

## 4<sup>th</sup> AML Directive

**DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 MAY 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC**

### CHAPTER I GENERAL PROVISIONS

#### *SECTION 1 subject-matter, scope and definitions*

##### Article 1 - ONGEWIJZIGD

1. This Directive aims to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing.

2. Member States shall ensure that money laundering and terrorist financing are prohibited.

3. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of that person's action;

(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;

(c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).

4. Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of another Member State or in that of a third country.

5. For the purposes of this Directive, 'terrorist financing' means the provision or collection of funds, by any means, directly or indirectly, with the intention that they

should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA, [as amended by Council Framework Decision 2008/919/JHA](#).

6. Knowledge, intent or purpose required as an element of the activities referred to in paragraphs 3 and 5 may be inferred from objective factual circumstances.

## Article 2

1. This Directive shall apply to the following obliged entities:

(1) credit institutions;

(2) financial institutions;

(3) the following natural or legal persons acting in the exercise of their professional activities:

(a) auditors, external accountants and tax advisors;

(b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or [carrying out of execution](#) of transactions for their client concerning the:

(i) buying and selling of real property or business entities;

(ii) managing of client money, securities or other assets;

(iii) opening or management of bank, savings or securities accounts;

(iv) organisation of contributions necessary for the creation, operation or management of companies;

(v) creation, operation or management of trusts, companies, foundations, or similar structures;

(c) trust or company service providers not already covered under points (a) or (b);

(d) estate agents **including letting agents** [AM3]

(e) other persons trading in goods **or services** [AM4] to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(f) providers of gambling services.

(g) providers engaged primarily and professionally in exchange services between virtual currencies and fiat currencies;

(h) wallet providers offering custodial services of credential necessary to access virtual currencies;

**(ha) electronic money issuers and distributors.** [AM5]

**(hb) art galleries and auction houses**

2. With the exception of casinos, and following an appropriate risk assessment, Member States may decide to exempt in full or in part, providers of certain gambling services from national provisions transposing this Directive on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such services.

Among the factors considered in their risk assessment, Member States shall assess the degree of vulnerability of the applicable transactions, including with respect to the payment methods used.

In their risk assessments, Member States shall indicate how they have taken into account any relevant findings in the reports issued by the Commission pursuant to Article 6.

Any decision taken by a Member State pursuant to the first subparagraph shall be notified to the Commission, together with a justification based on a specific risk assessment. The Commission shall communicate that decision to the other Member States.

3. Member States may decide that persons that engage in a financial activity on an occasional or very limited basis where there is little risk of money laundering or terrorist financing do not fall within the scope of this Directive, provided that all of the following criteria are met:

(a) the financial activity is limited in absolute terms;

(b) the financial activity is limited on a transaction basis;

(c) the financial activity is not the main activity of such person;

(d) the financial activity is ancillary and directly related to the main activity of such persons;

(e) the main activity of such persons is not an activity referred to in points (a) to (d) or point (f) of paragraph 1 (3);

(f) the financial activity is provided only to the customers of the main activity of such persons and is not generally offered to the public.

The first subparagraph shall not apply to persons engaged in the activity of money remittance as defined in points (13) of Article 4 of Directive 2007/64/EC of the European Parliament and of the Council.

4. For the purposes of point (a) of paragraph 3, Member States shall require that the total turnover of the financial activity does not exceed a threshold, which must be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.

5. For the purposes of point (b) of paragraph 3, Member States shall apply a maximum threshold per customer and ~~per~~ single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That maximum threshold shall be established at national level, depending on the type of financial activity. It shall be sufficiently low in order to ensure that the types of transactions in question are an impractical and inefficient method for laundering money or for terrorist financing, and shall not exceed EUR 1 000.

6. For the purposes of point (c) of paragraph 3, Member States shall require that the turnover of the financial activity does not exceed 5% of the total turnover of the natural or legal person concerned.

7. In assessing the risk of money laundering or terrorist financing for the purposes of this Article, Member States shall pay particular attention to any financial activity which is considered to be particularly likely, by its nature, to be used or abused for ~~the purposes of~~ money laundering or terrorist financing.

8. Decisions taken by Member States pursuant to paragraph 3 shall state the reasons on which they are based. Member States may decide to withdraw such decisions where circumstances change. They shall notify such decision to the Commission. The Commission shall communicate such decisions to the other Member States.

9. Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemption granted by decisions pursuant to this Article is not abused.

### **Article 3**

For the purposes of this Directive the following definitions apply:

(1) "credit institution" means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013<sup>1</sup> of the European Parliament and of the Council, including branches thereof, as defined in point (17) of Article 4(1) of that

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<sup>1</sup> Credit institution means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.

Regulation, located in the Union, whether its head office is situated within the Union or in a third country;

(2) "financial institution" means:

(a) an undertaking other than a credit institution which carries out one or more of the activities listed in points (2) to (12), (14) and (15) of Annex I to Directive 2013/36/EU of the European Parliament and of the Council, including the activities of currency exchange offices (bureaux de change);

(b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council, insofar as it carries out life assurance activities covered by that Directive;

(c) an investment firm as defined in point 1 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council;

(d) a collective investment undertaking marketing its units or shares;

(e) an insurance intermediary as defined in point (5) Article 2 of Directive 2002/92/EC of the European Parliament and of the Council where it acts with respect to life insurance and other investment related services, with the exception of a tied insurance intermediary as defined in point (7) of that Article;

(f) branches, when located in the Union, of financial institutions as referred to in points (a) to (e), whether their head office is situated in a Member State or in a third country;

(3) "property" means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets;

(4) "criminal activity" means any kind of criminal involvement in the commission of the following serious crimes:

(a) acts as defined in Articles 1 to 4 of Framework Decision 2002/475/JHA;

(b) any of the offences referred in Article 3(1)(a) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

(c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA;

(d) fraud affecting the Union's financial interests, where it is at least serious, as defined in Article 1(1) and Article 2(1) of the Convention on the Protection of the European Communities' Financial Interests;

(e) corruption;

(f) all offences, ~~including tax crimes relating to direct taxes and indirect taxes and~~ as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;

~~(g) offences relating to direct taxes and indirect taxes as defined in the national law of the Member States, taking into account Article 57 of this Directive.~~

(5) "self-regulatory body" means a body that represents members of a profession and has a role in regulating them, in performing certain supervisory or monitoring type functions and in ensuring the enforcement of the rules relating to them;

(6) "beneficial owner" means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of ~~25 10 %~~ plus one share or an ownership interest of more than ~~25 10 %~~ in the customer held by a natural person shall be an indication of direct ownership. A shareholding of ~~25 10 %~~ plus one share or an ownership interest of more than ~~25 10 %~~ in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means<sup>2</sup> may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council.

For the purpose of Article 13(1)(b) and article 30 of this Directive, the indication of ownership control set out in the second paragraph is reduced to 10% whenever the legal entity is a Passive Non-Financial Entity as defined in Directive 2011/16/EU;

~~(ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any~~

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<sup>2</sup> Refer to the end of the document for the content of article 22 2013/34.

~~doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point.~~

**(ii) if the entity fails to provide the identity of any natural person who meets the criteria set out in point (i), the obliged entities shall record that no beneficial owner exists and keep records of the actions taken in order to identify the beneficial ownership under point (i).**

**Where there is any doubt that the person(s) identified are the beneficial owner(s), a record of that doubt shall be made.**

**In addition, obliged entities shall identify and verify the identity of the relevant natural person who holds the position of senior managing official, who shall be identified as the "senior manager" (and not as "beneficial owner"), and record details of all legal owners of the entity. [AM6]**

(b) in the case of trusts all following persons:

(i) the settler(s); [AM7]

(ii) the trustee(s);

(iii) the protector(s), if any; [AM8]

(iv) the beneficiaries; or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b);

(7) "trust or company service provider" means any natural or legal person which by way of business, provides any of the following services to third parties:

(a) the formation of companies or other legal persons;

(b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

(c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;

(d) acting as, or arranging for another person to act as, a trustee of an express trust or a similar legal arrangement;

(e) acting as, or arranging for another person to act as, a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in accordance with Union law or subject to equivalent international standards;

(8) "correspondent relationship" means:

(a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;

(b) the relationships between and among credit institutions and financial institutions including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers;

(9) "politically exposed person" means a natural person who is or who has been entrusted with prominent public functions and includes the following:

(a) heads of State, heads of government, ministers and deputy or assistant ministers;

(b) members of parliament or similar legislative bodies;

(c) members of the governing bodies of political parties;

(d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions which are not subject to further appeal, except in exceptional circumstances;

(e) members of courts of auditors or of the boards of central banks;

(f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;

(g) members of the administrative, management or supervisory bodies of State owned enterprises;

(h) directors, deputy directors and members of the board or equivalent function of an international organisation.

No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials;

(10) "family members" includes the following:

(a) the spouse, or a person considered to be equivalent to a spouse, of a politically exposed person;

(b) the children and their spouses, or persons considered to be equivalent to a spouse, of a politically exposed person;

(c) the parents of a politically exposed person;

(11) "Persons known to be close associates" means:

(a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;

(b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.

(12) "senior management" means an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors;

(13) "business relationship" means a business, professional or commercial relationship which is connected with the professional activities of an obliged entity and which is expected, at the time when the contact is established, to have an element of duration;

(14) "gambling services" means [any](#) service which involves wagering a stake with monetary value in games of chance, including those with an element of skill such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services;

(15) "group" means a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU;

(16) "electronic money" means electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC, [but excluding monetary value as referred to in Article 1\(4\) and \(5\) of that Directive](#);

(17) "shell bank" means a credit institution or financial institution, or an institution that carries out activities equivalent to those carried out by credit institutions and financial institutions, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group.

[\(18\) "virtual currencies" means a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but](#)

is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically;

**(18a) 'electronic money issuer' means an institution as defined in point (3) of Article 2 of Directive 2009/110/EC.** [AM9]

#### **Article 4 - ONGEWIJZIGD**

1. Member States shall, in accordance with the risk-based approach, ensure that the scope of this Directive is extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing.

2. Where a Member State extends the scope of this Directive to professions or to categories of undertaking other than those referred to in Article 2(1), it shall inform the Commission thereof.

#### **Article 5 - ONGEWIJZIGD**

Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, within the limits of Union law.

### **SECTION 2 risk assessment**

#### **Article 6 - ONGEWIJZIGD**

1. The Commission shall conduct an assessment of the risks of money laundering and terrorist financing affecting the internal market and related to cross-border activities.

To that end, the Commission shall by 26 June 2017, draw up a report identifying, analysing and evaluating those risks at Union level. Thereafter, the Commission shall update its report every two years, or more frequently if appropriate.

2. The report referred to paragraph 1 shall cover at least the following:

(a) the areas of the internal market that are at greatest risk;

(b) the risks associated with each relevant sector;

(c) the most widespread means used by criminals to launder illicit proceeds.

3. The Commission shall make the report referred to in paragraph 1 available to the Member States and obliged entities in order to assist them to identify, understand, manage and mitigate the risk of money laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the ESAs, and representatives from FIUs to better understand the risks.

4. The Commission shall make the recommendations to Member States on the measures suitable for addressing the identified risks. In the event that Member States decide not to apply any of the recommendations in their national AML/CFT regimes, they shall notify the Commission thereof and provide a justification of such a decision.

***If either the justification provided by a Member State is not deemed satisfactory with the purpose of ensuring a strong AML regimes across the Union or a Member States continues failing to enforce measures to comply with those recommendations, the Commission might additionally recommend that Member States require obliged entities to apply enhanced customer due diligence measures when dealing with natural persons or legal entities operating in a sector or carrying out activities which are identified to be at high risk of money laundering/ terrorism financing.***

5. By 26 December 2016, the ESAs, through the Joint Committee, shall issue an opinion on the risks of money laundering and terrorist financing affecting the Union's financial sector (the 'joint opinion'). Thereafter, the ESAs, through the Joint Committee, shall issue an opinion every two years.

6. In conducting the assessment referred to in paragraph 1, the Commission shall organise the work at Union level, shall take into account the joint opinions referred to in paragraph 5 and shall involve the Member States' experts in the area of AML/CTF, representatives from FIUs and other Union level bodies where appropriate. The Commission shall make the joint opinions available to the Member States and obliged entities in order to assist them to identify, manage and mitigate the risk of money laundering and terrorist financing.

7. Every two years, or more frequently if appropriate, the Commission shall submit a report to the European Parliament and to the Council on the finding resulting from the regular risk assessments and the action taken based on those findings.

#### **Article 7 - ONGEWIJZIGD**

1. Each Member State shall take appropriate steps to identify, assess, understand and mitigate the money laundering and terrorist financing risks affecting it, as well as any data protection concerns in that regard. It shall keep that risk assessment up to date.

2. Each Member State shall designate an authority or establish a mechanism by which to coordinate the national response to the risks referred to in paragraph 1. The identity of that authority or the description of the mechanism shall be notified to the Commission, the ESAs and other Member States.

***If a Member State confers the competence of its authority from the first subparagraph on other authorities, in particular those at regional or local level, efficient and effective coordination shall be ensured between all the authorities involved. If more than one unit within an authority to which the competence was***

**conferred is in charge of tasks from the first subparagraph, efficient and effective coordination and cooperation shall be ensured between the different units.** [AM10]

3. In carrying out the risk assessments referred to in paragraph 1 of this Article, Member States shall make use of the findings of the report referred to in Article 6(1).

4. As regards the risk assessment referred to in paragraph 1, each Member State shall:

(a) use it to improve its AML/CFT regime, in particular by identifying any areas where obliged entities are to apply enhanced measures and, where appropriate, specifying the measures to be taken;

(b) identify, where appropriate, sectors or areas of lower or greater risk of money laundering and terrorist financing;

(c) use it to assist it in the allocation and prioritisation of resources to combat money laundering and terrorist financing;

(d) use it to ensure that appropriate rules are drawn up for each sector or area, in accordance with the risk of money laundering and terrorist financing;

(e) make appropriate information available promptly to obliged entities to facilitate the carrying out of their own money laundering and terrorist financing risk assessments.

5. Member States shall make the results of their risk assessments available to the Commission, the ESAs and the other Member States. **Other Member States may provide relevant additional information, where appropriate, to the Member State carrying out the risk assessment.** A summary of the assessment shall be made publicly available. That summary shall not contain classified information.

**5a. The ESAs, through the Joint Committee, and the Commission shall make the recommendations to Member States on the measures suitable for addressing the identified risks. In the event that Member States decide not to apply any of the recommendations in their national AML/CFT regimes, they shall notify the ESAs and the Commission thereof and provide a justification of such a decision.**

[AM11] **If either the justification provided is not deemed satisfactory with the purpose of ensuring a strong AML regimes across the Union or a Member State continues failing to enforce measures to comply with those recommendations, the Commission might additionally recommend that Member States require obliged entities to apply enhanced customer due diligence measures when dealing with natural persons or legal entities operating in a sector or carrying out activities which are identified to be at high risk of money laundering/terrorism financing.**

## Article 8 - ONGEWIJZIGD

1. Member States shall ensure that obliged entities take appropriate steps to identify and assess the risks of money laundering and terrorist financing, taking into account risk factors including those relating to their customers, countries or geographic areas, products, services, transactions or delivery channels. Those steps shall be proportionate to the nature and size of the obliged entities.

2. The risk assessments referred to in paragraph 1 shall be documented, kept up-to-date and made available to the relevant competent authorities and self-regulatory bodies concerned. Competent authorities may decide that individual documented risk assessments are not required, where the specific risks inherent in the sector are clear and understood.

3. Member States shall ensure that obliged entities have ~~in place~~ policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified at the level of the Union, the Member State and the obliged entity.

Those policies, controls and procedures shall be proportionate to the nature and size of the obliged entities.

4. The policies and procedures referred to in paragraph 3 shall include:

(a) the development of internal policies, controls and procedures, including model risk management practices, customer due diligence, reporting, record-keeping, internal control, compliance management including, where appropriate with regard to the size and nature of the business, the appointment of a compliance officer at management level, and employee screening;

(b) where appropriate with regard to the size and nature of the business, an independent audit function to test internal policies, controls and procedures referred to in point (a).

5. Member States shall require obliged entities to obtain approval from ~~their~~ senior management for the policies, controls and procedures that they put in place and to monitor and enhance the measures taken, where appropriate.

### **SECTION 3 third-country policy**

## Article 9 - ONGEWIJZIGD

1. Third-country jurisdictions which have strategic deficiencies in their national AML/CFT regimes that pose significant threats to the financial system of the Union (“high-risk third countries”), shall be identified in order to protect the proper functioning of the internal market.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 in order to identify high-risk third countries, taking into account strategic deficiencies, in particular in relation to:

(a) the legal and institutional AML/CFT framework of the third country, in particular:

(i) the criminalisation of money laundering and terrorist financing;

(ii) measures relating to customer due diligence;

(iii) requirements relation to record-keeping; and

(iv) requirements to report suspicious transaction;

(b) the powers and procedures of the third country's competent authorities for the purposes of combating money laundering and terrorist financing;

(c) the effectiveness of the AML/CFT system in addressing money laundering or terrorist financing risks of the third country.

***(ca) the existence of robust systems to ensure information on beneficial ownership is available to competent authorities without impediments.*** [AM12]

***(cb) the existence of proper sanction regime in case of breach of law.*** [AM13]

3. The delegated acts referred to in paragraph 2 shall be adopted within one month after the identification of the strategic deficiencies referred in that paragraph.

4. The Commission ~~shall take into account, as appropriate,~~ when drawing up the delegated acts referred to in paragraph 2, ***shall conduct its assessment in relation to the risks posed by individual third countries by taking into account, but not solely relying on, relevant*** evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, ~~in relation to the risks posed by individual third countries.~~

## CHAPTER II CUSTOMER DUE DILIGENCE

### SECTION 1 general provisions

#### Article 10 - ONGEWIJZIGD

1. Member States shall prohibit their credit institutions and financial institutions from keeping anonymous accounts or anonymous passbooks. Member States shall, in any event, require that the owners and beneficiaries of existing anonymous accounts or anonymous passbooks be subject to customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way.

2. Member States shall take measures to prevent misuse of bearer shares and bearer share warrants.

### Article 11 - ONGEWIJZIGD

Member States shall ensure that obliged entities apply customer due diligence measures in the following ~~cases~~circumstances:

- (a) when establishing a business relationship;
- (b) when carrying out an occasional transaction that:
  - (i) amounts to EUR 15 000 or more, whether that transaction is carried out in a single operation or in several operations which appear to be linked; or
  - (ii) constitutes a transfer of funds, as defined in point (9) of Article 3 of Regulation (EU) 2015/847 of the European Parliament and of the Council, exceeding EUR 1 000;
- (c) in the case of persons trading in goods **or services** [AM14], when carrying out occasional transactions in cash amounting to EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- (d) for providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2.000 or more, whether the transaction is carried out in a single operation or in several operation which appear to be linked;
- (e) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
- (f) when there are doubts about the veracity or adequacy of previously obtained customer identification data;

### Article 12

1. By way of derogation from points (a), (b) and (c) of the first subparagraph of Articles 13(1) and Article 14, and based on an appropriate risk assessment which demonstrates low risk, a Member State may allow obliged entities not to apply certain customer due diligence measures with respect to electronic money, where all of the following risk mitigating conditions are met:

- (a) the payment instrument is not reloadable, or has a maximum monthly payment transactions limit of EUR ~~250-150~~ which can be used only in **that Member State the Union**; [AM15]
- (b) the maximum amount stored electronically does not exceed EUR ~~250-150~~;
- (c) the payment instrument is used exclusively to purchase goods or services;

- (d) the payment instrument cannot be funded with anonymous electronic money;
- (e) the issuer carries out sufficient monitoring **and ensures the traceability** [AM16] of the transactions or business relationship to enable the detection of unusual or suspicious transactions.

~~For the purposes of point (b) of the first subparagraph, a Member State may increase the maximum amount to EUR 500 for payment instruments that can be used only in that Member State.~~

2. Member States shall ensure that the derogation provided for in paragraph 1 is not applicable in the case **either of online payment or** [AM17] of redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR ~~400~~ 50.

3. Member States shall ensure that Union credit institutions and financial institutions acting as acquires only accept payments carried out with prepaid cards issued in third countries where such cards meet requirements equivalent to those set out in points (a), (b), (c) or the first subparagraph of Article 13(1) and Article 14, or can be considered to meet the requirements in paragraph 1 and 2 of this Article.

### Article 13

1. Customer due diligence measures shall comprise:

(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source, including, where available, electronic identification means as set out in Regulation (EU) 910/2014<sup>3</sup>;

(b) identifying the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is, including as regards legal persons, trusts, companies, foundations, and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;

(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;

(d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds and ensuring that the documents, data or information held are kept up-to-date.

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<sup>3</sup> [Regulation \(EU\) n°910/2014 of the European Parliament and the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC \(OJ L 257, 28.8.2014, p.73\)](#)

When performing the measures referred to in points (a) and (b) of the first subparagraph, obliged entities shall also verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person.

2. Member States shall ensure that obliged entities apply each of the customer due diligence requirements laid down in paragraph 1. However, obliged entities may determine the extent of such measures on a risk-sensitive basis.

3. Member States shall require that obliged entities take into account at least the variables set out in Annex I when assessing the risks of money laundering and terrorist financing.

4. Member States shall ensure that obliged entities are able to demonstrate to competent authorities or self-regulatory bodies that the measures are appropriate in view of the risks of money laundering and terrorist financing that have been identified.

5. For life or other investment-related insurance business, Member States shall ensure that, in addition to the customer due diligence measures required for the customer and the beneficial owner, credit institutions and financial institutions conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment-related insurance policies, as soon as the beneficiaries are identified or designated:

(a) in the case of beneficiaries that are identified as specifically named persons or legal arrangements, taking the name of the person;

(b) in the case of beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the credit institutions or financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.

With regard to points (a) and (b) of the first subparagraph, the verification of the identity of the beneficiaries shall take place at the time of the payout. In the case of assignment, in whole or in part, of the life or other investment-related insurance to a third party, credit institutions and financial institutions aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person or legal arrangement receiving for its own benefit the value of the policy assigned.

6. In the case of beneficiaries of trusts or of similar legal arrangements that are designated by particular characteristics or class, an obliged entity shall obtain sufficient information concerning the beneficiary to satisfy the obliged entity that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.

## **Article 14**

1. Member States shall require that verification of the identity of the customer and the beneficial owner take place before the establishment of a business relationship or the carrying out of the transaction.

2. By way of derogation from paragraph 1, Member States may allow verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if necessary so as not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing. In such situations, those procedures shall be completed as soon as practicable after initial contact.

3. By way of derogation from paragraph 1, Member States may allow the opening of an account with a credit institution or financial institution, including accounts that permit transactions in transferable securities, provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until full compliance with the customer due diligence requirements laid down in points (a) and (b) of the first subparagraph of Article 13(1) is obtained.

4. Member States shall require that, where an obliged entity is unable to comply with the customer due diligence requirements laid down in points (a), (b) or (c) of the first subparagraph of Article 13(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction and shall terminate the business relationship and consider making a suspicious transaction report to the FIU in relation to the customer in accordance with Article 33.

Member States shall not apply the first subparagraph to notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that those persons ascertain the legal position of their client, or perform the task of defending or representing that client in, or concerning judicial proceedings, including providing advice on instituting or avoiding proceedings.

5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, including at times when the relevant circumstances of a customer change or when the relevant circumstances of a customer change, or when the obliged entity has a duty in the course of the relevant calendar year, to contact the customer for the purpose of reviewing any information related to the beneficial owner(s), in particular under Directive 2011/16/EU. **Member States shall require that obliged entities contact the customer for the purpose of reviewing any information related to the beneficial owner(s) not later than... [one year after the date of entry into force of this amending Directive].** [AM18]

## **SECTION 2 simplified customer due diligence**

### **Article 15 - ONGEWIJZIGD**

1. Where a Member State or an obliged entity identifies areas of lower risk, that Member State may allow obliged entities to apply simplified customer due diligence measures.
2. Before applying simplified customer due diligence measures obliged entities shall ascertain that the customer relationship or transaction presents a lower degree of risk.
3. Member States shall ensure that obliged entities carry out sufficient monitoring of the transactions or business relationships to enable the detection of unusual or suspicious transactions.

#### **Article 16 - ONGEWIJZIGD**

When assessing the risks of money laundering and terrorist financing relating to types of customers, geographic areas, and particular products, services, transactions or delivery channels, Member States and obliged entities shall take into account at least the factors of potentially lower risk situations set out in Annex II.

#### **Article 17 - ONGEWIJZIGD**

By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, on the risk factors to be taken into consideration and the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account shall be taken of the nature and size of the business, and where appropriate and proportionate, specific measures shall be laid down.

### ***SECTION 3 enhanced customer due diligence***

#### **Article 18**

1. In cases referred to Articles 19-18a to 24, ~~and when dealing with natural persons or legal entities established in the third countries identified by the Commission as high-risk third countries,~~ as well as in other cases of higher risk that are identified by Member States or obliged entities, Member States shall require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.

Enhanced customer due diligence measures need not be invoked automatically with respect to branches and majority-owned subsidiaries of obliged entities established in the Union which are located in ~~high-risk the~~ third countries, where those branches or majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 45. Member States shall ensure that those cases are handled by obliged entities by using a risk-based approach.

2. Member States shall require obliged entities to examine, as far as reasonably possible, the background and purpose of all complex, unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. In particular, obliged entities shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious.

3. When assessing the risks of money laundering and terrorist financing, Member States and obliged entities shall take into account at least the factors of potentially higher-risk situations set out in Annex III.

4. By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions in accordance with Article 16 of Regulation (EU) No 1093/2010, (EU) No 1094/2010, and (EU) No 1095/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where enhanced customer due diligence measures are appropriate. Specific account shall be taken of the nature and size of the business, and where appropriate and proportionate, specific measures shall be laid down.

#### Article 18a

1. With respect to business relationships or transactions involving high risk third countries, Member States shall require that, when dealing with natural persons or legal entities established in the third countries identified as high-risk third countries pursuant to Article 9 (2), obliged entities shall apply at least all the following enhanced customer due diligence measures:

(a) obtaining additional information on the customer and on the beneficial owner;

(b) obtaining addition information on the intended nature of the business relationship;

(c) obtaining information on the source of funds or source of wealth of the customer and of the beneficial owner;

(d) obtaining information on the reasons for the intended or performed transactions;

(e) obtaining the approval of senior management for establishing or continuing the business relationship;

(f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;

(g) requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.

1a. In addition to the measures provided in paragraph 1, Member States shall apply the following measures to third countries identified as high-risk third countries pursuant to Article 9(2) in compliance with international obligations of the Union:

(a) requiring increased supervisory examination or external audit requirements for branches and subsidiaries of financial institutions based in the country concerned;

(b) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned;

2. In addition to the measures provided in paragraph 1 and 1a and in compliance with international obligations of the Union, Member States may require obliged entities, when dealing with natural persons or legal entities established in the third countries identified as high-risk third countries pursuant to Article 9(2) to apply one or several additional mitigating measures:

(a) requiring financial institutions to apply additional elements of enhanced due diligence;

(b) introducing enhanced relevant reporting mechanisms or systematic reporting of financial transactions;

(c) limiting business relationships or financial transactions with natural persons or legal entities from the identified country.

3. In addition to the measures provided in paragraph 1 and 1a, Member States may apply one of the following measures to third countries identified as high-risk third countries pursuant to Article 9(2) in compliance with international obligations of the Union:

(a) refusing the establishment of subsidiaries or branches or representative offices of financial institutions from the country concerned, or otherwise taking into account the fact that the relevant financial institution is from a country that does not have adequate AML/CFT systems;

(b) prohibiting financial institutions from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AML/CFT systems;

(c) prohibiting financial institutions from relying on third parties located in the country concerned to conduct elements of the customer due diligence process;

(d) requiring financial institutions to review and amend, or if necessary terminate, correspondent relationships with financial institutions in the country concerned;

~~(e) requiring increased supervisory examination or external audit requirements for branches and subsidiaries of financial institutions based in the country concerned;~~

~~(f) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned.~~

4. When enacting or applying the measures set out in paragraphs 2 and 3, Member States shall take into account, as appropriate relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combatting terrorist financing, in relation to the risks posed by individual third countries.

5. Member States shall notify the Commission before enacting or applying the measures set out in paragraphs 2 and 3.

### **Article 19 - ONGEWIJZIGD**

With respect to cross-border correspondent relationships with a third-country respondent institution, Member States shall, in addition to the customer due diligence measures laid down in Article 13, require their credit institutions and financial institutions to:

(a) gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;

(b) assess the respondent institution's AML/CFT- controls;

(c) obtain approval from senior management before establishing new correspondent relationships;

(d) document the respective responsibilities of each institution;

(e) with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the correspondent institution, and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.

### **Article 20 - ONGEWIJZIGD**

With respect ~~to~~ of transactions or business relationships with politically exposed persons, Member States shall, in addition to the customer due diligence measures set out in Article 13, require obliged entities to:

(a) have in place appropriate risk management systems, including risk-based procedures, to determine whether the customer or the beneficial owner of the customer is ~~a politically exposed person~~ such a person;

(b) apply the following measures in cases of business relationships with politically exposed persons:

(i) obtain senior management approval for establishing or continuing business relationships with such persons;

(ii) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction with such persons;

(iii) conduct enhanced, ongoing monitoring of those business relationships.

#### **Article 21 - ONGEWIJZIGD**

Member States shall require obliged entities to take reasonable measures to determine whether the beneficiaries of a life or other investment-related insurance policy and/or, where required, the beneficial owner of the beneficiary are politically exposed persons. Those measures shall be taken no later than at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to applying the customer due diligence measures laid down in Article 13, Member States shall require obliged entities to:

(a) inform senior management before payout of policy proceeds;

(b) conduct enhanced scrutiny on the entire business relationship with the policyholder.

#### **Article 22 - ONGEWIJZIGD**

Where politically exposed person is no longer entrusted with a prominent ~~public~~ function by a Member State or a third country or with a prominent ~~public~~ function by an international organisation, obliged entities shall for at least 12 months, be required to take into account the continuing risk posed by that person and to apply appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk specific to politically exposed persons.

#### **Article 23 - ONGEWIJZIGD**

The measures referred to in Articles 20 and 21 shall also apply to family members or persons known to be close associates of politically exposed persons.

#### **Article 24 - ONGEWIJZIGD**

Member States shall prohibit credit institutions and financial institutions from entering into or continuing a correspondent relationship with a shell bank. They shall require that those institutions take appropriate measures to ensure that they do not engage in or continue correspondent relationships with a credit institution or financial institution that is known to allow its accounts to be used by a shell bank.

### **SECTION 4 performance by third parties**

## Article 25 - ONGEWIJZIGD

Member States may permit obliged entities to rely on third parties to meet the customer due diligence requirements laid down in points (a), (b) and (c) of the first subparagraph of Article 13(1). However, the ultimate responsibility for meeting those requirements shall remain with the obliged entity which relies on the third party.

## Article 26 - ONGEWIJZIGD

1. For the purposes of this Section, "third parties" means obliged entities that are listed in Article 2, the member organisations or federations of those obliged entities, or other institutions or persons situated in a Member State or third country that:

(a) apply customer due diligence requirements and record-keeping requirements that are consistent with those laid down in this Directive; and

(b) have their compliance with the requirements of this Directive supervised in a manner consistent with Section 2 of Chapter VI.

2. Member States shall prohibit obliged entities from relying on third parties established in high-risk third countries. ~~Member States may exempt branches and majority-owned subsidiaries of obliged entities established in the Union from that prohibition where these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 45.~~

## Article 27

1. Member States shall ensure that obliged entities obtain from the third party being relied upon the necessary information concerning the customer due diligence requirements laid down in points (a), (b) and (c) of the first subparagraph of Article 13(1).

2. Member States shall ensure that obliged entities to which the customer is referred take adequate steps to ensure that the third party provides, immediately, upon request, relevant copies of identification and verification data, [including, where available, data obtained through electronic identification means as set out in Regulation 910/2014](#), and other relevant documentation on the identity of the customer or the beneficial owner.

## Article 28 - ONGEWIJZIGD

Member States shall ensure that the competent authority of the home Member State (for group-wide policies and procedures) and the competent authority of the host Member State (for branches and subsidiaries) may consider an obliged entity to comply with the provisions adopted pursuant to Articles 26 and 27 through its group programme, where the following conditions are met:

(a) the obliged entity relies on information provided by a third party that is part of the same group;

(b) that group applies customer due diligence measures, rules on record-keeping and programmes against money laundering and terrorist financing in accordance with this Directive or equivalent rules;

(c) the effective implementation of requirements referred to in point (b) is supervised at group level by a competent authority of the home Member State or the third country.

### **Article 29 - ONGEWIJZIGD**

This Section shall not apply to outsourcing or agency relationships where, on the basis of a contractual arrangement, the outsourcing service provider or agent is to be regarded as part of the obliged entity.

## **CHAPTER III BENEFICIAL OWNERSHIP INFORMATION**

### **Article 30**

1. Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.

Member States shall ensure that those entities are required to provide, in addition to information about their legal owner, information on the beneficial owner to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter II.

***Member States shall ensure that owners of shares or voting rights or ownership interest in corporate and other legal entities, including through bearer shareholdings, or through control via other means, disclose to those entities whether they are holding the interest in their own name and on their own account or on behalf of another person. Member States shall ensure that the natural person(s) who hold the position of senior managing official(s) in corporate and other legal entities, disclose to those entities whether they are holding the position in their own name or on behalf of another person.*** [AM19]

2. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.

3. Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State, for example a commercial register, companies register as referred to in article 3 of the Directive 2009/101/EC of the European Parliament and of the Council, or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The

information on beneficial ownership contained in that database may be collected in accordance with national systems.

4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current. **Member States shall require that the obliged entities report cases of missing or inaccurate disclosures.**

5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:

a) competent authorities and FIUs, without any restriction;

b) obliged entities, in the framework of the conduct of customer due diligence in accordance with Chapter II;

~~c) any person or organisation that can demonstrate a legitimate interest.~~

~~The persons or organisations referred to in point (c) shall access at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.~~

**5a. The information held in the register referred to in paragraph 3 of this Article on any corporate and legal entities other than those referred to in Article 1a(a) of Directive (EC) 2009/101 shall be publicly accessible.**

**The information publicly accessible shall consist of at least the name, the date of birth, the nationality, the country of residence, contact details (without disclosure of a home address), the nature and extent of the beneficial interest held of the beneficial owner as defined in Article 3(6)(b).**

**For the purpose of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and open data standards, and subject to online registration. Member States may introduce a fee to cover the administrative costs.** [AM20]

6. The central register referred to in paragraph 3 shall ensure timely and unrestricted access by competent authorities and FIUs to all information held in the central register without any restriction and without alerting the entity concerned. It shall also allow timely access by obliged entities when taking customer due diligence measures in accordance with Chapter II.

Competent authorities granted access to the central register referred to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including tax authorities, supervisors [AM21] and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets.

7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraph 1 and 3 to the competent authorities and FIUs of other Member States in a timely manner.

8. Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.

~~Whenever entering into a new customer relationship with a corporate or other legal entity subject to registration of beneficial ownership information pursuant to paragraph 3, the obliged entities shall collect proof of registration-~~

~~9. Member States may provide for an exemption to the access referred to in points (b) and (c) of paragraph 5 to all or part of the information on the beneficial ownership on a case-by-case basis in exceptional circumstances, where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable. Exemptions granted pursuant to this paragraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.~~

In exceptional circumstances to be laid down in national law, where the access referred to in point (b) of paragraph 5 **and paragraph 5a** would expose the beneficial owner to the risk of **fraud**, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon an evaluation of the exceptional nature of the circumstances, with the evaluation accessible to the Commission upon request. **Exemptions shall be reassessed at regular intervals of at least every two years to avoid abuse. When an exemption is granted, this has to be clearly indicated in the register.** [AM22]

Exemptions granted pursuant to this paragraph shall not apply to credit institutions and financial institutions, and to the obliged entities as referred to in point (3)(b) of Article 2(1) that are public officials.

~~10. By 26 June 2019, the Commission shall submit a report to the European parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring the safe and efficient interconnection of the central registers referred to in paragraph 3 via the European central platform established by Article 4a(1) of Directive 2009/101/EC. Where appropriate, that report shall be accompanied by a legislative proposal.~~

Member States shall ensure that the central registers referred to in paragraph 3 of this Article are interconnected via the European Central Platform established by Article

4a(1) of Directive 2009/101/EC. The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 4c of Directive 2009/101/EC.

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 4a(2) of Directive 2009/101/EC, in accordance with Member States' national laws implementing paragraph 5 of this Article.

The information referred to in paragraph 1 of this Article shall be available through the national registers and through the system of interconnection of registers for 10 years after the corporate or other legal entity has been struck off from the commercial or company register.

Member States shall cooperate among themselves and with the Commission in order to implement the different types of access in accordance with paragraph 5 and 5a.

### **Article 31**

1. Member States shall ensure that this Article applies to trusts and other types of legal arrangements having a structure or functions similar to trusts, such as, inter alia, fiducie, Treuhand, **waqf** or fideicomiso, **and all other similar, in terms of structure or function, existing or future legal arrangements.** Member States shall define the characteristics to determine where legal arrangements have a structure or functions similar to trusts.

Each Member States shall require that trustees of any express trust ~~governed under their law~~ **created, administered or operated in that Member State under the law of a Member State or of a third country** obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

(a) the settler**(s)**;

(b) the trustee**(s)**;

(c) the protector**(s)** (if any); [AM23]

(d) the beneficiaries or class of beneficiaries;

(e) any other natural person exercising effective control over the trust.

2. Member States shall ensure that trustees **and other beneficial owners** disclose their status and provide the information referred to in paragraph 1 to obliged entities in a timely manner **where, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the threshold set out in points (b), (c) and (d) of Article 14.**

3. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.

3a. The information referred to in paragraph 1 shall be held in a central register referred to in Article 30 paragraph 3 -set up by the Member State where the trust is created, administered or operated. [AM24]

~~4. Member States shall require that the information referred to in paragraph 1 is held in a central register when the trust generates tax consequences. The central register shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the parties to the trust concerned. It may also allow timely access by obliged entities, within the framework of customer due diligence in accordance with Chapter II. Member States shall notify to the Commission the characteristics of those national mechanisms.~~

Member States shall ensure that the information held in the register referred to in paragraph 3a is accessible in a timely and unrestricted manner by competent authorities and FIUs, without alerting the parties to the trust concerned. They shall also ensure that obliged entities are allowed timely access to that information, pursuant to the provisions on customer due diligence laid down in Chapter II. Member States shall notify to the Commission the characteristics of those mechanisms.

Competent authorities granted access to the central register referred to in paragraph 3a shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including tax authorities, supervisors [AM25] and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing and tracing and seizing or freezing and confiscating criminal assets.

4a. The information held in the register referred to in paragraph 3a of this Article with respect to any other trusts than those referred to in Article 7b (b) of Directive (EC) 2009/101 shall be accessible to any person or organisation that can demonstrate a legitimate interest.

The information accessible to persons and organisations that can demonstrate a legitimate interest shall at least consist of the name, the date month and year of birth, the nationality and the country of residence and the nature and extent of the beneficial interest held of the beneficial owner as defined in Article 3(6)(b). [AM26]

***For the purpose of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and open data standards, and subject to online registration. Member States may introduce a fee to cover the administrative costs. [AM27]***

4b. Whenever entering into a new customer relationship with a trust or other legal arrangement subject to registration of beneficial ownership information pursuant to

paragraph 3a, the obliged entities shall collect proof of registration—~~whenever applicable.~~

5. Member States shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and up-to-date. **Member States shall require that the obliged entities report cases of missing or inaccurate disclosures.**

6. Member States shall ensure that obliged entities do not rely exclusively on the central register referred to in paragraph 4 to fulfil their customer due diligence requirements as laid down in Chapter II. Those requirements shall be fulfilled by using a risk-based approach.

7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraph 1 and 4 to the competent authorities and FIUs of other Member States in a timely manner.

7a. In exceptional circumstances laid down in national law, where the access referred to in paragraphs 4 and 4a would expose the beneficial owner to the risk of ~~fraud~~, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. **Member States shall ensure that these exemptions are granted upon an evaluation of the exceptional nature of the circumstances with the evaluation accessible to the Commission upon request. Exemptions shall be reassessed at regular intervals of at least every two years to avoid abuse. When an exemption is granted, this has to be clearly indicated in the register.** [AM28]

Exemptions granted pursuant to the first subparagraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.

Where a Member State decides to establish an exemption in accordance with the first subparagraph, it shall not restrict access to information by competent authorities and FIUs.

~~8. Member States shall ensure that the measures provided for in this Article apply to other types of legal arrangements having a structure or functions similar to trusts.~~

~~9. By 26 June 2019, the Commission shall submit a report to the European parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring safe and efficient interconnection of the central registries. Where appropriate, that report shall be accompanied by a legislative proposal.~~

Member States shall ensure that the central registers referred to in paragraph 3a of this Article are interconnected via the European Central Platform established by Article 4a(1) of Directive 2009/101/EU. The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications

and procedures established by implementing acts adopted by the Commission in accordance with Article 4c of Directive 2009/101/EC.

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 4a(2) of Directive 2009/101/EU/EC, in accordance with Member States' national laws implementing paragraphs 4 and 5 of this Article.

Member States shall ensure that only the information referred to in paragraph 1 that is up to date and corresponds to the actual ownership beneficiaries is made available through their national registers and through the system of interconnection of registers, and the access to that information shall be in accordance with data protection rules.

The information referred to in paragraph 1 of this Article shall be available through the national registers and through the system of interconnection of registers for 10 years after the trust or other legal arrangement similar to a trust has been struck off from the commercial or company register.

Member States shall cooperate with the Commission in order to implement the different types of access in accordance with paragraphs 4 and 4a of this Article.

10. For the purpose of this Article, a trust is considered to be **created**, administered or operated in **each a** Member State where ~~the trustees are established~~:

**a) it is created according to or governed by the Member State's law or has its ultimate court of appeal in the Member State's jurisdiction; or**

**b) it is connected to the Member State by**

**i) having one or more of the beneficial owners of the trust, as defined in Article 3(6)(b), resident in that Member State;**

**ii) holding real estate in that Member State;**

**iii) holding shares or voting rights or ownership interest in a legal entity incorporated in that Member State; or**

**iv) holding a bank or payment account in a credit institution situated in that Member State.** [AM29]

10a. Member States shall notify to the Commission the categories and characteristics of the legal arrangements that have been identified pursuant to the paragraph 1 within 12 months from the entry into the force of this Directive and upon expiry of that period the Commission should publish within 2 months in the Official Journal of the European Union the consolidated list of such legal arrangements.

By 26 June 2020, the Commission shall submit a report to the European Parliament and to the Council assessing whether all legal arrangements which have a structure and function similar to trusts governed under the law of Member States were duly identified and made subject to the obligations as set out in this Directive. Where appropriate, the Commission shall take the necessary steps to act upon the findings of that report.

## CHAPTER IV REPORTING OBLIGATIONS

### SECTION 1 general provisions

#### Article 32

1. Each Member State shall establish an FIU in order to prevent, detect and effectively combat money laundering and terrorist financing.
2. Member States shall notify the Commission in writing of the name and address of the respective FIUs.
3. Each FIU shall be operationally independent and autonomous, which means that the FIU shall have the authority and capacity to carry out its functions freely, including the ability to take autonomous decision to analyse, request and disseminate specific information. The FIU as the central national unit shall be responsible for receiving and analysing suspicious transaction reports and other information relevant to money laundering, associated predicate offences or terrorist financing. The FIU shall be responsible for disseminating the results of its analyses and any additional relevant information to the competent authorities when there are grounds to suspect money laundering, associated predicate offences or terrorist financing. It shall be able to obtain [and use](#) information from [any](#) obliged entities.

Member States shall provide their FIUs with adequate financial, human and technical resources in order to fulfil their tasks.

4. Member States shall ensure that their FIUs have access, directly or indirectly, in a timely manner, to the financial, administrative and law enforcement information that they require to fulfil their tasks properly. FIUs shall be able to respond to requests for information by competent authorities in their respective Member State when such requests for information are motivated by concerns relating to money laundering, associated predicate offences or terrorist financing. The decision on conducting the analysis or dissemination of information shall remain with the FIU.
5. Where there are objective grounds for assuming that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested, the FIU shall be under no obligation to comply with the request for information.
6. Member States shall require competent authorities to provide feedback to the FIU about the use made of the information provided in accordance with this Article and about the outcome of the investigations or inspections performed on the basis of that information.

7. Member States shall ensure that the FIU is empowered to take urgent action, directly or indirectly, where there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to a transaction that is proceeding, in order to analyse the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities. The FIU shall be empowered to take such action, directly or indirectly, at the request of an FIU from another Member State for the periods and under the conditions specified in the national law of the FIU receiving the request.

8. The FIU's analysis function shall consist of the following:

(a) an operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use after dissemination; and

(b) a strategic analysis addressing money laundering and terrorist financing trends and patterns.

9. In the context of its functions, each FIU shall be able to obtain from any obliged entity, **without prejudice to Article 53**, [AM30] information for the purpose set in paragraph 1 of this Article, even if such obliged entity did not file a prior report pursuant to Article 33(1)(a).

#### Article 32a

1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts as defined in Directive 2007/64/EC ~~and~~ bank accounts **and safe deposit boxes** [AM31] held by a credit institution within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.

2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible, at national level, to FIUs and competent authorities for fulfilling their obligations under this Directive. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 to any other FIUs in a timely manner in accordance with Article 53.

3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:

– for the customer-account holder and any person purporting to act on behalf of the customer: the name, complemented by the other identification data required under the national provisions transposing Article 13(1) (a) or a unique identification number;

- for the beneficial owner of the customer-account holder: the name, complemented by the other identification data required under the national provisions transposing Article 13(1)(b) or a unique identification number;

- for the bank or payment account: the IBAN number and the date of account opening and closing.

**- for the safe deposit box: the name and the duration of the lease period.** [AM32]

**By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring safe and efficient interconnection of the central registries. Where appropriate, that report shall be accompanied by a legislative proposal.**

#### Article 32b

1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling land and buildings within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.

2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible, at national level, to FIUs and competent authorities. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 to any other FIUs in a timely manner in accordance with Article 53.

3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:

- for the real property owner and any person purporting to act on behalf of the owner: the name, complemented by the other identification data required under the national provisions transposing Article 13(1) (a) or a unique identification number;

- for the beneficial owner of the real property: the name, complemented by the other identification data required under the national provisions transposing Article 13(1)(b) or a unique identification number;

- for the real property: date and cause of ownership acquisition, mortgage and rights other than ownership;

- for the land: location, parcel number, land category (current state of land), parcel area (area of land);

- for the building: location, parcel number, building number, type, structure, floor area.

4. Member States shall cooperate among themselves and with the Commission in order to establish by 1 January 2018 an European real property register in accordance with paragraph 1 building on the European Land Information Service (EULIS). [AM33]

#### **Article 32c**

*1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling life insurance contracts or investment related services such as insurance contracts with premium refund held within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.*

*2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible, at national level, to FIUs and competent authorities. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 to any other FIUs in a timely manner in accordance with Article 53.*

*3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:*

*– for the contracting partner and any person purporting to act on behalf of the contracting partner: the name, complemented by the other identification data required under the national provisions transposing Article 13(1) (a) or a unique identification number;*

*– for the beneficial owner of the life insurance contract: the name, complemented by the other identification data required under the national*

*provisions transposing Article 13(1)(b) or a unique identification number;*

*- for the life insurance contract: date of conclusion of contract and insured amount.*

*4. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring safe and efficient interconnection of the central registries. Where appropriate, that report shall be accompanied by a legislative proposal.*

### **Article 33**

1. Member States shall require obliged entities, and, where applicable, their directors and employees, to cooperate fully by promptly:

(a) informing the FIU, including by filing a report, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, and by promptly responding to requests by the FIU for additional information in such cases; and

(b) ~~providing the FIU directly or indirectly, at its request, with all necessary information, in accordance with the procedures established by the applicable law.~~

All suspicious transactions, including attempted transactions, shall be reported.

2. The person appointed in accordance with point (a) of Article 8(4) shall transmit the information referred to in paragraph 1 of this Article to the FIU of the Member State in whose territory the obliged entity transmitting the information is established.

### **Article 34 - ONGEWIJZIGD**

1. By way of derogation from Article 33(1), Member States may, in the case of obliged entities referred to in point (3)(a), (b) and (d) of Article 2(1), designate an appropriate self-regulatory body of the profession concerned as the authority to receive the information referred to in Article 33(1).

Without prejudice to paragraph 2, the designated self-regulatory body shall in cases referred to in the first subparagraph of this paragraph, forward the information to the FIU promptly and unfiltered.

2. Member States shall not apply the obligations laid down in Article 33(1) to notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such exemption relates to information they receive from, or obtain on, one of their clients, in the course of ascertaining the legal position of their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings. **The exemption shall not apply in the case of suspicions of tax evasion, tax avoidance and tax fraud.**

#### **Article 35 - ONGEWIJZIGD**

1. Member States shall require obliged entities to refrain from carrying out transactions which they know or suspect to be related to proceeds of criminal activity or to terrorist financing, until they have completed the necessary action in accordance with point (a) of the first subparagraph of Article 33~~(1)~~ and have complied with any further specific instructions from the FIU or the competent authorities in accordance with the law of the relevant Member State.

2. Where refraining from carrying out transactions referred to in paragraph 1 is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected operation, the obliged entities concerned shall inform the FIU immediately afterwards.

#### **Article 36 - ONGEWIJZIGD**

1. Member States shall ensure that if, in the course of checks carried out in the obliged entities by the competent authorities referred to in Article 48, or in any other way, those authorities discover facts that could be related to money laundering or terrorist financing, they shall promptly inform the FIU.

2. Member States shall ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets inform the FIU if they discover facts that could be related to money laundering or terrorist financing.

#### **Article 37 - ONGEWIJZIGD**

Disclosure of information in good faith by an obliged entity or by an employee or director of such an obliged entity in accordance with Articles 33 and 34 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the obliged entity or its directors or employees in liability of any kind even in circumstances where they were not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred.

#### **Article 38 - ONGEWIJZIGD**

Member States shall ensure that individuals, including employees and representatives of the obliged entity who report suspicions of money laundering or terrorist financing internally, externally or to the FIU, are protected from being exposed to threats, retaliatory or hostile action, and in particular from adverse or discriminatory employment actions, civil claims and criminal charges linked to such disclosure.

## **SECTION 2 prohibition of disclosure**

### **Article 39**

1. Obligated entities and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information is being, will be or has been transmitted in accordance with Articles 33 and 34 or that a money laundering or terrorist financing analysis is being, or may be, carried out.

2. The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities, including the self-regulatory bodies, or disclosure for law enforcement purposes.

3..The prohibition laid down in paragraph 1 shall not prevent disclosure between the credit institutions and financial institutions from the Member States-provided that they belong to the same group, or between those institutions these entities and their branches and majority owned subsidiaries located established in third countries, provided that those-these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the group, in accordance with Article 45-42 and that the group-wide policies and procedures comply with the requirements set out in this Directive.

4. The prohibition laid down in paragraph 1 shall not prevent disclosure between obliged entities referred to in point 3(a) and (b) of Article 2(1), or entities from third countries which impose requirements equivalent to those laid down in this Directive, who perform their professional activities, whether as employees or not, within the same legal person or a larger structure to which the person belongs and which shares common ownership, management or compliance control.

5. For obliged entities referred to in points (1), (2) (3)(a) and (b) of Article 2(~~4~~) in cases relating to the same customer and the same transaction involving two or more obliged entities, the prohibition laid down in paragraph 1 of this Article shall not prevent disclosure between the relevant obliged entities provided that they are from a Member State, or entities in a third country which imposes requirements equivalent to those laid down in this Directive, and that they are from the same professional category and are subject to obligations as regards professional secrecy and personal data protection.

6. Where the obliged entities referred to in point (3)(a) and (b) in Article 2(1) seek to dissuade a client from engaging in illegal activity, that shall not constitute disclosure within the meaning of paragraph 1 of this Article.

## Chapter V Data protection, record-retention and statistical data

### Article 40

1. Member States shall require obliged entities to retain the following documents and information in accordance with national law for the purpose of preventing, detecting and investigating, by the FIU or by other competent authorities, possible money laundering or terrorist financing:

(a) in the case of customer due diligence, a copy of the documents and information which are necessary to comply with the customer due diligence requirements laid down in Chapter II, [including, where available, information obtained through electronic identification means as set out in Regulation \(EU\) No 910/2014](#), for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction;

(b) the supporting evidence and records of transactions, consisting of the original documents or copies admissible in judicial proceedings under the applicable national law, [including, where available, information obtained through electronic identification means as set out in Regulation \(EU\) No 910/2014](#), which are necessary to identify transactions, for a period of five years after the end of a business relationship with their customer or after the date of an occasional transaction.

[The second subparagraph shall also apply in respect of the data accessible through the centralised mechanism referred to in Article 32a.](#)

Upon expiry of the retention periods referred to in the first subparagraph, Member States shall ensure that obliged entities delete personal data, unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention after they have carried out a thorough assessment of the necessity and proportionality of such further retention and consider it to be justified as necessary for the prevention, detection or investigation of money laundering or terrorist financing. That further retention period shall not exceed five additional years.

2. Where, on 25 June 2015, legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing are pending in a Member State, and an obliged entity holds information or documents relating to those pending proceedings, the obliged entity may retain that information or those documents, in accordance with national law, for a period of five years from 25 June 2015. Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of

five years where the necessity and proportionality of such further retention has been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.

#### **Article 41 - ONGEWIJZIGD**

1. The processing of personal data under this Directive is subject to Directive 95/46/EC, as transposed into national law. Personal data that is processed pursuant to this Directive by the Commission or by the ESAs is subject to Regulation (EC) No 45/2001.

2. Personal data shall be processed by obliged entities on the basis of this Directive only for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 and shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Directive for any other purposes, such as commercial purposes, shall be prohibited.

3. Obligated entities shall provide new clients with the information required pursuant to Article 10 of Directive 95/46/EC before establishing a business relationship or carrying out an occasional transaction. That information shall, in particular, include a general notice concerning the legal obligations of obliged entities under this Directive to process personal data for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 of this Directive.

4. In applying the prohibition of disclosure laid down in Article 39(1), Member States shall adopt legislative measures restricting, in whole or in part, the data subject's right of access to personal data relating to him or her to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned to:

(a) enable the obliged entity or competent national authority to fulfil its tasks properly for the purposes of this Directive; or

(b) avoid obstructing official or legal inquiries, analyses, investigations or procedures for the purposes of this Directive and to ensure that the prevention, investigation and detection of money laundering and terrorist financing is not jeopardised.

#### **Article 42 - ONGEWIJZIGD**

Member States shall require that their obliged entities have systems in place that enable them to respond fully and speedily to enquiries from their FIU or from other authorities, in accordance with their national law, as to whether they are maintaining or have maintained, during a five-year period prior to that enquiry a business relationship with specified persons, and on the nature of that relationship, through secure channels and in a manner that ensures full confidentiality of the enquiries.

#### **Article 43 - ONGEWIJZIGD**

The processing of personal data on the basis of this Directive for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 shall be considered to be a matter of public interest under Directive 95/46/EC.

#### **Article 44 - ONGEWIJZIGD**

1. Member States shall, for the purposes of contributing to the preparation of risk assessments pursuant to Article 7, ensure that they are able to review the effectiveness of their systems to combat money laundering or terrorist financing by maintaining comprehensive statistics on matters relevant to the effectiveness of such systems.

2. The statistics referred to in paragraph 1 shall include:

(a) data measuring the size and importance of the different sectors which fall within the scope of this Directive, including the number of entities and persons and the economic importance of each sector;

(b) data measuring the reporting, investigation and judicial phases of the national AML/CFT regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to those reports and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences, the types of predicate offences, where such information is available, and the value in euro of property that has been frozen, seized or confiscated;

(c) if available, data identifying the number and percentage of reports resulting in further investigation, together with the annual report to obliged entities detailing the usefulness and follow-up of the reports they presented;

(d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the FIU.

3. Member States shall ensure that a consolidated review of their statistics is published.

4. Member States shall transmit to **Eurostat and** the Commission the statistics referred to in paragraph 2. **Eurostat shall publish an annual report summarising and explaining the statistics referred to paragraph 2, which has to be made available on its website.** [AM34]

### **Chapter VI POLICIES, PROCEDURES AND SUPERVISION**

#### **SECTION 1 internal procedures, training and feedback**

#### **Article 45 - ONGEWIJZIGD**

1. Member States shall require obliged entities that are part of a group to implement group-wide policies and procedures, including data protection policies and policies and procedures for sharing information within the group for AML/CFT purposes. Those policies and procedures shall be implemented effectively at the level of branches and majority-owned subsidiaries in Member States and third countries.

2. Member States shall require that obliged entities that operate establishments in another Member State ensure that those establishments respect the national provisions of that other Member State transposing this Directive.

3. Member States shall ensure that where obliged entities have branches or majority-owned subsidiaries located in third countries where the minimum AML/CFT requirements are less strict than those of the Member State, their branches and majority-owned subsidiaries located in the third country implement the requirements of the Member State, including data protection, to the extent that the third country's law so allows.

4. The Member States and the ESAs shall inform each other of instances in which a third country's law does not permit the implementation of the policies and procedures required under paragraph 1. In such cases, coordinated action may be taken to pursue a solution.

5. Member States shall require that, where a third country's law does not permit the implementation of the policies and procedures required under paragraph 1, obliged entities ensure that branches and majority-owned subsidiaries in that third country apply additional measures to effectively handle the risk of money laundering or terrorist financing, and inform the competent authorities of their home Member State. If the additional measures are not sufficient, the competent authorities of the home Member State shall exercise additional supervisory actions, including requiring that the group does not establish or that it terminates business relationships, and does not undertake transactions and, where necessary, requesting the group to close down its operations in the third country.

6. The ESAs shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 5 and the minimum action to be taken by credit institutions and financial institutions where a third country's law does not permit the implementation of the measures required under paragraphs 1 and 3. The ESAs shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 December 2016.

7. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 6 of this Article in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

8. Member States shall ensure that the sharing of information within the group is allowed. Information on suspicions that funds are the proceeds of criminal activity or are related to terrorist financing reported to the FIU shall be shared within the group, unless otherwise instructed by the FIU.

9. Member States may require electronic money issuers as defined in point (3) of Article 2 of Directive 2009/110/EC and payment service providers as defined in point (9) of Article 4 of Directive 2007/64/EC established on their territory in forms other than a branch, and whose head office is situated in another Member State, to appoint a central contact point in their territory to ensure, on behalf of the appointing institution, compliance with AML/CFT rules and to facilitate supervision by competent authorities, including by providing competent authorities with documents and information on request.

10. The ESAs shall develop draft regulatory technical standards on the criteria for determining the circumstances in which the appointment of a central contact point pursuant to paragraph 9 is appropriate, and what the functions of the central contact points should be. The ESAs shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 June 2017.

11. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 10 of this Article in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

#### **Article 46 - ONGEWIJZIGD**

1. Member States shall require that obliged entities take measures proportionate to their risks, nature and size so that their employees are aware of the provisions adopted pursuant to this Directive, including relevant data protection requirements. Those measures shall include participation of their employees in special ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases. Where a natural person falling within any of the categories listed in point (3) of Article 2(1) performs professional activities as an employee of a legal person, the obligations in this Section shall apply to that legal person rather than to the natural person.

2. Member States shall ensure that obliged entities have access to up-to-date information on the practices of money launderers and financers of terrorism and on indications leading to the recognition of suspicious transactions.

3. Member States shall ensure that, where practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided to obliged entities.

4. Member States shall require that, where applicable, obliged entities identify the member of the management board who is responsible for the implementation of the

laws, regulations and administrative provisions necessary to comply with this Directive.

## **SECTION 2 supervision**

### **Article 47**

1. Member States shall ~~provide~~ ensure that providers of exchanging services between virtual currencies and fiat currencies, custodian wallet providers, currency exchange and cheque cashing offices, and trust or company service providers ~~be~~ are licensed or registered, and that providers of gambling services ~~be~~ are regulated.

2. Member States shall require competent authorities to ensure that the persons who hold a management function in the entities referred to in paragraph 1, or are the beneficial owners of such entities, are fit and proper persons.

3. With respect to the obliged entities referred to in point (3)(a), (b) and (d) of Article 2(1), Member States shall ensure that competent authorities take the necessary measures to prevent criminals convicted in relevant areas or their associates from holding a management function in or being the beneficial owners of those obliged entities.

### **Article 48 - ONGEWIJZIGD**

1. Member States shall require the competent authorities to monitor effectively, and to take the measures necessary to ensure, compliance with this Directive. ***In particular, Member States shall require the competent authorities to monitor effectively activities of persons whom AML/CFT related tasks are delegated by obliged entities and self-regulatory bodies.***

***1a. Member States shall ensure that one competent authority operates as supervising AML/CFT authority, which shall be structurally independent. The supervising AML/CFT authority shall ensure supervision and coordination of anti-money laundering activities carried out by other competent authorities and law enforcement bodies to ensure that all obliged entities are subject to adequate supervision including inspections, preventions, monitoring and remedial actions. The supervising AML/CFT authority shall serve as a contact point for the supervising AML/CFT authorities of the other Member States, the Commission and the ESAs.***

2. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities maintain high professional standards, including standards of confidentiality and data protection, that they are of high integrity and are appropriately skilled.

3. In the case of credit institutions, financial institutions, and providers of gambling services, competent authorities shall have enhanced supervisory powers.

4. Member States shall ensure that competent authorities of the Member State in which the obliged entity operates through establishments\_ supervise that those establishments respect the national provisions of that Member State transposing this Directive. In the case of the establishments referred to in Article 45(9), such supervision may include the taking of appropriate and proportionate measures to address serious failings that require immediate remedies. Those measures shall be temporary and be terminated when the failings identified are addressed, including with the assistance of or in cooperation with the competent authorities of the home Member State of the obliged entity, in accordance with Article 45(2).

5. Member States shall ensure that the competent authorities of the Member State in which the obliged entity operates establishments shall cooperate with the competent authorities of the Member State in which the obliged entity has its head office, to ensure effective supervision of the requirements of this Directive.

6. Member States shall ensure that when applying a risk-based approach to supervision, the competent authorities:

(a) have a clear understanding of the risks of money laundering and terrorist financing present in their Member State;

(b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities; and

(c) base the frequency and intensity of on-site and off-site supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in that Member State.

7. The assessment of the money laundering and terrorist financing risk profile of obliged entities, including the risks of non-compliance, shall be reviewed both periodically and when there are major events or developments in their management and operations.

8. Member States shall ensure that competent authorities take into account the degree of discretion allowed to the obliged entity, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of its internal policies, controls and procedures.

9. In the case of the obliged entities referred to in point (3)(a), (b) and (d) of Article 2(1), Member States may allow the functions referred to in paragraph 1 of this Article to be performed by self-regulatory bodies, provided that those self-regulatory bodies comply with paragraph 2 of this Article.

10. By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 on the characteristics of a risk-based approach to supervision and the steps to be taken when conducting supervision on a risk-based basis. Specific account shall be taken of the nature and size of the business, and, where appropriate and proportionate, specific measures shall be laid down.

#### Article 48a

1. Commission experts shall carry out general and specific audits in the competent authorities of the Member States. The Commission may appoint experts from Member States to assist its own experts. General and specific audits shall be carried out on a regular basis. Their main purpose shall be to verify that competent authorities take action in accordance with the risk assessments and in compliance with this Directive. The Commission may, in advance of carrying out such audits, request that the Member States provide, as soon as possible, any relevant information.

2. Specific audits and inspections in one or more specific areas may supplement general audits. These specific audits and inspections shall in particular serve to:

(a) verify the implementation of the recommendations on the measures suitable for addressing the risks identified in risk assessments and may include, as appropriate, on-the-spot inspections of competent authorities;

(b) verify the functioning and organisation of competent authorities;

(c) investigate important or recurring problems in the Member States;

(d) investigate emergency situations, emerging problems or new developments in the Member States.

3. The Commission shall report on the findings of each audit carried out. Its report shall, if appropriate, contain recommendations for Member States to be included into the recommendations referred to in Article 7(5a). The Commission shall make its reports publicly available. The Commission shall provide the relevant competent authority with a draft report for comments, take those comments into consideration in preparing the final report and publish the competent authority's comments together with the final report.

4. The Commission shall establish an annual control programme, communicate it to Member States in advance, and report on its results. The Commission may amend the programme to take account of developments in the fields of AML/CFT.

5. Member States shall:

(a) take appropriate follow-up action in the light of the recommendations resulting from the audits;

(b) give all necessary assistance and provide all documentation and other technical support that Commission experts request to enable them to carry out the audits efficiently and effectively;

(c) ensure that Commission experts have access to all premises or parts of premises and to information, including computing systems, relevant to the execution of their duties.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 in order to draw up detailed rules concerning the audits.

### **SECTION 3 cooperation**

#### **SUBSECTION I national cooperation**

##### **Article 49**

Member States shall ensure that policy makers, the FIUs, supervisors and other competent authorities involved in AML/CFT, **such as tax authorities and law enforcement authorities**, [AM35] have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing, including with a view to fulfilling their obligation under Article 7.

#### **SUBSECTION II cooperation with the ESAs**

##### **Article 50 - ONGEWIJZIGD**

The competent authorities shall provide the ESAs with all the information necessary to allow them to carry out their duties under this Directive. **By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities on the modalities of cooperation and information exchange between competent authorities, in relation to the AML/CFT supervision of credit and financial institutions that operate on a cross-border basis.** [AM36]

#### **SUBSECTION IIA cooperation between competent authorities**

##### **Article 50a**

Member States shall **ensure not prohibit or place unreasonable or unduly restrictive conditions on** the exchange of information **and** [AM37] assistance between competent authorities without unreasonable or unduly restrictive conditions. In particular Member States shall ensure that competent authorities do not refuse a request for assistance on the grounds that:

(a) the request is also considered to involve tax matters;

(b) national legislation requires obliged entities to maintain secrecy or confidentiality, except where the relevant information that is sought is held in circumstances where legal privilege or legal professional secrecy applies;

(c) there is an inquiry, investigation or proceeding underway in the requested Member State, unless the assistance would impede that inquiry, investigation or proceeding;

(d) the nature or status of the requesting counterpart authority is different from that of requested competent authority.

**Member States shall ensure that competent authorities supervising credit and financial institutions cooperate with each other to the greatest extent possible, regardless of their respective nature or status. Such cooperation also includes the ability to conduct, within the powers of the requested competent authority, inquiries on behalf of a requesting competent authority, and the subsequent exchange of the information obtained through such inquiries. [AM38]**

**Member States shall establish a common cooperation framework for competent authorities responsible for supervising credit and financial institutions for compliance with their AML/CFT obligations.**

### **SUBSECTION III cooperation between FIUs and with the Commission**

#### **Article 51 - ONGEWIJZIGD**

1. The Commission **shall set up a European Financial Intelligence Unit (EFIU) ~~may lend such assistance as may be needed~~** to facilitate coordination, including the exchange of information between FIUs within the Union. It may regularly convene meetings of the EU FIUs' Platform composed of representatives from Member States' FIUs, in order to facilitate cooperation among FIUs, exchange views and provide advice on implementation issues relevant for FIUs and reporting entities as well as on cooperation-related issues such as effective FIU cooperation, the identification of suspicious transactions with a cross-border dimension, the standardisation of reporting formats through the FIU.net or its successor, the joint analysis of cross-border cases, and the identification of trends and factors relevant to assessing the risks of money laundering and terrorist financing at national and supranational level.

**1a. The EFIU shall coordinate, assist and support Member States FIUs in cross-border cases. The EFIU shall lend support to those Member States especially in maintaining and developing the technical infrastructure for ensuring the exchange of information, assisting them in joint analysis of cross border cases and strategic analysis, and coordinate the work of Member States FIUs for cross-border cases.**

**1b. The Commission shall provide the EFIU with adequate financial, human and technical resources in order to fulfil its tasks.**

## Article 52 - ONGEWIJZIGD

Member States shall ensure that their FIUs co-operate with each other to the greatest extent possible, regardless of their organisational status.

## Article 53

1. Member States shall ensure that FIUs exchange, spontaneously or upon request, any information that may be relevant for the processing or analysis of information by the FIU related to money laundering or terrorist financing and the natural or legal person involved, regardless of the type of associated predicate offences and even if the type of associated predicate offences that may be involved is not identified at the time of the exchange.

***A request shall contain the relevant facts, background information, the reasons for the request and description of how the information sought will be used.***

~~[AM39] Different exchange mechanisms may apply if so agreed between the FIUs, in particular as regards exchanges through the FIU.net or its successor.~~

~~When an FIU receives a report pursuant to point (a) of the first subparagraph of Article 33(1) which concerns another Member State, it shall promptly forward it to the FIU of that member State.~~

***Member States shall also ensure that this Article applies at least to breaches on the part of corporate and other legal entities, trusts and other types of legal arrangements having a structure or functions similar to trusts, that are serious, repeated, systematic, or a combination thereof, of the requirements laid down in Articles 30 and 31.*** [AM40]

2. Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its available powers which it would normally use domestically for receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU. The FIU to whom the request is made shall respond in a timely manner. That FIU shall obtain information in accordance with Article 32(9) and transfer the answers promptly.

~~When an FIU seeks to obtain additional information from an obliged entity established in another Member State which operates on its territory, the request shall be addressed to the FIU of the Member State in whose territory the obliged entity is established. That FIU shall transfer requests and answers promptly.~~

3. An FIU may refuse to exchange information only in exceptional circumstances where the exchange could be contrary to fundamental principles of its national law. Those exceptions shall be specified in a way which prevents misuse of, and undue limitations on, the free exchange of information for analytical purposes.

## Article 54 - ONGEWIJZIGD

Information and documents received pursuant to Articles 52 and 53 shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When exchanging information and documents pursuant to Articles 52 and 53, the transmitting FIU may impose restrictions and conditions for the use of that information. The receiving FIU shall comply with those restrictions and conditions.

### **Article 55**

1. Member States shall ensure that the information exchanged pursuant to Articles 52 and 53 is used only for the purpose for which it was sought or provided and that any dissemination of that information by the receiving FIU to any other authority, agency or department, or any use of this information for purposes beyond those originally approved, is made subject to the prior consent by the FIU providing the information.

2. Member States shall ensure that the requested FIU's prior consent to disseminate the information to competent authorities is granted promptly and to the largest extent possible, regardless of the type of associated predicate offences. The requested FIU shall not refuse its consent to such dissemination unless this would fall beyond the scope of application of its AML/CFT provisions, could lead to impairment of a criminal investigation, would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State of the requested FIU, or would otherwise not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained.

### **Article 56 - ONGEWIJZIGD**

1. Member States shall require their FIUs to use protected channels of communication between themselves and encourage the use of the FIU.net or its successor.

2. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs cooperate in the application of state-of-the-art technologies in accordance with their national law. Those technologies shall allow FIUs to match their data with that of other FIUs in an anonymous way by ensuring full protection of personal data with the aim of detecting subjects of the FIU's interests in other Member States and identifying their proceeds and funds.

### **Article 57**

Differences between national law definitions of **tax-crimespredicate offences** shall not impede the ability of FIUs to exchange information or provide assistance to another FIU, to the greatest extent possible under their national law and shall not limit the exchange, dissemination and the use of information pursuant to Articles 53, 54 and 55.

**Subsection IIIa - Cooperation between competent authorities supervising credit and financial institutions and professional secrecy**

## Article 57a

1. Member States shall provide that all persons working for or who have worked for competent authorities supervising credit and financial institutions for compliance with this Directive and auditors or experts acting on behalf of such competent authorities shall be bound by the obligation of professional secrecy.

Confidential information which they receive in the course of their duties under this Directive may be disclosed only in summary or aggregate form, such that individual credit and financial institutions cannot be identified, without prejudice to cases covered by criminal law and administrative sanctioning provisions.

2. Paragraph 1 shall not prevent the exchange of information between competent authorities supervising credit and financial institutions within a Member States or between competent authorities supervising credit and financial institutions in different Member States in accordance with this Directive or other directives or regulations relating to the supervision of credit and financial institutions. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

3. Competent authorities supervising credit and financial institutions receiving confidential information as referred to in paragraph 1, shall only use this information:

- in the discharge of their duties under this Directive or under other directives or regulations in the field of AML/CFT, prudential regulation and supervising credit and financial institutions, including sanctioning;

- in an appeal against a decision of the competent authority supervising credit and financial institutions, including court proceedings;

- in court proceeding initiated pursuant to special provisions provided for in Union law adopted in the field of this Directive or in the field of prudential regulations and supervision of credit and financial institutions.

4. Member States shall ensure that competent supervising authorities cooperate with each other for the purposes of this Directive to the greatest extent possible, regardless of their respective nature or status. Such cooperation also includes the ability to conduct, within the powers of the requested competent authority, inquiries on behalf of a requesting competent authority, and the subsequent exchange of the information obtained through such inquiries.

5. Member States shall authorize their national competent authorities supervising credit and financial institutions to conclude cooperation agreements providing for collaboration and exchanges of confidential information with the competent authorities of third countries that constitute counterparts of the national competent authorities supervising credit and financial institutions mentioned in paragraph 1. Such cooperation agreements shall be concluded on the basis of reciprocity and only if the information disclosed is subject to guarantees of professional secrecy at least

equivalent to those referred to in paragraph 1. Confidential information exchanged according to these cooperation agreements shall be used for the purpose of performing the supervisory task of those authorities.

Where the exchanged information originates in another Member State, it shall only be disclosed with the explicit agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

#### **Article 57b**

1. Notwithstanding Article 57a (1) and (3), Member States may authorise exchange of information between competent authorities, in the same Member State or in a different Member State, between the competent authorities and authorities entrusted with the public duty of supervising financial sector entities and natural or legal persons acting in the exercise of their professional activities as referred to in Article 2(1)(3) of this Directive and the authorities responsible for the supervision of financial markets in the discharge of their respective supervisory functions.

The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1).

2. Notwithstanding Article 57a (1) and (3), Member States may, by virtue of provisions laid down in national law, authorise the disclosure of certain information to other national authorities responsible for law on the supervision of the financial markets, or the investigation of money laundering, the associated predicate offences and terrorist financing.

However, confidential information exchanged according to paragraph 2 shall only be used for the purpose of performing the legal tasks of the authorities mentioned. Persons having access to such information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1).

3. This Subsection shall not prevent the competent authorities supervising credit and financial institutions for compliance with this Directive from transmitting confidential information, for the purposes of their tasks, to other authorities responsible for supervising credit and financial institutions according to other directives or regulations, including the European Central Bank acting according to Regulation 1024/2013.

### **SECTION 4 sanctions**

#### **Article 58 - ONGEWIJZIGD**

1. Member States shall ensure that obliged entities can be held liable for breaches of national provisions transposing this Directive in accordance with this Article and

Articles 59 to 61. Any resulting sanction or measure shall be effective, proportionate and dissuasive.

2. Without prejudice to the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and measures and ensure that their competent authorities may impose such sanctions and measures with respect to breaches of the national provisions transposing this Directive, and shall ensure that they are applied.

Member States may decide not to lay down rules for administrative sanctions or measures for breaches which are subject to criminal sanctions in their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.

***Member States shall ensure that, in cases of breaches which are subject to criminal sanctions, law enforcement authorities are properly informed about such breaches.***

3. Member States shall ensure that where obligations apply to legal persons in the event of a breach of national provisions transposing this Directive, sanctions and measures can be applied to the members of the management body and to other natural persons who under national law are responsible for the breach.

4. Member States shall ensure that the competent authorities have all the supervisory and investigatory powers that are necessary for the exercise of their functions.

5. Competent authorities shall exercise their powers to impose administrative sanctions and measures in accordance with this Directive, and with national law, in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to such other authorities;

(d) by application to the competent judicial authorities.

In the exercise of their powers to impose administrative sanctions and measures, competent authorities shall cooperate closely in order to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases,

#### **Article 59 - ONGEWIJZIGD**

1. Member States shall ensure that this Article applies at least to breaches on the part of obliged entities that are serious, repeated, systematic, or a combination thereof, of the requirements laid down in:

- (a) Articles 10 to 24 (customer due diligence);
- (b) Articles 33, 34 and 35 (suspicious transaction reporting);
- (c) Article 40 (record-keeping); and
- (d) Articles 45 and 46 (internal controls).

2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following:

- (a) a public statement which identifies the natural or legal person and the nature of the breach;
- (b) an order requiring the natural or legal person to cease the conduct and to desist from repetition of that conduct;
- (c) where an obliged entity is subject to an authorisation, withdrawal or suspension of the authorisation;
- (d) a temporary ban against any person discharging managerial responsibilities in an obliged entity, or any other natural person, held responsible for the breach, from exercising managerial functions in obliged entities;
- (e) maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the breach where that benefit can be determined, or at least EUR 1 000 000.

3. Member States shall ensure that, by way of derogation from paragraph 2(e), where the obliged entity concerned is a credit institution or financial institution, the following sanctions can also be applied:

- (a) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or 10 % of the total annual turnover according to the latest available accounts approved by the management body; where the obliged entity is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Article 22 of Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
- (b) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 25 June 2015.

4. Member States may empower competent authorities to impose additional types of administrative sanctions in addition to those referred to in points (a) to (d) of paragraph 2 or to impose administrative pecuniary sanctions exceeding the amounts referred to in point (e) of paragraph 2 and in paragraph 3.

### **Article 60 - ONGEWIJZIGD**

1. Member States shall ensure that a decision imposing an administrative sanction or measure for breach of the national provisions transposing this Directive against which there is no appeal shall be published by the competent authorities on their official website immediately after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the breach and the identity of the persons responsible. Member States shall not be obliged to apply this subparagraph to decisions imposing measures that are of an investigatory nature.

Where the publication of the identity of the persons responsible as referred to in the first subparagraph or the personal data of such persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an on-going investigation, competent authorities shall:

(a) delay the publication of the decision to impose an administrative sanction or measure until the moment at which the reasons for not publishing it cease to exist;

(b) publish the decision to impose an administrative sanction or measure on an anonymous basis in a manner in accordance with national law, if such anonymous publication ensures an effective protection of the personal data concerned; in the case of a decision to publish an administrative sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is foreseen that within that period the reasons for anonymous publication shall cease to exist;

(c) not publish the decision to impose an administrative sanction or measure at all in the event that the options set out in points (a) and (b) are considered insufficient to ensure:

(i) that the stability of financial markets would not be put in jeopardy; or

(ii) the proportionality of the publication of the decision with regard to measures which are deemed to be of a minor nature.

2. Where Member States permit publication of decisions against which there is an appeal, competent authorities shall also publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose an administrative sanction or a measure shall also be published.

3. Competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of five years after its publication. However, personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

4. Member States shall ensure that when determining the type and level of administrative sanctions or measures, the competent authorities shall take into account all relevant circumstances, including where applicable:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the natural or legal person held responsible;

(c) the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;

(d) the benefit derived from the breach by the natural or legal person held responsible, insofar as it can be determined;

(e) the losses to third parties caused by the breach, insofar as they can be determined;

(f) the level of cooperation of the natural or legal person held responsible with the competent authority;

(g) previous breaches by the natural or legal person held responsible.

5. Member States shall ensure that legal persons can be held liable for the breaches referred to in Article 59(1) committed for their benefit by any person, acting individually or as part of an organ of that legal person, and having a leading position within the legal person based on any of the following:

(a) power to represent the legal person;

(b) authority to take decisions on behalf of the legal person; or

(c) authority to exercise control within the legal person.

6. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 5 of this Article has made it possible to commit one of the breaches referred to in Article 59(1) for the benefit of that legal person by a person under its authority.

### **Article 61 - ONGEWIJZIGD**

1. Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage the reporting to competent authorities of potential or actual breaches of the national provisions transposing this Directive.

2. The mechanisms referred to in paragraph 1 shall include at least:

- (a) specific procedures for the receipt of reports on breaches and their follow-up;
- (b) appropriate protection for employees or persons in a comparable position, of obliged entities who report breaches committed within the obliged entity;
- (c) appropriate protection for the accused person;
- (d) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC;
- (e) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the obliged entity, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.

3. Member States shall require obliged entities to have in place appropriate procedures for their employees, or persons in a comparable position, to report breaches internally through a specific, independent and anonymous channel, proportionate to the nature and size of the obliged entity concerned. ***The competent authorities shall provide one or more secure communication channel for persons to report suspicions of money laundering or terrorist financing. Such channels shall ensure that the identity of persons providing information is known only to the competent authorities.*** [AM41]

#### **Article 62 - ONGEWIJZIGD**

1. Member States shall ensure that their competent authorities inform the ESAs of all administrative sanctions and measures imposed in accordance with Articles 58 and 59 on credit institutions and financial institutions, including of any appeal in relation thereto and the outcome thereof.

2. Member States shall ensure that their competent authorities, in accordance with their national law, check the existence of a relevant conviction in the criminal record of the person concerned. Any exchange of information for those purposes shall be carried out in accordance with Decision 2009/316/JHA and Framework Decision 2009/315/JHA as implemented in national law.

3. The ESAs shall maintain a website with links to each competent authority's publication of administrative sanctions and measures imposed in accordance with Article 60 on credit institutions and financial institutions, and shall show the time period for which each Member State publishes administrative sanctions and measures.

<b>Chapter VII FINAL PROVISIONS</b>
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#### **Article 63 - ONGEWIJZIGD**

Point (d) of paragraph 2 of Article 25 of Regulation (EU) No 648/2012 of the European Parliament and the Council (1) is replaced by the following:

‘(d) the CCP is established or authorised in a third country that is not considered, by the Commission in accordance with Directive (EU) 2015/849 of the European Parliament and of the Council (\*), as having strategic deficiencies in its national anti-money laundering and counter financing of terrorism regime that poses significant threats to the financial system of the Union.

(\* )Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).’

#### **Article 64 - ONGEWIJZIGD**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 9 **and Article 48a** shall be conferred on the Commission for an indeterminate period of time from 25 June 2015.
3. The power to adopt delegated acts referred to in Article 9 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 9 **and Article 48a** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.

#### **Article 65**

By 26 June 2019 the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and to the Council.

The report shall be accompanied, if necessary, by appropriate proposals, including, where appropriate, with respect to **between Asset Recovery Offices of the Member States, cash payments** [AM42], virtual currencies, empowerments to set-up and maintain a central database registering users' identities and wallet addresses accessible to FIUs, as well as self-declaration forms for the use of virtual currency users.

*By the end of 2017, the Commission shall draw up a report on the Member States' FIUs powers and obstacles to cooperation. This evaluation shall include the assessment of means to support joint analysis of cross-border cases and solutions to increase the level of financial intelligence within the EU. The report shall be accompanied, if necessary, by appropriate proposals to remedy the obstacles in cooperation regarding access to, exchange of and use of information. The report shall include an assessment of the need for:*

*(a) operational guidance on the proper implementation of this Directive;*

*(b) facilitation of information exchange on cross-border cases;*

*(c) a dispute settlement mechanism;*

*(d) support of joint strategic risk analysis at EU level;*

*(e) joint analysis teams for cross-border cases;*

*(f) obliged entities to report directly to FIU.net;*

*(g) establishment of a European Financial Intelligence Unit to enhance cooperation and coordination among national FIUs;*

*By 1 January 2019 the Commission shall draw up a report summarising the results of the assessment concerning the possibility to impose a limit to cash transfers at EU level;*

## Article 66

Directives 2005/60/EC and 2006/70/EC are repealed with effect from ~~26 June 2017~~ 1 January 2017.

References to the repealed directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex IV.

#### **Article 67**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ~~26 June 2017~~ 1 January 2017. They shall immediately communicate the text of those measures to the Commission.

~~When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their publication. The methods of making such reference shall be laid down by Member States.~~

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### **Article 68 - ONGEWIJZIGD**

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

#### **Article 69 - ONGEWIJZIGD**

This Directive is addressed to the Member States.

### **ANNEX I**

The following is a non-exhaustive list of risk variables that obliged entities shall consider when determining to what extent to apply customer due diligence measures in accordance with Article ~~13~~11(3):

- (i) The purpose of an account or relationship;
- (ii) The level of assets to be deposited by a customer or the size of transactions undertaken;
- (iii) The regularity or duration of the business relationship.

### **ANNEX II**

The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in Article ~~16~~14:

(1) Customer risk factors:

(a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;

(b) public administrations or enterprises;

(c) customers ~~that are~~ resident in lower risk geographical areas as set out in paragraph (3).

(2) Product, service, transaction or delivery channel risk factors:

(a) life insurance policies where the premium is low;

(b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;

(c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;

(d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;

(e) products where the risk of money laundering/terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money [as defined in Directive 2009/110/EC](#)).

(3) Geographical risk factors – **registration in**: [AM43]

(a) [EU](#) Member States;

(b) third countries having effective anti-money laundering/combating terrorist financing systems;

(c) third countries identified by credible sources as having a low level of corruption or other criminal activity;

(d) third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the ~~revised~~-FATF Recommendations and effectively implement those requirements.

<b>ANNEX III</b>
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The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in Article [4816](#)(3):

(1) Customer risk factors:

- (a) the business relationship is conducted in unusual circumstances;
- (b) customers resident in countries set out in (3);
- (c) legal persons or arrangements that are personal asset-holding vehicles;
- (d) companies that have nominee shareholders or shares in bearer form;
- (e) businesses that are cash-intensive;
- (f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business.

(2) Product, service, transaction or delivery channel risk factors:

- (a) private banking;
- (b) products or transactions that might favour anonymity;
- (c) non-face-to-face business relationships or transactions, without certain safeguards, such as electronic [identification means or relevant trust services as defined in Regulation \(EU\) 910/2014](#);
- (d) payment received from unknown or un-associated third parties;
- (e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products.

(3) Geographical risk factors:

- (a) without prejudice to Article [98a](#), countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective anti-money laundering/combating terrorist financing systems;
- (b) countries identified by credible sources as having significant levels of corruption or other criminal activity;
- (c) countries subject to sanctions, embargos or similar measures issued by, for example, the Union or the United Nations ;
- (d) countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.

