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**Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing**

2013/0025(COD)

Part 2 – Articles

		<i>COM</i>	<i>COUNCIL</i>	<i>EP</i>	<i>COUNCIL TEXT vs ECON VOTE</i>	<p style="text-align: center;">COMMENTS BY:</p> <p><i>AT: CZ: LT: SI: HR: HU: LV: UK: BG: DE: DK: EL: FI: IE: FR: BE: NL: PL: RO: SE: MT: ES: PT: LL:</i></p>
78.		HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	IE:

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						<p>Ireland's observations below in this column are preliminary in nature.</p> <p>Ireland has indicated support for Council's general approach, therefore where it makes no comment, it should be assumed we continue to support the Council's general approach of 18 June 2014; Ireland would observe that some changes proposed by EP may need to be vetted for legal certainty by Commission legal services.</p> <p>Ireland reserves the right to provide more detailed responses if and when more detailed discussions develop during Trilogues.</p> <p>FI:</p> <p>FI SUPPORTS THE COUNCILS GENERAL APPROACH (GA). IN OUR COMMENTS WE POINT OUT THE SPESIFIC ARTICLES THAT IN OUR VIEW SHOULD BE KEPT IN LINE WITH THE GA RATHER THAN MOVING TOWARDS EP'S TEXT. IN ADDITION, THERE ARE</p>
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						SOME ARTICLES THAT COULD BENEFIT FROM A CLOSER REVIEW. WE FIND IT ALSO IMPROTANT THAT DURING NEGOTIATIONS WITH THE EP AND COM FILES ON DATA PROTECTION ARE CLOSELY MONITORED.
79.	Chapter I	CHAPTER I	CHAPTER I	CHAPTER I	CHAPTER I	
80.	Title	GENERAL PROVISIONS	GENERAL PROVISIONS	GENERAL PROVISIONS	GENERAL PROVISIONS	
81.	Section 1	SECTION 1	SECTION 1	SECTION 1	SECTION 1	
82.	Title	SCOPE AND DEFINITIONS	SCOPE AND DEFINITIONS	SCOPE AND DEFINITIONS	SCOPE AND DEFINITIONS	
83.	Art. 1	<i>Article 1</i>	<i>Article 1</i>	<i>Article 1</i>	<i>Article 1</i>	
84.	Art 1 – para 1	1. Member States shall ensure that money laundering and terrorist financing are prohibited.	1. Member States shall ensure that money laundering and terrorist financing are prohibited.	1. Member States shall ensure that money laundering and terrorist financing are prohibited.	1. Member States Member States shall ensure that money laundering and terrorist financing are prohibited.	
85.	Art 1 – para 2	2. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:	2. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:	2. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:	2. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:	
86.	Art 1 – para 2 – point a	(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	(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	(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	(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	ES: The definition of ML should strictly align to the legal definition agreed in the

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		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 his action;	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 his action;	concealing or disguising the illicit origin of the property <i>or of avoiding freezing or confiscation orders</i> or of assisting any person who is involved in the commission of such activity to evade the legal consequences of <i>that person's</i> action;	concealing or disguising the illicit origin of the property <i>or of avoiding freezing or confiscation orders or of</i> assisting any person who is involved in the commission of such activity to evade the legal consequences of his <i>that person's</i> action;	<p>international Conventions. In our opinion, the proposal of the EP does not fit.</p> <p>HR:</p> <p>HR considers this EP amendment inappropriate. To regard avoidance of freezing or confiscation orders derived from criminal activity as money laundering would broaden the definition of predicate criminal offence of money laundering from the United Nations Convention against Transnational Organized Crime and the recently adopted Directive on the freezing and confiscation of proceeds of crime, in addition to being contrary to the Croatian Criminal Code.</p> <p>LV:</p> <p>We see aim of this amendment is not in line with FATF guidelines.</p> <p>BG:</p> <p>BG: Freezing and confiscation orders might be obtained as</p>
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						<p>civil or criminal sanctions. In this respect it is unclear if the definition excludes the civil one.</p> <p>DE:</p> <p>The inclusion of the “avoidance of freezing or confiscation orders” cannot be supported.</p> <p>Any activity constituting a money laundering offence is related to illicit financial flows proceeding from a designated predicate offence. Money subject to freezing orders is not per se illicit but only related to a person or entity listed by the UN Security Council, the EU or a member state.</p> <p>FI:</p> <p>We strongly support the GA. Opening this point as suggested by the EP could have effects to the possible COM proposal on criminal law aspects of AML.</p> <p>IE:</p> <p>The avoidance of a freezing</p>
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						<p>order would not necessarily constitute 'laundering'; COM legal services might consider whether this added text might make less clear the commonly accepted definition of ML</p> <p>NL:</p> <p>EP text is OK</p> <p>MT:</p> <p><u>Defining money laundering as the laundering of criminal proceeds for the purpose of avoiding freezing orders or confiscation orders seems illogical. Infringing freezing and confiscation orders is a criminal act in itself separate from money laundering irrespective of whether the frozen or confiscated funds were of licit or illicit origin.</u></p>
87.	Art 1 – para 2 – point b	(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;	(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;	(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;	(b) the 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;	

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88.	Art 1 – para 2 – point c	(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;	(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;	(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;	(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;	
89.	Art 1 – para 2 – point d	(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).	(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).	(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).	(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).	
90.	Art 1 – para 3	3. 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.	3. 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.	3. 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.	3. 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.	
91.	Art 1 – para 4	4. 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	4. 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	4. 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	4. 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	LL: Reference should be as it is the first time there is this reference : - in the text : "Council Framework Decision 2002/475/JHA"

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		of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism ¹ , as amended by Council Framework Decision 2008/919/JHA of 28 November 2008 ² .	meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism ³ , as amended by Council Framework Decision 2008/919/JHA of 28 November 2008 ⁴ .	of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism ⁵ , as amended by Council Framework Decision 2008/919/JHA of 28 November 2008 ⁶ .	meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism ⁷ , as amended by Council Framework Decision 2008/919/JHA of 28 November 2008 ⁸ .	- full title (see EP) for the footnote Reference should be as it is the first time there is this reference : - in the text : "Council Framework Decision 2002/475/JHA" - full title (see EP) for the footnote
92.	Art 1 – para 5	5. Knowledge, intent or purpose required as an element of the activities referred to in paragraphs 2 and 4 may be inferred from objective factual circumstances.	5. Knowledge, intent or purpose required as an element of the activities referred to in paragraphs 2 and 4 may be inferred from objective factual circumstances.	5. Knowledge, intent or purpose required as an element of the activities referred to in paragraphs 2 and 4 may be inferred from objective factual circumstances.	5. Knowledge Knowledge, intent or purpose required as an element of the activities referred to in paragraphs 2 and 4 may be inferred from objective factual circumstances.	
93.		Article 2	Article 2	Article 2	Article 2	

¹ OJ L 164, 22.6.2002, p. 3.

² OJ L 330, 9.12.2008, p. 21)

³ OJ L 164, 22.6.2002, p. 3.

⁴ OJ L 330, 9.12.2008, p. 21-23.

⁵ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

⁶ Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/474/JHA (OJ L 330, 9.12.2008, p. 21).

⁷ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

⁸ Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/474/JHA (OJ L 330, 9.12.2008, p. 21).

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94.	Art 2 – para 1	1. This Directive shall apply to the following obliged entities:	1. This Directive shall apply to the following obliged entities:	1. This Directive shall apply to the following obliged entities:	1. — This Directive shall apply to the following obliged entities:	FR: The French delegation, in accordance with the EBA Opinion of 4 July 2014 and with the French Non paper on virtual currencies (25 July 2014), consider that market participants at the direct interface between conventional and virtual currencies to become “obliged entities under the AMLD 4 and thus subject to its anti-money laundering and counter financing requirements.
95.	Art 2 – para 1 – point 1	(1) credit institutions;	(1) credit institutions;	(1) credit institutions;	(1) — credit institutions;	
96.	Art 2 – para 1 – point 2	(2) financial institutions;	(2) financial institutions;	(2) financial institutions;	(2) — financial institutions;	
97.	Art 2 – para 1 – point 3	(3) the following legal or natural persons acting in the exercise of their professional activities:	(3) the following legal or natural persons acting in the exercise of their professional activities:	(3) the following <i>natural or</i> legal [...] persons acting in the exercise of their professional activities:	(3) — the following legal or natural <i>or legal [...]</i> persons acting in the exercise of their professional activities:	NL: EP text is OK
98.	Art 2 – para 1 – point 3 – subpoint a	(a) auditors, external accountants and tax advisors;	(a) auditors, external accountants and tax advisors;	(a) auditors, external accountants and tax advisors;	(a) — auditors, external accountants and tax advisors;	LV: We would like harmonisation of terms in Directive and Regulation and use of term “real estate”.

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99.	Art 2 – para 1 – point 3 – subpoint b	(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 execution of transactions for their client concerning the:	(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 execution of transactions for their client concerning the:	(b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or <i>immovable</i> property transaction, or by assisting in the planning or execution of transactions for their client concerning the:	(b) notaries 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 <i>immovable</i> property transaction, or by assisting in the planning or execution of transactions for their client concerning the:	<p>CZ:</p> <p>In order to maintain consistency in terminology CZ recommends keeping the term “real estate” (articles bellow use terms as “real property” or “real estate agents”).</p> <p>BG:</p> <p>BG: To replace immovable property with real estate (Commission and Council text)</p> <p>DE:</p> <p>The change proposed by the EP can be supported</p> <p>BE:</p> <p>Why such a change? We do not understand the added value;</p> <p>The Council text (real estate) should be kept.</p> <p>NL:</p> <p>EP text is OK</p> <p>MT:</p>
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						<p><u>The term “immovable property transaction” is better suited than “real estate transaction”.</u></p> <p>LL:</p> <p>Please agree on one wording for : "real estate" or "immovable property" in the whole text</p>
100.	Art 2 – para 1 – point 3 – subpoint b – point i	(i) buying and selling of real property or business entities;	(i) buying and selling of real property or business entities;	(i) buying and selling of real property or business entities;	(i) — buying and selling of real property or business entities;	<p>DE:</p> <p>In order to be consistent with no. 99 it should be</p> <p>(i) — buying and selling of <u>immovable property</u> or business entities;</p>
101.	Art 2 – para 1 – point 3 – subpoint b – point ii	(ii) managing of client money, securities or other assets;	(ii) managing of client money, securities or other assets;	(ii) managing of client money, securities or other assets;	(ii) — managing of client money, securities or other assets;	
102.	Art 2 – para 1 – point 3 – subpoint b – point iii	(iii) opening or management of bank, savings or securities accounts;	(iii) opening or management of bank, savings or securities accounts;	(iii) opening or management of bank, savings or securities accounts;	(iii) — opening or management of bank, savings or securities accounts;	
103.	Art 2 – para 1 – point 3 – subpoint b – point iv	(iv) organisation of contributions necessary for the creation, operation or management of companies;	(iv) organisation of contributions necessary for the creation, operation or management of companies;	(iv) organisation of contributions necessary for the creation, operation or management of companies;	(iv) — organisation of contributions necessary for the creation, operation or management of companies;	

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104.	Art 2 – para 1 – point 3 – subpoint b – point v	(v) creation, operation or management of trusts, companies or similar structures;	(v) creation, operation or management of trusts, companies or similar structures;	(v) creation, operation or management of trusts, <i>foundations, mutuals,</i> companies or similar structures;	(v) creation, operation or management of trusts, <i><u>foundations, mutuals,</u></i> companies or similar structures;	<p>ES:</p> <p>We understand that foundations and mutual are encompassed in the notion of either companies or similar structures. Suggest deleting it.</p> <p>UK:</p> <p>We do not support the addition of “mutual” within the scope of this Directive unless a definition of what is entailed is provided and discussed by experts. In the UK three forms of ‘mutuals’ are already within scope of the 3AMLD not because of their status as ‘mutuals’ but given the range of activities they engage in. We are unsure how other types of mutual will map out across Member States. It would be useful to avoid a ‘trust like situation’ where one specific term means a different type of entities with a different set of purposes and activities in one State from another.</p> <p>DE:</p> <p>We prefer the Council text proposal.</p>
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						<p>It is not clear to us what “mutual” means in the context of the EP text. Please clarify. If it is equivalent to “cooperatives” we do not see the necessity to include them in this paragraph.</p> <p>IE:</p> <p>Perhaps “or similar structures” sufficed? Changes at this technical level will not all be commented on by Ireland below</p> <p>FR:</p> <p><u>Which kind of entities are mutuals?</u> “</p> <p>BE:</p> <p>What is meant by “mutuals”? Does it refer to cooperative banks?</p> <p>NL:</p> <p>EP text is OK</p>
105.	Art 2 – para 1 – point 3 – subpoint c	(c) trust or company service providers not already covered under points (a) or (b);	(c) trust or company service providers not already covered under points (a) or (b);	(c) trust or company service providers not already covered under points (a) or (b);	(c) trust trust or company service providers not already covered under points (a) or (b);	<p>LV:</p> <p>We would like harmonisation of terms</p>

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						in Directive and Regulation and use of term “real estate”. We support amendment.
106.	Art 2 – para 1 – point 3 – subpoint d	(d) real estate agents, including letting agents;	(d) real estate agents, including letting agents	(d) estate agents, including letting agents, <i>in so far as they are involved in financial transactions</i> ;	(d) real estate agents, including letting agents, <i>in so far as they are involved in financial transactions</i> ;	ES: The meaning of the EP's proposal is unclear, but given that attempted transactions also trigger obligations and that real state is a higher risk sector in most (if not in all) MS, we do not favour any restriction on the scope of activities where real state agents are obliged entities. CZ: CZ strongly supports the Council's GA. SI: “Letting agents” should be excluded from the scope of the Directive since there is no evidence of ML/TF risk regarding their activities. LV: We support treshold,

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						<p>addition of services. UK:</p> <p>The Commission's original text is preferred by far as it explicitly brings in scope letting agents and there is an abundance of evidences to suggest that property, including letting activities, are used to launder money. The EP text itself is problematic as it suggests a real estate agent needs to be involved in the financial transaction to be in scope of the Directive – an extremely narrow approach which would lead to the exclusion of UK estate agents from the scope of this Directive. Given the high money laundering risks in the property market, this is highly undesirable. The UK has a money laundering offence (s328) – which is based on 3AMLD article 1(2)&7(d)- to enter into or become concerned in an arrangement which a person knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another</p>
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						<p>person. As a result an estate agent does not have to be involved in the 'financial transaction' but assist in arranging it to be caught by the Proceeds of Crime Act.</p> <p>BG:</p> <p>BG: - Real estate agents; - „letting agents” - it would be appropriate to specify the scope of the letting agents in order to avoid inappropriate extension of the scope to all persons giving real estates for rent. Besides, the requirement for giving own properties for rent (for example, a company engaged in construction activity) should be clarified.</p> <p>DE:</p> <p>1. The wording of the EP would lead to an inclusion of letting agents into the scope of the AMLD and therefore cannot be supported. The range of obliged entities would increase tremendously and could not be effectively supervised. Moreover, monthly rent payments are</p>
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						<p>usually not very high and therefore are not particularly attractive to money laundering.</p> <p>IF the EP insists on the inclusion of letting agents the obligation should be restricted to high end objects of a monthly rent above 10.000 Euros.</p> <p>2. The restriction to submit only real estate agents when involved in financial transactions related to the real estate purchase cannot be supported. In most countries real estate agents only show clients the available real estate and accompany them until the contract is formally concluded. The payment of the price for the real estate is normally carried out directly between the parties of the contract or maybe through the notaries trust account. Still any real estate agent who participates in the sale of property should be subject to the AML/CFT provisions because of its special insights of the client.</p>
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						<p>EL:</p> <p>We do not agree with EP. Real estate agents have commercial activities and provide financial services only occasionally.</p> <p>IE:</p> <p>In Irish context, deletion of 'real' is appropriate, but the added words introduce lack of clarity..</p> <p>BE:</p> <p>Be does not agree with the EP amendment.</p> <p>Because :</p> <ol style="list-style-type: none"> 1. The notion of "estate agents" is not clear, there where real estate agents are well regulated professions. The limitation of the submission of the real estate agents to solely their involvement in financial transactions limits the application field of the directive. The real estate agents do fulfil also other activities such as "syndic" and property manager". What is the
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						<p>motivation behind this step backwards ?</p> <p>2. Letting agents is a professional activity proper to the UK and not known in order EU countries. If UK wants to cover them they can always to this on the basis of Art. 5. But such specific reference should not be included in the application field of the DIR.</p> <p>NL:</p> <p>We <u>agree with including letting agents</u>, as there are known money laundering risks in this sector.</p> <p>We <u>do not agree with the EP text "in so far (...) transactions"</u>. This is an unnecessary addition and may lead to confusion in relation to the term 'transaction' that is central to the directive.</p> <p>SE:</p> <p>SE supports the Council text, i.e. letting agent should not be included in the scope.</p> <p>MT:</p>
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						<p><u>MT is of the opinion that the term “involved in a financial transaction” is open to interpretation and may lead to ambiguity.</u></p> <p>PT:</p> <p>PT supports the Council GA since we consider the expression “real estate agents” should be maintained.</p> <p>In fact, the EP proposal may lead to difficulties in the determination of the obliged agents and it may also lead to the exclusion from the AMLD of real estate activities that comprise a serious risk regarding money laundering and that are essential in the prevention, detection and reporting of suspicious or anomalous ML/FT transactions.</p> <p>Moreover, considering that the risk of money laundering and terrorist financing through tenancies is considerably low, as rent for residential or commercial property is not very high compared to the buying or selling of real</p>
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						<p>estate, we believe that the extension of the scope of the AMLD to “letting agents” would create an excessive burden to a very restrictive sector of activity, with a very limited usefulness in the prevention and repression of ML/FT.</p> <p>The EP proposal adds to the definition of “real estate agent”, as obliged entity, the condition “in so far as they are involved in financial transactions”. Considering that this addition may result in a limitation to the scope of application of the real estate agents activities, we believe this EP proposal should be excluded.</p>
107.	Art 2 – para 1 – point 3 – subpoint e	(e) other natural or legal persons trading in goods, only to the extent that payments are made or received in cash in an amount of EUR 7 500 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;	(e) other natural or legal persons trading in goods, only to the extent that payments are made or received in cash in an amount of EUR 7 500 <u>10 000</u> or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;	(e) other natural or legal persons trading in goods <i>or services</i> , only to the extent that payments are made or received in cash in an amount of EUR 7 500 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;	(e) — other natural or legal persons trading in goods <i><u>or services</u></i> , only to the extent that payments are made or received in cash in an amount of EUR 7 500 <u>10 000</u> 500 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;	<p>ES:</p> <p>- The measure was intended for the legal persons trading in goods as a residual clause. FIs and DNFBPs offering other services are already covered by the Directive</p> <p>AT:</p>

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						<p><u>Austrian</u> Position: We understand that high thresholds are vulnerable to abuse. We believe, however, that lowering the threshold to EUR 10 000 suffices in order to get the balance of risk mitigation and overly burdening the industry right.</p> <p>Thus, we <u>support the General Approach</u> that sets the threshold at EUR 10 000.</p> <p>CZ:</p> <p>CZ strongly supports the Council's GA.</p> <p>LT:</p> <p>-</p> <p>HR:</p> <p>-</p> <p>HU:</p> <p>HU supports the Council general approach. HU cannot accept the proposal of the EP. It is absolutely a red-line in Hungary.</p> <p>UK:</p>
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						<p>The Council text is preferred. The widening of the definition in the EP text introduces two significant changes which would increase the number of high value dealers needing to be supervised without clear cut evidences of the benefits for these being brought forward.</p> <p>We also prefer threshold agreed in Council as a sound compromise, half way between the current threshold and the 7500 wanted by others.</p> <p>We have maintained throughout the course of the negotiations that the issue was to ensure effective policing of the current 3AMLD threshold rather than arbitrarily bringing it down on the basis of no evidence as to the effect of doing so.</p> <p>BG:</p> <p>BG: The FATF recommendation introduced a narrower range of reporting</p>
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						<p>persons trading with goods and include only traders with gems and precious metals, and only in cash transactions amounting over 15 000 USD /EUR. The draft Commission Directive includes all traders (individuals or entities) in cash payments amounting over 7 500 EUR. This category is present in the current Directive 2005/60/EC, but the threshold is set at 15 000 EUR.</p> <p>Therefore, during discussion at the Council, we agreed as a compromise on the threshold of 10 000 EUR. We are strongly in favour of keeping that fragile compromise.</p> <p>DE:</p> <p>1. The inclusion of services into the definition of dealers under the AMLD is too broad and cannot be supported. This would de facto extend AML/CFT obligations to all sectors of the economy. This would not be in line with the spirit of the risk based approach considering only</p>
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						<p>those sectors as obliged entities that show a significant risk appetite and therefore are particularly exposed to AML/CFT.</p> <p>DK:</p> <p>-</p> <p>EL:</p> <p>The application of this directive on natural or legal persons trading in <i>services</i> will probably lead to a serious increase in persons obliged to apply the due diligence measures. As a result, the task of monitoring the obliged persons will be complicated and not so effectively managed. It should be noted that the word "services" is not included in "Art. 10 – para 1 – point c".</p> <p>Also we are in favor of the less strict approach: EUR 10.000</p> <p>FI:</p>
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						<p>We support the GA and are not in favour of lowering the threshold to EUR 7 500.</p> <p>IE:</p> <p>-IE supported the Council text threshold of 10 K</p> <p>FR:</p> <p>-</p> <p>NL:</p> <p>We <u>do not agree with adding 'services'</u> to the definition. This widens the group of obliged entities considerably and there is no solid research to substantiate the ML and TF risks in case of trade in services.</p> <p>We <u>do not agree to lowering the threshold to EUR 7.500.</u> There is no risk analysis whatsoever proving the need for a lower threshold. We prefer to keep the threshold as in the GA text: EUR 10.000.</p> <p>PL:</p> <p>In PL's opinion the level of</p>
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						<p>cash transaction should be fixed at 10.000 EUR.</p> <p>RO:</p> <p>-</p> <p>SE:</p> <p>-</p> <p>MT:</p> <p>-</p> <p>PT:</p> <p>-</p> <p>LL:</p> <p>-</p>
108.	Art 2 – para 1 – point 3 – subpoint f	(f) providers of gambling services.	(f) providers of gambling services.	(f) providers of gambling services.	(f) providers of gambling services.	
109.	Art 2 – para 1a (new)		<p><u>1a. With the exception of casinos and cross-border online gambling and following an appropriate risk assessment, Member States may decide to exempt fully or in part providers of certain gambling services from national provisions transposing the provisions of</u></p>	<p><i>With the exception of casinos, Member States may decide to exempt in full or in part certain gambling services, as referred to in point (3)(f) of the first subparagraph, from national provisions transposing this Directive on the basis of the low risk posed by the nature of the services</i></p>	<p><u>1a. With the exception of casinos and cross-border online gambling and following an appropriate risk assessment, Member States may decide to exempt fully in full or in part providers of certain gambling services, as referred to in point (3)(f) of the first</u></p>	<p>ES:</p> <p>We oppose to the need to seek approval of the Commission to exemptions on the gambling sector. This is not required in any other sector. The notification system as provided in the Council</p>

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			<p><u>this Directive on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such services.</u></p>	<p><i>on the basis of risk assessments. Before applying any such an exemption, the Member State concerned shall seek the approval of the Commission.</i></p>	<p><u>subparagraph, from national provisions transposing the provisions of this Directive on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such of the services on the basis of risk assessments. Before applying any such an exemption, the Member State concerned shall seek the approval of the Commission.</u></p>	<p>proposal should prevail.</p> <p>No exemption should be allowed for on-line gambling, CZ:</p> <p>The requirement of the approval of the Commission is inappropriate, the notification is sufficient. CZ therefore strongly supports the Council's GA.</p> <p>LT:</p> <p>LT does not support any exemptions from the AMLD obligations for any gambling providers so we are in favour of initial Com proposal, but we can support Council's GA.</p> <p>SI:</p> <p>We can agree that any decision taken by a Member State pursuant to this paragraph should be notified, to the Commission.</p> <p>However, we do not support amendment requesting MS that before applying any such an exemption, the MS concerned shall seek the</p>
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						<p>approval of the Commission.</p> <p>HU:</p> <p>HU supports the Council general approach.</p> <p>HU cannot accept the proposal of the EP. HU has strong opposition against the EP text, so in first place HU supports the general approach.</p> <p>If it does not hinder the adoption of the Directive, HU supports the deletion of “cross-border”, in line with the Hungarian mandate represented during the council meetings.</p> <p>Due to the nature of online gambling it is hard to differentiate between cross-border and national online gambling (within the border), moreover the concepts are not defined by the Directive.</p> <p>LV:</p> <p>We would like to retain Council text.</p> <p>UK:</p>
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						<p>A mix of both EP and Council text elements would be a sound outcome.</p> <p>As previously stated, the UK is not supportive of 'cross-border' online gambling language in the Council text. While we accepted it in the spirit of reaching a general approach, there is no clear-cut definition and/or proper understanding of what this entails. The language would also likely lead to differential treatment of land-based gambling such as bingo and betting with their online equivalents. It also potentially creates the anomalous situation whereby online gambling providers in just one jurisdiction can, through exemption, be subject to more AML obligations while companies operating across and providing the exact same service can't. As such the scope as set out in the EP text is preferable.</p> <p>Quite simply no objective risk-based assessment has been made that would justify any such restrictions where</p>
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						<p>companies licensed and regulated in other parts of the EU are involved.</p> <p>The EP text is also clearer in setting out the basis of exemption. 'Risk assessment' clearly points to NRAs while "proven low risk" could suggest/hint at court-based decision.</p> <p>We do not support the Commission approving of legitimate risk-based exemptions by individual member states in sectors that go beyond FATF initial requirements.</p> <p>DE:</p> <p>1. The change proposed by the EP to exclude only land based casinos from the possibility of national exemptions from the scope of AML/CFT legislation can be supported.</p> <p>Still, we stress the fact that exemptions can only be granted on the basis of "proven" low risk as established by the Council text</p>
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						<p>version.</p> <p>2. The obligation to seek the COM's approval of national exemptions will not be supported. We doubt that such provision would be in line with member state constitutions.</p> <p>DK:</p> <p>DK prefers the general approach reached in Council, however, in order to accommodate the European Parliament, the first part of the European Parliament's proposal could be acceptable to us. It is important that the part "Before applying any such an exemption, the Member State concerned shall seek the approval of the Commission" is deleted, since this should be decided at Member State level and by applying a risk-based approach.</p> <p>EL:</p> <p>We would be flexible to the Commission's prior approval of Member States' proposed</p>
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						<p>exemptions of very low risk gambling services</p> <p>In such a case (only in such a case) we would also live with casinos only being singled out from any such exemptions (from the Directive's provisions)</p> <p>FI:</p> <p>FI supports the contents of the GA, which is in line with the rather wide definition of gambling services. In particular, although FI would have supported an even wider coverage of higher risk gambling services, cross-border online gambling should fall within the scope of application as included in the GA, which is also in line with the European efforts to combat money laundering and match fixing by additional measures in the field of on-line gambling. It is also included in the scope of FATF recommendations. In view of the increasingly cross-border nature such activities and the high amounts of money involved, it would be important to recognise in EU</p>
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						<p>legislation the high risks of money laundering related to cross-border online gambling, by means of binding CDD measures. Furthermore, as regards the exclusion of certain services of the scope of application, FI prefers notification instead of seeking of approval. The risk assessment in that respect should be left to the Member States, in view of the differing risks related to the organisation of the gambling sector in different Member States.</p> <p>IE:</p> <p>IE continues to support the Council text; it is submitted that seeking Commission approval may be cumbersome; note also that there is more general provision in draft article 6 for the exchange between Commission and MS on specific risks such as those posed by sub-sectors of the gambling industry..</p> <p>FR:</p> <p><u>The French delegation supports the Council draft</u></p>
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						<p><u>on providers of gambling services which excludes casinos and online gambling from the possibility of exemption. But the French delegation would not support any weakening of the text by any widening of the scope of the derogations (on the basis of proven low risk).</u></p> <p>BE:</p> <p>BE supports the Council General Approach and strongly rejects the EP amendment, in particular when it comes to seek COM's approval.</p> <p>NL:</p> <p>We <u>do not agree</u> with the EP text. We want the <u>online gambling sector to be subject to the full directive</u> (as it has known ML risks).</p> <p>We <u>suggest deleting 'cross-border'</u> as this is a</p>
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						<p>qualification that does not ally to an online activity (and there is no way to supervise whether an online activity is cross-border or not).</p> <p>We would <u>agree with notifying</u> the Commission of the use of an exemption by a MS, but we <u>do not agree with seeking Commission approval</u>.</p> <p>SE:</p> <p>SE prefers, as in the Council text, not to include a text stating that MS should seek the approval of the Commission.</p> <p>MT:</p> <p><u>MT can support the version in the final column.</u></p> <p><u>Although MT has been of the view that there should not be any exemptions and that the Union must be able to consistently and holistically address the risks posed by the gambling services sector, in the spirit of compromise it has accepted that in low risk scenarios exemptions may be</u></p>
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						<p><u>granted as long as they are non-discriminatory, evidence-based and subject to an approval procedure by the Commission.</u></p> <p>PT:</p> <p>PT doesn't support the possibility of MS excluding online gambling from the scope of this directive.</p> <p>Moreover, PT doesn't agree with PE proposal foreseen to give the Commission the possibility to approve the exemptions decided to be applied by Member States.</p> <p>LL:</p> <p><u>From the drafting point of view EP proposal "as referred to in point (3)(f) of the first subparagraph," and deletion of "the provisions of" is correct</u></p>
110.	Art 2 – para 1a – subpara 2 (new)		<p><u>Any decision taken by a Member State pursuant to this paragraph shall be notified, along with a justification based on a specific risk assessment, to the Commission. The</u></p>		<p>Any decision taken by a Member State pursuant to this paragraph shall be notified, along with a justification based on a specific risk assessment, to the Commission. The</p>	<p>HU:</p> <p>HU supports the Council general approach.</p> <p>HU accepts the notification process in connection with</p>

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			<p><u>Commission shall communicate the decision to the other Member States.</u></p>		<p>Commission shall communicate the decision to the other Member States.</p>	<p>the relief decision and justified by risk assessment. LV:</p> <p>We would like to retain Council text. UK:</p> <p>The Council text is preferable in that Member States need to justify and notify their decision to exempt but without their sovereign decision being subject to Commission approval.</p> <p>A political assessment of the outcome of the NRA by the Commission is not welcomed. DE:</p> <p>According to the comment made under No. 109 we prefer the approach proposed by the Council to notify national exemptions to the COM. The COM remains with sufficient competence to revise if such national exemption is in line with the provisions of the AMLD4.</p>
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						<p>DK:</p> <p>DK prefers the general approach reached in Council.</p> <p>EL:</p> <p>We prefer Council's text.</p> <p>IE:</p> <p>IE continues to support the Council text – see comment above. Consider whether the Commission has the resources to receive, process such notifications.</p> <p>FR:</p> <p><u>The French delegation prefer a notification of the decision to the Commission (Council text) rather than a prior approval by the Commission (EP' text). But the word "Any" is not very clear : it would be difficult for a Member State to notify every individual decision to the Commission.</u></p> <p>NL:</p> <p>See previous comment. We</p>
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						prefer notification to the Commission over approval by the Commission.
111.	Art 2 – para 2 – subpara 1 –	2. Member States may decide that legal and natural persons, who engage in a financial activity on an occasional or very limited basis where there is little risk of money laundering or terrorist financing occurring, do not fall within the scope of this Directive provided that the legal or natural person fulfils all of the following criteria:	2. Member States may decide that legal and natural persons, who engage in a financial activity on an occasional or very limited basis where there is little risk of money laundering or terrorist financing occurring, do not fall within the scope of this Directive provided that the legal or natural person fulfils all of the following criteria:	2. Member States may decide that <i>natural or</i> legal persons <i>that</i> engage in a financial activity on an occasional or very limited basis where there is little risk of money laundering or terrorist financing occurring, do not fall within the scope of this Directive provided that the <i>natural or</i> legal person fulfils all of the following criteria:	2. Member States may decide that legal and natural <i>or legal</i> persons, who <i>that</i> engage in a financial activity on an occasional or very limited basis where there is little risk of money laundering or terrorist financing occurring, do not fall within the scope of this Directive provided that the legal or <i>or legal</i> person fulfils all of the following criteria:	
112.	Art 2 – para 2 – subpara 1 — point a	(a) the financial activity is limited in absolute terms;	(a) the financial activity is limited in absolute terms;	(a) the financial activity is limited in absolute terms;	(a) the the financial activity is limited in absolute terms;	
113.	Art 2 – para 2 – subpara 1 — point b	(b) the financial activity is limited on a transaction basis;	(b) the financial activity is limited on a transaction basis;	(b) the financial activity is limited on a transaction basis;	(b) the the financial activity is limited on a transaction basis;	
114.	Art 2 – para 2 – subpara 1 — point c	(c) the financial activity is not the main activity;	(c) the financial activity is not the main activity;	(c) the financial activity is not the main activity;	(c) the the financial activity is not the main activity;	
115.	Art 2 – para 2 – subpara 1 – point d	(d) the financial activity is ancillary and directly related to the main activity;	(d) the financial activity is ancillary and directly related to the main activity;	(d) the financial activity is ancillary and directly related to the main activity;	(d) the the financial activity is ancillary and directly related to the main activity;	
116.	Art 2 – para 2 – subpara 1 – point e	(e) the main activity is not an activity mentioned in paragraph 1, with the exception of the activity	(e) the main activity is not an activity mentioned in paragraph 1, with the exception of the activity	(e) the main activity is not an activity <i>referred to</i> in paragraph 1, with the exception of the activity	(e) the the main activity is not an activity mentioned <i>referred to</i> in paragraph 1, with the	LL: Drafting : referred to is better

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		referred to in point (3)(e) of paragraph 1;	referred to in point (3)(e) of paragraph 1;	referred to in point (3)(e) of paragraph 1;	exception of the activity referred to in point (3)(e) of paragraph 1;	drafting
117.	Art 2 – para 2 – subpara 1 – point f	(f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public.	(f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public.	(f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public.	(f) the the financial activity is provided only to the customers of the main activity and is not generally offered to the public.	
118.	Art 2 – para 2 – subpara 2	The previous subparagraph shall not apply to the legal and natural persons engaged in the activity of money remittance within the meaning of Article 4(13) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC ⁹ .	The previous subparagraph shall not apply to the legal and natural persons engaged in the activity of money remittance within the meaning of Article 4(13) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC ¹⁰ .	The <i>first</i> subparagraph shall not apply to <i>natural or</i> legal persons engaged in the activity of money remittance within the meaning of Article 4(13) of Directive 2007/64/EC of the European Parliament and of the Council ¹¹ . ■	The previous ^{first} subparagraph shall not apply to the legal and natural <u>or legal</u> persons engaged in the activity of money remittance within the meaning of Article 4(13) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC^{12 13} . ■	NL: EP text is OK LL: <i>EP suggestions for "first" + the reference are in line with the drafting rules</i>
119.	Art 2 – para 3	3. For the purposes of point	3. For the purposes of	3. For the purposes of point	3. For the purposes of	UK:

⁹ OJ L 319, 5.12.2007, p. 1.

¹⁰ OJ L 319, 5.12.2007, p. 1.

¹¹ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

¹² OJ L 319, 5.12.2007, p. 1.

¹³ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

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		(a) of paragraph 2, Member States shall require that the total turnover of the financial activity may not exceed a threshold which must be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.	point (a) of paragraph 2, Member States shall require that the total turnover of the financial activity may not exceed a threshold which must be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.	(a) of paragraph 2, Member States shall require that the total turnover of the financial activity <i>does</i> not exceed a threshold, which must be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.	point (a) of paragraph 2, Member States shall require that the total turnover of the financial activity <i>maydoes</i> not exceed a threshold, which must be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.	<p>Council text preferred. It gives additional flexibility upon implementation for Member States and paves the way to the RBA.</p> <p>NL:</p> <p>EP text is OK</p> <p>LL:</p> <p><u>If "MS shall require" then the correct EN verb would be "does"...</u></p>
120.	Art 2 – para 4	4. For the purposes of point (b) of paragraph 2, Member States shall apply a maximum threshold per customer and single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That 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.	4. For the purposes of point (b) of paragraph 2, Member States shall apply a maximum threshold per customer and single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That 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.	4. For the purposes of point (b) of paragraph 2, Member States shall apply a maximum threshold per customer and single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That 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.	4. For the purposes of point (b) of paragraph 2, Member States shall apply a maximum threshold per customer and single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That 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.	

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121.	Art 2 – para 5	5. For the purposes of point (c) of paragraph 2, Member States shall require that the turnover of the financial activity does not exceed 5 % of the total turnover of the legal or natural person concerned.	5. For the purposes of point (c) of paragraph 2, Member States shall require that the turnover of the financial activity does not exceed 5 % of the total turnover of the legal or natural person concerned.	5. For the purposes of point (c) of paragraph 2, Member States shall require that the turnover of the financial activity does not exceed 5 % of the total turnover of the natural <i>or legal</i> person concerned.	5. For the purposes of point (c) of paragraph 2, Member States shall require that the turnover of the financial activity does not exceed 5 % of the total turnover of the legal or natural <i>or legal</i> person concerned.	NL: EP text is OK
122.	Art 2 – para 6	6. In assessing the risk of money laundering or terrorist financing occurring for the purposes of this Article, Member States shall pay special attention to any financial activity which is regarded as particularly likely, by its nature, to be used or abused for money laundering or terrorist financing purposes.	6. In assessing the risk of money laundering or terrorist financing occurring for the purposes of this Article, Member States shall pay special attention to any financial activity which is regarded as particularly likely, by its nature, to be used or abused for money laundering or terrorist financing purposes.	6. In assessing the risk of money laundering or terrorist financing occurring for the purposes of this Article, Member States shall pay special attention to any financial activity which is regarded as particularly likely, by its nature, to be used or abused for money laundering or terrorist financing purposes.	6. In assessing the risk of money laundering or terrorist financing occurring for the purposes of this Article, Member States shall pay special attention to any financial activity which is regarded as particularly likely, by its nature, to be used or abused for money laundering or terrorist financing purposes.	
123.	Art 2 – para 7	7. Any decision pursuant to this Article shall state the reasons on which it is based. Member States shall provide for the possibility of withdrawing that decision should circumstances change.	7. Any decision <u>taken by a Member State</u> pursuant to this Article <u>paragraph 2</u> shall state the reasons on which it is based. Member States shall provide for the possibility of withdrawing that decision should circumstances change. <u>Such a decision shall be made available to the Commission. The Commission shall communicate the decision to the other Member States.</u>	7. Any decision pursuant to this Article shall state the reasons on which it is based. Member States shall provide for the possibility of withdrawing that decision should circumstances change.	7. Any decision taken by a Member State pursuant to this Article <u>paragraph 2</u> shall state the reasons on which it is based. Member States shall provide for the possibility of withdrawing that decision should circumstances change. Such a decision shall be made available to the Commission. The Commission shall communicate the decision to the other Member States.	CZ: CZ supports the ECON vote. The obligation to make the decision available to the Commission could be an inappropriate administrative burden for the MS. LT: LT supports Council GA version of Art. 2 – para 7. <u>UK:</u>

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						<p><u>We support the Council text.</u> DE:</p> <p>We support to include the additional sentence proposed by the Council. The COM should have the possibility to review national decisions to exempt low risk categories from the scope of national AML/CFT legislation. Moreover, this mechanism would be in line with the proposal made according to the gambling sector</p> <p>EL:</p> <p>We prefer Council's text. FR:</p> <p><u>The French delegation supports the Council's text. But same remark as before on the word "Any": should the decisions individually or overall be made available?</u> NL:</p> <p><u>We prefer the GA text.</u> LL:</p>
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						Reference to paragraph 2 as Council suggest makes more sense.
124.	Art 2 – para 8	8. Member States shall establish risk-based monitoring activities or take any other adequate measures to ensure that the exemption granted by decisions pursuant to this Article is not abused.	8. Member States shall establish risk-based monitoring activities or take any other adequate measures to ensure that the exemption granted by decisions pursuant to this Article is not abused.	8. Member States shall establish risk-based monitoring activities or take any other adequate measures to ensure that the exemption granted by decisions pursuant to this Article is not abused.	8. Member States shall establish risk-based monitoring activities or take any other adequate measures to ensure that the exemption granted by decisions pursuant to this Article is not abused.	LL: should "to this Article" be replaced by "paragraph 2"? (see point 7 above)
125.	Art 3	<i>Article 3</i>	<i>Article 3</i>	<i>Article 3</i>	<i>Article 3</i>	
126.	Art 3 – para 1	For the purposes of this Directive the following definitions shall apply:	For the purposes of this Directive the following definitions shall apply:	For the purposes of this Directive the following definitions shall apply:	For the purposes of this Directive the following definitions shall apply:	LL: EN correct drafting would be "the following definitions shall apply" (without shall - draftign rule for definitions)
127.	Art 3 – para 1 – point 1	(1) "credit institution" means a credit institution, as defined in Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit	(1) "credit institution" means a credit institution, as defined in Article 4 3 (1) of Directive 2006/48/EC 2013/36/EU of the European Parliament and of the Council of 14 26 June 2006 relating 2013 on access to the	(1) "credit institution" means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ¹⁶ , including branches thereof, as defined in point (17) of Article	(1) Member States shall establish risk-based monitoring activities or take any other adequate measures to ensure that the exemption granted by decisions pursuant to this Article is not abused. "credit institution" means a credit institution, as defined in Article 43 point (1) of Directive 2006/48/EC 2013/36/EU Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council	UK: Art 3(1) of (2013/36/EU) defines credit institutions by reference to Reg 4(1) of the CRR. This means the definition is found in the

¹⁶

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

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		institutions ¹⁴ , including branches within the meaning of Article 4(3) of that Directive located in the European Union of credit institutions having their head offices inside or outside the European Union;	taking up activity of credit institutions and pursuit of the business prudential supervision of credit institutions ¹⁵ and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC , including branches within the meaning of Article 4(3)(16) of that Directive located in the European Union of credit institutions having their head offices inside or outside the European Union;	4(1) of that Regulation, located in the Union, whether its head office is situated within the Union or in a third country;	of 1426 June 2006 relating to access to the taking up activity of credit institutions and pursuit of the business prudential supervision of credit institutions ¹⁷ and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC , ¹⁸ including branches within the meaning thereof, as defined in point (17) of Article 4(3)(161) of that Directive Regulation, located in the European Union of credit institutions having their, whether its head offices inside or outside office is situated within the European Union or in a third country;	relevant regulations rather than the Directive. FR: OK for the Council's wording BE: The reference to the Regulation (EU) No 575/2013 proposed by the PE instead of to the Directive 2013/36/EU could be more appropriate since the Directive itself refers to that Regulation. NL: EP text is OK LL: In both cases it is a first occurrence of the reference : please give only " Regulation (EU) No 575/2013 of the European Parliament and of
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¹⁴ OJ L 177, 30.6.2006, p. 1.

¹⁵ ~~OJ L 177, 30.6.2006, p. 1.~~

~~OJ L 177, 30.6.2006, p. 1.~~

¹⁸ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

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						<p>the Council"</p> <p>OR "Directive 2006/48/EC 2013/36/EU of the European Parliament and of the Council"</p> <p>in the text and the rest of the reference in footnote....</p> <p>It is more common to speak about third country in EU law...</p>
128.	Art 3 – para 1 – point 2	(2) "financial institution" means:	(2) "financial institution" means:	(2) "financial institution" means:	(2) — "financial institution" means:	<p>LV:</p> <p>We need to specify "principal activity" term. Will formulate comment after explanations.</p>
129.	Art 3 – para 1 – point 2 – subpoint a	(a) an undertaking, other than a credit institution, which carries out one or more of the operations included in points 2 to 12 and points 14 and 15 of Annex I to Directive 2006/48/EC, including the	(a) an undertaking, other than a credit institution, which carries out one or more of the operations included in points 2 to 12 and points 14 and 15 of Annex I to Directive 2006/48/EC 2013/36/EU ,	(a) an undertaking ■ other than a credit institution <i>the principal activity of which is to pursue</i> one or more of the activities listed in points (2) to (12) and points (14) and (15) of Annex I to Directive	(a) — an undertaking, ■ other than a credit institution, <i>the principal activity of which carries out to pursue</i> one or more of the operations <i>included activities listed</i> in points (2) to (12) and points	<p>ES:</p> <p>The fact that an undertaking conducts ancillary or limited financial activity is only one of the pre-conditions for MS to decide to exempt them from</p>

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		activities of currency exchange offices (bureaux de change);	including the activities of currency exchange offices (bureaux de change);	2013/36/EU of the European Parliament and of the Council ¹⁹ , including the activities of currency exchange offices (bureaux de change);	(14) and (15) of Annex I to Directive 2006/48/EC ²⁰ 2013/36/EU of the European Parliament and of the Council ²⁰ , including the activities of currency exchange offices (bureaux de change);	the scope of the Directive (Art. 2.2.). The proposal of the EP makes this exemption a general rule, it does not take risk into account and is contradictory with article 2.2.. LV: We propose to keep words "life insurance", because according to FATF recommendations AML requirements are binding only for life insurance but are not binding for P&C (non-life) insurance. UK: <u>The UK prefers the Council text, which maintains the status quo. The EP proposals unduly narrow the scope of the application; and financial</u>
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¹⁹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

²⁰ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

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						<p><u>activity on a limited basis is exempt in any case.</u></p> <p>EL:</p> <p>FR:</p> <p><u>The French delegation supports the Council's text rather than the EP's text which deals with "the principal activity"</u></p> <p>NL:</p> <p>We support the GA text</p> <p>PT:</p> <p>We request the deletion of the reference to "<i>principal activity</i>", as proposed by the EP.</p> <p>The mere exercise of any of the activities listed in points 2 to 12 and points 14 and 15 of CRD IV shall lead <i>ipso iure</i> to the classification as financial institutions of those undertakings pursuing such activities, in line with the authorization procedures established in MSs.</p>
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						<p>Consequently, the eventual occasional nature of these activities shall be addressed in the context of Article 2 (2) to (7) (financial activity on an occasional or very limited basis).</p> <p>LL:</p> <p>Not having the annexe, does annexe I speak about operations or activities? (please align vocabulary to annexe if needed)</p> <p>Depending of the outcome of negotiations the reference could be first of second : if second : "Directive 2013/36/EU" is sufficient...</p>
130.	Art 3 – para 1 – point 2 – subpoint b	(b) an insurance company duly authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ²¹ , insofar as it	(b) an insurance company duly authorised as defined in accordance with Article 13 point (1) of Directive 2002/83/2009/138/EC of the European Parliament and of	(b) an insurance company duly authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council ²³ , insofar as it carries out activities covered by that Directive;	(b) an insurance company duly authorised as defined authorised in accordance with Article 13 point (1) of Directive 2002/83/2009/2009/138/EC of the European Parliament and	<p>LT:</p> <p>LT does not support EP ECON proposal on Art. 3 – para 1 - point 2 – subpoint b, because according this</p>

²¹ OJ L 345, 19.12.2002, p. 1.

²³ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

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		carries out activities covered by that Directive;	the Council of 525 November 2002 concerning life assurance 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II) ²² , insofar as it carries out life assurance activities covered by that Directive;		of the Council of 525 November 2002 concerning life assurance 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II) ²⁴ , insofar as it carries out life assurance activities covered by that Directive;	definition it can be understood that all insurance companies are in the scope of Directive, but in the text obligations are imposed only on life insurance companies. It is not clear what obligations are set for non-life insurance companies. There are no evidence that non-life insurance (for example motor vehicle third party liability insurance) pose AML risk. For the clarity LT is in favour of retaining Council GA text. SI: It can be concluded from this amendment that Directive would apply to all insurance activities not merely to life insurance. In our view widening the scope of Directive to all insurance activities (e.g. property or even car insurance) would bring additional burden and costs to the obliged entities. Therefore, we cannot support proposed change. At least
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²² OJ L **335, 17.12.2009, p. 1**,³⁴⁵, 19.12.2002, p. 1.

²⁴ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

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						<p>appropriate explanation is needed with this regard.</p> <p><u>UK:</u></p> <p>The UK prefers the Council text. The EP and Commission texts appear to bring all insurance activities – not just life assurance - within scope.</p> <p><u>DE:</u></p> <p>Money laundering cases and typologies showed that money laundering in the insurance sector is mainly conducted through live assurance. Therefore the extension to all types of insurance contracts does not seem necessary. Still member states are free to include other insurance sectors if deemed necessary.</p> <p><u>FR:</u></p> <p><u>OK for the Council's wording</u></p> <p><u>BE:</u></p> <p>1.</p> <p>2. <u>SIGNIFICANT NEW REMARK RELATED TO THE CONSISTENCY OF THE SCOPE OF THE DIRECTIVE;</u> Art. 13 (1)</p>
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						<p>of Solvency II Directive defines the insurance undertakings, not by reference to their activities, but to the <u>authorisation</u> to conduct these activities. This is not the case for the other categories of financial obliged entities that are defined by reference to their activities themselves. This means that, by difference with the other categories of obliged entities, an undertaking that would exercise life insurance activities without licence (and thus illegally) is formally not submitted to AML/CFT requirements. It would therefore be much more appropriate to define a life insurance company as being: <i><u>“an undertaking exercising life insurance activities listed by article 2 (3) of the Directive 2009/138/EC of the European Parliament and of the Council”</u></i>. If this definition is retained, the last words of this paragraph (<i>“insofar as it carries out life assurance</i></p>
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						<p><i>activities covered by that Directive”) should be removed, because they are redundant.</i></p> <p>3. In any case, the definition proposed by the EP should be completed to restrict the scope of the directive to life insurance undertakings only (according to the current EP proposal all insurance undertakings would qualify as obliged entities).</p> <p>NL:</p> <p><u>We prefer the GA text as it is more up to date.</u></p> <p>MT:</p> <p><u>This definition of insurance company suggested by the EP will cover all companies providing insurance services and will not be limited to just providers of life insurance. This will constitute a major change. As such, MT would prefer the Council's previous version.</u></p> <p>PT:</p>
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						<p>The restriction to life insurance activities as foreseen in Council text (and in line with the Directive 2005/60) should be kept</p> <p>LL:</p> <p><u>EP proposal is the right way of referencing for the first time (and it is quoted here the first time)...</u></p>
131.	Art 3 – para 1 – point 2 – subpoint c	(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 of 21 April 2004 on markets in financial instruments ²⁵ ;	(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 of 21 April 2004 on markets in financial instruments ²⁶ ;	(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 of 21 April 2004 on markets in financial instruments;	(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 of 21 April 2004 on markets in financial instruments ²⁷ ;	<p>LL:</p> <p><u>Reference should be :</u></p> <p>- <u>in the text :</u> Directive 2004/39/EC of the European Parliament and of the Council</p> <p>- in footnote : full title</p>
132.	Art 3 – para 1 – point 2 – subpoint d	(d) a collective investment undertaking marketing its units or shares;	(d) a collective investment undertaking marketing its units or shares;	(d) a collective investment undertaking marketing its units or shares;	(d) a collective investment undertaking marketing its units or shares;	

²⁵ OJ L 145, 30.4.2004, p. 1.

²⁶ OJ L 145, 30.4.2004, p. 1.

~~OJ L 145, 30.4.2004, p. 1.~~

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133.	Art 3 – para 1 – point 2 – subpoint e	(e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ²⁸ , with the exception of intermediaries as mentioned in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services;	(e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ²⁹ <u>when they act in respect of life insurance and other investment related services</u> , with the exception of intermediaries as mentioned in Article 2(7) of that Directive; when they act in respect of life insurance and other investment related services;	(e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council ³⁰ , with the exception of intermediaries as referred to in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services;	(e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ³¹ when they act in respect of life insurance and other investment related services ³² , with the exception of intermediaries as mentioned <u>referred to</u> in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services;	LT: LT supports Council GA text. It is not clear why in the case of insurance intermediary there is distinction between life and non-life insurance (only intermediaries when they act in respect of life insurance are in the scope of Directive) the and in the case of insurance undertaking all insurance undertakings are in the scope. For the sake of consistency and legal clarity it is necessary to adopt Council GA text of both subpoints b and e of Art. 3 - para 1- point 2. <u>UK:</u> The UK has a preference for the Council text, as the EP text appears to capture all insurance intermediaries. <u>DE:</u>
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²⁸ OJ L 9, 15.1.2003, p. 3.

²⁹ OJ L 9, 15.1.2003, p. 3.

³⁰ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3).

³¹ ~~OJ L 9, 15.1.2003, p. 3.~~

³² Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3).

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						<p>The definition of insurance intermediaries should be congruent with the enumerated insurance companies under no. 130.</p> <p>Therefore the Council proposal should be maintained.</p> <p>EL:</p> <p>We agree with Council.</p> <p>NL:</p> <p>EP text is OK</p> <p>PT:</p> <p>The restriction to life insurance activities as foreseen in Council text (and in line with the Directive 2005/60) should be kept</p> <p>LL:</p> <p><u>The full EP way of referencing is correct + "referred to" is also more appropriate</u></p>
134.	Art 3 – para 1 – point 2 –	(f) branches, when located in the European Union, of	(f) branches, when located in the European	(f) branches ■ of financial institutions as referred to in	(f) branches, when located in the European	FR:

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	subpoint f	financial institutions as referred to in points (a) to (e), whose head offices are inside or outside the European Union;	Union, of financial institutions as referred to in points (a) to (e), whose head offices are inside or outside the European Union;	points (a) to (e) <i>that are located in the Union, whether its head office is situated in the Union or in a third country;</i>	Union, — of financial institutions as referred to in points (a) to (e), whose <i>that are located in the Union, whether its head offices are inside or outside office is situated in the European Union or in a third country;</i>	OK for Council's wording NL: We prefer the GA text LL: <u>EP proposal appears as a better drafting...</u>
135.	Art 3 – para 1 – point 3	(3) "property" means assets of every 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;	(3) "property" means assets of every 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;	(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;	(3) — "property" means assets of every <i>any</i> 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;	BG: BG: In the terms and definitions chapter of the FATF standards the definition of property includes the "every" kind. NL: EP text OK LL: <u>EP proposal appears as a better drafting...</u>
136.	Art 3 – para 1 – point 4	(4) "criminal activity" means any kind of criminal involvement in the commission of the following serious crimes:	(4) "criminal activity" means any kind of criminal involvement in the commission of the following serious crimes:	(4) "criminal activity" means any kind of criminal involvement in the commission of the following serious crimes:	(4) — "criminal activity" means any kind of criminal involvement in the commission of the following serious crimes:	
137.	Art 3 – para 1 – point 4 –	(a) acts as defined in Articles 1 to 4 of Framework Decision	(a) acts as defined in Articles 1 to 4 of Framework	(a) acts as defined in Articles 1 to 4 of Framework Decision	(a) — acts as defined in Articles 1 to 4 of Framework	NL:

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	subpoint a	2002/475/JHA on combatting terrorism, as amended by Council Framework Decision 2008/919/JHA of 28 November 2008;	Decision 2002/475/JHA on combatting terrorism, as amended by Council Framework Decision 2008/919/JHA of 28 November 2008;	2002/475/JHA, as amended by Framework Decision 2008/919/JHA;	Decision 2002/475/JHA on combatting terrorism , as amended by Council Framework Decision 2008/919/JHA of 28 November 2008 ;	EP text OK LL: <u>Normally we don't need to specify when it was amended because references in UE legal acts are dynamic (each time there is an amendment it is covered) - is there a will to achieve something else? make them static?</u>
138.	Art 3 – para 1 – point 4 – subpoint b	(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;	(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;	(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;	(b) any 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;	
139.	Art 3 – para 1 – point 4 – subpoint c	(c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the	(c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member	(c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA ³⁵ ;	(c) the the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member	NL: EP text OK LL: <u>It is the first reference, EP</u>

³⁵ Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (OJ L 351, 29.12.1998, p. 1).

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		European Union ³³ ;	States of the European Union ³⁴ ;		States of the European Union ³⁶ ;	proposal is correct
140.	Art 3 – para 1 – point 4 – subpoint d	(d) fraud affecting the Union's financial interests, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities' Financial Interests ³⁷ ;	(d) fraud affecting the Union's financial interests, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities' Financial Interests ³⁸ ;	(d) fraud affecting the Union's financial interests, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities' Financial Interests ³⁹ ;	(d) fraud affecting the Union's financial interests, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities' Financial Interests ⁴⁰ ;	
141.	Art 3 – para 1 – point 4 – subpoint e	(e) corruption;	(e) corruption;	(e) corruption;	(e) corruption;	
142.	Art 3 – para 1 – point 4 – subpoint f	(f) all offences, including tax crimes related to direct taxes and indirect taxes, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences	(f) all offences, including tax crimes, <u>as defined in national law of the Member States</u> , related to direct taxes and indirect taxes, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States	(f) all offences, including tax <i>offences</i> related to direct taxes and indirect taxes, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences	(f) all offences, including tax crimes, as defined in national law of the Member States, offences related to direct taxes and indirect taxes, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States	AT: Austrian Position: In our view the specific provision on tax crimes as predicate offences was misleading from the very beginning on as it does not consider the differences in the national definitions of crime. This in turn has undesired

³³ OJ L 351, 29.12.1998, p. 1.

³⁴ OJ L 351, 29.12.1998, p. 1.

³⁶ Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (OJ L 351, 29.12.1998, p. 1).

³⁷ OJ C 316, 27.11.1995, p. 49.

³⁸ OJ C 316, 27.11.1995, p. 49.

³⁹ OJ C 316, 27.11.1995, p. 49.

⁴⁰ OJ C 316, 27.11.1995, p. 49.

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		<p>punishable by deprivation of liberty or a detention order for a minimum of more than six months;</p>	<p>which 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;</p>	<p>punishable by deprivation of liberty or a detention order for a minimum of more than six months;</p>	<p>which 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;</p>	<p>implications on the cooperation between FIUs. FIUs are no tax authorities and there is no international definition of tax crime. Defining tax crimes would moreover require a unanimity vote. Furthermore there is an issue of double criminality. In any case 4AMLD is the wrong instrument for combatting tax evasion. The OECD standard on administrative information exchange and the EU Directive on administrative cooperation in the field of taxation are the right instruments.</p> <p>However, in order to achieve a compromise, and taking into account that this is a strong political point for some Member States, the Council in its General Approach agreed on a compromise text. The wording of the General approach, thus, features the indispensable safeguard for the FIUs that they need not go beyond what is possible under existing national legislation when acting on request. Given the above said, the wording of the general approach is the</p>
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						<p>utmost acceptable compromise to us. Information exchange by the FIU must be in line with the national law of the respective MS. We do not support any amendments that alter the reference to the MS's national law.</p> <p>The EP's "linguistic" amendment to Art. 3 (4) (f) (EP Amendment 52) seems to worsen the situation. If all tax offences punishable according to criminal law fall within the scope of this provision the differentiation of serious crimes and other offences punishable according to criminal law becomes obsolete.</p> <p>HU:</p> <p>HU supports the Council general approach.</p> <p>LV:</p> <p>We would like to see rationale of amendment.</p> <p>UK:</p>
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						<p>Council is clearer and there is no added value in shifting 'crimes' to 'offences' art. 16 as per the EP text.</p> <p>BG:</p> <p>BG: We prefer the text from the General approach "<i>as defined in national law of the Member States</i>" to be preserved in the final text.</p> <p>DE:</p> <p>The EP proposal cannot be supported. Fiscal and tax related offences have not been harmonized at EU level, therefore is subject to national reservation.</p> <p>The phrase "<i>as defined in national law of the Member State</i>" must be kept.</p> <p>EL:</p> <p>We could be flexible on this. The EP text would be acceptable.</p> <p>FR:</p>
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						<p><u>As the EP draft, the words "As defined in the national law of the Member states" should be deleted. The French delegation encourages the mutual recognition of tax crimes between the Member States to improve the cooperation between the FIU and competent authorities. The French delegation consider that a reference to " the national law of the Member States" for the definition of the tax crime weakens this cooperation.</u></p> <p>NL:</p> <p>We prefer the GA text</p> <p>PT:</p> <p>LL:</p> <p><u>Do we want to address tax crimes only or other types of tax offences also? This is more a question of substance....</u></p> <p><u>The text refers to "States" are</u></p>
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						<u>they Member States or also third counties or both? please specify....</u>
143.	Art 3 – para 1 – point 4a (new)			<i>(4a) "self-regulatory body" means a body that has the power, recognised by national law, to establish the obligations and rules governing a certain profession or a certain field of economic activity, which must be complied with by natural or legal persons in that profession or field;</i>	<i><u>(4a) "self-regulatory body" means a body that has the power, recognised by national law, to establish the obligations and rules governing a certain profession or a certain field of economic activity, which must be complied with by natural or legal persons in that profession or field;</u></i>	<p>ES:</p> <p>The definition does not expressly say that the SRB represents and is made up of the members of the profession.</p> <p>LT:</p> <p><u>LT could support insertion of this definition.</u></p> <p>HU:</p> <p>HU cannot support the EP proposal.</p> <p>UK:</p> <p>The definition of the self-regulatory bodies proposed in this amendment goes beyond the requirements of FATF and cuts across the FATF effectiveness methodology. The focus of the effectiveness methodology is to ensure that the supervisor can apply fit and proper tests to their membership, are able to fully understand the AML/CFT risks of their sector, able to</p>

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						<p>demonstrate that they apply effective and dissuasive sanctions in practice. There is no requirement for their role in regulating the profession or business more widely to be enshrined in national law for them to be able to meet the effectiveness criteria for AML/CFT supervision. This amendment would result in the entire accountancy sector in the UK being denied the ability to be supervised by their professional bodies, resulting in increased regulatory burden for many SMEs, despite the fact that these professional bodies are fully engaged in ensuring that their firms apply a proper risk based approach to compliance and are committed to demonstrating the effectiveness of their supervisory interventions and sanctions. It will also result in denying the extension of professional body supervision to estate agents, despite the fact that their professional bodies have demonstrated a commitment and capacity to provide effective and proportionate supervision within this sector. The FATF</p>
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						<p>effectiveness methodology is a more appropriately targeted approach to ensuring that only professional bodies who are up to standard and can deliver their obligations are appointed, rather than the requirement that they be set up by national law.</p> <p>As such we would simply suggest as a minimum that 'recognised by national law' is deleted from this amendment.</p> <p>EL:</p> <p>We consider the EP addition as useful.</p> <p>NL:</p> <p>EP text OK</p>
144.	Art 3 – para 1 – point 5	(5) "beneficial owner" means any natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:	(5) "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. The beneficial owner shall at least include:	(5) "beneficial owner" means any natural <i>person</i> who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted <i>and includes</i> at least:	(5) — "beneficial owner" means any natural <i>person(s)</i> who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted. The beneficial owner shall and includes at least include :	<p>ES:</p> <p>Probably the deletion of the "(s)" is an unintended grammar issue. However, it should be made clear that there can more than one BO. At least it is quite relevant in the subdefinitions below.</p> <p>LT:</p>

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						<p><u>LT supports Council GA drafting of Art. 3 – para 1 – point 5 - subpoint a –point i.</u></p> <p>HU:</p> <p>HU supports the Council general approach.</p> <p>BG:</p> <p>BG: In some instances this definition may exclude the effective control, which is required by the definition in the FATF standards.</p> <p>DE:</p> <p>The “(s)” should be kept in order to indicate that there can be more than one beneficial owner for any given customer.</p> <p>NL:</p> <p>We agree with EP text</p> <p>PL:</p> <p>PL definitely prefers the definition of beneficial owner as in the version proposed by the Council.</p>
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						<p>LL:</p> <p>1) <u>in the text there are different ways to reference to "persons", "natural persons", "individuals" - please agree on one vocabulary....</u></p> <p>2) <u>the definition should be one sentence so EP proposal seems good in that way....</u></p>
145.	Art 3 – para 1 – point 5 – subpoint a	(a) in the case of corporate entities:	(a) in the case of corporate entities:	(a) in the case of corporate entities:	(a) in in the case of corporate entities:	<p>LV:</p> <p>We support proposal of Council, because the notion of control should be used in a broad sense.</p> <p>FR:</p> <p><u>For corporate entities' beneficial owner, the French authorities prefer the Council text, but encourage, in accordance with the FATF recommendation (IN Recommendation 10. 5) and the EP text, a step by step approach : (i) direct or indirect control over a certain percentage of shares ii) if any doubt about i) control via</u></p>

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						other means iii) if any doubt about i) and ii), the senior managing official
146.	Art 3 – para 1 – point 5 – subpoint a – point i – subpara 1	(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union legislation or subject to equivalent international standards.	(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights <u>or ownership interest</u> in that legal entity, including through bearer share holdings, <u>or through control via other means</u> , other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union legislation or subject to equivalent international standards <u>which ensure adequate transparency of ownership information</u> .	(i) the natural <i>person</i> who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union <i>law</i> or subject to equivalent international standards.	(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights or ownership interest in that legal entity, including through bearer share holdings, or through control via other means , other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union legislation <i>law</i> or subject to equivalent international standards which ensure adequate transparency of ownership information .	<p>ES:</p> <p>We support the Council in having a explicit reference that adequate transparency should be ensured in order to exempt listed companies from third countries</p> <p>HU:</p> <p>HU supports the Council general approach. HU cannot accept the text of the EP. The text “<u>or through control via other means</u>,” is necessary.”</p> <p>LV:</p> <p>We support proposal of Council. We propose to keep word "indication" because ownship of shares is only indicative factor that owner is befcial owner. Shares can be kept in behalf of other persons.</p>

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						<p>UK:</p> <p>The UK has a strong preference for the Council text in particular references to 'control via other means'.</p> <p>The UK continues to feel that companies listed on non-regulated markets which have equivalent standards of disclosure and transparency to regulated markets should also be exempt.</p> <p>DE:</p> <p>The inclusion of the phrase "or through control via other means" is essential. Beneficial ownership includes not only the legal owner but also those persons who have a controlling position within the legal entity due to golden-share agreements or, through family structures, funding etc.</p> <p>EL:</p> <p>We insist to keep the sentence "or ownership interest" in order to include legal entities which don't have shares.</p> <p>NL:</p>
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						<p>We <u>prefer the GA text</u>. It better reflects the FATF recommendation.</p> <p>PT:</p> <p>We are broadly comfortable with EP proposal although we would prefer to keep the reference to ownership interest.</p> <p>In addition we consider that the Council text would benefit from the inclusion of a new Article 3 (5) (a) (iia) as proposed by the EP.</p> <p>LL:</p> <p>1) Does "other than" refers to "legal entity"? the link is not so clear....</p> <p>2) change from "legislation" to</p>
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						"law" is a common practice for drafting
147.	Art 3 – para 1 – point 5 – subpoint a – point i – subpara 2	A percentage of 25% plus one share shall be evidence of ownership or control through shareholding and applies to every level of direct and indirect ownership;	A percentage <u>shareholding or ownership interest</u> of 25 % <u>plus one share or more in the customer held by a natural person</u> shall be evidence of ownership or control through shareholding and applies to every level <u>an indication</u> of direct and indirect ownership;	<i>In any event, a shareholding of 25 % plus one share by a natural person is evidence of direct ownership; a shareholding of 25 % plus one share in the customer, held by a corporate entity, which is under the control of a natural person, or by multiple corporate entities, which are under the control of the same natural person, shall be an indication of indirect ownership; the notion of control shall be determined, inter alia, in accordance with the criteria laid down in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council⁴¹; however, this applies without prejudice to the right for Member States to decide that a lower percentage may be</i>	A percentage shareholding or ownership interest of 25 % plus one share or more in the customer held by a natural person shall be evidence of ownership or control through shareholding and applies to every level an indication of direct and indirect ownership; <i>In any event, a shareholding of 25 % plus one share by a natural person is evidence of direct ownership; a shareholding of 25 % plus one share in the customer, held by a corporate entity, which is under the control of a natural person, or by multiple corporate entities, which are under the control of the same natural person, shall be an indication of indirect ownership; the notion of control shall be determined, inter alia, in</i>	ES: In what concerns ownership and control through other means, both versions are very similar. The Council version is presented in a clearer and more consistent way (e.g. not differentiating between evidence and indication, different subparagraphs..). HU: HU supports the Council general approach. However it is worth considering that this definition covers all possibility of control. HU cannot support the text of the EP. UK:

⁴¹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

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				evidence of ownership or control;	<u>accordance with the criteria laid down in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council⁴²; however, this applies without prejudice to the right for Member States to decide that a lower percentage may be evidence of ownership or control;</u>	<p>UK would consider a mix of both the EP and Council texts as the solution.</p> <p>The EP text is weak in that it places ownership above control by other means where both should have equal value, as specified in the Council text.</p> <p>It also requires obliged entities to determine 'control through other means' by reference to the criteria listed in Directive 2013/34/EU – this is both too prescriptive (ie an assessment in line with these criteria in all cases) and too restrictive (because the notion of control in that Directive is narrowly defined). By contrast, the Council text refers to this Directive as something that 'may' be referred to when looking to determine 'control through other means', which is more proportionate and effective.</p>
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⁴² Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

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						<p>The EP text correctly however refers to 25% plus one share rather than 25% or more in the Council text. While this seems a detail it has substantial bearing on the composition of a register of BO. The 3 AMLD cites 25% + one share. Is the Commission expecting all obliged entities to redo their CDD in case it is 25% only rather 25% + share. This would be costly and disproportionate for businesses.</p> <p>DE:</p> <p>See comment above – the structure of the Council text, which gives separate definitions for direct ownership, indirect ownership and control via other means seems clearer.</p> <p>BE:</p> <p>In the Council compromise, the word "evidence" of direct ownership" has been replaced by "an indication of direct ownership" with the aim to avoid that obliged entities</p>
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						<p>consider that an natural person holding less than 25% can never qualify as a BO: it could be the case depending on the shareholding structure of the customer. We suggest retaining the Council wording. Beside this, the EP proposal is shorter than the Council compromise, but it seems nevertheless to meet our expectations regarding the clarification of what "indirect shareholding" means, and it is thus acceptable to BE.</p> <p>NL:</p> <p><u>Using "25% plus one" (as in the EP text) is in line with FATF and with AMLD3. A slight change to this definition would have as a consequence that obliged entities would have to revisit all their BOs to check for the 1% difference. This is not efficient and not necessary.</u></p> <p>Using "more than 25%" would also work.</p> <p>We would prefer the use of the word 'indication' (GA text) instead of 'evidence' (EP text) as this is more in line with</p>
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						<p>FATF wording. MT:</p> <p><u>It is not clear why under the EP text a 25% plus one share in the customer is evidence of direct ownership, while on the other hand 25% plus one share in the customer held by a corporate entity which is under the control of a natural person is an indication of indirect ownership. In this regard, MT would support the Council's previous version.</u></p> <p>LL:</p> <p><i>(EP reference for 2013/34/EU is correct - first occurrence)</i></p>
148.	Art 3 – para 1 – point 5 – subpoint a – point i – subpara 2a (new)		<p><u>A shareholding or ownership interest of 25 % or more 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.</u></p>		<p><u>A shareholding or ownership interest of 25 % or more 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.</u></p>	<p>HU:</p> <p>HU supports the Council general approach.</p> <p>UK:</p> <p>As per our comment above and in line with the current language in the 3rd AMLD, it should read 25% + one share.</p> <p>NL:</p>

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						GA text in line 148 is identical to EP text in line 147.
149.	Art 3 – para 1 – point 5 – subpoint a – point i – subpara 2b (new)		<u>Control through other means 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 of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings⁴³;</u>		Control through other means 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 of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings⁴⁴;	<p>HU:</p> <p>HU supports the Council general approach. This para. is needed.</p> <p>UK:</p> <p>As per our comment above, the Council text is preferred.</p> <p>DE:</p> <p>The phrase “control through other means” should be kept.</p> <p>NL:</p> <p>GA text in line 149 is identical to EP text in line 147.</p>
150.	Art 3 – para 1 – point 5 – subpoint a – point ii	(ii) if there is any doubt that the person(s) identified in point (i) are the beneficial owner(s), the natural person(s) who exercises control over the management of a legal entity through other means;	(ii) if, <u>after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if</u> there is any doubt that the person(s) identified in point (i) are the	(ii) if there is any doubt that the <i>person</i> identified in point (i) <i>is</i> the beneficial owner <i>or if after taking all the necessary measures no person can be identified in point (i)</i> , the natural <i>person</i> who exercises control over the management	(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 if there is any doubt that the <i>person(s)</i> identified in point (i) are ^{is} the	<p>ES:</p> <p>The Council version is much clearer.</p> <p>In the EP version:</p> <p>-the notion of control through other means is both in i) and</p>

⁴³ OJ L 182, 29.6.2013, p.19.~~OJ L 182, 29.6.2013, p.19.~~

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			beneficial owner(s), the natural person(s) who exercises control over the management of a legal entity through other means <u>hold the position of senior managing official(s)</u> ;	of a legal entity through other means, <i>which may include the senior management</i> ;	beneficial owner s <i>or if after taking all the necessary measures no person can be identified in point (i)</i> , the natural person (s) who exercises control over the management of a legal entity through other means <u>hold means, which may include the position of senior managing official(s); management</u> ;	<p>ii)</p> <p>-the notion of control through management is both in ii) and ii a)</p> <p>The mixed concepts create confusion.</p> <p>What we do appreciate in the EP version is the established safeguards for those cases where senior managers are considered BO (i.e. keep records of actions taken by the obliged entity)</p> <p>LT:</p> <p>LT could support EP ECON drafting of Art. 3 – para 1-point 5 –subpoint a-point ii.</p> <p>SI:</p> <p>It is not clear what the control through “other means” could be other than senior management.</p> <p>HU:</p> <p>HU supports the Council general approach. HU has strong opposition against the text of the EP.</p> <p>LV:</p>
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						<p>We would like to keep Council text.</p> <p>UK:</p> <p>The EP text unduly weakens the beneficial owner identification requirements and allows for an easy get out of jail card. The Council text clearly specifies that this option is available only in exceptional circumstances and only if there is no ground of suspicion.</p> <p>The Council text is preferred.</p> <p>DE:</p> <p>The position of the senior manager cannot be considered the (legal) beneficial owner of a company, since he is employed by the company.</p> <p>Therefore we opt for a non-binding provision to incorporate senior-management as a last resort for BO identification when considered appropriate by the</p>
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						<p>member state..</p> <p>BE:</p> <p>We don't understand very clearly the differences between points (ii) and (iia) of the EP text, except the last part of para (iia) that seems interesting (<i>"the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under points (i) and (ii) in order to prove the inability to identify such persons"</i>).</p> <p>NL:</p> <p>We prefer the EP text as it makes clear that naming senior management as BO is a very last resort option.</p> <p>In order to align this paragraph of the EP text with the next one, the words “, which may include the senior management” should be left out.</p> <p>MT:</p> <p>Paragraph a(ii) and a(iia)</p>
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						<p><u>should not offer obliged entities a way out from seeking to identify the beneficial owner/s of a legal entity. MT is of the view that such a concession should only be allowed in those cases when it is not possible to identify the natural persons owning or exercising control over a corporate entity. In this case thus the text proposed by the Council is preferred.</u></p>
151.	<p>Art 3 – para 1 – point 5 – subpoint a – point iia (new)</p>			<p><i>(iia) where no natural person is identified under point (i) or (ii), the natural person who holds the position of senior managing official, in which case, the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under points (i) and (ii) in order to prove the inability to identify such persons;</i></p>	<p><u><i>(iia) where no natural person is identified under point (i) or (ii), the natural person who holds the position of senior managing official, in which case, the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under points (i) and (ii) in order to prove the inability to identify such persons;</i></u></p>	<p>LT:</p> <p><u>LT could support EP ECON drafting of Art. 3 – para 1- point 5 –subpoint a-point iia (new).</u></p> <p>UK:</p> <p>The Council version is needed here .The Council text clearly specifies that this option is available only in exceptional circumstances and only if there is no ground of suspicion.</p> <p>DE:</p> <p>See no. 150.</p> <p>NL:</p>

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						<p>We support the EP text PT:</p> <p>We strongly support the EP's proposal for the addition of this provision, since it simultaneously:</p> <p>(i) Accommodates, in a more explicit manner, the 3rd step of the FATF's methodology for identifying the beneficial owner ("senior managing officials");</p> <p>(ii) Provides for duly safeguards aimed at ensuring that this 3rd step is not regarded as an "easy way out".</p>
152.	Art 3 – para 1 – point 5 – subpoint b	(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:	(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:	(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts <i>or</i> <i>mutuals</i> , which administer and distribute funds:	(b) — in the case of legal entities, such as foundations, and legal arrangements, such as trusts <i>or mutuals</i> , which administer and distribute funds:	<p>ES:</p> <p>The proposal of the EP is very similar to the current definition in the 3rd AMLD, which is unclear and does not meet the FATF international standards.</p> <p>We do not see very clearly the need to single out mutual, which in any case are not legal arrangements in Spain.</p> <p>We support the Council version.</p>

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						<p><u>UK:</u></p> <p><u>As per our previous comments on bringing mutual within scope.</u></p> <p><u>FR:</u></p> <p><u>The EP's text includes further development and details. But the scope should be in accordance with the FATF recommendation 25 which deals with "Legal arrangements which refer to express trusts or other similar legal arrangements". What does exactly mean "mutual"? The EP's text should be in accordance for legal arrangements with the FATF recommendation 10 IN 5.</u></p> <p><u>BE:</u></p> <p>For the sake of clarity of the text, we prefer to distinguish the case of trusts, on the one hand, and that of other legal entities or arrangements, as it is provided by the Council compromise. The structure of the EP text seems less suitable (persons considered under point (iiia) are already</p>
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						considered under points (i) to (iii). PT: We consider the Council's GA more appropriate, since it is more focused on the notion of control, in line with FATF's IN to R. 10.
153.	Art 3 – para 1 – point 5 – subpoint b – point i	(i) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity; and	(i) the settlor <u>the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity; and</u>	(i) the natural <i>person</i> who exercises control over 25 % or more of the property of a legal arrangement or entity; and	(i) the settlor the natural <i>person(s)</i> who exercises control over 25 % or more of the property of a legal arrangement or entity; and	NL: The GA text is more in line with FATF. However, it would be good to also include definitions of settlor, trustee etc. in article 3.
154.	Art 3 – para 1 – point 5 – subpoint b – point ii	(ii) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity; or	(ii) the trustee(s) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity; or	(ii) where the future beneficiaries have already been determined, the natural <i>person</i> who is the beneficiary of 25 % or more of the property of a legal arrangement or entity; or	(ii) the trustee(s) where the future beneficiaries have already been determined, the natural <i>person(s)</i> who is the beneficiary of 25 % or more of the property of a legal arrangement or entity; or	NL: The GA text is more in line with FATF. However, it would be good to also include definitions of settlor, trustee etc. in article 3.
155.	Art 3 – para 1 – point 5 – subpoint b – point iia (new)		(iia) <u>the protector, if any;</u>		(iia) the protector, if any;	NL: The GA text is more in line with FATF. However, it would be good to also include definitions of settlor, trustee etc. in article 3.
156.	Art 3 – para 1	(iii) where the individuals that	(iii) <u>the beneficiaries; or</u>	(iii) where the individuals that	(iii) the beneficiaries; or	LV:

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	– point 5 – subpoint b – point iii (new)	benefit 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. For beneficiaries of trusts that are designated by characteristics or by class, obliged entities shall obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights;	where the individuals that benefit 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. For beneficiaries of trusts that are designated by characteristics or by class, obliged entities shall obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights;	benefit 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. For beneficiaries of trusts that are designated by characteristics or by class, obliged entities shall obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights;	where the individuals that benefit 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. For beneficiaries of trusts that are designated by characteristics or by class, obliged entities shall obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights;	<p>We can support, need more explanation.</p> <p>NL:</p> <p>The GA text is more in line with FATF. However, it would be good to also include definitions of settlor, trustee etc. in article 3.</p>
157.	Art 3 – para 1 – point 5 – subpoint b – point iia (new)			<i>(iia) for trusts, the identity of the settlor, trustee, the protector (if any), the beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership);</i>	<i><u>(iia) for trusts, the identity of the settlor, trustee, the protector (if any), the beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership);</u></i>	<p>HU:</p> <p>HU supports the Council general approach.</p> <p>UK:</p> <p>Council text preferred.</p> <p>EL:</p> <p>Delete: “the identity of”</p> <p>(iia) for trusts, the identity of the settlor, trustee, the protector (if any), the</p>

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						<p>beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership);</p> <p>FR:</p> <p><u>This definition of BO, specific for "trusts" must be consistent with the previous list (i) ii) iii) which deals with "the case of legal entities, such as foundations, and legal arrangements , such as trusts or mutual"</u></p> <p>NL:</p> <p>If we use the above GA text suggestions, <u>this paragraph of the EP text is no longer necessary.</u></p>
158.	Art 3 – para 1 – point 5 – subpoint b – point iv (new)		<p>(iv) <u>any other natural person exercising ultimate control over the trust through direct or indirect ownership or through other means</u></p>		<p>(iv) any other natural person exercising ultimate control over the trust through direct or indirect ownership or through other means</p>	<p>UK:</p> <p>Council text preferred.</p> <p>EL:</p> <p>We believe that this provision should not be deleted</p> <p>(iv) any other natural</p>

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						person exercising ultimate control over the trust through direct or indirect ownership or through other means.
159.	Art 3 – para 1 – point 5 – subpoint (c) (new)		(c) <u>in the case of legal arrangements and legal entities similar to trusts, such as foundations, the natural person(s) holding equivalent or similar positions to those under point (b) shall be included;</u>		(c) <u>in the case of legal arrangements and legal entities similar to trusts, such as foundations, the natural person(s) holding equivalent or similar positions to those under point (b) shall be included;</u>	UK: Council text preferred. BE: Taking into account our previous comment, we also suggest maintaining point (c).
160.	Art 3 – para 1 – point 6	(6) "trust or company service providers" means any natural or legal person which by way of business provides any of the following services to third parties:	(6) "trust or company service providers" means any natural or legal person which by way of business provides any of the following services to third parties:	(6) "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:	(6) — "trust or company service providers <u>provider</u> " means any natural or legal person which by way of business provides any of the following services to third parties:	LL: <u>Singular form seems more appropriate because the definition use "natural or legal" in singular...</u>
161.	Art 3 – para 1 – point 6 – subpoint a	(a) forming companies or other legal persons;	(a) forming companies or other legal persons;	(a) forming companies or other legal persons;	(a) — forming companies or other legal persons;	
162.	Art 3 – para 1 – point 6 – subpoint b	(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;	(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;	(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;	(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;	

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163.	Art 3 – para 1 – point 6 – subpoint c	(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;	(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;	(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;	(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;	
164.	Art 3 – para 1 – point 6 – subpoint d	(d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;	(d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;	(d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;	(d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;	
165.	Art 3 – para 1 – point 6 – subpoint e	(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 conformity with European Union legislation or subject to equivalent international standards;	(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 conformity with European Union legislation or subject to equivalent international standards;	(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 conformity with Union <i>law</i> or subject to equivalent international standards;	(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 conformity with European Union legislation <i>law</i> or subject to equivalent international standards;	EL: We prefer the word: “legislation” , which has a broader meaning NL: EP text OK LL: <u>change from "legislation" to "law" is a common practice</u>

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						for drafting
166.	Art 3 – para 1 – point 6a (new)		<u>(6a) “correspondent relationship” means:</u>		(6a) “correspondent relationship” means:	<p>DE:</p> <p>The definition of correspondent relationship should be incorporated into the AMLD.</p> <p>FR:</p> <p>France supports Council’s text on “correspondent relationship”</p> <p>BE:</p> <p>The inclusion of a definition of “correspondent relationship” appears to be very useful and should thus be maintained.</p> <p>NL:</p> <p>We would like the GA definition to be included.</p> <p>PL:</p> <p>PL supports the inclusion of the definition of “correspondent relationship” as proposed in the Council’s version.</p>

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						<p>MT:</p> <p><u>Having a definition of a correspondent relationship would be beneficial. MT would prefer the Council's version.</u></p> <p>PT:</p> <p>We consider very important to keep the "correspondent relationship" definition, which encompasses not only the traditional correspondent banking relationships but also the similar relationships covered by FATF's R. 13.</p>
167.	Art 3 – para 1 – point 6a– subpoint a (new)		<p>(a) <u>the provision of banking services by one bank (the "correspondent") to another bank (the "respondent"), including but not limited to providing a current or other liability account and related services, like cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;</u></p>		<p>(a) the provision of banking services by one bank (the "correspondent") to another bank (the "respondent"), including but not limited to providing a current or other liability account and related services, like cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;</p>	<p>LT:</p> <p><u>LT does not support deletion of the definition "correspondent relationship".</u></p> <p>DE:</p> <p>We support the inclusion of a definition of correspondent banking. Since correspondent banking is one of the few remaining high risk situations still defined by the directive all member states should have the same understanding of the</p>

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						<p>underlying circumstances. NL:</p> <p>We <u>would like the GA definition to be included.</u></p>
168.	<p>Art 3 – para 1 – point 6a – subpoint b (new)</p>		<p><u>(b) the relationships between credit institutions, financial institutions and among credit and financial institutions where similar services are provided, including but not limited to those relationships established for securities transactions or funds transfers;</u></p>		<p><u>(b) the relationships between credit institutions, financial institutions and among credit and financial institutions where similar services are provided, including but not limited to those relationships established for securities transactions or funds transfers;</u></p>	<p>LV:</p> <p>We support proposal of Council. Similar approach is supported by World Bank. http://www-wds.worldbank.org/external/default/WDSP/IB/2010/04/27/000333038_20100427011931/Rendered/PDF/542500PUB0Expo101Official0Use0Only1.pdf</p> <p>UK:</p> <p>Care should be taken to avoid this definition inadvertently capturing all banking services offered by one credit or financial institution to another that is based in a third country. This could be achieved by deleting 'including but not</p>

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						<p>limited to' in a).</p> <p>NL:</p> <p>We would like the GA definition to be included.</p>
169.	<p>Art 3 – para 1 – point 7 – subpoint a</p>	<p>(7) (a) "foreign politically exposed persons" means natural persons who are or have been entrusted with prominent public functions by a third country;</p>	<p>(7) (a) "foreign politically exposed persons" means natural persons who are or have been entrusted with prominent public functions by a third country and includes the following:</p>	<p>(7) (a) "foreign politically exposed persons" means natural persons who are or have been entrusted with a prominent public <i>function</i> by a third country;</p>	<p>(7) —(a)— "foreign politically exposed persons" means natural persons who are or have been entrusted with <u>a</u> prominent public functions <i>function</i> by a third country and includes the following country;</p>	<p>ES:</p> <p><u>We strongly support the EP definitions of foreign and domestic PEPs. We have always supported that it is unrealistic to consider "PEPs" of any other MS as domestic.</u></p> <p>AT:</p> <p><u>Austrian Position:</u> Foreign PEPs should be defined as natural persons who are or have been entrusted with prominent public functions by another country. FATF R.12 on PEPs applies to all foreign PEPs. A <u>limitation</u> to <u>PEPs of third countries</u> as proposed by the EC falls short of the FATF requirements and will have serious ramifications for all EU-MS during the 4th Round of Mutual Evaluations. Consequently, domestic PEPs should be defined as natural persons who are or have been</p>

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						<p>entrusted with prominent public functions by their Member State, but not by a MS.</p> <p><u>General Approach:</u> The general approach does not distinguish between foreign and domestic PEPs. The same CDD measures have to be applied to both. Thus, the provision is within the limits of FATF R.12. If no appropriate definition of foreign and domestic PEPs (as described above) can be attained through trilogue negotiations, <u>we could stick with the wording</u> of the General Approach <u>as a minimum compromise</u>.</p> <p><u>EP Amendment 55:</u> In this respect the EP amendment seems to define domestic PEPs as PEPs entrusted with the prominent function only <u>by their MS</u> ("<i>...by the Member State...</i>") and thus is <u>acceptable to us</u>. In our view this is not only a linguistic amendment, but also alters the meaning of the definition.</p> <p>LT:</p>
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						<p><u>LT supports Council GA drafting of Art 3(7), 3 (7a), 3 (7b).</u></p> <p>UK:</p> <p>We prefer the Council text and the absence of distinction between foreign and domestic. The approach should be risk-based and not limited to the nationality.</p> <p>However, the Council text no longer contains a reference to PEPs being entrusted with their position by a country. The reference to country or state or international organisation should be re-inserted for the avoidance of doubt. We would also ask for 'the following' to be preceded by 'at least' to maintain the open character of 3MLD's PEPs definition. There is a risk that the definition as currently drafted would be too narrow and does not allow for the expansion of the definition on a risk-sensitive basis.</p> <p>DE:</p> <p>The proposal made by the EP</p>
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						<p>concerning the definition of domestic and foreign PEPs etc. in No. 169 – 172 is in line with definition provided in the FATF glossary. The EP approach could be supported.</p> <p>Still, the definition of the “foreign PEP” should read as follows “...have been entrusted with a prominent public function by another country”. If the wording of the COM proposal is retained only PEPs from third countries outside the EU would be included.</p> <p>FR:</p> <p><u>The Council’s text does not distinguish domestic and foreign politically exposed persons contrary to the FATF standards.</u></p> <p>BE:</p> <p><u>BE strongly prefers to maintain the Council definition and all provisions related to PEPs as proposed by the Council. The reasons for this have been debated at length.</u></p>
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						<p><u>We should avoid also horizontal issue problems with FATF MERs.</u></p> <p>NL:</p> <p>The EP text is not possible in view of internal market principles. Hence the GA text would have to prevail. It however does not fit FATF recommendations.</p> <p>MT:</p> <p><u>The council's approach to the definition of "politically exposed persons" is more coherent and correct. Having no distinction between foreign and domestic PEPs would in turn mean that the same EDD procedure (see article 23) is applicable to all PEPs irrespective of whether they are domestic foreign or engaged by an international organisation.</u></p> <p>PT:</p> <p>We oppose any drafting that creates the concept of EU PEP, i.e. relating "foreign PEPs" to non-EU countries and "domestic PEPs" to all</p>
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						<p>EU Member States.</p> <p>The communitarization of the PEP concept:</p> <p>(i) Lacks justification from a risk-based perspective;</p> <p>(ii) Would not be in coherence with the territorial <i>rationale</i> of the AML/CFT supervisory systems;</p> <p>(iii) Notoriously contradicts the distinction between domestic and foreign PEPs carried out by the FATF Recommendations.</p>
170.	<p>Art 3 – para 1 – point 7 – subpoint b</p>	<p>(b) "domestic politically exposed persons" means natural persons who are or who have been entrusted by a Member State with prominent public functions;</p>	<p>deleted</p>	<p>(b) "domestic <i>politically exposed</i> persons" means natural persons who are or who have been entrusted by <i>the</i> Member State with <i>a</i> prominent public <i>function</i>;</p>	<p>deleted(b) "domestic politically exposed persons" means natural persons who are or who have been entrusted by <i>the</i> Member State with <i>a</i> prominent public <i>function</i>;</p>	<p>CZ:</p> <p>CZ strongly supports the Council's GA.</p> <p>UK:</p> <p>Council text preferred.</p> <p>FR:</p> <p><u>The word "the" in the EP text : "entrusted by the MS" is not very clear : does it mean that a domestic PPE is a national PPE or a EU PPE?</u></p> <p>NL:</p>

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						<p>The EP text is not possible in view of internal market principles. Hence the GA text would have to prevail. It however does not fit FATF recommendations.</p> <p>PT:</p> <p>We support the amendment proposed by the EP, provided that it does not consist of a mere linguistic amendment, but reintroduces a definition of domestic PEPs consistent with the FATF Recommendations (people entrusted with prominent public functions in <i>each</i> Member State), thereby respecting the international standards. In this scenario, point (a) needs to be adjusted accordingly (for instance, through the replacement of “<i>a third country</i>” by “<i>another country</i>”).</p> <p>If this is not the case and MSs and the EP fail to reach a consensus towards the explicit reinstatement of the FATF's Recommendations, then we would prefer the neutral approach currently adopted by</p>
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						the Council's GA on the PEP issue.
171.	Art 3 – para 1 – point 7 – subpoint c	(c) "persons who are or who have been entrusted with a prominent function by an international organisation" means directors, deputy directors and members of the board or equivalent function of an international organisation;	deleted	(c) "persons who are or who have been entrusted with a prominent function by an international organisation" means directors, deputy directors and members of the board or equivalent function of an international organisation;	deleted (c) "persons who are or who have been entrusted with a prominent function by an international organisation" means directors, deputy directors and members of the board or equivalent function of an international organisation;	<p>CZ:</p> <p>CZ strongly supports the Council's GA.</p> <p>NL:</p> <p>The EP text is not possible in view of internal market principles. Hence the GA text would have to prevail. It however does not fit FATF recommendations.</p>
172.	Art 3 – para 1 – point 7 – subpoint d	(d) "natural persons who are or have been entrusted with prominent public functions" shall include the following:	deleted	(d) "natural persons who are or have been entrusted with a prominent public function" include the following:	deleted (d) "natural persons who are or have been entrusted with a prominent public function" include the following:	<p>ES:</p> <p>We support keeping the elements in the list added by the Council</p> <p>CZ:</p> <p>CZ strongly supports the Council's GA.</p> <p>NL:</p> <p>The EP text is not possible in view of internal market principles. Hence the GA text would have to prevail. It however does not fit FATF</p>

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						recommendations.
173.	Art 3 – para 1 – point 7 – subpoint d – point i	(i) heads of State, heads of government, ministers and deputy or assistant ministers;	(i) heads of State, heads of government, ministers and deputy or assistant ministers;	(i) heads of State, heads of government, ministers and deputy or assistant ministers;	(i) heads of State, heads of government, ministers and deputy or assistant ministers;	
174.	Art 3 – para 1 – point 7 – subpoint d – point ii	(ii) members of parliaments;	(ii) members of parliaments;	(ii) members of parliaments <i>or similar legislative bodies</i> ;	(ii) members of parliaments <i>or similar legislative bodies</i> ;	NL: EP text OK
175.	Art 3 – para 1 – point 7 – subpoint d – point iia (new)		<u>(iia) members of the governing bodies of political parties;</u>		(iia) members of the governing bodies of political parties;	UK: Council text preferred. BG: BG: According to the FATF standards senior politicians should be included in the definition. In some instances this category may include person(s) who are heavily involved in the political process but not as MP members, for example members of the board of the political party, who are taking the decisions which in a later phase the political party is proposing to the parliament. DE: The paragraph must be kept.

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						<p>Due to the FATF glossary “important political party officials” have to be included MT:</p> <p><u>MT supports the inclusion of members of governing bodies of political parties. The ML/FT risks posed by such persons should also be taken in consideration and mitigated. In this regard, the Council's version is preferred.</u></p> <p>PT:</p> <p>We consider very important to keep this addition, which will be helpful to ensure compliance with the FATF's Glossary.</p>
176.	Art 3 – para 1 – point 7 – subpoint d – point iii	(iii) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;	(iii) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;	(iii) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;	(iii) — members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;	
177.	Art 3 – para 1 – point 7 – subpoint d – point iv	(iv) members of courts of auditors or of the boards of central banks;	(iv) members of courts of auditors or of the boards of central banks;	(iv) members of courts of auditors or of the boards of central banks;	(iv) — members of courts of auditors or of the boards of central banks;	
178.	Art 3 – para 1	(v) ambassadors, <i>chargés</i>	(v) ambassadors, <i>chargés</i>	(v) ambassadors, <i>chargés</i>	(v) — ambassadors,	

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	– point 7 – subpoint d – point v	<i>d'affaires</i> and high-ranking officers in the armed forces;	<i>d'affaires</i> and high-ranking officers in the armed forces;	<i>d'affaires</i> and high-ranking officers in the armed forces;	<i>chargés d'affaires</i> and high- ranking officers in the armed forces;	
179.	Art 3 – para 1 – point 7 – subpoint d – point vi	(vi) members of the administrative, management or supervisory bodies of State owned enterprises.	(vi) members of the administrative, management or supervisory bodies of State owned enterprises-;	(vi) <i>senior</i> members of the administrative, management or supervisory bodies of State owned enterprises.	(vi) — <i>senior</i> members of the administrative, management or supervisory bodies of State owned enterprises-;	EL: We prefer to include every person with managerial control over a State owned enterprise, so: “ members_of the administrative, management or supervisory bodies of State owned enterprises ”. NL: We prefer GA text. <u>Adding 'senior' is not needed</u> as the article already provides for this art 3(1)(7)(d) [line 181]
180.	Art 3 – para 1 – point 7 – subpoint d – point vii (new)		<u>(vii) directors, deputy directors and members of the board or equivalent function of an international organisation</u>		(vii) — directors, — deputy directors and members of the board or equivalent function of an international organisation	UK: Council text preferred DE: Paragraph vii) must be retained. According to Rec. 12 and the glossary of the FATF directors, deputy directors and members of the board of international organisation fall

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						<p>within the scope of PEPs. Therefore vii) should be maintained.</p> <p>EL:</p> <p>We prefer Council's text</p> <p>NL:</p> <p>We prefer the GA text as it <u>better reflects FATF text.</u></p> <p>MT:</p> <p><u>MT supports the Council's version.</u></p> <p>PT:</p> <p>We consider very important to keep this addition, which will be helpful to ensure compliance with the FATF's Glossary..</p>
181.	Art 3 – para 1 – point 7 – subpara 1	None of the categories set out in points (i) to (vi) shall be understood as covering middle ranking or more junior officials;	None of the categories set out in points (i) to (vii) shall be understood as covering middle ranking or more junior officials;	None of the categories set out in points (i) to (vi) shall be understood as covering middle-ranking or more junior officials;	None of the categories set out in points (i) to (vii) shall be understood as covering middle—ranking or more junior officials;	
182.	Art 3 – para 1 – point 7 – subpoint e	(e) "family members" shall include the following:	(e)(7a) "family members" shall include <u>includes</u> the following:	"family members" <i>means</i> :	(e)(7a) —"family members" shall include <u>includes</u> the following <u>means</u> :	<p>ES:</p> <p>From a risk perspective we do not see the reasons for the</p>

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						<p>EP's proposed deletion of some family members. There is evidence that some of them have been involved in ML cases. In any case, although we think it would be convenient to have a common approach, it would be still possible for MS to apply stricter provisions under art. 5.</p> <p>UK:</p> <p>“includes’ is less restrictive and allow for a more holistic approach to defining PEPs bearing in mind the need to adjust to cultural conception of families,etc.</p> <p>BG:</p> <p>BG: The definition of “family members” is incomplete in the terms of effective implementation for the AML/CFT risks mitigation. Based on the risk the definition should also include the children, parents and relatives on collateral line (brothers and sisters) of the PEP. This proposal is made in accordance with the FIU</p>
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						<p>internal risk assessment. DE:</p> <p>We support the Council text. The FATF does not provide for any definition who falls within the circle of family members. In the interest to achieve a consistent level of prevention the term "family" should at least include the core family members such as spouse, any life partner equivalent to a spouse, children and their spouses or partners, and the parents.</p> <p>FR:</p> <p><u>The EP's text on family members is more restrictive than the Council text which seems more conform with the FATF's standards.</u></p> <p>BE:</p> <p>It is important for the compliance with the FATF standards to provide a definition that is not too restrictive. However, the replacement of the word "includes" with "means" in the EP proposal appears to restrict</p>
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						<p>unduly the definition provided: the word "includes" refers to a non-exhaustive list (other categories of persons could be considered as "family members" taking into account the particularities of the concrete situation, while the word "means" appears to refer to a close and exhaustive list. In our view, the word "include" should be preferred.</p> <p>NL:</p> <p>EP text OK</p> <p>PT:</p> <p>We strongly support the Council's non-exhaustive approach on the definition of family members.</p> <p>The EP seems to underpin a closed definition of "<i>family members</i>".</p> <p>The <i>rationale</i> here is to keep this concept as open as possible, giving only a list of examples of what should be considered as integrating the concept.</p> <p>Further to the FATF's guidance on R. 12 and 22, the definition of "family</p>
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						<p>members" has to be adjusted to "the social-economic and cultural structure" of each country, thus justifying the non-exhaustive nature of the definition.</p> <p>In addition, all the examples given in the COM and Council wordings can be framed within the broad definition provided by the FATF's guidance on R. 12 and 22 ["individuals who are related to a PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnership"].</p> <p>LL:</p> <p><u>If it is a definition we should use "means", if it is not a definition we should move this text elsewhere...</u></p>
183.	Art 3 – para 1 – point 7 – subpoint e – point i	(i) the spouse;	(i) the spouse;	(i) the spouse;	(i) the spouse;	<p>LV:</p> <p>We insist on Council text.</p>
184.	Art 3 – para 1 – point 7 – subpoint e – point ii	(ii) any partner considered as equivalent to the spouse;	(ii) any partner person considered as equivalent to the spouse;	(ii) any partner considered <i>to be</i> equivalent to the spouse;	(ii) any partner person partner considered <i>as to be</i> equivalent to the spouse;	<p>LV:</p> <p>We insist on proposal of Council because</p>

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						<p>according to Latvian regulation children and parents are part of family.</p> <p>DE:</p> <p>See No. 182</p> <p>NL:</p> <p>EP text OK</p>
185.	<p>Art 3 – para 1 – point 7 – subpoint e – point iii</p>	<p>(iii) the children and their spouses or partners;</p>	<p>(iii) the children and their spouses or partners <u>persons</u> <u>considered as equivalent to the spouse;</u></p>	<p>I</p>	<p>(iii) — the children and their spouses or partners <u>persons</u> <u>considered as equivalent to the spouse;</u></p>	<p>SI:</p> <p>With regard to the children and their spouses or partners we are more in favour of the initial COM proposal.</p> <p>UK:</p> <p>The EP text restricts the definition of PEP by deleting references to PEP's immediate family members.</p> <p>This is not in line with FATF REC and fails to consider the risk associated with this category of customer.</p> <p>The Council text is preferable.</p> <p>Once and if the decision is set in a narrow view, it is easy to see that corrupt PEP will use</p>

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						<p>their family members to launder money.</p> <p>DE:</p> <p>See No. 182</p> <p>EL:</p> <p>We are in favour to keep the provision :</p> <p>(iii) the children and their spouses or persons considered as equivalent to the spouse;</p> <p>BE:</p> <p>This exclusion proposed by the EP will probably raise concerns regarding the compliance of the 4th Directive with FATF standards (see comments above regarding the risk to define too restrictively the notion).</p> <p>NL:</p> <p>Children are 'family members'. The GA text therefore better reflects FATF text.</p> <p>PT:</p>
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						Please see our previous comments. We consider very important to keep the reference as in the Council GA. Otherwise, MS will fall short of the FATF standards
186.	Art 3 – para 1 – point 7 – subpoint e – point iv	(iv) the parents;	(iv) the parents;	I	(iv) the parents;	<p>SI:</p> <p>With regard to the parents we are more in favour of the initial COM proposal.</p> <p>DE:</p> <p>See No. 182</p> <p>EL:</p> <p>We are in favour to keep the provision :</p> <p>(iv) the parents;</p> <p>BE:</p> <p>This exclusion proposed by the EP will probably raise concerns regarding the compliance of the 4th Directive with FATF standards (see comments above regarding the risk to define too restrictively the notion).</p>

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						<p>NL:</p> <p>Parents are 'family members'. The GA text therefore better reflects FATF text.</p> <p>PT:</p> <p>Please see our previous comments. We consider very important to keep the reference as in the Council GA. Otherwise, MS will fall short of the FATF standards.</p>
187.	Art 3 – para 1 – point 7 – subpoint f	(f) "persons known to be close associates" shall include the following:	(f)(7b) "persons known to be close associates" shall include <u>means</u> the following:	close associates" <i>means</i> :	(f)(7b) "persons known to be close associates" shall include <u>means</u> the following <u>means</u> :	<p>NL:</p> <p>EP text OK</p> <p>LL:</p> <p><u>Please delete "the following" after "means"</u></p>
188.	Art 3 – para 1 – point 7 – subpoint f – point i	(i) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in points (7)(a) to (7)(d) above;	(i) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in <u>point (7)</u> points (7)(a) to (7)(d) above;	(i) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in points (7)(a) to (d)	(i) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in <u>point (7)</u> points (7)(a) to (7)(d) above;	<p>NL:</p> <p>EP text OK</p> <p>LL:</p> <p><u>(reference depend of the result of negotiations in 7)</u></p>
189.	Art 3 – para 1	(ii) any natural person who	(ii) any natural person	(ii) any natural person who	(ii) any natural person	UK:

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	– point 7 – subpoint f– point ii	has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in points (7)(a) to (7)(d) above;	who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the <u>point</u> (7)points (7)(a) to (7)(d) above;	has ■ beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in points (7)(a) to (d) ■ ;	who has sole <u>■</u> beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the <u>the</u> (7)points (7)(a) to (7)(d) above; <u>point</u> (7)(d) <u>above;</u> <u>■</u> ;	The EP amendment requires PEP treatment in situations where a beneficial owner (rather than the sole beneficial owner) is associated with a customer that has been set up for the benefit of a PEP. Depending on the risk associated with this situation, this may be disproportionate. LL: (reference depend of the result of negotiations in 7)
190.	Art 3 – para 1 – point 8	(8) "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 make decisions affecting its risk exposure. It need not, in all cases, involve a member of the board of directors;	(8) "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 make decisions affecting its risk exposure. It need not, in all cases, involve a member of the board of directors;	(8) "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 make decisions affecting its risk exposure. It need not, in all cases, involve a member of the board of directors;	(8) — "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 make decisions affecting its risk exposure. It need not, in all cases, involve a member of the board of directors;	
191.	Art 3 – para 1 – point 9	(9) "business relationship" means a business, professional or commercial relationship which is connected with the professional activities of the obliged entities and which is	(9) "business relationship" means a business, professional or commercial relationship which is connected with the professional activities of the	(9) "business relationship" means a business, professional or commercial relationship which is connected with the professional activities of the obliged entities and which is	(9) — "business relationship" means a business, professional or commercial relationship which is connected with the professional activities of the	

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		expected, at the time when the contact is established, to have an element of duration;	obliged entities and which is expected, at the time when the contact is established, to have an element of duration;	expected, at the time when the contact is established, to have an element of duration;	obliged entities and which is expected, at the time when the contact is established, to have an element of duration;	
192.	Art 3 – para 1 – point 10	(10) "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;	(10) "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;	(10) "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;	(10) — "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;	LL: <u>Should it be "recipient of services" or "the customer" see also 10a...?</u>
193.	Art 3 – para 1 – point 10a (new)			(10a) "betting transaction" means all the stages in the commercial relationship between, on the one hand, the gambling service provider and, on the other, the customer and the beneficiary of the registration of the bet and the stake until the payout of any winnings;	(10a) <u>"betting transaction" means all the stages in the commercial relationship between, on the one hand, the gambling service provider and, on the other, the customer and the beneficiary of the registration of the bet and the stake until the payout of any winnings;</u>	LT: LT considers this definition redundant – following this logic the same definitions/explanations of all gambling services should be provided. LT does not support amendment (10a). <u>UK:</u> DE:

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						<p>The EP proposal could be supported.</p> <p>FI:</p> <p>FI does not support the addition of a definition of "betting transaction", particularly as betting activities is intended to be left out of the compulsory scope of application of all CDD obligations. Nevertheless, it is somewhat unclear what is intended with "any service" in the definition of "gambling services".</p> <p>NL:</p> <p>We do not agree with the EP text. <u>The insertion of a definition of betting transaction is not necessary and does not have any added value</u> in the context of this directive. Instead it only creates confusion. Different forms of betting exist, the player can f.i. bet against other players (the operator is only facilitator) and the player can bet against the operator. All forms should be captured.</p>
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						<p>Providing a definition in this directive is not necessary and creates confusion.</p> <p>SE:</p> <p>SE questions the purpose of this definition and its relation to the rest of the directive.</p>
194.	Art 3 – para 1 – point 11	(11) "group" has the meaning given to it in Article 2(12) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate ⁴⁵ .	(11) <u>"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</u> "group" has the meaning given to it in Article 2(12) of Directive 2002/87/EC of the European Parliament and of the Council of 16	(11) "group" means group as defined in Article 2(12) of Directive 2002/87/EC of the European Parliament and of the Council ⁴⁷ ;	(11) — "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 "group" has the meaning given to it defined in Article 2(12) of Directive 2002/87/EC of the European Parliament and of the Council	<p>LV:</p> <p>We can not support proposal of Parliament because identification using internet or telemarketing has heightened risk due to the fact that it is impossible to verify person's passport or ID card.</p> <p>DE:</p>

⁴⁵ OJ L 35, 11.2.2003, p. 1.

⁴⁷ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).

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			December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate ⁴⁶ :		of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate^{48 49} :	<p>The wording proposed by the Council should be maintained.</p> <p>FR:</p> <p><u>France supports the Council's definition of "group"</u></p> <p>BE:</p> <p>Both references to the Directive 2013/34/EU or 2002/87/EC seem to be acceptable.</p> <p>NL:</p> <p>EP text more accurate, with its reference to Directive 2002/87/EC.</p> <p>LL:</p> <p><u>Correct referencing way for 2002/87/EC...</u></p>
195.	Art 3 – para 1 – point 11a			(11a) "non-face-to-face", means concluding a contract	<u>(11a) "non-face-to-face", means concluding a contract</u>	LT:

⁴⁶ — OJ L 35, 11.2.2003, p. 1.

— OJ L 35, 11.2.2003, p. 1.

⁴⁹ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).

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	(new)			<p><i>or carrying out a transaction, where the contractor or intermediary and the consumer are not simultaneously physically present, by exclusive means of the internet, telemarketing or other electronic means of communication up to and including the time at which the contract is concluded or the transaction is carried out.</i></p>	<p><u><i>or carrying out a transaction, where the contractor or intermediary and the consumer are not simultaneously physically present, by exclusive means of the internet, telemarketing or other electronic means of communication up to and including the time at which the contract is concluded or the transaction is carried out.</i></u></p>	<p>LT could support insertion of this definition.</p> <p>HU:</p> <p>HU can support the text.</p> <p>UK:</p> <p>The UK does not support the EP addition. The expression 'face to face' is clear and does not need to be defined in particular via a flawed definition e.g. postal services/means are missing.</p> <p>It could also lead to confusion and be open to interpretation – does it mean that simultaneous physical presence is necessary at all times?</p> <p>DE:</p> <p>Since non-face-to-face business relationships are no longer specifically mentioned as a high risk situation in the AMLD we do not see the necessity to include a definition.</p> <p>BE:</p>
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						<p>This is a clarification that can be useful; however BE wonders if the sentence is complete ("... <i>by exclusively using means such as the internet...</i>" ?)</p> <p>NL:</p> <p>We <u>do not see the need for this point 11a</u>. We prefer to leave it out.</p> <p>MT:</p> <p><u>The proposed definition for non face to face under the EP text creates various ambiguities:</u></p> <p><u>Why is the term “concluding a contract” being used instead of “establishing a business relationship”?</u></p> <p><u>Why is the term “contractor or intermediary” being used rather than “obliged entity”?</u></p> <p><u>MT does not support the EP’s text.</u></p> <p>PT:</p>
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						We do not agree with this new definition. In order to avoid unintended loopholes, the concept of "non-face-to-face" needs to be addressed on a case-by-case basis.
196.	Art. 4	Article 4	Article 4	Article 4	Article 4	
197.	Art 4 – para 1	1. Member States shall ensure that the provisions of this Directive are 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 money laundering or terrorist financing purposes.	1. Member States shall ensure that the provisions of this Directive are 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 money laundering or terrorist financing purposes.	1. Member States shall, in accordance with the risk-based approach , ensure that the provisions of this Directive are 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 money laundering or terrorist financing purposes.	1. Member States shall , in accordance with the risk-based approach , ensure that the provisions of this Directive are 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 money laundering or terrorist financing purposes.	DE: The Council text should be retained. NL: EP text OK PL: PL believes that reference to the risk-based approach in this article is not necessary. In our opinion it narrows the field of manoeuvre for the MS legislators. LL: <u>Drafting rule : Delete "provisions of" before "of this Directive" and change "are" to "is"</u>
198.	Art 4 – para 2	2. Where a Member State decides to extend the provisions of this Directive to	2. Where a Member State decides to extend the provisions of this Directive to	2. Where a Member State decides to extend the provisions of this Directive to	2. Where a Member State decides to extend the provisions of this Directive to	LL:

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		professions and to categories of undertakings other than those referred to in Article 2(1), it shall inform the Commission thereof.	professions and to categories of undertakings other than those referred to in Article 2(1), it shall inform the Commission thereof.	professions and to categories of undertakings other than those referred to in Article 2(1), it shall inform the Commission thereof.	professions and to categories of undertakings other than those referred to in Article 2(1), it shall inform the Commission thereof.	Drafting rule : Delete "provisions of" before "of this Directive"
199.	Art 5	<i>Article 5</i>	<i>Article 5</i>	<i>Article 5</i>	<i>Article 5</i>	
200.	Art 4 – para 1	The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing.	The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing.	The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, <i>provided that such provisions are in full compliance with Union law, especially as regards Union data protection rules and the protection of fundamental rights as enshrined in the Charter. Such provisions shall not unduly prevent consumers from accessing financial services and shall not constitute an obstacle to the functioning of the internal market.</i>	The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, <i>provided that such provisions are in full compliance with Union law, especially as regards Union data protection rules and the protection of fundamental rights as enshrined in the Charter. Such provisions shall not unduly prevent consumers from accessing financial services and shall not constitute an obstacle to the functioning of the internal market.</i>	<p>ES:</p> <p>We strongly call for the deletion of the EP's added sentence. The Union has mechanisms to ensure that stricter provisions taken by a MS are in accordance with the EU law: It is the European Court of Justice who is in charge of it, and it is only its role, and nobody else's, to decide whether the national legislation of a MS is an obstacle to the functioning of the internal market, and if that obstacle is justified or not.</p> <p>A consistent approach is needed. It is not possible to state, on the one hand, that this Directive pursues a general interest, to remark the need for a political will at all levels to fight against ML/TF, to recognise that the</p>

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						<p>Internal Market can pose a risk for ML/TF, to require MS and obliged entities to take the necessary actions to mitigate ML/TF risks and, eventually, to opt for a minimum harmonisation Directive, and on the other hand to take some many preventions to constraint action by MS.</p> <p>The reference to “unduly restrict access to financial services” is vague and subject to abuse and to justification for poor compliance with the preventative obligations.</p> <p>Spain has not for the moment faced any problem in reconciling the AML and DP legislation. In fact there is close cooperation and interaction among authorities in this field, to the point that the DP authorities are members of the Commission for the Prevention of ML and TF. However, we think the EP's approach to this subject is utterly wrong.</p> <p>DE:</p>
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						<p>We do not support the EP text; which states an obvious prerequisites with no added value</p> <p>Especially if and to the extent that the present Directive contains data protection provisions which as “leges speciales” stay behind the general principles of EU data protection law. Only if this passage is deleted, member states may have stricter provisions than the present Directive, but nevertheless stay behind the general principles.</p> <p>BE:</p> <p>We don't think that this EP amendment must be retained: it only reiterates obligations already stated in other EU law texts (Privacy Directive / Regulation).</p> <p>NL:</p> <p>We prefer to leave out the EP text. It is stating the obvious. This kind of text should go to the recitals.</p> <p>PT:</p>
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						<p>We strongly disagree with the amendments proposed by the EP.</p> <p>More specifically, boundaries imposed by EU law derive automatically from other Union's legal acts with no need of more explicit references in the AML/CFT framework.</p> <p>Additionally, proportionality assessments and costs and benefits analyses shall be carried out on a case-by-case basis without the introduction of more <i>a priori</i> constraints. Otherwise, MSs will leave room for discretionary policy choices contradictory with the FATF Recommendations, thus entailing a wrong political message in the course of the 4th round of mutual evaluations.</p> <p>Nevertheless, we would like to underline the fact that AML/CFT legal dispositions have already been recognised as <u>interests of general good</u> (see the recent case law on the matter) and, thus, may in this</p>
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						capacity legitimate justified restrictions to EU freedoms (for instance, those related to data protection).
201.	Section 2	SECTION 2	SECTION 2	SECTION 2	SECTION 2	
202.	Title	RISK ASSESSMENT	RISK ASSESSMENT	RISK ASSESSMENT	RISK ASSESSMENT	
203.	Art. 6	Article 6	Article 6	Article 6	Article 6	LV: We would like to keep Council text.
204.	Art 6 – para -1 (new)		<u>-1. The Commission shall coordinate work at the EU level on the identification, understanding and assessment of money laundering and terrorist financing risks affecting the internal market and related to specific cross-border phenomena and shall draw up a report on these risks. The Commission shall take into account the joint opinion by EBA, EIOPA and ESMA, referred to in paragraph 2 of this Article, when available, and involve the Member States' experts in the area of anti-money laundering and countering the financing of terrorism</u>		-1. The Commission shall coordinate work at the EU level on the identification, understanding and assessment of money laundering and terrorist financing risks affecting the internal market and related to specific cross-border phenomena and shall draw up a report on these risks. The Commission shall take into account the joint opinion by EBA, EIOPA and ESMA, referred to in paragraph 2 of this Article, when available, and involve the Member States' experts in the area of anti-money laundering and countering the financing of terrorism	ES: The EP's approach to define the topics to be included in the supranational risk assessment seems a little bit premature. We do prefer the Council's proposal. AT: <u>Austrian Position:</u> We are supportive of the idea that the Commission should play a prominent role in identifying supranational ML and TF risks. We also support the idea of a frequent update of the supranational risk assessment (as envisaged for national risk assessments). Risk is not rigid, but dynamic and might change

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			<p><u>(AML/CFT), representatives from Member States' FIUs and other EU level bodies where appropriate.</u></p> <p><u>The first report shall be provided by ... [two years from the date of entry into force of this Directive] and subsequent reports shall be provided as necessary. The reports shall be published.</u></p>		<p>(AML/CFT), representatives from Member States' FIUs and other EU level bodies where appropriate.</p> <p>The first report shall be provided by ... [two years from the date of entry into force of this Directive] and subsequent reports shall be provided as necessary. The reports shall be published.</p>	<p>rapidly due to various factors. The EP amendment takes a similar approach. In this respect we support the EP amendment.</p> <p>EP Amendment 65: The EP's proposal that the EC should lay down minimum standards for national risk assessments and the involvement of the industry and other relevant stakeholders are <u>not in line with the FATF guidance on national risk assessments</u> and would put EU-MS in a disadvantageous position <i>vis-à-vis</i> third countries that are free to conduct their national risk assessments as they see fit. In this respect we do not support it.</p> <p>LT:</p> <p><u>LT strongly supports Council GA drafting of Art 6.</u></p> <p>HU:</p> <p>HU supports the Council general approach.</p> <p>UK:</p>
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						<p>We prefer the Council text on the SRA overall with the exception of the recommendation section.</p> <p>DK:</p> <p>DK would like to hear the opinion of the Commission regarding this new role for the Commission as presented by the European Parliament, before commenting on this article.</p> <p>FR:</p> <p><u>The Council text on Risk assessment is satisfactory but the French Authorities would prefer a higher level text with a real and autonomous mechanism for the risk assessment at the EU level. Therefore, the French Authorities support the EP's text which provides this mechanism and already identify some specific risks</u></p>
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						<p><u>for a work at the EU level. Indeed, the EP text seems to be as a higher level of ambition.</u></p> <p>BE:</p> <p>This provision regarding the “supra national risk assessment” is the result of very long and difficult debates in the Council: we think that it should be retained.</p> <p>However, if the EP imposes to the EC to "<i>conduct an assessment</i>", instead of to "<i>coordinate work</i>" on a risk assessment, this would be acceptable to us.</p> <p>NL:</p> <p>We prefer this GA text as it clearly states that the SNRA should be limited to (a) risks affecting the internal market and (b) cross border phenomena.</p> <p>PL:</p> <p>PL strongly supports the stipulations regarding the risk-assessment at the EU level as in the version agreed</p>
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						<p>by the Council. The Council's version is an effect of lasting debates at the group level. We believe that wording proposed by the Council is a compromise acceptable by all MS. We are firmly in support of risk-assessment at the EU level as an auxiliary tool used by the MS in producing the risk assessments at the national level.</p> <p>MT:</p> <p><u>The text proposed by the Council is more appropriate in MT's opinion since it grants those involved the discretion to decide how to conduct the SRA, rather than listing strict requirements as to what such SRA should cover.</u></p> <p>PT:</p> <p>We strongly support the Council's GA on maintaining ESA's opinion.</p> <p>We consider crucial the introduction of an independent and joint opinion by the European Supervisory Authorities, given the</p>
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						specificities and cross-border nature of the financial sector. LL: 1) Drafting rule : delete " of this Article" after "paragraph 2" 2) [two years from the date of entry into force of this Directive] should be moved to footnote with a star
205.	Art 6 – para 1 – subpara 1	1. The European Banking Authority (hereinafter "EBA"), European Insurance and Occupational Pensions Authority (hereinafter "EIOPA") and European Securities and Markets Authority (hereinafter "ESMA") shall provide a joint opinion on the money laundering and terrorist financing risks affecting the internal market.	1. The European Banking Authority (hereinafter "EBA"), European Insurance and Occupational Pensions Authority (hereinafter "EIOPA") and European Securities and Markets Authority (hereinafter "ESMA") shall provide a joint opinion on the money laundering and terrorist financing risks affecting the internal market <u>EU financial sector.</u>	1. The Commission shall conduct an assessment on the money laundering and terrorist financing risks affecting the internal market, with particular reference to cross-border activities. To that end, the Commission shall consult the Member States, the ESAs, the European Data Protection Supervisor, the Article 29 Working Party, Europol and other relevant authorities.	1. The European Banking Authority (hereinafter "EBA"), European Insurance and Occupational Pensions Authority (hereinafter "EIOPA") and European Securities and Markets Authority (hereinafter "ESMA") The Commission shall provide a joint opinion <u>conduct an assessment on the money laundering and terrorist financing risks affecting the internal market EU financial sector market, with particular reference to cross-border activities. To that end, the Commission shall consult the Member States, the ESAs, the European Data Protection Supervisor, the Article 29</u>	LT: LT strongly objects to EP ECON proposal to oblige Commission to conduct AML risk assessment. HU: HU supports the Council general approach. UK: The EP text loses the focus on cross-border risk as exemplified in the subparagraph comment below (line 208).

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					<p><u>Working Party, Europol and other relevant authorities.</u></p>	<p>Council text preferred overall DE:</p> <p>We prefer the EP text which relieves ESAs from obligation to provide a formal Joint Opinion. EP text is clearer about the fact that COM has the main responsibility.</p> <p>IE:</p> <p>Ireland notes that EP proposes a fundamental changes here which are a) to dispense with a <i>report on</i> risk coordinated by the EU, and b) to confer direct responsibility for the EU Commission to carry out a risk assessment; these changes will lead to a more centralised and 'top-down' approach to both EU and national ML-TF risk assessments than previously envisaged;</p> <p>Specifying the different elements that the EU R.A. will contain as a minimum ('at least') seems useful, but will there need to a mechanism to determine what additional areas of risk assessment might be included?</p>
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						<p>BE:</p> <p>BE does not understand what would be the role/added value of the European Data Protection Supervisor, the Article 29 Working Party in this exercise?</p> <p>Moreover, looking at the EP amendments, we think the EP has missed the complementarity between the EU-wide risk assessment and the national risk assessments (when EP speaks about 'minimum standards' for national assessments). Moreover the long list of subpara 1 from (a) to (e) does not seems useful.</p> <p>NL:</p> <p>We prefer the EP text but only in as far as it only requires that the Commission 'involve' the ESAs. The ESAs should not be required to provide a joint opinion.</p> <p>PT:</p> <p>See our previous comment on</p>
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						<p>the crucial importance of maintaining the ESA's independent opinion.</p> <p>Indeed, ESAs have already explicitly recognized their availability to provide such an independent opinion, alongside the other mandates conferred by the legal framework currently under discussion.</p> <p>LL:</p> <p><u>1) EBA, EIOPA and ESMA are already referred to in recital 15 so use only the short name +</u></p> <p><u>Please agree if you use "ESA" abbreviation for all 3?</u></p> <p><u>2) if agreed to quote the "Article 29 Working Party," then maybe there is reference missing...</u></p>
206.	Art 6 – para 1 – subpara 1a (new)			<p><i>The risk assessment referred to in the first subparagraph shall cover at least the following:</i></p>	<p><i><u>The risk assessment referred to in the first subparagraph shall cover at least the following:</u></i></p>	<p>UK:</p> <p>Council text preferred – less prescriptive.</p> <p>DE:</p>

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						<p>The minimum topics identified by the EP can be supported provided that the list is not exhaustive.</p> <p>NL:</p> <p>We do not want the EP text to be included. This summing up of the content of the SNRA goes way beyond the scope of (a) internal market and (b) cross-border.</p>
207.	Art 6 – para 1 – subpara 1a – point a (new)			<i>(a) the overall extent of money laundering and the areas of the internal market that are at greater risk;</i>	<i><u>(a) the overall extent of money laundering and the areas of the internal market that are at greater risk;</u></i>	<p>UK:</p> <p>Council text preferred – less prescriptive.</p> <p>NL:</p> <p>We do not want the EP text to be included. ‘overall extent of ML’ goes way beyond the scope of (a) internal market and (b) cross-border.</p>
208.	Art 6 – para 1 – subpara 1a – point b (new)			<i>(b) the risks associated with each relevant sector, in particular the non-financial sectors and the gambling sector;</i>	<i><u>(b) the risks associated with each relevant sector, in particular the non-financial sectors and the gambling sector;</u></i>	<p>UK:</p> <p>This places an assumption on these two areas with little back-up evidence/rationale for this.</p> <p>The focus on two specific sectors means that the SRA is</p>

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						<p>losing its cross-border focus (gambling is by and large a domestic activity except for remote gambling) which is not acceptable as discussed and agreed in Council.</p> <p>NL:</p> <p>We do not want the EP text to be included. This summing up of the content of the SNRA goes way beyond the scope of (a) internal market and (b) cross-border.</p> <p>PT:</p> <p>Given the high-risk specificities and cross-border nature of the financial sector, it must be expressly and autonomously mentioned as an aspect to be considered in the risk assessment ("<i>the risks associated with each relevant sector activity of the financial and, in particular the non-financial sectors (...).</i>")</p>
209.	Art 6 – para 1 – subpara 1a – point c (new)			<i>(c) the most widespread means used by criminals to launder illicit proceeds;</i>	<i><u>(c) the most widespread means used by criminals to launder illicit proceeds;</u></i>	<p>UK:</p> <p>Council text preferred – less prescriptive.</p> <p>NL:</p>

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						We do not want the EP text to be included. This summing up of the content of the SNRA goes way beyond the scope of (a) internal market and (b) cross-border.
210.	Art 6 – para 1 – subpara 1a – point d (new)			<i>(d) the recommendations to the competent authorities on the effective deployment of resources;</i>	<i><u>(d) the recommendations to the competent authorities on the effective deployment of resources;</u></i>	UK: Council text preferred – less prescriptive. NL: We do not want the EP text to be included. This summing up of the content of the SNRA goes way beyond the scope of (a) internal market and (b) cross-border.
211.	Art 6 – para 1 – subpara 1a – point e (new)			<i>(e) the role of EUR banknotes in criminal activities and money laundering.</i>	<i><u>(e) the role of EUR banknotes in criminal activities and money laundering.</u></i>	UK: Council text preferred – less prescriptive. IE: Maybe in instead of 'role' one could use FATF's internationally recognised (though new) terms " <i>Trends and Methods</i> " for what was previously called 'typologies'

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						<p>Hence "Trends and methods report on use of EUR banknotes to launder funds or to finance terrorism".</p> <p>NL:</p> <p>We do not want the EP text to be included. This summing up of the content of the SNRA goes way beyond the scope of (a) internal market and (b) cross-border.</p>
212.	Art 6 – para 1 – subpara 1b – point a (new)			<p><i>The risk assessment shall also include proposals for minimum standards for risk assessments to be conducted by competent national authorities. Those minimum standards shall be developed in cooperation with Member States and shall involve the industry and other relevant stakeholders through public consultations and private stakeholders meetings as appropriate.</i></p>	<p><u><i>The risk assessment shall also include proposals for minimum standards for risk assessments to be conducted by competent national authorities. Those minimum standards shall be developed in cooperation with Member States and shall involve the industry and other relevant stakeholders through public consultations and private stakeholders meetings as appropriate.</i></u></p>	<p>ES:</p> <p>The role of the supranational risk assessments is not to provide guidance on the methodology to be used for the national risk assessments. In addition, MS may have very different approaches to their national risk assessments and all of them can be valid a priori.</p> <p>Even if it is afterwards decided to issue some guidance in this point, we are at this stage reluctant to see this included in a compulsory text.</p> <p>UK:</p>

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						<p>The Commission is not best placed, and does not have the technical expertise, to set out minimum standards for competent authorities' risk assessments. Prescribing how competent authorities must assess risk fails to take into account national and institutional specificities and is likely to be disproportionate and, possibly, ineffective.</p> <p>DE:</p> <p>We support the text proposal made by the EP and suggest amending it with the explain-or-comply-approach established in no. 215 of the Council text.</p> <p>NL:</p> <p>We do not want the EP text to be included. This summing up of the content of the SNRA goes way beyond the scope of (a) internal market and (b) cross-border.</p> <p>PT:</p> <p>We would be available to</p>
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						<p>support a minimum standards methodology_insofar as it is framed within a binding approach to be followed by MS. In fact, there is no point in agreeing upon the issuance of minimum standards if they are not mandatorily followed by competent authorities of MSs.</p> <p>Therefore, an approach based on minimum standards demands changing the wording of article 7(3), so that a binding approach is foreseen to this end.</p> <p>Otherwise, we would prefer the “comply or explain” mechanism foreseen in the Council's GA, since it provides for the possibility of addressing specific recommendations to MS.</p>
213.	Art 6 – para 1 – subpara 2	The opinion shall be provided within 2 years from the date of entry into force of this Directive.	The <u>first</u> opinion shall be provided within 2 years <u>by ... [18 months]</u> from the date of entry into force of this Directive] <u>and subsequent opinions shall be provided as necessary</u>	The <i>Commission shall issue risk assessment</i> by ...*[OJ please insert date: 12 months after the date of entry into force of this Directive] <i>and shall update it a biannual basis or more frequently if appropriate.</i>	The first opinion <u>Commission</u> shall be provided within 2 years <u>by ... [18 issue risk assessment by ...]</u> *[OJ please insert date: 12 months from <u>after</u> the date of entry into force of this Directive] <u>and subsequent opinions shall be provided as necessary</u> <u>update it a biannual basis or more</u>	<p>UK:</p> <p>The Council text timeline is more flexible and realistic.</p> <p>DE:</p> <p>The period of 12 month might be too ambitious. We therefore suggest maintaining the lapse of time proposed by</p>

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					<i>frequently if appropriate.</i>	<p>the Council. IE:</p> <p>Ireland notes the shorter timeframe for producing the ML-TF risk report a.k.a. risk assessment; this means the EU-level risk assessment exercise may be completed before Member States are required to transpose 4MLD, assuming a period for transposition of 24 months from the date of entry into force.</p> <p>As completion of the EU-level risk assessment is (likely to be) dependent on all MS carrying out their domestic risk assessments, it follows that the shorter timeframe for the EU level exercise will add <u>greater urgency</u> to the national risk assessment exercises and furthermore the compilation of a high quality EU-level risk assessment would appear to require MS to <u>adopt a standard methodology</u> to the conduct of these NRAs.</p> <p>Ireland is aware that a working group attached to the EGMLTF has started</p>
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						<p>developing <i>“minimum standards [of risk assessment] ... ”in cooperation with Member States”,</i> but it is clear that the work done to date is prompted by the old COM text and possibly lacks the impetus (and resourcing) required by the EPs new text.</p> <p>BE:</p> <p>Considering the large amount of workload provided by the 4th Directive to the ESAs, the time limits foreseen by the Directive need to be realistic: please maintain the time limit of 18 months, and do not restrict it to 12 months.</p> <p>NL:</p> <p>The ESAs will have a lot of additional work to do, based on the new AMLD texts.</p> <p><u>18 months (GA text) seems reasonable.</u></p> <p><u>On updating, we prefer the GA text ‘as necessary’.</u></p> <p>LL:</p>
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						Please move to footnote with a star : [18 months] from the date of entry into force of this Directive
214.	Art 6 – para 2	2. The Commission shall make the opinion available to assist Member States and obliged entities to identify, manage and mitigate the risk of money laundering and terrorist financing.	2. The Commission shall make the opinion opinions referred to in paragraph 1 available to assist Member States and obliged entities to identify, manage and mitigate the risk of money laundering and terrorist financing.	2. The Commission shall make the risk assessment available to assist Member States and obliged entities to identify, manage and mitigate the risk of money laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the ESAs, Europol and the Committee of Union FIUs, to better understand the risks. A summary of the assessment shall be publicly available. That summary shall not contain classified information.	2. _____ The Commission shall make the opinion opinions referred to in paragraph 1 risk assessment available to assist Member States and obliged entities to identify, manage and mitigate the risk of money laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the ESAs, Europol and the Committee of Union FIUs, to better understand the risks. A summary of the assessment shall be publicly available. That summary shall not contain classified information.	<p>ES:</p> <p>What is the Committee of Union FIUs? Maybe it has been used instead of the FIUs Platform?</p> <p>Anyway, the Council's version provides for the publication of the supranational risk assessments, so it does not seem to be a big difference in substance.</p> <p>DE:</p> <p>In our view there is no substantial difference between the two text proposals</p> <p>The Committee of Union FIUs is not known to us. What may possibly be meant is the FIU Platform whose tasks are described in Art 48 of the Directive.</p> <p>NL:</p>

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						<p>We object to the EP text. By stating that the summary does not contain classified information, it is implied that the SNRA itself <i>does</i> include classified information. Member States do not have to provide such information to the Commission for the SNRA.</p> <p>Also, if there is indeed <u>classified information in the SNRA</u>, this should not be <u>provided to all obliged entities</u> as this is a very large group.</p> <p>MT:</p> <p><u>It is not clear what the term Committee of Union FIUs is referring to.</u></p> <p>LL:</p> <p><u>Is it an opinion or opinions? or a joint opinion or opinions?</u></p>
215.	Art 6 – para 2a (new)		<p><u>5. The Commission shall make recommendations to Member States on the measures suitable for addressing the identified</u></p>	<p>2a. The Commission shall submit an annual report to the European Parliament and to the Council on the findings resulting from the regular risk assessments and</p>	<p>5. The Commission shall make recommendations to Member States on the measures suitable for addressing the identified risks. In case Member States</p>	<p>ES:</p> <p><u>Not against the proposal of the EP, but is the periodicity consistent with the foreseen period for revising the</u></p>

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			<p><u>risks. In case 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 for such a decision.</u></p>	<p>the action taken based on those findings.</p>	<p>decide not to apply any of the recommendations in their national AML/CFT regimes they shall notify the Commission thereof and provide a justification for such a decision.2a. The Commission shall submit an annual report to the European Parliament and to the Council on the findings resulting from the regular risk assessments and the action taken based on those findings.</p>	<p>supranational risk assessment? Shouldn't it be better to provide for reports whenever supranational risk assessments are updated, instead of annual reports?</p> <p>HU:</p> <p>HU supports the Council general approach. HU cannot support the text of the EP.</p> <p>UK:</p> <p>EP text is preferred. We support the Commission reporting on the outcomes of its assessment of supra-national cross border risks.</p> <p>While potential actions to address the risks highlighted shod be discussed within the EGMLTF and relevant countries, there is no specific need for a formal set of public recommendations.</p> <p>NL:</p> <p><u>We do not see the need for another annual report as suggested in the EP text.</u></p>
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						<p><u>The notification by MS to the Commission, if the MS decides not to apply the recommendations, should be deleted. This is too much involvement by the Commission in MS affairs.</u></p> <p>PT:</p> <p>See our previous comment.</p> <p>LL:</p> <p><u>Suggestion : if a Member State... it shall notify...</u></p>
216.	Art. 6a (new)			Article 6a	Article 6a	<p><u>CZ:</u></p> <p><u>CZ doesn't support to include article 6a.</u></p> <p>PT:</p> <p>We do not agree with article 6a proposed by the EP.</p> <p>Supplemental assessments of national AML/CFT legislation by the Commission – in addition to FATF's mutual evaluations – would in effect duplicate the evaluation procedures with all the costs</p>

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						<p>associated to be borne by MSs. Additionally, the duplication of assessments will surely hinder certainty about the adequacy of AML/CFT internal frameworks, notably when such assessments come to different conclusions.</p> <p>As such, we believe that national evaluations should be performed either directly by the FATF or through Moneyval, depending on the MSs involved.</p> <p>Accordingly, the COM shall carry out its tasks in accordance with the powers directly conferred by the Treaties with no need of further specification.</p>
217.	Art. 6a – para 1 (new)			<p><i>1. Without prejudice to the infringement proceedings provided for in the TFEU, the Commission shall ensure that national law to combat money laundering and terrorist financing, adopted by Member States pursuant to this Directive is implemented effectively and is consistent with the European framework.</i></p>	<p><i><u>1. Without prejudice to the infringement proceedings provided for in the TFEU, the Commission shall ensure that national law to combat money laundering and terrorist financing, adopted by Member States pursuant to this Directive is implemented effectively and is consistent with the European framework.</u></i></p>	<p>ES:</p> <p><u>We are not against the Commission having powers to impose corrective measures when it is detected that inefficient application by a MS of the preventive measures leads to a cross-border risk of ML. In fact we consider that the EP approach is more holistic since it</u></p>

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						<p><u>complements provisions on higher risks third countries with potential measures applying to MS when necessary.. However, we see some difficulties:</u></p> <p>a) <u>There is an overlapping with the FATF/Moneyval MERs, which focus on the implementation of the standards and on effectiveness</u></p> <p>b) <u>Has the Commission enough resources as to ensure an effective implementation of the national law? (effective implementation is not the same as formal transposition)</u></p> <p>c) <u>The focus should be on the ML risk as consequence of inadequate implementation. The consistency with the EU framework is already looked at by reviewing formal transposition by MS of the Directive.</u></p>
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						<p><u>Instead of a separate article 6.a, an alternative approach could be a mention that the supranational risk assessment may include or lead to a review, total or partial, of the effective implementation of the national legislation transposing the Directive, when there are serious indications of weak implementation leading to a higher risk of ML/TF, and provided that adequate corrective measures are not being undertaken by other international fora.</u></p> <p>LT:</p> <p>LT strongly objects to insertion of the new Art. 6a – this provision is redundant as Commission's role as a guard of the Treaty is enshrined in the TFEU.</p> <p>UK:</p> <p>The Commission has neither the resources nor the technical expertise to assess the effectiveness of Member</p>
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						<p>States' AML/CTF regimes as a whole.</p> <p>Shall we expect FATF-like team of assessors from the Commission?</p> <p>If this amendment actually refers to the usual review by the Commission of the implementation of the Directive then the usual text, as per the 3AMLD will suffice....</p> <p>DE:</p> <p>We would welcome the introduction of a peer-review mechanism coordinated by the COM. Experience has shown that the level of effective implementation varies considerably between member states. In order to provide for a consistent level of prevention member states should assist each other through peer reviews and information exchange.</p> <p>IE:</p> <p>Ireland and a number of other MS are members of FATEF; currently the IMF the World</p>
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						<p>Bank and the FATF are trying to find ways of ensuring that they do not overlap / duplicate efforts in carrying out AML-CFT assessments of countries – these three bodies have developed ‘universal procedures’ which would allow each to rely upon the AML-CFT country – assessments done by the others.</p> <p>This proposal in article 6.1.a seems to envisage that a fourth international organisation – the Commission, would carry out assessments of countries’ AML-CFT infrastructures, and despite the fact that 4MLD is largely influenced by the international FATF standards, it seems that the Commission’s checks on the effectiveness of a country’s AML-CFT would be done against the backdrop of EU law.</p> <p>Ireland would appreciate it if thought were given to avoiding duplicative on-site assessments as these exercises are quite resource intensive for the country whose systems are being evaluated.</p>
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						<p>FR:</p> <p><u>France supports the effectiveness assessment (EP's Text)</u></p> <p>BE:</p> <p>Is this proposal useful? Even if we have no fundamental objection, this would probably imply that the EC obtains additional resources to conduct such assessments...</p> <p>NL:</p> <p>We do not want the EP text included. <u>The Commission does not (and should not) have the means to fulfil this obligation.</u></p> <p>PL:</p> <p>PL strongly opposes the art 6a as proposed by the EP. We do not perceive any need for additional control of MS's law compliance with the European law in the field of AML/CFT.</p> <p>SE:</p>
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						<p>SE questions the added value of the proposal as FATF is already carrying out evaluations on all member states.</p> <p>MT:</p> <p><u>MT believes that the evaluation procedures currently in place are quite comprehensive and effective. Introducing a further peer review process or any other mechanism to evaluate the effectiveness of national AML regimes will only lead to a duplication of a system which is already in place and effective and thus the logistical burden placed on member states and competent authorities to cope with a further evaluation procedure would not be considered worthwhile given the fact that it would not be covering any new ground not already tackled by other evaluations.</u></p> <p>LL:</p> <p><u>What is an EU framework, please be more specific...</u></p>
218.	Art. 6a – para			2. For the application of	<u>2. For the application of</u>	IE:

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	2 (new)			<i>paragraph 1, the Commission shall be assisted, where appropriate, by the ESAs, Europol, the Committee of Union FIUs, and any other competent European authority.</i>	<u><i>paragraph 1, the Commission shall be assisted, where appropriate, by the ESAs, Europol, the Committee of Union FIUs, and any other competent European authority.</i></u>	<p>Note there that while the AMLC, attached to the EBA, would be a likely source of the necessary expertise, it is not sufficiently resourced to conduct on-site country assessments.</p> <p>BE:</p> <p>As for this amendment, we have strong doubts, in particular when it comes to the ESAs which are supposed to foster cooperation among MS authorities; if ESAs are given such a role, it could be counterproductive and go against ESAs tasks.</p> <p>NL:</p> <p>We do not want the EP text included. The Commission does not (and should not) have the means to fulfil this obligation.</p>
219.	Art. 6a – para 3 (new)			<i>3. Assessments of national law combat money laundering and terrorist financing provided for in paragraph 1 shall be without prejudice to those conducted by the Financial Action Task</i>	<u><i>3. Assessments of national law combat money laundering and terrorist financing provided for in paragraph 1 shall be without prejudice to those conducted by the Financial Action Task</i></u>	<p>SI:</p> <p>We are not in favour of conducting any assessments of national law by the COM. However, if this provision is</p>

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				<i>Force or Moneyval.</i>	<u><i>Force or Moneyval.</i></u>	<p>adopted then the procedures and COMs competences should be determined in this Article.</p> <p>UK:</p> <p>Despite this clarification the new article 6a as a whole is not acceptable.</p> <p>IE:</p> <p>Note comments above on 'overlapping' assessments of countries.</p> <p>NL:</p> <p>The EP text should not be included. It is stating the obvious.</p> <p>PT:</p> <p>LL:</p> <p><u>In case of agreement, should there be a more precise reference for : Financial Action Task Force or Moneyval. ?</u></p>
220.	Art. 7	Article 7	Article 7	Article 7	Article 7	LT:

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						<p><u>LT supports Council GA version of Art. 7.</u></p> <p>LV:</p> <p>We think that it is important to agree on general principles on data protections requirments for AML area. In our point of view data protection requirments can be taken into account so far as it does not prejudice to AML requirments and this principle should be stipulated in the directive. We think that only general principles of data protections requirments for AML area could be stipuleted in AML directive but not all data protection requirments in details.</p>
221.	Art. 7 – para 1	1. Each Member State shall take appropriate steps to	1. Each Member State shall take appropriate steps to	1. Each Member State shall take appropriate steps to	1. Each Member State shall take appropriate steps to	ES:

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		identify, assess, understand and mitigate the money laundering and terrorist financing risks affecting it, and keep the assessment up-to-date.	identify, assess, understand and mitigate the money laundering and terrorist financing risks affecting it, and keep the assessment up-to-date.	identify, assess, understand and mitigate the money laundering and terrorist financing risks affecting it, <i>as well as any data protection concerns in that regard</i> , and keep the assessment up-to-date.	identify, assess, understand and mitigate the money laundering and terrorist financing risks affecting it, <i>as well as any data protection concerns in that regard</i> , and keep the assessment up-to-date.	<p><u>It has no sense at all to mention data protection in this article. If any, it could affect to the mitigating measures, which in most cases would be legislative provisions, which should respect, as always, DP legislation</u></p> <p>UK:</p> <p>Council text is preferable. An AMLCTF risk assessment serves to assess AML/CTF risk – not data protection concerns. Such an assessment, if necessary, need to be considered as part of the wider data protection framework discussions.</p> <p>DE:</p> <p>We do not support the EP's proposal to integrate data protection issues into the risk assessment.</p> <p>IE:</p> <p>Ireland observes that 'data protection concerns' do not normally form part of a an</p>
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						<p>assessment of ML – TF risks. The text is therefore unclear.</p> <p>BE:</p> <p>Data protection is important but it should not interfere in all aspects. Here we need to identify, assess, understand and mitigate the money laundering and terrorist financing risks. This has nothing to do with data protection.</p> <p>NL:</p> <p>EP text is too unspecific</p> <p>MT:</p> <p><u>MT does not believe that data protection concerns should be addressed by the AML/CFT national risk assessment.</u></p> <p>PT:</p>
222.	Art. 7 – para 2	2. Each Member State shall designate an authority to co-ordinate the national response to the risks referred to in paragraph 1. The identity of	2. Each Member State shall designate an authority or establish a mechanism to co-ordinate the national response to the risks referred to in	2. Each Member State shall designate an authority to coordinate the national response to the risks referred to in paragraph 1. The identity	2. Each Member State shall designate an authority or establish a mechanism to co-ordinate to coordinate the national response to the risks	<p>DE:</p> <p>The phrase “establish a mechanism” is in line with Rec. 1 of the FATF. It</p>

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		that authority shall be notified to the Commission, EBA, EIOPA and ESMA and other Member States.	paragraph 1. The identity of that authority <u>or the description of the mechanism</u> shall be notified to the Commission, EBA, EIOPA and ESMA and other Member States.	of that authority shall be notified to the Commission, <i>the ESAs, Europol</i> and other Member States.	referred to in paragraph 1. The identity of that authority or the description of the mechanism shall be notified to the Commission, EBA, EIOPA and ESMA <u>the ESAs, Europol</u> and other Member States.	<p>considers decentralised and federal structures – such as e.g. the divided competences between the German Länder and the Federal State - and therefore should be included as a second option.</p> <p>IE:</p> <p>While appreciating that the Parliament wants to see 'leadership' / lead agencies driving national responses to ML-TF risks, Ireland would nonetheless support the General Approach's use of 'mechanism' because it permits the establishment of a multi-agency committee.</p> <p>FR:</p> <p><u>France supports the Council's text (cf reco 1 FATF)</u></p> <p>NL:</p> <p><u>We prefer the GA text as it allows MS the liberty to choose whether it wants to designate an authority or use some other type of mechanism (it is a directive, therefore such freedom to choose is</u></p>
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						appropriate). PT:
223.	Art. 7 – para 3	3. In carrying out the assessments referred to in paragraph 1, Member States may make use of the opinion referred to in Article 6(1).	3. In carrying out the assessments referred to in paragraph 1, Member States may make use of the opinion referred to in Article 6(1) <u>and the findings of the report referred to in Article 6(-1).</u>	3. In carrying out the assessments referred to in paragraph 1, Member States <i>shall</i> make use of the <i>risk assessment</i> referred to in Article 6(1).	3. — In carrying out the assessments referred to in paragraph 1, Member States may <i>shall</i> make use of the opinion <i>risk assessment</i> referred to in Article 6(1) and the findings of the report referred to in Article 6(-1).	DE: We do not support the change made by the EP. The member states must retain the decision-making authority on the risk assessment. IE: Perhaps for clarity: <i>“in carrying out their national risk assessments, MS shall make use of the Commission's supranational risk assessment of the EU referred to in Article</i> NL: EP text OK PL: Please note the comments to the art. 6. In PL's opinion the risk assessment produced at the EU level

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						<p>should not be obligatory used in carrying out the risk assessment at the national level.</p> <p>MT:</p> <p><u>In MT's opinion member states should be granted full discretion whether or not to implement the recommendations made by the Commission subsequent to the SRA.</u></p> <p>PT:</p> <p>See comments on Article 6, namely those related to the minimum standards approach proposed by the EP.</p> <p>If such "minimum standards" methodology prevails, the EP's proposal on Article 7 (3) shall be amended as follows:</p> <p>"3. In carrying out the assessments referred to in paragraph 1, Member States <i>shall</i> make use of the <i>risk assessment</i> referred to in Article 6(1) <u>and comply with the minimum standards provided therein</u>".</p> <p>However, even <u>if the</u></p>
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						<p><u>Council's GA prevails</u>, we would support rewriting this provision, insofar as it foresees the binding obligation of making use of the ESA's opinion along with the findings of the supranational risk assessment ("[...] Member States may shall make use of the opinion referred to in Article 6(1) and the findings of the report referred to in Article 6(-1).")</p> <p>In fact, we consider such a binding approach (limited, in this case, to use of the supranational assessment) as compatible with the possibility of addressing specific recommendations under the "comply or explain mechanism" set forth in Article 6(5) of the Council's GA.</p> <p>Lastly, we believe that the EP's <i>ex ante</i> approach (with the issuance of minimum standards to be implemented by competent authorities while carrying out NRAs) may be compatible with the <i>ex post</i> Council's GA (under which findings of the supranational report and specific recommendations – on a</p>
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						<p>“comply or explain” basis – may be followed by MSs). In this scenario, Article 6 would have to adjusted accordingly and Article 7(3) should read as follows:</p> <p>“ In carrying out the assessments referred to in paragraph 1, Member States:</p> <p>a) may make use of the opinion referred to in Article [ESAs opinion] and the findings of the report referred to in Article [findings of the supranational report];</p> <p>b) shall comply with the minimum standards referred to in Article [minimum standards to be followed by NCA's].</p>
224.	Art. 7 – para 4	4. Each Member State shall carry out the assessment referred to in paragraph 1 and:	4. Each Member State shall carry out the assessment referred to in paragraph 1 and:	4. Each Member State shall carry out the assessment referred to in paragraph 1 and:	4. Each Member State shall carry out the assessment referred to in paragraph 1 and:	LL: <u>Is it one assessment or more?</u>
225.	Art. 7 – para 4 – point a	(a) use the assessment(s) to improve its anti-money laundering and combating terrorist financing regime, in particular by identifying any areas where obliged entities	(a) use the assessment(s) to improve its anti-money laundering and combating terrorist financing AML/CFT regime, in particular by identifying any areas where	(a) use the assessment(s) to improve its anti-money laundering and combating terrorist financing regime, in particular by identifying any areas where obliged entities	(a) use the assessment(s) to improve its anti-money laundering and combating terrorist financing AML/CFTfinancin g regime, in particular by	LV: We can support amendment.

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		shall apply enhanced measures and, where appropriate, specifying the measures to be taken;	obliged entities shall apply enhanced measures and, where appropriate, specifying the measures to be taken;	shall apply enhanced measures and, where appropriate, specifying the measures to be taken;	identifying any areas where obliged entities shall apply enhanced measures and, where appropriate, specifying the measures to be taken;	LL: <u>Please agree if you use AML/CFT abbreviation or not...</u>
226.	Art. 7 – para 4 – point aa (new)			<i>(aa) identify, where appropriate, sectors or areas of negligible, lower or greater risk of money laundering and terrorist financing;</i>	<i><u>(aa) identify, where appropriate, sectors or areas of negligible, lower or greater risk of money laundering and terrorist financing;</u></i>	ES: <u>Both new points aa) and ba) seem already covered by points a) and b)</u> <u>UK:</u> <u>We can support this.</u> DE: Member states could identify specific situations which are to be considered high or low risks but only after conducting a risk assessment. NL: EP text OK SE: SE is of the opinion that the article partly contradicts the risk-based approach in the FATF-standards. The article seems to be closer to a rule-

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						based approach than a risk-based one.
227.	Art. 7 – para 4 – point b	(b) use the assessment(s) to assist it in the allocation and prioritisation of resources to combat money laundering and terrorist financing;	(b) use the assessment(s) to assist it in the allocation and prioritisation of resources to combat money laundering and terrorist financing;	(b) use the assessment(s) to assist it in the allocation and prioritisation of resources to combat money laundering and terrorist financing;	(b) use use the assessment(s) to assist it in the allocation and prioritisation of resources to combat money laundering and terrorist financing;	<p>LV:</p> <p>We can support amendment.</p> <p>LL:</p> <p><u>Does "it" refers to Member State? if yes, consider replacing b "Member State"...</u></p>
228.	Art. 7 – para 4 – point ba (new)			<i>(ba) use the assessment(s) to ensure that appropriate rules are drawn up for each sector or area, in accordance with the risk of money laundering;</i>	<i><u>(ba) use the assessment(s) to ensure that appropriate rules are drawn up for each sector or area, in accordance with the risk of money laundering;</u></i>	<p>UK:</p> <p><u>This is too prescriptive/ There are other ways to address any issues identified depending on their scope/nature – not just “rules”. A more general wording would be preferred such as ‘strategies’.</u></p> <p>DE:</p> <p>The proposal made by the EP can be supported</p> <p>NL:</p> <p>EP text OK but it should also refer to the risk of terrorist financing.</p>

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						<p>SE:</p> <p>SE is of the opinion that the article partly contradicts the risk-based approach in the FATF-standards. The article seems to be closer to a rule-based approach than a risk-based one.</p> <p>LL:</p> <p>Proposal : <u>use the assessment(s) to draw up appropriate ruels for each sector....</u> <u>+ quid terrorist financing?</u></p>
229.	Art. 7 – para 4 – point c	(c) make appropriate information available to obliged entities to carry out their own money laundering and terrorist financing risk assessments.	(c) make appropriate information available to obliged entities to carry out their own money laundering and terrorist financing risk assessments.	(c) make appropriate information available <i>in a timely manner</i> to obliged entities <i>to enable them</i> to carry out their own money laundering and terrorist financing risk assessments.	(c) _____ make appropriate information available <u>in a timely manner</u> to obliged entities <u>to enable them to</u> carry out their own money laundering and terrorist financing risk assessments.	<p>LV:</p> <p>We can support amendment.</p> <p>NL:</p> <p>EP text OK</p> <p>PL:</p> <p>PL prefers the wording proposed by the Council.</p>
230.	Art. 7 – para 5	5. Member States shall make the results of their risk	5. Member States shall make the results of their risk	5. Member States shall make the results of their risk	5. _____ Member States shall make the results of their risk	IE:

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		assessments available to the other Member States, the Commission, and EBA, EIOPA and ESMA upon request.	assessments available to the other Member States, the Commission, and EBA, EIOPA and ESMA upon request .	assessments available to the other Member States, the Commission, <i>and the ESAs</i> upon request. <i>A summary of the assessment shall be made publicly available. That summary shall not contain classified information.</i>	assessments available to the other Member States, the Commission, and EBA, EIOPA and ESMA upon request , <u>the ESAs upon request. A summary of the assessment shall be made publicly available. That summary shall not contain classified information.</u>	<p>As noted above, Ireland's understanding is that the EGMLTF's work on this is at an early stage, if the Parliament's text is accepted, there are resourcing implications for both the EGMLTF's working group and for all MS.</p> <p>NL:</p> <p>We object to the EP text. By stating that the summary does not contain classified information, it is implied that the RA itself <i>does</i> include classified information. Member States do not have to make such information available to the Commission or the ESAs.</p> <p>PT:</p> <p>We strongly oppose the introduction of "upon request" as provided in EP/COM text.</p> <p>The mandatory sharing of the national risk assessments' results among Member States is considered to be one of the most significant advances during the negotiations at the Council's level. It is also</p>
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						considered to be a crucial tool to understand cross-border risks. LL: <u>If the information is classified it shouldn't be public... is it really necessary to specify this here?</u>
231.	Art. 8	Article 8	Article 8	Article 8	Article 8	
232.	Art. 8 – para 1	1. Member States shall ensure that obliged entities take appropriate steps to identify and assess their money laundering and terrorist financing risks taking into account risk factors including customers, countries or geographic areas, products, services, transactions or delivery channels. These steps shall be proportionate to the nature and size of the obliged entities.	1. Member States shall ensure that obliged entities take appropriate steps to identify and assess their money laundering and terrorist financing risks taking into account risk factors including customers, countries or geographic areas, products, services, transactions or delivery channels. These steps shall be proportionate to the nature and size of the obliged entities.	1. Member States shall ensure that obliged entities take appropriate steps to identify and assess their money laundering and terrorist financing risks taking into account risk factors including customers, countries or geographic areas, products, services, transactions or delivery channels. <i>Those</i> steps shall be proportionate to the nature and size of the obliged entities.	1. Member States Member States shall ensure that obliged entities take appropriate steps to identify and assess their money laundering and terrorist financing risks taking into account risk factors including customers, countries or geographic areas, products, services, transactions or delivery channels. These <i>Those</i> steps shall be proportionate to the nature and size of the obliged entities.	NL: EP text OK LL: <u>"Those" is better EN</u>
233.	Art. 8 – para 2	2. The assessments referred to in paragraph 1 shall be documented, kept up to date and be made available to competent authorities and self-regulatory bodies.	2. The assessments referred to in paragraph 1 shall be documented, kept up to date and be made available to <u>the relevant</u> competent authorities and self-regulatory bodies- <u>concerned</u> . <u>Competent authorities may decide that individual</u>	2. The assessments referred to in paragraph 1 shall be documented, kept up to date and be made available <i>upon request</i> to competent authorities and self-regulatory bodies.	2. The assessments The assessments referred to in paragraph 1 shall be documented, kept up to date and be made available <u>upon request</u> to the relevant competent authorities and self-regulatory bodies- concerned . Competent authorities may decide that individual	ES: <u>We support keeping the last sentence introduced by the Council. It is consistent with the FATF standards and it is realistic in not imposing too burdensome requirements on</u>

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			<p><u>documented risk assessments are not required, if the specific risks inherent in the sector are clear and understood.</u></p>		<p>documented risk assessments are not required, if the specific risks inherent in the sector are clear and understood.</p>	<p>small entities. LT:</p> <p>LT supports Council GA version of Art. 8. HU:</p> <p>HU supports the Council general approach. LV:</p> <p>We want explanation of amendment. Will coment later. BE:</p> <p><u>Keep Council text because it is important to take account of the small entities/ professions.</u> NL:</p> <p>We agree with the combined GA and EP text. PL:</p> <p>PL prefers the wording proposed by the Council. MT:</p>
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						<p><u>MT supports the discretion granted to national competent authorities (under the Council text) allowing them to exempt obliged entities from conducting risk assessments in certain low risk scenarios.</u></p>
234.	Art. 8 – para 3	<p>3. Member States shall ensure that obliged entities have policies, controls and procedures to mitigate and manage effectively the money laundering and terrorist financing risks identified at Union level, Member State level, and at the level of obliged entities. Policies, controls and procedures should be proportionate to the nature and size of those obliged entities.</p>	<p>3. Member States shall ensure that obliged entities have policies, controls and procedures to mitigate and manage effectively the money laundering and terrorist financing risks identified at Union level, Member State level, and at the level of obliged entities. Policies, controls and procedures should be proportionate to the nature and size of those obliged entities.</p>	<p>3. Member States shall ensure that obliged entities have policies, controls and procedures to mitigate and manage effectively the money laundering and terrorist financing risks identified at Union level, Member State level, and at the level of obliged entities. Policies, controls and procedures should be proportionate to the nature and size of those obliged entities <i>and the risk of money laundering and terrorist financing and should respect data protection rules.</i></p>	<p>3. Member States shall ensure that obliged entities have policies, controls and procedures to mitigate and manage effectively the money laundering and terrorist financing risks identified at Union level, Member State level, and at the level of obliged entities. Policies, controls and procedures should be proportionate to the nature and size of those obliged entities <i>and the risk of money laundering and terrorist financing and should respect data protection rules.</i></p>	<p>ES:</p> <p><u>We do not see the point in adding a reference to data protection rules here. The reference is already inserted, where relevant, in the articles related to particular elements that should be covered by the procedures (e.g. record-keeping).</u></p> <p>UK:</p> <p>Another case of reference to data protection being superfluous and unhelpful for both regulators and obliged entities.</p> <p>NL:</p> <p>EP text OK</p> <p>PT:</p>

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						<p>There is no need of more explicit references to data protection rules (see our general comments on data protection – article 39a as proposed by the EP).</p> <p>LL:</p> <p><u>We are in enacting terms so :</u> "Policies, controls and procedures SHALL be proportionate..."</p>
235.	Art. 8 – para 4	4. The policies and procedures referred to in paragraph 3 shall at least include:	4. The policies and procedures referred to in paragraph 3 shall at least include:	4. The policies and procedures referred to in paragraph 3 shall at least include:	4. — The policies and procedures referred to in paragraph 3 shall at least include:	<p>LV:</p> <p>We think that it is important to agree on general principles on data protections requirments for AML area.</p> <p>In our point of view data protection requirments can be taken into account so far as it does not prejudice to AML requirments and this principle should be stipulated in the directive.</p>

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						We think that only general principles of data protections requirements for AML area could be stipulated in AML directive but not all data protection requirements in details.
236.	Art. 8 – para 4 – point a	(a) the development of internal policies, procedures and controls, including customer due diligence, reporting, record keeping, internal control, compliance management (including, when appropriate to the size and nature of the business, the appointment of a compliance officer at management level) and employee screening;	(a) the development of internal policies, procedures and controls, including customer due diligence, reporting, record keeping, internal control, compliance management (including, when appropriate to the size and nature of the business, the appointment of a compliance officer at management level) and employee screening;	(a) the development of internal policies, procedures and controls, including <i>model risk management practices</i> , customer due diligence, reporting, record keeping, internal control, compliance management (including, when appropriate to the size and nature of the business, the appointment of a compliance officer at management level) and employee screening. <i>Those measures shall not allow the obliged entities to ask consumers to provide more personal data than necessary;</i>	(a) the the development of internal policies, procedures and controls, including <i>model risk management practices</i> , customer due diligence, reporting, record keeping, internal control, compliance management (including, when appropriate to the size and nature of the business, the appointment of a compliance officer at management level) and employee screening. <i>Those measures shall not allow the obliged entities to ask consumers to provide more personal data than necessary;</i>	<p>UK:</p> <p>Another unnecessary reference to data protection.</p> <p>BG:</p> <p>BG: The term consumer should be replaced with customer.</p> <p>DE:</p> <p>It is not clear to us what “model risk management practices” means. We could support the obligation to provide – e.g. in the frame of the internal policies - for clear guidance how to handle specific identified high-risk situations.</p> <p>IE:</p>

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						<p>Ireland – both inserts might be examined as to their clarity</p> <p>BE:</p> <p>We don't think that the EP amendment at the end of this paragraph must be retained: it only reiterates obligations already stated in other EU law texts (Privacy Directive / Regulation).</p> <p>NL:</p> <p>The message of the EP text is in principle OK, but “<u>more personal data than necessary</u>” is very unspecific. This text may be better suited for a recital.</p> <p>MT:</p> <p><u>MT believes that data protection issues should not be regulated by this directive.</u></p> <p>PT:</p> <p>We strongly reject the last addition proposed by the EP, which would undermine the obliged entities' leeway to apply the risk-based approach internally defined according to</p>
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						<p>their “risk appetite”.</p> <p>(see also our general comments on data protection – article 39a as proposed by the EP)</p> <p>LL:</p> <p><u>1) Proposal : move the content of the parenthesis in a point c) (see point b))</u></p> <p><u>2) if the sentence <i>Those measures shall not allow the obliged entities to ask consumers to provide more personal data than necessary;</i> is kept then move it to the end of the enumeration</u></p>
237.	Art. 8 – para 4 – point b	(b) when appropriate with regard to the size and nature of the business, an independent audit function to test internal policies, procedures and controls referred to in point (a).	(b) when appropriate with regard to the size and nature of the business, an independent audit function to test internal policies, procedures and controls referred to in point-(a).	(b) when appropriate with regard to the size and nature of the business, an independent audit function to test internal policies, procedures and controls referred to in point (a).	(b) — when appropriate with regard to the size and nature of the business, an independent audit function to test internal policies, procedures and controls referred to in point-(a).	
238.	Art. 8 – para 5	5. Member States shall require obliged entities to obtain approval from senior management for the policies and procedures they put in place, and shall monitor and enhance the measures taken,	5. Member States shall require obliged entities to obtain approval from senior management for the policies and procedures they put in place, and shall monitor and enhance the measures taken,	5. Member States shall require obliged entities to obtain approval from senior management for the policies and procedures they put in place, and shall monitor and enhance the measures taken,	5. Member States shall require obliged entities to obtain approval from senior management for the policies and procedures they put in place, and shall monitor and enhance the measures taken,	

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		where appropriate.	where appropriate.	where appropriate.	where appropriate.	
239.	Art. 8 a (new)			Article 8a	Article 8a	<p>LV:</p> <p>We would like to keep Council text.</p> <p>PT:</p> <p>We strongly oppose the proposed EP's action plan towards 3rd countries.</p> <p>General comments on EU policy towards 3rd countries under the AML "package":</p> <p>On the one hand, the Council's GA:</p> <p>(i) Proposes the adoption of a "black list" approach towards 3rd countries which have strategic deficiencies in their national AML/CFT regimes that pose significant threats to the financial system of the European Union;</p> <p>(ii) Puts an end to EU level positive equivalence judgements, for the purposes of Articles 25 and 38.</p> <p>On the other hand, the EP proposal foresees the</p>

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						<p>simultaneous adoption of a black-list and a white-list approach. As for the latter, the EP proposes the issuance of a list of equivalent third jurisdictions by the Commission.</p> <p>Even though we would prefer a strictly risk-based approach (without the issuance of any list at EU level) or a sole “white-list” approach led by the Commission (as proposed by the EP although without the issuance of a “black-list”), we can’t in general accept the proposed EP’s action plan towards 3rd countries. Indeed, the simultaneous issuance of a white and a black list would drive obliged entities to an uncritical “tick-box” approach with very doubtful results to the effectiveness of AML/CFT measures. Thus, if a strictly risk-based approach is not possible, then the listing procedure has to be limited to the issuance of a single – white or black – list.</p> <p>If a <u>“black-list” approach remains in the text</u>, only the Council’s GA set of proposals will be acceptable for us, for</p>
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						<p>the following reasons:</p> <p>(i) Given the political challenges involved, we deem of the utmost importance that any black list is issued and consolidated by the European Commission, regardless of the resemblance with the FATF public statements. Thus, we can't, in any event, advocate the endorsement of FATF lists through the national legislation of each MS, as intended by the EP.</p> <p>(ii) Article 8a as proposed by the Council is drafted in a more balanced and careful manner, thus detailing the aspects that shall be addressed while assessing third countries, as well as indicating the information sources that shall be privileged;</p> <p>(iii) It shall be explicitly stated that countries not included in a list still have to be monitored according to a risk-based approach [in line with the Council's proposal for a new recital (18b)].</p> <p>In light of the reasons previously pointed out, we do not agree with the deletion of Article 8a as proposed by the</p>
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						EP.
240.	Art. 8 a – para 1 (new)			<p><i>1. In order to develop a common approach and common policies against non-cooperative jurisdictions with deficiencies in the field of combating money laundering, Member States shall periodically endorse and adopt the lists of countries published by the FATF.</i></p>	<p><u><i>1. In order to develop a common approach and common policies against non-cooperative jurisdictions with deficiencies in the field of combating money laundering, Member States shall periodically endorse and adopt the lists of countries published by the FATF.</i></u></p>	<p>AT:</p> <p><u>Austrian Position:</u> We are of the opinion that the “white list” approach of 3AML or any similar positive equivalence approach should be maintained. The EC should take the lead in such a process, assess and decide upon the equivalence of third countries. More harmonisation in this area is of great importance to the internal market.</p> <p><u>General Approach:</u> Article 8a of the General Approach introduces a negative equivalence provision (“black list” approach). Art 8a juncto Art 25 of the General Approach means that obliged entities may rely on any third parties but the ones coming from high-risk countries. Under 3AML only third parties from equivalent countries were deemed reliable. Thus, the wording of the General Approach seems to be a step backwards. <u>We do not support</u> this black list</p>

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						<p>approach.</p> <p><u>EP Amendments 44, 71 and 90:</u> EP Amendment 71 introduces a negative equivalence approach ("black list"). EP Amendments 44 (Recital 42a) and 90 on the other hand introduces a positive equivalence approach ("white list"). The latter could be supported.</p> <p>LT:</p> <p><u>LT does not support EP ECON proposal to insert new Art. 8a.</u></p> <p>HU:</p> <p>HU cannot accept the proposal of the EP. HU has strong opposition against the EP text, so in first place HU supports the general approach.</p> <p>UK:</p> <p>What happens if a Member States ends up on the FATF listing?</p> <p>BG:</p>
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						<p>BG: It is unclear if the endorsed and adopted list should be published as well and if this list should be based on the one published by the FATF (if it should shorten it, etc.).</p> <p>DE:</p> <p>We support the initiative of the EP to establish a proper EU off-shore policy in order to address non-cooperative jurisdictions. The adoption of the FATF list of non-cooperative countries would be a feasible basic starting point for joint action.</p> <p>DK:</p> <p>DK prefers the general approach reached by the Council on article 8a. DK thus questions the need for this tool at EU level. The FATF is doing very valid and extensive work in ranking high-risk countries and DK finds it difficult to see the value added in making another list at EU level. If the intention is for the Commission to supplement the FATF list with risks that cause a particular concern for</p>
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						<p>the EU as a whole, there might be some added value, but it needs to be clarified and possibly exemplified what this could cover. From Annex III there seems to be merely overlap with the work already done at FATF level.</p> <p>IE:</p> <p>Ireland observes that the 'white' of common understanding list of no longer to be used, but there will be mechanisms to align with the FATF's 'black' list, and <i>to add to it.</i></p> <p>Ireland can support this as the (abandoned) white list did cause uncertainties for industry.</p> <p>FR:</p> <p><u>The French Authorities support</u></p> <p><u>1/ the FATF lists to be automatically implemented by MS with enhanced due diligences as the EP provide.</u></p>
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						<p><u>2/ the Commission to establish a list of non cooperative jurisdictions, separately from the FATF lists. The Council and the EP texts seem to take up this point.</u></p> <p><u>3/ The MS to agree on similar enhanced due diligences on those non cooperative jurisdictions. The Council and the EP texts do not seem to tackle this subject.</u></p> <p>BE:</p> <p>The issue of "third countries policy" is highly political, but we wish to avoid intervening in this debate with political considerations. However, the Council compromise seems to us to be sound and balanced. At the opposite, we don't understand very clearly the mechanism proposed by the EP: if it is sufficient that MS endorse lists of risky countries published by the FATF (para 1), what will be the aim of the "preparatory work" to be coordinated by the EC (para 2) ? Would this work be preparatory to the work</p>
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						<p>delivered by the FATF of which the EC is a member? Or preparatory to the establishment of a separate list foreseen by the para 3? Will this EU list be different from that of the FATF? If not, what is the usefulness of this EU list, while MS will already be required to endorse the FATF list (para 1)?</p> <p>We thus suggest coming back to the Council compromise.</p> <p>NL:</p> <p>We do not agree with the EP text. <u>We think this is a choice for MS to make, not one to be made an obligation under EU law.</u></p> <p>PL:</p> <p>PL firmly supports the provisions regarding the common approach to the third countries as proposed by the Council. Again in our view the Council's version as an effect of lasting debates at the group level. We believe that wording proposed by the Council is a compromise acceptable by all MS.</p>
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						<p>Therefore we object the art. 8a as proposed by the EP.</p> <p>LL:</p> <p><u>Is the position of this article right here? The first part looks like a recital..</u></p>
241.	Art. 8 a – para 2 (new)			<p><i>2. The Commission shall coordinate preparatory work at the Union level on the identification of third countries with grave strategic deficiencies in their money laundering systems that pose significant risks to the financial system of the Union, taking into account the criteria set out in point (3) of Annex III.</i></p>	<p><u>2. The Commission shall coordinate preparatory work at the Union level on the identification of third countries with grave strategic deficiencies in their money laundering systems that pose significant risks to the financial system of the Union, taking into account the criteria set out in point (3) of Annex III.</u></p>	<p>UK:</p> <p>If the EU is endorsing the FATF listing, what is the added value of a separate list. In the absence of the EU assessing third countries, what else can it add to the existing FATF listing process?</p> <p>DE:</p> <p>Moreover, the EU should have the competence to identify countries others than the ones listed by the FATF if deemed necessary.</p> <p>NL:</p> <p>In order to fulfil requirements of subsidiarity, <u>the focus of the EU list should be on risks for the EU financial system.</u></p> <p>See GA text (line 247)</p>

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242.	Art. 8 a – para 3 (new)			<i>3. The Commission shall be empowered to adopt delegated acts in order to establish a list of countries as defined in paragraph 2.</i>	<u><i>3. The Commission shall be empowered to adopt delegated acts in order to establish a list of countries as defined in paragraph 2.</i></u>	<p>UK:</p> <p>Implemented Act are necessary as per the Council text should a black list remains. Member States (EGMLTF) need to be involved.</p> <p>DE:</p> <p>In order to provide for a level playing field and a consistent level of prevention throughout the EU, we support the idea of establishing binding measures how to treat the identified jurisdictions.</p> <p>NL:</p> <p><u>A black list should NOT be adopted through a delegated act but only through an implementing act.</u></p>
243.	Art. 8 a – para 4 (new)			<i>4. The Commission shall monitor on a regular basis the evolution of the situation in the countries defined in paragraph 2 of this Article on the basis of criteria set out in point (3) of Annex III and, where appropriate, shall review the list referred to in</i>	<u><i>4. The Commission shall monitor on a regular basis the evolution of the situation in the countries defined in paragraph 2 of this Article on the basis of criteria set out in point (3) of Annex III and, where appropriate, shall review the list referred to in</i></u>	<p>NL:</p> <p>EP text OK</p>

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				<i>paragraph 3 of this Article.</i>	<i>paragraph 3 of this Article.</i>	
244.	Section 2a (new)		<u>SECTION 3</u>		<u>SECTION 3</u>	LL: Council proposed a better structure by adding Section 3
245.	Title (new)		<u>THIRD COUNTRY POLICY</u>		<u>THIRD COUNTRY POLICY</u>	
246.	Art. 8a (new)		<i>Article 8 a</i>		<i>Article 8 a</i>	PT: Further to reasons pointed out in our previous comment on EU policy towards 3rd countries, it is our strong belief that the Council's GA on Article 8a has to prevail in its entirety, in case the "black-list" approach stands in the text.
247.	Art. 8a – para -1 (new)		<u>-1. Third-country jurisdictions which have strategic deficiencies in their national AML/CFT regimes that pose significant threats to the financial system of the European Union, shall be identified in order to protect the proper functioning of the Internal Market.</u>		<u>-1. Third-country jurisdictions which have strategic deficiencies in their national AML/CFT regimes that pose significant threats to the financial system of the European Union, shall be identified in order to protect the proper functioning of the Internal Market.</u>	LT: LT strongly supports Council GA version of Art. 8a. HU: HU supports the Council general approach. HU cannot accept the proposal of the EP. HU has strong opposition against the EP text, so in first place HU supports the general

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						<p>approach.</p> <p>If it does not hinder the adoption of the Directive, HU supports, in line with the Hungarian mandate represented during the council meeting that the listing should not go beyond the FATF public statement.</p> <p>DE:</p> <p>We prefer the process drafted by the EP above.</p> <p>NL:</p> <p><u>We prefer this GA text over the EP text, as it is better aligned with FATF and has a focus on the EU internal market (subsidiarity)</u></p> <p>PL:</p> <p>PL firmly supports the provisions regarding the common approach to the third countries as proposed by the Council. Again in our view the Council's version is an effect of lasting debates at the group level. We believe that wording proposed by the Council is a compromise</p>
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						acceptable by all MS. Therefore we object the art. 8a as proposed by the EP.
248.	Art. 8a – para 1 (new)		<u>1. The Commission shall be empowered to adopt implementing acts to identify high-risk third countries referred to in paragraph 1, taking into account strategic deficiencies, in particular in relation to:</u>		1. The Commission shall be empowered to adopt implementing acts to identify high-risk third countries referred to in paragraph 1, taking into account strategic deficiencies, in particular in relation to:	<p>NL:</p> <p>The list should be adopted by implementing act (not delegated act)</p> <p>LL:</p> <p>Please bear in mind that if this article is kept there is a standard recital and a standard article for implementing acts needed....</p>
249.	Art. 8a – para 1 – point a (new)		<u>(a) the legal and institutional AML/CFT framework of the third country, in particular:</u>		(a) the legal and institutional AML/CFT framework of the third country, in particular:	<p>BE:</p> <p>The deletion of the list of criteria on which the EC should establish the EU list seems not suitable.</p> <p>NL:</p> <p>We prefer the EP text where these requirements are found in an Annex.</p>
250.	Art. 8a – para 1 – point a – subpoint i (new)		<u>(i) the criminalization of money laundering and terrorist financing,</u>		(i) the criminalization of money laundering and terrorist financing,	<p>NL:</p> <p>We prefer the EP text where these requirements are found</p>

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						in an Annex.
251.	Art. 8a – para 1 – point a – subpoint ii (new)		<u>(ii) customer due diligence measures,</u>		(ii) customer due diligence measures,	NL: We prefer the EP text where these requirements are found in an Annex.
252.	Art. 8a – para 1 – point a – subpoint iii (new)		<u>(iii) record keeping requirements, and</u>		(iii) record keeping requirements, and	NL: We prefer the EP text where these requirements are found in an Annex.
253.	Art. 8a – para 1 – point a – subpoint iv (new)		<u>(iv) suspicious transaction reporting;</u>		(iv) suspicious transaction reporting;	NL: We prefer the EP text where these requirements are found in an Annex.
254.	Art. 8a – para 1 – point b (new)		<u>(b) the powers and procedures of the third country's competent authorities for the purposes of combating money laundering and terrorist financing; or</u>		(b) the powers and procedures of the third country's competent authorities for the purposes of combating money laundering and terrorist financing; or	NL: We prefer the EP text where these requirements are found in an Annex.
255.	Art. 8a – para 1 – point c (new)		<u>(c) the effectiveness of the anti-money laundering and counter terrorist financing system in addressing money laundering or terrorist financing risks of the third country.</u>		(c) the effectiveness of the anti-money laundering and counter terrorist financing system in addressing money laundering or terrorist financing risks of the third country.	NL: We prefer the EP text where these requirements are found in an Annex.

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256.	Art. 8a – para 2 (new)		<u>2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in paragraph 2 of Article 58c.</u>		2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in paragraph 2 of Article 58c.	
257.	Art. 8a – para 3 (new)		<u>3. The Commission shall take into account, where appropriate, relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competencies in the field of preventing money laundering and combating the financing of terrorism in relation to the risks posed by individual third countries.</u>		3. The Commission shall take into account, where appropriate, relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competencies in the field of preventing money laundering and combating the financing of terrorism in relation to the risks posed by individual third countries.	NL: We would like this GA text to be included.
258.	Chapter II	CHAPTER II	CHAPTER II	CHAPTER II	CHAPTER II	
259.	Title	CUSTOMER DUE DILIGENCE	CUSTOMER DUE DILIGENCE	CUSTOMER DUE DILIGENCE	CUSTOMER DUE DILIGENCE	
260.	Section 1	SECTION 1	SECTION 1	SECTION 1	SECTION 1	
261.	Title	GENERAL PROVISIONS	GENERAL PROVISIONS	GENERAL PROVISIONS	GENERAL PROVISIONS	
262.	Art. 9	<i>Article 9</i>	<i>Article 9</i>	<i>Article 9</i>	<i>Article 9</i>	LV: We support amendment.
263.	Art. 9 – para 1	Member States shall prohibit their credit and financial	Member States shall prohibit their credit and financial	Member States shall prohibit their credit and financial	Member States shall prohibit their credit and financial	LT:

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		institutions from keeping anonymous accounts or anonymous passbooks. Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts or anonymous passbooks be made the subject of customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way.	institutions from keeping anonymous accounts or anonymous passbooks. Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts or anonymous passbooks be made the subject of customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way.	institutions from keeping anonymous accounts or or from issuing anonymous electronic payment cards which do not meet the conditions laid down in Article 10a. Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts, anonymous passbooks or anonymous payment cards be made the subject of customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way.	institutions from keeping anonymous accounts or or from issuing anonymous electronic payment cards which do not meet the conditions laid down in Article 10a. Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts, anonymous passbooks or anonymous passbooks payment cards be made the subject of customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way.	<p><u>LT could support EP ECON text of art. 9 – para 1.</u></p> <p>UK:</p> <p>It is unclear why payment cards should be singled out. Furthermore, the Council text does not provide for the existence of anonymous products as even Art 10bis of the Council text requires issuers of products set to benefit from the exemptions listed in this article will have to carry out ongoing monitoring of the business relationship to identify unusual or suspicious transactions, which presupposes the collection and use of at least some information. This means that there will be no European-issued anonymous e-money products in the future.</p> <p>It is possible that there will be some anonymous products in circulation once 4MLD comes into force. According to this amendments, their holders and beneficiaries would have to be identified. For EU-issued e-money products at least, this</p>
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						<p>might be disproportionate and costly as those benefiting from CDD exemptions under 3MLD would have had to impose product restrictions that limit their use for ML purposes.</p> <p>DE:</p> <p>We support the amendments proposed by the EP. The prohibition of anonymity should not be restricted to accounts and passbooks but to all relevant models of money storage.</p> <p>NL:</p> <p>EP text OK</p> <p>PT:</p> <p>We welcome the additions introduced by the EP on this provision, in order to explicitly limit the use of anonymous e-money (see our comments on article 10a/10bis).</p> <p>LL:</p>
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						What is the agreed term "due diligence" of "due diligence measures"?
264.	Art. 10	Article 10	Article 10	Article 10	Article 10	
265.	Art. 10 – para 1	Member States shall ensure that obliged entities apply customer due diligence measures in the following cases:	Member States shall ensure that obliged entities apply customer due diligence measures in the following cases:	Member States shall ensure that obliged entities apply customer due diligence measures in the following cases:	Member States shall ensure that obliged entities apply customer due diligence measures in the following cases:	
266.	Art. 10 – para 1 – point a	(a) when establishing a business relationship;	(a) when establishing a business relationship;	(a) when establishing a business relationship;	(a) — when establishing a business relationship;	
267.	Art. 10 – para 1 – point b	(b) when carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	(b) when carrying out an occasional transactions transaction:	(b) when carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	(b) — when carrying out an occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	ES: We support the drafting by the Concil clarifying that CDD applies to occasional wire transfers over 1.000 €. LT: LT supports Council GA text of Art. 10- para 1 – point b, (subpoint i and subpoint ii). DE: We support Council text in order to stay in line with AMLR IE:

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						<p>xxx</p> <p>BE:</p> <p>In our view, the Council compromise should be retained: see all the discussions around the threshold in the framework of the new regulation on fund transfers.</p> <p>NL:</p> <p>EP text OK</p>
268.	Art. 10 – para 1 – point b – subpoint i (new)		(i) amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked; <u>or</u>		(i) amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked; or	<p>UK:</p> <p>Council text preferred (depends on the next row).</p>
269.	Art. 10 – para 1 – point b – subpoint ii (new)		<u>(ii) which constitutes a transfer of funds according to Article 2, paragraph 7 of [revised Reg 1781/2006] exceeding EUR 1 000;</u>		(ii) which constitutes a transfer of funds according to Article 2, paragraph 7 of [revised Reg 1781/2006] exceeding EUR 1 000;	<p>HU:</p> <p>HU supports the Council general approach.</p> <p>UK:</p> <p>This is in line with the WTR.</p> <p>DE:</p> <p>In order to cover all cases that</p>

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						<p>require customer due diligence we support a reference to AMLR in its final version. Concerning the application of CDD obligations we opt for a 0-Euro-threshold when the transfer of funds is related to an anonymous payment instrument such as cash or anonymous e-money etc.</p> <p>NL:</p> <p>We would prefer to include these <u>without the threshold of EUR 1 000.</u></p>
270.	Art. 10 – para 1 – point c	(c) for natural or legal persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 7 500 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	(c) for natural or legal persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 7 500 <u>10 000</u> or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	(c) for natural or legal persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 7 500 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	(c) — for natural or legal persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 7 50010 000500 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	<p>HU:</p> <p>HU supports the Council general approach.</p> <p>UK:</p> <p>As per our previous comment on the threshold.</p> <p>BG:</p> <p>BG; We strongly prefer keeping the threshold of 10 000 EUR (Council General approach)</p> <p>EL:</p>

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						<p>The reduction of cash amount limit for natural or legal persons trading in goods (7.500 EUR or more) will probably lead to a serious increase in persons obliged to apply the due diligence measures. As a result, the task of monitoring the obliged persons will be complicated and not so effectively managed.</p> <p>FI:</p> <p>We prefer the GA.</p> <p>NL:</p> <p>There is no RA substantiating the need for lowering this threshold. <u>We prefer the GA threshold of EUR 10 000.</u></p> <p>PL:</p> <p>In PL's opinion the level of cash transaction should be fixed at 10.000 EUR.</p>
271.	Art. 10 – para 1 – point d	(d) for providers of gambling services, when carrying out occasional transactions amounting to EUR 2 000 or	(d) for providers of gambling services, <u>either upon the collection of winnings and/or upon the</u>	(d) for <i>casinos</i> , when carrying out occasional transactions amounting to EUR 2 000 or more, whether the transaction	(d) — for providers of gambling services, either upon the collection of winnings and/or upon the	<p>ES:</p> <p><u>We can live with both</u></p>

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		more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	wagering of a stake , when carrying out occasional transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	is carried out in a single operation or in several operations which appear to be linked;	wagering of a stake(d) for casinos , when carrying out occasional transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	<p>versions, however the explicit reference to on-line gambling introduced by the EP could be convenient.</p> <p>LT:</p> <p>LT supports Council GA text of Art. 10- para 1- point d. In order to effectively prevent money laundering it is essential to have link between all clients operations – wagering of a stake and collection of winnings. For example casino client changing big amount of money into chips, then playing (imitating) for some time and again the same amount of chips changing back into cash. In this case he can receive “sertificate” from casino that he won this amount and now these money will become of “official and clean” origin. The same applies for other types of gambling. The threshold is quite high – 2000 EUR so it should not raise additional administrative burden for operators.</p> <p>HU:</p> <p>HU supports the Council</p>
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						<p>general approach.</p> <p>UK:</p> <p>The UK would like to point out that betting shops simply do not have the technology to detect linked transactions. This would imply IT-only betting mechanisms. The Directive does not cater for different gambling models and would entail huge costs for over 9000 shops in the UK or simply abolish a sector altogether. As such the EP text is preferable as the issue of linked transaction only applies to casinos.</p> <p>The Council text does not cater for SMEs specificities/limited budget in that sector.</p> <p>The Council text seems to leave the decision to opt for winnings or stakes or both – we approve of that level of discretion. The NRA will determine what is the most risk-appropriate option.</p> <p>DE:</p> <p>We support the text proposal provided by the EP. CDD</p>
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						<p>obligations should apply to any transaction related to the gambling service. Therefore we would rather prefer to include the definition of gambling transactions proposed by the EP in Art. 3.</p> <p>FI:</p> <p>Both the stages of collection of winnings and wagering of a stake should be included as a possibility. Depending on whether online gambling is included in the scope of application, the identification of a customer normally takes place at the phase of establishing customer relationship. (In case it is not included, a separate provision appears unnecessary.)</p> <p>FR:</p> <p><u>The French authorities support the Council's text on Art. 10 paragraph 1 – point d</u></p> <p>NL:</p> <p><u>We prefer the GA text as it applies to all providers of gambling services.</u></p>
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						<p>MT:</p> <p><u>MT cannot support the text being proposed in the final column. Similarly to the EP version, this text discriminates among the various gambling services, setting out different thresholds for the application of customer due diligence measures.</u></p> <p><u>MT has always supported the extension of the AMLD to all gambling services. All gambling services must be obliged to carry out customer due diligence measures. Given the nature of a gambling transaction, Malta opines that it is appropriate that such measures should be carried out upon transactions amounting to EUR 2000 or more. MT therefore prefers the Council Presidency compromise text:</u></p> <p><u>for providers of gambling services, either upon the collection of winnings and/or upon the wagering of a stake, when carrying out occasional transactions amounting to EUR 2 000 or more, whether</u></p>
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						<p><i>the transaction is carried out in a single operation or in several operations which appear to be linked.</i></p> <p><u>The EP version and the compromise text in the final column discriminates among the various gambling services and lays down more onerous customer due diligence obligations for operators of online gambling services. There is no evidence that online gambling services pose a greater risk to money laundering than other land-based services. All gambling services should be subject to equivalent customer due diligence obligations.</u></p>
272.	Art. 10 – para 1 – point da (new)			(da) for on-line gambling when establishing the business relationship;	<i><u>(da) for on-line gambling when establishing the business relationship;</u></i>	<p>HU:</p> <p>HU does not support the text of the EP.</p> <p>UK:</p> <p>We would like to see the 2000 threshold applicable for online gambling. Currently, irrespective of the threshold, online gambling companies</p>

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						<p>will be forced to conduct those kinds of checks on everyone whereas the rest of the industry will be spared.</p> <p>We would like to see the evidence behind the decision to overlook the threshold in that instance.</p> <p>DE:</p> <p>We support the proposal made by the EP applying CDD obligations when establishing the business relationship regardless of the wagered amount. In our view online gambling is much more exposed to AML/CFT than land-based gambling for the fact that the gambling service is provided over the internet.</p> <p>NL:</p> <p><u>We prefer the GA text as it applies to all providers of gambling services.</u></p>
273.	Art. 10 – para 1 – point db (new)			<i>(db) for other providers of gambling services, when paying out winnings of EUR 2 000 or more;</i>	<i><u>(db) for other providers of gambling services, when paying out winnings of EUR 2 000 or more;</u></i>	<p>HU:</p> <p>HU does not support the text of the EP.</p> <p>UK:</p>

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						<p>We support the EP text here.</p> <p>DE:</p> <p>In our opinion all land-based gambling providers should be subject to the same threshold. Therefore we think that "other providers" should be included into EP proposal no. 271</p> <p>NL:</p> <p><u>We prefer the GA text as it applies to all providers of gambling services.</u></p>
274.	Art. 10 – para 1 – point e	(e) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;	(e) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;	(e) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;	(e) when when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;	
275.	Art. 10 – para 1 – point f	(f) when there are doubts about the veracity or adequacy of previously obtained customer identification data.	(f) when there are doubts about the veracity or adequacy of previously obtained customer identification data.	(f) when there are doubts about the veracity or adequacy of previously obtained customer identification data;	(f) when when there are doubts about the veracity or adequacy of previously obtained customer identification data- i	
276.	Art. 10 – para 1 – point fa (new)			<i>(fa) when a company is established.</i>	<i><u>(fa) when a company is established.</u></i>	<p>ES:</p> <p><u>If this is kept it should be contextualised to legal professions, including notaries and TCSPs participating in the creation of companies. It is</u></p>

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						<p><u>not unreasonable, since:</u></p> <p>(i) <u>it is not clear that participating in the incorporation of a company is a business relationship</u></p> <p>(ii) <u>the criteria to quantify the transaction is unclear, but in any case there are a lot of companies that can be misused for ML, with less than 15.000 € capital.</u></p> <p>SI:</p> <p>Under presumption that this provision relates only to the company service providers and not to business or court registers this fact should be explicitly mentioned or explained in recitals.</p> <p>UK:</p> <p>We cannot support this amendment.</p> <p>It is not appropriate for CDD to be done every time that a company is incorporated or established. In the UK this may be done without an</p>
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						<p>obliged entity (i.e. companies can be incorporated directly by the registrar of companies). It is not appropriate that CDD should need to be conducted by the registrar in such cases. This would create a barrier to the growth in terms of the ease of doing business in the UK.</p> <p>We would want clarify as to who this aimed at and with what benefit.</p> <p>established' is problematic in any case – there may not be an intermediary involved where an overseas company sets up a branch in a MS.</p> <p>DE:</p> <p>Identification obligations in relation of the establishment of a company are already included in relation to legal professionals, accountants and TCSPs. The remaining obliged entities do not participate in the establishment of companies. Therefore the amendment is not necessary.</p> <p>BE:</p>
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						<p>“(fa) when a company is established”. This amendment should be deleted because a company is only established before a notary, and in that case he establishes a business relationship (already covered).</p> <p>NL:</p> <p><u>We do not want the EP text included. It is highly unspecific</u> as it now would apply to everyone having some knowledge of a company being set up.</p> <p>For those professions providing assistance in setting up companies (notaries), we already have provisions in this directive.</p> <p>PL:</p> <p>In our opinion the establishing of the company is not a relevant moment to conduct CDD. PL is against this stipulation.</p> <p>MT:</p> <p><u>The insertion of this requirement would solve</u></p>
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						<p><u>interpretational issues as to whether company incorporations should be categorised as occasional transactions or business relationships and hence whether they should eventually be subject to CDD.</u></p> <p>PT:</p> <p>We consider that this new indent should be deleted.</p> <p>The establishment of a company can't entail the automatic application of CDD measures. Indeed, the establishment of companies may, most of the times, result from an act of a public authority without the intermediation of any of the obliged entities covered by this Directive. Where the intermediation of such an obliged entity occurs, establishment of companies is already addressed by this Directive [see, for instance, Article 2 (1)(3)(b)(v)].</p> <p>In fact, the obligation to apply CDD derives from commercial contact between obliged entities and the companies that with them</p>
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						want to start a business relationship and/or execute an occasional transaction.
277.	Art. 10a		<u>Article 10 bis</u>	Article 10a	Article 10 bis 10a	DELETED
278.	Art. 10a – para 1 (new)		<u>1. By way of derogation from Articles 11 and 12 and based on an appropriate risk assessment which demonstrates low risk, Member States may decide to allow obliged entities not to apply certain customer due diligence measures in respect of electronic money, as defined in Article 2(2) of Directive 2009/110/EC, if all of the following risk mitigating conditions are fulfilled:</u>	<i>1. Member States may, on the basis of proven low risk, apply exemptions to obliged entities from customer due diligence with respect to electronic money as defined in Article 2(2) of Directive 2009/110/EC of the European Parliament and of the Council , if the following conditions are met:</i>	1. By way of derogation from Articles 11 and 12 and based on an appropriate risk assessment which demonstrates low risk, Member States may decide, on the basis of proven low risk, apply exemptions to allow obliged entities not to apply certain from customer due diligence measures inwith respect ofto electronic money, as defined in Article 2(2) of Directive 2009/110/EC, if all of the European Parliament and of the Council , if the following risk mitigating conditions are fulfilledmet:	DELETED
279.	Art. 10a – para 1 – point a (new)		<u>(a) the payment instrument is not reloadable, or has a maximum monthly payment transactions limit EUR 250 that can only be used in that one particular</u>	<i>(a) the payment instrument is not reloadable;</i>	(a) the payment instrument is not reloadable; or has a maximum monthly payment transactions limit EUR 250 that can only be used in that one particular	DELETED

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			<u>Member State;</u>		<u>Member State;</u>	
280.	Art. 10a – para 1 – point b (new)		<u>(b) the maximum amount stored electronically does not exceed EUR 250. Member States may increase this limit up to EUR 500 for payment instruments that can only be used in that one particular Member State;</u>	<i>(b) the maximum amount stored electronically does not exceed EUR 250; Member States may increase this limit up to EUR 500 for payment instruments that can only be used in that one particular Member State;</i>	(b) the maximum amount stored electronically does not exceed EUR 250; Member States may increase this limit up to EUR 500 for payment instruments that can only be used in that one particular Member State;	DELETED
281.	Art. 10a – para 1 – point c (new)		<u>(c) the payment instrument is used exclusively to purchase goods or services;</u>	<i>(c) the payment instrument is used exclusively to purchase goods or services;</i>	(c) the payment instrument is used exclusively to purchase goods or services;	DELETED
282.	Art. 10a – para 1 – point d (new)		<u>(d) the payment instrument cannot be funded with anonymous electronic money;</u>	<i>(d) the payment instrument cannot be funded with electronic money;</i>	(d) the payment instrument cannot be funded with anonymous electronic money;	DELETED
283.	Art. 10a – para 1 – point e (new)		<u>(e) the issuer carries out sufficient monitoring of the transactions or business relationship to enable the detection of unusual or suspicious transactions.</u>	<i>(e) redemption in cash and cash withdrawal are forbidden unless identification and verification of the identity of the holder, adequate and appropriate policies and procedures on redemption in cash and cash withdrawal, and record keeping obligations are performed.</i>	(e) the issuer carries out sufficient monitoring of the transactions or business relationship to enable the detection of unusual or suspicious transactions. (e) redemption in cash and cash withdrawal are forbidden unless identification and verification of the identity of the holder, adequate and appropriate policies and procedures on redemption in cash and cash withdrawal, and record keeping obligations are performed.	DELETED

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284.	Art. 10a – para 2 (new)		<u>2. Member States shall ensure that the derogation set out in paragraph 1 is not applicable in case of redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR 100.</u>	2. Member States shall ensure that customer due diligence measures are always applied before redemption of the monetary value of the electronic money exceeding EUR 250.	2. Member States shall ensure that the derogation set out in paragraph 1 is not applicable in case of customer due diligence measures are always applied before redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR 100 250.	DELETED
285.	Art. 10a – para 3			3. This Article shall not prevent Member States from allowing obliged entities to apply simplified customer due diligence measures in respect of electronic money in accordance with Article 13 of this Directive if the conditions laid down in this Article are not met.	3. This Article shall not prevent Member States from allowing obliged entities to apply simplified customer due diligence measures in respect of electronic money in accordance with Article 13 of this Directive if the conditions laid down in this Article are not met.	DELETED
286.	Art. 11	Article 11	Article 11	Article 11	Article 11	
287.	Art. 11 – para 1	1. Customer due diligence measures shall comprise:	1. Customer due diligence measures shall comprise:	1. Customer due diligence measures shall comprise:	1. Customer due diligence measures shall comprise:	
288.	Art. 11 – para 1 – point a	(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;	(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;	(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;	(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;	DELETED

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289.	Art. 11 – para 1 – point b	(b) identifying the beneficial owner and taking reasonable measures to verify his identity so that the institution or person covered by this Directive is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;	(b) identifying the beneficial owner and taking reasonable measures to verify his identity so that the institution or person covered by this Directive is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;	(b) <i>in addition to the identification of the beneficial owner listed in a register pursuant to Article 29</i> , taking reasonable measures to verify the beneficial owner's identity to the satisfaction of the institution or person covered by this Directive, including, as regards legal persons, trusts, <i>foundations, mutuals, holdings and all other</i> similar legal arrangements, taking <i>all necessary</i> measures to understand the ownership and control structure of the customer, <i>assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship</i> ;	(b) identifying <u>in addition to the identification of the</u> beneficial owner and listed in a register pursuant to Article 29 , taking reasonable measures to verify his <u>the beneficial owner's</u> identity so that to the satisfaction of the institution or person covered by this Directive is satisfied that it knows who the beneficial owner is , including, as regards legal persons, trusts and <u>foundations, mutuals, holdings and all other</u> similar legal arrangements, taking reasonable <u>necessary</u> measures to understand the ownership and control structure of the customer, <u>assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship</u> ;	DELETED
290.	Art. 11 – para 1 – point c	(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;	(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;	(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;	(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship ;	
291.	Art. 11 – para 1 – point d	(d) conducting ongoing monitoring of the business relationship including scrutiny	(d) conducting ongoing monitoring of the business relationship including scrutiny	(d) conducting ongoing monitoring of the business relationship including scrutiny	(d) conducting ongoing monitoring of the business relationship including scrutiny	DELETED

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		of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person'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.	of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person'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.	of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including the source of funds and ensuring that the documents, data or information held are kept up to date.	of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person'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- <u>to</u> - <u>date</u> .	
292.	Art. 11 – para 1a (new)		<u>Obligated entities shall also be required when performing the measures in points (a) and (b) above, to verify that any person purporting to act on behalf of the customer is so authorised and shall be required to identify and verify the identity of that person.</u>	<i>1a. When performing the measures referred to in points (a) and (b) of paragraph 1, obliged entities shall also be required to verify that any person purporting to act on behalf of the customer is so authorised to do so and shall be required to identify and verify the identity of that person.</i>	Obligated entities shall also be required <i>1a. When performing the measures referred to in points (a) and (b) above, of paragraph 1, obliged entities shall also be required to verify that any person purporting to act on behalf of the customer is so authorised <u>to do so</u> and shall be required to identify and verify the identity of that person.</i>	DELETED
293.	Art. 11 – para 2	2. Member States shall ensure that obliged entities apply each of the customer due diligence requirements set out in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis.	2. Member States shall ensure that obliged entities apply each of the customer due diligence requirements set out in paragraph 1, but obliged entities may determine the extent of such measures on a risk-sensitive	2. Member States shall ensure that obliged entities apply each of the customer due diligence requirements set out in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis.	2. — Member States shall ensure that obliged entities apply each of the customer due diligence requirements set out in paragraph 1, but obliged entities may determine the extent of such measures on a risk-sensitive	UK: The UK supports the Council text which allows obliged entities to apply a risk based approach. The EP deletion however is confusing as it seems to place

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			basis.		basis.	the responsibilities on MS. NL: GA text is more accurate. In the EP text one could think that it means <i>Member States</i> may determine the extent (...). LL: The Council addition makes sense without it could refer to <i>Member States...</i>
294.	Art. 11 – para 3	3. When assessing money laundering and terrorist financing risks, Member States shall require obliged entities to take into account at least the variables set out in Annex I.	3. When assessing money laundering and terrorist financing risks, Member States shall require that obliged entities to take into account at least the variables set out in Annex I when assessing money laundering and terrorist financing risks.	3. When assessing money laundering and terrorist financing risks, Member States shall require obliged entities to take into account at least the variables set out in Annex I.	3. When assessing money laundering and terrorist financing risks, Member States shall require that obliged entities to take into account at least the variables set out in Annex I when assessing money laundering and terrorist financing risks.	NL: GA text is more accurate.
295.	Art. 11 – para 4	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.	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.	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.	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.	
296.	Art. 11 – para	5. For life or other investment-	5. For life or other	5. For life or other investment-	5. For life or other	UK:

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	5 – subpara 1	related insurance business, Member States shall ensure that financial institutions shall, in addition to the customer due diligence measures required for the customer and the beneficial owner, 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:	investment-related insurance business, Member States shall ensure that <u>credit and</u> financial institutions shall, in addition to the customer due diligence measures required for the customer and the beneficial owner, 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.	related insurance business, Member States shall ensure that financial institutions shall, in addition to the customer due diligence measures required for the customer and the beneficial owner, 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:	investment-related insurance business, Member States shall ensure that credit and financial institutions shall, in addition to the customer due diligence measures required for the customer and the beneficial owner, 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:⚠	<p><u>Is article 11 not applying to credit institution in the EP text?</u></p> <p>DE:</p> <p>Since credit and financial institutions are defined separately in Art. 3 (1) and (2) they should be both mentioned.</p> <p>BE:</p> <p><u>Credit institutions and financial institutions are not the same, why are they skipped?</u></p> <p>This deletion is probably justified by the consideration that insurance products only are concerned. In our view, it is nevertheless much better to maintain the text of the Council. Indeed, credit institutions can intervene as intermediaries for the selling of those products; if these words are deleted, one could argue that, when intervening in the quality of insurance intermediaries, credit institutions must be considered as "financial</p>
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						institutions" but this is doubtful and certainly unnecessarily complicated. NL: GA text is more accurate. LL: :
297.	Art. 11 – para 5 – subpara 1 – point a	(a) for beneficiaries that are identified as specifically named natural or legal persons or legal arrangements, taking the name of the person;	(a) for beneficiaries that are identified as specifically named natural or legal persons or legal arrangements, taking the name of the person;	(a) for beneficiaries that are identified as specifically named natural or legal persons or legal arrangements, taking the name of the person;	(a) — for beneficiaries that are identified as specifically named natural or legal persons or legal arrangements, taking the name of the person;	
298.	Art. 11 – para 5 – subpara 1 – point b	(b) for beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.	(b) for beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the <u>credit or</u> financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.	(b) for beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.	(b) — for beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the credit or financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.	UK: <u>Same comment as 296.</u> DE: See 296 BE: <u>Credit institutions and financial institutions are not the same, why are they skipped?</u> See above NL:

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						GA text is more accurate.
299.	Art. 11 – para 5 – subpara 2	For both the cases referred to in points (a) and (b), the verification of the identity of the beneficiaries shall occur at the time of the payout. In case of assignment, in whole or in part, of the life or other investment related insurance to a third party, 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 own benefit the value of the policy assigned.	For both the cases referred to in points (a) and (b), the verification of the identity of the beneficiaries shall occur at the time of the payout. In case of assignment, in whole or in part, of the life or other investment related insurance to a third party, credit 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 own benefit the value of the policy assigned.	For both the cases referred to in points (a) and (b) <i>of the first subparagraph</i> , the verification of the identity of the beneficiaries shall occur at the time of the payout. In <i>the</i> case of assignment, in whole or in part, of the life or other investment related insurance to a third party, 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 own benefit the value of the policy assigned.	For both the cases referred to in points (a) and (b) of the first subparagraph , the verification of the identity of the beneficiaries shall occur 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 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 own benefit the value of the policy assigned.	UK: Same comment as 296 and 298. DE: See 296 NL: GA text is more accurate.
300.	Art. 11 – para 6 (new)		6. For beneficiaries of trusts that are designated by characteristics or by class, obliged entities shall obtain sufficient information concerning the beneficiary to satisfy themselves that they will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to		6. For beneficiaries of trusts that are designated by characteristics or by class, obliged entities shall obtain sufficient information concerning the beneficiary to satisfy themselves that they will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights.	BE: The clarification introduced in the Council compromise should be retained. NL: We prefer to include the GA text MT:

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			<u>exercise vested rights.</u>			<u>MT supports the Council's text. This provision lays down the measures that obliged entities have to implement when beneficiaries of trust would not be able to be identified at the moment of initiating the business relationship.</u>
301.	Art. 12	<i>Article 12</i>	<i>Article 12</i>	<i>Article 12</i>	<i>Article 12</i>	
302.	Art. 12 – para 1	1. Member States shall require that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying-out of the transaction.	1. Member States shall require that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying-out of the transaction.	1. Member States shall require that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying out of the transaction.	1. Member States Member States shall require that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying-out of the transaction.	
303.	Art. 12 – para 2	2. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these procedures	2. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such	2. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship <i>or during the execution of the transaction for entities subject to the obligations referred to in Article 2(1) and, in any event, at the time when any winnings are paid out</i> , if this	2. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship <i>or during the execution of the transaction for entities subject to the obligations referred to in Article 2(1) and, in any event, at the time when any</i>	LT: <u>LT supports Council GA version of Art. 12 – para 2.</u> UK: The EP addition is complicating the text and the reference to winnings does not make sense. DE:

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		shall be completed as soon as practicable after the initial contact.	situations these procedures shall be completed as soon as practicable after the initial contact.	is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations <i>those</i> procedures shall be completed as soon as practicable after the initial contact.	<i>winnings are paid out,</i> if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these <i>those</i> procedures shall be completed as soon as practicable after the initial contact.	<p>The amendment proposed by the EP is not covered by Rec. 10. Due to the provisions of the FATF the verification can only be delayed in case of the establishment of a business relationship, but the business relationship is neither operational nor any transaction can be carried out until the verification process is completed. Therefore the exemption cannot be applied to transactions.</p> <p>BE:</p> <p>Keep the text of the Council general approach; BE does not understand the meaning of this general extension?</p> <p>NL:</p> <p>We prefer the GA text.</p> <p>Also, is the reference in the EP text to 2(1) correct?</p> <p>MT:</p> <p><u>It is not clear why this particular paragraph makes reference to article 2(1) of the directive. Article 2(1) lists the</u></p>
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						<p>obliged entities subject to the directive.</p> <p>PT:</p> <p>We strongly oppose the EP amendments.</p> <p>Pursuant to FATF's R. 10, <i>"financial institutions should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business"</i>.</p> <p>Even though the EU's general rule on "timing of verification" looks stricter than the FATF Recommendations [as article</p>
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						<p>12 (1) requires that such verification takes place before the establishment of the business relationship or the carrying-out of the occasional transaction], the relevance of the criteria pointed out in Article 12 (2) for assessing the possibility of an <i>ex post</i> verification seem restricted to business relationships, in accordance with the quotation above pertaining to FATF's R. 10.</p> <p>Additionally, risk posed by occasional transactions advises a more cautious approach.</p> <p>LL:</p> <p><u>"those" is correct EN</u></p>
304.	Art. 12 – para 3	3. By way of derogation from paragraphs 1 and 2, Member States may allow the opening of a bank account 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 paragraphs 1 and 2 is obtained.	3. By way of derogation from paragraphs paragraphs 1 and 2 , Member States may allow the opening of a bank account <u>with a credit or financial institution, including accounts that permit transactions in transferable securities,</u> provided that there are adequate safeguards in place to ensure that transactions are not carried out by the	3. By way of derogation from paragraphs 1 and 2, Member States may allow the opening of a bank account 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 paragraphs 1 and 2 is obtained.	3. By way of derogation from paragraphs paragraph paragraphs 1 and 2, Member States may allow the opening of a bank an bank account with a credit or financial institution, including accounts that permit transactions in transferable securities, provided that there are adequate safeguards in place to ensure that	<p>EL:</p> <p>BE:</p> <p>We suggest maintaining the text of the Council: this option should not be limited to banks only.</p> <p>NL:</p>

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			customer or on its behalf until full compliance with paragraphs 1 and 2 obligations set out in Article 11(1)(a) and (b) is obtained.		transactions are not carried out by the customer or on its behalf until full compliance with paragraphs 1 and 2 obligations set out in Article 11(1)(a) and (b)2 is obtained.	We prefer the GA text PT:
305.	Art. 12 – para 4 – subpara 1	4. Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 11(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, and shall consider terminating the business relationship and making a suspicious transaction report to the financial intelligence unit (FIU) in accordance with Article 32 in relation to the customer.	4. Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 11(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, and shall consider terminating terminate the business relationship and consider making a suspicious transaction report to the financial intelligence unit (FIU) in accordance with Article 32 in relation to the customer.	4. Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 11(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, and shall consider terminating the business relationship and making a suspicious transaction report to the <i>FIU</i> in accordance with Article 32 in relation to the customer.	4. — Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 11(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, and shall consider terminating terminatetermina ting the business relationship and consider making a suspicious transaction report to the financial intelligence unit (FIU) in accordance with Article 32 in relation to the customer.	HU: HU supports the proposal of the COUNCIL general approach. UK: The UK strongly supports the Council text, which makes termination of the business relationship a requirement where CDD cannot be applied. It also requires firms to consider making a SAR, rather than requiring it in all cases, which is an important distinction as in some cases (eg a non-cooperative customer), there are no grounds for suspicion despite failure to apply all CDD measures. DE: Due to Rec. 10 the legal

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						<p>consequence when the performance of CDD is not possible, is compulsory therefore the text proposed by the Council should be maintained.</p> <p>NL:</p> <p>EP text is OK.</p> <p>Certain life insurances cannot just be terminated. Hence it is better to use 'consider terminating' and 'making a suspicious transaction report' (EP text)</p>
306.	Art. 12 – para 4 – subpara 2	Member States shall not apply the previous subparagraph to, notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such exemption relates to ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.	Member States shall not apply the previous first subparagraph to, notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such exemption relates to ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings <u>and is necessary to ensure respect of the rights guaranteed in the Articles 7, 47 and 48 of the Charter of Fundamental</u>	Member States shall not apply the previous subparagraph to, notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such <i>an</i> exemption relates to ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.	Member States shall not apply the previous firstprevious subparagraph to, notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such <i>an</i> exemption relates to ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings <u>and is necessary to ensure respect of the rights guaranteed in the Articles 7, 47 and 48 of</u>	<p>AT:</p> <p><u>Austrian Position:</u> We do not see the need for inserting these references to the EU's Fundamental Rights Charter. The insertion only creates additional criteria for the application of the exemption. We would thus suggest deleting the reference to the FRC. This would also compromise with the EP's view.</p> <p>NL:</p> <p>We prefer GA the text, the</p>

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			<u>Rights of the European Union.</u>		the Charter of Fundamental Rights of the European Union.	reference to the Charter. LL: "first" seems to be better EN Delete "of Fundamental Rights of the European Union." It already appears before...
307.	Art. 12 – para 5	5. Member States shall require that obliged entities apply the customer due diligence procedures 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.	5. Member States shall require that obliged entities apply the customer due diligence procedures 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.	5. Member States shall require that obliged entities apply the customer due diligence procedures 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.	5. Member States shall require that obliged entities apply the customer due diligence procedures 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.	DELETED
308.	Section 2	SECTION 2	SECTION 2	SECTION 2	SECTION 2	
309.	Title	SIMPLIFIED CUSTOMER DUE DILIGENCE	SIMPLIFIED CUSTOMER DUE DILIGENCE	SIMPLIFIED CUSTOMER DUE DILIGENCE	SIMPLIFIED CUSTOMER DUE DILIGENCE	
310.	Art. 13	<i>Article 13</i>	<i>Article 13</i>	<i>Article 13</i>	<i>Article 13</i>	
311.	Art. 13 – para 1	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.	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.	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.	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.	AT: <u>Austrian Position:</u> It should be clearly stated whether situations of lower risks are to be identified <u>by either the MS or by the obliged entity</u> . The

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						present wording carries the risk of conflicting assessments of the risk level.
312.	Art. 13 – para 2	2. Before applying simplified customer due diligence measures obliged entities shall ascertain that the customer relationship or transaction presents a lower degree of risk.	2. Before applying simplified customer due diligence measures obliged entities shall ascertain that the customer relationship or transaction presents a lower degree of risk.	2. Before applying simplified customer due diligence measures obliged entities shall ascertain that the customer relationship or transaction presents a lower degree of risk.	2. Before Before applying simplified customer due diligence measures obliged entities shall ascertain that the customer relationship or transaction presents a lower degree of risk.	
313.	Art. 13 – para 3	3. Member States shall ensure that obliged entities carry out sufficient monitoring of the transaction or business relationship to enable the detection of unusual or suspicious transactions.	3. Member States shall ensure that obliged entities carry out sufficient monitoring of the transaction or business relationship to enable the detection of unusual or suspicious transactions.	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.	3. Member Member States shall ensure that obliged entities carry out sufficient monitoring of the transaction transactions or business relationship relationships to enable the detection of unusual or suspicious transactions.	NL: EP text OK
314.	Art. 14	<i>Article 14</i>	<i>Article 14</i>	<i>Article 14</i>	<i>Article 14</i>	
315.	Art. 14 – para 1	When assessing the money laundering and terrorist financing risks relating to types of customers, countries or 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.	When assessing the money laundering and terrorist financing risks relating to types of customers, countries or 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	When assessing the money laundering and terrorist financing risks relating to types of customers, countries or geographic areas, and particular products, services, transactions or delivery channels, Member States and obliged entities shall take into account at least the factors relating to customer and product, service, transaction	When assessing the money laundering and terrorist financing risks relating to types of customers, countries or geographic areas, and particular products, services, transactions or delivery channels, Member States and obliged entities shall take into account at least the factors relating to customer and product, service, transaction	LT: <u>LT could support EP ECON drafting of Art. 14.</u> <u>UK:</u> EL: We prefer Council's text

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			<p>situations set out in Annex II.</p>	<p><i>or delivery channel as</i> potentially lower risk situations set out in Annex II.</p>	<p><i>or delivery channel as</i> potentially lower risk situations set out in Annex II.</p>	<p>BE:</p> <p>Keep text of Council. Why is this specification necessary if reference is made to the Annexe II?</p> <p>NL:</p> <p><u>The text added by the EP suggests that the geographical factors in Annex II are <i>not</i> to be taken into account.</u> We do not want this.</p> <p>PT:</p> <p>Comments related to EP amendments to Annex II</p> <p>We strongly oppose amendments concerning the inclusion of the following low-risk scenarios:</p> <ul style="list-style-type: none"> - Amendment 136 (as practice demonstrates that <u>beneficial owners of pooled accounts held by notaries and other legal professionals</u> pose a high risk of ML/TF); - Amendment 141 (as <u>non-face-to-face business relationships or transactions</u> always represent a high-risk
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						<p>scenario, in line with FATF's IN to R. 10; In our view, <u>verification of the identity through electronic devices</u> would, in a best case scenario, lead to the application of normal CDD).</p> <p>Identically, we strongly oppose the elimination operated by EP's amendment 148, as <u>new products and business practices</u> have been internationally recognized as a particular threat to AML/CFT (we recall FATF's R. 15, as well as the work developed on new payment methods).</p> <p>On the other hand, we support the introduction of the low-risk scenarios brought by the following amendments voted by the EP in its first reading: 137 to 140 and 142.</p> <p>Lastly, the introduction of amendment 145 (<u>equivalent jurisdictions identified by the Commission</u>) would only make sense if a "white-list" approach towards 3rd countries is adopted in the text.</p>
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316.	Art. 15	Article 15	Article 15	Article 15	Article 15	
317.	Art. 15 – para 1	EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to in Article 2(1)(1) and (2) 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/or the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within 2 years of the date of entry into force of this Directive.	EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to in Article 2(1)(1) and (2) 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/or the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account should <u>shall</u> be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within 2 years of the date of entry into force of this Directive	<i>The ESAs shall, by ...* [OJ please insert date: 12 months after the date of entry into force of this Directive], issue guidelines addressed to competent authorities and the obliged entities referred to in Article 2(1)(1) and (2) 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/or the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be laid down. █</i>	EBA, EIOPA and ESMA shall <u>The ESAs shall, by ...*</u> <u>[OJ please insert date: 12 months after the date of entry into force of this Directive],</u> issue guidelines addressed to competent authorities and the obliged entities referred to in Article 2(1)(1) and (2) 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/or the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account should <u>shall</u> <u>should</u> be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within 2 years of the date of entry into force of this Directive <u>laid down.</u> █	UK: The Council text is preferable - the EP timetable is too short DE: A 12 month deadline seems too ambitious therefore we support the Council proposal. BE: Reducing the time left to the ESAs from 2 to 1 year is certainly not very realistic given the procedures defined in the ESAs Regulations! Please, keep the 2 year timeframe. NL: The period of time suggested by the EP (12 months) is very short. We prefer 2 years (GA text) LL: <u>SHALL is used for Articles, SHOULD for recitals, please use shall here... (twice)</u>

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						Proposal : "These guidelines shall be issued by... * (footnote : OJ : please insert : 2 years of the date of entry into force of this Directive)
318.	Section 3	SECTION 3	SECTION 3	SECTION 3	SECTION 3	
319.	Title	ENHANCED CUSTOMER DUE DILIGENCE	ENHANCED CUSTOMER DUE DILIGENCE	ENHANCED CUSTOMER DUE DILIGENCE	ENHANCED CUSTOMER DUE DILIGENCE	
320.	Art. 16	Article 16	Article 16	Article 16	Article 16	DELETED
321.	Art. 16 –para 1 – subpara 1	1. In cases identified in Articles 17 to 23 of this Directive and in other cases of higher risks 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.	1. In cases identified in Articles 17 to 23 of this Directive and <u>when dealing with natural persons or legal entities established in the third countries, identified by the Commission as high-risk in accordance with Article 8a, also</u> in other cases of higher risks 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.	1. In cases identified in Articles 17 to 23 of this Directive and 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.	1. ———— In cases identified in Articles 17 to 23 of this Directive and when dealing with natural persons or legal entities established in the third countries, identified by the Commission as high-risk in accordance with Article 8a, also in other cases of higher risks 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.	DELETED
322.	Art. 16 –para 1 – subpara 2		<u>Enhanced customer due diligence measures need not be invoked automatically with respect to branches and</u>		Enhanced — customer — due diligence measures need not be — invoked — automatically with respect to branches and	DELETED

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			<p><u>majority-owned subsidiaries of obliged entities established in the European Union which are located in the third countries, identified by the Commission as high-risk in accordance with Article 8a, if these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 42. Member States shall ensure that these cases are handled by obliged entities by using a risk-based approach.</u></p>		<p>majority-owned subsidiaries of obliged entities established in the European Union which are located in the third countries, identified by the Commission as high-risk in accordance with Article 8a, if these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 42. Member States shall ensure that these cases are handled by obliged entities by using a risk-based approach.</p>	
323.	Art. 16 –para 2	<p>2. Member States shall require obliged entities to examine, as far as reasonably possible, the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. In particular, they shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious.</p>	<p>2. Member States shall require obliged entities to examine, as far as reasonably possible, the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. In particular, they shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious.</p>	<p>2. Member States shall require obliged entities to examine the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose, <i>or which constitute tax offences within the meaning of Article 3(4)(f)</i>. In particular, they shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious.</p>	<p>2. Member States shall require obliged entities to examine, as far as reasonably possible, the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose, <i>or which constitute tax offences within the meaning of Article 3(4)(f)</i>. In particular, they shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious.</p>	<p>DELETED</p>

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				<i>Where an obliged entity determines such an unusual or suspicious transaction or activity, it shall, without delay, inform the FIUs of all Member States that might be concerned.</i>	appear unusual or suspicious. <u><i>Where an obliged entity determines such an unusual or suspicious transaction or activity, it shall, without delay, inform the FIUs of all Member States that might be concerned.</i></u>	
324.	Art. 16 –para 3	3. When assessing the money laundering and terrorist financing risks, Member States and obliged entities shall take into account at least the factors of potentially higher-risk situations set out in Annex III.	3. When assessing the money laundering and terrorist financing risks, Member States and obliged entities shall take into account at least the factors of potentially higher-risk situations set out in Annex III.	3. When assessing the money laundering and terrorist financing risks, Member States and obliged entities shall take into account at least the factors of relating to <u><i>customer and product, service, transaction or delivery channel as</i></u> potentially higher-risk situations set out in Annex III.	3. ———— When assessing the money laundering and terrorist financing risks, Member States and obliged entities shall take into account at least the factors of relating to <u><i>customer and product, service, transaction or delivery channel as</i></u> potentially higher-risk situations set out in Annex III.	DELETED
325.	Art. 16 –para 4	4. EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to Article 2(1)(1) and (2) 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/or the measures to be taken in situations where enhanced due	4. EBA, EIOPA and ESMA shall issue guidelines addressed to competent authorities and the obliged entities referred to <u>in</u> Article 2(1)(1) and (2) 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/or the measures to be taken in situations where enhanced due	4. <i>The ESAs shall, by ... * [OJ please insert date: 12 months after the date of entry into force of this Directive],</i> issue guidelines addressed to competent authorities and the obliged entities referred to Article 2(1)(1) and (2) 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	4. ———— EBA, EIOPA and ESMA <u><i>The ESAs shall, by ... * [OJ please insert date: 12 months after the date of entry into force of this Directive],</i></u> issue guidelines addressed to competent authorities and the obliged entities referred to in	DELETED

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		diligence measures need to be applied. Those guidelines shall be issued within 2 years of the date of entry into force of this Directive.	diligence measures need to be applied <u>are appropriate. Specific account shall be taken of the nature and size of the business, and where appropriate and proportionate, specific measures foreseen.</u> Those guidelines shall be issued within 2 years of the date of entry into force of this Directive.	and/or the measures to be taken in situations where enhanced due diligence measures need to be applied. I	to be taken into consideration and/or the measures to be taken in situations where enhanced due diligence measures need to be applied <u>are appropriate. Specific account shall be taken of the nature and size of the business, and where appropriate and proportionate, specific measures foreseen.</u> Those guidelines shall be issued within 2 years of the date of entry into force of this Directive. <u>applied.</u> I	
326.	Art. 17	<i>Article 17</i>	<i>Article 17</i>	<i>Article 17</i>	<i>Article 17</i>	PT: Amendments adopted by the Council's GA, intended to accommodate the definition of "correspondent relationship" proposed by the Council in a new Article 3 (6a), should be kept.
327.	Art. 17 –para 1	In respect of cross-frontier correspondent banking relationships with respondent institutions from third countries, Member States shall, in addition to the customer due diligence measures as set out in Article 11, require their credit	In respect of cross-frontier correspondent banking relationships with respondent institutions from third countries, Member States shall, in addition to the customer due diligence measures as set out in Article 11, require their credit <u>and</u>	In respect of <i>cross-border</i> correspondent banking relationships with respondent institutions from third countries, Member States shall, in addition to the customer due diligence measures as set out in Article 11, require their credit	In respect of <i>cross-frontierborder</i> correspondent banking relationships with respondent institutions from third countries, Member States shall, in addition to the customer due diligence measures as set out in Article 11, require their credit <u>and</u>	DE: See comment 296 BE: It would be consistent to require that EDD is applied in case of business relationship

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		institutions to:	<u>financial</u> institutions to:	institutions to:	financial institutions to:	<p>between non-banking financial institutions that are similar to correspondent banking relationships: there is no logical reason to restrict the application of this requirement to banks only. The wording proposed by the Council should thus be retained.</p> <p>NL:</p> <p>Border (EP text) is more accurate than frontier.</p> <p>Credit <i>and</i> financial institutions (GA text) is more accurate.</p> <p>RO:</p> <p>RO suggests maintaining the proposal of the EU Council in respect to adding “financial institution” along to “credit institutions”, as entities obliged to apply CDD measures, as mentioned below.</p> <p>LL:</p> <p><u>Cross-border is more used in UE law...</u></p>
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328.	Art. 17 –para 1 – point a	(a) gather sufficient information about a 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;	(a) gather sufficient information about a 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;	(a) gather sufficient information about a 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;	(a) gather sufficient information about a 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;	
329.	Art. 17 –para 1 – point b	(b) assess the respondent institution's anti-money laundering and anti-terrorist financing controls;	(b) assess the respondent institution's anti-money laundering and anti-terrorist financing <u>AML/CFT</u> controls;	(b) assess the respondent institution's anti-money laundering and anti-terrorist financing controls;	(b) assess the respondent institution's anti-money laundering and anti-terrorist financing <u>AML/CFT</u> financin <u>g</u> controls;	NL: EP text OK
330.	Art. 17 –para 1 – point c	(c) obtain approval from senior management before establishing new correspondent banking relationships;	(c) obtain approval from senior management before establishing new correspondent banking relationships;	(c) obtain approval from senior management before establishing new correspondent banking relationships;	(c) obtain approval from senior management before establishing new correspondent banking relationships;	BE: See above: we suggest maintaining the deletion of "banking". NL: EP text OK
331.	Art. 17 –para 1 – point d	(d) document the respective responsibilities of each institution;	(d) document the respective responsibilities of each institution;	(d) document the respective responsibilities of each institution;	(d) document the respective responsibilities of each institution;	
332.	Art. 17 –para 1 – point e	(e) with respect to payable-through accounts, be satisfied that the respondent credit institution has verified the identity of and performed ongoing due diligence on the	(e) with respect to payable-through accounts, be satisfied that the respondent credit <u>or financial</u> institution has verified the identity of and performed ongoing due	(e) with respect to payable-through accounts, be satisfied that the respondent credit institution has verified the identity of and performed ongoing due diligence on the	(e) with respect to payable-through accounts, be satisfied that the respondent credit or financial institution has verified the identity of and performed ongoing due	<u>UK</u> : <u>The deletion of financial institution is not appropriate.</u> DE:

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		customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.	diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.	customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.	diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.	<p>See comment 296</p> <p>BE:</p> <p>See above: we suggest maintaining the insertion of "or financial".</p> <p>NL:</p> <p>GA text more accurate</p> <p>RO:</p> <p>RO suggests maintaining the proposal of the EU Council in respect to adding "financial institution" along to "credit institutions", as entities obliged to apply CDD measures, as mentioned below.</p>
333.	Art. 18	<i>Article 18</i>	<i>Article 18</i>	<i>Article 18</i>	<i>Article 18</i>	
334.	Art. 18 –para 1	In respect of transactions or business relationships with foreign politically exposed persons, Member States shall, in addition to the customer due diligence measures set out in Article 11, require obliged entities to:	In respect of transactions or business relationships with foreign politically exposed persons, Member States shall, in addition to the customer due diligence measures set out in Article 11, require obliged entities to:	In respect of transactions or business relationships with foreign politically exposed persons, Member States shall, in addition to the customer due diligence measures set out in Article 11, require obliged entities to:	In respect of transactions or business relationships with foreign politically exposed persons, Member States shall, in addition to the customer due diligence measures set out in Article 11, require obliged entities to:	<p>ES:</p> <p>We strongly support the approach taken by the EP, which makes a very clear distinction on the treatment given to domestic PEPs (i.e. national) and the one given to international PEPs. The</p>

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						<p>EP approach recognises that it is absolutely normal that domestic PEPs have assets and conducts transactions in the country, and therefore additional factors should be present in order to require enhanced due diligence.</p> <p>The drafting of the EP is not only consistent with risk but also with the principle to observe proportionality and not subjecting obliged entities to unreasonably burdensome obligations. Therefore we support adhering to articles 18 and 19 as drafted by the EP.</p> <p>LT:</p> <p><u>LT supports Council GA drafting of Art. 18.</u></p> <p>LV:</p> <p>We support proposal of Council because management system is crucial to implement procedures effectively.</p> <p>FR:</p>
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						<p>France supports the EP's text (art. 18) which distinguishes domestic and foreign PPE. And the risk management system for every PPE in the Council's text (cf art. 18 a) is contrary to the FATF's recommendation on PPE.</p> <p>BE:</p> <p>Keep Council text.</p> <p>We agree, and this is crucial in our view: this was the only solution that has been found to avoid criticism of discrimination based on nationality within the EU.</p> <p>NL:</p> <p>Internal market principles prohibit the distinction made by FATF which is also in the EP text. Therefore we go with the GA text.</p> <p>MT:</p> <p>See previous comment in relation to the definition of PEP and the comments on the distinction between domestic, foreign and PEPs within international organisations.</p>
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335.	Art. 18 –para 1 – point a	(a) have appropriate risk-based procedures to determine whether the customer or the beneficial owner of the customer is such a person;	(a) have appropriate <u>risk management systems, including</u> risk-based procedures, to determine whether the customer or the beneficial owner of the customer is such a person;	(a) have appropriate risk-based procedures to determine whether the customer or the beneficial owner of the customer is such a person;	(a) have have appropriate risk management systems, including risk-based procedures, to determine whether the customer or the beneficial owner of the customer is such a person;	<p>HU:</p> <p>HU supports COM and EP proposal</p> <p>DE:</p> <p>The wording proposed by the Council is in line with Rec. 12 and therefore should be retained.</p> <p>NL:</p> <p>Internal market principles prohibit the distinction made by FATF which is also in the EP text. Therefore we go with the GA text.</p> <p>PT:</p> <p>See our comments on Article 3 (7).</p> <p>If the Council's neutral approach on PEPs prevails, this provision shall provide further flexibility on how MSs intend to simultaneously comply with FATF's R. 12 and the EU framework. In this context, this provision shall be amended as follows:</p> <p>“a) <u>take reasonable</u></p>
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						<u>measures</u> and/or have appropriate risk management systems, including risk-based procedures [...]"
336.	Art. 18 –para 1 – point aa (new)		<u>(b) in cases of business relationships with such persons, apply the following measures:</u>		(b) in cases of business relationships with such persons, apply the following measures:	<p>BE:</p> <p>The "two steps approach" provided by the Council compromise is clearer. Council text should be kept.</p> <p>NL:</p> <p>Internal market principles prohibit the distinction made by FATF which is also in the EP text. Therefore we go with the GA text.</p> <p>PT:</p> <p>In the circumstance that the Council's approach on PEPs prevails, this provision shall be amended as follows, for the reasons pointed out in our previous comment:</p> <p>"(b) in cases of business relationships with such persons, apply, <u>where appropriate</u>, the following measures."</p>
337.	Art. 18 –para	(b) obtain senior management approval for establishing or	(bii) obtain senior management approval for	(b) obtain senior management approval for establishing or	(bii) – b) obtain senior management approval for	

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	1 – point b	continuing business relationships with such customers;	establishing or continuing business relationships with such customers;	continuing business relationships with such customers;	establishing or continuing business relationships with such customers;	
338.	Art. 18 –para 1 – point c	(c) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;	(ejii) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;	(c) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;	(ejii)— c) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;	
339.	Art. 18 –para 1 – point d	(d) conduct enhanced ongoing monitoring of the business relationship.	(d iv) conduct enhanced ongoing monitoring of the business relationship.	(d) conduct enhanced ongoing monitoring of the business relationship.	(d iv)— d) conduct enhanced ongoing monitoring of the business relationship.	
340.	Art. 19	<i>Article 19</i>	<i>Article 19</i>	<i>Article 19</i>	<i>Article 19</i>	<p>LV:</p> <p>We would like to keep Council text.</p> <p>PT:</p> <p>See our comments on Article 3 (7).</p> <p>We support the deletion of article 19 (in case the Council's neutral approach on PEPs prevails)</p>
341.	Art. 19 –para 1	In respect of transactions or business relationships with domestic politically exposed persons or a person who is or has been entrusted with a prominent function by an	deleted	In respect of transactions or business relationships with domestic politically exposed persons or <i>persons</i> who <i>are</i> or <i>who have</i> been entrusted with a prominent function by an	deleted <u>In respect of transactions or business relationships with domestic politically exposed persons or persons who are or who have been entrusted with a</u>	<p>UK:</p> <p>The Council text was deleted because it no longer distinguishes between foreign</p>

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		international organisation, Member States shall, in addition to the customer due diligence measures set out in Article 11, require obliged entities:		international organisation, Member States shall, in addition to the customer due diligence measures set out in Article 11, require obliged entities:	<u>prominent function by an international organisation, Member States shall, in addition to the customer due diligence measures set out in Article 11, require obliged entities:</u>	and domestic PEPs, hence these EP provisions (which build on this distinction) are no longer relevant. DE: We support the wording proposed by the EP since it is in line with Rec. 12. FR: <u>The French authorities support the distinction between domestic PPE (CDD) and foreign PPE (enhanced CDD) which is done in the EP's text.</u> BE: <u>Delete the EP amendment.</u> See above: it is crucial to maintain an equal treatment of EU and non-EU PEPs. NL: Internal market principles prohibit the distinction made by FATF which is also in the EP text. Therefore we go with the GA text.
342.	Art. 19 –para 1 – point a	(a) to have appropriate risk-based procedures to determine		(a) to have appropriate risk-based procedures to determine	<u>(a) to have appropriate risk-based procedures to</u>	DE:

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		whether the customer or the beneficial owner of the customer is such a person;		whether the customer or the beneficial owner of the customer is such a person;	<u>determine whether the customer or the beneficial owner of the customer is such a person;</u>	See no. 341 NL: Internal market principles prohibit the distinction made by FATF which is also in the EP text. Therefore we go with the GA text.
343.	Art. 19 –para 1 – point b	(b) in cases of higher risk business relationships with such persons, to apply the measures referred to in points (b), (c) and (d) of Article 18.		(b) in cases of higher risk business relationships with such persons, to apply the measures referred to in points (b), (c) and (d) of Article 18.	<u>(b) in cases of higher risk business relationships with such persons, to apply the measures referred to in points (b), (c) and (d) of Article 18.</u>	DE: See no. 341 NL: Internal market principles prohibit the distinction made by FATF which is also in the EP text. Therefore we go with the GA text.
344.	Art. 19a (new)			<i>Article 19a</i>	<u>Article 19a</u>	LV: We cannot support proposal of Parliament because it will take disproportional resources and obliged entities can get the information from clients directly.

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						<p>BE:</p> <p>BE has strong doubts that the establishment of such list is feasible. And if it can be established, it will be impossible to keep up to date. Where does it stop (e.g. even municipalities, should the list be updated after each national, regional, local elections)? As for international agencies, they enjoy privileges and immunities and we do not think the EU could obtain the information.</p>
345.	Art. 19a – para 1 (new)			<p><i>The Commission, in cooperation with Member States and international organisations, shall draw a list of domestic politically exposed persons and persons resident in a Member State who are or who have been entrusted with a prominent function by an international organisation. The list shall be accessible by competent authorities and by obliged entities.</i></p>	<p><u><i>The Commission, in cooperation with Member States and international organisations, shall draw a list of domestic politically exposed persons and persons resident in a Member State who are or who have been entrusted with a prominent function by an international organisation. The list shall be accessible by competent authorities and by obliged entities.</i></u></p>	<p>ES:</p> <p>Practical reasons prevent us from supporting this initiative: different definitions of domestic PEPs within MS (local, regional, central...), need for two lists (one for the Directive and another one to meet national requirements), need to harmonise what reliable and stable ID data would be added to the name in order to avoid homonymy, conditions for access by obliged entities (does the EP not see any DP issue here?), feasibility of obtaining such</p>

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						<p><u>lists and of ensuring accuracy and updateness.... Is the EC capable of obtaining such data from international organisations? Which organisations? Potential role of the EP?...</u></p> <p>AT:</p> <p><u>EP Amendment 85:</u></p> <p>The EP Amendment envisages a list of domestic and international organisation PEPs drawn up by the EC in co-operation with EU-MS and IOs.</p> <p><u>Austrian Position:</u> We do not support a list of domestic and IO PEPs, because we are of the opinion that PEPs identification lies at the heart of EDD measures that have to be carried out by the obliged entities themselves. In practice the EC would rely heavily on information provided by EU-MS who would have to carry the whole burden. Consequently, lobbying the EU-MS to get withdrawn from the list is likely to happen. The public sector should not take on obligations assigned to the</p>
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						<p>private sector. CZ:</p> <p>It is not possible to draw such a list and ensure that it would be actual and complete.</p> <p>LT:</p> <p><u>LT strongly objects to EP ECON proposal to insert new Art. 19a.</u></p> <p>UK:</p> <p>UK does not support this amendment.</p> <p>A list of politically exposed persons is likely to be limitative and not consider the whole definition of PEP as defined by FAFTF and in the Council text.</p> <p>Private firms provide such a listing. Member States do not have to take on the responsibility, legal liability and public budget to bring down the legitimate cost of compliance for obliged entities.</p> <p>DE:</p>
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						<p>We do not support a EU public PEP list.</p> <p>There are already well functioning commercial models that provide obliged entities with information who are the relevant PEPs.</p> <p>We do not see the necessity to a new government driven approach.</p> <p>DK:</p> <p>DK questions the approach suggested by the European Parliament and finds that the new article 19a should be deleted.</p> <p>EL:</p> <p>We agree to add article 19a.</p> <p>FR:</p> <p><u>The French authorities do not support the EP's proposal of art. 19a (list of PPE draw up by the Commission)</u></p> <p>NL:</p> <p><u>We strongly object to an EU list of PEPs.</u> First of all it is</p>
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						<p>the responsibility of the obliged entities to identify PEPs. Secondly, this list will almost automatically be outdated, therefore of no use.</p> <p>RO:</p> <p>RO suggests clarifications in respect to the modality of drafting the list. Is this to include the reference to the positions that entry in the categories of PEPs or refers to the names of persons. In case there is opted for the latter, it will appear the need to permanently update /modify the list of the names and, therefore, a more complex mechanism will be required.</p> <p>PT:</p> <p>We strongly oppose the EP proposal for article 19a.</p> <p>The creation of a EU PEP list, as proposed by the EP, comes with a significant number of disadvantages:</p> <p>(i) The creation, maintenance and update of such a list will place an overwhelming burden</p>
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						<p>not only on the Commission but also on Member States;</p> <p>(ii) This will result in a decrease of quality of PEP controls on the part of obliged entities, when comparing with private market lists;</p> <p>(iii) The notification that people are in and out of the list increases the awareness on possible CDD / EDD measures application, thus enabling people to adjust their behaviour accordingly;</p> <p>(iv) Even if it is expressly foreseen the non-exhaustive nature of such a list, the risk remains that obliged entities start to use only the list run by the European Commission and Member States. This may generate the problem of certain PEPs not being adequately identified simply because they were not on such public list. Moreover, enforcement actions in these cases will be highly jeopardized.</p> <p>In this context, we can't accept that private suppliers are refrained from making "PEPs lists" available to obliged entities for the purposes of complying with</p>
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						<p>the obligations laid down in the AMLD.</p> <p>Nevertheless, the existence of "PEP lists" for compliance purposes shall be considered regardless of the further prohibition of obliged entities processing / transferring the data contained in such lists for commercial purposes</p> <p>[which already results from the existing DP framework, as expressly recognized by recital (31) of this AMLD].</p> <p>LL:</p> <p><u>Quid foreign?</u></p>
346.	Art. 19a – para 2 (new)			<p><i>The Commission shall notify the persons concerned that they have been placed on or removed from the list.</i></p>	<p><i><u>The Commission shall notify the persons concerned that they have been placed on or removed from the list.</u></i></p>	<p>UK:</p> <p>The Commission core AML responsibilities and resources should not be diverted to costly and burdensome exercise to PEPs across the EU.</p> <p>NL:</p> <p><u>We strongly object to an EU list of PEPs.</u> First of all it is the responsibility of the obliged entities to identify</p>

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						PEPs. Secondly, this list will almost automatically be outdated, therefore of no use. PT: .
347.	Art. 19a – para 3 (new)			<i>The requirements in this Article shall not exempt obliged entities from their customer due diligence obligations, and obliged entities shall not rely exclusively on that information as sufficient to fulfil those obligations.</i>	<u><i>The requirements in this Article shall not exempt obliged entities from their customer due diligence obligations, and obliged entities shall not rely exclusively on that information as sufficient to fulfil those obligations.</i></u>	UK: This is fine in principle as the same spirit applies when obliged entities resort to commercial database of PEPs. NL: <u>We strongly object to an EU list of PEPs.</u> First of all it is the responsibility of the obliged entities to indentify PEPs. Secondly, this list will almost automatically be outdated, therefore of no use.
348.	Art. 19a – para 4 (new)			<i>Member States shall take all appropriate measures to prevent the trade of information for commercial purposes on foreign politically exposed persons, domestic politically exposed persons, or persons who are or who have been entrusted with a prominent function by an international</i>	<u><i>Member States shall take all appropriate measures to prevent the trade of information for commercial purposes on foreign politically exposed persons, domestic politically exposed persons, or persons who are or who have been entrusted with a prominent function by an international</i></u>	CZ: CZ understand the new para as as reminder that personal info should not be misused. However, it should not be read as preventing creation of commercial databases and trade in such databases. Otherwise the obliged persons

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				<i>organisation.</i>	<u><i>organisation.</i></u>	<p>would not be able to identify foreign PEPs, or only by requiring an affidavit of such person, which may not be reliable.</p> <p>HU:</p> <p>HU cannot support this para.</p> <p>UK:</p> <p>This is an unacceptable intervention of the EU into the operation of free businesses and markets.</p> <p>Commercial PEP database draw on publically available information to help obliged entities identify PEP amount their customer database. It is the only feasible PEP identification tool for some high volume business.</p> <p>DE:</p> <p>There are already well functioning commercial models that provide obliged entities with information who are the relevant PEPs.</p> <p>We do not see the necessity to</p>
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						<p>a new government driven approach.</p> <p>BE:</p> <p><u>The list is drawn up by the Commission, then it would be its responsibility to take these measures. Moreover, since the list is public, how would such misuse be prevented?</u></p> <p>NL:</p> <p><u>There is nothing illegal in the trade in information on PEPs. We should not want to prohibit this. .</u></p>
349.	Art. 20	<i>Article 20</i>	<i>Article 20</i>	<i>Article 20</i>	<i>Article 20</i>	
350.	Art. 20 – para 1	Obligated entities shall 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 at the latest 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	Obligated entities shall 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 at the latest 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	Obligated entities shall take reasonable measures, <i>in accordance with the risk-based approach</i> , 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 at the latest at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where	Obligated entities shall take reasonable measures, <i>in accordance with the risk-based approach</i> , 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 at the latest at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where	<p>UK:</p> <p>Whilst there are references to the risk based approach in the directive's preamble, the emphasis of applying a risk based approach to the activity highlighted in this article is enhanced by the additional wording.</p> <p>FR:</p> <p><u>The EP's text is not conform with the FATF's standards (INR 12). France therefore</u></p>

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		identified, in addition to taking normal customer due diligence measures, Member States shall require obliged entities to:	identified, in addition to taking normal customer due diligence measures, Member States shall require obliged entities to:	there are higher risks identified, in addition to taking normal customer due diligence measures, Member States shall require obliged entities to:	there are higher risks identified, in addition to taking normal customer due diligence measures, Member States shall require obliged entities to:	<p><u>supports the Council's text (art. 20)</u></p> <p>BE:</p> <p>The amendment seems reasonable since it is not determined by the RBA here.</p> <p>According to the Recommendations Glossary, "The term Reasonable Measures means: appropriate measures which are <u>commensurate with the money laundering or terrorist financing risks</u>." The proposed insertion creates thus a redundancy... However, if it is considered as clearer, why not?</p> <p>NL:</p> <p>EP text OK</p>
351.	Art. 20 – para 1 – point a	(a) inform senior management before the payout of the policy proceeds;	(a) inform senior management before the payout of the policy proceeds;	(a) inform senior management before the payout of the policy proceeds;	(a) — inform senior management before the payout of the policy proceeds;	
352.	Art. 20 – para 1 – point b	(b) conduct enhanced scrutiny on the whole business relationship with the policyholder.	(b) conduct enhanced scrutiny on the whole business relationship with the policyholder.	(b) conduct enhanced scrutiny on the whole business relationship with the policyholder.	(b) — conduct enhanced scrutiny on the whole business relationship with the policyholder.	
353.	Art. 21	Article 21	Article 21	Article 21	Article 21	

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354.	Art. 21 – para 1	The measures referred to in Articles 18, 19 and 20 shall also apply to family members or persons known to be close associates of such politically exposed persons.	The measures referred to in Articles 18, 19 and 20 shall also apply to family members or persons known to be close associates of such politically exposed persons.	The measures referred to in Articles 18, 19 and 20, <i>but not those referred to in Article 19a</i> , shall also apply to family members or persons <i>who, as indicated by evidence, are</i> close associates of such <i>foreign or domestic</i> politically exposed persons.	The measures referred to in Articles 18, 19 and 20, <i>but not those referred to in Article 19a</i> , shall also apply to family members or persons known to be <i>who, as indicated by evidence, are</i> close associates of such <i>foreign or domestic</i> politically exposed persons.	<p><u>UK:</u></p> <p><u>The Council text is more balanced on PEPs overall.</u></p> <p><u>DE:</u></p> <p>The amendment proposed by the EP cannot be supported. Due to Rec. 12 the requirements apply to family members and close associates irrespective whether the PEP is domestic or foreign.</p> <p>Moreover, we do not support Art. 19a, so delete reference here.</p> <p><u>NL:</u></p> <p>“as indicated by evidence” suggests <i>a contrario</i> that in other cases no evidence would be needed. We suggest to leave this out.</p> <p><u>PT:</u></p> <p>FATF's R. 12 does not leave room for the amendments proposed by the EP, which shall be disregarded.</p>
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						<p>LL:</p> <p>Delete : <u>but not those referred to in Article 19a,</u></p> <p>There is no definition of "politically exposed persons"</p>
355.	Art. 22	<i>Article 22</i>	<i>Article 22</i>	<i>Article 22</i>	<i>Article 22</i>	
356.	Art. 22 – para 1	Where a person referred to in Articles 18, 19 and 20 has ceased to be entrusted with a prominent public function by a Member State or a third country or with a prominent function by an international organisation, obliged entities shall be required to consider the continuing risk posed by that person and to apply such appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk. This period of time shall not be less than 18 months.	Where a person referred to in Articles 18, 19 and 20 has ceased to be entrusted with a prominent public function by a Member State or a third country or with a prominent function by an international organisation, obliged entities shall be required to consider the continuing risk posed by that person and to apply such appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk. This period of time shall not be less than 18 months.	Where a person referred to in Articles 18, 19 and 20 has ceased to be a foreign politically exposed person, a domestic politically exposed person or a person who is or who has been entrusted with a prominent function by an international organisation, obliged entities shall be required to consider the continuing risk posed by that person and to apply such appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk. <i>That</i> period of time shall not be less than 12 months.	Where a person referred to in Articles 18, 19 and 20 has ceased to be entrusted with a prominent public function by a foreign politically exposed person, a Member State domestic politically exposed person or a third country person who is or who has been entrusted with a prominent function by an international organisation, obliged entities shall be required to consider the continuing risk posed by that person and to apply such appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk. This That period of time shall not be less than 18 12 months.	<p>ES:</p> <p><u>Although the specific minimum period of time is somehow arbitrary, we consider that 18 months might be more adequate than 12 (too scarce). Just for info in Spain the timeframe is 24 months.</u></p> <p><u>UK:</u></p> <p><u>The Council text is more balanced and in line with previous comments Council timetable are preferable.</u></p> <p>NL:</p> <p>We agree to the EP text (12 months)</p> <p>PT:</p>

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						<p>See comments on article 3(7) as for the distinction between foreign and domestic PEPs.</p> <p>We can't accept the proposed decrease of the 18-month initially proposed by the COM and agreed upon by the Council.</p> <p>We believe that the 12 month period referred to in the EP's approach does not adequately dissuade the integration of funds eventually originated by illicit conducts and practises (e.g. corruption).</p> <p>LL:</p> <p><i>"a person who is" is it a natural person?</i></p> <p><i>"that" is correct EN</i></p>
357. 	Art. 23	<i>Article 23</i>	<i>Article 23</i>	<i>Article 23</i>	<i>Article 23</i>	<p>PT:</p> <p>Amendments adopted by the Council's GA, intended to accommodate the definition of "correspondent relationship" proposed by the Council in a new Article 3 (6a), should be kept.</p>

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358.	Art. 23 – para 1	1. Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank and shall require that credit institutions take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank that is known to permit its accounts to be used by a shell bank.	1. Member States shall prohibit credit <u>and financial</u> institutions from entering into or continuing a correspondent banking relationship with a shell bank and shall require that credit <u>those</u> institutions take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank <u>credit or financial institution</u> that is known to permit its accounts to be used by a shell bank	1. Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank and shall require that credit institutions take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank that is known to permit its accounts to be used by a shell bank.	1. Member States shall prohibit credit <u>and financial</u> institutions from entering into or continuing a correspondent banking relationship with a shell bank and shall require that credit <u>those</u> credit institutions take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank <u>credit or financial institution</u> bank that is known to permit its accounts to be used by a shell bank.	DE: We prefer Council text that includes all types of financial institutions. EL: We prefer to keep the word “and financial institutions”. BE: Regarding the scope (banks only or also the financial institutions), comments made regarding Art. 17 are also applicable: the prohibition should also apply to non-banking financial institutions. NL: GA text is more accurate.
359.	Art. 23 – para 2	2. For the purposes of paragraph 1, "shell bank" shall mean a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is	2. For the purposes of paragraph 1, "shell bank" shall mean a credit <u>or financial</u> institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is	2. For the purposes of paragraph 1, "shell bank" shall mean a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is	2. For the purposes of paragraph 1, "shell bank" shall mean a credit <u>or financial</u> institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is	NL: GA text is more accurate LL: (Quid moving this to definitions?)

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		unaffiliated with a regulated financial group.	unaffiliated with a regulated financial group.	unaffiliated with a regulated financial group.	unaffiliated with a regulated financial group.	
360.	Section 4	SECTION 4	SECTION 4	SECTION 4	SECTION 4	
361.	Title	PERFORMANCE BY THIRD PARTIES	PERFORMANCE BY THIRD PARTIES	PERFORMANCE BY THIRD PARTIES	PERFORMANCE BY THIRD PARTIES	
362.	Art. 24	<i>Article 24</i>	<i>Article 24</i>	<i>Article 24</i>	<i>Article 24</i>	<p>LV:</p> <p>We can not support proposal of Parliament due to the following reasons:</p> <p>1) it is unclear how to hold liable third parties;</p> <p>2) liability of third persons is not a matter of AML.</p>
363.	Art. 24 – para 1	Member States may permit the obliged entities to rely on third parties to meet the requirements laid down in Article 11(1)(a), (b) and (c). However, the ultimate responsibility for meeting those requirements shall remain with the obliged entity which relies on the third party.	Member States may permit the obliged entities to rely on third parties to meet the requirements laid down in Article 11(1)(a), (b) and (c). However, the ultimate responsibility for meeting those requirements shall remain with the obliged entity which relies on the third party.	Member States may permit the obliged entities to rely on third parties to meet the requirements laid down in Article 11(1)(a), (b) and (c). However, the ultimate responsibility for meeting those requirements shall remain with the obliged entity which relies on the third party. <i>In addition, Member States shall ensure that any such</i>	Member States may permit the obliged entities to rely on third parties to meet the requirements laid down in Article 11(1)(a), (b) and (c). However, the ultimate responsibility for meeting those requirements shall remain with the obliged entity which relies on the third party. <i>In addition, Member States shall ensure that any such</i>	<p>CZ:</p> <p>CZ supports the Council's GA.</p> <p>LT:</p> <p><u>LT objects to proposal of EP ECON to share responsibility between obliged entities and third parties. Third parties are</u></p>

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				<p><i>third parties may also be held liable for breaches of national provisions adopted pursuant to this Directive.</i></p>	<p><u><i>third parties may also be held liable for breaches of national provisions adopted pursuant to this Directive.</i></u></p>	<p>not in the scope of this Directive, all responsibility for compliance with national legislation transposing this Directive should fall on obliged entities.</p> <p>SI:</p> <p>Third parties should not be held liable for breaches of national provisions since the ultimate responsibility for meeting those requirements remains with the obliged entity which relies on the third party.</p> <p>UK:</p> <p>Council text preferred as per comment to recital 24.</p> <p>The EP text suggests that third parties that perform AML/CTF-related services on behalf of obliged entities may themselves be liable for failure to comply with the Directive's provisions even though they are not themselves within scope. It is not clear how legally, this would be possible without extending the Directive's scope worldwide.</p>
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						<p><u>It is also undesirable as the amendment weakens obliged entities' accountability for their own compliance: outsourcing tends to increase risk and obliged entities that choose to outsource some of their compliance work must therefore be responsible for everything others do on their behalf.</u></p> <p>DE:</p> <p>Third parties do not fall within the range of obliged entities of the AMLD therefore the proposal made by the EP is not viable.</p> <p>EL:</p> <p>We agree to add the sentence "In addition.....to this Directive".</p> <p>BE:</p> <p><u>No responsibility remains fully with the obliged entity. Difficult to impose sanctions on other countries' obliged entities by the Member State itself.</u></p>
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						<p>It is to be underlined that this EP amendment is useless: a business introducer needs in any case to be an obliged entity (see below). If he fails to comply with CDD requirements, this failing can already be sanctioned by virtue of the AML/CFT rules applicable to that entity.</p> <p>NL:</p> <p>The additional text provided by the EP is impossible to supervise outside the home jurisdiction (in other MS or in third countries). We suggest to leave it out.</p> <p>PL:</p> <p>PL prefers the version proposed by the Council.</p> <p>MT:</p> <p><u>Third parties situated in third countries would not be applying national provisions adopted pursuant to the Directive given that they would not be EU member states.</u></p> <p>PT:</p>
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						<p>We fully support EP's proposal foreseeing third party liability for their non compliant practises on behalf of obliged entities.</p> <p>LL:</p> <p>LEGAL CONCERN to be checked : <u>"Member States shall ensure that any such third parties may also be held liable for breaches of national provisions adopted pursuant to this Directive"</u></p>
364.	Art. 25	Article 25	Article 25	Article 25	Article 25	
365.	Art. 25 – para 1	<p>1. For the purposes of this Section, "third parties" shall mean obliged entities who are listed in Article 2, or other institutions and persons situated in Member States or a third country, who apply customer due diligence requirements and record keeping requirements equivalent to those laid down in this Directive and their compliance with the requirements of this Directive is supervised in accordance with Section 2 of Chapter VI.</p>	<p>1. For the purposes of this Section, "third parties" shall mean obliged entities who are listed in Article 2, <u>their member organisations or federations</u>, or other institutions and persons situated in Member States or a third country, who apply customer due diligence requirements and record keeping requirements <u>equivalent to</u> <u>consistent with</u> those laid down in this Directive, <u>and their whose</u> compliance with the requirements of this Directive</p>	<p>1. For the purposes of this Section, "third parties" shall mean:</p> <p>(a) obliged entities who are listed in Article 2; <u>or</u></p> <p>(b) other institutions and persons situated in Member States or a third country, who apply customer due diligence requirements and record keeping requirements equivalent to those laid down in this Directive and their compliance with the requirements of this Directive is supervised in accordance</p>	<p>1. —— For the purposes of this Section, "third parties" shall mean:</p> <p>(a) obliged entities who are listed in Article 2, <u>their member organisations; or federations, or</u></p> <p>(b) other institutions and persons situated in Member States or a third country, who apply customer due diligence requirements and record keeping requirements equivalent to <u>consistent with</u> those laid down in this Directive, <u>and</u></p>	<p>ES:</p> <p><u>We support keeping the reference to the notion of equivalence.</u></p> <p>LT:</p> <p>LT is in favour of Council's GA text of art. 25.</p> <p><u>UK:</u></p> <p><u>Council text preferred.</u></p> <p>FR:</p>

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			is supervised in accordance in <u>consistent</u> with Section 2 of Chapter VI.	with Section 2 of Chapter VI.	their <u>whose</u> their compliance with the requirements of this Directive is supervised in accordance consistent <u>accordance</u> nce with Section 2 of Chapter VI.	France supports the EP's definition of « third parties ». French authorities do not understand the addition, in the Council's text, of the following words "their member organisations or federation ». BE: BE urges to keep the Council general approach and this amendment relating to the BE diamond sector; the Council text is safer than the EP amendment in Art. 33. NL: We prefer the GA text PL: PL prefers the version proposed by the Council. LL: Delete shall before "mean" a) and b) are better structure
366.	Art. 25 – para 2	2. The Member States shall consider information available on the level of geographical	2. <u>Member States shall prohibit obliged entities from relying on third parties</u>	2. The <i>Commission</i> shall consider information available on the level of geographical	2. ——— Member States shall prohibit obliged entities from relying on third parties	LV:

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		<p>risk when deciding if a third country meets the conditions laid down in paragraph 1 and shall inform each other, the Commission and EBA, EIOPA and ESMA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, of cases where they consider that a third country meets such conditions.</p>	<p><u>established in third countries indicated by the Commission as high-risk in accordance with Article 8a. Member States may exempt branches and majority-owned subsidiaries of obliged entities established in the European Union from the abovementioned prohibition if these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 42.</u> The Member States shall consider information available on the level of geographical risk when deciding if a third country meets the conditions laid down in paragraph 1 and shall inform each other, the Commission and EBA, EIOPA and ESMA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, of cases where they consider that a third country meets such</p>	<p>risk when deciding if a third country meets the conditions laid down in paragraph 1 and shall inform the <i>Member States, the obliged entities and the ESAs</i> to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, of cases where they consider that a third country meets such conditions.</p>	<p><u>established in third countries indicated by the Commission as high-risk in accordance with Article 8a. Member States may exempt branches and majority-owned subsidiaries of obliged entities established in the European Union from the abovementioned prohibition if these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 42.</u> The Member States shall consider information available on the level of geographical risk when deciding if a third country meets the conditions laid down in paragraph 1 and shall inform each other, the Commission <i>Member States, the obliged entities and EBA, EIOPA and ESMA</i> the ESAs to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, of cases where</p>	<p>We can not support proposal of Parliament because it will take disproportional resources and it is impossible to evaluate all countries of the world.</p> <p><u>UK:</u></p> <p><u>Council text preferred on black listing.</u></p> <p>The EP text has both a white and black listing. The issues with the equivalence list have been repeatedly raised. Council outcome clearly establishes a black list as a better alternative (despite UK own misgivings on this). It still provides some degree of guidance to obliged entities without risking FATF criticisms (of Member States who ran equivalence list as seen in the past) and without being subject to politicisation and controversy around the decision process that plagued the equivalence listing process.</p>
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			conditions.		they consider that a third country meets such conditions.	<p>DE:</p> <p>We support the proposal made by the Council.</p> <p>DK:</p> <p>DK prefers to maintain the general approach reached in Council regarding article 25. DK finds that this should remain an exclusive competence of Member States, whereas the Commission should have a more coordinating role.</p> <p>FR:</p> <p><u>France supports the Council's text which is conform with the FATF recommendation n° 12 and the art. 42.</u></p> <p>BE:</p> <p>This EP proposal means that EC must assess the equivalence of AML regimes in force in third countries. However, it is unlikely that there will be political will to come back to the technique of the "white list", and it is equally unlikely that resources</p>
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						<p>will be made available for establishing that white list. However, if such work stream is reactivated at EU level, and if sufficient resources can be allocated at EC level for the conduct of these assessments, we would not oppose to that turn-around.</p> <p>NL:</p> <p><u>We strongly object to any white list.</u></p> <p>If we follow the GA text here, the EP text is not as needed anymore. This would also be less work for the Commission.</p> <p>PT:</p> <p>Further to our comments on article 8a:</p> <p>(i) Only the Council's proposed procedure for a "black-list" approach will be acceptable for us. In such scenario (<u>maintenance of a "black-list" procedure</u>), we very much support the Council's GA as for the deletion of Article 25 (2) of the COM's initial proposal,</p>
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						<p>since the text needs to leave enough room for a risk-based approach under which, in this case, Member States shall not be mandatorily bound to the issuance of white lists at national level. Additionally, the current drafting of Article 25 (2), as proposed by the Council's GA, provides for a natural consequence (prohibition of reliance) of the "black-list" procedure while preserving the effectiveness of group-wide policies.</p> <p>(ii) If a "<u>white-list</u>" is intended to <u>remain</u> (which we consider <u>acceptable</u> insofar as the "<u>black-list</u>" procedure is <u>withdrawn from the text</u>), then we welcome the views expressed by the EP regarding the issuance of a list of equivalent jurisdictions by the Commission, in order to overcome the predictable political challenges. Notwithstanding, there is a need to articulate the creation of this procedure with SDD measures, as obliged entities will tend to consider countries included in the "white-list" as posing a low geographical risk</p>
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						<p>and, thus, follow SDD measures in these cases (see, to this effect, amendment 145 voted by the EP in its first reading).</p> <p>LL:</p> <p>Delete "relevant provisions of"</p>
367.	Art. 25 – para 2a (new)			<p><i>2a. The Commission shall provide a list of jurisdictions having anti-money laundering measures equivalent to provisions of this Directive and other related rules and regulations of the Union.</i></p>	<p><u><i>2a. The Commission shall provide a list of jurisdictions having anti-money laundering measures equivalent to provisions of this Directive and other related rules and regulations of the Union.</i></u></p>	<p>ES:</p> <p>We do support reinserting in the Directive the notion of equivalent countries. The EGMLTF could support the Commission in providing such list.</p> <p>LT:</p> <p>LT does not support EP ECON proposal to introduce "White lists".</p> <p>UK:</p> <p>As above.</p> <p>DE:</p> <p>We do not support a white list in addition to the black list.</p> <p>BE:</p>

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						<p>See above. We nevertheless draw the attention on the fact that, the concept of "equivalent third countries" has been deleted everywhere in the general approach of the Council.</p> <p>NL:</p> <p><u>We strongly object to any white list.</u></p> <p>PT:</p> <p>See our previous comment.</p> <p>LL:</p> <p><u>Delete "provisions of"</u></p>
368.	Art. 25 – para 2b (new)			<p><i>2b. The list referred to in paragraph 2a shall be regularly reviewed and updated according to the information received from Member States pursuant to paragraph 2.</i></p>	<p><u>2b. The list referred to in paragraph 2a shall be regularly reviewed and updated according to the information received from Member States pursuant to paragraph 2.</u></p>	<p>SI:</p> <p>Paragraph 2 does not referred to information received from Member States. For that reason it seems that paragraph 2b is not in compliance with paragraph 2 which contrary says that Commission shall inform Member States of cases where they consider that a third country meets such conditions.</p>

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						<p>UK:</p> <p>As above.</p> <p>DE:</p> <p>See no. 367.</p> <p>NL:</p> <p><u>We strongly object to any white list.</u></p>
369.	Art. 26	<i>Article 26</i>	<i>Article 26</i>	<i>Article 26</i>	<i>Article 26</i>	
370.	Art. 26 – para 1	1. Member States shall ensure that obliged entities obtain from the third party being relied upon the necessary information concerning the requirements laid down in Article 11(1)(a), (b) and (c).	1. Member States shall ensure that obliged entities obtain from the third party being relied upon the necessary information concerning the requirements laid down in Article 11(1)(a), (b) and (c).	1. Member States shall ensure that obliged entities obtain from the third party being relied upon the necessary information concerning the requirements laid down in Article 11(1)(a), (b) and (c).	1. Member States Member States shall ensure that obliged entities obtain from the third party being relied upon the necessary information concerning the requirements laid down in Article 11(1)(a), (b) and (c).	
371.	Art. 26 – para 2	2. Member States shall ensure that obliged entities to which the customer is being referred take adequate steps to ensure that relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner are immediately forwarded, on	2. Member States shall ensure that obliged entities to which the customer is being referred take adequate steps to ensure that relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner are immediately forwarded, on	2. Member States shall ensure that obliged entities to which the customer is being referred take adequate steps to ensure that relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner are immediately forwarded, on	2. Member States Member States shall ensure that obliged entities to which the customer is being referred take adequate steps to ensure that relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner are immediately forwarded, on	DELETED

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		request, by the third party.	request, by the third party.	request, by the third party.	request, by the third party.	
372.	Art. 27	<i>Article 27</i>	<i>Article 27</i>	<i>Article 27</i>	<i>Article 27</i>	
373.	Art. 27 – para 1	Member States shall ensure that the home competent authority (for group-wide policies and controls) and the host competent authority (for branches and subsidiaries) may consider that an obliged entity applies the measures contained in Article 25(1) and 26 through its group programme, where the following conditions are fulfilled:	Member States shall ensure that the home competent authority (for group-wide policies and controls) and the host competent authority (for branches and subsidiaries) may consider that an obliged entity applies complies with the measures contained in Articles 25(1) and 26 through its group programme, where the following conditions are fulfilled:	1. Member States shall ensure that the home competent authority (for group-wide policies and controls) and the host competent authority (for branches and subsidiaries) may consider that an obliged entity applies the measures contained in Article 25(1) and <i>Article</i> 26 through its group programme, where the following conditions are <i>met</i> :	1. Member States shall ensure that the home competent authority (for group-wide policies and controls) and the host competent authority (for branches and subsidiaries) may consider that an obliged entity applies complies with the measures contained in Articles Article 25(1) and Article 26 through its group programme, where the following conditions are fulfilled met :	UK: _No strong views. The EP text reverts to the verb “applies” which is perhaps preferable since it is more neutral. It implies the firm is doing something to comply but does not prejudge whether it is successful in doing so. NL: EP text is OK
374.	Art. 27 – para 1 – point a	(a) an obliged entity relies on information provided by a third party that is part of the same group;	(a) an obliged entity relies on information provided by a third party that is part of the same group;	(a) an obliged entity relies on information provided by a third party that is part of the same group;	(a) — an obliged entity relies on information provided by a third party that is part of the same group;	
375.	Art. 27 – para 1 – point b	(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;	(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;	(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;	(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;	
376.	Art. 27 – para 1 – point c	(c) the effective implementation of requirements referred to in point (b) is supervised at	(c) the effective implementation of requirements referred to in point (b) is supervised at	c) the effective implementation of requirements referred to in point (b) is supervised at	(c) — the effective implementation of requirements referred to in point (b) is supervised at	UK: We do not support the EP text as it lists the conditions under

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		group level by a competent authority.	group level by a competent authority.	group level by a <i>home</i> competent authority <i>in cooperation with host competent authorities</i> .	group level by a <i>home</i> competent authority- <i>in cooperation with host competent authorities</i> .	<p>which an obliged entities can rely on the CDD information obtained by their group. The cooperation between home and host supervisors is discussed in article 44 and 45.</p> <p>DE:</p> <p>The Council text should be retained.</p> <p>NL:</p> <p>EP text is OK</p>
377.	Art. 27 – para 1a (new)			<i>1a. The ESAs shall, by ...* [OJ please insert date: 12 months after the date of entry into force of this Directive], issue guidelines on the implementation of the supervisory regime by the competent authorities in the relevant Member States for group entities to ensure coherent and effective group level supervision.</i>	<i>1a. The ESAs shall, by ...* [OJ please insert date: 12 months after the date of entry into force of this Directive], issue guidelines on the implementation of the supervisory regime by the competent authorities in the relevant Member States for group entities to ensure coherent and effective group level supervision.</i>	<p>ES:</p> <p><u>This fits better in the section devoted to supervision.</u></p> <p>UK:</p> <p>We do not support the EP amendments. While there is a clear need to ensure coherent and effective group supervision, the provisions in the 4MLD are sufficient to achieve this.</p> <p>Additionally, it is unlikely to be effective due to marked – and justifiable – differences in supervisory regimes.</p> <p>BE:</p>

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						<p>BE could accept this EP amendment in a spirit of compromise. But limiting the time left to the ESAs to 1 year is certainly not very realistic given the procedures defined in the ESAs regulations! Please, provide a 2 year timeframe.</p> <p>NL:</p> <p>We prefer not to have the ESAs draw up guidelines.</p> <p>PT:</p> <p>We support the issuance of guidelines on group-based supervision by ESAs, in line with the EP's proposal.</p> <p>If possible, the scope of these guidelines should be broadened in such way that they also address group-based policies to be followed by obliged entities.</p> <p>However, the systematic placement of this provision does not seem correct.</p> <p>Instead of being integrated in "Performance by third parties"</p>
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						Section, we would rather see this provision in articles that deal in-depth with group-based supervision (notably articles 42 or 45). Otherwise, the relevance of these guidelines would be confined to reliance on 3rd parties.
378.	Art. 28	Article 28	Article 28	Article 28	Article 28	
379.	Art. 28 – para 1	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.	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.	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.	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.	
380.	Chapter III	CHAPTER III	CHAPTER III	CHAPTER III	CHAPTER III	
381.	Title	BENEFICIAL OWNERSHIP INFORMATION	BENEFICIAL OWNERSHIP INFORMATION	BENEFICIAL OWNERSHIP INFORMATION	BENEFICIAL OWNERSHIP INFORMATION	
382.	Art. 29	Article 29	Article 29	Article 29	Article 29	DELETED
383.	Art. 29 – para 1	1. Member States shall ensure that corporate or legal entities established within their territory obtain and hold adequate, accurate and current information on their beneficial ownership.	1. Member States shall ensure that corporate or and other legal entities established incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership. Member States shall ensure	1. Member States shall ensure that companies and other entities having legal personality, including trusts or entities with a similar structure or function to trusts, foundations, holdings and all other similar, in terms of structure or function,	1. Member States shall ensure that corporate or legal entities established within their territory obtain and hold adequate, accurate and current information on their beneficial ownership. Member States shall ensure that companies and other entities having legal personality, including trusts or entities with a similar structure or function to trusts, foundations, holdings and all other similar, in terms of structure or function,	DELETED

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			<p><u>that these entities are required to provide, in addition to basic information, information concerning the beneficial owner to obliged entities, when the obliged entities are taking customer due diligence measures in accordance with Article 10.</u></p>	<p><i>existing or future legal arrangements established or incorporated within their territory, or governed under their law obtain and, hold and transmit to a public central register, commercial register or companies register within their territory adequate, accurate and current and up-to-date information on them and on their beneficial ownership, at the moment of establishment as well as any changes thereof.</i></p>	<p><i><u>holdings and all other similar, in terms of structure or function, existing or future legal arrangements established or incorporated within their territory, or governed under their law obtain and, hold and transmit to a public central register, commercial register or companies register within their territory adequate, accurate and current and up-to-date information on them and on their beneficial ownership. Member States shall ensure that these entities are required to provide, in addition to basic information, information concerning, at the beneficial owner to obliged entities, when the obliged entities are taking customer due diligence measures in accordance with Article 10 moment of establishment as well as any changes thereof.</u></i></p>	
384.	Art. 29 – para 1a – subpara 1 (new)			<p><i>1a. The register shall contain the minimum information to clearly identify the company and its beneficial owner, namely the name, number, legal form and status of the</i></p>	<p><i><u>1a. The register shall contain the minimum information to clearly identify the company and its beneficial owner, namely the name, number, legal form and status of the</u></i></p>	DELETED

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				entity, proof of incorporation, address of the registered office (and of the principal place of business if different from the registered office), the basic regulatory powers (such as those contained in the Memorandum and Articles of Association), the list of directors (including their nationality and date of birth) and shareholder/beneficial owner information, such as the names, dates of birth, nationality or jurisdiction of incorporation, contact details, number of shares, categories of shares (including the nature of the associated voting rights) and proportion of shareholding or control, if applicable.	<u>entity, proof of incorporation, address of the registered office (and of the principal place of business if different from the registered office), the basic regulatory powers (such as those contained in the Memorandum and Articles of Association), the list of directors (including their nationality and date of birth) and shareholder/beneficial owner information, such as the names, dates of birth, nationality or jurisdiction of incorporation, contact details, number of shares, categories of shares (including the nature of the associated voting rights) and proportion of shareholding or control, if applicable.</u>	
385.	Art. 29 – para 1a – subpara 2 (new)			The requirements stipulated in this Article shall not exempt obliged entities from their customer due diligence obligations, and obliged entities shall not rely exclusively on that information as sufficient to fulfil those obligations.	<u>The requirements stipulated in this Article shall not exempt obliged entities from their customer due diligence obligations, and obliged entities shall not rely exclusively on that information as sufficient to fulfil those obligations.</u>	DELETED
386.	Art. 29 – para 1b (new)			1b. Regarding trusts or other types of legal entities and	<u>1b. Regarding trusts or other types of legal entities and</u>	DELETED

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				<p>arrangements, existing or future, with a similar structure or function, the information shall include the identity of the settlor, of the trustee(s), of the protector (if relevant), of the beneficiaries or class of beneficiaries, and of any other natural person exercising effective control over the trust. Member States shall ensure that trustees disclose their status to obliged entities when, 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 10. The information held should include the date of birth and nationality of all individuals. Member States shall follow the risk-based approach when publishing the trust deed and letter of wishes and shall ensure where applicable and while respecting the protection of personal information that information is disclosed to competent authorities, in particular to FIUs, and to obliged entities.</p>	<p><u>arrangements, existing or future, with a similar structure or function, the information shall include the identity of the settlor, of the trustee(s), of the protector (if relevant), of the beneficiaries or class of beneficiaries, and of any other natural person exercising effective control over the trust. Member States shall ensure that trustees disclose their status to obliged entities when, 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 10. The information held should include the date of birth and nationality of all individuals. Member States shall follow the risk-based approach when publishing the trust deed and letter of wishes and shall ensure where applicable and while respecting the protection of personal information that information is disclosed to competent authorities, in particular to FIUs, and to obliged entities.</u></p>	
387.	Art. 29 – para 2 – subpara 1	2. Member States shall ensure that the information referred to	2. Member States shall ensure that the information	2. The information referred to in <i>paragraphs 1, 1a and 1b</i>	<p>2. Member States shall ensure that the information</p>	DELETED

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		in paragraph 1 of this Article can be accessed in a timely manner by competent authorities and by obliged entities.	referred to in paragraph 1 of this Article can be accessed in a timely manner <u>is held in a specified location, for example in the case of companies in a public and central company registry, or in data retrieval systems, which ensure timely and unrestricted access</u> by competent authorities and by obliged entities <u>FIUs, without alerting the entity concerned</u>	<i>shall be accessible by competent authorities, in particular by FIUs, and by obliged entities of all Member States in a timely manner—1. Member States shall make the registers referred to in paragraph 1 publicly available following prior identification of the person wishing to access the information through basic online registration. The information shall be available online to all persons in an open and secure data format, in line with data protection rules, in particular as regards the effective protection of the rights of the data subject to access personal data and the rectification or deletion of inaccurate data. The fees charged for obtaining the information shall not exceed the administrative costs thereof. Any changes to the information displayed shall be clearly indicated in the register without delay and in any event within 30 days.</i>	referred to in paragraph 1 of this Article can be accessed in a timely manner <u>is held in a specified location, for example in the case of companies in a public and central company registry, or in data retrieval systems, which ensure timely and unrestricted access</u> by competent authorities and by obliged entities <u>FIUs, without alerting the entity concerned</u> <u>2. The information referred to in paragraphs 1, 1a and 1b shall be accessible by competent authorities, in particular by FIUs, and by obliged entities of all Member States in a timely manner—1. Member States shall make the registers referred to in paragraph 1 publicly available following prior identification of the person wishing to access the information through basic online registration. The information shall be available online to all persons in an open and secure data format, in line with data protection rules, in particular as regards the effective protection of the rights of the data subject to</u>	
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					<u>access personal data and the rectification or deletion of inaccurate data. The fees charged for obtaining the information shall not exceed the administrative costs thereof. Any changes to the information displayed shall be clearly indicated in the register without delay and in any event within 30 days.</u>	
388.	Art. 29 – para 2 – subpara 1a (new)		<u>Member States shall notify to the Commission the characteristics of the national mechanism used to hold beneficial ownership information.</u>	<i>The company registers referred to in paragraph 1 of this Article shall be interconnected by means of the European platform, the portal and optional access points established by the Member States pursuant to Directive 2012/17/EU. Member States, with the support of the Commission, shall ensure that their registers are interoperable within the system of register networking through the European platform.</i>	<u>Member States shall notify to the Commission the characteristics of the national mechanism used to hold beneficial ownership information. The company registers referred to in paragraph 1 of this Article shall be interconnected by means of the European platform, the portal and optional access points established by the Member States pursuant to Directive 2012/17/EU. Member States, with the support of the Commission, shall ensure that their registers are interoperable within the system of register networking through the European platform.</u>	DELETED
389.	Art. 29 – para		<u>4. Member States may</u>	<i>2a. The Commission, in</i>	<u>4. 2a. The Commission,</u>	DELETED

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	2a – subpara 1 (new)		<u>allow obliged entities to access information on beneficial ownership referred to in paragraph 2 and lay down the conditions to this effect.</u>	<i>cooperation with Member States, shall rapidly, constructively and effectively seek cooperation with third countries to encourage that equivalent central registers containing beneficial ownership information are established and information referred to in paragraphs 1 and 1a of this Article in their countries is made publically accessible.</i>	<i><u>in cooperation with Member States may allow obliged entities, shall rapidly, constructively and effectively seek cooperation with third countries to access information on encourage that equivalent central registers containing beneficial ownership information are established and information referred to in paragraph 2 and lay down the conditions to paragraphs 1 and 1a of this effect</u>Article in their countries is made publically accessible.</i>	
390.	Art. 29 – para 2a – subpara 2 (new)		<u>5. Member States shall ensure that competent authorities and FIUs are able to provide information referred to in paragraphs 1 and 2 to the competent authorities and FIUs of other Member States in a timely manner.</u>	<i>Priority shall be given to third countries that host a significant number of corporate or legal entities, including trusts, foundations, holdings and all other bodies that are similar in terms of structure or function and that hold shares indicating direct ownership pursuant to Article 3(5) in corporate or legal entities established in the Union.</i>	<i><u>5. Member States shall ensure that competent authorities and FIUs are able to provide information referred to in paragraphs 1 and 2 to the competent authorities and FIUs of other Member States in a timely manner.</u>Priority shall be given to third countries that host a significant number of corporate or legal entities, including trusts, foundations, holdings and all other bodies that are similar in terms of structure or function and that hold shares indicating direct ownership</i>	DELETED

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					<i>pursuant to Article 3(5) in corporate or legal entities established in the Union.</i>	
391.	Art. 29 – para 2b (new)		6. This Article does not exempt obliged entities from their customer due diligence obligations laid down in this Directive. Those obligations shall be fulfilled using a risk-based approach.	<i>2b. Member States shall lay down the rules on effective, proportionate and dissuasive penalties for natural or legal persons applicable to infringements of the national provisions adopted pursuant to this Article and shall take all measures necessary to ensure that such penalties are applied. For the purposes of this Article, Member States shall establish effective anti-abuse measures with view to preventing misuse based on bearer shares and bearer share warrants.</i>	6. This Article does not exempt obliged entities from their customer due diligence obligations laid down in this Directive. Those obligations shall be fulfilled using a risk-based approach. <i>2b. Member States shall lay down the rules on effective, proportionate and dissuasive penalties for natural or legal persons applicable to infringements of the national provisions adopted pursuant to this Article and shall take all measures necessary to ensure that such penalties are applied. For the purposes of this Article, Member States shall establish effective anti-abuse measures with view to preventing misuse based on bearer shares and bearer share warrants.</i>	DELETED
392.	Art. 29 – para 2c (new)		7. Member States shall provide for adequate and proportionate sanctions where corporate and other legal entities repetitively or systematically fail to comply	<i>2c. The Commission shall, by ...* [OJ please insert date: 3 years after the date of entry into force of this Directive], submit to the European Parliament and to the</i>	7. Member States shall provide for adequate and proportionate sanctions where corporate and other legal entities repetitively or systematically fail to comply	DELETED

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			<u>with the requirements to obtain and disclose information on their beneficial owners in accordance with this Article.</u>	<i>Council a report on the application and mode of functioning of the requirements pursuant to this Article, if appropriate, accompanied, where appropriate by a legislative proposal.</i>	<u>with the requirements to obtain and disclose information on their beneficial owners in accordance with this Article.2c. The Commission shall, by ... * [OJ please insert date: 3 years after the date of entry into force of this Directive], submit to the European Parliament and to the Council a report on the application and mode of functioning of the requirements pursuant to this Article, if appropriate, accompanied, where appropriate by a legislative proposal.</u>	
393.	Art. 29 – para 7 (new)		8. Member States shall take measures to prevent misuse of bearer shares and bearer share warrants.		8. Member States shall take measures to prevent misuse of bearer shares and bearer share warrants.	DELETED
394.	Art. 30	Article 30	Article 30	I	Article 30 I	DELETED
395.	Art. 30 – para 1	1. Member States shall ensure that trustees of any express trust governed under their law obtain and hold adequate, accurate and current information on beneficial ownership regarding the trust. This information shall include the identity of the settlor, of the trustee(s), of the protector	1. Member States shall ensure require that trustees of any express trust governed under their law obtain and hold adequate, accurate and current information on beneficial ownership regarding the trust.	I	1. Member States shall ensure require that trustees of any express trust governed under their law obtain and hold adequate, accurate and current information on beneficial ownership regarding the trust. I	DELETED

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		(if relevant), of the beneficiaries or class of beneficiaries, and of any other natural person exercising effective control over the trust.				
396.	Art. 30 – para 1, subpara 1		This information shall include the identity of the settlor, of the trustee(s), of the protector (if relevant <u>any</u>), of the beneficiaries or class of beneficiaries, and of any other natural person exercising effective control over the trust.		This information shall include the identity of the settlor, of the trustee(s), of the protector (if relevant), of the beneficiaries or class of beneficiaries, and of any other natural person exercising effective control over the trust.	DELETED
397.	Art. 30 – para 2	2. Member States shall ensure that trustees disclose their status to obliged entities when, 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 10.	2. Member States shall ensure that trustees disclose their status <u>and provide in a timely manner the information referred to in paragraph 1</u> to obliged entities, when, 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 10.	I	2. Member States shall ensure that trustees disclose their status and provide in a timely manner the information referred to in paragraph 1 to obliged entities, when, 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 10.	DELETED
398.	Art. 30 – para 3 – subpara 1	3. Member States shall ensure that the information referred to in paragraph 1 of this Article can be accessed in a timely manner by competent authorities and by obliged entities.	3. Member States shall ensure <u>require</u> that the information referred to in paragraph 1 of this Article can be accessed in a timely manner <u>is held in a specified location or in data retrieval systems which ensure timely and unrestricted access</u> by	I	3. Member States shall ensure that the information referred to in paragraph 1 of this Article can be accessed in a timely manner is held in a specified location or in data retrieval systems which ensure timely and unrestricted access by	DELETED

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			competent authorities and by obliged entities FIUs without alerting the parties to the trust concerned.		competent authorities and by obliged entities FIUs without alerting the parties to the trust concerned.]	
399.	Art. 30 – para 1 – subpara 1a (new)		<u>Member States shall notify to the Commission the characteristics of the national mechanism used to hold beneficial owner information.</u>		Member States shall notify to the Commission the characteristics of the national mechanism used to hold beneficial owner information.	DELETED
400.	Art. 30 – para 4	4. Member States shall ensure that measures corresponding to those in paragraphs 1, 2 and 3 apply to other types of legal entity and arrangement with a similar structure and function to trusts.	4. Member States shall ensure that measures corresponding to those in paragraphs 1, 2 and 3 competent authorities and FIUs are able to provide information referred to in paragraph 1 to the competent authorities and FIUs of other Member States in a timely manner.	I	4. Member States shall ensure that measures corresponding to those in paragraphs 1, 2 and 3 competent authorities and FIUs are able to provide information referred to in paragraph 1 to the competent authorities and FIUs of other Member States in a timely manner.]	
401.	Art. 30 – para 6 (new)		<u>6. This Article does not exempt obliged entities from their customer due diligence obligations laid down in this Directive. Those obligations shall be fulfilled by using a risk-based approach.</u>		6. This Article does not exempt obliged entities from their customer due diligence obligations laid down in this Directive. Those obligations shall be fulfilled by using a risk-based approach.	DELETED
402.	Art. 30 – para 7 (new)		<u>7. Member States shall provide for adequate and proportionate sanctions where trustees repetitively</u>		7. Member States shall provide for adequate and proportionate sanctions where trustees repetitively	DELETED

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			<u>or systematically fail to comply with the requirements referred to in this Article.</u>		or systematically fail to comply with the requirements referred to in this Article.	
403.	Art. 30 – para 8 (new)		8. Member States shall ensure that the measures provided for in this Article apply to other types of legal entity entities and arrangement arrangements with a similar structure and function or functions similar to trusts.		8. Member States shall ensure that the measures provided for in this Article apply to other types of legal entity entities and arrangement arrangements with a similar structure and function or functions similar to trusts.	DELETED
404.	Chapter IV	CHAPTER IV	CHAPTER IV	CHAPTER IV	CHAPTER IV	
405.	Title	REPORTING OBLIGATIONS	REPORTING OBLIGATIONS	REPORTING OBLIGATIONS	REPORTING OBLIGATIONS	
406.	Section 1	SECTION 1	SECTION 1	SECTION 1	SECTION 1	
407.	Title	GENERAL PROVISIONS	GENERAL PROVISIONS	GENERAL PROVISIONS	GENERAL PROVISIONS	
408.	Art. 31	<i>Article 31</i>	<i>Article 31</i>	<i>Article 31</i>	<i>Article 31</i>	
409.	Art. 31 – para 1	1. Each Member State shall establish an FIU in order to prevent, detect and investigate money laundering and terrorist financing.	1. Each Member State shall establish an FIU in order to prevent, detect and investigate effectively combat money laundering and terrorist financing.	1. Each Member State shall establish an FIU in order to prevent, detect and investigate money laundering and terrorist financing.	1. Each Member State shall establish an FIU in order to prevent, detect and investigate effectively combat money laundering and terrorist financing.	UK: The UK prefers the Council text. In the EP text, “Investigate” is not an agreed function of a FIU internationally - therefore this should read “combat”. BG: BG: We objects strongly to

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						<p>the wording of paragraph 1 regarding the investigation of money laundering as it creates uncertainty about the functions for investigation of ML and FT which are missing in a significant part of the FIUs of the Member States (including FID-SANS). The recommendations of the FATF also do not contain any such requirement for FIU to investigate ML and FT. The functions of FIU are related primarily to the analysis of the received suspicious transaction reports (or other information) and disclosure to the competent authorities for further investigation.</p> <p><u>The text of this art. should be amended as follows:</u></p> <p>“Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and</p>
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						<p>terrorist financing, and for the dissemination of the results of that analysis".</p> <p>DE:</p> <p>The Council text should be retained.</p> <p>The term "investigate" cannot be accepted, because it is reserved for the law enforcement authorities.</p> <p>FI:</p> <p>We strongly support wording of the GA since it does not refer to terminology used in criminal investigation.</p> <p>IE:</p> <p>Ireland supports the the Council text which recognises that not all countries have 'police' FIUs with investigative resources.</p> <p>FR:</p> <p><u>The French authorities support the EP's text on the FIU prerogatives and the FIU cooperation. They consider</u></p>
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						<p><u>that the Council's text weakens those prerogative and cooperation i) in view of the initial text of the Commission ii) the FATF recommendation 29 (IN 29 C : FIU shall be able to obtain relevant additional information from obliged entities) iii) CJEU "JYSKE" 25 April 2013 which encourages the cooperation between FIU</u></p> <p>NL:</p> <p>FIU analyses cases of potential money laundering and terrorist financing, it does not investigate these cases by means of criminal investigations The directive text should not suggest that it does.</p> <p>RO:</p> <p>RO suggests maintaining the EU Council proposal. The FIUs do not have investigative attributions.</p>
410.	Art. 31 – para 1a (new)			<p><i>1a. The persons referred to in Article 2(1)(3)(a), (b), and (d), shall inform the FIU and/or the appropriate self-regulatory body of the</i></p>	<p><u><i>1a. The persons referred to in Article 2(1)(3)(a), (b), and (d), shall inform the FIU and/or the appropriate self-regulatory body of the</i></u></p>	<p>ES:</p> <p><u>We deem that all obliged entities are bound to the STR obligation and therefore this</u></p>

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				<p><i>profession concerned, as referred to in Article 33(1), if they suspect, or have reasonable grounds to suspect that their services are being misused for the purpose of criminal activity.</i></p>	<p><u><i>profession concerned, as referred to in Article 33(1), if they suspect, or have reasonable grounds to suspect that their services are being misused for the purpose of criminal activity.</i></u></p>	<p>provision is redundant and unnecessary.</p> <p>LT:</p> <p>LT does not support insertion of para 1a of Art. 31 – the object of Art. 31 is different. It could be considered amending of Art. 32 or Art. 33.</p> <p>UK:</p> <p>This amendment is acceptable but duplicates article 32.</p> <p>DE:</p> <p>The provisions set out in this paragraph are already covered by Art. 32 (1). Therefore the provision is superfluous.</p> <p>IE:</p> <p>Although this text is aligned with Irish law which provides for direct reporting to the FIU) we support the Council text at 31(3) below which provided for reporting in a more flexible way which recognises there exist organisational differences in MS.</p>
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						<p>BE:</p> <p><u>Delete this paragraph contradictory to Art 33 and not in line with article 32.</u></p> <p>NL:</p> <p>We do not agree with the EP text. It suggests that informing FIU would only be an obligation for persons referred to in 2(1)(3)(a)(b) and (d). This is not correct.</p> <p>The text may not fit with rules on legal privilege.</p> <p>MT:</p> <p><u>It is not clear why this paragraph 1a is being proposed under the EP text. The reporting of suspicious transactions and activities is already being covered by article 32. As such, MT prefers if the text is not included again.</u></p>
411.	Art. 31 – para 2	2. Member States shall notify the Commission in writing of the name and address of the	2. Member States shall notify the Commission in writing of the name and	2. Member States shall notify the Commission in writing of the name and address of the	2. Member States Member States shall notify the Commission in writing of the name and	<p>LV:</p> <p>We would like to see</p>

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		respective FIUs.	address of the respective FIUs.	respective FIUs.	address of the respective FIUs.	harmonised definitions in other legislative acts as well.
412.	Art. 31 – para 3	3. The FIU shall be established as a central national unit. It shall be responsible for receiving (and to the extent permitted, requesting), analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering or associated predicate offences, potential terrorist financing or are required by national legislation or regulation. The FIU shall be provided with adequate resources in order to fulfil its tasks.	3. The FIU shall be established as <u>an operationally independent and autonomous FIU</u> . <u>Operationally independent and autonomous FIUs means that the FIU shall have the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or disseminate specific information. The FIU as the central national unit. It shall be responsible for receiving (and to the extent permitted, requesting), and analysing suspicious transaction reports and disseminating to the competent authorities, disclosures of other information which concern potential relevant to money laundering or, associated predicate offences, potential or terrorist financing or are required by national legislation or regulation. The FIU shall be responsible for disseminating the results of</u>	3. The FIU shall be established as <i>an operationally independent and autonomous</i> central national unit. It shall be responsible for receiving and – analysing – <i>suspicious transaction reports and other information relevant to potential money laundering, associated predicate offences or potential terrorist financing. The FIU shall be responsible for disseminating the results of its analysis to all competent authorities where there are grounds to suspect money laundering or associated predicate offences or terrorist financing – It shall be able to obtain relevant additional information from obliged entities for those purposes.</i> The FIU shall be provided with adequate <i>financial, technical and human</i> resources in order to fulfil its tasks. <i>Member States shall ensure that the FIU is free</i>	3. — The FIU shall be established as a <u>operationally independent and autonomous</u> ; <u>Operationally independent and autonomous FIUs means that the FIU shall have the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or disseminate specific information. The FIU as the central national unit. It shall be responsible for receiving (and to the extent permitted, requesting), and –</u> analysing – <i>suspicious transaction reports and disseminating to the competent authorities, disclosures of other information which concern potential other information relevant to potential money laundering or, associated predicate offences, or potential or terrorist</i>	DELETED

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			<u>its analysis 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 additional information from obliged entities.</u>	<i>from undue interference.</i>	financing or are required by national legislation or regulation. <i>The FIU shall be responsible for disseminating the results of its analysis and any additional relevant information to the all competent authorities when where there are grounds to suspect money laundering or associated predicate offences or terrorist financing.</i> <u>1. It shall be able to obtain relevant additional information from obliged entities for those purposes. The FIU shall be provided with adequate financial, technical and human resources in order to fulfil its tasks. Member States shall ensure that the FIU is free from undue interference.</u>	
413.	Art. 31 para 3 subpara 1		<u>The FIU shall be</u> provided with adequate <u>financial, human and technical</u> resources in order to fulfil its tasks.		<u>The FIU shall be</u> provided with adequate <u>financial, human and technical</u> resources in order to fulfil its tasks.	DELETED
414.	Art. 31 – para 4	4. Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that	4. Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that	4. Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that	4. — Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that	<u>UK:</u>

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	<p>it requires to properly fulfil its tasks. In addition, FIUs shall respond to requests for information by law enforcement authorities in their Member State unless there are factual reasons to assume 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.</p>	<p>it requires to properly fulfil its tasks. In addition, FIUs shall be able to respond to requests for information by law enforcement competent authorities in their Member State unless <u>when these are motivated by money laundering associated predicate offences and terrorist financing concerns.</u> <u>The decision on conducting the analysis or dissemination of information shall remain with the FIU.</u> Where there are factual reasons to assume 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 <u>the FIU is under no obligation to comply with the request. Member States shall require competent authorities to provide feedback to the FIU about the use made of the information provided in</u></p>	<p>it requires to properly fulfil its tasks. In addition, FIUs shall respond to requests for information by law enforcement authorities in their Member State unless there are factual reasons to assume 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. <i>When the FIU receives such a request, the decision to conduct analysis or dissemination of information to the requesting law enforcement authority should remain within the FIU. Member States shall require law enforcement authorities to provide feedback to the FIU about the use made of the information provided.</i></p>	<p>it requires to properly fulfil its tasks. In addition, FIUs shall be able to respond to requests for information by law enforcement competent <u>enforcement</u> authorities in their Member State unless <u>when these are motivated by money laundering associated predicate offences and terrorist financing concerns.</u> <u>The decision on conducting the analysis or dissemination of information shall remain with the FIU.</u> Where unless there are factual reasons to assume that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where divulgence <u>disclosure</u> 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. <u>When the FIU is under no obligation to comply with the request,</u> <u>the decision to conduct analysis or dissemination of information to the requesting law enforcement authority should remain within the</u></p>	
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			<p><u>accordance with this Article and about the outcome of the investigations or inspections performed on its basis.</u></p>		<p><i><u>FIU. Member States shall require competentlaw enforcement 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 its basis.</u></i></p>	<p><u>'shall request' is overall better than 'shall require' in both text and makes it more manageable for FIUs.</u></p> <p>BG:</p> <p>BG: Requests from law enforcement authorities should be related to ML and FT and predicate offenses. Bulgaria supports the text of the Council General Approach.</p> <p>NL:</p> <p>the combination of GA and EP text has our support</p> <p>RO:</p> <p>RO suggests maintaining the EU Council proposal.</p> <p>MT:</p> <p><u>The text adopted by the Council is more appropriate. FIUs should not be obliged to exchange information with competent authorities, but should retain the discretion to</u></p>
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						<p><u>determine whether or not they should exchange information.</u></p> <p>LL:</p> <p><u>Disclosure is more commonly used term</u></p>
415.	Art. 31 – para 5	5. Member States shall ensure that the FIU is empowered to take urgent action, either directly or indirectly, when there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion.	5. Member States shall ensure that the FIU is empowered to take urgent action, either directly or indirectly, when there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction, <u>and confirm the suspicion and disseminate the results of the analysis to competent authorities. The FIU shall be empowered to take such action, either 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.</u>	5. Member States shall ensure that the FIU is empowered to take urgent action, either directly or indirectly, when there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion.	5. Member States shall ensure that the FIU is empowered to take urgent action, either directly or indirectly, when there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction, and confirm the suspicion, and disseminate the results of the analysis to competent authorities. The FIU shall be empowered to take such action, either 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, and confirm the suspicion.	<p>SI:</p> <p><u>Text related to the suspension of the transaction on the request of an FIU from another MS should not be deleted in order to provide further freezing of proceeds of crime in another MS.</u></p> <p>HU:</p> <p>HU maintains its former proposal:</p> <p>“... when there is a suspicion that a transaction is related to money laundering, associated predicate offences or terrorist financing...”</p> <p>BG:</p> <p>BG: The FIU employees or any other competent public servants involved in the postponement process should be protected from reverse civil</p>

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						<p>or administrative procedures in relation to their lawful actions for postponing of suspicious transaction/deal.</p> <p>BE:</p> <p>Council text should be maintained absolutely because the text ECON is not in line with the requirements of Art 54 Warsaw convention.</p> <p>NL:</p> <p>the GA text has our support</p> <p>RO:</p> <p>RO suggests maintaining the EU Council proposal.</p> <p>MT:</p> <p><u>MT supports the adoption of the Council text which lays down an obligation which is already entrenched in the Council of Europe Convention CETS No. 198, requiring member states to ensure that FIUs are empowered to postpone transactions subsequent to the request of foreign counterparts.</u></p>
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416.	Art. 31 – para 6	6. The FIU's analysis function shall consist of an operational analysis which focusses on individual cases and specific targets and a strategic analysis addressing money laundering and terrorist financing trends and patterns.	6. The FIU's analysis function shall consist of <u>the following</u> :	6. The FIU's analysis function shall consist of an operational analysis which focusses on individual cases and specific targets and a strategic analysis addressing money laundering and terrorist financing trends and patterns.	6. _____ The FIU's analysis function shall consist of <u>the following: an operational analysis which focusses on individual cases and specific targets and a strategic analysis addressing money laundering and terrorist financing trends and patterns.</u>	BG: BG: In the FATF standard specific requirement for operational and strategic analysis are given. In this respect all the requirements should be given in order to fulfil effectiveness. NL: the combination of GA and EP text has our support
417.	Art. 31 – para 6 – point a (new)		(a) _____ an operational analysis which focusses on individual cases and specific targets <u>or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use after dissemination;</u> and		(a) _____ an _____ operational analysis which focusses on individual cases and specific targets <u>or on appropriate selected _____ information, depending on the type and volume of the disclosures received and the expected use after dissemination;</u> and	NL: the GA text has our support
418.	Art. 31 – para 6 – point b (new)		(b) _____ a strategic analysis addressing money laundering and terrorist financing trends and patterns.		(b) _____ a strategic analysis addressing money laundering and terrorist financing trends and patterns.	
419.	Art. 32	Article 32	Article 32	Article 32	Article 32	
420.	Art. 32 – para 1 – subpara 1	1. Member States shall require obliged entities, and where applicable their directors and employees, to cooperate fully:	1. Member States shall require obliged entities, and where applicable their directors and employees, to	1. Member States shall require obliged entities, and where applicable their directors and employees, to cooperate fully	1. _____ Member States shall require obliged entities, and where applicable their directors and employees, to	DELETED

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			cooperate fully:	<i>by promptly:</i>	cooperate fully <u><i>by promptly:</i></u>	
421.	Art. 32 – para 1 – subpara 1 – point a	(a) by promptly informing the FIU, on their own initiative, where the institution or person covered by this Directive knows, suspects or has reasonable grounds to suspect that funds 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;	(a) by promptly informing, <u>including by filing a report</u> , the FIU, on their own initiative, where the institution or person covered by this Directive <u>obliged entity</u> knows, suspects or has reasonable grounds to suspect that funds 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;	(a) by promptly informing the FIU, on their own initiative, where the institution or person covered by this Directive knows, suspects or has reasonable grounds to suspect that funds 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;	(a) by promptly informing, <u>including by filing a report</u> , the FIU, on their own initiative, where the institution or person covered by this Directive <u>obliged entity</u> Directive knows, suspects or has reasonable grounds to suspect that funds 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;	DELETED
422.	Art. 32 – para 1 – subpara 1 – point b	(b) by promptly furnishing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.	(b) by promptly furnishing the FIU, <u>directly or indirectly</u> , at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.	(b) by promptly providing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation <u>law</u> .	(b) by promptly furnishing, directly or indirectly <u>providing</u> the FIU, directly or indirectly , at its request, with all necessary information, in accordance with the procedures established by the applicable legislation <u>law</u> .	DELETED
423.	Art. 32 – para 1 – subpara 2		<u>All suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction.</u>		<u>All suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction.</u>	DELETED
424.	Art. 32 – para 2	2. The information referred to in paragraph 1 of this Article shall be forwarded to the FIU	2. The information referred to in paragraph 1 of this Article shall be forwarded	2. The information referred to in paragraph 1 of this Article shall be forwarded to the FIU	2. The The information referred to in paragraph 1 of this Article shall be forwarded	ES: <u>We read this paragraph in</u>

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		<p>of the Member State in whose territory the institution or person forwarding the information is situated. The person or persons designated in accordance with the procedures provided for in Article 8(4) shall forward the information.</p>	<p>to the FIU of the Member State in whose territory the institution or personobliged entity forwarding the information is situatedestablished. The person or persons designated in accordance with the procedures provided for in Article 8(4) shall forward the information.</p>	<p>of the Member State in whose territory the institution or person forwarding the information is situated <i>and to the FIU of the Member State where the obliged entity is established</i>. The person or persons designated in accordance with [] Article 8(4) shall forward the information.</p>	<p>to the FIU of the Member State in whose territory the institution or personobliged entity-person forwarding the information is situatedestablished-situated and to the FIU of the Member State where the obliged entity is established. The person or persons designated in accordance with the procedures provided for in [] Article 8(4) shall forward the information.</p>	<p><u>conjunction with the EP proposal in article 16.2. Although the drafting is not very consistent (art. 16.2. refers to all affected FIUs and this one to FIUs of the country where the entity is situated and established), we understand that the intention of the EP is to ensure that the FIU of the country where the transaction has been attempted or has been made also receives the information. If this is the case we certainly support the position of the EP, although some fine tuning in the drafting would be needed.</u></p> <p>LT:</p> <p>LT supports Council's GA text of Art 32 – para 2.</p> <p>HU:</p> <p>HU cannot support the EP proposal.</p> <p>UK:</p> <p>The UK prefers the Council text, although both the Council and the EP text seem confused between “situated” and “established”. It is not</p>
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						<p>clear what “established” means here (where it has its head office)? Normally we need it to be where the suspicion is identified (ie this would be where situated). This also contradicts the emphasis in article 50 to share internationally as much as possible as you are likely to get the reporting go to two places and then the FIUs forwarding to each other - this can not be the intention of this?!</p> <p>IE:</p> <p>Ireland submits there are unintended consequences here for remittance service (based in one member state) providing services through a large network of agents situated in several other (host) MS. In such a scenario local reporting is the practice <i>accepted and requested</i> by the FIUs, i.e. the PS agents report to the FIU closest to their physical situation. PS agents may or may not be considered to be ‘established’ in the host countries; if they are considered by the commission’s legal service to</p>
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						<p>be 'established' – there is no problem, however if there is any ambiguity at to 'establishment' the word 'situated' in the COM text is better as it ensures that the most relevant FIU receives the report.</p> <p>Ireland also has concerns with the words “<i>and to the FIU of the MS where the obliged entity is established</i>” as this means that the UK and IE FIUs which are 'home' FIUs to large remittance providers may be swamped by reports which are mere copies of the reports already made to the agents' most proximate FIU.</p> <p>The Council text therefore suits a PAYPAL type model where there are no local presences through agents; the Parliament text may have an ambiguity ('established') and certainly contains a duplicative obligation.</p> <p>Ireland would like further consideration of the term “established” and would like to signal to the presidency that the FIUs have stated want</p>
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						<p>'host' or 'local' reporting in preference to reports being sent first to the 'hub' for later dispatch back to FIUs which were at the outset more proximate to the laundering activity.</p> <p>BE:</p> <p>The text of ECON is NOT acceptable: we must not install double reporting obligations. Only one FIU should receive the info and then the interplay between the FIUs will start through the cross-border reporting by FIUs.</p> <p>NL:</p> <p>The provision is not completely clear but it should read that in case of a situation where an obliged entity has its seat in one MS, but operates establishments (branches, majority owned subsidiaries) or provides services in another MS, information is provided to both home and host FIU</p> <p>MT:</p> <p><u>The text adopted by the Council is clearer. The EP text</u></p>
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						<p><u>is ambiguous and it is not clear why it makes reference to a report being made to the FIU where the institutions is situated and another report to the FIU where the obliged entity is established, when in actual fact it is referring to the same person/entity.</u></p> <p>PT:</p> <p>We do not support the EP's proposal for the following two reasons:</p> <p>(i) It hampers legal certainty when simultaneous references are made to "established" and "situated". What does "situated" mean? Is it different from the well-known concept of establishment?</p> <p>Therefore, we support the Council's wording as it provides more legal certainty.</p> <p>Additionally, Article 16 (2) of the EP's proposal foresees that: "<i>where an obliged entity determines such an unusual or suspicious transaction or activity, it shall, without delay, inform the FIUs of all Member</i></p>
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						<p><i>States that might be concerned.” [see our comments on Article 16 (2)]</i></p> <p>In short, we believe that, in addition to the burdens entailed, the EP's proposal would not be even comprehensible to the private sector, as it provides that obliged entities file STRs before the FIUs of the MS(s): (i) where they are situated; (ii) where they are established; (iii) that might be related to the unusual or suspicious transaction.</p> <p>Lastly, it is our understanding that the Council's GA is consistent with a reasonable application of the territoriality principle, which we support.</p> <p>This means that one MS can require obliged entities established in that MS to file STRs before the local FIU whenever the suspicious activity is carried out there. Notwithstanding, we would be in favour of further explicit clarification to this effect.</p> <p>In a nutshell, the Council's GA would be the minimum acceptable for us.</p> <p>LL:</p>
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						Please agree on one expression "established" or "situated" in the whole text
425.	Art. 33	Article 33	Article 33	Article 33	Article 33	
426.	Art. 33 – para 1 – subpara 1	1. By way of derogation from Article 32(1), Member States may, in the case of the persons referred to in Article 2(1)(3)(a), (b), and (d) designate an appropriate self-regulatory body of the profession concerned as the authority to receive the information referred to in Article 32(1).	1. By way of derogation from Article 32(1), Member States may, in the case of the persons referred to in Article 2(1)(3)(a), (b), and (d) designate an appropriate self-regulatory body of the profession concerned as the authority to receive the information referred to in Article 32(1).	1. By way of derogation from Article 32(1), Member States may, in the case of the persons referred to in Article 2(1)(3)(a), (b), (d) and (e) and those professions and categories of undertaking referred to in Article 4, designate an appropriate self-regulatory body of the profession concerned as the authority to receive the information referred to in Article 32(1).	1. By By way of derogation from Article 32(1), Member States may, in the case of the persons referred to in Article 2(1)(3)(a), (b), and (d) and (e) and those professions and categories of undertaking referred to in Article 4, (d) and (e) and those professions and categories of undertaking referred to in Article 4, designate an appropriate self-regulatory body of the profession concerned as the authority to receive the information referred to in Article 32(1).	<p>LV:</p> <p>It could be added in Recitals, but would like to see how to practically ensure this?</p> <p>UK:</p> <p><u>Council preferred.</u></p> <p>BE:</p> <p>The text of ECON is not acceptable. These derogations go too far; they were initially only admitted for professions subject to strict professional secrecy rules, for which the breach is subject to penal sanctions and who are in a position to defend or represent clients in a court case.</p> <p>There is no rational for extending it even to real estate agents. It will only make the whole preventive reporting</p>

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						<p>system less effective as has already been evidenced by the law profession where the “batonnier” is more an obstruction to the transfer of the STRs to the FIU than a help.</p> <p>Lastly, as regards the reference to point (e) and the link with the BE diamond sector, BE would prefer the Council general approach and the amendment made by the Council in Art. 25, which provides more safeguards.</p> <p>NL:</p> <p>The group of entities which are covered by article 4 is very diverse. Allowing a derogation for all of them, would go too far.</p>
427.	Art. 33 – para 1 – subpara 1a (new)			<i>In all circumstances, Member States shall provide for the means and manner by which to achieve the protection of professional secrecy, confidentiality and privacy.</i>	<i><u>In all circumstances, Member States shall provide for the means and manner by which to achieve the protection of professional secrecy, confidentiality and privacy.</u></i>	<p><u>UK:</u></p> <p><u>We can't support the EP amendment. Member States should not have to provide for professional secrecy etc. What we do is displace such secrecy, confidentiality etc (if it exists) when making a report to FIU.</u></p> <p>IE:</p>

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						<p>BE:</p> <p>Delete this paragraph. There is no need because the legal professions and their SRB do already adhere to these principles as foreseen under their proper legal provisions and deontological codes.</p> <p>NL:</p> <p>This is too unspecific and should be left out.</p> <p>LL:</p> <p><u>Not very precise, looks like a recital , not very precise "in all circumstances"...</u></p>
428.	Art. 33 – para 1 – subpara 2	Without prejudice to paragraph 2, the designated self-regulatory body shall in cases referred to in the first subparagraph forward the information to the FIU promptly and unfiltered.	Without prejudice to paragraph 2, the designated self-regulatory body shall in cases referred to in the first subparagraph forward the information to the FIU promptly and unfiltered.	Without prejudice to paragraph 2, the designated self-regulatory body shall in cases referred to in the first subparagraph forward the information to the FIU promptly and unfiltered.	Without prejudice to paragraph 2, the designated self-regulatory body shall in cases referred to in the first subparagraph forward the information to the FIU promptly and unfiltered.	
429.	Art. 33 – para 2	2. Member States shall not apply the obligations laid down in Article 32(1) to notaries, other independent	2. Member States shall not apply the obligations laid down in Article 32(1) to notaries, other independent	2. Member States shall not apply the obligations laid down in Article 32(1) to notaries, other independent	2. Member States shall not apply the obligations laid down in Article 32(1) to notaries, other independent	<p>AT:</p> <p><u>Austrian Position:</u> We do not</p>

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		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 for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.	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 for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings, <u>and ensures respect of the rights guaranteed in Articles 7, 47 and 48 of the Charter of Fundamental Rights of the European Union.</u>	legal professionals, auditors, external accountants and tax advisors only to the strict extent that such <i>an</i> exemption relates to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.	legal professionals, auditors, external accountants and tax advisors only to the strict extent that such <u>an</u> exemption relates to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings, <u>and ensures respect of the rights guaranteed in Articles 7, 47 and 48 of the Charter of Fundamental Rights of the European Union.</u>	see the need for inserting these references to the EU's Fundamental Rights Charter. The insertion only creates additional criteria for the application of the exemption. We would thus suggest deleting the reference to the FRC. This would also compromise with the EP's view. NL: We prefer to keep the reference to the Charter (GA text) in the article
430.	Art. 34	<i>Article 34</i>	<i>Article 34</i>	<i>Article 34</i>	<i>Article 34</i>	
431.	Art. 34 – para1 – subpara 1	1. Member States shall require obliged entities to refrain from carrying out transactions which they know or suspect to be related to money laundering or terrorist financing until they have completed the necessary action in accordance with Article 32(1)(a).	1. Member States shall require obliged entities to refrain from carrying out transactions which they know or suspect to be related to money laundering <u>funds that are proceeds of criminal activity or are related to</u> terrorist financing, until they have completed the necessary	1. Member States shall require obliged entities to refrain from carrying out transactions which they know or suspect to be related to money laundering or terrorist financing until they have completed the necessary action in accordance with Article 32(1)(a).	1. Member States shall require obliged entities to refrain from carrying out transactions which they know or suspect to be related to money laundering or terrorist financing until they have completed the necessary action in accordance with Article 32(1)(a).	HU: HU supports the proposal of the COUNCIL general approach. DE: We support to maintain the Council text.

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			action in accordance with Article 32(1)(a) <u>and complied with any further specific instructions from the competent authorities in conformity with the legislation of the relevant Member State.</u>		necessary action in accordance with Article 32(1)(a) <u>and complied with any further specific instructions from the competent authorities in conformity with the legislation of the relevant Member State.</u>	BE: The ECON text as it stands is not understandable (What is "money financing"?) and not acceptable. Keep Council text. NL: we prefer the GA text, but it should be aligned with the text of article 34(2): "funds that are related to money laundering, associated predicate offences or terrorist financing" MT: <u>In line with article 32(1)(a) obliged entities are required to report knowledge or suspicion that funds are proceeds of criminal activity or related to terrorist financing, hence the same wording should be adopted by article 34. Thus the Council text is more appropriate.</u>
432.	Art. 34 – para1 – subpara 2	In conformity with the legislation of the Member States, instructions may be given not to carry out the transaction.	<u>deleted</u>	In accordance with national law, instructions may be given not to carry out the transaction.	<u>In accordance with national law, instructions may be given not to carry out the transaction.</u>	NL: We agree with the EP text.

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433.	Art. 34 – para 2	2. Where such a transaction is suspected of giving rise to money laundering or terrorist financing and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the obliged entities concerned shall inform the FIU immediately afterwards.	2. Where such a transaction is suspected of giving rise to involve funds that are related to money laundering, associated predicate offences or terrorist financing and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the obliged entities concerned shall inform the FIU immediately afterwards.	2. Where such a transaction is suspected of giving rise to money laundering or terrorist financing and where to refrain in such a manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the obliged entities concerned shall inform the FIU immediately afterwards.	2. Where such a transaction is suspected of giving rise to involve funds that are related to money laundering, associated predicate offences or terrorist financing and where to refrain in such a manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the obliged entities concerned shall inform the FIU immediately afterwards.	NL: We agree with the GA text MT: See comment to article 34(1).
434.	Art. 35	Article 35	Article 35	Article 35	Article 35	
435.	Art. 35 – para 1	1. Member States shall ensure that if, in the course of inspections carried out in the obliged entities by the competent authorities referred to in Article 45, 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.	1. Member States shall ensure that if, in the course of inspections carried out in the obliged entities by the competent authorities referred to in Article 45, 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.	1. Member States shall ensure that if, in the course of inspections carried out in the obliged entities by the competent authorities referred to in Article 45, 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.	1. Member States shall ensure that if, in the course of inspections carried out in the obliged entities by the competent authorities referred to in Article 45, 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.	
436.	Art. 35 – para 2	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	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	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	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	

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		discover facts that could be related to money laundering or terrorist financing.	discover facts that could be related to money laundering or terrorist financing.	discover facts that could be related to money laundering or terrorist financing.	discover facts that could be related to money laundering or terrorist financing.	
437.	Art. 36	<i>Article 36</i>	<i>Article 36</i>	<i>Article 36</i>	<i>Article 36</i>	
438.	Art. 36 – para 1	The disclosure in good faith as foreseen in Articles 32 (1) and 33 by an obliged entity or by an employee or director of such an obliged entity of the information referred to in Articles 32 and 33 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.	The disclosure in good faith as foreseen in Articles 32 (1) and 33 by an obliged entity or by an employee or director of such an obliged entity of the information referred to in Articles 32 and 33 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 <u>even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.</u>	<i>Disclosure of information</i> in good faith ■ by an obliged entity or by an employee or director of such an obliged entity <i>in accordance with</i> Articles 32 and 33 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.	The disclosure <u>Disclosure of information</u> in good faith as foreseen in Articles 32 (1) and 33. ■ by an obliged entity or by an employee or director of such an obliged entity of the information referred to in <u>in accordance with</u> Articles 32 and 33 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 if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.	DELETED
439.	Art. 37	<i>Article 37</i>	<i>Article 37</i>	<i>Article 37</i>	<i>Article 37</i>	LV: We would like to keep Council text.
440.	Art. 37 – para	Member States shall take all	Member States shall take all	Member States shall <i>ensure</i>	Member States shall take all	ES:

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1	appropriate measures in order to protect employees of the obliged entity who report suspicions of money laundering or terrorist financing either internally or to the FIU from being exposed to threats or hostile action.	appropriate measures in order to protect <u>directors, employees, or persons in a comparable position</u> , of the obliged entity who report suspicions of money laundering or terrorist financing either internally or to the FIU from being exposed to threats or hostile action.	<i>that individuals, including employees and representatives of the obliged entity who report suspicions of money laundering or terrorist financing either internally or to the FIU are duly protected from being exposed to threats or hostile action, adverse treatment and adverse consequences, and in particular from adverse or discriminatory employment actions. Member States shall guarantee legal aid free of charge for such persons and shall provide secure communication channels for persons to report their suspicions of money laundering or terrorist financing. Such channels shall ensure that the identity of persons providing information is known only to the ESAs or to the FIU. Member States shall ensure that there are adequate witness protection programmes.</i>	appropriate measures in order to protect <u>directors, ensure that individuals, including employees, or persons in a comparable position, and representatives</u> of the obliged entity who report suspicions of money laundering or terrorist financing either internally or to the FIU from being exposed to threats or hostile action are duly protected from being exposed to threats or hostile action, adverse treatment and adverse consequences, and in particular from adverse or discriminatory employment actions. Member States shall guarantee legal aid free of charge for such persons and shall provide secure communication channels for persons to report their suspicions of money laundering or terrorist financing. Such channels shall ensure that the identity of persons providing information is known only to the ESAs or to the FIU. Member States shall ensure that there are adequate witness protection programmes.	<p>We prefer to keep the drafting by the Council. The mention to free legal aid exceeds the purpose of this Directive and the ESAs have no role at all here.</p> <p>LT:</p> <p>LT could be flexible on the Art. 37.</p> <p>SI:</p> <p>The identity of persons providing information should be only known to the FIU and not to the ESAs.</p> <p>UK:</p> <p>The EP text is highly problematic for the UK.</p> <p>The first sentence appears to give exemption from prosecution to those reporting suspicions. Surely this cannot be the intention? We would have thought that removing 'adverse treatment and adverse employment practices, and in particular from' and inserting 'in terms of' (or</p>
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						<p>similar) would be better - this would make clear any protection related to employment actions only.</p> <p>Even if the clause was restricted in a way set out above, the reference to legal aid is problematic. In the UK The Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed civil legal aid for employment matters, part from those under the Equality Act 2010. Matters engaging Convention Rights are of course still in scope. This was to ensure legal aid is available those cases that justify it at a time of huge fiscal challenge.</p> <p>If someone is reporting suspicions of wrong-doing, but is not implicated in the wrong-doing, why do they need a lawyer? The situation is analogous to that of a victim, and the UK is clear that we do not provide legal aid to victims as there is simply no need unless they are specific conditions met (including for example if someone is reporting wrong-doing with the potential to be a witness in criminal</p>
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						<p>proceedings and require advice and assistance regarding self-incrimination, then that is in scope of criminal legal aid currently).</p> <p>DE:</p> <p>We support the idea to provide for secure communication channels.</p> <p>For the rest we do not support the EP proposal.</p> <p>DK:</p> <p>Although DK acknowledges the intention of the European Parliament, we do find that legal aid free of charge and witness protection are rather extensive measures and especially if there are no concrete threat to the individual. DK therefore finds it important to adhere to the general approach reached in Council, which seems like a more balanced approach.</p>
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						<p>IE:</p> <p>Query reference to ESAs in this context;</p> <p>Ireland not clear on why the identity of a person filing an SAR/STR would ever be disclosed to the ESAs.</p> <p>Note also that if an STR is made through an SRB, it would presumably need to know the identity of the person filing;</p> <p>BE:</p> <p>The additions of the EP are not needed in this directive.</p>
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						<p>Quid of the channels for the DNFBS? Why is it not foreseen?</p> <p>The EP text should be deleted and the Council general approach should be kept.</p> <p>NL:</p> <p>We prefer “employees or persons in a comparable position” (instead of ‘employees’).</p> <p>We are not sure what is meant by ‘representatives’ and would want this more clearly defined.</p> <p>We <u>strongly object</u> to the text on legal aid free of charge. It goes far beyond the scope of</p>
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						<p>this directive.</p> <p>We <u>strongly object</u> to the text on witness protection programmes. It goes far beyond the scope of this directive.</p> <p>PL:</p> <p>PL views the EP proposal as too far-reaching, therefore PL firmly supports the version proposed by the Council.</p> <p>PT:</p> <p>Protection from threats or hostile action should be extended to “representatives” / “persons in a comparable position”, in line with the Council’s GA and the EP’s vote. Notwithstanding, we highlight the more comprehensive nature of the reference to “persons in a comparable position.”</p>
441.	Section 2	SECTION 2	SECTION 2	SECTION 2	SECTION 2	
442.	Title	PROHIBITION OF DISCLOSURE	PROHIBITION OF DISCLOSURE	PROHIBITION OF DISCLOSURE	PROHIBITION OF DISCLOSURE	
443.	Art. 38	<i>Article 38</i>	<i>Article 38</i>	<i>Article 38</i>	<i>Article 38</i>	

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444.	Art. 38 – para 1	1. Obligated entities and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information has been transmitted in accordance with Articles 32 and 33 or that a money laundering or terrorist financing investigation is being or may be carried out.	1. Obligated entities and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information <u>is being, will be or</u> has been transmitted in accordance with Articles 32 and 33 or that a money laundering or terrorist financing <u>investigationanalysis</u> is being or may be carried out.	1. Obligated entities and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information has been transmitted in accordance with Articles 32 and 33 or that a money laundering or terrorist financing investigation is being or may be carried out.	1. — Obligated entities and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information <u>is being, will be or</u> has been transmitted in accordance with Articles 32 and 33 or that a money laundering or terrorist financing <u>investigationanalysisinvestigation</u> is being or may be carried out.	<p>ES:</p> <p><u>We support the drafting of the Council in order to ensure that tipping off provisions are extended to all previous stages of an STR, including the previous analyses.</u></p> <p>LV:</p> <p>We support amendment.</p> <p>BG:</p> <p>BG: This provision should cover all cases related to disclosure by the obliged entity, analysis being carried out by the FIU and interest of the FIU (requests to the obliged entities related to the FIU work). The proposed amendment is extremely narrow and does not ensure proper implementation of the international standard of protection of the information processed by the FIU or by the law enforcement authorities.</p> <p>DE:</p>
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						<p>The clarification provided by the Council text should be maintained.</p> <p>NL:</p> <p>FIU is not involved in investigations and the directive text should not suggest that it is.</p> <p>MT:</p> <p><u>The Council text is more appropriate since it covers not only information which has been transmitted but also information which is being or may be transmitted.</u></p> <p>PT:</p> <p>We strongly support the Council's GA, namely the replacement of "investigation" by "analysis".</p> <p>For us, this slight amendment represents one of the most remarkable progresses achieved in the course of the negotiations at the Council level.</p> <p>More specifically, disclosure to customers of the internal analyses (risk assessments,</p>
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						<p>CDD or others) carried out on them would decisively undermine the effectiveness of any further investigations.</p> <p>Thus, non-disclosure of these analyses cannot, in any event, be envisaged as an unduly “gold-plating”.</p>
445.	<p>Art. 38 – para 2</p>	<p>2. The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities of Member States, including the self-regulatory bodies, or disclosure for law enforcement purposes.</p>	<p>2. The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities of Member States, including the self-regulatory bodies, or disclosure for law enforcement purposes.</p>	<p>2. The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities of Member States, including the self-regulatory bodies, <i>data protection authorities</i> or disclosure for law enforcement purposes.</p>	<p>2. — The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities of Member States, including the self-regulatory bodies, <i>data protection authorities</i> or disclosure for law enforcement purposes.</p>	<p>ES:</p> <p><u>DP authorities can request what personal data an obliged entity has. However, we wonder if that includes the operational/financial analyses conducted by the FIU.</u></p> <p>LT:</p> <p><u>LT does not support EP ECON drafting of Art. 38 – para 2 – it is not clear what role data protection authorities have in this particular provision.</u></p> <p>SI:</p> <p>Data protection authorities are not involved in any ML/TF investigations performed by FIU and LE. The main role of data protection authorities is</p>

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						<p>related to the protection of personal data therefore, we cannot see any reasonable ground to allow disclosure of STRs to them unless it is related to claims concerning problems with personal data processing.</p> <p>LV:</p> <p>We would like to keep Council text.</p> <p>UK:</p> <p>EP text is confusing. Council text preferred.</p> <p>Data authorities is a term used in the data protection reform proposals, it is not desirable to refer to provisions that are still subject to (difficult) reforms and whose end products is not known – far from it.</p> <p>BG:</p> <p>BG: The disclosure to the data protection authorities could adversely affect the analysis carried out by the FIU and could result to de facto tipping off and the subjects of analysis being made aware of the</p>
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						<p>checks conducted. Therefore Bulgaria objects to the inclusion of the data protection authorities under this derogation.</p> <p>DE:</p> <p>We do not see the necessity why data protection authorities should be informed about STRs.</p> <p>IE:</p> <p>Ireland unclear on inclusion of data protection authorities; why would it be appropriate for an employee of an obliged entity to divulge the content of an STR to the data protection authorities?</p> <p>NL:</p> <p>EP text is OK</p> <p>PT:</p> <p>Reference to data protection authorities should be deleted (see our general comments on data protection – article 39a as proposed by the EP).</p>
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446.	Art. 38 – para 3	3. The prohibition laid down in paragraph 1 shall not prevent disclosure between institutions from Member States, or from third countries which impose requirements equivalent to those laid down in this Directive provided that they belong to the same group.	3. The prohibition laid down in paragraph 1 shall not prevent disclosure between institutions <u>obliged entities</u> from Member States <u>referred to in Article 2(1)(1) and (2)</u> , or <u>entities</u> from third countries which impose requirements equivalent to those laid down in this Directive provided that they belong to the same group.	3. The prohibition laid down in paragraph 1 shall not prevent disclosure between institutions from Member States, or from third countries which impose requirements equivalent to those laid down in this Directive provided that they belong to the same group.	3. — The prohibition laid down in paragraph 1 shall not prevent disclosure between institutions <u>obliged entities</u> institutions from Member States referred to in Article 2(1)(1) and (2) , or <u>entities</u> from third countries which impose requirements equivalent to those laid down in this Directive provided that they belong to the same group.	DELETED
447.	Art. 38 – para 4 – subpara 1	4. The prohibition laid down in paragraph 1 shall not prevent disclosure between persons referred to in Article 2(1)(3)(a) and (b) from Member States, or 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 network.	4. The prohibition laid down in paragraph 1 shall not prevent disclosure between persons <u>obliged entities</u> referred to in Article 2(1)(3)(a) and (b) from Member States, or 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 network.	4. The prohibition laid down in paragraph 1 shall not prevent disclosure between persons referred to in Article 2(1)(3)(a) and (b) from Member States, or 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 network.	4. — The prohibition laid down in paragraph 1 shall not prevent disclosure between persons <u>obliged entities</u> persons referred to in Article 2(1)(3)(a) and (b) from Member States, or 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 network.	UK: Council text preferred. More consistent. NL: We agree with the GA text. LL: <u>Quid entities as in paragraph 3?</u>
448.	Art. 38 – para 4 – subpara 1	For the purposes of the first subparagraph, a "network" shall mean the larger structure to which the person belongs and which shares common ownership, management or compliance control.	For the purposes of the first subparagraph, a "network" shall mean the larger structure to which the person belongs and which shares common ownership, management or compliance control.	For the purposes of the first subparagraph, a "network" shall mean the larger structure to which the person belongs and which shares common ownership, management, <u>standards, methods</u> or	For the purposes of the first subparagraph, a "network" shall mean the larger structure to which the person belongs and which shares common ownership, management, <u>standards, methods</u> or	NL: We agree with the EP text.

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				compliance control.	compliance control.	
449.	Art. 38 – para 5	5. For entities or persons referred to in Article 2(1)(1), (2) and (3)(a) and (b) in cases related to the same customer and the same transaction involving two or more institutions or persons, the prohibition laid down in paragraph 1 of this Article shall not prevent disclosure between the relevant institutions or persons provided that they are situated in a Member State, or 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.	5. For obliged entities or persons referred to in Article 2(1)(1), (2) and (3)(a) and (b) in cases related to the same customer and the same transaction involving two or more institutions or persons obliged entities , the prohibition laid down in paragraph 1 of this Article shall not prevent disclosure between the relevant institutions or persons provided that they are situated in a Member State, or 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.	5. For entities or persons referred to in Article 2(1)(1), (2) and (3)(a) and (b) in cases related to the same customer and the same transaction involving two or more institutions or persons, the prohibition laid down in paragraph 1 of this Article shall not prevent disclosure between the relevant institutions or persons provided that they are situated in a Member State, or 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.	5. For obliged entities or persons referred to in Article 2(1)(1), (2) and (3)(a) and (b) in cases related to the same customer and the same transaction involving two or more institutions or persons obliged entities persons , the prohibition laid down in paragraph 1 of this Article shall not prevent disclosure between the relevant institutions or persons provided that they are situated in a Member State, or 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.	UK: Council text preferred. More consistent. NL: We agree with the GA text.
450.	Art. 38 – para 5a (new)			<i>5a. For the purposes of this Article, third-country requirements equivalent to those laid down in this Directive shall include data protection rules.</i>	<i><u>5a. For the purposes of this Article, third-country requirements equivalent to those laid down in this Directive shall include data protection rules.</u></i>	ES: We propose to add “Exchanges of information with countries not offering adequate data protection will require the authorisation of the national data protection

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						<p>authorities”.</p> <p><u>The number of countries being equivalent both in AML and DP terms is extremely reduced. It is necessary to find a way out to allow for the necessary exchanges of information whilst at the same ensuring adequate protection of the data. This addition is essential at least in intragroup exchanges of information, which are legally required and necessary to comply with the internal controls at group level. Under article 42 groups are required to implement DP policies. Provided that DP authorities find that these polices are adequate, exchanges of information should be allowed.</u></p> <p><u>UK:</u></p> <p><u>The Council text provides for a similar yet more balanced safeguard.</u></p> <p>DE:</p> <p>The provision proposed by the EP is unnecessary and therefore should be deleted.</p>
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						<p>BE:</p> <p>Redundant since already mentioned in previous paragraph.</p> <p>NL:</p> <p>We agree with the EP text, although it is rather unspecific.</p>
451.	Art. 38 – para 6	6. Where the persons referred to in Article 2(1)(3)(a) and (b) seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of paragraph 1.	6. Where the persons obliged entities referred to in Article 2(1)(3)(a) and (b) seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of paragraph 1.	6. Where the persons referred to in Article 2(1)(3)(a) and (b) seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of paragraph 1.	6. persons obliged entities referred to in Article 2(1)(3)(a) and (b) seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of paragraph 1.	<p>NL:</p> <p>We agree with the GA text.</p>
452.	Chapter V	CHAPTER V	CHAPTER V	CHAPTER V	CHAPTER V	
453.	Title	RECORD KEEPING AND STATISTICAL DATA	RECORD KEEPING AND STATISTICAL DATA	DATA PROTECTION, RECORD KEEPING AND STATISTICAL DATA	<u>DATA PROTECTION,</u> RECORD KEEPING AND STATISTICAL DATA	<p>ES:</p> <p><u>Suggest deleting “Data Protection”. The focus should be on the AML obligations. DP is transversal to the whole Directive and there should be an specific section on DP.</u></p> <p>AT:</p> <p><u>Austrian Position:</u> In principle</p>

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						<p>we support those EP Amendments that reflect the concerns expressed in the opinion of the European Data Protection Supervisor of July 4, 2013.</p> <p><u>UK:</u></p> <p><u>This directive is not about data protection. It only needs to be made clear that the information collated and stored is done for the purpose of AML compliance primarily.</u></p>
454.	Art. 39	Article 39	Article 39	Article 39	Article 39	
455.	Art. 39 – para 1	Member States shall require obliged entities to store the following documents and information in accordance with national law for the purpose of the prevention, detection and investigation of possible money laundering or terrorist financing by the FIU or by other competent authorities:	Member States shall require obliged entities to store <u>retain</u> the following documents and information in accordance with national law for the purpose of the prevention, detection and investigation of possible money laundering or terrorist financing by the FIU or by other competent authorities:	I. Member States shall require obliged entities to store the following documents and information in accordance with national law for the purpose of the prevention, detection and investigation of possible money laundering or terrorist financing by the FIU or by other competent authorities:	I. Member States shall require obliged entities to store <u>retain</u> <u>store</u> the following documents and information in accordance with national law for the purpose of the prevention, detection and investigation of possible money laundering or terrorist financing by the FIU or by other competent authorities:	DELETED
456.	Art. 39 – para 1 – point a	(a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of five years after the business relationship with their	(a) in the case of the customer due diligence, a copy or the references of the documents <u>and information</u> required <u>obtained</u> , for a period of five	(a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of five years after the business relationship with their	(a) — in the case of the customer due diligence, a copy or the references of the documents <u>and information</u> required <u>obtained</u> <u>required</u> , for a	DELETED

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		customer has ended. Upon expiration of this period, personal data shall be deleted 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 only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The maximum retention period after the business relationship has ended shall not exceed ten years;	years after the <u>occasional transaction was carried out or after the</u> business relationship with their customer has ended. Upon expiration of this <u>that five-year</u> period, personal data shall be deleted 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 only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The <u>In such a case the</u> maximum retention period after the business relationship has ended shall not exceed <u>the limitation period provided for in their national law and, in any case, fifteen</u> years;	customer has ended <i>or after the date of the occasional transaction</i> . Upon expiration of <i>that retention</i> period, personal data shall be deleted 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 only if necessary for the prevention, detection or investigation of money laundering and terrorist financing <i>and if the extension of the data retention period is justified on a case-by-case basis</i> . The maximum <i>extension of the</i> retention period <i>is five additional</i> years;	period of five years after the occasional transaction was carried out or after the business relationship with their customer has ended; or <i>after the date of the occasional transaction</i> . Upon expiration of this <u>that five-year</u> that retention period, personal data shall be deleted 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 only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The <u>In such and if the extension of the data retention period is justified on a case-by-case basis</u> . The maximum retention period after the business relationship has ended shall not exceed <u>extension of the limitation</u> retention period <u>provided for in their national law and, in any case, fifteen</u> is five <u>additional</u> years;	
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457.	Art. 39 – para 1 – point b	(b) in the case of business relationships and transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of five years following either the carrying-out of the transactions or the end of the business relationship, whichever period is the shortest. Upon expiration of this period, personal data shall be deleted, 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 only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The maximum retention period following either the carrying-out of the transactions or the end of the business relationship, whichever period ends first, shall not exceed ten years.	(b) in the case of business relationships and transactions, the supporting evidence and records <u>of transactions</u> , consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of five years following either the carrying-out of the transactions or the end of the business relationship, whichever period is the shortest. <u>expires first</u> . Upon expiration of this period, personal data shall be deleted, 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 only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The <u>In such a case the</u> maximum retention period following either the carrying-out of the transactions or the end of the business relationship, whichever period ends <u>expires</u> first, shall not	(b) in the case of business relationships and transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national law for a period of five years following either the carrying-out of the transactions or the end of the business relationship, whichever period is the <i>shorter</i> . Upon expiry of <i>that retention</i> period, personal data shall be deleted, 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 only if necessary for the prevention, detection or investigation of money laundering and terrorist financing <i>and if the extension of the data retention period is justified on a case by case basis</i> . The maximum <i>extension of the</i> retention period <i>is five additional</i> years.	(b) — in the case of business relationships and transactions, the supporting evidence and records of transactions , consisting of the original documents or copies admissible in court proceedings under the applicable national legislation <i>law</i> for a period of five years following either the carrying-out of the transactions or the end of the business relationship, whichever period is the shortest. <u>expires first, shorter</u> . Upon expiration <u>expiry</u> of this <i>that retention</i> period, personal data shall be deleted, 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 only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The <u>In such a case the</u> maximum retention period following either the carrying-out of the transactions or the end of the business	DELETED
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			exceed <u>the limitation period provided for in their national law and, in any case, ten fifteen</u> years.		relationship, whichever period ends expires first, shall not exceed the limitation period provided for in their national law and, in any case, ten fifteen years; and if the extension of the data retention period is justified on a case by case basis. The maximum extension of the retention period is five additional years.	
458.	Art. 39 – para 1a (new)			2. Any personal data retained shall not be used for any purpose other than the purpose for which it has been retained, and under no circumstances shall it be used for commercial purposes.	2. Any personal data retained shall not be used for any purpose other than the purpose for which it has been retained, and under no circumstances shall it be used for commercial purposes.	DELETED
459.	Art. 39a (new)			Article 39a	<u>Article 39a</u>	ES: <u>This should be a separate section</u> LV: We support amendment, but this is conceptual issue. UK: The requirement to inform

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						<p>potential new clients of data processing should not cut across any obligations to report money laundering</p> <p>PT:</p> <p><u>General comments on data protection:</u></p> <p>Council's GA on data protection shall prevail in its entirety both in the AMLD and the AMLR. Otherwise, data protection requirements will be regarded as an <i>a priori</i> impairment of AML/CFT effectiveness.</p> <p>1. An overly restrictive approach may impair the effectiveness of AML/CFT procedures, as:</p> <p>(i) Data gathered by obliged entities under the AMLD shall be used for purposes other than strict compliance with the that Directive (for instance, the communication of such data to competent authorities responsible for combating other illicit activities</p>
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						<p>potentially carried out by the customer);</p> <p>(ii) Disclosure to customers of the internal analyses (risk assessments, CDD or others) carried out on them would decisively undermine the effectiveness of any further investigations. Thus, non-disclosure of these analyses cannot, in any event, be envisaged as an unduly “gold-plating” [see comments on article 38(1)];</p> <p>(iii) Excessive references to data protection law may entitle obliged entities to reduce the quantity of information / elements obtained concerning each customer, with the justification of compliance with data protection rules. This attitude may, consequently, hinder the objectives that motivate the drafting of this Directive;</p> <p>(iv) Consistency with the sanctioning regimes set out in other financial services dossiers cannot be jeopardized by the introduction of</p>
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						<p>additional data protection requirements in the AML/CFT framework. Otherwise, the enforcement of AML/CFT rules would be undervalued, when compared with the tools granted by other enforcement regimes (at least when it comes to the financial sector).</p> <p>2. Powers granted to data protection authorities are already governed by Article 28 of the Data Protection Directive.</p> <p>3. The width of the data retention period needs (at least) to be compatible with the periods of limitation of ML/TF offences foreseen in the diverse national laws, so that the usefulness of any further investigatory / supervisory action can be preserved while legally possible.</p> <p>4. The fulfilment of data protection requirements shall be accessed by competent authorities on a case-by-case basis (with an eventual <i>ex post</i> control by judicial</p>
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						authorities). Therefore, the casuistic balance between AML/CFT and data protection frameworks shall not be prejudiced by the introduction of abstract legal provisions in the AMLR / AMLD.
460.	Art. 39a – para 1 (new)			<p><i>1. With regard to the processing of personal data carried out by Member States within the framework of this Directive, the provisions of Directive 95/46/EC apply. With regard to the processing of personal data by the ESAs, the provisions of Regulation (EC) No 45/2001 apply. The collection, processing and transfer of information for anti-money laundering purposes shall be considered as a public interest under those legal acts.</i></p>	<p><u><i>1. With regard to the processing of personal data carried out by Member States within the framework of this Directive, the provisions of Directive 95/46/EC apply. With regard to the processing of personal data by the ESAs, the provisions of Regulation (EC) No 45/2001 apply. The collection, processing and transfer of information for anti-money laundering purposes shall be considered as a public interest under those legal acts.</i></u></p>	<p>ES:</p> <p><u>We generally agree with this art. 39a with the exceptions below</u></p> <p>HU:</p> <p>HU cannot support the EP proposal.</p> <p>LV:</p> <p>We support amendment, but this is conceptual issue.</p> <p>UK:</p> <p>EP text for the whole of article 39a needs to be revisited if it is to be included in the Directive.</p> <p>“Collection” and ‘transfer’ are</p>

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						<p>both types of processing and needs not to be mentioned.</p> <p>Only 'personal data' processing should be subject to DP legislation, not the processing of 'information'.</p> <p>Language should be broadened to map out the scope of the 4AMLD e.g. CTF should be included.</p> <p>Overall we prefer council text which does not confuse by adding unnecessary language related to data protection.</p> <p>DE:</p> <p>In general we do not support the incorporation of a special regime on data protection into the AMLD.</p> <p>Moreover, the Directive 95/46 (data protection) does not apply to the police and justice sector. The framework decision on data protection is applicable in these sectors.</p> <p>A possible compromise instead of deletion would be a cross-reference to the</p>
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						<p>generally applicable (EU) data protection principles.</p> <p>NL:</p> <p>The text on AML purposes being a public interest is also in EP article 40a.</p> <p>Countering terrorist financing should also be included as a public interest.</p> <p>MT:</p> <p>Data protection matters should not be regulated by this directive.</p> <p>PT:</p> <p>This provision is redundant with Article 58b of the Council's GA.</p>
461.	Art. 39a – para 2 (new)			<p><i>2. Personal data shall be processed on the basis of this Directive for the sole purpose of the prevention of money laundering and terrorist financing. Obligated entities shall inform new clients of the possible use of the personal data for money</i></p>	<p><u><i>2. Personal data shall be processed on the basis of this Directive for the sole purpose of the prevention of money laundering and terrorist financing. Obligated entities shall inform new clients of the possible use of the personal data for money</i></u></p>	<p>ES:</p> <p>The first sentence is incompatible with the EP's proposed publicity of BO registries in art. 29. Public BO information does not ensure that the only purpose of information would be</p>

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				<p><i>laundering prevention purposes before establishing a business relationship. Processing sensitive categories of data shall be done in accordance with Directive 95/46/EC.</i></p>	<p><u><i>laundering prevention purposes before establishing a business relationship. Processing sensitive categories of data shall be done in accordance with Directive 95/46/EC.</i></u></p>	<p>prevention of ML/TF nor would it grant that only competent authorities and obliged entities access to such information.</p> <p>HU:</p> <p>HU cannot support the EP proposal.</p> <p>LV:</p> <p>We would like to see hierarchy of legislative acts. This is conceptual issue.</p> <p>UK:</p> <p>We support the spirit of this amendment as it requires obliged entities to build into their account opening procedures confirmation that data protection may be processed for ML/TF purposes, giving them a possible consent basis for processing as well. The language should more closely map the full scope of 4MLD, e.g. it is not clear whether 'prevention' covers the detection, investigation and</p>
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						<p>prosecution of ML/TF offences (e.g. provisions requiring info-sharing with FIUs)? To avoid any legal uncertainty, maybe replace the first sentence with something like "Personal data shall only be processed for the purposes of this Directive."</p> <p>DE:</p> <p>As to the to the Directive 94/46/EU see above.</p> <p>As for the rest, the amendments made by the EP do not make sense, as it is clear that "on the basis of this Directive", data may only be processed for the purposes laid down in the Directive. It should therefore be deleted.</p> <p>In the final analysis it is important that the data, if occasion arises, could also be used for other purposes (in compliance with other general provisions and the conditions for using them for other purposes as laid down therein).</p> <p>NL:</p>
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						<p>Countering terrorist financing should also be included.</p> <p>It is not sufficiently clear what 'sensitive categories of data' are.</p> <p>The text "processing (...) 95/46/EC" seems to imply that non-sensitive categories do not have to be processed according to directive 95/46/EC.</p> <p>PT:</p> <p>We do not agree with EP proposal (see our general comments on data protection above).</p>
462.	Art. 39a –para 3 (new)			<p><i>3. The processing of data collected on the basis of this Directive for commercial purposes shall be prohibited.</i></p>	<p><u><i>3. The processing of data collected on the basis of this Directive for commercial purposes shall be prohibited.</i></u></p>	<p>HU:</p> <p>HU cannot support the EP proposal.</p> <p>LV:</p> <p>We would like to see hierarchy of legislative acts. This is conceptual</p>

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						<p>issue.</p> <p><u>UK:</u></p> <p><u>Again, while we agree with the spirit of this amendment, how could information available on a public register be controlled in that way? There are other legitimate activities that would benefit from the publically available information and could fall in a grey area in terms of whether they are 'commercial' or not in nature such as circumstances in which credit reference agencies may require access to this information for the purpose of informing credit decisions and thereby facilitating business transactions. This has the potential to promote growth and should be permitted.</u></p> <p><u>NL:</u></p> <p>EP text OK.</p> <p><u>PT:</u></p> <p>We do not agree with EP proposal .</p> <p>The last sentence of recital 31</p>
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						<p>duly addresses this issue (“<i>in particular, further processing of personal data for commercial purposes should be strictly prohibited.</i>”)</p> <p>Additionally, this provision cannot be construed as prohibiting obliged entities from buying “<i>intelligence</i>” from private suppliers, in order to comply with AML/CFT obligations [see comments on article 19 (a) as proposed by the EP].</p> <p>However, if this provision <u>remains in the text</u>, then it should be <u>rewritten as follows</u>:</p> <p>“The further processing of data collected by obliged entities on the basis of this Directive for commercial purposes shall be prohibited.”</p> <p>LL:</p> <p><u>Is this not overlapping with Art 39 para 1a new?</u></p>
463.	Art. 39a – para 4 (new)			<p><i>4. The affected person to whom disclosure of information on processing his or her data is denied by an obliged entity or competent authority, shall have the right to request through his or her</i></p>	<p><u><i>4. The affected person to whom disclosure of information on processing his or her data is denied by an obliged entity or competent authority, shall have the right to request through his or her</i></u></p>	<p>ES:</p> <p><u>We would suggest deleting the “erasure”. Obligated entities keep the information in compliance of a legal obligation.</u></p>

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				<p><i>data protection authority any verifications of, access and corrections to or erasure of his or her personal data, as well as the right to lodge a judicial procedure.</i></p>	<p><u><i>data protection authority any verifications of, access and corrections to or erasure of his or her personal data, as well as the right to lodge a judicial procedure.</i></u></p>	<p>We are extremely hesitant about competent authorities. The term is used in the Directive in a wide sense, including LEAs. In our opinion ruling DP interaction with LEAs exceeds the scope of this Directive. Interaction with the FIU is also delicate. Should we provide that a person has access to the data held by the FIU?</p> <p>HU:</p> <p>HU cannot support the EP proposal.</p> <p>LV:</p> <p>We would like to see hierarchy of legislative acts. This is conceptual issue.</p> <p>UK:</p> <p>We do not support 39.4.-6.</p> <p>It is unclear what these aim to achieve; if these paragraphs merely restate the legal position under the data protection regime, they add</p>
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						<p>nothing and should be omitted. If they changed the existing regime, they do so while the general application of that regime is under review, which risks giving rise to different potentially inconsistent data protection regimes at a later date.</p> <p>BG:</p> <p>BG: This provision could result in tipping off the subject of a suspicious transaction report on the fact that analysis is being carried out by the FIU. The provision should be removed or proper safeguards should be introduced to avoid the risk of tipping off. It contradicts the tipping off provisions of the other articles of the directive. Please note that the obliged entity should also be protected against claims related to the fact that a report had been submitted, even if the suspicious activity turns out to be legitimate and not related to ML/TF.</p> <p>BE:</p> <p>“The right to lodge a judicial procedure” should be skipped</p>
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						<p>since this may lead to a flow of unjustified judicial procedures that could have a consequence the paralysis of the operationality of FIUs or of other competent authorities. Do not forget that in the previous paragraph it is already mentioned that:</p> <ul style="list-style-type: none"> - With regard to the processing of personal data carried out by Member States within the framework of this Directive, the provisions of Directive 95/46/EC apply. - Member States shall require the obliged entities and competent authorities to recognise and comply with the effective powers of data protection authorities in accordance with Directive 95/46/EC as regards the security of the processing and accuracy of personal data, on an ex officio basis or on the basis of a complaint by the person concerned. <p>NL:</p> <p>EP text OK.</p> <p>PT:</p>
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						We do not agree with EP proposal (see our general comments on data protection above).
464.	Art. 39a – para 5 (new)			5. Access by the person concerned to information contained in a suspicious transaction report shall be prohibited. The prohibition laid down in this paragraph shall not include disclosure to the data protection authorities.	<u>5. Access by the person concerned to information contained in a suspicious transaction report shall be prohibited. The prohibition laid down in this paragraph shall not include disclosure to the data protection authorities.</u>	<p>ES:</p> <p>“Access by the person concerned to information contained in a suspicious transaction report or in an analysis conducted or being conducted according to article 16.2 shall be prohibited.....”</p> <p>SI:</p> <p>Data protection authorities are not involved in any ML/TF investigations performed by FIU and LE. Therefore, we cannot see any reasonable ground to allow disclosure of information contained in a suspicious transaction report to the data protection authorities unless it is related to claims concerning problems with personal data processing.</p> <p>HU:</p> <p>HU cannot support the EP</p>

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						<p>proposal.</p> <p>BG:</p> <p>BG: Please see previous comment. It is not clear what is the purpose of notifying the data protection authority and how this would not result in ultimately notifying the person concerned. There should be detailed rules and safeguards for the data protection authorities if this provision is to be introduced.</p> <p>DE:</p> <p>Sentence 2 of the EP text could be supported.</p> <p>.</p> <p>BE:</p> <p>The prohibition laid down in this paragraph shall not include disclosure to the data protection authorities.</p> <p>If this part of the paragraph is kept: the FIU and the reporting authority should have the safeguard that the data protection authority will not inform the person concerned that an STR has</p>
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						<p>been lodged.</p> <p>An explicit prohibition safeguard should be provided for the data protection authority not to communicate any information on the possible existence or not of an STR file or investigation.</p> <p>If this is not foreseen the prohibition disclosure rule applicable for the reporting entities towards their clients will be easily circumvented and abused of by clients though an appeal to their data protection authority.</p> <p>NL:</p> <p>There is no definition of "the person concerned"</p> <p>PT:</p> <p>We do not agree with EP proposal (see our general comments on data protection above).</p> <p>LL:</p> <p><u>Is the reference to "this paragraph" correct? (substance)</u></p>
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465.	Art. 39a – para 6 (new)			<p>6. Member States shall require the obliged entities and competent authorities to recognise and comply with the effective powers of data protection authorities in accordance with Directive 95/46/EC as regards the security of the processing and accuracy of personal data, on an ex officio basis or on the basis of a complaint by the person concerned.</p>	<p><u>6. Member States shall require the obliged entities and competent authorities to recognise and comply with the effective powers of data protection authorities in accordance with Directive 95/46/EC as regards the security of the processing and accuracy of personal data, on an ex officio basis or on the basis of a complaint by the person concerned.</u></p>	<p>ES:</p> <p>What competent authorities? Directive 95/46 is not applicable to security.....</p> <p>HU:</p> <p>HU cannot support the EP proposal.</p> <p>DE:</p> <p>See comment no. 461.</p> <p>Directive 97/46 may not be (exclusively) relevant if data processing by the police is concerned, but only for data processing by private parties</p> <p>BE:</p> <p>Is this the right place for all these articles? Moreover the Data Protection directive will be replaced by a new one.</p> <p>Why not include this as a general rule in the law transposing the data protection directive?</p> <p>NL:</p> <p>Again, this text seems to limit</p>
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						<p>the application of directive 95/46 to only “the security of the processing and accuracy of personal data”. We disagree with this approach..</p> <p>PT:</p> <p>We do not agree with EP proposal (this already results from the Data Protection Directive – see our general comments on data protection above).</p>
466.	Art. 40	<i>Article 40</i>	<i>Article 40</i>	<i>Article 40</i>	<i>Article 40</i>	<p>LV:</p> <p>We cannot support proposal of Parliament because it will take disproportional resources</p>
467.	Art. 40 – para -1 (new)			<p><i>-1. Member States shall have national centralised mechanisms enabling them to identify, in a timely manner, whether natural or legal persons hold or control bank accounts kept by financial institutions on their territory.</i></p>	<p><i><u>-1. Member States shall have national centralised mechanisms enabling them to identify, in a timely manner, whether natural or legal persons hold or control bank accounts kept by financial institutions on their territory.</u></i></p>	<p>DELETED</p>

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468.	Art. 40 – para -1a (new)			<i>-1a. Member States shall also have mechanisms providing the competent authorities with a means of identifying property without giving prior notice to the owner.</i>	<i><u>-1a. Member States shall also have mechanisms providing the competent authorities with a means of identifying property without giving prior notice to the owner.</u></i>	DELETED
469.	Art. 40 – para 1	Member States shall require that their obliged entities have systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, in accordance with their national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship.	Member States shall require that their obliged entities have systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, in accordance with their national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship, <u>through secure channels and in a manner that ensures full confidentiality of the enquiries.</u>	1. Member States shall require that their obliged entities have systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, in accordance with their national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship, <i>through secure channels and in a manner that ensures full confidentiality of the enquiries.</i>	<u>1. Member States shall require that their obliged entities have systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, in accordance with their national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship, through secure channels and in a manner that ensures full confidentiality of the enquiries.</u>	DELETED
470.	Art 40a (new)			<i>Article 40a</i>	<i><u>Article 40a</u></i>	LV: We would like to see further explanations.
471.	Art. 40a – para 1 (new)			<i>The collection, processing and transfer of information for anti-money laundering purposes shall be considered to be a matter of public</i>	<i><u>The collection, processing and transfer of information for anti-money laundering purposes shall be considered to be a matter of public</u></i>	ES: <u>This should better fit in the section on DP</u>

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				<i>interest under Directive 95/46/EC.</i>	<i><u>interest under Directive 95/46/EC.</u></i>	<p>Only the collection, processing and transfer of information for AML purposes? Why terrorist financing and predicate offences are not included in the wording?</p> <p>DE:</p> <p>See comments above, this can at best apply to private parties only.</p> <p>BE:</p> <p>BE agrees that it is useful that this is clarified explicitly by a provision of the Directive instead of a recital.</p> <p>NL:</p> <p>This text can also be found in a previous text suggestion by the EP. And it should also include CFT.</p> <p>RO:</p> <p>RO suggests to include the categories of information this article makes reference to.</p> <p>PT:</p>
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						<p>We welcome the explicit reference to AML/CFT as a public interest ground, in line with recital (32).</p> <p>*“The collection, processing and transfer of information for anti-money laundering purposes shall be considered as a public interest under those legal acts”.</p> <p>We also note overlapping with the last sentence of Article 39a (as proposed by the EP),</p>
472.	Art. 41	Article 41	Article 41	Article 41	Article 41	
473.	Art. 41 – para 1	1. Member States shall, for the purposes of the preparation of national 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.	1. Member States shall, for the purposes of <u>contributing to</u> the preparation of national 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.	1. Member States shall, for the purposes of the preparation of national 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.	1. Member States shall, for the purposes of <u>contributing to</u> the preparation of national 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.	<p>LT:</p> <p><u>LT is flexible on the drafting of Art. 41.</u></p> <p>NL:</p> <p>EP text OK.</p>
474.	Art. 41 – para 2	2. Statistics referred to in paragraph 1 shall include:	2. Statistics referred to in paragraph 1 shall include:	2. Statistics referred to in paragraph 1 shall include:	2. Statistics referred to in paragraph 1 shall include:	LV:

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475.	Art. 41 – para 2 – point a	(a) data measuring the size and importance of the different sectors which fall under the scope of this Directive, including the number of entities and persons and the economic importance of each sector;	(a) data measuring the size and importance of the different sectors which fall under the scope of this Directive, including the number of entities and persons and the economic importance of each sector;	(a) data measuring the size and importance of the different sectors which fall under the scope of this Directive, including the number of entities and persons and the economic importance of each sector;	(a) — data measuring the size and importance of the different sectors which fall under the scope of this Directive, including the number of entities and persons and the economic importance of each sector;	
476.	Art. 41 – para 2 – point b	(b) data measuring the reporting, investigation and judicial phases of the national anti-money laundering and terrorist financing regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to these 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 and the value in euro of property that has been frozen, seized or confiscated.	(b) data measuring the reporting, investigation and judicial phases of the national anti-money laundering and terrorist financing AML/CFT regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to these 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, <u>the types of predicate offences, where such information is available,</u> and the value in euro of property that has been frozen, seized or confiscated.	(b) data measuring the reporting, investigation and judicial phases of the national anti-money laundering and terrorist financing regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to <i>those</i> 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 and the value in euro of property that has been frozen, seized or confiscated;	(b) — data measuring the reporting, investigation and judicial phases of the national anti-money laundering and terrorist financing AML/CFT financin g regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to these <i>those</i> 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, <u>the types of predicate offences, where such information is available,</u> and the value in euro of property that has been frozen, seized or confiscated.;	BE: “The types of predicate offences, where such information is available”: This phrase should be kept in the text as it is important for the NRA, for the strategic analysis. NL: EP text OK. PT: We consider very important to keep the Council's GA wording with regard to the statistical data on the “ <i>types of predicate offences, where such information is available</i> ”, in order to enhance the identification and mitigation of the predicate

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						threats. LL: "those" in correct EN
477.	Art. 41 – para 2 – point ba (new)			<i>(ba) data identifying the number and percentage of reports resulting in further investigation, with annual report to obliged institutions detailing the usefulness and follow-up of the reports they presented;</i>	<u><i>(ba) data identifying the number and percentage of reports resulting in further investigation, with annual report to obliged institutions detailing the usefulness and follow-up of the reports they presented;</i></u>	SI: Under presumption that suspicious transactions reports are meant in point ba) this fact should be included in the text. UK: FIUs need more flexibility the requirements are too stringent. BE: NL: EP text OK PT: We support this added provision as it enhances the quality of statistical data and the width of the information available.
478.	Art. 41 – para 2 – point bb			<i>(bb) data regarding the number of cross-border</i>	<u><i>(bb) data regarding the number of cross-border</i></u>	UK:

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	(new)			<i>requests for information that were made, received, refused and partially or fully answered by the FIU.</i>	<i><u>requests for information that were made, received, refused and partially or fully answered by the FIU.</u></i>	Council version preferred. NL: EP text OK PT: We support this added provision as it enhances the quality of statistical data and the width of the information available.
479.	Art. 41 – para 3	3. Member States shall ensure that a consolidated review of their statistical reports is published and shall transmit to the Commission the statistics referred to in paragraph 2.	3. Member States shall ensure that a consolidated review of their statistical reports is published and shall transmit to the Commission the statistics referred to in paragraph 2.	3. Member States shall ensure that a consolidated review of their statistical reports is published and shall transmit to the Commission the statistics referred to in paragraph 2.	3. Member States shall ensure that a consolidated review of their statistical reports is published and shall transmit to the Commission the statistics referred to in paragraph 2.	LL: <u>Where should it be published?</u>
480.	Chapter VI	CHAPTER VI	CHAPTER VI	CHAPTER VI	CHAPTER VI	
481.	Title	POLICIES, PROCEDURES AND SUPERVISION	POLICIES, PROCEDURES AND SUPERVISION	POLICIES, PROCEDURES AND SUPERVISION	POLICIES, PROCEDURES AND SUPERVISION	LL: <u>Quid deletion of "procedures" and addition of "cooperation" and "sanctions"?</u>
482.	Section 1	SECTION 1	SECTION 1	SECTION 1	SECTION 1	
483.	Title	INTERNAL PROCEDURES, TRAINING AND FEEDBACK	INTERNAL PROCEDURES, TRAINING AND FEEDBACK	INTERNAL PROCEDURES, TRAINING AND FEEDBACK	INTERNAL PROCEDURES, TRAINING AND FEEDBACK	
484.	Art. 42	<i>Article 42</i>	<i>Article 42</i>	<i>Article 42</i>	<i>Article 42</i>	
485.	Art. 42 – para	1. Member States shall require	1. Member States shall	1. Member States shall require	1. Member States shall	LT:

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	1	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 anti-money laundering and combating terrorist financing purposes. Those policies and procedures shall be implemented effectively at the level of branches and majority-owned subsidiaries in Member States and third countries.	<u>in addition to the obligations under this Directive binding individual obliged entities,</u> 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 anti-money laundering and combating terrorist financing 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.	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 anti-money laundering and combating terrorist financing purposes. Those policies and procedures shall be implemented effectively at the level of branches and majority-owned subsidiaries in Member States and third countries.	<u>in addition to the obligations under this Directive binding individual obliged entities,</u> 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 anti-money laundering and combating terrorist financing AML/CFT financin g purposes. Those policies and procedures shall be implemented effectively at the level of branches and majority-owned subsidiaries in Member States and third countries.	<p>LT strongly supports Councils's GA drafting of Art. 42.</p> <p>LV:</p> <p>We support Council text.</p> <p>FR:</p> <p>France supports the additional approach in the council text.</p> <p>NL:</p> <p>we prefer the GA text.</p> <p>PT:</p> <p>We consider that Council GA amendments should be kept, as group-wide policies shall not preclude compliance with this Directive on an individual basis.</p>
486.	Art. 42 – para 1a (new)		<u>1a. Member States shall require that obliged entities that operate establishments in another Member State ensure that these establishments respect the national provisions of that</u>		<u>1a. Member States shall require that obliged entities that operate establishments in another Member State ensure that these establishments respect the national provisions of that</u>	<p>BG:</p> <p>BG: The provision should remain unchanged as proposed by the Council General Approach.</p>

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			<p><u>other Member State pertaining to this Directive.</u></p>		<p>other Member State pertaining to this Directive.</p>	<p>DE:</p> <p>We support the inclusion of par. 1a (new) into Article 42. Obligated entities operating in another member state using the European passport still must respect national AML/CFT legislation.</p> <p>DK:</p> <p>DK finds it important that the general approach reached in Council is adhered to, to ensure that national provisions are respected.</p> <p>FR:</p> <p><u>France supports the Council's text (1a)</u></p> <p>BE:</p> <p>It is important to clarify this explicitly.</p> <p>NL:</p> <p>we prefer the GA text.</p> <p>PT:</p> <p>This Council GA amendment</p>
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						<p>is key for us, as it is one of the cornerstones of the home-host distribution of supervisory powers.</p> <p>In fact, the home CA shall require that obliged entities there headquartered fully comply with AML/CFT requirements of the host MSs where they are established, so that the principle of territoriality governing AML/CFT supervision is duly safeguarded.</p> <p>Nevertheless, in our view, the definition of establishment should also include e-money distributors, in line with our comments on recital (38a).</p>
487.	Art. 42 – para 2	2. Member States shall ensure that where obliged entities have branches or majority-owned subsidiaries located in third countries where the minimum anti-money laundering and combating terrorist financing 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	2. Member States shall ensure that where obliged entities have branches or majority-owned subsidiaries located in third countries where the minimum anti-money laundering and combating terrorist financing 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	2. Member States shall ensure that where obliged entities have branches or majority-owned subsidiaries located in third countries where the minimum anti-money laundering and combating terrorist financing 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	2. Member States shall ensure that where obliged entities have branches or majority-owned subsidiaries located in third countries where the minimum anti-money laundering and combating terrorist financing 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	<p>NL:</p> <p>we prefer the GA text.</p>

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		data protection, to the extent that the third country's laws and regulations so allow.	the Member State, including data protection, to the extent that the third country's laws and regulations so allow.	data protection, to the extent that the third country's laws and regulations so allow.	the Member State, including data protection, to the extent that the third country's laws and regulations so allow.	
488.	Art. 42 – para 3	3. The Member States, EBA, EIOPA and ESMA shall inform each other of cases where the legislation of the third country does not permit application of the measures required under paragraph 1 and coordinated action could be taken to pursue a solution.	3. The Member States, EBA, EIOPA and ESMA shall inform each other of cases where the legislation of the third country does not permit application of the measures required under paragraph 1 and coordinated action could be taken to pursue a solution.	3. The Member States and the ESAs shall inform each other of cases where the third-country law does not permit application of the measures required under paragraph 1 and coordinated action could be taken to pursue a solution.	3. The Member States, EBA, EIOPA and ESMA the ESAs shall inform each other of cases where the legislation of the third-country law does not permit application of the measures required under paragraph 1 and coordinated action could be taken to pursue a solution.	NL: we prefer the GA text. LL: <i>third-country law appears to be better EN</i>
489.	Art. 42 – para 4	4. Member States shall require that, where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1, obliged entities take additional measures to effectively handle the risk of money laundering or terrorist financing, and inform their home supervisors. If the additional measures are not sufficient, competent authorities in the home country shall consider additional supervisory actions, including, as appropriate, requesting the financial group to close down its operations in	4. Member States shall require that, where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1, obliged entities take ensure that branches and majority owned subsidiaries in this third country apply additional measures to effectively handle the risk of money laundering or terrorist financing, and inform their home supervisors. If the additional measures are not sufficient, competent authorities in the home country shall consider exercise additional supervisory actions,	4. Member States shall require that, where the third-country law does not permit application of the measures required under the first subparagraph of paragraph 1, obliged entities take additional measures to effectively handle the risk of money laundering or terrorist financing, and inform their home supervisors. If the additional measures are not sufficient, competent authorities in the home country shall consider additional supervisory actions, including, as appropriate, requesting the financial group to close down its operations in the host country.	4. Member States shall require that, where the legislation of the third-country law does not permit application of the measures required under the first subparagraph of paragraph 1, obliged entities take ensure that branches and majority owned subsidiaries in this third country apply take additional measures to effectively handle the risk of money laundering or terrorist financing, and inform their home supervisors. If the additional measures are not sufficient, competent authorities in the home country shall	DE: The text proposal made by the Council should be maintained. When operating branches or subsidiaries in a third country European enterprises are obliged to respect EU AML/CFT standards. The national supervisory authority should therefore have the power – due to the circumstances of the individual case – to order the closure of business in that country. IE: <u>Ireland had some reservations</u>

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		the host country.	including, as appropriate, <u>requiring that the group does not establish or that it terminates business relationships, and does not undertake transactions and, where necessary,</u> requesting the financial group to close down its operations in the host <u>third</u> country.		consider, exercise or <u>consider</u> additional supervisory actions, including, as appropriate, <u>requiring that the group does not establish or that it terminates business relationships, and does not undertake transactions and, where necessary, appropriate,</u> requesting the financial group to close down its operations in the host <u>third</u> host country.	<p><u>as to the clarity of the Council text, it therefore supports reversion to COM text by EP.</u></p> <p>FR:</p> <p>France supports the Council's text (42 para 4)</p> <p>BE:</p> <p>BE suggests maintaining the text of the Council. At least, the clarifications inserted at the end of this provision should be maintained.</p> <p>NL:</p> <p>we prefer the GA text. Could "branches and majority owned subsidiaries" be replaced by "establishments"?</p> <p>Also, the GA text provides for a more reasonable approach. The supervisor does not immediately have to request close down of operations.</p> <p>PT:</p> <p>Council's GA amendments should be kept, insofar as it <u>binds</u> supervision authorities</p>
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						<p>to take appropriate action when the application of additional measures is not sufficient.</p> <p>LL:</p> <p><u>Idem</u></p> <p><u>It should be "that third country" in new Council text</u></p> <p><u>Should it be "home country" or "Member State"?</u></p>
490.	Art. 42 – para 5 – subpara 1	5. EBA, EIOPA and ESMA shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 4 of this Article and the minimum action to be taken by obliged entities referred to Article 2(1)(1) and (2) where the legislation of the third country does not permit application of the measures required under paragraphs 1 and 2. EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission within two years of the date of entry into force of this	5. EBA, EIOPA and ESMA shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 4 of this Article and the minimum action to be taken by obliged entities referred to <u>in</u> Article 2(1)(1) and (2) where the legislation of the third country does not permit application of the measures required under paragraphs 1 and 2. EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission within two years of the date of entry into force	5. <i>The ESAs</i> shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 4 of this Article and the minimum action to be taken by obliged entities referred to Article 2(1)(1) and (2) where <i>third-country law</i> does not permit application of the measures required under paragraphs 1 and 2 of this Article. █	5. — EBA, EIOPA and ESMA <u>5. The ESAs</u> shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 4 of this Article and the minimum action to be taken by obliged entities referred to in Article 2(1)(1) and (2) where the legislation of the third-country law does not permit application of the measures required under paragraphs 1 and 2. EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission within two years	<p><u>UK:</u></p> <p><u>Council timetable more realistic/preferred.</u></p> <p>NL:</p> <p>We agree on the joint EP and GA text.</p> <p>LL:</p> <p><i>third-country law appears to be better EN</i></p>

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		Directive.	of this Directive.		of the date of entry into force of this Directive. Article. I	
491.	Art. 42 – para 5 – subpara 2			<i>The ESAs shall submit those draft regulatory technical standards to the Commission by ...* [OJ please insert date: 18 months after the date of entry into force of this Directive].</i>	<u>The ESAs shall submit those draft regulatory technical standards to the Commission by ...* [OJ please insert date: 18 months after the date of entry into force of this Directive].</u>	BE: Reducing the time left to the ESAs from 2 to 1 year 1/2 is not very realistic given the procedures defined in the ESAs Regulations. Please, keep the 2 year timeframe. NL: We think 2 years is more feasible for the ESAs than 18 months. LL: <u>Move to footnote...</u>
492.	Art. 42 – para 6	6. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 5 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.	6. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 5 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.	6. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 5 in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.	6. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 5 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.	NL: We prefer the GA text.
493.	Art. 42 – para	7. Member States shall ensure	7. Member States shall	7. Member States shall ensure	7. Member States shall	BG:

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	7	that sharing of information within the group is allowed provided that it does not prejudice investigation into, or analysis of, possible money laundering or terrorist financing by the FIU or by other competent authorities in accordance with national law.	ensure that sharing of information within the group is allowed provided . <u>Information on suspicions that it does not prejudice investigation into, funds are the proceeds of criminal activity or analysis of, possible money laundering or are related to</u> terrorist financing <u>reported to the FIU shall be shared within the group, unless otherwise instructed</u> by the FIU or by other competent authorities in accordance with national law.	that sharing of information within the group is allowed provided that it does not prejudice investigation into, or analysis of, possible money laundering or terrorist financing by the FIU or by other competent authorities in accordance with national law.	ensure that sharing of information within the group is allowed provided; Information on suspicions that it does not prejudice investigation into, funds are the proceeds of criminal activity or analysis of, possible money laundering or are related to terrorist financing <u>reported to the FIU shall be shared within the group, unless otherwise instructed</u> by the FIU or by other competent authorities in accordance with national law.	BG: It is not clear how the obliged entity would be made aware of the opening of an investigation. The proposal of the Parliament would be difficult to be implemented in practice and to achieve effective results. BE: It is of crucial importance that the words "unless otherwise instructed by the FIU" remain skipped since the FIU does not have any possible instruction power or view in this matter. On that point BE support the EP text (which is also the original COM text). NL: We prefer the GA text.
494.	Art. 42 – para 8	8. Member States may require issuers of electronic money as	8. Member States may require issuers of electronic	8. Member States may require electronic money <i>issuers</i> as	8. Member States may require issuers of electronic	<u>UK:</u>

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		defined by Directive 2009/110/EC of the European Parliament and of the Council ⁵⁰ and payment providers as defined by Directive 2007/64/EC of the European Parliament and of the Council ⁵¹ established on their territory, and whose head office is situated in another Member State or outside the Union, to appoint a central contact point in their territory to oversee the compliance with anti-money laundering and terrorist financing rules.	money as defined by Directive 2009/110/EC of the European Parliament and of the Council ⁵² and payment <u>service</u> providers as defined by Directive 2007/64/EC of the European Parliament and of the Council ⁵³ established on their territory <u>in forms other than a branch</u> , and whose head office is situated in another Member State or outside the Union , to appoint a central contact point in their territory to oversee the <u>ensure on behalf of the appointing institution</u> compliance with anti-money laundering and terrorist financing <u>AML/CFT</u> rules <u>and to facilitate supervision by competent authorities, including by providing competent authorities with documents and information on request.</u>	defined <i>in Article 2(3) of</i> Directive 2009/110/EC ■ and payment providers as defined <i>in Article 4(9) of</i> Directive 2007/64/EC ■ established on their territory, and whose head office is situated in another Member State or outside the Union, to appoint a central contact point in their territory to oversee the compliance with anti-money laundering and terrorist financing rules.	money <u>issuers</u> as defined by <u>in Article 2(3) of</u> Directive 2009/110/EC of the European Parliament and of the Council⁵⁴ ■ and payment <u>service</u> providers as defined <u>by in Article 4(9) of</u> Directive 2007/64/EC of the European Parliament and of the Council⁵⁵ ■ established on their territory <u>in forms other than a branch</u> , and whose head office is situated in another Member State or outside the Union, to appoint a central contact point in their territory to oversee the <u>ensure on behalf of the appointing institution</u> the compliance with anti-money laundering and terrorist financing <u>AML/CFT</u> <u>financin</u> g rules <u>and to facilitate supervision by competent authorities, including by providing competent authorities with documents and information on request.</u>	DE: We support the text proposal made by the Council. It is very important to include “in forms other than a branch” to include all types of establishments, including agents (and distributors) FR: <u>France supports the Council's text (art. 42 para 8)</u> BE: a. b. The insertion of the words “ <i>in forms other than a branch</i> ” by the Council in the text is crucial: if a branch is established, there is no need for requiring above this the creation of a central contact point.
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⁵⁰ OJ L 267, 10.10.2009, p. 7.

⁵¹ OJ L 319, 5.12.2007, p. 1.

⁵² OJ L 267, 10.10.2009, p. 7.

⁵³ OJ L 319, 5.12.2007, p. 1.

⁵⁴ OJ L 267, 10.10.2009, p. 7.

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						<p>c. The clarification of the aim of such CCP as proposed by the Council is also very important:</p> <ul style="list-style-type: none"> • As a reminder, the substitution of the word "<i>oversee</i>" by the words "<i>ensure on behalf of the appointing institution</i>" is very crucial to us. • In the same way, it is important to state that these CCP should aim at facilitating the supervision by competent authorities of the host country by providing these competent authorities with documents and information requested. <p>On these two points, the wording retained in the Council compromise should certainly be maintained</p> <p>NL:</p> <p>We agree on the joint EP and GA text.</p>
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						<p>PT:</p> <p>It is crucial for us that Article 42 (8) remains as proposed by the Council's GA.</p> <p>Further to our previous non-paper on this issue (together with BE and FR), Article 42 (8) should be read as allowing the host MSs to require the establishment of Central Contact Points (CCPs) by PIs and EMIs operating on their territory for representing them and exercising on their behalf all their responsibilities regarding the compliance with the local AML/CFT law.</p> <p>Additionally, the wording of Article 42 (8) should be broad enough to entrust CCPs – through the issuance of RTSs – with all the tasks deemed appropriate to facilitate supervision by the host CA (including but not limited to information requests).</p> <p>LL:</p> <p>2009/110/EC is already</p>
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						quoted page 52...(no footnote) Idem 2007/64/EC
495.	Art. 42 – para 9 – subpara 1	9. EBA, EIOPA and ESMA shall develop draft regulatory technical standards on the criteria for determining the circumstances when the appointment of a central contact point pursuant to paragraph 8 above is appropriate, and what the functions of central contact points should be. EBA, ESMA and EIOPA shall submit these draft regulatory technical standards to the Commission within two years of the date of entry into force of this Directive.	9. EBA, EIOPA and ESMA shall develop draft regulatory technical standards on the <u>setting out</u> criteria for determining the circumstances when the appointment of a central contact point pursuant to paragraph 8 above is appropriate, and what the functions of central contact points should be. EBA, ESMA and EIOPA shall submit these draft regulatory technical standards to the Commission within two years of the date of entry into force of this Directive.	9. <i>The ESAs</i> shall develop draft regulatory technical standards on the criteria for determining the circumstances when the appointment of a central contact point pursuant to paragraph 8 [...]is appropriate, and what the functions of the central contact points should be.	9. EBA, EIOPA and ESMA. The ESAs shall develop draft regulatory technical standards on thesetting outthe criteria for determining the circumstances when the appointment of a central contact point pursuant to paragraph 8 above [...] is appropriate, and what the functions of <u>the</u> central contact points should be. EBA, ESMA and EIOPA shall submit these draft regulatory technical standards to the Commission within two years of the date of entry into force of this Directive.	BE: As a reminder, if it is possible to replace "RTS" with "guidelines", BE will certainly support this change. This would doubtless facilitate very much the work of the ESAs with the view to produce an useful complement to the directive, taking into account the very diverse particularities or legal regimes applicable in this matter in the 28 MS. NL: EP text OK LL: <u>Delete above</u>
496.	Art. 42 – para 9 – subpara 2			<i>The ESAs</i> shall submit those draft regulatory technical	<u><i>The ESAs shall submit those draft regulatory technical</i></u>	NL:

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				standards to the Commission by ...* [OJ please insert date: two years after the date of entry into force of this Directive.	<u>standards to the Commission by ...* [OJ please insert date: two years after the date of entry into force of this Directive.</u>	2 years is more reasonable than 18 months.
497.	Art. 42 – para 10	10. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 9 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.	10. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 9 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.	10. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 9 in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.	10. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 9 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.	NL: EP text is OK
498.	Art. 43	<i>Article 43</i>	<i>Article 43</i>	<i>Article 43</i>	<i>Article 43</i>	
499.	Art. 43 – para 1 – subpara 1	1. Member States shall require that obliged entities take measures proportionate to their risks, nature and size so that their relevant employees are aware of the provisions adopted pursuant to this Directive, including relevant data protection requirements.	1. Member States shall require that obliged entities take measures proportionate to their risks, nature and size so that their relevant employees are aware of the provisions adopted pursuant to this Directive, including relevant data protection requirements.	1. Member States shall require that obliged entities take measures proportionate to their risks, nature and size so that their relevant employees are aware of the provisions adopted pursuant to this Directive, including relevant data protection requirements.	1. Member States shall require that obliged entities take measures proportionate to their risks, nature and size so that their relevant employees are aware of the provisions adopted pursuant to this Directive, including relevant data protection requirements.	LT: <u>LT could support EP ECON drafting of Art. 43.</u> NL: EP text is OK
500.	Art. 43 – para 1 – subpara 2	These measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to	These measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to	<i>Those</i> measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to	These <i>Those</i> measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be	NL: EP text is OK LL:

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		money laundering or terrorist financing and to instruct them as to how to proceed in such cases.	money laundering or terrorist financing and to instruct them as to how to proceed in such cases.	money laundering or terrorist financing and to instruct them as to how to proceed in such cases.	related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases.	<u>Those is better EN</u>
501.	Art. 43 – para 1 – subpara 3	Where a natural person falling within any of the categories listed in Article 2(1)(3) performs his 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.	Where a natural person falling within any of the categories listed in Article 2(1)(3) performs his 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.	Where a natural person falling within any of the categories listed in Article 2(1)(3) 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.	Where a natural person falling within any of the categories listed in Article 2(1)(3) performs his 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.	NL: EP text is OK
502.	Art. 43 – para 2	2. Member States shall ensure that obliged entities have access to up-to-date information on the practices of money launderers and terrorist financiers and on indications leading to the recognition of suspicious transactions.	2. Member States shall ensure that obliged entities have access to up-to-date information on the practices of money launderers and terrorist financiers and on indications leading to the recognition of suspicious transactions.	2. Member States shall ensure that obliged entities have access to up-to-date information on the practices of money launderers and terrorist financiers and on indications leading to the recognition of suspicious transactions.	2. Member States Member States shall ensure that obliged entities have access to up-to-date information on the practices of money launderers and terrorist financiers and on indications leading to the recognition of suspicious transactions.	LV: We cannot support amendment.
503.	Art. 43 – para 3	3. Member States shall ensure that, wherever practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided.	3. Member States shall ensure that, wherever practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided.	3. Member States shall ensure that, <i>where</i> practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided <i>to obliged entities</i> .	3. Member States Member States shall ensure that, wherever <i>where</i> practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided to obliged entities .	LV: We support amendment. NL: EP text is OK
504.	Art. 43 – para 3a (new)			<i>3a. Member States shall require that obliged entities appoint the member(s) of the</i>	<i>3a. Member States shall require that obliged entities appoint the member(s) of the</i>	<u>UK:</u> Not all entities have a

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				<p><i>management board who are responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with this Directive.</i></p>	<p><u><i>management board who are responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with this Directive.</i></u></p>	<p><u>management board. Small obliged entities don't. Seniority may be a better criteria.</u></p> <p>DE:</p> <p>We support the introduction of a new paragraph stating the obligation to appoint a compliance officer at management level. Still we would prefer a slightly modified text using the term "compliance officer".</p> <p>IE:</p> <p>Need to be clear on verb 'appoint' – could be interpreted as a requirement to appoint a board member solely or specifically for this purpose where intention is perhaps just to 'nominate' an existing board member to take resonsbilty for this areas.</p> <p>Drafting- The highlighted 'the' appears superfluous in Engl.</p> <p>NL:</p> <p>EP text OK</p>
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						<p>MT:</p> <p><u>It is not clear what the intention of this particular provision is.</u></p> <p>PT:</p> <p>This provision does not seem to be aligned with other provisions of this Directive, namely articles 3(8), 8 (4) (a) and (5), which do not require management board approval for internal control procedures or for the establishment of an independent compliance function. These can be approved by senior management.</p>
505.	Section 2	SECTION 2	SECTION 2	SECTION 2	SECTION 2	
506.	Title	SUPERVISION	SUPERVISION	SUPERVISION	SUPERVISION	
507.	Art. 44	Article 44	Article 44	Article 44	Article 44	
508.	Art. 44 – para 1	1. Member States shall provide that currency exchange offices and trust or company service providers shall be licensed or registered and providers of gambling services be authorised.	1. Member States shall provide that currency exchange and cheque cashing offices and trust or company service providers shall be licensed or registered and providers of gambling services be authorised regulated .	1. Member States shall provide that currency exchange offices and trust or company service providers be licensed or registered and providers of gambling services be authorised.	1. Member States shall provide that currency exchange and cheque cashing offices and trust or company service providers shall be licensed or registered and providers of gambling services be authorised regulated authorise	<p>LT:</p> <p>LT supports EP ECON drafting of Art. 44 regarding gambling services. Notions “regulated” and “authorised” are very different. “Authorised” means that operator has right (under the</p>

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					<p><u>d.</u></p> <p>licence, concession, monopoly, exclusive right, etc.. depending on the MS legislation) to provide its services in a particular MS. Gambling services are not harmonised at EU level and gambling may raise harm for health of consumers, that's why each MS has right to establish its own players protection policy and require operators who are authorised in another MS to comply with legislation of MS where operator intends to provide its services – to obtain licence or other form of authorisation. If notion “regulated” will be retained, it could be understood that gambling operator does not need to be authorised in particular MS. For the sake of players protection LT believes that wording “gambling services be authorised” should be used.</p> <p>HU:</p> <p>HU supports the Council general approach. HU cannot support the text of the EP.</p> <p>FR:</p>
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						<p><u>France supports the Council's text (art. 44)</u></p> <p>NL:</p> <p>We <u>would prefer part of the paragraph to be phrased as follows: "and gambling services be authorised when allowed under national law"</u>.</p> <p>Not all Member States currently allow all sorts of gambling. For instance online gambling is not allowed yet in the Netherlands. It should be clear that it only refers to situations where the member state allows online gambling (perhaps by means of a recital).</p> <p>However, if we would have to choose between 'authorised' and 'regulated' we prefer 'regulated'.</p> <p>MT:</p> <p><u>MT cannot support the text being proposed in the final column/EP text.</u></p>
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						<p><u>MT has always recognised the need that all the activities falling under article 44(1) are adequately regulated. However, given that gambling services are to date unharmonised at an EU level, MT considers that any requirement to licence or authorise these services would go beyond the objective of the proposed directive.</u></p> <p><u>Malta considers that the requirement under Article 44(1) should be sufficiently neutral, as opposed to the current prescriptive and establishment-oriented measure, in order to allow for the diversity of the gambling activities falling under its scope and the diversity of gambling policies and regulatory measures adopted by Member States in accordance with the case law of the Courts of Justice.</u></p> <p><u>MT therefore supports the more neutral text proposed by the Presidency compromise which makes use of the word</u></p>
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						<u>'regulated' for gambling services.</u>
509.	Art. 44 – para 2	2. In respect of the entities referred to in paragraph 1, Member States shall require competent authorities to ensure that the persons who effectively direct or will direct the business of such entities or the beneficial owners of such entities are fit and proper persons.	2. In respect of the entities referred to in paragraph 1, Member States shall require competent authorities to ensure that the persons who effectively direct hold a management function in entities referred to in paragraph 1, or will direct the business of such entities or are the beneficial owners of such entities, are fit and proper persons.	2. In respect of the entities referred to in paragraph 1, Member States shall require competent authorities to ensure that the persons who effectively direct or will direct the business of such entities or the beneficial owners of such entities are fit and proper persons.	2. — In respect of the entities referred to in paragraph 1, Member States shall require competent authorities to ensure that the persons who effectively direct hold a management function in entities referred to in paragraph 1, or will direct the business of such entities or are the beneficial owners of such entities, are fit and proper persons.	LV: We support amendment. NL: We prefer the GA text.
510.	Art. 44 – para 3	3. In respect of the obliged entities referred to in Article 2(1)(3) (a), (b), (d) and (e), Member States shall ensure that competent authorities take the necessary measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function in those obliged entities.	3. In respect of the obliged entities referred to in Article 2(1)(3) (a), (b), (d) and (ed) , Member States shall ensure that competent authorities take the necessary measures to prevent criminals or their associates from holding a management function in or being the beneficial owner owners of a significant or controlling interest, or holding a management function in those obliged entities.	3. In respect of the obliged entities referred to in <i>point (3)(a), (b), (d) and (e) of Article 2(1),</i> Member States shall ensure that competent authorities and self-regulatory bodies take the necessary measures to prevent convicted criminals in those areas or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function in those obliged entities.	3. — In respect of the obliged entities referred to in Article 2(1)(point (3)-(e)) Article 2(1)(a), (b), (d) and (ed) of Article 2(1), Member States shall ensure that competent authorities and self-regulatory bodies take the necessary measures to prevent convicted criminals in those areas or their associates from holding a management function in or being the beneficial owner ownersowner of a significant or controlling interest, or holding a management function in those obliged entities.	CZ: CZ strongly supports the Council's GA. DE: We support the amendment of the term "self regulatory bodies" IE: Ireland would suggest the use of the term "convicted criminal" instead of "criminal", in this section.

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						<p>NL:</p> <p>We prefer the GA text. This requirement cannot seriously be supervised in the case of the very large group of traders in high value goods.</p> <p>PL:</p> <p>PL strongly opposes the version of the art. 29 as proposed by the EP. We firmly support the wording proposed by the Council. Please note that the category of obliged entities defined in art. 2(1)(e) (<i>other natural or legal persons trading in goods, only to the extent that payments are made or received in cash in an amount of EUR 7 500 <u>10 000</u> or more possibly</i>) could possibly cover any SME in Europe. In our view it is almost impossible for MS to effectively enforce provisions of art. 44(3) in regard to this category of obliged entities.</p> <p>PT:</p> <p>We strongly disagree with EP proposals.</p>
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						The wording proposed by the EP is intended to prevent criminals from holding or controlling obliged entities relevant for this provision only when they are <u>convicted</u> for the <u>practise of crimes related to those entities' areas of practise</u> . Apart from general concerns that arise out of this approach, relating to the effectiveness of money laundering and criminality prevention, it would represent a serious deviation from the FATF's R. 26 and 28 (financial and non-financial sector respectively).
511.	Art. 45	<i>Article 45</i>	<i>Article 45</i>	<i>Article 45</i>	<i>Article 45</i>	
512.	Art. 45 – para 1	1. Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensure compliance with the requirements of this Directive.	1. Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensure compliance with the requirements of this Directive.	1. Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensure compliance with the requirements of this Directive.	1. Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensure compliance with the requirements of this Directive.	LL: <u>Delete "the requirements of"</u>
513.	Art. 45 – para 2	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	2. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is	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	2. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is	LV: We cannot support proposal of Parliament

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		monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of these authorities maintain high professional standards, including standards of confidentiality and data protection, they shall be of high integrity and be appropriately skilled.	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 these authorities maintain high professional standards, including standards of confidentiality and data protection, they shall be of high integrity and be appropriately skilled.	monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of <i>those</i> authorities maintain high professional standards, including standards of confidentiality and data protection, they shall be of high integrity and be appropriately skilled.	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 these <i>those</i> authorities maintain high professional standards, including standards of confidentiality and data protection, they shall be of high integrity and be appropriately skilled.	<p>due to the following reasons:</p> <p>1) it is unclear how to realize the mentioned monitoring</p> <p>2) it is not matter of AML.</p> <p>LL:</p> <p><u>Those is ok</u></p>
514.	Art. 45 – para 3	3. In the case of credit and financial institutions and providers of gambling services, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections.	3. In the case of credit and financial institutions and providers of gambling services, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections.	3. In the case of credit and financial institutions and providers of gambling services, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections. <i>Competent authorities in charge of supervising credit and financial institutions shall monitor the adequacy of the legal advice they receive with a view to reducing legal and regulatory arbitrage in the case of aggressive tax planning and avoidance.</i>	3. ———— In the case of credit and financial institutions and providers of gambling services, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections. <i>Competent authorities in charge of supervising credit and financial institutions shall monitor the adequacy of the legal advice they receive with a view to reducing legal and regulatory arbitrage in the case of aggressive tax planning and avoidance.</i>	<p>LT:</p> <p><u>LT supports EP ECON version of Art. 45 – para.3 regarding retaining phrase “notably to conduct on-site inspections”.</u></p> <p>HR:</p> <p>HR strongly opposes this EP amendment. Competent authorities of credit and financial institutions and providers of gambling services cannot be tasked with supervision related to taxation. In the least, the EP text should be amended to state “competent authorities in</p>

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						<p>charge of taxation...".</p> <p>We would like to discuss this issue further.</p> <p>HU:</p> <p>HU cannot support the EP proposal.</p> <p>HU supports the Council general approach (based on Article 45 point 6. on-site visit is included in the measures of the supervisory authorities.</p> <p>UK:</p> <p>The Council text is preferred.</p> <p>The reference to aggressive tax planning is not acceptable. It is not a crime and will not generate criminal proceeds and therefore cannot be money laundering. The Directive should focus on money laundering and should not seek to bring new crimes into effect by the back door. The GAAR rules should be dealt with separately.</p> <p>Finally, routinely monitoring the adequacy of credit and financial institutions' legal</p>
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						<p>advice is unlikely to be an effective use of supervisory resources and will not lead to the reduction in regulatory arbitrage in tax planning and avoidance this amendment is hoping to achieve. The EP text is unhelpful.</p> <p>BG:</p> <p>BG: We do not support the suggested amendment because it is not clear in respect of the responsibilities, tasks and functions of the competent authorities.</p> <p>DE:</p> <p>Competent authorities cannot supervise the legal advice that obliged entities receive; apart from data protection issues, this would be a breach of the special protection for client-lawyer relationships</p> <p>IE:</p> <p>Such advices would be privileged and non-accessible to competent authorities.</p> <p>BE:</p>
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						<p>What is the meaning of this EP amendment? Supervisors are not tax specialists. BE certainly recommends not to retain this EP amendment.</p> <p>NL:</p> <p>We strongly object to the EP added text. It suggests that aggressive tax planning is a crime, which it is not.</p> <p>Also “legal advice they receive” does not seem correct.</p> <p>MT:</p> <p><u>It is not clear what the EP is seeking to achieve by the introduction of the highlighted text.</u></p> <p>PT:</p> <p>We strongly oppose the EP's proposal:</p> <p>(i) It would confer power of tributary nature to supervision authorities for which they lack the necessary legal attributions;</p>
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						<p>(ii) It would introduce disturbances in supervisory resource allocation, in terms that are contrary to the principles of a risk-based and effective supervision;</p> <p>(iii) The tasks provided in the EP's proposed addition should be assigned to tributary authorities, since they are better qualified to address these matters (which are included in their field of expertise).</p> <p>LL:</p> <p><u>Change "notably" (français) to in particular</u></p>
515.	Art. 45 – para 4	4. Member States shall ensure that obliged entities that operate branches or subsidiaries in other Member States respect the national provisions of that other Member State pertaining to this Directive.	4. Member States shall ensure that <u>competent authorities of the Member State in which the obliged entities entity operates establishments supervise</u> that operate branches or subsidiaries in other Member States <u>these establishments</u> respect the national provisions of that other Member State pertaining to this Directive. <u>In the case of the establishments referred to in Article 42(8), such supervision may include the</u>	4. Member States shall <i>require</i> that obliged entities that operate branches or subsidiaries in other Member States respect the national provisions of that other Member State pertaining to this Directive.	4. — Member States shall ensure <u>require</u> that competent authorities of the Member State in which the obliged entities entity operates establishments supervise <u>entities that operate branches or subsidiaries in other Member States these establishments</u> respect the national provisions of that other Member State pertaining to this Directive. In the case of the establishments referred to in Article 42(8), such supervision may	<p>HU:</p> <p>HU cannot support the EP proposal.</p> <p>UK:</p> <p>‘MS shall require that competent authorities (see council text down to ‘this Directive’. Delete text in bold italics).</p> <p>DE:</p> <p>We support the text proposal</p>

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			<p><u>taking of appropriate and proportionate measures to address serious failings that require immediate remedies. These measures shall be temporary and be terminated when the failings identified are addressed, including, with the assistance of or in cooperation with the home country's competent authorities, in accordance with Article 42(1a) of this Directive.</u></p>		<p>include the taking of appropriate and proportionate measures to address serious failings that require immediate remedies. These measures shall be temporary and be terminated when the failings identified are addressed, including, with the assistance of or in cooperation with the home country's competent authorities, in accordance with Article 42(1a) of this Directive.</p>	<p>made by the Council since it is important to cover all types of establishments. Obligated entities when operating establishments in another member state using the European passport are subject to the AML/CFT regulation of the host country. The host country supervisory authority should have a minimum supervisory authority over the establishment.</p> <p>FR:</p> <p><u>France supports the Council's text (art. 45 para 4)</u></p> <p>BE:</p> <p>The changes introduced during the debate at the Council level should be maintained. They are crucial to BE. They were the result of long discussions, with the aim to clarify the respective roles of home & host supervisors.</p> <p>NL:</p> <p>We prefer the GA text as it better reflects host supervision. However, the text "appropriate and proportionate</p>
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						<p>measures (...) this Directive” is a rather strict limitation of host supervision. We find this strict limitation undesirable.</p> <p>PT:</p> <p>The Council GA text is key for us.</p> <p>Further to our previous non-paper on this issue (together with BE and FR), it is of the utmost importance that the host supervisor is empowered to apply appropriate and proportionate precautionary and remediate measures, in order to safeguard compliance with AML/CFT requirements by PI/EMI acting in the host MS through a network of agents/ e-money distributors.</p> <p>Therefore, we can't accept any decrease of the supervisory powers conferred on host CA by the Council's GA on article 45 (4), with the interpretation given by recital (38b) as also proposed by the Council.</p> <p>Indeed, we envision the supervisory powers granted by article 45 (4) as the minimum acceptable, since the host CA should be entrusted with all</p>
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						<p>the powers necessary to address (through preventive and/or remedial actions) breaches of the local law, irrespectively of its serious or non-serious nature. In such case, recital (38b) should be adjusted accordingly.</p> <p>LL:</p> <p><u>What is an establishment? a branch? a subsidiary? ...if some of them are the same please use one name in the whole text...</u></p>
516.	Art. 45 – para 5	5. Member States shall ensure that the competent authorities of the Member State in which the branch or subsidiary is established 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.	5. Member States shall ensure that the competent authorities of the Member State in which the branch or subsidiary is established shall <u>obliged entity operates establishments</u> 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.	5. Member States shall ensure that the competent authorities of the Member State in which the branch or subsidiary is established 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.	5. Member States shall ensure that the competent authorities of the Member State in which the branch or subsidiary is established 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.	<p>DE:</p> <p>For the sake of consistency throughout the article the wording should be modified as proposed by the Council.</p> <p>NL:</p> <p>We prefer the GA text.</p> <p>PT:</p> <p>Council GA drafting must be kept.</p> <p>In fact, we consider it essential to adequately address the operation of payment</p>

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						institutions and e-money institutions abroad (alongside other forms of establishment not directly qualified as obliged entities).
517.	Art. 45 – para 6	6. Member States shall ensure that competent authorities that apply a risk-sensitive approach to supervision:	6. Member States shall ensure that competent authorities that apply <u>when applying</u> a risk-sensitive based approach to supervision, <u>competent authorities:</u>	6. Member States shall ensure that <i>when applying a risk-based</i> approach to supervision, <i>competent authorities:</i>	6. Member States shall ensure that competent authorities that apply <u>when when applying a risk-sensitive based based</u> approach to supervision, <i>competent authorities:</i>	
518.	Art. 45 – para 6 – point a	(a) have a clear understanding of the money laundering and terrorist financing risks present in their country;	(a) have a clear understanding of the money laundering and terrorist financing risks present in their country;	(a) have a clear understanding of the money laundering and terrorist financing risks present in their country;	(a) have have a clear understanding of the money laundering and terrorist financing risks present in their country;	
519.	Art. 45 – para 6 – point b	(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	(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	(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	(b) have 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	
520.	Art. 45 – para 6 – point c	(c) base the frequency and intensity of on-site and off-site supervision on the risk profile of the obliged entity, and on the money laundering and terrorist financing risks present in the country.	(c) base the frequency and intensity of on-site and off-site supervision on the risk profile of the obliged entity, and on the money laundering and terrorist financing risks present in the country.	(c) base the frequency and intensity of on-site and off-site supervision on the risk profile of the obliged entity, and on the money laundering and terrorist financing risks present in the country.	(c) base base the frequency and intensity of on-site and off-site supervision on the risk profile of the obliged entity, and on the money laundering and terrorist financing risks present in the country.	

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521.	Art. 45 – para 7	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 the management and operations of the obliged entity.	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 the management and operations of the obliged entity.	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 the management and operations of the obliged entity.	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 the management and operations of the obliged entity.	
522.	Art. 45 – para 8	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 policies, internal controls and procedures.	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 policies, internal controls and procedures.	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 policies, internal controls and procedures.	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 policies, internal controls and procedures.	
523.	Art. 45 – para 9	9. In the case of the obliged entities referred to in Article 2(1)(3)(a), (b) and (d) Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with paragraph 2 of this Article.	9. In the case of the obliged entities referred to in Article 2(1)(3)(a), (b) and (d) Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with paragraph 2 of this Article.	9. In the case of the obliged entities referred to in Article 2(1)(3)(a), (b) and (d) Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with paragraph 2 of this Article.	9. — In the case of the obliged entities referred to in Article 2(1)(3)(a), (b) and (d) Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with paragraph 2 of this Article.	
524.	Art. 45 – para	10. EBA, EIOPA and ESMA shall issue guidelines	10. EBA, EIOPA and ESMA shall issue guidelines	10. <i>The ESAs shall, by ...*[OJ please insert date: 2 years</i>	10. — EBA, EIOPA and ESMA shall <u>10. The ESAs</u>	BE:

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10	addressed to competent authorities 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 factors to be applied when conducting supervision on a risk-sensitive basis. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within 2 years of the date of entry into force of this Directive.	addressed to competent authorities 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 factors to be applied characteristics of a risk-sensitive approach to supervision and the steps to be taken when conducting supervision on a risk-sensitive basis. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within 2 years of the date of entry into force of this Directive.	<i>after the date of entry into force of this Directive</i>], issue guidelines addressed to competent authorities 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 factors to be applied when conducting supervision on a risk-sensitive basis. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be <i>laid down</i> . █	<u>shall, by ...*[OJ please insert date: 2 years after the date of entry into force of this Directive]</u> , issue guidelines addressed to competent authorities 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 factors to be applied characteristics of a risk-sensitive approach to supervision and the steps to be taken applied when conducting supervision on a risk-sensitive basis. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be foreseen. These guidelines shall be issued within 2 years of the date of entry into force of this Directive laid down . █	<p>As a reminder, the change of the wording of this provision replacing the words "<i>factors to be applied</i>" by "<i>characteristics of a risk-sensitive approach to supervision and the steps to be taken</i>" is very crucial to the AMLC and the RBCWG: this change should certainly be maintained.</p> <p>NL:</p> <p>We prefer the GA text.</p> <p>We thing 2 years is more feasible for the ESAs than 18 months.</p> <p>LL:</p> <p><u>1) by ...*+footnote is correct</u></p> <p>2) is a risk based approach and risk sensitive approach the same if yes please use one term...</p> <p>3) change should to shall</p>
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						twice 4) laid down is correct EN
525.	Section 3	SECTION 3	SECTION 3	SECTION 3	SECTION 3	
526.	Title	CO-OPERATION	CO-OPERATION	CO-OPERATION	CO-OPERATION	
527.	Subsection I	SUBSECTION I	SUBSECTION I	SUBSECTION I	SUBSECTION I	
528.	Title	NATIONAL CO-OPERATION	NATIONAL CO-OPERATION	NATIONAL CO-OPERATION	NATIONAL CO-OPERATION	
529.	Art. 46	Article 46	Article 46	Article 46	Article 46	DELETED
530.	Art. 46 – para 1	Member States shall ensure that policy makers, the FIU, law enforcement authorities, supervisors and other competent authorities involved in anti-money laundering and combating terrorist financing have effective mechanisms to enable them to co-operate and co-ordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.	Member States shall ensure that policy makers, the FIUs, law enforcement authorities, supervisors and other competent authorities involved in anti-money laundering and combating terrorist <u>the financing of terrorism</u> have effective mechanisms to enable them to co-operate and co-ordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. <u>including with a view to fulfilling their obligation under Article 7 of this Directive.</u>	Member States shall ensure that policy makers, the FIU, law enforcement authorities, supervisors, <i>data protection authorities</i> and other competent authorities involved in anti-money laundering and combating terrorist financing 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.	Member States shall ensure that policy makers, the FIUs <u>FIU</u> , law enforcement authorities, supervisors, <i>data protection authorities</i> and other competent authorities involved in anti-money laundering and combating terrorist <u>the terrorist</u> financing of terrorism have effective mechanisms to enable them to co-operate <u>cooperate</u> and co-ordinate <u>coordinate</u> domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. <u>including with a view to fulfilling their obligation under Article 7 of</u>	DELETED

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					<u>this Directive.</u>	
531.	Subsection II	SUBSECTION II	SUBSECTION II	SUBSECTION II	SUBSECTION II	
532.	Title	CO-OPERATION WITH EBA, EIOPA AND ESMA	CO-OPERATION WITH EBA, EIOPA AND ESMA	CO-OPERATION WITH <i>THE</i> ESAS	CO-OPERATION WITH EBA, EIOPA AND ESMA <i>THE ESAS</i>	
533.	Art. 47	<i>Article 47</i>	<i>Article 47</i>	<i>Article 47</i>	<i>Article 47</i>	
534.	Art. 47 – para 1	The competent authorities shall provide EBA, EIOPA and ESMA with all the information necessary to carry out their duties under this Directive.	The competent authorities shall provide EBA, EIOPA and ESMA with all the information necessary to carry out their duties under this Directive.	<i>Without prejudice to data protection rules</i> , the competent authorities shall provide <i>the ESAs</i> with all the <i>relevant</i> information necessary to carry out their duties under this Directive.	The <i>Without prejudice to data protection rules, the</i> competent authorities shall provide EBA, EIOPA and ESMA <i>the ESAs</i> with all the <i>relevant</i> information necessary to carry out their duties under this Directive.	DE: The Council text should be retained. IE: Ireland – all texts could clarify that the ‘their duties’ refers to the ESAs duties. NL: EP text is OK PT: EP proposals on data protection are not acceptable (see our general comments on data protection – article 39a as proposed by the EP).
535.	Subsection III	SUBSECTION III	SUBSECTION III	SUBSECTION III	SUBSECTION III	
536.	Title	CO-OPERATION BETWEEN	CO-OPERATION BETWEEN	COOPERATION BETWEEN <i>THE</i>	Co-	LL:

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		FIUS AND WITH THE EUROPEAN COMMISSION	FIUS AND WITH THE EUROPEAN COMMISSION	COMMISSION AND THE FIUS	OPERATION COOPERATION BETWEEN FIUS AND WITH THE EUROPEAN COMMISSION AND THE FIUS	EP proposes a better order
537.	Art. 48	<i>Article 48</i>	<i>Article 48</i>	<i>Article 48</i>	<i>Article 48</i>	
538.	Art. 48 – para 1	The Commission 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 with representatives from Member States' FIUs to facilitate co-operation and to exchange views on co-operation related issues.	The Commission 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 with representatives from Member States' FIUs, <u>namely in the form of the EU Financial Intelligence Units' Platform, in order</u> to facilitate co-operation <u>among national FIUs</u> and to exchange views on co-operation related issues <u>such as effective international FIU co-operation, the identification of suspicious transactions with a cross-border dimension, the standardisation of reporting formats through the FIU.net network or its successor and the joint analysis of cross-border cases as well as trends and factors relevant to assessing money</u>	The Commission <i>shall</i> lend such assistance as may be needed to facilitate coordination, including the exchange of information between <i>Member State</i> FIUs within the Union. It <i>shall</i> regularly convene meetings <i>of the EU FIUs' Platform composed of</i> representatives from Member States FIUs <i>and, where appropriate, meetings of the EU FIUs' Platform with EBA, EIOPA or ESMA. The EU FIUs' Platform has been set up to formulate guidance on implementation issues relevant for FIUs and reporting entities, to facilitate the FIUs' activities, particularly those concerning international cooperation and joint analysis, to share information on trends and risk factors in the internal market, and to ensure the participation of the FIUs in the governance of the</i>	The Commission may <i>shall</i> lend such assistance as may be needed to facilitate coordination, including the exchange of information between <u>Member State</u> FIUs within the Union. It may <i>shall</i> regularly convene meetings <u>with of the EU FIUs' Platform composed of</u> representatives from Member States' FIUs, <u>namely in the form of States FIUs and, where appropriate, meetings of the EU Financial Intelligence Units' Platform, in order to facilitate co-operation among national FIUs and to exchange views FIUs' Platform with EBA, EIOPA or ESMA. The EU FIUs' Platform has been set up to formulate guidance on co-operation related implementation issues such as effective relevant for FIUs and reporting entities, to facilitate the FIUs' activities, particularly those</u>	LT: <u>LT supports Council GA drafting of Art. 48.</u> UK: The UK can support the text on platform meetings across the EU and the use of FIU Net (or other technology) to support the work of EU FIUs, it is helpful to discuss best practice and challenges being faced by EU FIUs - this is a reflection on the current situation and is standard business. However, the EP proposal to meet the EBA, EIOPA and ESMA is not supported as these are outside of the FIU arrangements and the current meetings discuss operational matters which might be difficult to share with external

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			<u>laundrying and terrorist financing risks both on the national and supranational level.</u>	<i>FIU.net system.</i>	concerning international FIU co-operation, the identification of suspicious transactions with a cross-border dimension, the standardisation of reporting formats through the FIU.net network or its successor and the cooperation and joint analysis of cross-border cases as well as, to share information on trends and risk factors relevant to assessing money laundering and terrorist financing risks both on the national in the internal market, and supranational level to ensure the participation of the FIUs in the governance of the FIU.net system.	<p>non-FIU partners.</p> <p>NL:</p> <p>We can agree with the EP text. However, the list of activities should be deleted.</p> <p>MT:</p> <p><u>The text adopted by the EP seems to be exhaustive in listing the functions of the FIU-Platform. It would be more appropriate to adopt the Council text which cites a few examples of what these functions may consist of but leaves room for the inclusion of others.</u></p> <p>LL:</p> <p><u>FIU.net is a network of a system?</u></p> <p><u>The platform was set up by a legal act? which one? is a reference missing?</u></p>
539.	Art. 49	Article 49	Article 49	Article 49	Article 49	<p>LV:</p> <p>We can support</p>

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						amendment concerning third countries. But prefer Council text.
540.	Art. 49 – para 1	Member States shall ensure that their FIUs co-operate with each other to the greatest extent possible irrespective of whether they are administrative, law enforcement or judicial or hybrid authorities.	Member States shall ensure that their FIUs co-operate with each other to the greatest extent possible irrespective of whether they are administrative, law enforcement or judicial or hybrid authorities, <u>regardless of their organisational status.</u>	Member States shall ensure that their FIUs cooperate with each other <i>and with third-country FIUs</i> to the greatest extent possible irrespective of whether they are administrative, law enforcement or judicial or hybrid authorities, <i>without prejudice to Union data protection rules.</i>	Member States shall ensure that their FIUs co- <u>operate</u> cooperate with each other <u>and with third-country FIUs</u> to the greatest extent possible irrespective of whether they are administrative, law enforcement or judicial or hybrid authorities, <u>regardless of their organisational status.</u> <u>without prejudice to Union data protection rules.</u>	<p>LT:</p> <p><u>LT supports Council GA drafting of Art.49.</u></p> <p>BE:</p> <p>“without prejudice to Union data protection rules.”: these words should be deleted, since redundant, because the FIUs already need to comply with the data protection rules in the processing of their data, Consequently how will they breach them in the transmission of information between FIUs where moreover also through the Ma3ch system between FIUs additional filters have been installed to prevent communication of personal data.</p> <p>NL:</p> <p>Cooperation with third country FIUs should be</p>

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						<p>dependent on whether the third countries in question have systems in place that are comparable to those of the EU.</p> <p>We <u>strongly object</u> to a possible obligation for our FIU to cooperate with third country regimes that have deficient systems for AML and CFT.</p> <p><u>We therefore prefer the GA text.</u></p>
541.	Art. 50	<i>Article 50</i>	<i>Article 50</i>	<i>Article 50</i>	<i>Article 50</i>	<p>LV:</p> <p>We would like to see further explanations. Can support after comments.</p>
542.	Art. 50 – para 1 – subpara 1	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 or investigation by the FIU regarding financial transactions related to money laundering or terrorist financing and the natural or	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 or investigation by the FIU regarding financial transactions related to money laundering or terrorist financing and the natural or	1. Member States shall ensure that FIUs exchange <i>with other Member State FIUs and with third-country FIUs,</i> automatically or upon request, any information that may be relevant for the processing or analysis of information or investigation by the FIU regarding financial transactions related to money	1. Member States shall ensure that FIUs exchange, <i>spontaneously with other Member State FIUs and with third-country FIUs,</i> automatically or upon request, any information that may be relevant for the processing or analysis of information or investigation by the FIU regarding financial	DELETED

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		legal person involved. A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used.	legal person involved, <u>even if the type of predicate offences possibly involved is not identified at the time of the exchange</u> . A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used. <u>Different exchange mechanisms may apply if so agreed between the FIUs, in particular as regards exchanges through the decentralised computer network FIU.net or its successor.</u>	laundering or terrorist financing and the natural or legal person involved. A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used.	transactions related to money laundering or terrorist financing and the natural or legal person involved, <u>even if the type of predicate offences possibly involved is not identified at the time of the exchange</u> . A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used. <u>Different exchange mechanisms may apply if so agreed between the FIUs, in particular as regards exchanges through the decentralised computer network FIU.net or its successor.</u>	
543.	Art. 50 – para 1 – subpara 1a (new)		<u>When an FIU receives a report pursuant to Article 32(1)(a) of this Directive, which concerns another Member State, it shall promptly forward it to the FIU of that Member State.</u>		<u>When an FIU receives a report pursuant to Article 32(1)(a) of this Directive, which concerns another Member State, it shall promptly forward it to the FIU of that Member State.</u>	DELETED
544.	Art. 50 – para 2 – subpara 1	2. Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its powers which it has domestically available for receiving and analysing	2. Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its powers which it has <u>would use</u> domestically available for receiving and analysing	2. Member States shall ensure that the FIU to <i>which</i> the request is made is required to use the whole range of its powers which it has domestically available for receiving and analysing	2. Member States shall ensure that the FIU to whom <u>which</u> the request is made is required to use the whole range of its powers which it has <u>would use</u> domestically available for	LV: We support aim of amendment. UK:

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		information when it replies to a request for information referred to in paragraph 1 from another FIU based in the Union. The FIU to whom the request is made shall respond in a timely manner and both the requesting and requested FIU shall use secure digital means to exchange information, wherever possible.	information when it replies to a request for information referred to in paragraph 1 from another FIU based in the Union. The FIU to whom the request is made shall respond in a timely manner and both the requesting and requested FIU shall use secure digital means to exchange information, wherever possible.	information when it replies to a request for information referred to in paragraph 1 from another FIU 1 . The FIU to whom the request is made shall respond in a timely manner and both the requesting and requested FIU shall use secure digital means to exchange information, where possible.	receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU based in the Union. 1 . The FIU to whom the request is made shall respond in a timely manner and both the requesting and requested FIU shall use secure digital means to exchange information, wherever <u>where</u> possible.	The UK can accept the EP amendment. LL: <u>Which seems to be better EN</u>
545.	Art. 50 – para 2 – subpara 1a (new)			<i>In particular, when a Member State FIU seeks to obtain additional information from an obliged entity of 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 situated. That FIU shall transfer requests and answers promptly and without any filter.</i>	<u><i>In particular, when a Member State FIU seeks to obtain additional information from an obliged entity of 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 situated. That FIU shall transfer requests and answers promptly and without any filter.</i></u>	ES: <u>Why this wording while existing international exchange of information between FIUs?</u> LV: We support Council text. Will comment later. UK: The UK can not accept this amendment. The requirement to transfer without any filter cuts across the requirements to ensure confidentiality of SARs and protection of the identity

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						<p>of reporters. This is a red-line.</p> <p>Our FIU needs to be able to assess each SAR on a case by case basis for human rights issues, confidentiality, purposes of use before sharing/disseminating.</p> <p>UK FIU may not be able to share the SAR with that individual country, even if it would be interesting to them.</p> <p>BG:</p> <p>BG: The proposed provision creates uncertainty as to the application of the powers of the FIU to gather information pursuant to the provisions of the domestic legislation.</p> <p>DE:</p> <p>We do not support the EP proposal.</p> <p>The phrase „without any filter“ cannot be accepted; moreover, it is not in line with Art. 32 which does not allow indirect access either.</p> <p>IE:</p>
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						<p>Ireland suggests clarification of words 'situated' and 'established' in this context; FR:</p> <p><u>France supports this EP's text (art. 50 para 2 subpar 1a)</u> NL:</p> <p>EP text is OK PT:</p> <p>In line with the <i>rationale</i> behind articles 32(2) and 50(1), as proposed by the Council, the scope of this provision should be reassessed, so that it is limited to those cases where obliged entities do not have an establishment in a given MS. Where an establishment is set, FIUs should be able to address information requests to the establishment pertaining to a given obliged entity (for instance, this may be one of the main drives to demand the creation of central contact points in the host MS).</p>
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546.	Art. 50 – para 3	3. An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State or, in exceptional circumstances, where divulgence of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State or irrelevant to the purposes for which it has been collected. Any such refusal shall be appropriately justified to the FIU requesting the information.	3. An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State or, <u>only</u> in exceptional circumstances, where divulgence of the <u>exchange could impair fundamental national interests. These exceptions should be specified in a way which prevents misuse and undue limitations to the free exchange of</u> information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State or irrelevant to the <u>for analytical</u> purposes for which it has been collected. Any such refusal shall be appropriately justified to the FIU requesting the information.	3. An FIU may refuse to <i>disclose</i> information which could lead to impairment of a criminal investigation being conducted in the requested Member State or, in exceptional circumstances, where <i>disclosure</i> of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State or irrelevant to the purposes for which it has been collected. Any such refusal shall be appropriately justified to the FIU requesting the information.	3. — An FIU may refuse to divulge <u>disclose</u> information which could lead to impairment of a criminal investigation being conducted in the requested Member State or, <u>only</u> in exceptional circumstances, where divulgence of the <u>disclosure of the exchange could impair fundamental national interests. These exceptions should be specified in a way which prevents misuse and undue limitations to the free exchange of</u> information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State or irrelevant to the <u>for analytical</u> purposes for which it has been collected. Any such refusal shall be appropriately justified to the FIU requesting the information.	DE: It is not clear why the exception should be deleted. BE: The Council text should be maintained because in that text the principle of the free exchange for analytical purposes is guaranteed and this is essential in the operability of FIUs, as also required by the Egmont rules on FIUs. NL: We prefer the GA text RO: RO suggests maintaining the EU Council proposal. MT: <u>The text adopted by the Council is in line with the Egmont principles for information exchange between FIUs.</u> LL:
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						<u>Disclosed is more used in UE law</u>
547.	Art. 51	<i>Article 51</i>	<i>Article 51</i>	<i>Article 51</i>	<i>Article 51</i>	
548.	Art. 51 – para 1	Information and documents received pursuant to Articles 49 and 50 shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When transmitting information and documents pursuant to Articles 49 and 50, the transmitting FIU may impose restrictions and conditions for the use of that information. The receiving FIU shall comply with those restrictions and conditions. This does not affect the use for criminal investigations and prosecutions linked to the FIU's tasks to prevent, detect and investigate money laundering and terrorist financing.	Information and documents received pursuant to Articles 49 and 50 shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When transmitting information and documents pursuant to Articles 49 and 50, the transmitting FIU may impose restrictions and conditions for the use of that information. The receiving FIU shall comply with those restrictions and conditions. This does not affect the use for criminal investigations and prosecutions linked to the FIU's tasks to prevent, detect and investigate money laundering and terrorist financing.	Information and documents received pursuant to Articles 49 and 50 shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When transmitting information and documents pursuant to Articles 49 and 50, the transmitting FIU may impose restrictions and conditions for the use of that information. The receiving FIU shall comply with those restrictions and conditions. This does not affect the use for criminal investigations and prosecutions linked to the FIU's tasks to prevent, detect and investigate money laundering and terrorist financing.	Information and documents received pursuant to Articles 49 and 50 shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When transmitting information and documents pursuant to Articles 49 and 50, the transmitting FIU may impose restrictions and conditions for the use of that information. The receiving FIU shall comply with those restrictions and conditions. This does not affect the use for criminal investigations and prosecutions linked to the FIU's tasks to prevent, detect and investigate money laundering and terrorist financing.	<p>BG:</p> <p>BG: Bulgaria supports the draft of the Council. Use of information for evidence is subject to completely different requirements and procedures that cannot be fulfilled within most of the FIUs' mandate.</p> <p>BE:</p> <p>As already explained in previous comments the sentence "This does not affect the use for criminal investigations and prosecutions linked to the FIU's tasks to prevent, detect and investigate money laundering and terrorist financing." is not understandable. Therefore it should be deleted.</p> <p>NL:</p> <p>FIU analyses cases of potential money laundering</p>

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						and terrorist financing, it does not investigate these cases by means of criminal investigations. It does not prevent, detect or investigate, therefore this text should not be in the directive. LL: "This does not affect the use..." - the use of what?
549.	Art. 52	Article 52	Article 52	Article 52	Article 52	LV: We support Council text.
550.	Art. 52 – para 1	Member States shall ensure that FIUs undertake all necessary measures, including security measures, to ensure that information submitted pursuant to Articles 49 and 50 is not accessible by any other authority, agency or department, unless prior approval is given by the FIU providing the information.	1. Member States shall ensure that FIUs undertake all necessary measures, including security measures, to ensure that <u>the exchanged information is used only for the purpose for which it was sought or provided and that any dissemination of the information</u> submitted pursuant to Articles 49 and 50 is not accessible by <u>the receiving FIU to</u> any other authority, agency or department, <u>unless or any use of this information for purposes beyond those</u>	Member States shall ensure that FIUs undertake all necessary measures, including security measures, to ensure that information submitted pursuant to Articles 49 and 50 is not accessible by any other authority, agency or department, unless prior approval is given by the FIU providing the information.	1. Member States shall ensure that FIUs undertake all necessary measures, including security measures, to ensure that the exchanged information is used only for the purpose for which it was sought or provided and that any dissemination of the information submitted pursuant to Articles 49 and 50 is not accessible by the receiving FIU to any other authority, agency or department, unless or any use of this information for purposes beyond those	LT: <u>LT could be flexible regarding Art. 52.</u> BG: BG: The purpose of the use of information should also be included. DE: We support the Council text.. NL:

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			originally approved, is made subject to the prior approval is given authorisation by the FIU providing the information.		originally approved, is made subject to the prior approval is given authorisation given by the FIU providing the information.	We prefer the GA text MT: The Council text of article 52 ensures that the provision for exchange of information between FIUs is in line with the Egmont principles. FIUs that are Egmont members are expected to abide by these principles.
551.	Art. 52 – para 1a (new)		2. The requested FIU's prior consent to disseminate the information to competent authorities should be granted promptly and to the largest extent possible. The requested FIU should 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		2. The requested FIU's prior consent to disseminate the information to competent authorities should be granted promptly and to the largest extent possible. The requested FIU should 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	DE: The Council proposal should be preserved, especially the phrase “or would otherwise not be in accordance with fundamental principles of national law of that Member State....” DK: DK could support the European Parliament in deleting the Council proposal on the prior consent requirement to make the information sharing as effective as possible. NL:

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			<u>national law of that Member State. Any such refusal to grant consent shall be appropriately explained.</u>		<u>be appropriately explained.</u>	<p>We prefer the GA text</p> <p>RO:</p> <p>RO suggests maintaining the EU Council proposal.</p> <p>LL:</p> <p><u>Use SHALL in articles or move to recitals, organise in subpoints....</u></p>
552.	Art. 53	Article 53	Article 53	Article 53	Article 53	
553.	Art. 53 – para 1	1. Member States shall encourage their FIUs to use protected channels of communication between FIUs and to use the decentralised computer network FIU.net.	1. Member States shall encourage require their FIUs to use protected channels of communication between FIUs themselves and to encourage the use of the decentralised computer FIU.net network FIU.net or its successor.	1. Member States shall require their FIUs to use protected channels of communication between themselves.	1. Member States shall encourage require their FIUs to use protected channels of communication between FIUs themselves and to encourage the use of the decentralised computer FIU.net network FIU.net or its successor themselves.	<p>LT:</p> <p><u>LT could be flexible regarding Art. 53.</u></p> <p>LV:</p> <p>We support amendment.</p> <p><u>UK:</u></p> <p><u>Council text preferred.</u></p> <p>NL:</p> <p>We prefer a combination of EP and GA texts.</p>

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554.	Art. 53 – para 2	2. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs co-operate to apply sophisticated technologies. These technologies shall allow FIUs to match their data with other FIUs in an anonymous way by ensuring full protection of personal data with the aim to detect subjects of the FIU's interests in other Member States and identify their proceeds and funds.	2. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs co-operate to apply <u>sophisticated state-of-the-art technologies in accordance with their national law.</u> These technologies shall allow FIUs to match their data with other FIUs in an anonymous way by ensuring full protection of personal data with the aim to detect subjects of the FIU's interests in other Member States and identify their proceeds and funds.	2. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs cooperate <i>among themselves and, within its mandate, with Europol,</i> to apply sophisticated technologies. <i>Those</i> technologies shall allow FIUs to match their data with other FIUs in an anonymous way by ensuring full protection of personal data with the aim to detect subjects of the FIU's interests in other Member States and identify their proceeds and funds.	2. — Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs co-operate <u>cooperate among themselves and, within its mandate, with Europol,</u> to apply sophisticated state-of-the-art <u>sophisticated technologies in accordance with their national law.</u> These. <u>Those</u> technologies shall allow FIUs to match their data with other FIUs in an anonymous way by ensuring full protection of personal data with the aim to detect subjects of the FIU's <u>FIU's</u> interests in other Member States and identify their proceeds and funds.	DELETED
555.	Art. 53bis (new)		<i>Article 53bis</i>		<i>Article 53bis</i>	
556.	Art. 53a – para 1 (new)		<u>Differences between national law definitions of tax crimes shall not impede the ability of FIUs to exchange information or provide assistance to another FIU based in the Union, to the greatest extent possible under their national law.</u>		<i>Differences between national law definitions of tax crimes shall not impede the ability of FIUs to exchange information or provide assistance to another FIU based in the Union, to the greatest extent possible under their national law.</i>	DELETED
557.	Art. 54	<i>Article 54</i>	<i>Article 54</i>	<i>Article 54</i>	<i>Article 54</i>	DELETED

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558.	Art. 54 – para 1	Member States shall ensure that their FIUs cooperate with Europol regarding analyses carried out having a cross-border dimension concerning at least two Member States.	deleted	Member States shall <i>encourage</i> their FIUs to cooperate with Europol regarding analyses <i>of ongoing cases</i> carried out having a cross-border dimension concerning at least two Member States.	deleted Member States shall <i>encourage their FIUs to cooperate with Europol regarding analyses of ongoing cases carried out having a cross-border dimension concerning at least two Member States.</i>	DELETED
559.	Art. 54a (new)			<i>Article 54a</i>	<i>Article 54a</i>	DELETED
560.	Art. 54a – para 1 (new)			<i>The Commission should increase the pressure that it brings to bear on the tax havens to improve their cooperation and exchange of information in order to combat money laundering and terrorist financing.</i>	<i>The Commission should increase the pressure that it brings to bear on the tax havens to improve their cooperation and exchange of information in order to combat money laundering and terrorist financing.</i>	DELETED
561.	Section 4	SECTION 4	SECTION 4	SECTION 4	SECTION 4	LV: WE would like to stress that for Latvia it is very important that AML sanction regime is harmonized with other EU directives which stipulates sanctions for financial institutions.
562.	Title	SANCTIONS	SANCTIONS	SANCTIONS	SANCTIONS	AT: <u>Austrian</u> Position: The

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						<p>“optional regime” should in any case be retained! We strongly reject any kind of cut-off date or threshold approach regarding the “optional regime”!</p> <p>HR:</p> <p>As a general remark, Articles 55. to 58.a. concerning sanctions are a sensitive area for Croatia, particularly as regards the level of pecuniary sanctions, which in Croatia are not applied within the realm of criminal law as administrative sanctions belong under the Law on misdemeanour offences. Our position is that the application of national criminal law should not be compromised. Any changes to the compromise reached in the Council must therefore be approached carefully, having due regard towards national law.</p> <p>FR:</p> <p>On “sanctions” provisions, France supports the EP’s text except in art 56.1 on which France favours the « Council’s redaction. Indeed, the art. 56</p>
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						<p>should mention the words « <i>serious, repetitive or sytematic (...)</i> ». (Council's version).</p> <p>BE:</p> <p>For this entire chapter, we continue to consider that it is very crucial to ensure consistency of the sanctions provided by the AMLD, and applicable in the financial sector, with the sanctions regime provided by other prudential Directives.</p> <p>MT:</p> <p><u>MT supports the Council's compromise text.</u></p> <p>PT:</p> <p>Safeguarded the comments below, we entirely subscribe the Council's GA on the sanctioning regime, as it simultaneously:</p> <p>(i) Ensures a proper alignment with the sanctioning regimes set forth in other financial services <i>dossiers</i>;</p> <p>(ii) Addresses the specificities of the non-financial sector</p>
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						without prejudicing the regime applicable to credit and financial institutions.
563.	Art. 55	Article 55	Article 55	Article 55	Article 55	<p>AT:</p> <p>The publication of sanctions (Art. 56 and 57) not only contradicts the principle of non-publicity in administrative procedures under Austrian law but also seems to be problematic in the light of personality rights.</p> <p>LT:</p> <p><u>LT supports Council GA drafting of Art. 55.</u></p> <p>LV:</p> <p>We can support amendment.</p>
564.	Art. 55 – para 1	1. Member States shall ensure that obliged entities can be held liable for breaches of the national provisions adopted pursuant to this Directive.	1. Member States shall ensure that obliged entities can be held liable for breaches of the national provisions adopted pursuant to this Directive. <u>The penalties shall be effective, proportionate and dissuasive.</u>	1. Member States shall ensure that obliged entities can be held liable for breaches of the national provisions adopted pursuant to this Directive. <u>The penalties shall be effective, proportionate and dissuasive.</u>	1. Member States shall ensure that obliged entities can be held liable for breaches of the national provisions adopted pursuant to this Directive. <u>Member States shall ensure that obliged entities can be held liable for breaches of the national provisions adopted pursuant to this Directive. <u>The penalties shall be effective, proportionate and dissuasive.</u></u>	<p>FI:</p> <p>Proposal made by the EP is not necessary in light of last sentence of para 2.</p> <p>BE:</p> <p><i>“The penalties shall be</i></p>

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						<p><i>effective, proportionate and dissuasive</i>": this is already mentioned in the next paragraph.</p> <p>NL:</p> <p>We prefer a combined EP and GA text</p> <p>LL:</p> <p>PLEASE decide to use <u>PENALTIES</u> OR <u>SANCTIONS</u> in this text</p>
565.	Art. 55 – para 2 – subpara 1	2. Without prejudice to the right of Member States to impose criminal penalties, Member States shall ensure that competent authorities may take appropriate administrative measures and impose administrative sanctions where obliged entities breach the national provisions, adopted in the implementation of this Directive, and shall ensure that they are applied. Those measures and sanctions shall be effective, proportionate and dissuasive.	2. Without prejudice to the right of Member States to provide for and impose criminal penalties, Member States shall ensure that competent authorities may take appropriate administrative measures and impose lay down rules on administrative sanctions where obliged entities breach the and other administrative measures in respect of breaches of the national provisions, adopted in the implementation of transposing this Directive, and shall take all measures necessary to ensure that they are applied implemented .	2. Without prejudice to the right of Member States to impose criminal penalties, Member States shall ensure that competent authorities may take appropriate administrative measures and impose administrative sanctions where obliged entities breach the national provisions, adopted in the implementation of this Directive, and shall ensure that they are applied. Those measures and sanctions shall be effective, proportionate and dissuasive.	2. Without prejudice to the right of Member States to provide for and impose criminal penalties, Member States shall ensure that competent authorities may take appropriate administrative measures and impose lay down rules on administrative measures and impose lay down rules on administrative sanctions where obliged entities breach the and other administrative measures in respect of breaches of the national provisions, adopted in the implementation of transposing this Directive, and shall take all measures necessary to ensure that they are	<p>FI:</p> <p>We strongly support wording in the GA.</p> <p>NL:</p> <p>We prefer the GA text</p> <p>LL:</p> <p>"Transposition" of the Directive</p>

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			Those measures and sanctions shall be effective, proportionate and dissuasive.		applied implemented applied . Those measures and sanctions shall be effective, proportionate and dissuasive.	
566.	Art. 55 – para 1 – subpara 1a (new)		<u>Where Member States decide not to lay down rules for administrative sanctions for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions.</u>		<u>Where Member States decide not to lay down rules for administrative sanctions for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions.</u>	<p>CZ:</p> <p>CZ strongly supports the Council's GA.</p> <p>HR:</p> <p>This Council amendment ensures appropriate optionality on the national level regarding application of criminal vs. administrative law and should be maintained.</p> <p>DK:</p> <p>The European Parliament's proposal to delete this text is unacceptable for DK. It is of utmost importance for DK that this option is kept in the text in order to make it explicit in the text that Member States can choose between administrative and criminal sanctions, which is in accordance with recently agreed texts on CRD IV and MAR.</p> <p>FI:</p>

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						<p>We strongly support wording in the GA.</p> <p>NL:</p> <p>We prefer to keep the GA text</p> <p>PT:</p> <p>We support EP proposal.</p>
567.	Art. 55 – para 3	3. Member States shall ensure that where obligations apply to legal persons, sanctions can be applied to the members of the management body or to any other individuals who under national law are responsible for the breach.	3. Member States shall ensure that where obligations apply to legal persons <u>in the event of a breach of national provisions transposing this Directive</u> , sanctions <u>and measures</u> can be applied, <u>subject to the conditions laid down in national law</u> , to the members of the management body or <u>and</u> to any other individuals <u>natural persons</u> who under national law are responsible for the breach.	3. Member States shall ensure that where obligations apply to legal persons, sanctions can be applied to the members of the management body or to any other individuals who under national law are responsible for the breach.	3. Member States shall ensure that where obligations apply to legal persons <u>in the event of a breach of national provisions transposing this Directive</u> , sanctions <u>and measures</u> can be applied, <u>subject to the conditions laid down in national law</u> , to the members of the management body or <u>and</u> to any other individuals <u>natural persons</u> who under national law are responsible for the breach.	<p>NL:</p> <p>We prefer the GA text</p>
568.	Art. 55 – para 4	4. Member States shall ensure that the competent authorities have all the investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, competent authorities shall	4. Member States shall ensure that the competent authorities have, <u>in accordance with Article 45(2) and (3)</u> , all the <u>supervisory and</u> investigatory powers that are necessary for the exercise of their functions.	4. Member States shall ensure that the competent authorities have all the investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, competent authorities shall	4. Member States shall ensure that the competent authorities have <u>in accordance with Article 45(2) and (3)</u> , all the <u>supervisory and</u> investigatory powers that are necessary for the exercise of their functions.	<p>DE:</p> <p>We prefer the text provided by the Council which is more precise.</p> <p>NL:</p>

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		cooperate closely to ensure that administrative measures or sanctions produce the desired results and coordinate their action when dealing with cross border cases.		cooperate closely to ensure that administrative measures or sanctions produce the desired results and coordinate their action when dealing with cross border cases.	<u>In the exercise of their sanctioning powers, competent authorities shall cooperate closely to ensure that administrative measures or sanctions produce the desired results and coordinate their action when dealing with cross border cases.</u>	<p>We prefer the GA text</p> <p>RO:</p> <p>RO suggests to keep the term “supervisory powers” and to delete “investigative” in this para, as the sanctions are to be applied by the competent authorities with the supervision powers.</p> <p>LL:</p> <p>Please choose between : “powers <u>to impose sanctions and measures</u>” and “<u>sanctioning powers</u>”</p>
569.	Art. 55 – para 5 – subpara 1 (new)		<u>5. Competent authorities shall exercise their powers to impose sanctions and measures in accordance with this Directive and with national law, in any of the following ways:</u>		<u>5. Competent authorities shall exercise their powers to impose sanctions and measures in accordance with this Directive and with national law, in any of the following ways:</u>	<p>HR:</p> <p>As stated, our position is that Council amendments which ensure appropriate regard for the national law should be maintained.</p> <p>NL:</p> <p>We prefer to keep the GA text</p>
570.	Art. 55 – para 5 – subpara 1 – point a		<u>(a) directly;</u>		<u>(a) directly;</u>	<p>NL:</p> <p>We prefer to keep the GA text</p>

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	(new)					
571.	Art. 55 – para 5 – subpara 1 – point b (new)		(b) in collaboration with other authorities;		(b) in collaboration with other authorities;	NL: We prefer to keep the GA text
572.	Art. 55 – para 5 – subpara 1 – point c (new)		(c) under their responsibility by delegation to such authorities;		(c) under their responsibility by delegation to such authorities;	NL: We prefer to keep the GA text
573.	Art. 55 – para 5 – subpara 1 – point d (new)		(d) by application to the competent judicial authorities.		(d) by application to the competent judicial authorities.	NL: We prefer to keep the GA text
574.	Art. 55 – para 5 – subpara 2 (new)		In the exercise of their sanctioning powers to impose sanctions and measures , competent authorities shall cooperate closely to ensure that administrative measures or sanctions produce the desired results and coordinate their action when dealing with cross border cases.		In the exercise of their sanctioning powers to impose sanctions and measures; competent authorities shall cooperate closely to ensure that administrative measures or sanctions produce the desired results and coordinate their action when dealing with cross border cases.	NL: We prefer the GA text
575.	Art. 56	<i>Article 56</i>	<i>Article 56</i>	<i>Article 56</i>	<i>Article 56</i>	LT: <u>LT supports Council GA drafting of Art. 56.</u>
576.	Art. 56 – para 1	1. This Article shall at least apply to situations where obliged entities demonstrate systematic failings in relation to the requirements of the	1. Member States shall ensure that this This Article shall apply to situations where obliged entities demonstrate serious,	1. This Article shall at least apply to situations where obliged entities demonstrate systematic failings in relation to the requirements <i>laid down</i>	1. Member States shall ensure that this shall apply shall apply shall at least apply to situations where obliged entities demonstrate	DE: We support the amendment of “repetitive and serious” as

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		following Articles:	repetitive or systematic failings by obliged entities in relation to the requirements of the following Articles:	in:	serious, repetitive or systematic failings by obliged entities in relation to the requirements of the following Articles laid down in:	<p>provided by the Council.</p> <p>FR:</p> <p>France supports the Council's text (art. 56). It's absolutely necessary to keep the words "serious, repetitive or systematic failings"</p> <p>NL:</p> <p>We prefer the GA text</p> <p>PL:</p> <p>PL supports the wording proposed by the Council. We believe that adding additional bases on which the sanctioning procedure could be commenced would provide some flexibility for competent authorities in deciding if this procedure should or should not be launched. Stipulation "serious" as a general clause would be interpreted by the competent authorities so discretion to assess given failings as serious or not remains within the competent authority. Stipulation "repetitive" would allow to launch</p>
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						<p>sanctions procedures in the cases in which failings as a such may be not perceived as the serious ones, but it's repetitive character allow to consider them as censurable. Although, in this context stipulation "systematic" understood as "organized carefully and done thoroughly" would overlap with the stipulation "serious", while in this understanding every systematic failing should be consider also as a serious one.</p> <p>MT:</p> <p>PT:</p> <p>The expression "serious, repetitive or systematic failings by obliged entities" should be preserved, in order to ensure a reasonable degree of harmonisation.</p>
577.	Art. 56 – para 1 – point a	(a) 9 to 23 (customer due diligence);	(a) 9 to 23 (customer due diligence);	(a) <i>Articles</i> 9 to 23 (customer due diligence);	(a) Articles 9 to 23 (customer due diligence);	
578.	Art. 56 – para 1 – point b	(b) 32, 33 and 34 (suspicious transaction reporting);	(b) 32, 33 and 34 (suspicious transaction	(b) Articles 32, 33 and 34 (suspicious transaction	(b) Articles 32, 33 and 34 (suspicious transaction	

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			reporting);	reporting);	reporting);	
579.	Art. 56 – para 1 – point c	(c) 39 (record keeping); and	(c) 39 (record keeping); and	(c) Article 39 (record keeping); and	(c) Article 39 (record keeping); and	
580.	Art. 56 – para 1 – point d	(d) 42 and 43 (internal controls).	(d) 42 and 43 (internal controls).	(d) Articles 42 and 43 (internal controls).	(d) Articles 42 and 43 (internal controls).	
581.	Art. 56 – para 2 – subpara 1	2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative measures and sanctions that can be applied include at least the following:	2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative measures and sanctions that can be applied to persons responsible include at least the following:	2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative measures and sanctions that can be applied include at least the following:	2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative measures and sanctions that can be applied to persons responsible include at least the following:	IE: Noted that desired change made NL: We prefer the GA text
582.	Art. 56 – para 2 – subpara 1 – point a	(a) a public statement which indicates the natural or legal person and the nature of the breach;	(a) a public statement which indicates identifies the natural or legal person responsible for the breach and the nature of the breach;	(a) a public statement which indicates the natural or legal person and the nature of the breach, if necessary and proportionate after a case-by-case evaluation ;	(a) a a public statement which indicates identifies indicates the natural or legal person responsible for the breach and the nature of the breach, if necessary and proportionate after a case-by-case evaluation ;	AT: Austrian Position: The public statement publication not only contradicts the principle of non-publicity in administrative procedures under Austrian law but also seems to be problematic in the light of personality rights. EP Amendment 130 and 132: The amendments to Articles 56 para 2 point a and 57 para 1 introduce a proportionality test as regards the public statement and the publication of sanctions. Austrian Position: These

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						<p>amendments <u>should be supported.</u></p> <p><u>UK:</u></p> <p><u>This EP addition is most welcome, and supports the conclusion of a recent review of AMLS activity in determining that it is desirable to publicise some breaches of the Regulations, but that a blanket policy would be counter-productive by including unintentional and minor breaches, with potentially disproportionate consequences for such businesses.</u></p> <p><u>NL:</u></p> <p><u>We support the GA text, but agree with adding the EP text “if necessary and proportionate after a case-by-case evaluation.”</u></p> <p><u>PT:</u></p> <p>We do not agree with EP amendments as they would:</p> <p>(i) Raise unjustified restrictions to the “<i>naming and shaming</i>” procedure;</p>
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						(ii) Impair the alignment with the sanctioning regimes provided in other financial services <i>dossiers</i> .
583.	Art. 56 – para 2 – subpara 1– point b	(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;	(b) an order requiring the natural or legal person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;	(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;	(b) an order requiring the natural or legal person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;	NL: We prefer the GA text
584.	Art. 56 – para 2 – subpara 1– point c	(c) in case of an obliged entity subject to an authorisation, withdrawal of the authorisation;	(c) where in case of an obliged entity is subject to an authorisation, withdrawal or suspension of the authorisation;	(c) in <i>the</i> case of an obliged entity subject to an authorisation, withdrawal of the authorisation;	(c) where in the case of an obliged entity is subject to an authorisation, withdrawal or suspension of the authorisation;	DE: The term “or suspension” should be maintained as a less strict option to sanction the obliged entity. NL: We prefer the GA text
585.	Art. 56 – para 2 – subpara 1– point d	(d) a temporary ban against any member of the obliged entity's management body, who is held responsible, to exercise functions in institutions;	(d) a temporary ban against any member of the person discharging managerial responsibilities in an obliged entity's management body, who is held responsible, to exercise, or any other natural person responsible for the breach, from exercising managerial functions in institutions obliged entities;	(d) a temporary ban against any member of the obliged entity's management body, who is held responsible, to exercise functions in institutions;	(d) a temporary ban against any member of the person discharging managerial responsibilities in an obliged entity's management body, who is held responsible, to exercise, or any other natural person responsible for the breach, from exercising managerial functions in institutions obliged	NL: We prefer the GA text

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					<u>entitiesinstitutions;</u>	
586.	Art. 56 – para 2 – subpara 1– point e	(e) in case of a legal person, administrative pecuniary sanctions of up to 10% of the total annual turnover of that legal person in the preceding business year;	<u>deleted</u>	(e) in <i>the</i> case of a legal person, administrative pecuniary sanctions of up to 10% of the total annual turnover of that legal person in the preceding business year;	deleted (e) <u>in the case of a legal person, administrative pecuniary sanctions of up to 10% of the total annual turnover of that legal person in the preceding business year;</u>	<p>AT:</p> <p><u>Austrian Position:</u> We believe that the administrative penalties/pecuniary sanctions are too high, both in the case of legal persons and natural persons. According to the European Convention on Human Rights, which is integral part of the Austrian constitution, penalties of such a high amount may only be imposed by criminal courts in a regular criminal proceeding featuring certain minimum procedural guarantees and safeguards (such as legal protection, legal remedies, etc.). Furthermore, the amounts bear no relation to the criminal offences that should be prevented.</p> <p><u>EC Proposal and General Approach:</u> Administrative pecuniary sanctions of at least EUR 5 000 000 or 10% of the total annual turnover. In our view these sanctions are <u>too high!</u></p> <p>SI:</p>

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						<p>The proposed sanction is not acceptable from the perspective of our national legal system (Minor Act). Also, we assess the proposed sanctioning regime in this paragraph is too extreme at the EU level and obviously disproportionate. However, those sanctions should be only applied in case of credit and financial institutions.</p> <p>DE:</p> <p>Only the Councils Draft can be supported, since it also provides for maximum sanctions (see No. 591, Art. 56 para 2a-point a (new)).</p> <p>Turnover-related sanctions cannot be implemented in German law.</p> <p>EL:</p> <p>The effect of so high sanctions might not produce the expected results. Due to the wide range of sanctions we propose a combination of (e) and (g), when possible, in order to limit the imposed amounts.</p>
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						<p>FR:</p> <p>France supports the EP's text</p> <p>NL:</p> <p>We prefer the GA text</p>
587.	<p>Art. 56 – para 2 – subpara 1– point f</p>	<p>(f) in case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive;</p>	<p><u>deleted</u></p>	<p>(f) in <i>the</i> case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the euro is not the official currency, the corresponding value in the national currency on ...* <i>[OJ please insert the date of entry into force of this Directive];</i></p>	<p>deleted(f) in <i>the</i> case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the euro is not the official currency, the corresponding value in the national currency on ...* <i>[OJ please insert the date of entry into force of this Directive];</i></p>	<p>AT:</p> <p><u>Austrian Position:</u> We believe that the administrative penalties/pecuniary sanctions are too high, both in the case of legal persons and natural persons. According to the European Convention on Human Rights, which is integral part of the Austrian constitution, penalties of such a high amount may only be imposed by criminal courts in a regular criminal proceeding featuring certain minimum procedural guarantees and safeguards (such as legal protection, legal remedies, etc.). Furthermore, the amounts bear no relation to the criminal offences that should be prevented.</p> <p><u>EC Proposal and General Approach:</u> Administrative</p>

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						<p>pecuniary sanctions of at least EUR 5 000 000 or 10% of the total annual turnover. In our view these sanctions are <u>too high!</u></p> <p>SI:</p> <p>The proposed regulation is not acceptable from the perspective of our national legal system (Minor Act). Also, we assess the proposed sanctioning regime in this paragraph for natural person is too extreme at the EU level and obviously disproportionate. However, those sanctions should be only applied in case of credit and financial institutions.</p> <p>BG:</p> <p>BG: It is not possible to fix the exchange rate of the national currency to euro in cases where the rate is floating.</p> <p>DE:</p> <p>We support the Council text.</p> <p>The maximum amount of sanctions for a breach of the</p>
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						<p>obligations of Art. 55 up to EUR 5 000 000 is disproportionately high. Art. 55 provides only for duties of care, storage requirements and provisions on record keeping. The maximum amount is in contradiction to Article 55 para 2 subpara 2.</p> <p>EL:</p> <p>The effect of so high sanctions might not produce the expected results. Due to the wide range of sanctions we propose a combination of (f) and (g), when possible, in order to limit the imposed amounts.</p> <p>FR:</p> <p><u>France supports the EP's text which ("of up to 5 000 000 €") for natural person</u></p> <p>NL:</p> <p>We prefer the GA text</p> <p>LL:</p> <p>on ...* <i>[OJ please insert the date of entry into force of this</i></p>
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						Directive/; is the correct way of indicating this...
588.	Art. 56 – para 2 – subpara 1– point g	(g) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.	(g) <u>maximum</u> administrative pecuniary sanctions of <u>at least up to</u> twice the amount of the profits gained or losses avoided because of <u>benefit derived from</u> the breach where those that benefit can be determined <u>or at least EUR 1 000 000.</u>	(g) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.	(g) maximum administrative pecuniary sanctions of at least up to twice the amount of the profits gained or losses avoided because of benefit derived from the breach where those that benefit can be determined or at least EUR 1 000 000.	<p>HR:</p> <p>We express strong support for the General Approach, which introduces proportionality regarding the level of pecuniary sanctions by differentiating between credit or financial institutions and other obliged entities.</p> <p>DE:</p> <p>We support the Council approach</p> <p>It must be ensured that subpara 1 point g is an alternative to point e and f.</p> <p>.</p> <p>NL:</p> <p>We prefer the GA text</p> <p>SE:</p> <p>SE is of the opinion that it is important to keep the Council text.</p> <p>As a matter of proportionality it is important to keep the</p>

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						<p>distinction between financial and non-financial entities.</p> <p>The provisions on sanctions in the AMLD have been drafted according to those of CRDIV, in order to set a general standard. The AMLD however, includes a much wider range of legal and natural persons. The organisation of these DNFBPs varies both within and between Member States. The range of penalties and administrative measures should, as is stated in recital 41 of the directive, be “sufficiently broad to allow Member States and competent authorities to take account of the differences between obliged entities, in particular between credit and financial institutions and other obliged entities, as regards their size, characteristics and areas of activity.” These conditions are better reflected by the proposed distinction. A distinction is also fully in line with the risk-based approach underlying the directive.</p> <p>PT:</p>
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						We consider it is important to foresee a differentiated treatment for the financial and for the non-financial sector, considering the lesser capacity of the agents as well as the minor gravity of the infringements that typically occur in those non-financial activities.
589.	Art. 56 – para 2 – subpara 2	For the purpose of point (e), where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.	<u>deleted</u>	For the purpose of point (e) of <i>the first subparagraph</i> , where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the account of <i>subsidiary</i> .	deleted For the purpose of point (e) of the first subparagraph, where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the account of <i>subsidiary</i> .	<p>NL:</p> <p>We prefer the GA text</p> <p>RO:</p> <p>RO considers that the reference for the determination of the administrative pecuniary sanctions should be the same for both the Directive and the Regulation (see art. 18 (2) let. e of the respective piece of legislation).</p> <p>PT:</p> <p>We do not support EP amendment as we fail to</p>

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						understand its' rational. Furthermore, such calculation methodology wouldn't be in line with the sanctioning regimes foreseen in other financial services <i>dossiers</i> .
590.	Art. 56 – para 2a (new)		2a. Member States shall ensure that, by derogation from paragraph 2(g), where the obliged entity concerned is a credit or financial institution, also the following sanctions can be applied:		2a. Member States shall ensure that, by derogation from paragraph 2(g), where the obliged entity concerned is a credit or financial institution, also the following sanctions can be applied:	HR: As stated above, we strongly favour Council amendments which ensure a more proportional approach toward the level of pecuniary sanctions. NL: We prefer the GA text
591.	Art. 56 – para 2a - point a (new)		(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 has to prepare consolidated financial accounts [as defined in Article 22 of Directive		(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 has to prepare consolidated financial accounts [as defined in Article 22 of Directive 2013/34/EU], the	FR: The French authorities consider that the maximum administrative pecuniary sanctions (5 000 000 €) is too low for legal persons. NL: We prefer the GA text

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			<u>2013/34/EU], the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;</u>		<u>relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;</u>	
592.	Art. 56 – para 2a - point b (new)		<u>(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 the date of entry into force of this Directive.</u>		<u>(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 the date of entry into force of this Directive.</u>	UK: The UK has been supportive of this change in the past as it sets out minimum maximum sanctions only. NL: We prefer the GA text
593.	Art. 56 – para 3 (new)		<u>3. Member States may empower competent authorities to impose additional types of sanctions in addition to paragraph 2(a) to (d) of this Article or to impose pecuniary sanctions exceeding the amounts referred to in paragraphs 2(g) and 2a of</u>		<u>3. Member States may empower competent authorities to impose additional types of sanctions in addition to paragraph 2(a) to (d) of this Article or to impose pecuniary sanctions exceeding the amounts referred to in paragraphs 2(g) and 2a of this Article.</u>	NL: We prefer the GA text

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			<u>this Article.</u>			
594.	Art. 57	<i>Article 57</i>	<i>Article 57</i>	<i>Article 57</i>	<i>Article 57</i>	LT: <u>LT supports Council GA drafting of Art. 57.</u>
595.	Art. 57 – para 1 – subpara 1	1. Member States shall ensure that competent authorities publish any sanction or measure imposed for breach of the national provisions adopted in the implementation of this Directive without undue delay including information on the type and nature of the breach and the identity of persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets. Where publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the sanctions on an anonymous basis.	1. Member States shall ensure that competent authorities publish any sanction or a decision <u>imposing an administrative penalty or</u> measure imposed for breach of the national provisions adopted in the implementation of this Directive <u>against which there is no appeal shall be published by competent authorities on their official website immediately after the legal or natural person sanctioned is informed of that decision. The publication shall include at least</u> without undue delay including information on the type and nature of the breach and the identity of <u>the legal or natural</u> persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets. <u>Member States are not obliged to apply the above provisions to decisions</u>	1. Member States shall ensure that competent authorities publish any sanction or measure imposed for breach of the national provisions adopted in the implementation of this Directive, <i>if necessary and proportionate after a case-by-case evaluation,</i> without undue delay including information on the type and nature of the breach and the identity of persons responsible for it <i>¶</i> Where publication would cause a disproportionate damage to the parties involved, competent authorities <i>may</i> publish the sanctions on an anonymous basis.	1. Member States shall ensure that competent authorities publish any sanction or a decision <u>imposing an administrative penalty</u> or measure imposed for breach of the national provisions adopted in the implementation of this Directive against which there is no appeal shall be published by competent authorities on their official website immediately, if necessary and proportionate after the legal or natural person sanctioned is informed of that decision. <u>The publication shall include at least a case-by-case evaluation,</u> without undue delay including information on the type and nature of the breach and the identity of <u>the legal or natural</u> persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets. <u>Member</u>	AT: <u>Austrian Position:</u> The publication of sanctions not only contradicts the principle of non-publicity in administrative procedures under Austrian law but also seems to be problematic in the light of personality rights. LV: We support council text. <u>UK:</u> <u>Council text preferred, publication should be the norm.</u> DE: The Council draft is preferable. Publication of personal data

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			<p><u>imposing measures that are of an investigatory nature.</u></p> <p>Where publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the sanctions on an anonymous basis.</p>		<p>States are not obliged to apply the above provisions to decisions imposing measures that are of an investigatory nature.</p> <p>Where publication would cause a disproportionate damage to the parties involved, competent authorities shall<u>may</u> publish the sanctions on an anonymous basis.</p>	<p>can infringe fundamental rights of individuals.</p> <p>Personal data should have been excluded from the obligation to publication.</p> <p>None of the drafts contains special provisions concerning personal data and therefore cannot be supported.</p> <p>Also the Council Draft does not exclude personal data from the obligation to publication. However, it provides for the possibility for an exemption for personal data, if the publication is considered to be disproportionate..</p> <p>NL:</p> <p>We prefer the GA text and agree with the text included by the EP ("if necessary and proportionate after a case-by-case evaluation")</p> <p>PT:</p> <p>We disagree with the EP's proposed amendments, since it:</p> <p>(i) Allows competent authorities to carry out a necessity assessment, in addition to the case-by-case</p>
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						<p>proportionality evaluation, thus entailing a more restrictive approach;</p> <p>(ii) Confers a higher degree of discretion to competent authorities, as the Council's GA provides for specific measures on how to behave when the proportionality assessment advises the non-publication of sanctions [see subparagraph (1a) of article 57 (1) of the Council's GA].</p> <p>LL:</p> <p>Transposition "of this Directive"</p>
596.	Art. 57 – para 1 – subpara 1a (new)		<p><u>However, where the publication of the identity of the legal persons or personal data of natural 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 jeopardizes the stability of financial markets- or an on-going investigation, competent authorities shall</u></p>		<p><u>However, where the publication of the identity of the legal persons or personal data of natural 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 jeopardizes the stability of financial markets- or an on-going investigation, competent authorities shall</u></p>	<p>UK:</p> <p>Fully support the Council text.</p> <p>NL:</p> <p>We prefer the GA text</p>

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			<u>either:</u>		<u>either:</u>	
597.	Art. 57 – para 1 – subpara 1a – point a (new)		(a) <u>delay the publication of the decision to impose a sanction or a measure until the moment where the reasons for non publication cease to exist;</u>		(a) — delay the publication of the decision to impose a sanction or a measure until the moment where the reasons for non publication cease to exist;	NL: We prefer the GA text
598.	Art. 57 – para 1 – subpara 1a – point b (new)		(b) <u>publish the decision to impose a sanction or a measure on an anonymous basis in a manner which is in conformity with national law, if such anonymous publication ensures an effective protection of the personal data concerned; In the case of a decision to publish a 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.</u>		(b) — publish the decision to impose a sanction or a measure on an anonymous basis in a manner which is in conformity with national law, if such anonymous publication ensures an effective protection of the personal data concerned; In the case of a decision to publish a 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.	NL: We prefer the GA text
599.	Art. 57 – para 1 – subpara 1a – point c (new)		(c) <u>not publish the decision to impose a sanction or measure at all in the event that the options set out in (a) and (b) above are considered insufficient to ensure:</u>		(c) — not publish the decision to impose a sanction or measure at all in the event that the options set out in (a) and (b) above are considered insufficient to ensure:	NL: We prefer the GA text

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600.	Art. 57 – para 1 – subpara 1a – point c – subpoint i (new)		<u>(i) that the stability of financial markets would not be put in jeopardy; or</u>		(i) that the stability of financial markets would not be put in jeopardy; or	NL: We prefer the GA text
601.	Art. 57 – para 1 – subpara 1a – point c – subpoint ii (new)		<u>(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.</u>		(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.	NL: We prefer the GA text
602.	Art. 57 – para 1a (new)		<u>1a. 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 a sanction or a measure shall also be published.</u>		1a. 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 a sanction or a measure shall also be published.	NL: We prefer the GA text
603.	Art. 57 – para 1b (new)		<u>1b. 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. Personal data contained in the publication shall only be</u>		1b. 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. Personal data contained in the publication shall only be	NL: We prefer the GA text

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			<u>kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.</u>		<u>kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.</u>	
604.	Art. 57 – para 2	2. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:	2. Member States shall ensure that when determining the type of administrative sanctions or measures and the and level of administrative pecuniary sanctions <u>penalties or measures</u> , the competent authorities shall take into account all relevant circumstances, including <u>where appropriate</u> :	2. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:	2. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including: <u>Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:</u>	DE: We support the Council text. The wording „where appropriate“ is strictly necessary. This applies in particular to point c . NL: We prefer the GA text
605.	Art. 57 – para 2 – point a	(a) the gravity and the duration of the breach;	(a) the gravity and the duration of the breach;	(a) the gravity and the duration of the breach;	(a) the gravity and the duration of the breach;	
606.	Art. 57 – para 2 – point b	(b) the degree of responsibility of the responsible natural or legal person;	(b) the degree of responsibility of the responsible natural or legal person;	(b) the degree of responsibility of the natural or legal person <i>responsible</i> ;	(b) the degree of responsibility of the responsible natural or legal person <i>responsible</i> ;	
607.	Art. 57 – para 2 – point c	(c) the financial strength of the responsible natural or legal person, as indicated by the total turnover of that person or the annual income of that person;	(c) the financial strength of the responsible natural or legal person, as indicated <u>for example</u> by the total turnover of that <u>the responsible legal</u> person or the annual income of that <u>the responsible natural</u> person;	(c) the financial strength of the natural or legal person <i>responsible</i> as indicated by the total turnover of that person or the annual income of that person;	(c) the financial strength of the responsible natural or legal person, as indicated by the total turnover of that person or the annual income of that person; <u>the financial strength of the responsible natural or legal person, as indicated by the total turnover of that person or the annual income of that person;</u>	DE: We support the Council text. The wording „for example“ is strictly necessary. Member states must have the

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					natural that person;	possibility to determine the sanction according to the financial situation at the time when the offense was committed or according to the situation when the sanction is imposed. NL: We prefer a combination of EP and GA text
608.	Art. 57 – para 2 – point d	(d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;	(d) the importance of profits gained or losses avoided the benefit derived from the breach by the responsible natural or legal person, insofar as they it can be determined;	(d) the importance of profits gained or losses avoided by the natural or legal person <i>responsible</i> , insofar as they can be determined;	(d) the importance of profits gained or losses avoided the benefit derived from the breach by the responsible natural or legal person responsible , insofar as they it can be determined;	NL: We prefer a combination of EP and GA text
609.	Art. 57 – para 2 – point e	(e) the losses for third parties caused by the breach, insofar as they can be determined;	(e) the losses for third parties caused by the breach, insofar as they can be determined;	(e) the losses <i>to</i> third parties caused by the breach, insofar as they can be determined;	(e) the losses for to third parties caused by the breach, insofar as they can be determined;	
610.	Art. 57 – para 2 – point f	(f) the level of cooperation of the responsible natural or legal person with the competent authority;	(f) the level of cooperation of the responsible natural or legal person with the competent authority;	(f) the level of cooperation of the natural or legal person <i>responsible</i> with the competent authority;	(f) the level of cooperation of the responsible natural or legal person responsible with the competent authority;	NL: We prefer a combination of EP and GA text
611.	Art. 57 – para 2 – point g	(g) previous breaches by the responsible natural or legal person.	(g) previous breaches by the responsible natural or legal person.	(g) previous breaches by the natural or legal person <i>responsible</i> .	(g) previous breaches by the responsible natural or legal person responsible .	NL: We prefer a combination of EP and GA text

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612.	Art. 57 – para 3	3. EBA, EIOPA, and ESMA shall issue guidelines addressed to competent authorities 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 types of administrative measures and sanctions and level of administrative pecuniary sanctions applicable to obliged entities referred to in Article 2(1)(1) and (2). These guidelines shall be issued within 2 years of the date of entry into force of this Directive.	deleted	3. <i>In order to ensure their consistent application and dissuasive effect across the Union</i> , the ESAs shall, by ... * [OJ please insert date: 12 months after the date of entry into force of this Directive] issue guidelines addressed to competent authorities 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 types of administrative measures and sanctions and level of administrative pecuniary sanctions applicable to obliged entities referred to in Article 2(1)(1) and (2). ▮.	deleted 3. <u><i>In order to ensure their consistent application and dissuasive effect across the Union, the ESAs shall, by ...* [OJ please insert date: 12 months after the date of entry into force of this Directive] issue guidelines addressed to competent authorities 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 types of administrative measures and sanctions and level of administrative pecuniary sanctions applicable to obliged entities referred to in Article 2(1)(1) and (2). ▮.</i></u>	<p>HR:</p> <p>HR strongly supports the deletion of this paragraph in the Council GA, as it is not appropriate for the ESAs to issue guidance on the level of administrative pecuniary sanctions.</p> <p>UK:</p> <p>We do not support the EP text - tasking the ESAs with issuing guidance on sanctions is incompatible with other dossiers.</p> <p>Council timetable preferable.</p> <p>BE:</p> <ul style="list-style-type: none"> • • See the general comment at the top of this chapter: if the adoption of these guidelines is required from the ESAs, these guidelines should be completely consistent with possible guidelines regarding sanctions applied in accordance with other prudential directives. • Moreover, if the ESAs are
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						<p>required to produce these guidelines, and taking into account the numerous and important other tasks entrusted to the ESAs by the draft directive, the timeframe provided for this should be realistic. A one year deadline appears to be much too short in this regard: a two year timeframe should be provided.</p> <p>NL:</p> <p>We do not see added value in ESA guideline son sanctions. Therefore we suggest to not include this para.</p> <p>PT:</p> <p>We do not agree with EP and COM proposal as the definition of “types of administrative measures and sanctions and level of administrative pecuniary sanctions” is a competence of our National Parliament (and not of competent authorities, to whom guidelines would be addressed)</p>
613.	Art. 57 – para	4. In the case of legal persons,	4. In the case of legal	4. In the case of legal persons,	4. — In the case of legal	LL:

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	4	Member States shall ensure that they may be held liable for infringements referred to in paragraph 1 of Article 56 which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on any of the following:	persons , Member States shall ensure that they may <u>legal persons can</u> be held liable for infringements referred to in paragraph 1 of Article 56 which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has <u>and having</u> a leading position within the legal person; based on any of the following:	Member States shall ensure that they may be held liable for infringements referred to in Article 56(1) which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on any of the following:	persons, Member States shall ensure that they may <u>legal persons — can</u> be held liable for infringements referred to in paragraph 1 of Article 56(1) which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has and having <u>has</u> a leading position within the legal person, based on any of the following:	<u>Council drafting is clearer</u>
614.	Art. 57 – para 4 – point a	(a) a power of representation of the legal person;	(a) a power of representation of the legal person;	(a) a power of representation of the legal person;	(a) — a power of representation of the legal person;	
615.	Art. 57 – para 4 – point b	(b) an authority to take decisions on behalf of the legal person; or	(b) an authority to take decisions on behalf of the legal person; or	(b) an authority to take decisions on behalf of the legal person; or	(b) — an authority to take decisions on behalf of the legal person; or	
616.	Art. 57 – para 4 – point c	(c) an authority to exercise control within the legal person.	(c) an authority to exercise control within the legal person.	(c) an authority to exercise control within the legal person.	(c) — an authority to exercise control within the legal person.	
617.	Art. 57 – para 5	5. In addition to the cases referred to in paragraph 4, Member States shall ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 4 has made possible the commission of the infringements referred to in	5. In addition to the cases referred to in paragraph 4, Member States shall <u>also</u> ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 4 has made possible the commission of the infringements referred to in	5. In addition to the cases referred to in paragraph 4 <i>of this Article</i> , Member States shall ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in <i>that</i> paragraph has made possible the commission of the infringements referred to in	5. — In addition to the cases referred to in paragraph 4 <u>of this Article</u> , 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 <u>that</u> paragraph 4 has made possible the commission of the	NL: We prefer the GA text LL: <u>"of this Article" is needed</u> <u>There are different persons</u>

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		paragraph 1 of Article 56 for the benefit of a legal person by a person under its authority.	paragraph 1 of Article 56(1) for the benefit of athe legal person by a person under its authority.	Article 56(1) for the benefit of a legal person by a person under its authority.	infringements referred to in paragraph 1 of Article 56(1) for the benefit of athea legal person by a person under its authority.	<u>referred to in para 4 so which of them are concerned?</u>
618.	Art. 58	<i>Article 58</i>	<i>Article 58</i>	<i>Article 58</i>	<i>Article 58</i>	LT: <u>LT supports Council GA drafting of Art. 58.</u> LV: We can support amendment.
619.	Art. 58 – para 1	1. Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of breaches of the national provisions implementing this Directive to competent authorities.	1. Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage reporting of potential or actual breaches of the national provisions implementing transposing this Directive to competent authorities.	1. Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of breaches of the national provisions implementing this Directive to competent authorities.	1. Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of breaches of the national provisions implementing this Directive to competent authorities.	NL: We prefer the GA text LL: "transposing"
620.	Art. 58 – para 2	2. The mechanisms referred to in paragraph 1 shall include at least:	2. The mechanisms referred to in paragraph 1 shall include at least:	2. The mechanisms referred to in paragraph 1 shall include at least:	2. The mechanisms referred to in paragraph 1 shall include at least:	
621.	Art. 58 – para 2 – point a	(a) specific procedures for the receipt of reports on breaches and their follow-up;	(a) specific procedures for the receipt of reports on breaches and their follow-up;	(a) specific procedures for the receipt of reports on breaches and their follow-up;	(a) specific procedures for the receipt of reports on breaches and their follow-up;	
622.	Art. 58 – para	(b) appropriate protection for employees of institutions who	(b) appropriate protection for employees or	(b) appropriate protection for employees of institutions who	(b) appropriate protection for employees or	NL:

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	2 – point b	report breaches committed within the institution;	persons in a comparable position of institutions obliged entities who report breaches committed within the institution obliged entity ;	report breaches committed within the institution;	persons in a comparable position of institutions obliged entities institutions who report breaches committed within the institution obliged entity institution ;	We prefer the GA text
623.	Art. 58 – para 2 – point ba (new)			<i>(ba) appropriate protection for the accused person;</i>	<i><u>(ba) appropriate protection for the accused person;</u></i>	<p><u>UK:</u></p> <p>We need to be clear that any legal aid requirements should be provided to an individual accused of a criminal offense but such protection needs to be done in line with national requirements.</p> <p>NL:</p> <p>We agree with the EP text</p> <p>PT:</p> <p>We disagree with the EP's proposed addition, which is not in line with the sanctioning framework foreseen in other financial services <i>dossiers</i>.</p>
624.	Art. 58 – para 2 – point c	(c) 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	(c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in	(c) 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	(c) — protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in	<p>LL:</p> <p><u>Delete :</u> the principles laid down in</p>

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		principles laid down in Directive 95/46/EC.	compliance with the principles laid down in Directive 95/46/EC.	principles laid down in Directive 95/46/EC.	compliance with the principles laid down in Directive 95/46/EC.	
625.	Art. 58 – para 2 – point d (new)		(d) 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.		(d) — 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.	NL: We prefer the GA text
626.	Art. 58 – para 3	3. Member States shall require obliged entities to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and anonymous channel.	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.	3. Member States shall require obliged entities to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and anonymous channel.	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.	DE: Given the diversity of obliged entities in terms of nature, size, and structure of the business, the proportionality clause contained in the Council's version is very important for a reasonable implementation of the directive and should not be negotiable. NL: We prefer the GA text
627.	Art. 58a (new)		<u>Article 58a</u>		<u>Article 58a</u>	LT:

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						<p>LT could be flexible on Art. 58a.</p> <p>PT:</p> <p>In line with the EP's vote on Article 19 (2a) of the AMLR, sanctions applied further to breaches of the AMLD should be notified to ESAs and included in the central database run by EBA.</p> <p>In fact, the inclusion of AML/CFT sanctions in the central database governed by EBA would undoubtedly increase the accuracy of suitability assessments to be carried out by competent authorities.</p>
628.	Art. 58a – para 1 (new)		<p>1. Member States shall ensure that the competent authorities inform EBA, EIOPA and ESMA of all administrative sanctions and measures imposed in accordance with Articles 55 and 56 on obliged entities referred to in Article 2(1)(1) and (2), including of any appeal in relation thereto and the outcome thereof.</p>		<p>1. Member States shall ensure that the competent authorities inform EBA, EIOPA and ESMA of all administrative sanctions and measures imposed in accordance with Articles 55 and 56 on obliged entities referred to in Article 2(1)(1) and (2), including of any appeal in relation thereto and the outcome thereof.</p>	<p>ES:</p> <p>We remain unconvinced of the convenience of this article and would prefer deleting it.</p> <p>In any case, if it is kept the reference to article 55 should be deleted. Both the Council and the EP have introduced restrictions to the publication of sanctions, on the basis that it should be proportionate to the seriousness of the</p>

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						<p><u>infringements.</u></p> <p><u>In order to respect the proportionality of the sanction, only those sanctions being published, including the identity of the sanctioned person should be transmitted to the ESAs.</u></p> <p>FI:</p> <p>We find it important that this Art. and reference to the Framework Decision is kept in the AMLD.</p> <p>BE:</p> <p>The communication to the ESAs is crucial to improve the cooperation between NSAs in this matter. Keep the Council text.</p> <p>NL:</p> <p>We prefer the GA text</p>
629.	Art. 58a – para 3 – (new)		<p><u>3. The competent authorities, in accordance with their national law, shall check the existence of a relevant conviction in the criminal record of the person concerned, and exchange information. For</u></p>		<p>3. The competent authorities, in accordance with their national law, shall check the existence of a relevant conviction in the criminal record of the person concerned, and exchange information. For</p>	<p>NL:</p> <p>We prefer the GA text</p> <p>PT:</p> <p>Council text should be kept.</p>

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			<u>those purposes, information shall be exchanged in accordance with Decision 2009/316/JHA and Framework Decision 2009/315/JHA as implemented in national law.</u>		those purposes, information shall be exchanged in accordance with Decision 2009/316/JHA and Framework Decision 2009/315/JHA as implemented in national law.	Criminal records undoubtedly constitute a very valuable source for "fit and proper" assessments.
630.	Art. 58a – para 4 – (new)		<u>4. EBA, EIOPA and ESMA shall maintain a website with links to each competent authority's publication of administrative penalties and measures imposed in accordance with Article 57 on obliged entities referred to in Article 2(1)(1) and (2), and shall show the time period for which each Member State publishes administrative sanctions and measures.</u>		4. EBA, EIOPA and ESMA shall maintain a website with links to each competent authority's publication of administrative penalties and measures imposed in accordance with Article 57 on obliged entities referred to in Article 2(1)(1) and (2), and shall show the time period for which each Member State publishes administrative sanctions and measures.	NL: We prefer the GA text
631.	Chapter VIa (new)		CHAPTER VIa		CHAPTER VIa	
632.	Title		<u>PROCESSING OF PERSONAL DATA</u>		PROCESSING OF PERSONAL DATA	
633.	Art. 58b (new)		<u>Article 58b</u>		Article 58b	LT: LT supports Council GA .
634.	Art. 58b – para 1 (new)		<u>The processing of personal data for the purposes of this</u>		The processing of personal data for the purposes of this	NL:

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			<u>Directive shall be carried out in accordance with Directive 95/46/EC and, where relevant, with Regulation (EC) No 45/2001.</u>		Directive shall be carried out in accordance with Directive 95/46/EC and, where relevant, with Regulation (EC) No 45/2001.	<p>We prefer the GA text and suggest that instead of the different EP references in the directive to data protection issues, we limit it to this article 58b.</p> <p>PT:</p> <p>Council text should be kept.</p> <p>(see our general comments on data protection – article 39a as proposed by the EP).</p>
635.	Chapter VII	CHAPTER VII	CHAPTER VII	CHAPTER VII	CHAPTER VII	
636.	Title	FINAL PROVISIONS	FINAL PROVISIONS	FINAL PROVISIONS	FINAL PROVISIONS	
637.	Art. 58c (new)		<u>Article 58c</u>		Article 58c	<p>LT:</p> <p><u>LT supports Council GA.</u></p> <p>PT:</p> <p>Article 58c of the Council's GA in relation to the "comitology procedure" must be kept.</p>
638.	Art. 58c – para 1 (new)		<u>1. The Commission shall be assisted by the Committee for the Prevention of Money Laundering and Terrorist</u>		1. The Commission shall be assisted by the Committee for the Prevention of Money Laundering and Terrorist Financing	<p>HU:</p> <p>HU support the Council general approach. CPMLTF should remain the</p>

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			<u>Financing ('CPMLTF'), established by Directive 2005/60/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.</u>		(‘CPMLTF’), established by Directive 2005/60/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	<p>committee where the Commission and the Member States coordinate their respective international activities first and foremost because Central and Eastern European EU MSs are still excluded from FATF.</p> <p>DE:</p> <p>We support the EP proposal.</p> <p>NL:</p> <p>We prefer the GA text</p> <p>LL:</p> <p>Footnote with full reference of <u>Regulation (EU) No 182/2011 missing</u></p> <p><u>Standard clause</u></p>
639.	Art. 58c – para 2 (new)		<u>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time – limit</u>		2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time – limit for delivery of	<p>NL:</p> <p>We prefer the GA text</p> <p>LL:</p> <p><u>Standard clause</u></p>

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			<u>for delivery of the opinion, the chair of the committee so decides or a two-thirds majority of committee members so request.</u>		<u>the opinion, the chair of the committee so decides or a two-thirds majority of committee members so request.</u>	
640.	Art. 59	Article 59	Article 59	Article 59	Article 59	
641.	Art. 59 – para 1	Within four years after the date of entry into force of this Directive, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.	Within four years after the date of entry into force of this Directive, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.	By ...* [OJ please insert date: four years after the date of entry into force of this Directive], the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and to the Council.	Within By ...* [OJ please insert date: four years after the date of entry into force of this Directive- 1 , the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and <u>to</u> the Council.	DELETED
642.	Art. 59 – para 1a (new)			By ...* [OJ please insert date: one year after the entry into force of this Directive], the Commission shall submit to the European Parliament and to the Council a report on the provisions concerning serious tax offences and punishments in the Member States, on the cross-border significance of tax offences and on the possible need for a coordinated approach in the Union, accompanied if appropriate by a legislative proposal.	By ...* [OJ please insert date: one year after the entry into force of this Directive], the Commission shall submit to the European Parliament and to the Council a report on the provisions concerning serious tax offences and punishments in the Member States, on the cross-border significance of tax offences and on the possible need for a coordinated approach in the Union, accompanied if appropriate by a legislative proposal.	DELETED
643.	Art. 60	Article 60	Article 60	Article 60	Article 60	

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644.	Art. 60 – para 1	Directives 2005/60/EC and 2006/70/EC are repealed with effect from [insert date – day after the date set out in the first subparagraph of Article 61].	Directives 2005/60/EC and 2006/70/EC are repealed with effect from ... [insert date – day after the date set out in the first subparagraph of Article 61].	Directives 2005/60/EC and 2006/70/EC are repealed with effect from ...* [OJ please insert date: two years after the date of entry into force of this Directive].	Directives 2005/60/EC and 2006/70/EC are repealed with effect from ...* [OJ please insert date: two years after the date set out in the first subparagraph of Article 61 entry into force of this Directive].	
645.		References to the repealed Directives shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex IV.	References to the repealed Directives shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex IV.	References to the repealed directives shall be construed as being made to this Directive and should be read in accordance with the correlation table set out in Annex IV.	References to the repealed directives shall be construed as being made to this Directive and should be read in accordance with the correlation table set out in Annex IV.	DELETED
646.	Art. 61	Article 61	Article 61	Article 61	Article 61	
647.	Art. 61 – para 1 – subpara 1	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [two years after adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...* [OJ please insert date: two years after the entry into force of this Directive]. They shall forthwith communicate to the Commission the text of those measures.	1. — Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...* [OJ please insert date: two years after adoption] at the latest entry into force of this Directive]. They shall forthwith communicate to the Commission the text of those provisionsmeasures.	DELETED
648.	Art. 61 – para 1 – subpara 2	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the	When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the	When Member States adopt those provisionsmeasures, they shall contain a reference to this Directive or be accompanied by such a	DELETED

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		occasion of their official publication. Member States shall determine how such reference is to be made.	occasion of their official publication. Member States shall determine how such reference is to be made.	occasion of their official publication. Member States shall determine how such reference is to be made.	reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	
649.	Art. 61 – para 2	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.	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.	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.	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.	LL: <u>standard</u>
650.	Art. 62	<i>Article 62</i>	<i>Article 62</i>	<i>Article 62</i>	<i>Article 62</i>	
651.	Art. 62 – para 1	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	
652.	Art.63	<i>Article 63</i>	<i>Article 63</i>	<i>Article 63</i>	<i>Article 63</i>	
653.	Art. 63 – para 1	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	LL: <u>Standard</u> <u>End</u>

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