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 1 – Recitals

		COM	*COUNCIL*	*EP*	*COUNCIL TEXT vs ECON VOTE*	*COMMENTS BY MS:* **AT: LV: UK: BE: DE: FI: FR: NL: PL: RO: MT: IE: ES: PT: LL:**
1.		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	FI: FI SUPPORTS THE COUNCIL'S GENERAL APPROACH. WE HAVE SOME COMMENTS ON CERTAIN RECITALS THAT WE FIND VERY IMPORTANT AND THAT

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						SHOULD BE KEPT IN THE PACKAGE. IE: Ireland supported the Council text agreed at COREPER 2 meeting of 18 June 2014. Ireland will not submit detailed observations on the recitals to to the regulation at this time..
2.	Citation 1	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	
3.	Citation 2	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
4.	Citation 3	After transmission of the draft legislative act to the national Parliaments,	After transmission of the draft legislative act to the national Parliaments,	After transmission of the draft legislative act to the national Parliaments,	After transmission of the draft legislative act to the national Parliaments,	LL: **p**arliaments
5.	Citation 4	Having regard to the	Having regard to the	Having regard to the	Having regard to the	

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		opinion of the European Economic and Social Committee,	opinion of the European Economic and Social Committee[1],	opinion of the European Economic and Social Committee,	opinion of the European Economic and Social Committee[2] ~~,~~,	
6.	Citation 5	Having regard to the opinion of the European Central Bank,	Having regard to the opinion of the European Central Bank[3],	Having regard to the opinion of the European Central Bank,	Having regard to the opinion of the European Central Bank[4],	
7.	Citation 6	After consulting the European Data Protection Supervisor,	After consulting the European Data Protection Supervisor[5],	After consulting the European Data Protection Supervisor,	After consulting the European Data Protection Supervisor[6],	LL: To be deleted because it has been moved to the end of the recitals - rule for non mandatory consultations (as in the Regulation)
8.	Citation 7	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
9.		Whereas:	Whereas:	Whereas:	Whereas:	
10.	Recital 1	(1) Massive flows of dirty money can damage the stability and reputation of the financial	(1) Massive flows of dirty money can damage the stability and reputation of the	(1) Massive flows of ***illicit*** money can damage the stability and reputation of the	(1) ~~—~~ Massive flows of ~~dirty~~***illicit*** money can damage the stability and reputation of the	LV: **We can support amendment.**

[1] OJ C , , p. .
~~[2] OJ C , , p. .~~
[3] OJ C , , p. .
~~[4] OJ C , , p. .~~
[5] OJ C , , p. .
~~[6] OJ C , , p. .~~

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		sector and threaten the single market, and terrorism shakes the very foundations of our society. In addition to the criminal law approach, a preventive effort via the financial system can produce results.	financial sector and threaten the single market, and terrorism shakes the very foundations of our society. In addition to the criminal law approach, a preventive effort via the financial system can produce results.	financial sector and threaten the *internal* market and ***international development. Terrorism*** shakes the very foundations of our society. ***The key facilitators of illicit money flows are secretive corporate structures operating in and through secrecy jurisdiction, often also referred to as tax havens.*** In addition to ***further developing*** the criminal law approach ***at Union level, prevention*** via the financial system ***is indispensable and*** can produce ***complementary*** results. ***However, the preventive approach should be targeted and proportional, and should not result in the establishment of a comprehensive system for controlling the entire population.***	financial sector and threaten the ~~single~~***internal*** market~~,~~ and ***international development.*** ***Terrorism*** shakes the very foundations of our society. ***The key facilitators of illicit money flows are secretive corporate structures operating in and through secrecy jurisdiction, often also referred to as tax havens.*** In addition to ***further developing*** the criminal law approach~~, a preventive effort~~ ***at Union level, prevention*** via the financial system ***is indispensable and*** can produce ***complementary*** results. ***However, the preventive approach should be targeted and proportional, and should not result in the establishment of a comprehensive system***	UK: The reference to tax havens throughout is inappropriate. Reference to 'controlling the entire population' is out of place. BE: Keep the text of the Council. ECON text does not add anything and **"**The key facilitators of illicit money flows are" **not only** "secretive corporate structures". This is moreover not a tax directive. The preventive approach is targeted towards the financial sector and DNFBPs imposing obligations on them. The entire population is not under control. DE:

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					for controlling the entire population.	The council text should be retained. NL: We agree with "illicit". It is not clear what is meant by "secretive corporate structures" and "secrecy jurisdiction" . Also, tax havens are beyond the scope of these recitals. Also the text on "controlling the entire population" is not fit for a directive text. These texts should be left out. ES: The last sentence seems inadequate for a legislative text and sends a wrong message. PT:

						We cannot support the EP's proposal on this recital. Recitals should not be so straightforward as far as the key facilitators of illicit money flows are concerned. Although we recognize the threats posed by tax havens, obliged entities', focus on this particular aspect shall take place without potentially disregarding other illicit money facilitators. Additionally, and in line with our comments on recital (4) and article 5, we would clearly prefer a wording which provides for further neutrality (like the one proposed by the COM and supported by Council's GA). LL:

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						1) Please avoid the use of "can", instead use could or the present time if it is an affirmation 2) internal market is the correct term (cfr art 114 TFEU)
11.	Recital 2	(2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes. In order to facilitate their criminal activities, money launderers and terrorist financers could try to take advantage of	(2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes. In order to facilitate their criminal activities, money launderers and terrorist financers could try to take advantage of	(2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes. In order to facilitate their criminal activities, money launderers and terrorist financers could try to take advantage of the freedom of capital	(2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes. In order to facilitate their criminal activities, money launderers and terrorist financers could try to take advantage of	LV: **It is impossible to give such guarantee because compliance costs depend on business of obliged entity and risk level accepted by obliged entity.** UK: We fully agree with the spirit of the added final sentence to the EP text. BE: Keep Council text – no added value of these EP additions. Moreover, the tone of the

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		the freedom of capital movements and the freedom to supply financial services which the integrated financial area entails, if certain coordinating measures are not adopted at Union level.	the freedom of capital movements and the freedom to supply financial services which the integrated financial area entails, if certain coordinating measures are not adopted at Union level.	movements and the freedom to supply financial services which the integrated financial area entails~~, if.~~ ***Therefore***, certain coordinating measures are ***necessary*** at Union level. ***At the same time, the objectives of protection of society from criminals and protection of the stability and integrity of the European financial system should be balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs. Any requirement imposed on obliged entities to fight money laundering and terrorist financing should therefore be justified and***	the freedom of capital movements and the freedom to supply financial services which the integrated financial area entails~~, if certain coordinating measures are not adopted at Union level.~~ **. *Therefore*, certain coordinating measures are *necessary* at Union level. *At the same time, the objectives of protection of society from criminals and protection of the stability and integrity of the European financial system should be balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs. Any requirement imposed on***	EP amendment appears to reveal some degree of mistrust that is not appropriate. DE: We do not support t proposal made by the EP. Proportionality is a underlying principle to all legal acts and therefore sufficiently represented throughout the AMLD. Moreover, the risk based approach is a very effective tool in order tailor measures to the extent of the specific AML/CFT risk. NL: EP text OK ES: Last paragraph is a little bit redundant. It is an underlying assumption that regulatory provisions are not arbitrary, and that

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				proportionate.	***obliged entities to fight money laundering and terrorist financing should therefore be justified and proportionate.***	required measures are justified and proportionate (also at the FATF), otherwise they wouldn´t be included. PT: We do not agree with the EP's proposed additions to this recital. In line with our comments on recital (4) and article 5, we would clearly prefer a wording which provides for further neutrality (like the one proposed by the COM and supported by Council's GA).
12.	Recital 3	(3) The current proposal is the fourth Directive to deal with the threat of money laundering. Council Directive	(3) The current proposal is the fourth Directive to deal with the threat of money laundering. Council	(3) The current proposal is the fourth *directive* to deal with the threat of money laundering. Council Directive 91/308/EEC […][15]	(3)—— The current proposal is the fourth *directive* to deal with the threat of money laundering. Council Directive 91/308/EEC ~~of~~	UK: *The UK strongly rejects the multiple references to data protection and privacy issues*

[15] *Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (*OJ L 166, 28.6.1991, p. 77*).*

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		91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering[7] defined money laundering in terms of drugs offences and imposed obligations solely on the financial sector. Directive 2001/97/EC of the European Parliament and of the Council of December 2001 amending Council Directive 91/308/EEC[8] extended the scope both in terms of the crimes covered and the range of professions and activities covered. In June 2003 the	Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering[11] defined money laundering in terms of drugs offences and imposed obligations solely on the financial sector. Directive 2001/97/EC of the European Parliament and of the Council of December 2001 amending Council Directive 91/308/EEC[12] extended the scope both in terms of the crimes covered and the range of professions and activities covered. In June 2003 the	defined money laundering in terms of drugs offences and imposed obligations solely on the financial sector. Directive 2001/97/EC of the European Parliament and of the Council […][16] extended the scope both in terms of the crimes covered and the range of professions and activities covered. In June 2003 the Financial Action Task Force ([…] FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer	~~10 June 1991 on prevention of the use of the financial system for the purpose of money laundering~~**[…]**[19] defined money laundering in terms of drugs offences and imposed obligations solely on the financial sector. Directive 2001/97/EC of the European Parliament and of the Council ~~of December 2001 amending Council Directive 91/308/EEC~~**[…]**[20] extended the scope both in terms of the crimes covered and the range of professions and activities covered. In June 2003 the	*throughout the main articles of the Directive.* *We would be open to considering one single recital covering the issues and clarifying that any data collected and retained should be for the purposes of AML/CTF compliance only and cannot be shared/used for other purposes including commercial ones.* BE:

7 OJ L 166, 28.6.1991, p. 77.
8 OJ L 344, 28.12.2001, p. 76.
11 OJ L 166, 28.6.1991, p. 77.
12 OJ L 344, 28.12.2001, p. 76.
16 *Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC (*OJ L 344, 28.12.2001, p. 76*).*
19 *Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (*OJ L 166, 28.6.1991, p. 77*).*
20 *Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC (*OJ L 344, 28.12.2001, p. 76*).*

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		Financial Action Task Force (hereinafter referred to as the FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer identification and verification, the situations where a higher risk of money laundering may justify enhanced measures and also situations where a reduced risk may justify less rigorous controls. These changes were reflected in Directive	Financial Action Task Force (hereinafter referred to as the FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer identification and verification, the situations where a higher risk of money laundering may justify enhanced measures and also situations where a reduced risk may justify less rigorous controls. These changes were reflected in Directive	identification and verification, the situations where a higher risk of money laundering may justify enhanced measures and also situations where a reduced risk may justify less rigorous controls. *Those* changes were reflected in Directive 2005/60/EC of the European Parliament and of the Council […][17] and Commission Directive 2006/70/EC […][18]. ***In implementing the FATF Recommendations, the Union should fully respect its data***	Financial Action Task Force ~~(hereinafter referred to as the~~**[…]** FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer identification and verification, the situations where a higher risk of money laundering may justify enhanced measures and also situations where a reduced risk may justify less rigorous controls. ~~These~~ ***Those*** changes were reflected in	

[17] *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (OJ L 309, 25.11.2005, p. 15).

[18] *Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis* (OJ L 214, 4.8.2006, p. 29).

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		2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[9] and Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for	2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[13] and Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for	***protection law, as well as the Charter of Fundamental Rights of the European Union (Charter) and the European Convention for the Protection of Human Rights and Fundamental Freedoms.***	Directive 2005/60/EC of the European Parliament and of the Council ~~of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing~~**[…]**[21] and Commission Directive 2006/70/EC ~~of 1 August 2006 laying down~~**[…]**[22]**.** ***In implementing*** ~~measures for Directive 2005/60/EC~~***the FATF Recommendations, the Union should fully respect its data protection law, as well as the Charter of***	

9 OJ L 309, 25.11.2005, p. 15.

13 OJ L 309, 25.11.2005, p. 15.

21 *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (OJ L 309, 25.11.2005, p. 15).

22 *Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis* (OJ L 214, 4.8.2006, p. 29).

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		simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis[10].	simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis[14].		***Fundamental Rights*** ***of the European*** ~~Parliament~~***Union (Charter) and the European Convention for the Protection of Human Rights*** ***and*** ~~of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis~~[23] ***Fundamental Freedoms*****.**	Again, the negative tonality of this proposed amendment is not

[10] OJ L 214, 4.8.2006, p. 29.
[14] OJ L 214, 4.8.2006, p. 29.
~~OJ L 214, 4.8.2006, p. 29.~~

						appropriate. Moreover, it's surprising to notice that the necessity to comply with data protection law is mentioned... above the Union Charter and the European Convention for the protection of Human Rights and Fundamental Freedoms We agree the necessity to combine robust AML/CFT rules with the respect that is due to these essential European texts, but this should not be repeated so many times, and this should be done with a positive and constructive tone, which is not currently the case in Parliament's proposals. In our view, the recital n° 30a added by the EP and recital n°31 and recital 46 should be sufficient in this regard. DE:

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						We do not support the changes proposed by the EP. NL: EP text OK IE: Legal capital may be unclear; ES: "…., *the Union should fully respect its data protection law,"* We would suppress the term fully. It is unnecessary. The effective implementation of the AMLD makes necessary to restrict some rights of the data subject, which is a possibility foreseen in the data protection law and justified given the public interest pursued.

						In general, we think that there is an excess and repetitive mention to DP (somehow implicit in recital 1 and explicit in recitals 3,4,8,11,11(b), 25,30,31…). We would prefer a single recital on the issue, simply stating that the measures in the Directive have to and do respect DP legislation (e.g. recital 30), and focus on the primary aim of this Directive which is not DP but prevention of ML/TF. Efforts should be made to have a more balanced approach and send a message along the line that both AML and DP objectives should be reconciled rather than making it so clear that AML is subordinate to DP.

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						PT: We do not agree with the EP's proposed additions to this recital. In line with our comments on recital (4) and article 5, we would clearly prefer a wording which provides for further neutrality (like the one proposed by the COM and supported by Council's GA). LL: *1) The EP deletions for :* *"* ~~of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering"~~ + ~~of December 2001 amending Council Directive 91/308/EEC~~ + ~~(hereinafter referred to as the~~ + ~~of 26 October~~

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						~~2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing~~ + ~~of 1 August 2006 laying down~~ "are conform to the rules of drafting
13.	Recital 4	(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even European Union level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the European Union in this field should therefore be consistent with other action undertaken in other international fora. The European Union	(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even European Union level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the European Union in this field should therefore be consistent with other action undertaken in other international fora.	(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even Union level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Union in *that* field should therefore be ***compatible with, and at least as stringent as,*** other action undertaken in ***the*** international fora. ***Avoiding tax and***	(4)~~——~~ Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even ~~European~~ Union level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the ~~European~~ Union in ~~this~~***that*** field should therefore be ~~consistent~~***compatible with, and at least as stringent as,*** other action	UK: The Council text is preferred. Tax avoidance is not a form of illicit finance. The references to data protection, the charter, etc at the end of the amendment does not add any value (see previous comments). BE: *"However, it is essential for such an alignment with the non-binding FATF recommendations to be carried out in full*

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		action should continue to take particular account of the Recommendations of the FATF, which constitutes the foremost international body active in the fight against money laundering and terrorist financing. With the view to reinforce the efficacy of the fight against money laundering and terrorist financing, Directives 2005/60/EC and 2006/70/EC should be aligned with the new FATF Recommendations adopted and expanded in February 2012.	The European Union action should continue to take particular account of the Recommendations of the FATF, which constitutes the foremost international body active in the fight against money laundering and terrorist financing. With the view to reinforce the efficacy of the fight against money laundering and terrorist financing, Directives 2005/60/EC and 2006/70/EC should be aligned with the new FATF Recommendations adopted and expanded in February 2012.	***mechanisms of non-disclosure and concealment can be used as strategies employed in money laundering and terrorist financing in order to avoid detection***. Union action should continue to take particular account of the *FATF* Recommendations, ***and the recommendations of other*** international ***bodies*** active in the fight against money laundering and terrorist financing. With *a* view to reinforce the efficacy of the fight against money laundering and terrorist financing, Directives 2005/60/EC and 2006/70/EC should**,** ***where appropriate,*** be aligned with the new FATF Recommendations adopted and expanded in February 2012. ***However, it is essential for such an***	undertaken in ~~other~~***the*** international fora. ~~The European~~***Avoiding tax and mechanisms of non-disclosure and concealment can be used as strategies employed in money laundering and terrorist financing in order to avoid detection.*** Union action should continue to take particular account of the ***FATF*** Recommendations ~~of the FATF, which constitutes~~**, *and* *the*** ~~foremost~~***recommendations of other*** international ~~body~~***bodies*** active in the fight against money laundering and terrorist financing. With ~~the~~***a*** view to reinforce the efficacy of the fight against money laundering and terrorist financing, Directives 2005/60/EC and 2006/70/EC should**,** ***where appropriate,*** be	*compliance with Union law, especially as regards Union data protection law and the protection of fundamental rights as enshrined in the Charter.":* This EP amendment should be deleted since this gives the impression that the FATF Recommendations are not compliant with the EU data protection rules, and the FATF countries are all "obliged" through their membership of FATF to implement the recommendations in their national law (MERs – sanctions). So stating as such that they are not-binding is not correct. Moreover, similarly to regarding the addition to recital n°2 and 3, the tonality of this one appears to reveal some degree of mistrust that is

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				alignment with the non-binding FATF Recommendations to be carried out in full compliance with Union law, especially as regards Union data protection law and the protection of fundamental rights as enshrined in the Charter.	aligned with the new FATF Recommendations adopted and expanded in February 2012. ***However, it is essential for such an alignment with the non-binding FATF Recommendations to be carried out in full compliance with Union law, especially as regards Union data protection law and the protection of fundamental rights as enshrined in the Charter.***	not appropriate. The repetition of the need to respect the privacy law and the fundamental rights is useless. DE: We do not support the EP proposal. EU member states committed themselves to fully implement the FATF's 40 Recommendations to combat money laundering and terrorist financing. Thus, the AMLD has to be aligned by all means with FATF standards. There is leeway for stricter regulations but they must not fall short of international standards. NL: EP text mostly OK. However, the text "avoiding tax (...) avoid detection" should not be included. It is vague and

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						unspecific. ES: We question the statement that the FATF recommendations are not binding for those countries that are members (including the EC). Is there any need to state so clearly that the EU does not feel obliged to comply with the standards that have been agreed by the MS? References to data protection are redundant. PT: Although we acknowledge that compliance with the FATF Recommendations has to be ensured under the EU legal framework, we strongly disagree that the alignment with such Recommendations shall

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						be carried out only *"where appropriate"*. Indeed: (1) Implementation of the FATF Recommendations shall take place to the maximum extent permitted by EU law; (2) Boundaries imposed by EU fundamental freedoms derive automatically from the EU law with no need of more explicit references in the AML/CFT framework; (3) The references now introduced by the EP may 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.

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						Therefore, we do not agree with the following underlined additions proposed by the EP: "With *a* view to reinforce the efficacy of the fight against money laundering and terrorist financing, Directives 2005/60/EC and 2006/70/EC should***, where appropriate,*** be aligned with the new FATF Recommendations adopted and expanded in February 2012. ***However, it is essential for such an alignment with the non-binding FATF Recommendations to be carried out in full compliance with Union law, especially as regards Union data protection law and the protection of fundamental rights as enshrined in the***

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						Charter." See also our comments on article 5. LL: 1) deletion of european (twice) is correct drafting + use of that is also better 2) as it does not seem correct that it means :"avoiding tax and avoiding mechanisms of non-disclosure", I would propose to add "using" before "mechanisms of non-disclosure"… 3) better to use "could" in recitals than "can"
14.	Recital 4a (new)			***(4a) Particular attention should be paid to the fulfilment of the obligations set out in Article 208 of the Treaty on the Functioning of the European Union (TFEU), which requires coherence in***	***(4a) Particular attention should be paid to the fulfilment of the obligations set out in Article 208 of the Treaty on the Functioning of the European Union (TFEU), which requires coherence in***	UK: The reference to Article 208 of the TFEU is not helpful. Since it states that "Union development cooperation policy shall have as its primary objective the reduction

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				development cooperation policy in order to stem the increasing trend of money laundering activities being moved from developed countries to developing countries with less stringent anti-money laundering law.	***development cooperation policy in order to stem the increasing trend of money laundering activities being moved from developed countries to developing countries with less stringent anti-money laundering law.***	and, in the long term, the eradication of poverty", the amendment seems to suggest that the ultimate aim of this Directive is poverty reduction. BE: We do not see the added value of these additions since moreover no single article of the Directive deals with this. NL: EP text OK ES: We would agree with a drafting expressing a principle that the EU development cooperation policy will seek to contribute to strengthen the AML/CFT preventive regimes in developing countries. However, there is no

						need to suggest in any way that ML is taking place specially in developing countries or to put EU's system as a model (specially after reading the previous recitals and taking into account that the Directive is just a minimum harmonization generically transposing international standards) PT: We do not agree with the introduction of this new recital. Article 208 of the TFEU states that "[...] The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries".

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						To the extent that this cooperation hinders the implementation of a more robust risk based approach to the AML/CFT legal framework and the effective application of the FATF's Recommendations
15.	Recital 4b (new)			***(4b) In view of the fact that illicit financial flows, and in particular money laundering, represent between 6 and 8,7 % of the GDP of developing countries[24], which is an amount 10 times larger than the assistance by the Union and its Member States to the developing world, the measures taken to combat money laundering and terrorist financing need to be***	***(4b) In view of the fact that illicit financial flows, and in particular money laundering, represent between 6 and 8,7 % of the GDP of developing countries[25], which is an amount 10 times larger than the assistance by the Union and its Member States to the developing world, the measures taken to combat money laundering and terrorist financing need to be***	UK: This amendment is not helpful – the reference to the statistic has no place in a Directive which will last for years. Are we suggesting that should the figure be less, EU MS should not care as much? Illicit finance should be combatted no matter the estimated amount as calculated by a given source.

[24] ***Sources: "Tax havens and development. Status, analyses and measures", NOU, Official Norwegian Reports, 2009.***

[25] ***Sources: "Tax havens and development. Status, analyses and measures", NOU, Official Norwegian Reports, 2009.***

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				coordinated and to take into account the Union's and the Member States' development strategy and policies which aim to fight against capital flight.	***coordinated and to take into account the Union's and the Member States' development strategy and policies which aim to fight against capital flight.***	BE: We do not see the added value of these additions since moreover no single article of the Directive deals with this. NL: The EP reference to the percentage of GDP could be phrased more carefully, as there is only the one report stating this. "is said to represent" would be more appropriate. ES: It is surprising that, in a Directive aimed at preventing ML/TF in the Union, the only estimations on the level of funds laundered refer to third countries . Given the cautions with which estimations on illegal activities should be looked at, we would

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						suggest deleting it. PT: See our previous comment, regarding recital 4a as proposed by the EP.
16.	Recital 5	(5) Furthermore, the misuse of the financial system to channel criminal or even clean money to terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the preventive measures of this Directive should cover not only the manipulation of money derived from crime but also the collection of money or property for terrorist purposes.	(5) Furthermore, the misuse of the financial system to channel criminal or even clean money to terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the preventive measures of this Directive should cover not only the manipulation of money derived from crime but also the collection of money or property for terrorist purposes.	(5) Furthermore, the misuse of the financial system to channel criminal or even clean money to terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the preventive measures of this Directive should cover ▌the manipulation of money derived from ***serious*** crime ***and*** the collection of money or property for terrorist purposes.	(5)~~ _~~Furthermore, the misuse of the financial system to channel criminal or even clean money to terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the preventive measures of this Directive should cover ~~not only~~ ▌the manipulation of money derived from ***serious*** crime ~~but also~~***and*** the collection of money or property for terrorist purposes.	NL: EP text OK PT: LL: Please decide to use "dirty >< clean" OR "illicit><licit" (the last which seems more formal)

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17.	Recital 5a (new)			***(5a) Irrespective of the penalties provided for in the Member States, the primary objective of all measures taken under this Directive should be to combat all practices which result in substantial illegal profits being generated. It should do so by taking all possible steps to prevent the financial system from being used to launder those profits.***	***(5a) Irrespective of the penalties provided for in the Member States, the primary objective of all measures taken under this Directive should be to combat all practices which result in substantial illegal profits being generated. It should do so by taking all possible steps to prevent the financial system from being used to launder those profits.***	UK: Not a hugely helpful addition though not problematic as such. Are we suggesting that the Directive should target the generation and laundering of 'substantial' illicit profits only? NL: We do not agree with the EP text as it is too unspecific and not targeted to the scope of the directive. ES: We would propose to add to the last sentence: "…and by ensuring that the preventive regime provides accurate and adequate information to contribute to the criminal prosecution of the ML/TF"

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						LL: 1) important : please agree on one term to be used in this Directive "sanctions" OR "penalties"… 2) instead of ***It should do so by taking*** , I would propose : "This Directive should take all possible…."
18.	Recital 6	(6) The use of large cash payments is vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by cash payments natural or legal persons trading in goods should be covered by this Directive to the extent that they make or receive cash payments of EUR 7 500 or more. Member States may decide to adopt stricter provisions including a lower	(6) The use of large cash payments is **highly** vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by cash payments natural or legal persons trading in goods should be covered by this Directive to the extent that they make or receive cash payments of EUR ~~7 500~~**10 000** or more.	(6) The use of large cash payments is vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by cash payments natural *and* legal persons ▌should be covered by this Directive to the extent that they make or receive cash payments of EUR 7 500 or more. Member States *should be able to* decide to adopt stricter provisions including a	(6) ~~——~~ The use of large cash payments is ~~**highly**~~ vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by cash payments natural ~~**or**~~***and*** legal persons ~~trading in goods~~ ▌should be covered by this Directive to the extent that they make or receive cash payments of EUR 7 ~~500~~**~~10 000~~500** or more.	UK: Council text preferred as more balanced and focused. The removal of 'goods' suggest services are covered. We do not support this. The implications for doing so are huge. We also prefer threshold agreed in Council as a sound compromise, half way between the current threshold and the 7500 wanted by others.

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		threshold.	Member States may decide to adopt stricter provisions including a lower threshold **or a general limitation to the usage of cash**.	lower threshold.	Member States ~~may~~***should be able to*** decide to adopt stricter provisions including a lower threshold ~~**or a general limitation to the usage of cash**~~. .	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. DE: The scope of the directive should not be extended to services. Therefore the council text should be retained. NL: There is no risk assessment on which a lowering of the threshold could be based. Certainly, this threshold should not be lower than the one in the GA text: EUR 10 000.

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						The reference to MS adopting stricter measures including a general limitation on the usage of cash should be included. PL: In PL's opinion the level of cash transaction should be fixed at 10.000 EUR. ES: 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. We do not understand why the reference to the limitation on the usage of cash has been deleted. PT: We strongly support the

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						Council's GA wording, which explicitly provides for the possibility of a general limitation to the usage of cash as an alternative to a defined threshold for the performance of CDD measures (such limitation is, in our opinion, the most effective way of dealing with cash payments, whose high risk has been expressly recognized by the Council in its proposal).
19.	Recital 6a (new)		**(6a) The use of electronic money products is increasingly considered as a substitute for bank accounts and therefore, further to Directive**	***(6a) Electronic money products are increasingly used as a substitute for bank accounts. The issuers of such products should be under a strict obligation***	***(6a)*** ~~**The use of**~~ ***Electronic money products*** ~~***is***~~***are increasingly*** ~~***considered***~~***used as a substitute for bank accounts*** ~~**and therefore,**~~	**DELETED**

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			2009/110/EC of the European Parliament and of the Council [26], warrants subjecting these products to the AML/CFT obligations. However, in certain proven low-risk circumstances and under strict risk mitigating conditions, Member States should be allowed to exempt electronic money products from certain customer due diligence measures, such as the identification and verification of the customer and the beneficial owner but not from the monitoring of transactions or the business relationship, as	***to prevent money laundering and terrorist financing. However, it should be possible to exempt electronic money products from customer due diligence if certain cumulative conditions are met. The use of electronic money that is issued without performing customer due diligence should be allowed for the purchase of goods and services only from merchants and providers who are identified and whose identification is verified by the electronic money issuer. For person-to-person transfers, the use of electronic money without performing customer due diligence***	~~**further to Directive 2009/110/EC of the European Parliament and of the Council [27], warrants subjecting these .**~~ ***The issuers of such products*** ~~**to the AML/CFT obligations. However, in certain proven low-risk circumstances and**~~ ***should be under a strict*** ~~**risk mitigating conditions, Member States should be allowed**~~ ***obligation to prevent money laundering and terrorist financing. However, it should be possible to exempt electronic money products from*** ~~**certain**~~ ***customer due diligence*** ~~**measures, such as the identification and**~~	

[26] **Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (OJ L 267, 10.10.2009, p. 7.)**

~~**OJ L 267, 10.10.2009, p. 7.)**~~

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			described in point (d) of Article 11(1) of this Directive. The risk mitigating conditions should include a requirement for exempt electronic money products to be used exclusively for purchasing goods or services and that the amount stored electronically be low enough to preclude circumvention of the AML/CFT rules. This exemption is without prejudice to the discretion given to Member States to allow obliged entities to apply simplified customer due diligence measures to other electronic money products posing lower risks, in accordance with Article 13.	***should not be allowed. The amount stored electronically should be sufficiently small in order to avoid loopholes and to make sure that a person cannot obtain an unlimited amount of anonymous electronic money products.***	***~~verification of the customer and the beneficial owner but not from the monitoring of transactions or the business relationship, as described in point (d) of Article 11(1) of this Directive.~~if certain cumulative conditions are met. The ~~risk mitigating conditions should include a requirement for exempt electronic money products to be used exclusively for purchasing goods or services and~~ use of electronic money that is issued without performing customer due diligence should be allowed for the purchase of goods and services only from merchants and providers who are identified and whose identification is verified***	

					by the electronic money issuer. For person-to-person transfers, the use of electronic money without performing customer due diligence should not be allowed. ***The amount stored electronically*** ***be low enough should be sufficiently small in order to avoid loopholes and to preclude circumvention of the AML/CFT rules. This exemption is without prejudice to the discretion given to Member States to allow obliged entities to apply simplified customer due diligence measures to other electronic money products posing lower risks, in accordance with Article 13make sure that a person cannot obtain an unlimited amount of anonymous electronic***	

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					***money products*.**	
20.	Recital 6b (new)			***(6b) Estate agents are active in many different ways in the field of property transactions in the Member States. In order to reduce the risk of money laundering in the property sector estate agents should be included within the scope of this Directive where they are involved in financial transactions relating to property as part of their professional activities.***	***(6b) Estate agents are active in many different ways in the field of property transactions in the Member States. In order to reduce the risk of money laundering in the property sector estate agents should be included within the scope of this Directive where they are involved in financial transactions relating to property as part of their professional activities.***	UK: As per our comment on row 106 for Art 2 – para 1 – point 3 – subpoint d This new EP recital is problematic as a real estate agent now 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) – itself base on article 1(2) © & (d) in the 3AMLD - 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 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. BE: Estate agents are not clearly defined under national law: we have real estate agents and notaries. Why has the EP introduced such a modification compared to the Directive 2005/60 where real estate agents where already covered? What is meant with this change? Does this mean an extension? BE is not

						in favour of this change. DE: In most jurisdictions real estate agents do not participate in the payment of the real estate. Still they are in close contact with the client that could raise a suspicion whether the funds that are used for the purchase could be illegal or not. NL: We do not agree to the EP text. It is not clear what 'estate agents' are. Also 'property' means any kind of item over which one has ownership. A car, a bicycle etc. can all be property. This is far too wide to be used in this directive. ES: 6b) Estate agents are

						active in many different ways in the field of property transactions in the Member States. In order to reduce the risk of money laundering in the property sector estate agents should be included within the scope of this Directive. The last part of the sentence in the EP version is confussing PT: See comments on Article 2 (1) (3)(d). We consider that the sentence "where they are involved in financial transactions relating to property as part of their professional activities" should be suppressed from this new Recital. From our perspective, the proposed EP´s wording

						would nearly exclude real estate activities from the application of AMLD, which would be incompatible with the high level of risk that they entail regarding money laundering. LL: 1) Is it the appropriate place for this recital? 2) the property sector, estate
21.	Recital 7	(7) Legal professionals, as defined by the Member States, should be subject to the provisions of this Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being	(7) Legal professionals, as defined by the Member States, should be subject to the provisions of this Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose	(7) Legal professionals, as defined by the Member States, should be subject to the provisions of this Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being	(7)—Legal professionals, as defined by the Member States, should be subject to the provisions of this Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose	AT: <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

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		misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client. Thus, legal advice should remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering or terrorist financing, the legal advice is provided for money laundering or terrorist financing purposes or the lawyer knows that the client is seeking legal advice for money laundering or terrorist financing	of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client~~.~~**, so as to ensure respect of the rights guaranteed in Articles 7, 47 and 48 of the Charter of Fundamental Rights of the European Union.** Thus, legal advice should remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering or terrorist financing, the legal advice is provided for money laundering or terrorist financing purposes or the lawyer	misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client. Thus, legal advice should remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering or terrorist financing, the legal advice is provided for money laundering or terrorist financing purposes or the lawyer knows that the client is seeking legal advice for money laundering or terrorist financing	of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client~~.~~**, ~~so as to ensure respect of the rights guaranteed in Articles 7, 47 and 48 of the Charter of Fundamental Rights of the European Union.~~** Thus, legal advice should remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering or terrorist financing, the legal advice is provided for money laundering or terrorist financing purposes or the lawyer	compromise with the EP's view. NL: We would like the reference to the Charter (GA text) included. LL: 1) It seems that there are 3 different terms to cover the same person, if yes, please agree on one term for : "legal professional", "legal counsellor", "lawyer" 2) please refer to "Charter" in short as it was already quoted in recital 3

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		purposes.	knows that the client is seeking legal advice for money laundering or terrorist financing purposes.	purposes.	knows that the client is seeking legal advice for money laundering or terrorist financing purposes.	
22.	Recital 8	(8) Directly comparable services should be treated in the same manner when provided by any of the professionals covered by this Directive. In order to ensure the respect of the rights guaranteed by the Charter of Fundamental Rights of the European Union, in the case of auditors, external accountants and tax advisors, who, in some Member States, may defend or represent a client in the context of judicial proceedings or ascertain a client's legal position, the information they obtain in the performance of those	(8) Directly comparable services should be treated in the same manner when provided by any of the professionals covered by this Directive. In order to ensure the respect of the rights guaranteed by the Charter of Fundamental Rights of the European Union, in the case of auditors, external accountants and tax advisors, who, in some Member States, may defend or represent a client in the context of judicial proceedings or ascertain a client's legal position, the information they obtain in the	(8) Directly comparable services should be treated in the same manner when provided by any of the professionals covered by this Directive. In order to ensure respect *for* the rights guaranteed by the Charter, in the case of auditors, external accountants and tax advisors, who, in some Member States, may defend or represent a client in the context of judicial proceedings or ascertain a client's legal position, the information they obtain in the performance of those tasks should not be subject to the reporting	(8) ~~——~~ Directly comparable services should be treated in the same manner when provided by any of the professionals covered by this Directive. In order to ensure ~~the~~ respect ~~of~~***~~for~~*** the rights guaranteed by the Charter ~~——of Fundamental Rights of the European Union~~, in the case of auditors, external accountants and tax advisors, who, in some Member States, may defend or represent a client in the context of judicial proceedings or ascertain a client's legal position, the information they obtain in the	NL: EP text is OK LL: Please refer to "Charter" in short as it was already quoted in recital 3

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		tasks should not be subject to the reporting obligations in accordance with this Directive.	performance of those tasks should not be subject to the reporting obligations in accordance with this Directive.	obligations in accordance with this Directive.	performance of those tasks should not be subject to the reporting obligations in accordance with this Directive.	
23.	Recital 9	(9) It is important to expressly highlight that "tax crimes" related to direct and indirect taxes are included in the broad definition of "criminal activity" under this Directive in line with the revised FATF Recommendations.	(9) It is important to expressly highlight that "tax crimes" related to direct and indirect taxes are included in the broad definition of "criminal activity" under this Directive in line with the revised FATF Recommendations. **Since different tax offences may be designated in each Member State as constituting "criminal activity" punishable with the sanctions provided for in Article 3(4)(f) of this Directive, national law definitions of tax crimes may differ. While no harmonisation of Member States' national law definitions**	(9) It is important to highlight *expressly* that 'tax crimes' *relating* to direct and indirect taxes are included in the ▌ definition of 'criminal activity' under this Directive in line with the revised FATF Recommendations. ***The European Council of 23 May 2013 stated the need to deal with tax evasion and fraud and to fight money laundering in a comprehensive manner, both within the internal market and vis-à-vis non-cooperative third countries and jurisdictions. Agreeing on a definition of tax crimes is an important step in detecting those***	(9)—— It is important to **highlight** *expressly* ~~highlight~~ that ~~"~~'tax ~~crimes" related~~**crimes' *relating*** to direct and indirect taxes are included in the ~~broad~~ ▌ definition of ~~"~~'criminal ~~activity"~~**activity'** under this Directive in line with the revised FATF Recommendations. ~~**Since different tax offences may be designated in each Member State as constituting "criminal activity" punishable with** *The European Council of 23 May 2013 stated* **the sanctions provided for in Article 3(4)(f) of this Directive, national law definitions of tax crimes may**~~	**DELETED**

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			of tax crimes is sought, Member States should allow, to the greatest extent possible under their national law, the exhange of information or the provision of assistance between EU Financial Intelligence Units (FIUs).	***crimes, as too is public the disclosure of certain financial information by large companies operating in the Union on a country-by-country basis. It is also important to ensure that obliged entities and legal professionals, as defined by Member States, do not seek to frustrate the intent of this Directive or to facilitate or to engage in aggressive tax planning.***	***~~differ. While no harmonisation of Member States' national law definitions~~need to deal with tax evasion and fraud and to fight money laundering in a comprehensive manner, both within the internal market and vis-à-vis non-cooperative third countries and jurisdictions. Agreeing on a definition of tax crimes is ~~sought, Member States should allow, to the greatest extent possible under their national law,~~an important step in detecting those crimes, as too is public the ~~exhange of~~disclosure of certain financial information ~~or by large companies operating in the provision of assistance between EU Financial Intelligence~~***	

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					~~Units (FIUs).~~ ***Union on a country-by-country basis. It is also important to ensure that obliged entities and legal professionals, as defined by Member States, do not seek to frustrate the intent of this Directive or to facilitate or to engage in aggressive tax planning.***	
24.	Recital 9a (new)			***(9a) Member States should introduce General Anti-Avoidance Rules (GAAR) on tax matters with a view to curbing aggressive tax planning and avoidance in accordance with the European Commission's recommendations on Aggressive Tax Planning on December 12th 2012 and the OECD Progress Report to the G20 on 5 September 2013.***	***(9a) Member States should introduce General Anti-Avoidance Rules (GAAR) on tax matters with a view to curbing aggressive tax planning and avoidance in accordance with the European Commission's recommendations on Aggressive Tax Planning on December 12th 2012 and the OECD Progress Report to the G20 on 5 September 2013.***	LV: **This is not a matter of AML.** UK: The EP addition is completely out of scope of the Directive and should be handled by tax experts. BE: Comment regarding Recital 9 is also relevant regarding this one. NL:

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						We strongly disagree with the EP text of this recital. It is outside the scope of this directive and should not be in the recitals. LL: OECD should be spelled in full…
25.	Recital 9b (new)			***(9b) When they are performing or facilitating commercial or private transactions, entities which have a specific role in the financial system, such as the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), the central banks of the Member States and central settlement systems should, as far as possible, observe the rules applicable to other obliged entities adopted pursuant to this***	***(9b) When they are performing or facilitating commercial or private transactions, entities which have a specific role in the financial system, such as the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), the central banks of the Member States and central settlement systems should, as far as possible, observe the rules applicable to other obliged entities adopted pursuant to this***	NL: We strongly disagree with the EP text of this recital. Central banks have a very specific role in the financial systems of the MS and should not be considered equivalent to the role of obliged entities. The text suggested should not be in the recitals. ES: This is basically a statement of principles. Who is in charge of controlling this? Is the intention of the EP

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				Directive.	***Directive.***	to make Central Banks obliged entities also in what concerns transactions in the interbank market? PT:
26.	Recital 10	(10) There is a need to identify any natural person who exercises ownership or control over a legal person. While finding a percentage shareholding will not automatically result in finding the beneficial owner, it is an evidential factor to be taken into account. Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and should follow the chain of ownership until the	(10) There is a need to identify any natural person who exercises ownership or control over a legal ~~person.~~**entity. In order to ensure effective transparency, Member States should ensure that the widest possible range of legal entities incorporated or created by any other mechanism in their territory is covered.** While finding a **specified** percentage shareholding	(10) There is a need to identify any natural person who exercises ownership or control over a legal person. While finding a ***specific*** percentage shareholding will not automatically result in finding the beneficial owner, it is ***one*** factor ~~to~~ ***among others for the identification of the beneficial owner***. Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and should follow the chain of	(10)~~—~~ There is a need to identify any natural person who exercises ownership or control over a legal person.~~entity. In order to ensure effective transparency, Member States should ensure that the widest possible range of legal entities incorporated or created by any other mechanism in their territory is covered.~~ While finding a ~~specified~~*specific* percentage shareholding ~~or ownership interest~~ will not automatically result in finding the	**DELETED**

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		natural person who exercises ownership or control of the legal person that is the customer is found.	**or ownership interest** will not automatically result in finding the beneficial owner, it is ~~an~~**one** evidential factor **among others** to be taken into account. Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities~~,~~ and **obliged entities** should ~~follow the chain of ownership until~~**look for** the natural person**(s)** who **ultimately** exercises **control through** ownership or control **through other means** of the legal ~~person~~**entity** that is the customer~~ is found~~**. Control through other means may, inter alia, include the criteria**	ownership until the natural person who exercises ownership or control of the legal person that is the customer is found.	beneficial owner, it is ~~an~~**one** ~~evidential~~***one*** factor ~~to~~ ***among others*** ~~to be taken into account~~***for the identification of the beneficial owner***. Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and **obliged entities** should follow the chain of ownership ~~until~~**look for**~~until~~ the natural person~~(s)~~ who **ultimately** exercises **control through** ownership or control **through other means** of the legal ~~person~~**entity**~~person~~ that is the customer is found~~.~~**. Control through other means may, inter alia, include the criteria of control used for the purposes of preparing consolidated financial**	

			of control used for the purposes of preparing consolidated financial statements, such as through shareholders' agreement, the exercise of dominant influence or the power to appoint senior management. There may be cases where no natural person is identifiable who either ultimately owns, or who exerts control over a legal entity. In such exceptional cases obliged entities, having exhausted all other means of identification, and provided there are no grounds for suspicion, may consider the senior managing official(s) as beneficial		~~**statements, such as through shareholders' agreement, the exercise of dominant influence or the power to appoint senior management. There may be cases where no natural person is identifiable who either ultimately owns, or who exerts control over a legal entity. In such exceptional cases obliged entities, having exhausted all other means of identification, and provided there are no grounds for suspicion, may consider the senior managing official(s) as beneficial owner(s). .**~~	

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			owner(s).			
27.	Recital 11	(11) The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that companies retain information on their beneficial ownership and make this information available to competent authorities and obliged entities. In addition, trustees should declare their status to obliged entities.	(11) The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that ~~companies retain~~**corporate and other legal entities obtain and hold, in addition to basic information such as company name and address, proof of incorporation and legal ownership, adequate, accurate and current** information on their beneficial ownership and	(11) ***It is important to ensure, and to enhance, the traceability of payments.*** The ***existence of*** accurate and up-to-date information on the beneficial owner ***of any legal entity, such as legal persons, trusts, foundations, holdings and all other similar existing or future legal arrangements*** is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that companies retain information on their beneficial ownership and make ***adequate, accurate and up-to-date*** information available ***through central public registers, accessible on-***	(11)~~—~~ ***It is important to ensure, and to enhance, the traceability of payments.*** The ~~need for~~***existence of*** accurate and up-to-date information on the beneficial owner ***of any legal entity, such as legal persons, trusts, foundations, holdings and all other similar existing or future legal arrangements*** is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that companies ~~retain~~**~~corporate and other legal entities obtain and hold, in addition to basic information such as company name and~~**	**DELETED**

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			~~make~~**that** this information **is provided to obliged entities when the latter are taking customer due diligence measures and is made** available to competent authorities and ~~obliged entities. In addition~~**FIUs. With a view to enhancing transparency, beneficial ownership information should be stored in specified locations, for example in the case of companies in a public central company registry, or data retrieval systems, satisfying strict criteria of timely and unrestricted access to the information stored. In order to ensure a level playing field**	***line and in an open and secure data format, in accordance with Union data protection rules and the right to privacy as enshrined in the Charter. Access to such registers should be granted to competent authorities, in particular FIUs and obliged entities, as well as to the public subject to prior identification of the person wishing to access the information and to the possible payment of a fee.*** In addition, trustees should declare their status to obliged entities.	~~**address, proof of incorporation and legal ownership, adequate, accurate and current**~~**retain** information on their beneficial ownership and ~~make~~**that** ~~this information~~ ~~**is provided to obliged entities when the latter are taking customer due diligence measures and is made**~~ **make** ***adequate, accurate and up-to-date*** **information** available ***through central public registers, accessible on-line and in an open and secure data format, in accordance with Union data protection rules and the right to privacy as enshrined in the Charter. Access to such registers should be granted to competent authorities, in particular FIUs and obliged entities***. ~~In addition~~**FIUs.**	

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			among different types of legal form, trustees should **also be required to obtain, hold and provide to obliged entities taking customer due diligence measures, beneficial ownership information and to communicate this information to the specified locations or data retrieval systems and they should** declare their status to obliged entities. **Legal entities such as foundations and legal arrangements similar to trusts should be subject to equivalent requirements.**		~~**With a view to enhancing transparency, beneficial ownership information should be stored in specified locations, for example in the case of companies in a public central company registry, or data retrieval systems, satisfying strict criteria of timely and unrestricted access to the information stored. In order to ensure a level playing field among different types of legal form**~~, ***as well as to the public subject to prior identification of the person wishing to access the information and to the possible payment of a fee.*** **In addition**, trustees should ~~**also be required to obtain, hold and provide to obliged entities taking customer**~~	

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					~~due diligence measures, beneficial ownership information and to communicate this information to the specified locations or data retrieval systems and they should~~ declare their status to obliged entities. ~~Legal entities such as foundations and legal arrangements similar to trusts should be subject to equivalent requirements.~~	
28.	Recital 11a (new)			***(11a) The establishment of beneficial ownership registers by Member States would significantly improve the fight against money laundering, terrorist financing, corruption, tax crimes, fraud and other financial crimes. This could be achieved by improving the operations of the existing business***	***(11a) The establishment of beneficial ownership registers by Member States would significantly improve the fight against money laundering, terrorist financing, corruption, tax crimes, fraud and other financial crimes. This could be achieved by improving the operations of the existing business***	LV: **Most risks possibly are originated outside of Member States.** UK: Since the EP text also refers to trust registers, it is not acceptable to us as such. A focus on companies is preferred. As previously flagged,

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				registers in the Member States. It is vital that registers are interconnected if effective use is to be made of the information contained therein, due to the cross-border nature of business transactions. The interconnection of business registers across the Union is already required by Directive 2012/17/EU of the European Parliament and of the Council[28] and should be further developed.	***registers in the Member States. It is vital that registers are interconnected if effective use is to be made of the information contained therein, due to the cross-border nature of business transactions. The interconnection of business registers across the Union is already required by Directive 2012/17/EU of the European Parliament and of the Council[29] and should be further developed.***	the Interconnection Directive does not establish a requirement for general communication between MSs. It only needs to "ensure the interoperability of their [business] registers within the system of interconnection of registers via the platform." The platform itself is specific to business registers (BR), as it requires only the construction of a Business Registers Information System (BRIS) to facilitate secure communication between BRs: - when a company

[28] ***Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies register (OJ L 156, 16.6.2012, p. 1).***

[29] ***Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies register (OJ L 156, 16.6.2012, p. 1).***

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						is dissolved in one BR which has branches in another BR, which need to be closed; and - when companies are involved in a cross-border merger. BE: The substance of this recital shout be set in line with the provisions of the directive regarding transparency of legal entities. DE: We support the EP text proposal. Still, we would like to reiterate that public registers can only identify the legal owner of a company. FI: Please see our comments to Art. 29 and 30. FR: France supports the EP's

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						Recital (11a) on public central register. NL: We can agree with the EP text. However, the text on interconnection of registers should be formulated more carefully. The text "It is vital (...) of business transactions" should be left out. PL: **PL strongly opposes the central public registers of BO information as a mandatory solution. PL firmly supports the wording proposed by the Council. Please note the comments to the art. 29.** ES: We don´t oppose to the mention to the interconnection of company registries.

						However, we do not support that the centralised register or database should be necessarily in the company registry. Flexibility should be provided to MS in order to decide where to allocate the registry/database in accordance with their national commercial legislation. In Spain the centralised BO database already exists but it is in the General Council of Notaries, which is the place where it naturally fits since transfers of shares require the intervention of a notary but not registration in the Business Registry. Therefore we propose to create a new subparagraph from the second sentence. PT:

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						See our comments on article 29.
29.	Recital 11b (new)			***(11b) Technological progress has provided tools which enable obliged entities to verify the identity of their customers when certain transactions occur. Such technological improvements provide time-effective and cost-effective solutions to businesses and to customers and should therefore be taken into account when evaluating risk. The competent authorities of Member States and obliged entities should be proactive in combating new and innovative ways of money laundering, while respecting fundamental***	***(11b) Technological progress has provided tools which enable obliged entities to verify the identity of their customers when certain transactions occur. Such technological improvements provide time-effective and cost-effective solutions to businesses and to customers and should therefore be taken into account when evaluating risk. The competent authorities of Member States and obliged entities should be proactive in combating new and innovative ways of money laundering, while respecting fundamental***	DE: We deem the proposal made by the EP not appropriate. The purchase of particular technological tools is a business decision to be taken by each obliged entity individually according to its economic capacity. FR: France supports this Recital NL: EP text OK ES: We do not see the reasons for another mention to DP here, and

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				rights, including the right to privacy and data protection.	***rights, including the right to privacy and data protection.***	remain a little bit unsure of what this recital is referring to. PT: We understand and encourage the introduction of a recital addressing the use of technological progress to combat ML/TF. However, our comments on recital (4) and article (5) shall be taken into account when reference is made to "[...] *respecting fundamental rights, including the right to privacy and data protection.*"
30.	Recital 12	(12) This Directive should also apply to those activities of the obliged entities covered by this Directive which are performed on the internet.	(12) This Directive should also apply to those activities of the obliged entities covered by this Directive which are performed on the internet.	(12) This Directive should also apply to those activities of the obliged entities covered by this Directive which are performed on the internet.	(12) This Directive should also apply to those activities of the obliged entities covered by this Directive which are performed on the internet.	

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31.	Recital 12a (new)			***(12a) The representatives of the Union in the governing bodies of the EBRD should encourage the EBRD to implement the provisions of this Directive and to publish on its website an anti-money laundering policy, containing detailed procedures that would give effect to this Directive.***	***(12a) The representatives of the Union in the governing bodies of the EBRD should encourage the EBRD to implement the provisions of this Directive and to publish on its website an anti-money laundering policy, containing detailed procedures that would give effect to this Directive.***	UK: . BE: This recital is not aiming at facilitating the right understanding of the directive: it should thus not be retained. NL: EP text OK LL: 1) Is there a related article? 2) delete "the provisions of"
32.	Recital 13	(13) The use of the gambling sector to launder the proceeds of criminal activity is of concern. In order to mitigate the risks related to the sector and to provide parity amongst the providers of gambling services, an	(13) The use of the gambling sector to launder the proceeds of criminal activity is of concern. In order to mitigate the risks related to the sector ~~and to provide parity amongst the~~ **, an obligation for**	(13) The use of the gambling sector to launder the proceeds of criminal activity is of concern. In order to mitigate the risks related to the sector and to provide parity amongst the providers of gambling services, an obligation for providers	(13) The use of the gambling sector to launder the proceeds of criminal activity is of concern. In order to mitigate the risks related to the sector and to provide parity amongst the ~~**, an obligation for**~~ providers of gambling services, an obligation	UK: The EP text is more balanced and reflects the need to take into account the outcomes of the NRA and the different types of business models across the gambling sector. The Council text seems

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		obligation for all providers of gambling services to conduct customer due diligence for single transactions of EUR 2 000 or more should be laid down. Member States should consider applying this threshold to the collection of winnings as well as wagering a stake. Providers of gambling services with physical premises (e.g. casinos and gaming houses) should ensure that customer due diligence, if it is taken at the point of entry to the premises, can be linked to the transactions conducted by the customer on those premises.	providers of gambling services~~, an obligation for all providers of gambling services~~ **posing higher risks** to conduct customer due diligence for single transactions of EUR 2 000 or more should be laid down. Member States should consider applying this threshold to the collection of winnings ~~as well as~~**and/or** wagering a stake**, including by the purchase and exchange of gambling chips**. Providers of gambling services with physical premises (e.g. casinos and gaming houses) should ensure that customer due diligence, if it is taken at the point of entry to the premises, can be linked to the	of gambling services to conduct customer due diligence for single transactions of EUR 2 000 or more should be laid down. ***When carrying out that due diligence a risk based approach should be adopted that reflects the different risks for different types of gambling services and whether they represent a high or low risk for money laundering. The special characteristics of different types of gambling should also be taken into account, by, for example, differentiating between casinos, on-line gambling or other providers of gambling services***. Member States should consider applying *that* threshold to the collection of winnings as well as wagering a stake.	for ~~all~~ providers of gambling services ~~posing higher risks~~ to conduct customer due diligence for single transactions of EUR 2 000 or more should be laid down. ~~Member States~~***When carrying out that due diligence a risk based approach should be adopted that reflects the different risks for different types of gambling services and whether they represent a high or low risk for money laundering. The special characteristics of different types of gambling should also be taken into account, by, for example, differentiating between casinos, on-line gambling or other providers of gambling services.*** **Member States should** consider applying ~~this~~***that*** threshold to the	to leave the decision to opt for winnings or stakes or both – we approve of that level of discretion. The NRA would determine what is the most risk-appropriate option. DE: In our opinion there is no substantial difference between the two drafting suggestions. Still we feel that the council text is more precise concerning the application of the RABA. Moreover we feel it very important to add the criterion of "purchase and exchange of gambling chips". Therefore we would prefer the council proposal but could support the EP version, too. NL: We do not agree with the

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			transactions conducted by the customer on those premises. **However in proven low-risk circumstances, Member States should be allowed to exempt certain gambling services from some or all of the Directive's requirements. The use of an exemption by a Member State should only be considered in strictly limited and justified circumstances, and where the money laundering or terrorist financing risks are negligible. Such exemptions should be subject to a specific risk assessment and be notified to the Commission.**	Providers of gambling services ▌should ensure that customer due diligence, if it is taken at the point of entry ▌can be linked to the transactions conducted by the customer.	collection of winnings as well ~~as~~**and/or**~~as~~ wagering a stake~~:~~ ~~**including by the purchase and exchange of gambling chips.**~~.~~ Providers of gambling services ~~with physical premises (e.g. casinos and gaming houses)~~ ▌should ensure that customer due diligence, if it is taken at the point of entry ~~to the premises,~~ ▌can be linked to the transactions conducted by the customer ~~on those premises.~~ ~~**However in proven low-risk circumstances, Member States should be allowed to exempt certain gambling services from some or all of the Directive's requirements. The use of an exemption by a Member State should only be considered in**~~	GA text "posing higher risks". We would want this text to be left out. We agree with the EP text "when carrying out (...) providers of gambling services." We would also want the GA text "However (...) notified to the Commission" to be included. MT: MT is of the opinion that there should not be any discrimination among the various gambling services. All gambling services pose similar risks to money laundering and must therefore be subject to similar obligations. For this reason, Malta supports the text proposed by the

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					~~**strictly limited and justified circumstances, and where the money laundering or terrorist financing risks are negligible. Such exemptions should be subject to a specific risk assessment and be notified to the Commission**~~.	Commission. Nevertheless, if varying treatment is to be applied, it must be evidence-based, non-discriminatory and subject to appropriate risk assessments. IE: Seek clarification – has this been deleted? LL: "In order to mitigate the risks related to THAT sector"
33.	Recital 13a (new)			***(13a) Money laundering is becoming increasingly sophisticated and also includes illegal, and sometimes legal, betting, in particular in relation to sporting events. New forms of lucrative organised crime like match-fixing have***	***(13a) Money laundering is becoming increasingly sophisticated and also includes illegal, and sometimes legal, betting, in particular in relation to sporting events. New forms of lucrative organised crime like match-fixing have***	UK: We do not support this amendment. We do not understand why there is a reference for match fixing in the AMLD since it is a predicate offence. BE:

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				arisen and have developed into a profitable form of criminal activity related to money laundering.	***arisen and have developed into a profitable form of criminal activity related to money laundering.***	We don't see the usefulness of this recital for the right understanding of the directive. In our view, it should not be retained. DE: We support the inclusion of the proposed recital. The money laundering threat through illegal or manipulated gambling is an increasing problem; especially in the field of sports betting. The Convention against the manipulation of sport competitions that will be signed September 18 highlights the special risk and urges to strengthen preventive measures. NL: We disagree to the EP text "illegal, and sometimes legal" with respect to betting. We do

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						not like the suggestion of legal betting being linked to ML. We therefore suggest to leave out these words.
34.	Recital 14	(14) The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a risk-based approach should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision making to better target the money laundering and terrorist financing risks facing the European Union and those operating within it.	(14) The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a risk-based approach should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision making to better target the money laundering and terrorist financing risks facing the European Union and those operating within it.	(14) The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a ***holistic*** risk-based approach ***based on minimum standards*** should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision making to better target the money laundering and terrorist financing risks facing the ▌ Union and those operating within it.	(14)—The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a ***holistic*** risk-based approach ***based on minimum standards*** should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision making to better target the money laundering and terrorist financing risks facing the ~~European~~ ▌ Union and those operating within it.	BE: "Accordingly, a ***holistic*** risk-based approach ***based on minimum standards*** should be used.". BE does not support this EP amendment: Are we then not in a rule-based approach if we insert all these amendments? NL: We prefer the GA text. We do not want, as suggested in the EP text, to use 'holistic' in a directive text and do not think it wise to unduly limit the risk based approach by using "based on minimum standards". PT:

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						See our comments on risk assessment (articles 6 and 7.
35.	Recital 15	(15) Underpinning the risk-based approach is a need for Member States to identify, understand and mitigate the money laundering and terrorist financing risks it faces. The importance of a supra-national approach to risk identification has been recognised at international level, and the European Supervisory Authority (European Banking Authority) (hereinafter 'EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24	(15) Underpinning the risk-based approach is a need for Member States to identify, understand and mitigate the money laundering and terrorist financing risks it faces. The importance of a supra-national approach to risk identification has been recognised at international level, and the European Supervisory Authority (European Banking Authority) (hereinafter 'EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24	(15) Underpinning the risk-based approach is a need for Member States ***and the Union*** to identify, understand and mitigate the money laundering and terrorist financing risks it faces. The importance of a supra-national approach to risk identification has been recognised at international level, and the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[36]; the	(15)—_ Underpinning the risk-based approach is a need for Member States ***and the Union*** to identify, understand and mitigate the money laundering and terrorist financing risks it faces. The importance of a supra-national approach to risk identification has been recognised at international level, and the European Supervisory Authority (European Banking Authority) ~~(hereinafter~~ '**(**'EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ~~of 24~~	UK: This amendment calls on the ESAs to develop minimum standards for risk assessments carried out by national competent authorities. Art 45 (8) of the Council text tasks the EAS with the drafting of guidelines on risk-based supervision. These guidelines set out how competent authorities should assess risk but do so in a more effective way. As such the amendment by the EP at the end of this recital is not needed. BE:

[36] *Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*OJ L 331, 15.12.2010, p. 12*).*

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		November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC[30]; the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter 'EIOPA'), established by Regulation (EU) No	November 2010 establishing a European Supervisory Authority (European Banking Authority)~~, amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC~~33; the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter 'EIOPA'), established by Regulation (EU) No	European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA'), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council [37]; and the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No	~~November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC~~[39]; the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ~~(hereinafter '~~**('**EIOPA'), established by Regulation (EU) No	Maintain the Council text DE:

30 OJ L 331, 15.12.2010, p. 12.

33 OJ L 331, 15.12.2010, p. 12.

37 *Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (*OJ L 331, 15.12.2010, p. 48*).*

39 *Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*OJ L 331, 15.12.2010, p. 12*).*

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		1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC[31]; and the European Supervisory Authority (European Securities and Markets Authority) (hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and	1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)~~, amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC~~34; and the European Supervisory Authority (European Securities and Markets Authority) (hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and	1095/2010 of the European Parliament and of the Council[38], should be tasked with issuing an opinion on the risks affecting the financial sector ***and, in cooperation with Member States, should develop minimum standards for risk assessments carried out by the competent national authorities. That process should, as far as possible, involve relevant stakeholders through public consultations***.	1094/2010 of the European Parliament and of the Council ~~of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC~~[40]; and the European Supervisory Authority (European Securities and Markets Authority) ~~(hereinafter '~~(**'**ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and	

31 OJ L 331, 15.12.2010, p. 48.

34 OJ L 331, 15.12.2010, p. 48.

38 *Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (*OJ L 331, 15.12.2010, p. 84*).*

40 *Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (*OJ L 331, 15.12.2010, p. 48*).*

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		of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[32], should be tasked with issuing an opinion on the risks affecting the financial sector.	of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)~~,~~ ~~amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC~~35, should be tasked with issuing an opinion on the risks affecting the **EU** financial sector.		of the Council ~~of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC~~[41], should be tasked with issuing an opinion on the risks affecting the ~~**EU**~~ financial sector ***and, in cooperation with Member States, should develop minimum standards for risk assessments carried out by the competent national authorities. That process should, as far as possible, involve relevant stakeholders***	

32 OJ L 331, 15.12.2010, p. 84.

35 OJ L 331, 15.12.2010, p. 84.

41 *Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (*OJ L 331, 15.12.2010, p. 84*).*

					through public consultations.	We do not support the amendment made by the EP NL: EP text mostly OK. However, we want a possible SNRA to only focus on (a) internal market and (b) cross-border risks. Also, we do not see the need for ESA minimum standards for MS risk

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						assessments. ES: Recital 15 and 15 a). We favour the drafting of the Council which is more clear and divides the national and the supranational risk assesments and that frames the role of the EC on cross-border risks. There are multiple methodologies to carry out a national risk assessment (including through various risks assessments by different agencies), which exceeds the preventive area. There is no evidence that any of them is more effective than the other, and therefore we would not favour having minimum standards that MS should adhere to in their national risk assessments.

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						PT: See our comments on risk assessment (articles 6 and 7). LL: Underpinning the risk-based approach, IT is a need for Member Deleting of : ~~(hereinafter '~~ **(AND** ~~of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC~~ are conform to the rules of drafting (same for EIOPA and ESMA)
36.	Recita 15a (new)		**(15a) The Commission is well placed to review specific cross-border threats, that could**		~~**(15a) The Commission is well placed to review specific cross-border threats, that could affect the internal**~~	AT: Austrian Position: It should be added that the EC is also to be entrusted

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			affect the internal market and which cannot be identified and effectively combatted by individual Member States. Therefore, it should be entrusted with the responsibility of coordinating the assessment of the above-mentioned risks related to cross-border phenomena and with making recommendations on the appropriate measures to tackle the identified risks. Involvement of the relevant experts, such as the Expert Group on Money Laundering and Terrorist Financing and the representatives from the Member States' FIUs, as well as - where appropriate - other EU level bodies, is essential for the effectiveness of this		~~market and which cannot be identified and effectively combatted by individual Member States. Therefore, it should be entrusted with the responsibility of coordinating the assessment of the above-mentioned risks related to cross-border phenomena and with making recommendations on the appropriate measures to tackle the identified risks. Involvement of the relevant experts, such as the Expert Group on Money Laundering and Terrorist Financing and the representatives from the Member States' FIUs, as well as - where appropriate - other EU level bodies, is essential for the effectiveness of this process. National risk~~	with the review of risks emanating from vulnerabilities cause by the EU's legal framework. UK: We support the Council text in so far as the recommendations are not legally binding and the focus remains on risks to the internal market as a whole. BE: Maintain the Council text DE: See comment no. 35 NL: We would like the GA text to be included. PL: In PL's opinion recital 15a clearly and sufficiently explains the role of the Commission

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			process. National risk assessments and experiences are also an important source of information for the process.		~~**assessments and experiences are also an important source of information for the process.**~~	regarding the supra-national risk assessment. PL supports inclusion of this recital as in the version proposed by the Council. PT: We support the prominent role that is entrusted to the Commission by both the Council's and EP's proposals, without prejudice to the utmost convenience of maintaining the issuance of an independent joint opinion by the ESAs.
37.	Recital 16	(16) The results of risk assessments at Member State level should, where appropriate, be made available to obliged entities to enable them to identify, understand and mitigate their own risks.	(16) The results of risk assessments at Member State level should, where appropriate, be made available to obliged entities to enable them to identify, understand and mitigate their own risks.	(16) The results of risk assessments should, where appropriate, be made available ***in a timely manner*** to obliged entities to enable them to identify, understand and mitigate their own risks.	(16)~~—~~ The results of risk assessments ~~at Member State level~~ should, where appropriate, be made available ***in a timely manner*** to obliged entities to enable them to identify, understand and mitigate their own risks.	BE: Maintain the Council text NL: EP text is OK PL: PL prefers the version proposed by the Council.

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						LL: Considering recital (17) "Member State level" should stay for clarity reasons
38.	Recital 17	(17) In order to better understand and mitigate risks at European Union level, Member States should share the results of their risk assessments with each other, the Commission and EBA, EIOPA and ESMA, where appropriate.	(17) In ~~order~~**addition,** to **even** better understand and mitigate risks at European Union level, Member States should share the results of their risk assessments with each other, the Commission and EBA, EIOPA and ESMA~~,~~ ~~where appropriate~~.	(17) In order to better understand and mitigate risks at ▌Union level, ***a supranational risk analysis should be carried out so that the risks of money laundering and terrorist financing to which the internal market is exposed can be identified effectively. The Commission should require the Member States to deal with scenarios considered to be high risk in an effective way. Furthermore,*** Member States should share the results of their risk assessments with each other *and with* the Commission, EBA,	(17)~~—~~ In ~~order~~***addition,order*** to ~~even~~ better understand and mitigate risks at ~~European~~ ▌Union level, ***a supranational risk analysis should be carried out so that the risks of money laundering and terrorist financing to which the internal market is exposed can be identified effectively. The Commission should require the Member States to deal with scenarios considered to be high risk in an effective way. Furthermore,*** Member States should share the results of their risk assessments with each	UK: Recital 15 (a) of the Council text addresses these points in a more balanced way which reflects Member States' overall views. The Commission "should require the member states to deal with scenarios considered to be high risk in an effective way" suggest legally binding measures/sanctioning and advising by another means? This would read better as "Member States should work to address the scenarios identified as high risk in an effective manner." DE:

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				EIOPA**,** ESMA ***(together referred to as the 'ESAs'), and Europol***, where appropriate.	other~~,~~ ***and with*** the Commission ~~and,~~ EBA, EIOPA ~~and,~~ ESMA ***(together referred to as the 'ESAs'), and Europol***, where appropriate.	The proposal made by the EP is superfluous given that the process and involvement of COM and member states in the supranational risk assessment is already laid out in Recital 15 a (new). FR: **France supports this EP's Recital (17)** NL: We strongly prefer GA recital 15a over the EP text for this recital, for the following reasons: - The GA text limits the SNRA to (a) cross border phenomena and (b) risks affecting the internal market. - The GA text does not include text where the Commission would "require" the MS to "deal with scenario's" and

						- it does not require MS to share their national risk assessments with Europol. PL: **PL supports the version proposed by the Council. Please note the comments to the art. 6.** ES: We think the overall treatment of the national/supranational risk assessment is more clear and consistent in the Council's version than in the EP's one. PT: See our comments on article 7(3) and (5). We highlight the utmost importance of the mandatory exchange of NRAs (National Risk

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						Assessments) between MSs. Therefore, we do not agree with the wording "*where appropriate*" proposed by the EP , in line with the Council's GA. LL: 1) Deletion of "European" is correct 2) change "can" to "could" 3) please agree if the abbreviation ESA should be used or not
39.	Recital 18	(18) When applying the provisions of this Directive, it is appropriate to take account of the characteristics and needs of small obliged entities which fall under its scope, and to ensure a treatment which is appropriate to the	(18) When applying the provisions of this Directive, it is appropriate to take account of the characteristics and needs of small obliged entities which fall under its scope, and to ensure a treatment which is appropriate to the	(18) When applying the provisions of this Directive, it is appropriate to take account of the characteristics and needs of small obliged entities which fall under its scope, and to ensure a treatment which is appropriate to the	(18) When applying the provisions of this Directive, it is appropriate to take account of the characteristics and needs of small obliged entities which fall under its scope, and to ensure a treatment which is appropriate to the	

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		specific needs of small obliged entities, and the nature of the business.	specific needs of small obliged entities, and the nature of the business.	specific needs of small obliged entities, and the nature of the business.	specific needs of small obliged entities, and the nature of the business.	
40.	Recital 18a (new)		**(18a) In order to ensure uniform conditions for the protection of the proper functioning of the EU financial system and of the Internal Market from money laundering and terrorist financing, it is important that the Commission identifies third country jurisdictions which have strategic deficiencies in their national AML/CFT regimes (hereinafter referred to as 'high-risk third countries'). The changing nature of money laundering and terrorist financing threats, facilitated by a constant evolution of technology and of the means at the disposal of**		~~**(18a) In order to ensure uniform conditions for the protection of the proper functioning of the EU financial system and of the Internal Market from money laundering and terrorist financing, it is important that the Commission identifies third country jurisdictions which have strategic deficiencies in their national AML/CFT regimes (hereinafter referred to as 'high-risk third countries'). The changing nature of money laundering and terrorist financing threats, facilitated by a constant evolution of technology and of the means at the disposal of**~~	AT: Austrian Position: We do not support a EU black list. We are much more in favour of a white list approach. If a EU black list is established according to this recital it will not be a primary EU document, but rather a derivative reassembling information collected and opinions established by non-EU institutions. LV: **We support Council text.** BE: See comments in the AMLD regarding the provisions relating to the third countries policy; if the Council general

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			criminals, requires that quick and continuous adaptations of the legal framework as regards high-risk third countries be made in order to efficiently address existing risks and prevent new ones from arising. The Commission should take into account information from international organisations and standard setters in the field of anti-money laundering and countering the financing of terrorism (AML/CFT), such as FATF public statements, mutual evaluation or detailed assessment reports or published follow-up reports, and adapt its assessments to the changes therein, where		~~criminals, requires that quick and continuous adaptations of the legal framework as regards high-risk third countries be made in order to efficiently address existing risks and prevent new ones from arising. The Commission should take into account information from international organisations and standard setters in the field of anti-money laundering and countering the financing of terrorism (AML/CFT), such as FATF public statements, mutual evaluation or detailed assessment reports or published follow-up reports, and adapt its assessments to the changes therein, where~~	approach is retained, this recital should be maintained. DE: We support the incorporation of Recitals 18a and 18 b (new). Both EP and council agree in introduce a proper EU off-shore policy into the AMLD. This novelty should be reflected in the recitals. NL: We do not want to have a black list at all, but if we were to have one, this GA text would have our preference. PL: **PL supports the version proposed by the Council.** ES: The content is similar to recital 22a) introduced by

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			appropriate.		~~**appropriate.**~~	the EP. Both are acceptable to us, although the EP seems to go beyond, since it refers to "non-cooperative" jurisdictions, to the use of "all the available information" and given the previous remark on tax haven and secrecy jurisdiction it seems to base not strictluy on AML/CFT strategic deficiencies. This wider approach is reasonable for us. PT: See our comments on the EU's approach towards 3rd countries (comments on article 8a). Accordingly, if a "*black-list approach*" prevails, only the Council's GA will be acceptable for us.
41.	Recital 18b (new)		**(18b) Member States should at least provide**		~~**(18b) Member States**~~	**DELETED**

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			for enhanced customer due diligence measures to be applied by the obliged entities when dealing with persons or legal entities established in high-risk third countries identified by the Commission. Equally, reliance on third parties established in such high-risk third countries should be prohibited. Countries not included in the list should not automatically be considered as having effective AML/CFT systems and their entities should be assessed on a risk sensitive basis.		~~should at least provide for enhanced customer due diligence measures to be applied by the obliged entities when dealing with persons or legal entities established in high-risk third countries identified by the Commission. Equally, reliance on third parties established in such high-risk third countries should be prohibited. Countries not included in the list should not automatically be considered as having effective AML/CFT systems and their entities should be assessed on a risk sensitive basis.~~	
42.	Recital 19	(19) Risk itself is variable in nature, and the variables, either on their own or in	(19) Risk itself is variable in nature, and the variables, either on their own or in	(19) Risk itself is variable in nature, and the variables, either on their own or in	(19) ~~—~~ Risk itself is variable in nature, and the variables, either on their own or in	LL: "may increase or decrease the potential

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		combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventative measures, such as customer due diligence measures. Thus, there are circumstances in which enhanced due diligence should be applied and others in which simplified due diligence may be appropriate.	combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventative measures, such as customer due diligence measures. Thus, there are circumstances in which enhanced due diligence should be applied and others in which simplified due diligence may be appropriate.	combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventative measures, such as customer due diligence measures. Thus, there are circumstances in which enhanced due diligence should be applied and others in which simplified due diligence may be appropriate.	combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventative measures, such as customer due diligence measures. Thus, there are circumstances in which enhanced due diligence should be applied and others in which simplified due diligence may be appropriate.	risk posed," -> as we are in recitals, "may" should be deleted or changed to "could"
43.	Recital 20	(20) It should be recognised that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established, there are cases where particularly rigorous customer identification and verification	(20) It should be recognised that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established, there are cases where particularly rigorous customer identification and verification	(20) It should be recognised that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established, there are cases where particularly rigorous customer identification and verification	(20) It should be recognised that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established, there are cases where particularly rigorous customer identification and verification	

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		procedures are required.	procedures are required.	procedures are required.	procedures are required.	
44.	Recital 21	(21) This is particularly true of business relationships with individuals holding, or having held, important public positions, particularly those from countries where corruption is widespread. Such relationships may expose the financial sector in particular to significant reputational and legal risks. The international effort to combat corruption also justifies the need to pay special attention to such cases and to apply appropriate enhanced customer due diligence measures in respect of persons who hold or have held prominent functions domestically or abroad and senior figures in international	(21) This is particularly true of business relationships with individuals holding, or having held, important public positions, particularly those from countries where corruption is widespread. Such relationships may expose the financial sector in particular to significant reputational and legal risks. The international effort to combat corruption also justifies the need to pay special attention to such cases and to apply appropriate enhanced customer due diligence measures in respect of persons who hold or have held prominent functions domestically or abroad and senior figures in international	(21) This is particularly true of relationships with individuals *who hold* or *have* held important public positions, particularly those from countries where corruption is widespread***, within the Union and internationally***. Such relationships may expose the financial sector in particular to significant reputational and legal risks. The international effort to combat corruption also justifies the need to pay special attention to such cases and to apply appropriate enhanced customer due diligence measures in respect of persons who hold or have held prominent functions domestically or abroad and senior figures in international	(21)~~—~~ This is particularly true of ~~business~~ relationships with individuals ~~holding,~~***who hold*** or ~~having~~***have*** held~~,~~ important public positions, particularly those from countries where corruption is widespread***, within the Union and internationally***. Such relationships may expose the financial sector in particular to significant reputational and legal risks. The international effort to combat corruption also justifies the need to pay special attention to such cases and to apply appropriate enhanced customer due diligence measures in respect of persons who hold or have held prominent functions	NL: The EP text is largely OK. The reference to "within the Union and internationally" adds up to the entire world and could therefore be left out. PT: LL: Individuals or natural persons - please agree on one terminology

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		organisations.	organisations.	organisations.	domestically or abroad and senior figures in international organisations.	
45.	Recital 21a (new)			***(21a) The need for enhanced customer due diligence measures in respect of persons who hold or have held prominent functions, whether domestically or abroad, and senior figures in international organisations should not, however, lead to a situation in which lists containing information on such persons are traded for commercial purposes. Member States should take appropriate measures to prohibit such activity.***	***(21a) The need for enhanced customer due diligence measures in respect of persons who hold or have held prominent functions, whether domestically or abroad, and senior figures in international organisations should not, however, lead to a situation in which lists containing information on such persons are traded for commercial purposes. Member States should take appropriate measures to prohibit such activity.***	UK: As per our comment on the Directive's article on these issues. The EP text proposal to prohibit the sale of lists containing information about PEPs is not acceptable. Commercial PEP databases draw on publicly available information to help obliged entities identify PEPs among their customer database. It is the only feasible PEP identification tool for certain high volume businesses and a sound starting point for due diligence. BE:

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						Delete this recital: there should be no list for any PEP. DE: The commercial trade of PEP lists already exists (world check). Obliged entities have been using the commercial services for years now and results are in general positive; due to the fact that feasible alternatives do not exist. Therefore we do not see the necessity to implement a new government driven approach. NL: We do not agree with this recital. We see no harm in commercial lists of PEPs and feel no need to prohibit this activity. PT: On the basis of the same

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						reasons sustaining the elimination of Article 19a (as proposed by the EP), we do not agree with the EP's proposal for the addition of this recital.
46.	Recital 22	(22) Obtaining approval from senior management for establishing business relationships need not, in all cases, imply obtaining approval from the board of directors. Granting of such approval should be possible by someone with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to make decisions affecting its risk exposure.	(22) Obtaining approval from senior management for establishing business relationships need not, in all cases, imply obtaining approval from the board of directors. Granting of such approval should be possible by someone with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to make decisions affecting its risk exposure.	(22) Obtaining approval from senior management for establishing business relationships need not, in all cases, imply obtaining approval from the board of directors. Granting of such approval should be possible by someone with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to make decisions affecting its risk exposure.	(22) Obtaining approval from senior management for establishing business relationships need not, in all cases, imply obtaining approval from the board of directors. Granting of such approval should be possible by someone with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to make decisions affecting its risk exposure.	
47.	Recital 22a (new)			***(22a) It is essential for the Union to develop a common approach and a common policy to deal***	***(22a) It is essential for the Union to develop a common approach and a common policy to deal***	UK: Recital 18a of the Council text addresses

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				with non-cooperative jurisdictions that perform poorly in combating money laundering and terrorist financing. To that end, the Member States should act on and apply directly any lists of countries published by the FATF in their national systems to combat money laundering and terrorist financing. Furthermore, the Member States and the Commission should identify other non-cooperative jurisdictions on the basis of all information available. The Commission should develop a common approach to measures to be used to protect the integrity of the internal market against those non-cooperative jurisdictions.	***with non-cooperative jurisdictions that perform poorly in combating money laundering and terrorist financing. To that end, the Member States should act on and apply directly any lists of countries published by the FATF in their national systems to combat money laundering and terrorist financing. Furthermore, the Member States and the Commission should identify other non-cooperative jurisdictions on the basis of all information available. The Commission should develop a common approach to measures to be used to protect the integrity of the internal market against those non-cooperative jurisdictions.***	these issues in a more balanced way. UK position within council is well known, we remain dubious as to the added value of a EU black list and the issues that such a process will face (some of them similar to the White listing process including politicisation). DE: Recital 22 a (new) corresponds with the council proposal for Recital 18 a (new). We therefore suggest to merge the two recitals; especially to include the aspect of adapting the FATF lists at EU level. NL: The EP text could largely be merged with GA recitals 18a and 18b.

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						However, we disagree to the EP text at the end of the recital "The Commission should (...) non-cooperative jurisdictions". We do not want the Commission to develop such a 'common approach'. PT: See our comments on the EU's approach towards 3rd countries (comments on article 8a). Bearing in mind the political challenges involved, we do not agree with the issuance of "black lists" at national level (even if such issuance is limited to the endorsement of FATF statements). Therefore, if a "black-list approach" prevails, only the Council's GA will be

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						acceptable for us.
48.	Recital 23	(23) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers whose identification has been carried out elsewhere to be introduced to the obliged entities. Where an obliged entity relies on a third party, the ultimate responsibility for the customer due diligence procedure remains with the obliged entity to whom the customer is introduced. The third party, or the person that has introduced the customer, should also retain his own responsibility for compliance with the requirements in this Directive, including the	(23) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers whose identification has been carried out elsewhere to be introduced to the obliged entities. Where an obliged entity relies on a third party, the ultimate responsibility for the customer due diligence procedure remains with the obliged entity to whom the customer is introduced. The third party, or the person that has introduced the customer, should also retain his own responsibility for compliance with the requirements in this Directive, including the	(23) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers whose identification has been carried out elsewhere to be introduced to the obliged entities. Where an obliged entity relies on a third party, the ultimate responsibility for the customer due diligence procedure remains with the obliged entity to whom the customer is introduced. The third party, or the person that has introduced the customer, should also retain his own responsibility for compliance with the requirements in this Directive, including the	(23) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers whose identification has been carried out elsewhere to be introduced to the obliged entities. Where an obliged entity relies on a third party, the ultimate responsibility for the customer due diligence procedure remains with the obliged entity to whom the customer is introduced. The third party, or the person that has introduced the customer, should also retain his own responsibility for compliance with the requirements in this Directive, including the	LL: "SHOULD remain with the obliged" Who is the "person" that has introduced the customer…? legal person? natural person?

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		requirement to report suspicious transactions and maintain records, to the extent that he has a relationship with the customer that is covered by this Directive.	requirement to report suspicious transactions and maintain records, to the extent that he has a relationship with the customer that is covered by this Directive.	requirement to report suspicious transactions and maintain records, to the extent that he has a relationship with the customer that is covered by this Directive.	requirement to report suspicious transactions and maintain records, to the extent that he has a relationship with the customer that is covered by this Directive.	
49.	Recital 24	(24) In the case of agency or outsourcing relationships on a contractual basis between obliged entities and external natural or legal persons not covered by this Directive, any anti money laundering and anti-terrorist financing obligations for those agents or outsourcing service providers as part of the obliged entities, may only arise from contract and not from this Directive. The responsibility for complying with this Directive should remain with the obliged entity	(24) In the case of agency or outsourcing relationships on a contractual basis between obliged entities and external natural or legal persons not covered by this Directive, any anti money laundering and anti-terrorist financing obligations for those agents or outsourcing service providers as part of the obliged entities, may only arise from contract and not from this Directive. The responsibility for complying with this Directive should remain with the obliged entity	(24) In the case of agency or outsourcing relationships on a contractual basis between obliged entities and external natural or legal persons not covered by this Directive, any anti-money laundering and anti-terrorist financing obligations for those agents or outsourcing service providers as part of the obliged entities, may arise *only* from contract and not from this Directive. The responsibility for complying with this Directive should remain ***primarily*** with the obliged entity ▌. ***In***	(24)~~—~~ In the case of agency or outsourcing relationships on a contractual basis between obliged entities and external natural or legal persons not covered by this Directive, any anti~~-~~-money laundering and anti-terrorist financing obligations for those agents or outsourcing service providers as part of the obliged entities, may ~~only~~ arise ***only*** from contract and not from this Directive. The responsibility for complying with this Directive should remain ~~with the obliged entity covered hereby.~~***primarily***	UK: The Council text is preferred. The EP amendment 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. It is also undesirable as the amendment weakens obliged entities'

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		covered hereby.	covered hereby.	***addition, Member States should ensure that any such third parties may be held liable for breaches of national provisions adopted pursuant to this Directive.***	**with the obliged entity** ***. In addition, Member States should ensure that any such third parties may be held liable for breaches of national provisions adopted pursuant to this Directive.***	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. BE: Keep text of the Council, the addition of the EP are contradictory. DE: Third parties do not fall into the scope of the AMLD and therefore cannot be held liable. NL: We do not agree to the EP text at the end of this recital "In addition (...) this Directive". This is an obligation that should not be regulated by the MS as it cannot be enforced.

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						ES: The EP proposal has no sense since those third parties are not necessarily obliged entities of the AMLD and hence cannot held liable for infringements. The added sentence is in itself contradictory with the previous one. Reliance on third parties and agency or outsourcing agreements are different. PT: We support the additions proposed by the EP, in line with the comments made on Article 24.
50.	Recital 25	(25) All Member States have, or should, set up financial intelligence units (hereinafter referred to as FIUs) to collect and analyse the information	(25) All Member States have, or should, set up **operationally independent and autonomous** financial intelligence units (hereinafter referred to as	(25) All Member States have, or should, set up ***operationally independent and autonomous*** financial intelligence units (FIUs) to collect and analyse the	(25) All Member States have, or should, set up ***operationally independent and autonomous*** financial intelligence units (~~hereinafter referred to as~~	**DELETED**

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		which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. Suspicious transactions should be reported to the FIUs, which should serve as a national centre for receiving, analysing and disseminating to the competent authorities suspicious transaction reports and other information regarding potential money laundering or terrorist financing. This should not compel Member States to change their existing reporting systems where the reporting is done through a public prosecutor or other law enforcement authorities, as long as the	FIUs) to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. ~~Suspicious transactions~~**Operationally independent and autonomous FIUs means that the FIU should have the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/ or disseminate specific information. Suspicious transactions and other information relevant to money laundering, associated predicate offences and terrorist**	information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. Suspicious transactions should be reported to the FIUs, which should serve as a national centre for receiving, analysing and disseminating to the competent authorities suspicious transaction reports and other information regarding potential money laundering or terrorist financing. This should not compel Member States to change their existing reporting systems where the reporting is done through a public prosecutor or other law enforcement	FIUs) to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. ~~Suspicious transactions~~**~~Operationally independent and autonomous FIUs means that the FIU should have the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/ or disseminate specific information. Suspicious transactions and other information relevant to money laundering, associated predicate offences and terrorist~~**	

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		information is forwarded promptly and unfiltered to FIUs, allowing them to perform their tasks properly, including international cooperation with other FIUs.	**financing** should be reported to the FIUs, which should serve as a national centre for receiving, analysing and disseminating to the competent authorities **the results of its analysis**~~suspicious transaction reports and other information regarding potential money laundering or terrorist financing. This should not compel Member States to change their existing reporting systems where the reporting is done through a public prosecutor or other law enforcement authorities, as long as the information is forwarded promptly and unfiltered to FIUs, allowing them to perform their tasks properly, including international cooperation with other FIUs~~**. All suspicious transactions,**	authorities, as long as the information is forwarded promptly and unfiltered to FIUs, allowing them to perform their tasks properly, including international cooperation with other FIUs. ***It is important that Member States provide FIUs with the necessary resources to ensure that they have full operational capacity to deal with the current challenges posed by money laundering and terrorist financing while respecting fundamental rights, including the right to privacy and data protection.***	~~financing~~**Suspicious transactions** should be reported to the FIUs, which should serve as a national centre for receiving, analysing and disseminating to the competent authorities ~~the results of its analysis~~suspicious**suspicious** transaction reports and other information regarding potential money laundering or terrorist financing. This should not compel Member States to change their existing reporting systems where the reporting is done through a public prosecutor or other law enforcement authorities, as long as the information is forwarded promptly and unfiltered to FIUs, allowing them to perform their tasks properly, including international cooperation with other FIUs. ~~All~~	

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			including attempted transactions, should be reported regardless of the amount of the transaction. Reported information may also include threshold based information.		~~**suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction. Reported information may also include threshold based information.**~~***It is important that Member States provide FIUs with the necessary resources to ensure that they have full operational capacity to deal with the current challenges posed by money laundering and terrorist financing while respecting fundamental rights, including the right to privacy and data protection.***	
51.	Recital 26	(26) By way of derogation from the general prohibition on executing suspicious transactions, obliged entities may execute suspicious transactions	(26) By way of derogation from the general prohibition on executing suspicious transactions, obliged entities may execute suspicious transactions	(26) By way of derogation from the general prohibition on executing suspicious transactions, obliged entities may execute suspicious transactions	(26)~~—~~ By way of derogation from the general prohibition on executing suspicious transactions, obliged entities may execute suspicious transactions	**DELETED**

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		before informing the competent authorities, where refraining from the execution thereof is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. This, however, should be without prejudice to the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.	before informing the competent authorities, where refraining from the execution thereof is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. This, however, should be without prejudice to the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.	before informing the competent authorities, where refraining from the execution thereof is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. This, however, should be without prejudice to the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.	before informing the competent authorities, where refraining from the execution thereof is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. This, however, should be without prejudice to the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.	
52.	Recital 26a (new)			***(26a) Since a huge proportion of illicit financial flows ends up in tax havens, the Union should increase the pressure it brings to bear***	***(26a) Since a huge proportion of illicit financial flows ends up in tax havens, the Union should increase the pressure it brings to bear***	**DELETED**

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				on those countries to cooperate, in order to combat money laundering and terrorist financing.	***on those countries to cooperate, in order to combat money laundering and terrorist financing.***	
53.	Recital 27	(27) Member States should have the possibility to designate an appropriate self-regulatory body of the professions referred to in Article 2(1)(3)(a),(b), and (d) as the authority to be informed in the first instance in place of the FIU. In line with the case law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard to uphold the protection of fundamental rights as concerns the reporting obligations applicable to lawyers.	(27) Member States should have the possibility to designate an appropriate self-regulatory body of the professions referred to in Article 2(1)(3)(a),(b), and (d) as the authority to be informed in the first instance in place of the FIU. In line with the case law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard to uphold the protection of fundamental rights as concerns the reporting obligations applicable to lawyers.	(27) Member States should have the possibility to designate an appropriate self-regulatory body of the professions referred to in Article 2(1)(3)(a),(b), and (d) as the authority to be informed in the first instance in place of the FIU. In line with the case law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard to uphold the protection of fundamental rights as concerns the reporting obligations applicable to lawyers.	(27) Member States should have the possibility to designate an appropriate self-regulatory body of the professions referred to in Article 2(1)(3)(a),(b), and (d) as the authority to be informed in the first instance in place of the FIU. In line with the case law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard to uphold the protection of fundamental rights as concerns the reporting obligations applicable to lawyers.	LL: *No references to Articles in recitals, please use titles of articles if needed…*

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54.	Recital 28	(28) Where a Member State decides to make use of the exemptions provided for in Article 33(2), it may allow or require the self-regulatory body representing the persons referred to therein not to transmit to the FIU any information obtained from those persons in the circumstances referred to in that Article.	(28) Where a Member State decides to make use of the exemptions provided for in Article 33(2), it may allow or require the self-regulatory body representing the persons referred to therein not to transmit to the FIU any information obtained from those persons in the circumstances referred to in that Article.	(28) Where a Member State decides to make use of the exemptions provided for in Article 33(2), it may allow or require the self-regulatory body representing the persons referred to therein not to transmit to the FIU any information obtained from those persons in the circumstances referred to in that Article.	(28)~~—~~ Where a Member State decides to make use of the exemptions provided for in Article 33(2), it may allow or require the self-regulatory body representing the persons referred to therein not to transmit to the FIU any information obtained from those persons in the circumstances referred to in that Article.	LL: *1)No references to Articles in recitals, please use titles of articles if needed…* *2) Change "may" to "could" or "should be able to"* 3) delete the "referred to therein", "referred to in that Article"….
55.	Recital 29	(29) There have been a number of cases of employees who report their suspicions of money laundering being subjected to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, this is a crucial issue for the effectiveness of the anti-money laundering and	(29) There have been a number of cases of employees who report their suspicions of money laundering being subjected to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, this is a crucial issue for the effectiveness of the ~~anti-money laundering and anti-terrorist~~	(29) There have been a number of cases of ***individuals, including*** employees ***and representatives*** who report their suspicions of money laundering being subject to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, this is a crucial issue for the effectiveness of the anti-	(29)~~—~~ There have been a number of cases of ***individuals, including*** employees ***and representatives*** who report their suspicions of money laundering being ~~subjected~~**subject** to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, this is a crucial issue for the effectiveness of the anti-	LV: **We can support amendment.** UK: The EP is not acceptable. The implications for legal aid (and subsidiarity around this) are problematic here as per our comment on article 37. The narrowing down to

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		anti-terrorist financing system. Member States should be aware of this problem and should do whatever they can to protect employees from such threats or hostile action.	~~financing~~**AML/CFT** system. Member States should be aware of this problem and should do whatever they can to protect employees **or persons in a comparable position** from such threats or hostile action.	money laundering and anti-terrorist financing system. Member States should be aware of this problem and should do whatever they can to protect ***individuals, including*** employees ***and representatives*** from such threats or hostile action***, as well as from other adverse treatment or adverse consequences, making it easier for them to report suspicions, thereby strengthening the fight against money laundering***.	money laundering and anti-terrorist ~~financing~~**~~AML/CFT~~financing** system. Member States should be aware of this problem and should do whatever they can to protect ***individuals, including*** employees ~~**or persons in a comparable position**~~***and representatives*** from such threats or hostile action***, as well as from other adverse treatment or adverse consequences, making it easier for them to report suspicions, thereby strengthening the fight against money laundering***.	threat or hostile action only in the Council text is preferable. NL: We think a combination of the GA and EP texts is preferred. In this combined text we prefer "employees or persons in a comparable position" (instead of 'employees'). We are not sure what is meant by 'representatives' and would want this more clearly defined. PT: Protection from threats or hostile action should be extended to "representatives" /

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						"persons in a comparable position", in line with the Council's GA and the EP's vote. However, we highlight the more comprehensive nature of the reference to "*persons in a comparable position*." LL: Proposal for replacing : " and should do whatever they can" by "and should protect to the largest extent possible"…
56.	Recital 30	(30) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to	(30) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals	(30) Directive 95/46/EC of the European Parliament and of the Council[44], as *transposed into* national law, is applicable to the	(30) Directive 95/46/EC of the European Parliament and of the Council ~~of 24 October 1995 on the protection of individuals~~	DE: There is no substantial difference between the two texts. However, Directive

[44] *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (*OJ L 281, 23.11.1995, p. 31*).*

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		the processing of personal data and on the free movement of such data[42], as implemented in national law, is applicable to the processing of personal data for the purposes of this Directive.	with regard to the processing of personal data and on the free movement of such data43, as implemented in national law, is applicable to the processing of personal data for the purposes of this Directive.	processing of personal data for the purposes of this Directive.	~~with regard to the processing of personal data and on the free movement of such data~~[45], as ~~implemented in~~***transposed into*** national law, is applicable to the processing of personal data for the purposes of this Directive.	95/46 only applies to the processing of data by private parties. Data processing by the police and justice sectors are subject to the framework decision on data protection. In the Council version, this is made clear in Recital 33. which the EP would like to have deleted (see remarks there) NL: EP text is OK LL: *EP proposals are conform to drafting rules*

42 OJ L 281, 23.11.1995, p. 31.

43 OJ L 281, 23.11.1995, p. 31.

45 *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (*OJ L 281, 23.11.1995, p. 31*).*

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57.	Recital 30a (new)			***(30a) Regulation (EC) No 45/2001 of the European Parliament and of the Council[46] is applicable to the processing of personal data by the Union institutions and bodies for the purposes of this Directive.***	***(30a) Regulation (EC) No 45/2001 of the European Parliament and of the Council[47] is applicable to the processing of personal data by the Union institutions and bodies for the purposes of this Directive.***	AT: LV: UK: BE: DE: FI: FR: NL: EP text is OK

[46] ***Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).***

[47] ***Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).***

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						PL: RO: MT: ES: LL:
58.	Recital 31	(31) Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out of customer due diligence, ongoing	(31) Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out customer due diligence, ongoing monitoring, investigation	(31) Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out customer due diligence, ongoing monitoring, investigation	(31)— Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out ~~of~~ customer due diligence, ongoing monitoring, investigation	UK: We support the EP amendment in principles as it adds the identification of PEPs by obliged entities to the list of obligations that should not be unduly restricted by data protection legislation. This in order to clarify that the 'restriction'

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		monitoring, investigation and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, sharing of information by competent authorities and sharing of information by financial institutions. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive and not further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited.	and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, sharing of information by competent authorities and sharing of information by **credit and** financial institutions. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive and not further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited.	and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, ***identification of a politically exposed person,*** sharing of information by competent authorities and sharing of information by financial institutions ***and obliged entities***. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive and not further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be	and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, ~~sharing~~***identification of a politically exposed person,*** **sharing of** information by competent authorities and sharing of information by ~~**credit and**~~ financial institutions ***and obliged entities***. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive and not further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be	applies to obliged entities rather than to the public register or companies. A public register won't just be for AML/CTF purposes (i.e. it will be used for company law/corporate governance purposes also). Important then that this restriction does not apply to the register therefore – and that data can be processed for other reasons (including by the companies holding their own registers). BE: Keep the reference to credit institutions as it is different from financial institutions. NL: We prefer a combination of EP and GA texts.

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				strictly prohibited.	strictly prohibited.	RO: **RO requests clarification about the terminology used at the end of the 2nd thesis** "sharing of information by ~~**credit and**~~ financial institutions ***and obliged entities***." The in the category of obliged entities are included financial institutions, according to the art. 2 para 1 of this proposal. **Could you please clarify if you want to refer to all obliged entities (and in this case the reference shall be made solely to them and to delete the words financial institutions) or only to credit and financial institutions, as indicated in the EU Council text.** ES: "…The personal data

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						collected should be limited to what is ~~strictly~~ necessary for the purpose of complying with the requirements of this Directive" We wouldn´t be in favour of a language that could be used by obliged entities as a cover for not having properly conducted due diligence or analyses.
59.	Recital 32	(32) The fight against money-laundering and terrorist financing is recognised as an important public interest ground by all Member States.	(32) The fight against money-laundering and terrorist financing is recognised as an important public interest ground by all Member States.	(32) The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. ***The eradication of such phenomena requires a resolute political will and cooperation at all levels***.	(32)—The fight against money-laundering and terrorist financing is recognised as an important public interest ground by all Member States. ***The eradication of such phenomena requires a resolute political will and cooperation at all levels.***	NL: We do not have any strong objections to the EP text ES: It could be argued that this includes not taking DP provisions to the point that negatively affects the fight against ML/TF (such as for example not allowing to keep records for as long

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						as they can be used in Court as an evidence)
60.	Recital 32a (new)			***(32a) It is of the utmost importance that investment that is co-financed by the Union budget fulfils the highest standards in order to prevent financial crimes including corruption and tax evasion. In 2008, the EIB therefore adopted an internal guideline entitled "Policy on preventing and deterring prohibited conduct in European Investment Bank activities" with Article 325 TFEU, Article 18 of the EIB Statute and Council Regulation (EC, Euratom) No 1605/2002[48] as its legal***	***(32a) It is of the utmost importance that investment that is co-financed by the Union budget fulfils the highest standards in order to prevent financial crimes including corruption and tax evasion. In 2008, the EIB therefore adopted an internal guideline entitled "Policy on preventing and deterring prohibited conduct in European Investment Bank activities" with Article 325 TFEU, Article 18 of the EIB Statute and Council Regulation (EC, Euratom) No 1605/2002[49] as its legal***	UK: . BE: This recital is not aiming at facilitating the right understanding of the directive: it should be deleted. NL: We do not have any strong objections to the EP text

[48] ***Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).***

[49] ***Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).***

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				basis. Following adoption of the policy, the EIB is to report on suspicions or alleged cases of money laundering affecting EIB supported projects, operations and transactions to the Luxembourg FIU.	***basis. Following adoption of the policy, the EIB is to report on suspicions or alleged cases of money laundering affecting EIB supported projects, operations and transactions to the Luxembourg FIU.***	
61.	Recital 33	(33) This Directive is without prejudice to the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, including the provisions of Framework decision 977/2008/JHA.	(33) This Directive is without prejudice to the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, including the provisions of Framework decision 977/2008/JHA**, as implemented in national law.**		~~(33) This Directive is without prejudice to the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, including the provisions of Framework decision 977/2008/JHA, as implemented in national law.~~	DE: Recital 33 should be retained. Otherwise data processing by the police and justice sectors would be subject to Directive 95/46. This is a completely inacceptable result. FR: The French authorities consider that the words "as implemented in national law" should be

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						deleted NL: We would like the GA text to be included. ES: We do not support the deletion of this reference. In the articles there are some references to respect by competent authorities to the Directive 95/46/EC. This Directive is not applicable to all competent authorities alluded by the Directive (sometimes LEAs are included). It is useful to have some statement clarifying this point.
62.	Recital 34	(34) The rights of access of the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to	(34) The rights of access of the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to information contained	(34) The rights of access of the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to information contained in	(34)— The rights of access of the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to information contained	UK: As per previous comments, the EP's reference to data protection is unhelpful and very much so in this case.

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		information contained in a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Limitations to this right in accordance with the rules laid down in Article 13 of Directive 95/46/EC may therefore be justified.	in a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Limitations to this right in accordance with the rules laid down in Article 13 of Directive 95/46/EC ~~may~~**are** therefore ~~be~~ justified.	a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Limitations *on that* right in accordance with Article 13 of Directive 95/46/EC may therefore be justified. ***However, such limitations have to be counterbalanced by the effective powers granted to the data protection authorities, including indirect access powers, laid down in Directive 95/46/EC, enabling them to investigate, on an ex officio basis or on the basis of a complaint, any claims concerning problems with personal data processing. This should in particular include access to the data file at the obliged***	in a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Limitations ~~to this~~***on that*** right in accordance with ~~the rules laid down in~~ Article 13 of Directive 95/46/EC ~~may~~**are**~~may~~ therefore be justified. ***However, such limitations have to be counterbalanced by the effective powers granted to the data protection authorities, including indirect access powers, laid down in Directive 95/46/EC, enabling them to investigate, on an ex officio basis or on the basis of a complaint, any claims concerning problems with personal data processing. This should in particular include access to the data file at the obliged***	As pointed out higher up in the same paragraph, access to information in SARs could seriously undermine the effectiveness of the fight against ML/TF. NL: EP text is OK ES: The main objective of the AMLD is to prevent effectively ML. It has therefore to state very clearly that limitations of the rights of the data subject ARE justified. We don´t oppose to the explicit mention of the indirect access. However, we wonder why both in the version of the Council, and even more highlighted in the EP's one, only the restrictions to the right of access

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				entity.	***entity.***	are/may be justified. Does it means that the person can oppose to the treatment of his data or claim for deletion in the framework of an analyses or STR? Art. 13 of the PD Directive allows for additional restrictions of rights. PT: The wording of this recital should follow closely the Council's GA without any further additions (see our general comments on data protection – article 39a). LL: 1) "Are" is better than "may" because we shouldn't use may in recitals…. 2) "have to be" should be replaced by "should"

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63.	Recital 35	(35) Persons who merely convert paper documents into electronic data and are acting under a contract with a credit institution or a financial institution do not fall within the scope of this Directive, nor does any natural or legal person that provides credit or financial institutions solely with a message or other support systems for transmitting funds or with clearing and settlement systems.	(35) Persons who merely convert paper documents into electronic data and are acting under a contract with a credit institution or a financial institution do not fall within the scope of this Directive, nor does any natural or legal person that provides credit or financial institutions solely with a message or other support systems for transmitting funds or with clearing and settlement systems.	(35) Persons who merely convert paper documents into electronic data and are acting under a contract with a credit institution or a financial institution do not fall within the scope of this Directive, nor does any natural or legal person that provides credit or financial institutions solely with a message or other support systems for transmitting funds or with clearing and settlement systems.	(35) Persons who merely convert paper documents into electronic data and are acting under a contract with a credit institution or a financial institution do not fall within the scope of this Directive, nor does any natural or legal person that provides credit or financial institutions solely with a message or other support systems for transmitting funds or with clearing and settlement systems.	LL: 1) a credit institution or a financial institution SHOULD not fall 2) nor SHOULD any natural or legal person that provides
64.	Recital 36	(36) Money laundering and terrorist financing are international problems and the effort to combat them should be global. Where Union credit and financial institutions have branches and subsidiaries located in third countries where the legislation in	(36) Money laundering and terrorist financing are international problems and the effort to combat them should be global. Where Union credit and financial institutions have branches and subsidiaries located in third countries where the	(36) Money laundering and terrorist financing are international problems and the effort to combat them should be global. Where Union credit and financial institutions have branches and subsidiaries located in third countries where the legislation in	(36) Money laundering and terrorist financing are international problems and the effort to combat them should be global. Where Union credit and financial institutions have branches and subsidiaries located in third countries where the	

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		this area is deficient, they should, in order to avoid the application of very different standards within the institution or group of institutions, apply Union standards or notify the competent authorities of the home Member State if application of such standards is impossible.	legislation in this area is deficient, they should, in order to avoid the application of very different standards within the institution or group of institutions, apply Union standards or notify the competent authorities of the home Member State if application of such standards is impossible.	this area is deficient, they should, in order to avoid the application of very different standards within the institution or group of institutions, apply Union standards or notify the competent authorities of the home Member State if application of such standards is impossible.	legislation in this area is deficient, they should, in order to avoid the application of very different standards within the institution or group of institutions, apply Union standards or notify the competent authorities of the home Member State if application of such standards is impossible.	
65.	Recital 37	(37) Feedback should, where practicable, be made available to obliged entities on the usefulness and follow-up of the suspicious transactions reports they present. To make this possible, and to be able to review the effectiveness of their systems to combat money laundering and terrorist financing Member States should keep and improve the relevant statistics. To further enhance the	(37) Feedback should, where practicable, be made available to obliged entities on the usefulness and follow-up of the suspicious transactions reports they present. To make this possible, and to be able to review the effectiveness of their systems to combat money laundering and terrorist financing Member States should keep and improve the relevant statistics. To further enhance the	(37) Feedback should, where ***possible***, be made available to obliged entities on the usefulness and follow-up of the suspicious transactions reports they present. To make this possible, and to be able to review the effectiveness of their systems to combat money laundering and terrorist financing Member States should keep and improve the relevant statistics. To further enhance the	(37) Feedback should, where ~~practicable~~***possible***, be made available to obliged entities on the usefulness and follow-up of the suspicious transactions reports they present. To make this possible, and to be able to review the effectiveness of their systems to combat money laundering and terrorist financing Member States should keep and improve the relevant statistics. To	UK: We do not support a formal evaluation of NRA. The Council text is more balanced and preferable. BE: Keep Council text: The following EP text "Including an evaluation of national risk assessments. The Commission should carry out the first such

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		quality and consistency of the statistical data collected at Union level, the Commission should keep track of the EU-wide situation with respect to the fight against money laundering and terrorist financing and publish regular overviews.	quality and consistency of the statistical data collected at Union level, the Commission should keep track of the EU-wide situation with respect to the fight against money laundering and terrorist financing and publish regular overviews.	quality and consistency of the statistical data collected at Union level, the Commission should keep track of the Union-wide situation with respect to the fight against money laundering and terrorist financing and publish regular overviews**,** ***including an evaluation of national risk assessments. The Commission should carry out the first such overview within one year from the date of entry into force of this Directive.***	further enhance the quality and consistency of the statistical data collected at Union level, the Commission should keep track of the ~~EU~~**Union**-wide situation with respect to the fight against money laundering and terrorist financing and publish regular overviews~~.~~**,** ***including an evaluation of national risk assessments. The Commission should carry out the first such overview within one year from the date of entry into force of this Directive.***	overview within one year from the date of entry into force of this Directive" should be deleted Indeed, this recital deals with statistics. DE: We welcome the evaluation of national risk assessments. But instead of a review carried out by the COM we would prefer a peer-review among member states. Moreover we think that the timeframe of one year might be too ambitious. NL: We prefer the GA text. We do not want the Commission, in an AML CFT overview, to provide an evaluation of national risk assessments. We do not see this (doing

						an evaluation) as a role for the Commission. PL: PL prefers the wording as proposed by the Council. PL questions the right of the Commission to evaluate the national risk assessments. ES: In any case, the last sentence should refer to the supranational risk assessments. PT: The overviews to be carried out by the Commission shall not be framed within a broader role where the Commission is tasked with the responsibility of carrying out supplemental assessments on MS's AML/CFT legislation.

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						Therefore, we do not agree with the EP's proposal for an "*evaluation of national risk assessments*" taking place under the procedure foreseen in Article 6a of the EP's proposal, with which we strongly disagree (see our comments on this provision).
66.	Recital 37a (new)		**(37a) Where Member States decide to require issuers of electronic money and payment service providers established on their territory in forms other than a branch, and whose head office is situated in another Member State, to appoint a central contact point in their territory, they may**	***(37a) Member States should not only ensure that obliged entities comply with the relevant rules and guidelines, but should also have systems in place that actually minimise the risks of money laundering within those entities.***	~~**(37a) Where Member States decide to require issuers of electronic money and payment service providers established on their territory in forms other than a branch, and whose head office is situated in another Member State, to appoint a central contact point in their territory, they may**~~	UK: The Council text is fine but unnecessary as the technical standards will set this all out. (Andy Watson may comment further). BE: The Council text has been negotiated at length and the EP does not know what is behind this;

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			require that such a central contact point, acting on behalf of the appointing institution, ensures the establishments' compliance with AML/CFT rules. They should also ensure that this requirement is proportionate and does not go beyond what is necessary to achieve the aim of ensuring the compliance with AML/CFT rules, including by facilitating the respective supervision.		~~require that such a central contact point, acting on behalf of the appointing institution, ensures the establishments' compliance with AML/CFT rules. They should also ensure that this requirement is proportionate and does not go beyond what is necessary to achieve the aim of ensuring the compliance with AML/CFT rules, including by facilitating the respective supervision.~~*(37a) Member States should not only ensure that obliged entities comply with the relevant rules and guidelines, but should also have systems in place that actually minimise the risks of money laundering within those entities.*	Absolute necessity to keep the text of the Council. Many of the text amendments made by the EP are going backwards, showing a clear lack of comprehension of the issues at stake of the functioning of an FIU. DE: Provided that the designation of a central contact point will be included into the AMLD the aspect should be reflected in the recitals. NL: Both the GA and EP texts could be included. However, they should be in separate recitals ES: Recitals (37a)- (40). We obviously support the inclusion of the new text

						proposed by the Council, without prejudice, that as delegation we could support a stronger approach, in particular in what concerns recital (40a) banking registries or alternative systems to obtain information on a person without a prior notice PT: Further to the comments on article 42 (8), we fully support the Council's GA on recital (37a). LL: Change **"territory, they may"** to **"territory, they should be able to"** **And** **"They should also ensure that"** to **"MEMBER STATES should also ensure**

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						that"
67.	Recital 37b (new)			***(37b) In order to be able to review the effectiveness of their systems to combat money laundering and terrorist financing, Member States should keep and improve the relevant statistics. In order further to enhance the quality and consistency of the statistical data collected at Union level, the Commission should keep track of the Union-wide situation with respect to the fight against money laundering and terrorist financing and should publish regular overviews.***	***(37b) In order to be able to review the effectiveness of their systems to combat money laundering and terrorist financing, Member States should keep and improve the relevant statistics. In order further to enhance the quality and consistency of the statistical data collected at Union level, the Commission should keep track of the Union-wide situation with respect to the fight against money laundering and terrorist financing and should publish regular overviews.***	NL: EP text is OK ES: This is duplicative of recital (37) PT: In order to enhance the quality of statistical data (which are currently poor across the EU), we welcome the tasks entrusted to the Commission under this newly added recital by the EP. However, the publication of these overviews on statistical data shall not be framed within a broader role where the Commission is tasked with the responsibility of carrying out

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						supplemental assessments on MS's AML/CFT legislation (see our comments on article 6a).
68.	Recital 38	(38) Competent authorities should ensure that, in regard to currency exchange offices, trust and company service providers or gambling service providers, the persons who effectively direct the business of such entities and the beneficial owners of such entities are fit and proper persons. The criteria for determining whether or not a person is fit and proper should, as a minimum, reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal	(38) Competent authorities should ensure that, in regard to currency exchange offices, trust and company service providers or gambling service providers, the persons who effectively direct the business of such entities and the beneficial owners of such entities are fit and proper persons. The criteria for determining whether or not a person is fit and proper should, as a minimum, reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal	(38) Competent authorities should ensure that, in regard to currency exchange offices, trust and company service providers or gambling service providers, the persons who effectively direct the business of such entities and the beneficial owners of such entities are fit and proper persons. The criteria for determining whether or not a person is fit and proper should, as a minimum, reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal	(38) Competent authorities should ensure that, in regard to currency exchange offices, trust and company service providers or gambling service providers, the persons who effectively direct the business of such entities and the beneficial owners of such entities are fit and proper persons. The criteria for determining whether or not a person is fit and proper should, as a minimum, reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal	

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		purposes.	purposes.	purposes.	purposes.	
69.	Recital 38a (new)		**(38a) Where an obliged entity operates establishments in another Member State, including through a network of agents, the home country's competent authority is responsible for supervising the obliged entity's application of group AML/CTF policies and processes. This may involve on-site visits in establishments based in another Member State. The home country's competent authority should cooperate closely with the host country's competent authority and inform the host country's competent authority of any issues that could affect their assessment of the establishment's**		~~**(38a) Where an obliged entity operates establishments in another Member State, including through a network of agents, the home country's competent authority is responsible for supervising the obliged entity's application of group AML/CTF policies and processes. This may involve on-site visits in establishments based in another Member State. The home country's competent authority should cooperate closely with the host country's competent authority and inform the host country's competent authority of any issues that could affect their assessment of the establishment's**~~	UK: FCA views needed – shall I just reiterate our points in the cover email. Carolin- Andy you have the home-host supervision note we shared with you 10 days ago and your comments are pending. BE: The Council text has been negotiated at length and the EP does not know what is behind this; Absolute necessity to keep the text of the Council. DE: We support the incorporation of Recitals 38a and 38b (new) and the respective articles into the AMLD in order to improve the home/host

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			compliance with the host country's AML/CFT obligations.		~~**compliance with the host country's AML/CFT obligations.**~~	supervision in cases of cross border services and to determine the obligation of obliged entities operating by using the European passport with respect to the host country AML/CFT regime. FR: France supports this Recital NL: We would want the GA text to be included. PL: PL supports the inclusion of recital 38a as in the version proposed by the Council. PT: We agree with the Council's GA proposed wording and we believe

						that it should be maintained. However , an explicit reference to e-money distributors has to be placed in this recital, in order to achieve a desirable symmetry with the supervisory powers conferred by recital (38b). ("*Where an obliged entity operates establishments in another Member State, including through a network of agents* or *persons distributing electronic money according to Article 3 (4) of Directive 2009/110/EC* [...]"). This amendment is essential to define the scope of Article 42 (1a) of the Council's GA (see our comments on such provision). LL:

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						What is the right term : "on-site visit"(38a) or "onsite inspections"(38b) or "on the spot checks" (previous EU texts)?
70.	Recital 38b (new)		**(38b) Where an obliged entity operates establishments in another Member State, including through a network of agents or persons distributing electronic money according to Article 3 (4) of Directive 2009/110/EC, the host country's competent authority retains responsibility for enforcing the establishment's compliance with AML/CTF requirements, including, where apropriate, by carrying out onsite inspections and offsite monitoring and by taking appropriate and**		~~**(38b) Where an obliged entity operates establishments in another Member State, including through a network of agents or persons distributing electronic money according to Article 3 (4) of Directive 2009/110/EC, the host country's competent authority retains responsibility for enforcing the establishment's compliance with AML/CTF requirements, including, where apropriate, by carrying out onsite inspections and offsite monitoring and by taking**~~	BE: The Council text has been negotiated at length and the EP does not know what is behind this; Absolute necessity to keep the text of the Council. FR: France supports this Recital NL: We would want the GA text to be included. PL: PL supports the inclusion of recital 38b as in the version proposed by the Council. PT:

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			proportional measures to address serious infringements of these requirements. The host country's competent authority should cooperate closely with the home country's competent authority and inform the home country's competent authority of any issues that could affect their assessment of the obliged entity's application of group AML/CTF policies and processes. In order to remove serious infringements of AML/CFT rules that require immediate remedies, the host country's competent authority may be empowered to apply appropriate and proportionate temporary remedial measures, applicable		~~**appropriate and proportional measures to address serious infringements of these requirements. The host country's competent authority should cooperate closely with the home country's competent authority and inform the home country's competent authority of any issues that could affect their assessment of the obliged entity's application of group AML/CTF policies and processes. In order to remove serious infringements of AML/CFT rules that require immediate remedies, the host country's competent authority may be empowered to apply appropriate and proportionate temporary remedial**~~	We do not agree with any decrease of the supervisory powers arising from the Council's GA on article 45 (4), with the interpretation given by recital (38b) as proposed by the Council. Further to our remarks on article 45 (4), we would like to stress that the width of the supervisory powers conferred on the host CA towards agents and distributors (as well as other forms of establishment) should at least be maintained.

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			under similar circumstances to obliged entities under their competence, to address such serious failings, where appropriate, with the assistance of, or in cooperation with the home country's competent authority.		~~**measures, applicable under similar circumstances to obliged entities under their competence, to address such serious failings, where appropriate, with the assistance of, or in cooperation with the home country's competent authority.**~~	
71.	Recital 39	(39) Taking into account the transnational character of money laundering and terrorist financing, co-ordination and co-operation between EU FIUs are extremely important. This co-operation has so far only been addressed by Council Decision 2000/642/JHA of 17 October 2000 concerning	(39) Taking into account the transnational character of money laundering and terrorist financing, co-ordination and co-operation between EU FIUs are extremely important. ~~This co-operation has so far only been addressed by Council Decision 2000/642/JHA of 17 October 2000 concerning~~	(39) Taking into account the transnational character of money laundering and terrorist financing, coordination and *cooperation* between EU FIUs are extremely important. *Such cooperation* has so far been addressed *only* by Council Decision 2000/642/JHA[52]. In order to ensure better	(39) ~~—~~ Taking into account the transnational character of money laundering and terrorist financing, ~~co-ordination~~**coordination** and ~~co-operation~~***cooperation*** between EU FIUs are extremely important. ~~This co-operation~~ ***Such cooperation*** has so far ~~only~~ been addressed ***only***	UK: The UK was not clear why the EP amendment changes FIU to FUI?! NL: EP text is OK RO: **RO requests to correct the term of FUIs used in the 3rd thesis into**

[52] *Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (*OJ L 271, 24.10.2000, p. 4*).*

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		arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information[50]. In order to ensure better co-ordination and cooperation between FUIs, and in particular to ensure that suspicious transactions reports reach the FIU of the Member State where the report would be of most use, more detailed, further going and up-dated rules should be included in this Directive.	~~arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information[51].~~ In order to ~~ensure better co-ordination~~**improve such coordination** and cooperation between FIUs, and in particular to ensure that suspicious transactions reports reach the FIU of the Member State where the report would be of most use, ~~more~~ detailed, ~~further going and up-dated~~ rules should be included in this Directive.	coordination and cooperation between FUIs, and in particular to ensure that suspicious transactions reports reach the FIU of the Member State where the report would be of most use, more detailed, further going and up-dated rules should be included in this Directive.	by Council Decision 2000/642/JHA ~~of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information[53].~~[54]. In order to ensure better ~~co-ordination~~**improve such** coordination and cooperation between ~~FIUs~~**FUIs**, and in particular to ensure that suspicious transactions reports reach the FIU of the Member State where the report would be of most use, more detailed, further going and up-dated rules should be	**FIUs.** LL: 1) "Are" or "should be" extremely important? 2) EP reference for Council Decision 2000/642/JHA is correct

50 OJ L 271, 24.10.2000, p. 4.

~~51 OJ L 271, 24.10.2000, p. 4.~~

~~53 OJ L 271, 24.10.2000, p. 4.~~

54 *Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (*OJ L 271, 24.10.2000, p. 4*).*

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					included in this Directive.	
72.	Recital 39a (new)		**(39a) The "EU Financial Intelligence Units' Platform", an informal group composed of representatives from Member States' FIUs and active since 2006, is used to facilitate cooperation among national FIUs and exchange views on co-operation related issues such as effective international FIUs co-operation, the joint analysis of cross-border cases as well as trends and factors relevant to assessing money laundering and terrorist financing risks both on the national and supranational level.**		~~**(39a) The "EU Financial Intelligence Units' Platform", an informal group composed of representatives from Member States' FIUs and active since 2006, is used to facilitate cooperation among national FIUs and exchange views on co-operation related issues such as effective international FIUs co-operation, the joint analysis of cross-border cases as well as trends and factors relevant to assessing money laundering and terrorist financing risks both on the national and supranational level.**~~	UK: UK FIU do you want to keep this? BE: There is no harm to mention this in the recital since this is what happens effectively. The Council text should be kept. FR: France supports this Recital NL: We would want the GA text to be included. RO: **RO is in favour of maintaining the EU Council proposal.**
73.	Recital 40	(40) Improving the exchange of information	(40) Improving the exchange of information	(40) Improving the exchange of information	(40)~~—~~ Improving the exchange of information	**DELETED**

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		between FIUs within the EU is of particular importance to face the transnational character of money laundering and terrorist financing. The use of secure facilities for the exchange of information, especially the decentralised computer network FIU.net and the techniques offered by that network should be encouraged by Member States.	between FIUs within the EU is of particular importance to face the transnational character of money laundering and terrorist financing. The use of secure facilities for the exchange of information, especially the decentralised ~~computer network FIU.net and the techniques offered by that network should be encouraged by Member States.~~**FIU.net network or its successor and the techniques offered by that network, should be encouraged by Member States. The initial exchange between the FIUs of information related to money laundering or terrorist financing for analytical purposes and which is not further processed or disseminated should be allowed unless it**	between FIUs within the *Union* is of particular importance to face the transnational character of money laundering and terrorist financing. The use of secure facilities for the exchange of information ▌and the techniques offered by ***such facilities*** should be encouraged by Member States. .	between FIUs within the ~~EU~~***Union*** is of particular importance to face the transnational character of money laundering and terrorist financing. The use of secure facilities for the exchange of information~~, especially the decentralised computer network FIU.net~~ ▌and the techniques offered by ~~that network~~***such facilities*** should be encouraged by Member States.~~**FIU.net network or its successor and the techniques offered by that network, should be encouraged by Member States. The initial exchange between the FIUs of information related to money laundering or terrorist financing for analytical purposes and which is not further processed or disseminated should**	

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			would compromise the legitimate interests of the Member State or of a natural or legal person. Exchanges of information on cases identified by EU FIUs as possibly involving tax crimes should be without prejudice to exchanges of information in the field of taxation, in accordance with Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC[55] or in accordance with international standards on the exchange of information and administrative		~~be allowed unless it would compromise the legitimate interests of the Member State or of a natural or legal person. Exchanges of information on cases identified by EU FIUs as possibly involving tax crimes should be without prejudice to exchanges of information in the field of taxation, in accordance with Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC[56] or in accordance with international standards on the exchange of information and~~	

[55] **OJ L 336, 27.12.1977, p. 15**
~~OJ L 336, 27.12.1977, p. 15~~

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			cooperation in tax matters.		~~**administrative cooperation in tax matters**~~ .	
74.	Recital 40a (new)		**(40a) In order to be able to respond fully and rapidly to enquiries from FIUs, obliged entities need to have in place effective systems enabling them to have full and timely access through secure and confidential channels to information about business relationships that they maintain or have maintained with specified legal or natural persons. Member States could, for instance, consider putting in place systems of banking registries or electronic data retrieval systems which would provide FIUs with access to information on bank accounts. Member States could**		~~**(40a) In order to be able to respond fully and rapidly to enquiries from FIUs, obliged entities need to have in place effective systems enabling them to have full and timely access through secure and confidential channels to information about business relationships that they maintain or have maintained with specified legal or natural persons. Member States could, for instance, consider putting in place systems of banking registries or electronic data retrieval systems which would provide FIUs with access to information on bank accounts. Member States could**~~	**DELETED**

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			also consider establishing mechanisms to ensure that competent authorities have procedures in place in order to identify assets without prior notification to the owner.		~~also consider establishing mechanisms to ensure that competent authorities have procedures in place in order to identify assets without prior notification to the owner.~~	
75.	Recital 40b (new)		**(40b) Member States should encourage their competent authorities to rapidly, constructively and effectively provide the widest range of international cooperation for the purposes of this Directive, including the exchange of information between non-counterpart authorities amongst Member States, without prejudice to any rules and procedures applicable to judicial**		~~(40b) Member States should encourage their competent authorities to rapidly, constructively and effectively provide the widest range of international cooperation for the purposes of this Directive, including the exchange of information between non-counterpart authorities amongst Member States, without prejudice to any rules and procedures applicable to judicial~~	**DELETED**

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			cooperation in criminal matters.		~~**cooperation in criminal matters.**~~	
76.	Recital 41	(41) The importance of combating money laundering and terrorist financing should lead Member States to lay down effective, proportionate and dissuasive sanctions in national law for failure to respect the national provisions adopted pursuant to this Directive. Member States currently have a diverse range of administrative measures and sanctions for breaches of the key preventative measures. This diversity could be detrimental to the efforts put in combating money laundering and terrorist financing and the Union's response is at risk of being fragmented. This Directive should therefore include a range	(41) The importance of combating money laundering and terrorist financing should lead Member States to lay down effective, proportionate and dissuasive **administrative measures and** sanctions in national law for failure to respect the national provisions adopted pursuant to this Directive. Member States currently have a diverse range of administrative measures and sanctions for breaches of the key preventative ~~measures~~**provisions**. This diversity could be detrimental to the efforts ~~put~~**made** in combating money laundering and terrorist financing and the Union's response is at	(41) The importance of combating money laundering and terrorist financing should lead Member States to lay down effective, proportionate and dissuasive sanctions in national law for failure to respect the national provisions adopted pursuant to this Directive. Member States currently have a diverse range of administrative measures and sanctions for breaches of the key preventative measures. This diversity could be detrimental to the efforts put *into* combating money laundering and terrorist financing and the Union's response is at risk of being fragmented. This Directive should therefore include a range	(41)~~—~~ The importance of combating money laundering and terrorist financing should lead Member States to lay down effective, proportionate and dissuasive ~~**administrative measures and**~~ sanctions in national law for failure to respect the national provisions adopted pursuant to this Directive. Member States currently have a diverse range of administrative measures and sanctions for breaches of the key preventative ~~measures~~**provisions.mea sures.** This diversity could be detrimental to the efforts ~~put~~**made** ~~in~~**put *into*** combating money laundering and terrorist financing and	FI: It is important that the wording of the GA is kept because of the reference made to administrative measures that are in the scope of the AMLD. NL: We would want the GA text to be included. PL: **We support the recital 41 as in the version proposed by the Council. Please note the comments to the art. 56.** LL: 1) Do administrative refer only to measures or also sanctions? 2) "that" is correct term

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		of administrative measures and sanctions that Member States shall have available for systematic breaches of the requirements relating to customer due diligence measures, record keeping, reporting of suspicious transactions and internal controls of obliged entities. This range should be sufficiently broad to allow Member States and competent authorities to take account of the differences between obliged entities, in particular between financial institutions and other obliged entities, as regards their size, characteristics and areas of activity. In the application of this Directive, Member States should ensure that the imposition of administrative measures	risk of being fragmented. This Directive should therefore include a range of administrative measures and sanctions that Member States shall **at least** have available for **serious, repetitive or** systematic breaches of the requirements relating to customer due diligence measures, record keeping, reporting of suspicious transactions and internal controls of obliged entities. This range should 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. In the application of this	of administrative measures and sanctions that Member States shall have available for systematic breaches of the requirements relating to customer due diligence measures, record keeping, reporting of suspicious transactions and internal controls of obliged entities. *That* range should be sufficiently broad to allow Member States and competent authorities to take account of the differences between obliged entities, in particular between financial institutions and other obliged entities, as regards their size, characteristics***, level of risk*** and areas of activity. In the application of this Directive, Member States should ensure that the imposition of administrative measures	the Union's response is at risk of being fragmented. This Directive should therefore include a range of administrative measures and sanctions that Member States shall ~~**at least**~~ have available for ~~**serious, repetitive or**~~ systematic breaches of the requirements relating to customer due diligence measures, record keeping, reporting of suspicious transactions and internal controls of obliged entities. ~~This~~***That*** range should 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***, level of risk*** and areas of	

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		and sanctions in accordance with this Directive and of criminal sanctions in accordance with national law does not breach the principle of *ne bis in idem*.	Directive, Member States should ensure that the imposition of administrative measures and sanctions in accordance with this Directive and of criminal ~~sanctions~~**penalties** in accordance with national law does not breach the principle of *ne bis in idem.*	and sanctions in accordance with this Directive and of criminal sanctions in accordance with national law does not breach the principle of *ne bis in idem*.	activity. In the application of this Directive, Member States should ensure that the imposition of administrative measures and sanctions in accordance with this Directive and of criminal ~~sanctions~~**~~penalties~~sanctions** in accordance with national law does not breach the principle of *ne bis in idem*.	
77.	Recital 41a (new)		**(41a) For the purposes of assessing the appropriateness of persons holding a management function in or otherwise controlling obliged entities, information about criminal convictions should be exchanged in**		~~**(41a) For the purposes of assessing the appropriateness of persons holding a management function in or otherwise controlling obliged entities, information about criminal convictions should be exchanged in**~~	BE: This recital added by the Council should be maintained. FI: We support the GA. It is important to clearly indicate that Framework Decisions' scope or

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			accordance with Framework Decision 2009/315/JHA[57] and Decision 2009/316/JHA[58], as transposed into national law, and with other relevant provisions of national law.		~~accordance with Framework Decision 2009/315/JHA[59] and Decision 2009/316/JHA[60], as transposed into national law, and with other relevant provisions of national law.~~	content is not altered by the AMLD. NL: We would want the GA text to be included. PT: Criminal records undoubtedly constitute a very valuable source for "fit and proper" assessments. LL: Legal issue : the Directive imposes the respect of national law…to be checked…
78.	Recital 42	(42) Technical standards in financial services should ensure consistent harmonisation and	(42) Technical standards in financial services should ensure consistent harmonisation	(42) Technical standards in financial services should ensure consistent harmonisation and	(42) Technical standards in financial services should ensure consistent harmonisation	

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		adequate protection of depositors, investors and consumers across the Union. As bodies with highly specialised expertise, it would be efficient and appropriate to entrust EBA, EIOPA and ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.	and adequate protection of depositors, investors and consumers across the Union. As bodies with highly specialised expertise, it would be efficient and appropriate to entrust EBA, EIOPA and ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.	adequate protection of depositors, investors and consumers across the Union. As bodies with highly specialised expertise, it would be efficient and appropriate to entrust *the ESAs* with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.	and adequate protection of depositors, investors and consumers across the Union. As bodies with highly specialised expertise, it would be efficient and appropriate to entrust ~~EBA, EIOPA and ESMA~~***the ESAs*** with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.	
79.	Recital 42 a (new)			***(42a) To allow competent authorities and obliged entities to better evaluate the risks arising from certain transactions, the Commission should draw up a list of the jurisdictions outside the Union that have implemented rules and regulations similar to those laid down in this Directive.***	***(42a) To allow competent authorities and obliged entities to better evaluate the risks arising from certain transactions, the Commission should draw up a list of the jurisdictions outside the Union that have implemented rules and regulations similar to those laid down in this Directive.***	LV: **We cannot support proposal of Parliament because it will take disproportional resources and it is impossible to evaluate all countries of the world.** UK: The UK position on the

						equivalence list is well known by Council. Given that the EP text refers to both White and Black listing, we would consider black listing as the better option should a list remain in the text – and this despite our misgivings on the issue. The third country equivalence process has been politicised, FATF has criticised Member States using such listing as it led to business doing no due diligence on business partners operating in equivalent third country. Keeping the equivalence list is tantamount to a weakening of the EU AML regime. BE: See the comments regarding the provision added to the text of the

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						AMLD that matches with this recital : it seems unlikely that the technique of the white list will be maintained. NL: We strongly object to the EP text. We see no need for a 'white list'. It does not fit the risk based approach, favoured by FATF. ES: We support the reintroduction of the "equivalence list" proposed by the EP, but consider that it should read: "*….from certain transactions, the Commission and the EGMLFT should…"* PT: See our comments on the EU's approach towards

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						3rd countries (comments on articles 8a and 24). There is no point in maintaining this recital if the "*white-list approach*" is withdrawn from the text.
80.	Recital 43	(43) The Commission should adopt the draft regulatory technical standards developed by EBA, EIOPA and ESMA pursuant to Article 42 of this Directive by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.	(43) The Commission should adopt the draft regulatory technical standards developed by EBA, EIOPA and ESMA pursuant to Article 42 of this Directive by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.	(43) The Commission should adopt the draft regulatory technical standards developed by *the ESAs* pursuant to Article 42 of this Directive by means of delegated acts pursuant to Article 290 *TFEU* and 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.	(43) ~~—~~ The Commission should adopt the draft regulatory technical standards developed by ~~EBA, EIOPA and ESMA~~***the ESAs*** pursuant to Article 42 of this Directive by means of delegated acts pursuant to Article 290 ~~of the Treaty on the Functioning of the European Union~~***TFEU*** and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, ***of*** Regulation (EU) No 1094/2010 and ***of*** Regulation (EU) No	LL: 1) use TFEU 2) no references to specific articles in the recitals

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					1095/2010.	
81.	Recital 44	(44) In view of the very substantial amendments that would need to be made to Directive 2005/60/EC and Directive 2006/70/EC, they should be merged and replaced for reasons of clarity and consistency.	(44) In view of the very substantial amendments that would need to be made to Directive 2005/60/EC and Directive 2006/70/EC, they should be merged and replaced for reasons of clarity and consistency.	(44) In view of the very substantial amendments that would need to be made to *Directives* 2005/60/EC and 2006/70/EC, they should be merged and replaced for reasons of clarity and consistency.	(44) In view of the very substantial amendments that would need to be made to ~~Directive~~***Directives*** 2005/60/EC and ~~Directive~~ 2006/70/EC, they should be merged and replaced for reasons of clarity and consistency.	
82.	Recital 45	(45) Since the objective of this Directive, namely the protection of the financial system by means of prevention, investigation and detection of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States, as individual measures adopted by Member States to protect their financial systems could be inconsistent with the	(45) Since the objective of this Directive, namely the protection of the financial system by means of prevention, investigation and detection of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States, as individual measures adopted by Member States to protect their financial systems could be inconsistent with the	(45) Since the objective of this Directive, namely the protection of the financial system by means of prevention, investigation and detection of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States, as individual measures adopted by Member States to protect their financial systems could be inconsistent with the	(45) Since the objective of this Directive, namely the protection of the financial system by means of prevention, investigation and detection of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States, as individual measures adopted by Member States to protect their financial systems could be inconsistent with the	LL: EP proposal is in line with the new standard formula But "by reason of the scale and effects of the action," should be replaced by a real reason in line with this Directive "the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on

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		functioning of the internal market and with the prescriptions of the rule of law and Union public policy and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.	functioning of the internal market and with the prescriptions of the rule of law and Union public policy and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.	functioning of the internal market and with the prescriptions of the rule of law and Union public policy *but can rather*, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.	functioning of the internal market and with the prescriptions of the rule of law and Union public policy ~~and~~***but*** *can* ~~therefore~~***rather***, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.	European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective." : is standard text
83.	Recital 46	(46) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of	(46) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of	(46) This Directive respects the fundamental rights and observes the principles recognised by the Charter, in particular, the respect for private	(46)~~—~~ This Directive respects the fundamental rights and observes the principles recognised by the Charter ~~of Fundamental Rights of~~	NL: EP text is OK LL: Please use Charter in

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		the European Union, in particular, the respect for private and family life, the right to protection of personal data, the freedom to conduct a business, the prohibition of discrimination, the right to an effective remedy and to a fair trial, and the right of defence.	the European Union, in particular, the respect for private and family life, the right to protection of personal data, the freedom to conduct a business, the prohibition of discrimination, the right to an effective remedy and to a fair trial, and the right of defence.	and family life, the ***presumption of innocence, the*** right to protection of personal data, the freedom to conduct a business, the prohibition of discrimination, the right to an effective remedy and to a fair trial, and the right of defence.	~~the European Union~~, in particular, the respect for private and family life**, the *presumption of innocence*, *the*** right to protection of personal data, the freedom to conduct a business, the prohibition of discrimination, the right to an effective remedy and to a fair trial, and the right of defence.	short
84.	Recital 47	(47) In line with Article 21 of the EU Charter of Fundamental Rights prohibiting any discrimination based on any ground, Member States have to ensure that this Directive is implemented, as regards risk assessments in the context of customer due diligence, without discrimination.	(47) In line with Article 21 of the EU Charter of Fundamental Rights prohibiting any discrimination based on any ground, Member States have to ensure that this Directive is implemented, as regards risk assessments in the context of customer due diligence, without discrimination.	(47) In line with Article 21 of the Charter prohibiting any discrimination based on any ground, Member States have to ensure that this Directive is implemented, as regards risk assessments in the context of customer due diligence, without discrimination.	(47)~~—~~ In line with Article 21 of the ~~EU~~ Charter~~ of Fundamental Rights~~ prohibiting any discrimination based on any ground, Member States have to ensure that this Directive is implemented, as regards risk assessments in the context of customer due diligence, without discrimination.	LL: Please use Charter in short
85.	Recital 48	(48) In accordance with the Joint Political	(48) In accordance with the Joint Political	(48) In accordance with the Joint Political	(48)~~—~~ In accordance with the Joint Political	AT:

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		Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	There appears to be an inconsistency of recital (48) and the Explanatory Memorandum's Point 5 on Additional Information – Transposition measures (not included in this table, but in the EC proposal of February 8, 2013) which mentions the requirement of the Member States to submit correlation tables. According to the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, the explanatory documents, can take the form of correlation tables or other documents serving the same purpose. Thus, the Explanatory Memorandum's Point 5 on Additional Information –

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						Transposition measures should be changed accordingly. An ex-ante requirement to submit correlation tables is not permissible! LL: The standard text inverses the order : "In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,…" (And there could be a footnote after "documents" (OJ C 369, 17.12.2011, p. 14".))
86.	Recital 48a (new)			***(48a) Member States and obliged entities, when applying this Directive or national law transposing this Directive, are bound by Council Directive***	***(48a) Member States and obliged entities, when applying this Directive or national law transposing this Directive, are bound by Council Directive***	UK: Whilst 2000/43/EC concerns equal treatment and should be acceptable as such, we have not come across this in the

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				2000/43/EC[61].	***2000/43/EC[62].***	AML context. As such, in principle, we would prefer not to have this amendment taken on board. BE: Quid when a MS needs to apply ECDD measures for transactions involving persons from high risk countries or NCCTs? NL: EP text is OK
87.	Recital 48b (new)			***(48b) The European Data Protection Supervisor delivered an opinion on 4 July 2013[63],***	***(48b) The European Data Protection Supervisor delivered an opinion on 4 July 2013[64],***	UK: In principles we would prefer not to have this amendment taken on board. As above.

[61] ***Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).***

[62] ***Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).***

[63] ***OJ C 32, 4.2.2014, p. 9.***

[64] ***OJ C 32, 4.2.2014, p. 9.***

						LL: Correct (see Regulation) End