

# DIRECTIVES

## DIRECTIVE (EU) 2018/843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 May 2018

**amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) Directive (EU) 2015/849 of the European Parliament and of the Council <sup>(4)</sup> constitutes the main legal instrument in the prevention of the use of the Union financial system for the purposes of money laundering and terrorist financing. That Directive, which had a transposition deadline of 26 June 2017, sets out an efficient and comprehensive legal framework for addressing the collection of money or property for terrorist purposes by requiring Member States to identify, understand and mitigate the risks related to money laundering and terrorist financing.
- (2) Recent terrorist attacks have brought to light emerging new trends, in particular regarding the way terrorist groups finance and conduct their operations. Certain modern technology services are becoming increasingly popular as alternative financial systems, whereas they remain outside the scope of Union law or benefit from exemptions from legal requirements, which might no longer be justified. In order to keep pace with evolving trends, further measures should be taken to ensure the increased transparency of financial transactions, of corporate and other legal entities, as well as of trusts and legal arrangements having a structure or functions similar to trusts ('similar legal arrangements'), with a view to improving the existing preventive framework and to more effectively countering terrorist financing. It is important to note that the measures taken should be proportionate to the risks.
- (3) The United Nations (UN), Interpol and Europol have been reporting on the increasing convergence between organised crime and terrorism. The nexus between organised crime and terrorism and the links between criminal and terrorist groups constitute an increasing security threat to the Union. Preventing the use of the financial system for the purposes of money laundering or terrorist financing is an integral part of any strategy addressing that threat.

<sup>(1)</sup> OJ C 459, 9.12.2016, p. 3.

<sup>(2)</sup> OJ C 34, 2.2.2017, p. 121.

<sup>(3)</sup> Position of the European Parliament of 19 April 2018 (not yet published in the Official Journal) and decision of the Council of 14 May 2018.

<sup>(4)</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (4) While there have been significant improvements in the adoption and implementation of Financial Action Task Force (FATF) standards and the endorsement of the work of the Organisation for Economic Cooperation and Development on transparency by Member States in recent years, the need to further increase the overall transparency of the economic and financial environment of the Union is clear. The prevention of money laundering and of terrorist financing cannot be effective unless the environment is hostile to criminals seeking shelter for their finances through non-transparent structures. The integrity of the Union financial system is dependent on the transparency of corporate and other legal entities, trusts and similar legal arrangements. This Directive aims not only to detect and investigate money laundering, but also to prevent it from occurring. Enhancing transparency could be a powerful deterrent.
- (5) While the aims of Directive (EU) 2015/849 should be pursued and any amendments to it should be consistent with the Union's ongoing action in the field of countering terrorism and terrorist financing, such amendments should be made having due regard to the fundamental right to the protection of personal data, as well as the observance and application of the proportionality principle. The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled 'The European Agenda on Security' indicated the need for measures to address terrorist financing in a more effective and comprehensive manner, highlighting that the infiltration of financial markets allows for the financing of terrorism. The European Council conclusions of 17-18 December 2015 also stressed the need to take rapidly further action against terrorist financing in all domains.
- (6) The Communication from the Commission to the European Parliament and to the Council entitled 'Action Plan for strengthening the fight against terrorist financing' underscores the need to adapt to new threats and to amend Directive (EU) 2015/849 accordingly.
- (7) Union measures should also accurately reflect developments and commitments undertaken at international level. Therefore, UN Security Council Resolution (UNSCR) 2195 (2014) on Threats to international peace and security and UNSCRs 2199(2015) and 2253(2015) on Threats to international peace and security caused by terrorist acts, should be taken into account. Those UNSCRs deal with, respectively, the links between terrorism and transnational organised crime, preventing terrorist groups from gaining access to international financial institutions and expanding the sanctions framework to include Islamic State in Iraq and Levant.
- (8) Providers engaged in exchange services between virtual currencies and fiat currencies (that is to say coins and banknotes that are designated as legal tender and electronic money, of a country, accepted as a medium of exchange in the issuing country) as well as custodian wallet providers are under no Union obligation to identify suspicious activity. Therefore, terrorist groups may be able to transfer money into the Union financial system or within virtual currency networks by concealing transfers or by benefiting from a certain degree of anonymity on those platforms. It is therefore essential to extend the scope of Directive (EU) 2015/849 so as to include providers engaged in exchange services between virtual currencies and fiat currencies as well as custodian wallet providers. For the purposes of anti-money laundering and countering the financing of terrorism (AML/CFT), competent authorities should be able, through obliged entities, to monitor the use of virtual currencies. Such monitoring would provide a balanced and proportional approach, safeguarding technical advances and the high degree of transparency attained in the field of alternative finance and social entrepreneurship.
- (9) The anonymity of virtual currencies allows their potential misuse for criminal purposes. The inclusion of providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers will not entirely address the issue of anonymity attached to virtual currency transactions, as a large part of the virtual currency environment will remain anonymous because users can also transact without such providers. To combat the risks related to the anonymity, national Financial Intelligence Units (FIUs) should be able to obtain information allowing them to associate virtual currency addresses to the identity of the owner of virtual currency. In addition, the possibility to allow users to self-declare to designated authorities on a voluntary basis should be further assessed.

- (10) Virtual currencies should not to be confused with electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council <sup>(1)</sup>, with the larger concept of 'funds' as defined in point (25) of Article 4 of Directive (EU) 2015/2366 of the European Parliament and of the Council <sup>(2)</sup>, nor with monetary value stored on instruments exempted as specified in points (k) and (l) of Article 3 of Directive (EU) 2015/2366, nor with in-games currencies, that can be used exclusively within a specific game environment. Although virtual currencies can frequently be used as a means of payment, they could also be used for other purposes and find broader applications such as means of exchange, investment, store-of-value products or use in online casinos. The objective of this Directive is to cover all the potential uses of virtual currencies.
- (11) Local currencies, also known as complementary currencies, that are used in very limited networks such as a city or a region and among a small number of users should not be considered to be virtual currencies.
- (12) Business relationships or transactions involving high-risk third countries should be limited when significant weaknesses in the AML/CFT regime of the third-countries concerned are identified, unless adequate additional mitigating measures or countermeasures are applied. When dealing with such cases of high-risk and with such business relationships or transactions, Member States should require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks. Each Member State therefore determines at national level the type of enhanced due diligence measures to be taken with regard to high-risk third countries. Those different approaches between Member States create weak spots on the management of business relationships involving high-risk third countries as identified by the Commission. It is important to improve the effectiveness of the list of high-risk third countries established by the Commission by providing for a harmonised treatment of those countries at Union level. That harmonised approach should primarily focus on enhanced customer due diligence measures, where such measures are not already required under national law. In accordance with international obligations, Member States should be allowed to require obliged entities, where applicable, to apply additional mitigating measures complementary to the enhanced customer due diligence measures, in accordance with a risk based approach and taking into account the specific circumstances of business relationships or transactions. International organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing may call for the application of appropriate countermeasures to protect the international financial system from the ongoing and substantial risks relating to money laundering and terrorist financing emanating from certain countries. In addition, Member States should require obliged entities to apply additional mitigating measures regarding high-risk third countries identified by the Commission by taking into account calls for countermeasures and recommendations, such as those expressed by the FATF, and responsibilities resulting from international agreements.
- (13) Given the evolving nature of threats and vulnerabilities relating to money laundering and the financing of terrorism, the Union should adopt an integrated approach on the compliance of national AML/CFT regimes with the requirements at Union level, by taking into consideration an effectiveness assessment of those national regimes. For the purpose of monitoring the correct transposition of the Union requirements in national AML/CFT regimes, the effective implementation of those requirements and the capacity of those regimes to achieve an effective preventive framework, the Commission should base its assessment on the national AML/CFT regimes, which should be without prejudice to assessments conducted by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, such as the FATF or the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism.
- (14) General purpose prepaid cards have legitimate uses and constitute an instrument contributing to social and financial inclusion. However, anonymous prepaid cards are easy to use in financing terrorist attacks and logistics. It is therefore essential to deny terrorists this means of financing their operations, by further reducing the limits and maximum amounts under which obliged entities are allowed not to apply certain customer due diligence measures provided for by Directive (EU) 2015/849. Therefore, while having due regard to consumers' needs in

<sup>(1)</sup> 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 amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

<sup>(2)</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

using general purpose prepaid instruments and not preventing the use of such instruments for promoting social and financial inclusion, it is essential to lower the existing thresholds for general purpose anonymous prepaid cards and to identify the customer in the case of remote payment transactions where the transaction amount exceeds EUR 50.

- (15) While the use of anonymous prepaid cards issued in the Union is essentially limited to the Union territory only, that is not always the case with similar cards issued in third countries. It is therefore important to ensure that anonymous prepaid cards issued outside the Union can be used in the Union only where they can be considered to comply with requirements equivalent to those set out in Union law. That rule should be enacted in full compliance with Union obligations in respect of international trade, especially the provisions of the General Agreement on Trade in Services.
- (16) FIUs play an important role in identifying the financial operations of terrorist networks, especially cross-border, and in detecting their financial backers. Financial intelligence might be of fundamental importance in uncovering the facilitation of terrorist offences and the networks and schemes of terrorist organisations. Due to a lack of prescriptive international standards, FIUs maintain significant differences as regards their functions, competences and powers. Member States should endeavour to ensure a more efficient and coordinated approach to deal with financial investigations related to terrorism, including those related to the misuse of virtual currencies. The current differences should however not affect an FIU's activity, particularly its capacity to develop preventive analyses in support of all the authorities in charge of intelligence, investigative and judicial activities, and international cooperation. In the exercise of their tasks, FIUs should have access to information and be able to exchange it without impediments, including through appropriate cooperation with law enforcement authorities. In all cases of suspected criminality and, in particular, in cases involving the financing of terrorism, information should flow directly and quickly without undue delays. It is therefore essential to further enhance the effectiveness and efficiency of FIUs, by clarifying the powers of and cooperation between FIUs.
- (17) FIUs should be able to obtain from any obliged entity all the necessary information relating to their functions. Their unfettered access to information is essential to ensure that flows of money can be properly traced and illicit networks and flows detected at an early stage. The need for FIUs to obtain additional information from obliged entities based on a suspicion of money laundering or financing of terrorism might be triggered by a prior suspicious transaction report reported to the FIU, but might also be triggered through other means such as the FIU's own analysis, intelligence provided by competent authorities or information held by another FIU. FIUs should therefore in the context of their functions be able to obtain information from any obliged entity, even without a prior report being made. This does not include indiscriminate requests for information to the obliged entities in the context of the FIU's analysis, but only information requests based on sufficiently defined conditions. An FIU should also be able to obtain such information on a request made by another Union FIU and to exchange the information with the requesting FIU.
- (18) The purpose of the FIU is 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, and to disseminate the results of its analysis as well as additional information to the competent authorities where there are grounds to suspect money laundering, associated predicate offences or financing of terrorism. An FIU should not refrain from or refuse the exchange of information to another FIU, spontaneously or upon request, for reasons such as a lack of identification of an associated predicate offence, features of criminal national laws and differences between the definitions of associated predicate offences or the absence of a reference to particular associated predicate offences. Similarly, an FIU should grant its prior consent to another FIU to forward the information to competent authorities regardless of the type of possible associated predicate offence in order to allow the dissemination function to be carried out effectively. FIUs have reported difficulties in exchanging information based on differences in national definitions of certain predicate offences, such as tax crimes, which are not harmonised by Union law. Such differences, should not hamper the mutual exchange, the dissemination to competent authorities and the use of that information as defined by this Directive. FIUs should rapidly, constructively and effectively ensure the widest range of international cooperation with third countries' FIUs in relation to money laundering, associated predicate offences and terrorist financing in accordance with the FATF Recommendations and Egmont Principles for Information Exchange between Financial Intelligence Units.

- (19) Information of a prudential nature relating to credit and financial institutions, such as information relating to the fitness and properness of directors and shareholders, to the internal control mechanisms, to governance or to compliance and risk management, is often indispensable for the adequate AML/CFT supervision of such institutions. Similarly, AML/CFT information is also important for the prudential supervision of such institutions. Therefore, the exchange of confidential information and collaboration between AML/CFT competent authorities supervising credit and financial institutions and prudential supervisors should not be hampered by legal uncertainty which might arise as a result of the absence of explicit provisions in this field. Clarification of the legal framework is even more important since prudential supervision has, in a number of cases, been entrusted to non-AML/CFT supervisors, such as the European Central Bank (ECB).
- (20) Delayed access to information by FIUs and other competent authorities on the identity of holders of bank and payment accounts and safe-deposit boxes, especially anonymous ones, hampers the detection of transfers of funds relating to terrorism. National data allowing the identification of bank and payments accounts and safe-deposit boxes belonging to one person is fragmented and therefore not accessible to FIUs and to other competent authorities in a timely manner. It is therefore essential to establish centralised automated mechanisms, such as a register or data retrieval system, in all Member States as an efficient means to get timely access to information on the identity of holders of bank and payment accounts and safe-deposit boxes, their proxy holders, and their beneficial owners. When applying the access provisions, it is appropriate for pre-existing mechanisms to be used provided that national FIUs can access the data for which they make inquiries in an immediate and unfiltered manner. Member States should consider feeding such mechanisms with other information deemed necessary and proportionate for the more effective mitigation of risks relating to money laundering and the financing of terrorism. Full confidentiality should be ensured in respect of such inquiries and requests for related information by FIUs and competent authorities other than those authorities responsible for prosecution.
- (21) In order to respect privacy and protect personal data, the minimum data necessary for the carrying out of AML/CFT investigations should be held in centralised automated mechanisms for bank and payment accounts, such as registers or data retrieval systems. It should be possible for Member States to determine which data it is useful and proportionate to gather, taking into account the systems and legal traditions in place to enable the meaningful identification of the beneficial owners. When transposing the provisions relating to those mechanisms, Member States should set out retention periods equivalent to the period for retention of the documentation and information obtained within the application of customer due diligence measures. It should be possible for Member States to extend the retention period on a general basis by law, without requiring case-by-case decisions. The additional retention period should not exceed an additional five years. That period should be without prejudice to national law setting out other data retention requirements allowing case-by-case decisions to facilitate criminal or administrative proceedings. Access to those mechanisms should be on a need-to-know basis.
- (22) Accurate identification and verification of data of natural and legal persons are essential for fighting money laundering or terrorist financing. The latest technical developments in the digitalisation of transactions and payments enable a secure remote or electronic identification. Those means of identification as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council <sup>(1)</sup> should be taken into account, in particular with regard to notified electronic identification schemes and ways of ensuring cross-border legal recognition, which offer high level secure tools and provide a benchmark against which the identification methods set up at national level may be checked. In addition, other secure remote or electronic identification processes, regulated, recognised, approved or accepted at national level by the national competent authority may be taken into account. Where appropriate, the recognition of electronic documents and trust services as set out in Regulation (EU) No 910/2014 should also be taken into account in the identification process. The principle of technology neutrality should be taken into account in the application of this Directive.

<sup>(1)</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).



- (23) In order to identify politically exposed persons in the Union, lists should be issued by Member States indicating the specific functions which, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions. Member States should request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation.
- (24) The approach for the review of existing customers in the current framework is risk-based. However, given the higher risk of money laundering, terrorist financing and associated predicate offences associated with certain intermediary structures, that approach might not allow for the timely detection and assessment of risks. It is therefore important to ensure that certain clearly specified categories of existing customers are also monitored on a regular basis.
- (25) Member States are currently required to ensure that corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership. The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise be able to hide their identity behind a corporate structure. The globally interconnected financial system makes it possible to hide and move funds around the world, and money launderers and terrorist financiers as well as other criminals have increasingly made use of that possibility.
- (26) The specific factor determining which Member State is responsible for the monitoring and registration of beneficial ownership information of trusts and similar legal arrangements should be clarified. Due to differences in the legal systems of Member States, certain trusts and similar legal arrangements are not monitored or registered anywhere in the Union. Beneficial ownership information of trusts and similar legal arrangements should be registered where the trustees of trusts and persons holding equivalent positions in similar legal arrangements are established or where they reside. In order to ensure the effective monitoring and registration of information on the beneficial ownership of trusts and similar legal arrangements, cooperation between Member States is also necessary. The interconnection of Member States' registries of beneficial owners of trusts and similar legal arrangements would make this information accessible, and would also ensure that the multiple registration of the same trusts and similar legal arrangements is avoided within the Union.
- (27) Rules that apply to trusts and similar legal arrangements with respect to access to information relating to their beneficial ownership should be comparable to the corresponding rules that apply to corporate and other legal entities. Due to the wide range of types of trusts that currently exists in the Union, as well as an even greater variety of similar legal arrangements, the decision on whether or not a trust or a similar legal arrangement is comparably similar to corporate and other legal entities should be taken by Member States. The aim of the national law transposing those provisions should be to prevent the use of trusts or similar legal arrangements for the purposes of money laundering, terrorist financing or associated predicate offences.
- (28) With a view to the different characteristics of trusts and similar legal arrangements, Member States should be able, under national law and in accordance with data protection rules, to determine the level of transparency with regard to trusts and similar legal arrangements that are not comparable to corporate and other legal entities. The risks of money laundering and terrorist financing involved can differ, based on the characteristics of the type of trust or similar legal arrangement and the understanding of those risks can evolve over time, for instance as a result of the national and supranational risk assessments. For that reason, it should be possible for Member States to provide for wider access to information on beneficial ownership of trusts and similar legal arrangements, if such access constitutes a necessary and proportionate measure with the legitimate aim of preventing the use of the financial system for the purposes of money laundering or terrorist financing. When determining the level of transparency of the beneficial ownership information of such trusts or similar legal arrangements, Member States should have due regard to the protection of fundamental rights of individuals, in particular the right to privacy and protection of personal data. Access to beneficial ownership information of trusts and similar legal arrangements should be granted to any person that can demonstrate a legitimate interest. Access should also be granted to any person that files a written request in relation to a trust or similar legal arrangement which holds or owns a controlling interest in any corporate or other legal entity incorporated outside the Union, through direct or indirect ownership, including through bearer shareholdings, or through control via other means. The criteria and

conditions granting access to requests for beneficial ownership information of trusts and similar legal arrangements should be sufficiently precise and in line with the aims of this Directive. It should be possible for Member States to refuse a written request where there are reasonable grounds to suspect that the written request is not in line with the objectives of this Directive.

- (29) In order to ensure legal certainty and a level playing field, it is essential to clearly set out which legal arrangements established across the Union should be considered similar to trusts by effect of their functions or structure. Therefore, each Member State should be required to identify the trusts, if recognised by national law, and similar legal arrangements that may be set up pursuant to its national legal framework or custom and which have structure or functions similar to trusts, such as enabling a separation or disconnection between the legal and the beneficial ownership of assets. Thereafter, Member States should notify to the Commission the categories, description of the characteristics, names and where applicable legal basis of those trusts and similar legal arrangements in view of their publication in the *Official Journal of the European Union* in order to enable their identification by other Member States. It should be taken into account that trusts and similar legal arrangements may have different legal characteristics throughout the Union. Where the characteristics of the trust or similar legal arrangement are comparable in structure or functions to the characteristics of corporate and other legal entities, public access to beneficial ownership information would contribute to combating the misuse of trusts and similar legal arrangements, similar to the way public access can contribute to the prevention of the misuse of corporate and other legal entities for the purposes of money laundering and terrorist financing.
- (30) Public access to beneficial ownership information allows greater scrutiny of information by civil society, including by the press or civil society organisations, and contributes to preserving trust in the integrity of business transactions and of the financial system. It can contribute to combating the misuse of corporate and other legal entities and legal arrangements for the purposes of money laundering or terrorist financing, both by helping investigations and through reputational effects, given that anyone who could enter into transactions is aware of the identity of the beneficial owners. It also facilitates the timely and efficient availability of information for financial institutions as well as authorities, including authorities of third countries, involved in combating such offences. The access to that information would also help investigations on money laundering, associated predicate offences and terrorist financing.
- (31) Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This is particularly true for corporate governance systems that are characterised by concentrated ownership, such as the one in the Union. On the one hand, large investors with significant voting and cash-flow rights may encourage long-term growth and firm performance. On the other hand, however, controlling beneficial owners with large voting blocks may have incentives to divert corporate assets and opportunities for personal gain at the expense of minority investors. The potential increase in confidence in financial markets should be regarded as a positive side effect and not the purpose of increasing transparency, which is to create an environment less likely to be used for the purposes of money laundering and terrorist financing.
- (32) Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of corporate and other legal entities as well as certain types of trusts and similar legal arrangements. Member States should therefore allow access to beneficial ownership information in a sufficiently coherent and coordinated way, by establishing clear rules of access by the public, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of corporate and other legal entities as well as of certain types of trusts and similar legal arrangements.
- (33) Member States should therefore allow access to beneficial ownership information on corporate and other legal entities in a sufficiently coherent and coordinated way, through the central registers in which beneficial ownership information is set out, by establishing a clear rule of public access, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of corporate and other legal entities. It is essential to also establish a coherent legal framework that ensures better access to information relating to beneficial ownership of trusts and similar legal arrangements, once they are registered within the Union. Rules that apply to trusts and similar legal arrangements with respect to access to information relating to their beneficial ownership should be comparable to the corresponding rules that apply to corporate and other legal entities.

- (34) In all cases, both with regard to corporate and other legal entities, as well as trusts and similar legal arrangements, a fair balance should be sought in particular between the general public interest in the prevention of money laundering and terrorist financing and the data subjects' fundamental rights. The set of data to be made available to the public should be limited, clearly and exhaustively defined, and should be of a general nature, so as to minimise the potential prejudice to the beneficial owners. At the same time, information made accessible to the public should not significantly differ from the data currently collected. In order to limit the interference with the right to respect for their private life in general and to protection of their personal data in particular, that information should relate essentially to the status of beneficial owners of corporate and other legal entities and of trusts and similar legal arrangements and should strictly concern the sphere of economic activity in which the beneficial owners operate. In cases where the senior managing official has been identified as the beneficial owner only *ex officio* and not through ownership interest held or control exercised by other means, this should be clearly visible in the registers. With regard to information on beneficial owners, Member States can provide for information on nationality to be included in the central register particularly for non-native beneficial owners. In order to facilitate registry procedures and as the vast majority of beneficial owners will be nationals of the state maintaining the central register, Member States may presume a beneficial owner to be of their own nationality where no entry to the contrary is made.
- (35) The enhanced public scrutiny will contribute to preventing the misuse of legal entities and legal arrangements, including tax avoidance. Therefore, it is essential that the information on beneficial ownership remains available through the national registers and through the system of interconnection of registers for a minimum of five years after the grounds for registering beneficial ownership information of the trust or similar legal arrangement have ceased to exist. However, Member States should be able to provide by law for the processing of the information on beneficial ownership, including personal data for other purposes if such processing meets an objective of public interest and constitutes a necessary and proportionate measure in a democratic society to the legitimate aim pursued.
- (36) Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to provide for exemptions to the disclosure through the registers of beneficial ownership information and to access to such information, in exceptional circumstances, where that information would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. It should also be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information in the register.
- (37) The interconnection of Member States' central registers holding beneficial ownership information through the European Central Platform established by Directive (EU) 2017/1132 of the European Parliament and of the Council <sup>(1)</sup> necessitates the coordination of national systems having varying technical characteristics. This entails the adoption of technical measures and specifications which need to take account of differences between registers. In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to tackle such technical and operational issues. Those powers should be exercised in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(2)</sup>. In any case, the involvement of Member States in the functioning of the whole system should be ensured by means of a regular dialogue between the Commission and the representatives of Member States on the issues concerning the operation of the system and on its future development.
- (38) Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(3)</sup> applies to the processing of personal data under this Directive. As a consequence, natural persons whose personal data are held in national registers as beneficial owners should be informed accordingly. Furthermore, only personal data that is up to date and

<sup>(1)</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

<sup>(2)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>(3)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).



corresponds to the actual beneficial owners should be made available and the beneficiaries should be informed about their rights under the current Union legal data protection framework, as set out in Regulation (EU) 2016/679 and Directive (EU) 2016/680 of the European Parliament and of the Council<sup>(1)</sup>, and the procedures applicable for exercising those rights. In addition, to prevent the abuse of the information contained in the registers and to balance out the rights of beneficial owners, Member States might find it appropriate to consider making information relating to the requesting person along with the legal basis for their request available to the beneficial owner.

- (39) Where the reporting of discrepancies by the FIUs and competent authorities would jeopardise an on-going investigation, the FIUs or competent authorities should delay the reporting of the discrepancy until the moment at which the reasons for not reporting cease to exist. Furthermore, FIUs and competent authorities should not report any discrepancy when this would be contrary to any confidentiality provision of national law or would constitute a tipping-off offence.
- (40) This Directive is without prejudice to the protection of personal data processed by competent authorities in accordance with Directive (EU) 2016/680.
- (41) Access to information and the definition of legitimate interest should be governed by the law of the Member State where the trustee of a trust or person holding an equivalent position in a similar legal arrangement is established or resides. Where the trustee of the trust or person holding equivalent position in similar legal arrangement is not established or does not reside in any Member State, access to information and the definition of legitimate interest should be governed by the law of the Member State where the beneficial ownership information of the trust or similar legal arrangement is registered in accordance with the provisions of this Directive.
- (42) Member States should define legitimate interest, both as a general concept and as a criterion for accessing beneficial ownership information in their national law. In particular, those definitions should not restrict the concept of legitimate interest to cases of pending administrative or legal proceedings, and should enable to take into account the preventive work in the field of anti-money laundering, counter terrorist financing and associate predicate offences undertaken by non-governmental organisations and investigative journalists, where appropriate. Once the interconnection of Member States' beneficial ownership registers is in place, both national and cross-border access to each Member State's register should be granted based on the definition of legitimate interest of the Member State where the information relating to the beneficial ownership of the trust or similar legal arrangement has been registered in accordance with the provisions of this Directive, by virtue of a decision taken by the relevant authorities of that Member State. In relation to Member States' beneficial ownership registers, it should also be possible for Member States to establish appeal mechanisms against decisions which grant or deny access to beneficial ownership information. With a view to ensuring coherent and efficient registration and information exchange, Member States should ensure that their authority in charge of the register set up for the beneficial ownership information of trusts and similar legal arrangements cooperates with its counterparts in other Member States, sharing information concerning trusts and similar legal arrangements governed by the law of one Member State and administered in another Member State.
- (43) Cross-border correspondent relationships with a third-country's respondent institution are characterised by their on-going, repetitive nature. Accordingly, Member States, while requiring the adoption of enhanced due diligence measures in this particular context, should take into consideration that correspondent relationships do not include one-off transactions or the mere exchange of messaging capabilities. Moreover, recognising that not all cross-border correspondent banking services present the same level of money laundering and terrorist financing risks, the intensity of the measures laid down in this Directive can be determined by application of the principles of the risk based approach and do not prejudice the level of money laundering and terrorist financing risk presented by the respondent financial institution.
- (44) It is important to ensure that anti-money laundering and counter-terrorist financing rules are correctly implemented by obliged entities. In that context, Member States should strengthen the role of public authorities acting as competent authorities with designated responsibilities for combating money laundering or terrorist financing,

<sup>(1)</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

including the FIUs, the authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets, authorities receiving reports on cross-border transportation of currency and bearer-negotiable instruments and authorities that have supervisory or monitoring responsibilities aimed at ensuring compliance by obliged entities. Member States should strengthen the role of other relevant authorities including anti-corruption authorities and tax authorities.

- (45) Member States should ensure effective and impartial supervision of all obliged entities, preferably by public authorities via a separate and independent national regulator or supervisor.
- (46) Criminals move illicit proceeds through numerous financial intermediaries to avoid detection. Therefore it is important to allow credit and financial institutions to exchange information not only between group members, but also with other credit and financial institutions, with due regard to data protection rules as set out in national law.
- (47) Competent authorities supervising obliged entities for compliance with this Directive should be able to cooperate and exchange confidential information, regardless of their respective nature or status. To this end, such competent authorities should have an adequate legal basis for exchange of confidential information, and collaboration between AML/CFT competent supervisory authorities and prudential supervisors should not be hampered unintentionally by legal uncertainty which may stem from a lack of explicit provisions in this field. The supervision of the effective implementation of group policy on AML/CFT should be done in accordance with the principles and modalities of consolidated supervision as laid down in the relevant European sectoral legislation.
- (48) The exchange of information and the provision of assistance between competent authorities of the Member States is essential for the purposes of this Directive. Consequently, Member States should not prohibit or place unreasonable or unduly restrictive conditions on this exchange of information and provision of assistance.
- (49) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>(1)</sup>, 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.
- (50) Since the objective of this Directive, namely the protection of the financial system by means of prevention, detection and investigation 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 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.
- (51) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union ('the Charter'), in particular the right to respect for private and family life (Article 7 of the Charter), the right to the protection of personal data (Article 8 of the Charter) and the freedom to conduct a business (Article 16 of the Charter).
- (52) When drawing up a report evaluating the implementation of this Directive, the Commission should give due consideration to the respect of the fundamental rights and principles recognised by the Charter.
- (53) Given the need to urgently implement measures adopted with a view to strengthen the Union's regime set in place for the prevention of money laundering and financing of terrorism, and seeing the commitments undertaken by Member States to quickly proceed with the transposition of Directive (EU) 2015/849, the amendments to Directive (EU) 2015/849 should be transposed by 10 January 2020. Member States should set up beneficial ownership registers for corporate and other legal entities by 10 January 2020 and for trusts and similar legal arrangements by 10 March 2020. Central registers should be interconnected via the European Central Platform by 10 March 2021. Member States should set up centralised automated mechanisms allowing the identification of holders of bank and payment accounts and safe-deposit boxes by 10 September 2020.

<sup>(1)</sup> OJ C 369, 17.12.2011, p. 14.

- (54) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(1)</sup> and delivered an opinion on 2 February 2017 <sup>(2)</sup>.
- (55) Directive (EU) 2015/849 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Amendments to Directive (EU) 2015/849**

Directive (EU) 2015/849 is amended as follows:

(1) point (3) of Article 2(1) is amended as follows:

(a) point (a) is replaced by the following:

‘(a) auditors, external accountants and tax advisors, and any other person that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters as principal business or professional activity;’

(b) point (d) is replaced by the following:

‘(d) estate agents including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to EUR 10 000 or more;’

(c) the following points are added:

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

(h) custodian wallet providers;

(i) persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(j) persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more.’;

(2) Article 3 is amended as follows:

(a) point (4) is amended as follows:

(i) point (a) is replaced by the following:

‘(a) terrorist offences, offences related to a terrorist group and offences related to terrorist activities as set out in Titles II and III of Directive (EU) 2017/541 (\*);’

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(\*) Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).;

(ii) point (c) is replaced by the following:

‘(c) the activities of criminal organisations as defined in Article 1(1) of Council Framework Decision 2008/841/JHA (\*);’

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(\*) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).;

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<sup>(1)</sup> 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).

<sup>(2)</sup> OJ C 85, 18.3.2017, p. 3.

(b) in point (6), point (b) is replaced by the following:

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

- (i) the settlor(s);
- (ii) the trustee(s);
- (iii) the protector(s), if any;
- (iv) the beneficiaries or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;’;

(c) point (16) is replaced by the following:

‘(16) “electronic money” means electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC, but excluding monetary value as referred to in Article 1(4) and (5) of that Directive;’

(d) the following points are added:

- ‘(18) “virtual currencies” means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically;
- (19) “custodian wallet provider” means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.’;

(3) Article 6 is amended as follows:

(a) in paragraph (2), points (b) and (c) are replaced by the following:

- ‘(b) the risks associated with each relevant sector including, where available, estimates of the monetary volumes of money laundering provided by Eurostat for each of those sectors;
- (c) the most widespread means used by criminals to launder illicit proceeds, including, where available, those particularly used in transactions between Member States and third countries, independently of the identification of a third country as high-risk pursuant to Article 9(2).’;

(b) paragraph (3) is replaced by the following:

‘3. The Commission shall make the report referred to in paragraph 1 available to Member States and obliged entities in order to assist them to identify, understand, manage and mitigate the risk of money laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the European Supervisory Authorities (ESAs), and representatives from FIUs, to better understand the risks. Reports shall be made public at the latest six months after having been made available to Member States, except for the elements of the reports which contain classified information.’;

(4) Article 7 is amended as follows:

(a) in paragraph (4), the following points are added:

- ‘(f) report the institutional structure and broad procedures of their AML/CFT regime, including, inter alia, the FIU, tax authorities and prosecutors, as well as the allocated human and financial resources to the extent that this information is available;
- (g) report on national efforts and resources (labour forces and budget) allocated to combat money laundering and terrorist financing.’;

(b) paragraph 5 is replaced by the following:

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

(5) Article 9 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The Commission is empowered to adopt delegated acts in accordance with Article 64 in order to identify high-risk third countries, taking into account strategic deficiencies in particular in the following areas:

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

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

(ii) measures relating to customer due diligence;

(iii) requirements relating to record-keeping;

(iv) requirements to report suspicious transactions;

(v) the availability of accurate and timely information of the beneficial ownership of legal persons and arrangements to competent authorities;

(b) the powers and procedures of the third country’s competent authorities for the purposes of combating money laundering and terrorist financing including appropriately effective, proportionate and dissuasive sanctions, as well as the third country’s practice in cooperation and exchange of information with Member States’ competent authorities;

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

(b) paragraph 4 is replaced by the following:

‘4. The Commission, when drawing up the delegated acts referred to in paragraph 2, shall take into account relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing.’;

(6) in Article 10, paragraph 1 is replaced by the following:

‘1. Member States shall prohibit their credit institutions and financial institutions from keeping anonymous accounts, anonymous passbooks or anonymous safe-deposit boxes. Member States shall, in any event, require that the owners and beneficiaries of existing anonymous accounts, anonymous passbooks or anonymous safe-deposit boxes be subject to customer due diligence measures no later than 10 January 2019 and in any event before such accounts, passbooks or deposit boxes are used in any way.’;

(7) Article 12 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the first subparagraph, points (a) and (b) are replaced by the following:

‘(a) the payment instrument is not reloadable, or has a maximum monthly payment transactions limit of EUR 150 which can be used only in that Member State;

(b) the maximum amount stored electronically does not exceed EUR 150’;

(ii) the second subparagraph is deleted;



(b) paragraph 2 is replaced by the following:

‘2. Member States shall ensure that the derogation provided for in paragraph 1 of this Article is not applicable in the case of redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR 50, or in the case of remote payment transactions as defined in point (6) of Article 4 of the Directive (EU) 2015/2366 of the European Parliament and of the Council (\*) where the amount paid exceeds EUR 50 per transaction.

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(\*) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).;

(c) the following paragraph is added:

‘3. Member States shall ensure that credit institutions and financial institutions acting as acquirers only accept payments carried out with anonymous prepaid cards issued in third countries where such cards meet requirements equivalent to those set out in paragraphs 1 and 2.

Member States may decide not to accept on their territory payments carried out by using anonymous prepaid cards.;

(8) Article 13(1) is amended as follows:

(a) point (a) is replaced by the following:

‘(a) identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source, including, where available, electronic identification means, relevant trust services as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council (\*) or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the relevant national authorities;

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(\*) Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).;

(b) at the end of point (b), the following sentence is added:

‘Where the beneficial owner identified is the senior managing official as referred to in Article 3(6)(a) (ii), obliged entities shall take the necessary reasonable measures to verify the identity of the natural person who holds the position of senior managing official and shall keep records of the actions taken as well as any difficulties encountered during the verification process.;

(9) Article 14 is amended as follows:

(a) in paragraph 1, the following sentence is added:

‘Whenever entering into a new business relationship with a corporate or other legal entity, or a trust or a legal arrangement having a structure or functions similar to trusts (“similar legal arrangement”) which are subject to the registration of beneficial ownership information pursuant to Article 30 or 31, the obliged entities shall collect proof of registration or an excerpt of the register.;

(b) paragraph 5 is replaced by the following:

‘5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or when the obliged entity has any legal duty in the course of the relevant calendar year to contact the customer for the purpose of reviewing any relevant information relating to the beneficial owner(s), or if the obliged entity has had this duty under Council Directive 2011/16/EU (\*).

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(\*) Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).;

(10) Article 18 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'In the cases referred to in Articles 18a to 24, as well as in other cases of higher risk that are identified by Member States or obliged entities, Member States shall require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.;

(b) paragraph 2 is replaced by the following:

'2. Member States shall require obliged entities to examine, as far as reasonably possible, the background and purpose of all transactions that fulfil at least one of the following conditions:

- (i) they are complex transactions;
- (ii) they are unusually large transactions;
- (iii) they are conducted in an unusual pattern;
- (iv) they do not have an apparent economic or lawful purpose.

In particular, obliged entities shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious.;

(11) The following Article is inserted:

*'Article 18a*

1. With respect to business relationships or transactions involving high-risk third countries identified pursuant to Article 9(2), Member States shall require obliged entities to apply the following enhanced customer due diligence measures:

- (a) obtaining additional information on the customer and on the beneficial owner(s);
- (b) obtaining additional information on the intended nature of the business relationship;
- (c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner(s);
- (d) obtaining information on the reasons for the intended or performed transactions;
- (e) obtaining the approval of senior management for establishing or continuing the business relationship;
- (f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

Member States may require obliged entities to ensure, where applicable, that the first payment be carried out through an account in the customer's name with a credit institution subject to customer due diligence standards that are not less robust than those laid down in this Directive.

2. In addition to the measures provided in paragraph 1 and in compliance with the Union's international obligations, Member States shall require obliged entities to apply, where applicable, one or more additional mitigating measures to persons and legal entities carrying out transactions involving high-risk third countries identified pursuant to Article 9(2). Those measures shall consist of one or more of the following:

- (a) the application of additional elements of enhanced due diligence;
- (b) the introduction of enhanced relevant reporting mechanisms or systematic reporting of financial transactions;
- (c) the limitation of business relationships or transactions with natural persons or legal entities from the third countries identified as high risk countries pursuant to Article 9(2).

3. In addition to the measures provided in paragraph 1, Member States shall apply, where applicable, one or several of the following measures with regard to high-risk third countries identified pursuant to Article 9(2) in compliance with the Union's international obligations:

- (a) refusing the establishment of subsidiaries or branches or representative offices of obliged entities from the country concerned, or otherwise taking into account the fact that the relevant obliged entity is from a country that does not have adequate AML/CFT regimes;
- (b) prohibiting obliged entities from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AML/CFT regimes;
- (c) requiring increased supervisory examination or increased external audit requirements for branches and subsidiaries of obliged entities located in the country concerned;
- (d) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned;
- (e) requiring credit and financial institutions to review and amend, or if necessary terminate, correspondent relationships with respondent institutions in the country concerned.

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

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

(12) in Article 19, the introductory part is replaced by the following:

'With respect to cross-border correspondent relationships involving the execution of payments with a third-country respondent institution, Member States shall, in addition to the customer due diligence measures laid down in Article 13, require their credit institutions and financial institutions when entering into a business relationship to:'

(13) The following Article is inserted:

*'Article 20a*

1. Each Member State shall issue and keep up to date a list indicating the exact functions which, according to national laws, regulations and administrative provisions, qualify as prominent public functions for the purposes of point (9) of Article 3. Member States shall request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation for the purposes of point (9) of Article 3. Those lists shall be sent to the Commission and may be made public.

2. The Commission shall compile and keep up to date the list of the exact functions which qualify as prominent public functions at the level of Union institutions and bodies. That list shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Union level.

3. The Commission shall assemble, based on the lists provided for in paragraphs 1 and 2 of this Article, a single list of all prominent public functions for the purposes of point (9) of Article 3. That single list shall be made public.

4. Functions included in the list referred to in paragraph 3 of this Article shall be dealt with in accordance with the conditions laid down in Article 41(2).;

(14) in Article 27, paragraph 2 is replaced by the following:

'2. Member States shall ensure that obliged entities to which the customer is referred take adequate steps to ensure that the third party provides immediately, upon request, relevant copies of identification and verification data, including, where available, data obtained through electronic identification means, relevant trust services as set out in Regulation (EU) No 910/2014, or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities.;

(15) Article 30 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

'Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. Member States shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions.';

(ii) the following subparagraph is added:

'Member States shall require that the beneficial owners of corporate or other legal entities, including through shares, voting rights, ownership interest, bearer shareholdings or control via other means, provide those entities with all the information necessary for the corporate or other legal entity to comply with the requirements in the first subparagraph.';

(b) paragraph 4 is replaced by the following:

'4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current, and shall put in place mechanisms to this effect. Such mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In the case of reported discrepancies, Member States shall ensure that appropriate actions be taken to resolve the discrepancies in a timely manner and, if appropriate, a specific mention be included in the central register in the meantime.';

(c) paragraph 5 is replaced by the following:

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

(a) competent authorities and FIUs, without any restriction;

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

(c) any member of the general public.

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

Member States may, under conditions to be determined in national law, provide for access to additional information enabling the identification of the beneficial owner. That additional information shall include at least the date of birth or contact details in accordance with data protection rules.';

(d) the following paragraph is inserted:

'5a. Member States may choose to make the information held in their national registers referred to in paragraph 3 available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register.';

(e) paragraph 6 is replaced by the following:

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

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

(f) paragraph 7 is replaced by the following:

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

(g) paragraphs 9 and 10 are replaced by the following:

'9. In exceptional circumstances to be laid down in national law, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. A Member State that has granted exemptions shall publish annual statistical data on the number of exemptions granted and reasons stated and report the data to the Commission.

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

10. Member States shall ensure that the central registers referred to in paragraph 3 of this Article are interconnected via the European Central Platform established by Article 22(1) of Directive (EU) 2017/1132 of the European Parliament and of the Council (\*). The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 24 of Directive (EU) 2017/1132 and with Article 31a of this Directive.

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 22(1) of Directive (EU) 2017/1132, in accordance with Member States' national laws implementing paragraphs 5, 5a and 6 of this Article.

The information referred to in paragraph 1 shall be available through the national registers and through the system of interconnection of registers for at least five years and no more than 10 years after the corporate or other legal entity has been struck off from the register. Member States shall cooperate among themselves and with the Commission in order to implement the different types of access in accordance with this Article.

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(\* ) Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).;

(16) Article 31 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that this Article applies to trusts and other types of legal arrangements, such as, inter alia, fiducie, certain types of Treuhand or fideicomiso, where such arrangements have a structure or functions similar to trusts. Member States shall identify the characteristics to determine where legal arrangements have a structure or functions similar to trusts with regard to such legal arrangements governed under their law.

Each Member State shall require that trustees of any express trust administered in that Member State obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

(a) the settlor(s);



- (b) the trustee(s);
- (c) the protector(s) (if any);
- (d) the beneficiaries or class of beneficiaries;
- (e) any other natural person exercising effective control of the trust.

Member States shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions.;

- (b) paragraph 2 is replaced by the following:

‘2. Member States shall ensure that trustees or persons holding equivalent positions in similar legal arrangements as referred to in paragraph 1 of this Article, disclose their status and provide the information referred to in paragraph 1 of this Article to obliged entities in a timely manner, where, as a trustee or as person holding an equivalent position in a similar legal arrangement, they form a business relationship or carry out an occasional transaction above the thresholds set out in points (b), (c) and (d) of Article 11.’;

- (c) the following paragraph is inserted:

‘3a. Member States shall require that the beneficial ownership information of express trusts and similar legal arrangements as referred to in paragraph 1 shall be held in a central beneficial ownership register set up by the Member State where the trustee of the trust or person holding an equivalent position in a similar legal arrangement is established or resides.

Where the place of establishment or residence of the trustee of the trust or person holding an equivalent position in similar legal arrangement is outside the Union, the information referred to in paragraph 1 shall be held in a central register set up by the Member State where the trustee of the trust or person holding an equivalent position in a similar legal arrangement enters into a business relationship or acquires real estate in the name of the trust or similar legal arrangement.

Where the trustees of a trust or persons holding equivalent positions in a similar legal arrangement are established or reside in different Member States, or where the trustee of the trust or person holding an equivalent position in a similar legal arrangement enters into multiple business relationships in the name of the trust or similar legal arrangement in different Member States, a certificate of proof of registration or an excerpt of the beneficial ownership information held in a register by one Member State may be considered as sufficient to consider the registration obligation fulfilled.;

- (d) paragraph 4 is replaced by the following:

‘4. Member States shall ensure that the information on the beneficial ownership of a trust or a similar legal arrangement is accessible in all cases to:

- (a) competent authorities and FIUs, without any restriction;
- (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;
- (c) any natural or legal person that can demonstrate a legitimate interest;
- (d) any natural or legal person that files a written request in relation to a trust or similar legal arrangement which holds or owns a controlling interest in any corporate or other legal entity other than those referred to in Article 30(1), through direct or indirect ownership, including through bearer shareholdings, or through control via other means.

The information accessible to natural or legal persons referred to in points (c) and (d) of the first subparagraph shall consist of the name, the month and year of birth and the country of residence and nationality of the beneficial owner, as well as nature and extent of beneficial interest held.

Member States may, under conditions to be determined in national law, provide for access of additional information enabling the identification of the beneficial owner. That additional information shall include at least the date of birth or contact details, in accordance with data protection rules. Member States may allow for wider access to the information held in the register in accordance with their national law.

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

(e) the following paragraph is inserted:

'4a. Member States may choose to make the information held in their national registers referred to in paragraph 3a available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register.;

(f) paragraph 5 is replaced by the following:

'5. Member States shall require that the information held in the central register referred to in paragraph 3a is adequate, accurate and current, and shall put in place mechanisms to this effect. Such mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In the case of reported discrepancies Member States shall ensure that appropriate actions be taken to resolve the discrepancies in a timely manner and, if appropriate, a specific mention be included in the central register in the meantime.;

(g) paragraph 7 is replaced by the following:

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

(h) the following paragraph is inserted:

'7a. In exceptional circumstances to be laid down in national law, where the access referred to in points (b), (c) and (d) of the first subparagraph of paragraph 4 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. A Member State that has granted exemptions shall publish annual statistical data on the number of exemptions granted and reasons stated and report the data to the Commission.

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

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

(i) paragraph 8 is deleted;

(j) paragraph 9 is replaced by the following:

'9. Member States shall ensure that the central registers referred to in paragraph 3a of this Article are interconnected via the European Central Platform established by Article 22(1) of Directive (EU) 2017/1132. The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 24 of Directive (EU) 2017/1132 and with Article 31a of this Directive.

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 22(2) of Directive (EU) 2017/1132, in accordance with Member States' national laws implementing paragraphs 4 and 5 of this Article.

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

The information referred to in paragraph 1 shall be available through the national registers and through the system of interconnection of registers for at least five years and no more than 10 years after the grounds for registering the beneficial ownership information as referred to in paragraph 3a have ceased to exist. Member States shall cooperate with the Commission in order to implement the different types of access in accordance with paragraphs 4 and 4a.;

(k) the following paragraph is added:

'10. Member States shall notify to the Commission the categories, description of the characteristics, names and, where applicable, legal basis of the trusts and similar legal arrangements referred to in paragraph 1 by 10 July 2019. The Commission shall publish the consolidated list of such trusts and similar legal arrangements in the *Official Journal of the European Union* by 10 September 2019.

By 26 June 2020, the Commission shall submit a report to the European Parliament and to the Council assessing whether all trusts and similar legal arrangements as referred to in paragraph 1 governed under the law of Member States were duly identified and made subject to the obligations as set out in this Directive. Where appropriate, the Commission shall take the necessary steps to act upon the findings of that report.;

(17) the following Article is inserted:

'Article 31a

#### **Implementing acts**

Where necessary in addition to the implementing acts adopted by the Commission in accordance with Article 24 of Directive (EU) 2017/1132 and in accordance with the scope of Article 30 and 31 of this Directive, the Commission shall adopt by means of implementing acts technical specifications and procedures necessary to provide for the interconnection of Member States' central registers as referred to in Article 30(10) and Article 31(9), with regard to:

- (a) the technical specification defining the set of the technical data necessary for the platform to perform its functions as well as the method of storage, use and protection of such data;
- (b) the common criteria according to which beneficial ownership information is available through the system of interconnection of registers, depending on the level of access granted by Member States;
- (c) the technical details on how the information on beneficial owners is to be made available;
- (d) the technical conditions of availability of services provided by the system of interconnection of registers;
- (e) the technical modalities how to implement the different types of access to information on beneficial ownership based on Article 30(5) and Article 31(4);
- (f) the payment modalities where access to beneficial ownership information is subject to the payment of a fee according to Article 30(5a) and Article 31(4a) taking into account available payment facilities such as remote payment transactions.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64a(2).

In its implementing acts, the Commission shall strive to reuse proven technology and existing practices. The Commission shall ensure that the systems to be developed shall not incur costs above what is absolutely necessary in order to implement this Directive. The Commission's implementing acts shall be characterised by transparency and the exchange of experiences and information between the Commission and the Member States.;

(18) in Article 32 the following paragraph is added:

‘9. Without prejudice to Article 34(2), in the context of its functions, each FIU shall be able to request, obtain and use information from any obliged entity for the purpose set in paragraph 1 of this Article, even if no prior report is filed pursuant to Article 33(1)(a) or 34(1).’;

(19) the following Article is inserted:

‘Article 32a

1. Member States shall put in place centralised automated mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts and bank accounts identified by IBAN, as defined by Regulation (EU) No 260/2012 of the European Parliament and of the Council (\*), and safe-deposit boxes held by a credit institution within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.

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

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

- for the customer-account holder and any person purporting to act on behalf of the customer: the name, complemented by either the other identification data required under the national provisions transposing point (a) of Article 13(1) or a unique identification number;
- for the beneficial owner of the customer-account holder: the name, complemented by either the other identification data required under the national provisions transposing point (b) of Article 13(1) or a unique identification number;
- for the bank or payment account: the IBAN number and the date of account opening and closing;
- for the safe-deposit box: name of the lessee complemented by either the other identification data required under the national provisions transposing Article 13(1) or a unique identification number and the duration of the lease period.

4. Member States may consider requiring other information deemed essential for FIUs and competent authorities for fulfilling their obligations under this Directive to be accessible and searchable through the centralised mechanisms.

5. By 26 June 2020, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring secure and efficient interconnection of the centralised automated mechanisms. Where appropriate, that report shall be accompanied by a legislative proposal.

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(\*) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).;

(20) the following Article is inserted:

‘Article 32b

1. Member States shall provide FIUs and competent authorities with access to information which allows the identification in a timely manner of any natural or legal persons owning real estate, including through registers or electronic data retrieval systems where such registers or systems are available.

2. By 31 December 2020, the Commission shall submit a report to the European Parliament and to the Council assessing the necessity and proportionality of harmonising the information included in the registers and assessing the need for the interconnection of those registers. Where appropriate, that report shall be accompanied by a legislative proposal.’;

(21) in Article 33(1), point (b) is replaced by the following:

‘(b) providing the FIU directly, at its request, with all necessary information.’;

(22) in Article 34, the following paragraph is added:

‘3. Self-regulatory bodies designated by Member States shall publish an annual report containing information about:

(a) measures taken under Articles 58, 59 and 60;

(b) number of reports of breaches received as referred to in Article 61, where applicable;

(c) number of reports received by the self-regulatory body as referred to in paragraph 1 and the number of reports forwarded by the self-regulatory body to the FIU where applicable;

(d) where applicable number and description of measures carried out under Article 47 and 48 to monitor compliance by obliged entities with their obligations under:

(i) Articles 10 to 24 (customer due diligence);

(ii) Articles 33, 34 and 35 (suspicious transaction reporting);

(iii) Article 40 (record-keeping); and

(iv) Articles 45 and 46 (internal controls).’;

(23) Article 38 is replaced by the following:

*Article 38*

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

2. Member States shall ensure that individuals who are exposed to threats, retaliatory or hostile actions, or adverse or discriminatory employment actions for reporting suspicions of money laundering or terrorist financing internally or to the FIU are entitled to present a complaint in a safe manner to the respective competent authorities. Without prejudice to the confidentiality of information gathered by the FIU, Member States shall also ensure that such individuals have the right to an effective remedy to safeguard their rights under this paragraph.’;

(24) in Article 39, paragraph 3 is replaced by the following:

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

(25) in Article 40, paragraph 1 is amended as follows:

(a) point (a) is replaced by the following:

‘(a) in the case of customer due diligence, a copy of the documents and information which are necessary to comply with the customer due diligence requirements laid down in Chapter II, including, where available, information obtained through electronic identification means, relevant trust services as set out in Regulation (EU) No 910/2014 or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction.’;



(b) the following subparagraph is added:

'The retention period referred to in this paragraph, including the further retention period that shall not exceed five additional years, shall also apply in respect of the data accessible through the centralised mechanisms referred to in Article 32a.');

(26) Article 43 is replaced by the following:

*'Article 43*

The processing of personal data on the basis of this Directive for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 shall be considered to be a matter of public interest under Regulation (EU) 2016/679 of the European Parliament and of the Council (\*).

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(\*) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).;

(27) Article 44 is replaced by the following:

*'Article 44*

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

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

- (a) data measuring the size and importance of the different sectors which fall within the scope of this Directive, including the number of natural persons and entities and the economic importance of each sector;
- (b) data measuring the reporting, investigation and judicial phases of the national AML/CFT regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to those reports and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences, the types of predicate offences, where such information is available, and the value in euro of property that has been frozen, seized or confiscated;
- (c) if available, data identifying the number and percentage of reports resulting in further investigation, together with the annual report to obliged entities detailing the usefulness and follow-up of the reports they presented;
- (d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the FIU, broken down by counterpart country;
- (e) human resources allocated to competent authorities responsible for AML/CFT supervision as well as human resources allocated to the FIU to fulfil the tasks specified in Article 32;
- (f) the number of on-site and off-site supervisory actions, the number of breaches identified on the basis of supervisory actions and sanctions/administrative measures applied by supervisory authorities.

3. Member States shall ensure that a consolidated review of their statistics is published on an annual basis.

4. Member States shall transmit annually to the Commission the statistics referred to in paragraph 2. The Commission shall publish an annual report summarising and explaining the statistics referred to in paragraph 2, which shall be made available on its website.;

(28) in Article 45, paragraph 4 is replaced by the following:

‘4. The Member States and the ESAs shall inform each other of instances in which the law of a third country does not permit the implementation of the policies and procedures required under paragraph 1. In such cases, coordinated actions may be taken to pursue a solution. In the assessing which third countries do not permit the implementation of the policies and procedures required under paragraph 1, Member States and the ESAs shall take into account any legal constraints that may hinder proper implementation of those policies and procedures, including secrecy, data protection and other constraints limiting the exchange of information that may be relevant for that purpose.’;

(29) in Article 47, paragraph 1 is replaced by the following:

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

(30) Article 48 is amended as follows:

(a) the following paragraph is inserted:

‘1a. In order to facilitate and promote effective cooperation, and in particular the exchange of information, Member States shall communicate to the Commission the list of competent authorities of the obliged entities listed in Article 2(1), including their contact details. Member States shall ensure that the information provided to the Commission remains updated.

The Commission shall publish a register of those authorities and their contact details on its website. The authorities in the register shall, within the scope of their powers, serve as a contact point for the counterpart competent authorities of the other Member States. Financial supervisory authorities of the Member States shall also serve as a contact point for the ESAs.

In order to ensure the adequate enforcement of this Directive, Member States shall require that all obliged entities are subject to adequate supervision, including the powers to conduct on-site and off-site supervision, and shall take appropriate and proportionate administrative measures to remedy the situation in the case of breaches.’;

(b) paragraph 2 is replaced by the following:

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

(c) paragraph (4) is replaced by the following:

‘4. Member States shall ensure that competent authorities of the Member State in which the obliged entity operates establishments supervise the respect by those establishments of the national provisions of that Member State transposing this Directive.

In the case of credit and financial institutions that are part of a group, Member States shall ensure that, for the purposes laid down in the first subparagraph, the competent authorities of the Member State where a parent undertaking is established cooperate with the competent authorities of the Member States where the establishments that are part of group are established.

In the case of the establishments referred to in Article 45(9), supervision as referred to in the first subparagraph of this paragraph may include the taking of appropriate and proportionate measures to address serious failings that require immediate remedies. Those measures shall be temporary and be terminated when the failings identified are addressed, including with the assistance of or in cooperation with the competent authorities of the home Member State of the obliged entity, in accordance with Article 45(2).’;

(d) in paragraph (5), the following subparagraph is added:

'In the case of credit and financial institutions that are part of a group, Member States shall ensure that the competent authorities of the Member State where a parent undertaking is established supervise the effective implementation of the group-wide policies and procedures referred to in Article 45(1). For that purpose, Member States shall ensure that the competent authorities of the Member State where credit and financial institutions that are part of the group are established cooperate with the competent authorities of the Member State where the parent undertaking is established.';

(31) Article 49 is replaced by the following:

*'Article 49*

Member States shall ensure that policy makers, the FIUs, supervisors and other competent authorities involved in AML/CFT, as well as tax authorities and law enforcement authorities when acting within the scope of this Directive, have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing, including with a view to fulfilling their obligation under Article 7.';

(32) in Section 3 of Chapter VI, the following subsection is inserted:

*'Subsection IIa*

### **Cooperation between competent authorities of the Member States**

*Article 50a*

Member States shall not prohibit or place unreasonable or unduly restrictive conditions on the exchange of information or assistance between competent authorities for the purposes of this Directive. In particular Member States shall ensure that competent authorities do not refuse a request for assistance on the grounds that:

- (a) the request is also considered to involve tax matters;
- (b) national law requires obliged entities to maintain secrecy or confidentiality, except in those cases where the relevant information that is sought is protected by legal privilege or where legal professional secrecy applies, as described in Article 34(2);
- (c) there is an inquiry, investigation or proceeding underway in the requested Member State, unless the assistance would impede that inquiry, investigation or proceeding;
- (d) the nature or status of the requesting counterpart competent authority is different from that of requested competent authority.';

(33) Article 53 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

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

(b) in paragraph 2, second subparagraph, the second sentence is replaced by the following:

'That FIU shall obtain information in accordance with Article 33(1) and transfer the answers promptly.';

(34) in Article 54, the following subparagraph is added:

'Member States shall ensure that FIUs designate at least one contact person or point to be responsible for receiving requests for information from FIUs in other Member States.';

(35) In Article 55, paragraph 2 is replaced by the following:

'2. Member States shall ensure that the requested FIU's prior consent to disseminate the information to competent authorities is granted promptly and to the largest extent possible, regardless of the type of associated predicate offences. The requested FIU shall not refuse its consent to such dissemination unless this would fall beyond

the scope of application of its AML/CFT provisions or could lead to impairment of an investigation, or would otherwise not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained. Those exceptions shall be specified in a way which prevents misuse of, and undue limitations to, the dissemination of information to competent authorities.’;

(36) Article 57 is replaced by the following:

*‘Article 57*

Differences between national law definitions of predicate offences as referred to in point 4 of Article 3 shall not impede the ability of FIUs to provide assistance to another FIU and shall not limit the exchange, dissemination and the use of information pursuant to Articles 53, 54 and 55.’;

(37) in Section 3 of Chapter VI, the following subsection is added:

*‘Subsection IIIa*

**Cooperation between competent authorities supervising credit and financial institutions and other authorities bound by professional secrecy**

*Article 57a*

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

Without prejudice to cases covered by criminal law, confidential information which the persons referred to in the first subparagraph receive in the course of their duties under this Directive may be disclosed only in summary or aggregate form, in such a way that individual credit and financial institutions cannot be identified.

2. Paragraph 1 shall not prevent the exchange of information between:

- (a) competent authorities supervising credit and financial institutions within a Member State in accordance with this Directive or other legislative acts relating to the supervision of credit and financial institutions;
- (b) competent authorities supervising credit and financial institutions in different Member States in accordance with this Directive or other legislative acts relating to the supervision of credit and financial institutions, including the European Central Bank (ECB) acting in accordance with Council Regulation (EU) No 1024/2013 (\*). That exchange of information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

By 10 January 2019, the competent authorities supervising credit and financial institutions in accordance with this Directive and the ECB, acting pursuant to Article 27(2) of Regulation (EU) No 1024/2013 and point (g) of the first subparagraph of Article 56 of Directive 2013/36/EU of the European Parliament and of the Council (\*\*), shall conclude, with the support of the European Supervisory Authorities, an agreement on the practical modalities for exchange of information.

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

- (a) in the discharge of their duties under this Directive or under other legislative acts in the field of AML/CFT, of prudential regulation and of supervising credit and financial institutions, including sanctioning;
- (b) in an appeal against a decision of the competent authority supervising credit and financial institutions, including court proceedings;
- (c) in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of this Directive or in the field of prudential regulation and supervision of credit and financial institutions.

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

5. Member States may authorise their national competent authorities which supervise credit and financial institutions to conclude cooperation agreements providing for collaboration and exchanges of confidential information with the competent authorities of third countries that constitute counterparts of those national competent authorities. Such cooperation agreements shall be concluded on the basis of reciprocity and only if the information disclosed is subject to a guarantee of professional secrecy requirements at least equivalent to that referred to in paragraph 1. Confidential information exchanged according to those cooperation agreements shall be used for the purpose of performing the supervisory task of those authorities.

Where the information exchanged originates in another Member State, it shall only be disclosed with the explicit consent of the competent authority which shared it and, where appropriate, solely for the purposes for which that authority gave its consent.

#### *Article 57b*

1. Notwithstanding Article 57a(1) and (3) and without prejudice to Article 34(2), Member States may authorise the exchange of information between competent authorities in the same Member State or in different Member States, between the competent authorities and authorities entrusted with the supervision of financial sector entities and natural or legal persons acting in the exercise of their professional activities as referred to in point (3) of Article 2(1) and the authorities responsible by law for the supervision of financial markets in the discharge of their respective supervisory functions.

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

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

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

3. Member States may authorise the disclosure of certain information relating to the supervision of credit institutions for compliance with this Directive to Parliamentary inquiry committees, courts of auditors and other entities in charge of enquiries, in their Member State, under the following conditions:

- (a) the entities have a precise mandate under national law to investigate or scrutinise the actions of authorities responsible for the supervision of those credit institutions or for laws on such supervision;
- (b) the information is strictly necessary for fulfilling the mandate referred to in point (a);
- (c) the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in Article 57a(1);
- (d) where the information originates in another Member State, it shall not be disclosed without the express consent of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their consent.

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(\*) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

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



(38) in Article 58(2), the following subparagraph is added:

'Member States shall further ensure that where their competent authorities identify breaches which are subject to criminal sanctions, they inform the law enforcement authorities in a timely manner.'

(39) Article 61 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that competent authorities, as well as, where applicable, self-regulatory bodies, establish effective and reliable mechanisms to encourage the reporting to competent authorities, as well as, where applicable self-regulatory bodies, of potential or actual breaches of the national provisions transposing this Directive.

For that purpose, they shall provide one or more secure communication channels for persons for the reporting referred to in the first subparagraph. Such channels shall ensure that the identity of persons providing information is known only to the competent authorities, as well as, where applicable, self-regulatory bodies.'

(b) in paragraph 3, the following subparagraphs are added:

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

Member States shall ensure that individuals who are exposed to threats, hostile actions, or adverse or discriminatory employment actions for reporting suspicions of money laundering or terrorist financing internally or to the FIU are entitled to present a complaint in a safe manner to the respective competent authorities. Without prejudice to the confidentiality of information gathered by the FIU, Member States shall also ensure that such individuals have the right to effective remedy to safeguard their rights under this paragraph.'

(40) the following Article is inserted:

*'Article 64a*

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing (the "Committee") as referred to in Article 23 of Regulation (EU) 2015/847 of the European Parliament and of the Council (\*). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 (\*\*).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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(\*) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

(\*\*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).';

(41) Article 65 is replaced by the following:

*'Article 65*

1. By 11 January 2022, and every three years thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and to the Council.

That report shall include in particular:

(a) an account of specific measures adopted and mechanisms set up at Union and Member State level to prevent and address emerging problems and new developments presenting a threat to the Union financial system;

(b) follow-up actions undertaken at Union and Member State level on the basis of concerns brought to their attention, including complaints relating to national laws hampering the supervisory and investigative powers of competent authorities and self-regulatory bodies;

- (c) an account of the availability of relevant information for the competent authorities and FIUs of the Member States, for the prevention of the use of the financial system for the purposes of money laundering and terrorist financing;
- (d) an account of the international cooperation and information exchange between competent authorities and FIUs;
- (e) an account of necessary Commission actions to verify that Member States take action in compliance with this Directive and to assess emerging problems and new developments in the Member States;
- (f) an analysis of feasibility of specific measures and mechanisms at Union and Member State level on the possibilities to collect and access the beneficial ownership information of corporate and other legal entities incorporated outside of the Union and of the proportionality of the measures referred to in point (b) of Article 20;
- (g) an evaluation of how fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union have been respected.

The first report, to be published by 11 January 2022, shall be accompanied, if necessary, by appropriate legislative proposals, including, where appropriate, with respect to virtual currencies, empowerments to set-up and maintain a central database registering users' identities and wallet addresses accessible to FIUs, as well as self-declaration forms for the use of virtual currency users, and to improve cooperation between Asset Recovery Offices of the Member States and a risk-based application of the measures referred to in point (b) of Article 20.

2. By 1 June 2019, the Commission shall assess the framework for FIUs' cooperation with third countries and obstacles and opportunities to enhance cooperation between FIUs in the Union including the possibility of establishing a coordination and support mechanism.

3. The Commission shall, if appropriate, issue a report to the European Parliament and to Council to assess the need and proportionality of lowering the percentage for the identification of beneficial ownership of legal entities in light of any recommendation issued in this sense by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing as a result of a new assessment, and present a legislative proposal, if appropriate.;

(42) in Article 67, paragraph (1) is replaced by the following:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 26 June 2017.

Member States shall apply Article 12(3) as of 10 July 2020.

Member States shall set up the registers referred to in Article 30 by 10 January 2020 and the registers referred to in Article 31 by 10 March 2020 and the centralised automated mechanisms referred to in Article 32a by 10 September 2020.

The Commission shall ensure the interconnection of registers referred to in Articles 30 and 31 in cooperation with the Member States by 10 March 2021.

Member States shall immediately communicate the text of the measures referred to in this paragraph to the Commission.

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

(43) in Annex II, point (3), the introductory part is replaced by the following:

'(3) Geographical risk factors — registration, establishment, residence in:';

(44) Annex III is amended as follows:

(a) in point (1), the following point is added:

'(g) customer is a third country national who applies for residence rights or citizenship in the Member State in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities in that Member State.;

(b) point (2) is amended as follows:

(i) point (c) is replaced by the following:

‘(c) non-face-to-face business relationships or transactions, without certain safeguards, such as electronic identification means, relevant trust services as defined in Regulation (EU) No 910/2014 or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities;’;

(ii) the following point is added:

‘(f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species.’.

#### Article 2

##### **Amendment to Directive 2009/138/EC**

In Article 68(1), point (b) of Directive 2009/138/EC, the following point is added:

‘(iv) authorities responsible for supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 of the European Parliament and of the Council (\*) for compliance with that Directive;

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

#### Article 3

##### **Amendment to Directive 2013/36/EU**

In the first paragraph of Article 56 of Directive 2013/36/EU, the following point is added:

‘(g) authorities responsible for supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 of the European Parliament and of the Council (\*) for compliance with that Directive.

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

#### Article 4

##### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 10 January 2020. They shall immediately communicate the text of those provisions to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

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

#### Article 5

##### **Entry into force**

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

*Article 6***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 30 May 2018.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

L. PAVLOVA

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