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## Legislation

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# EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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## I

(Legislative acts)

## REGULATIONS

**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**  
**(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) Flows of illicit money through transfers of funds can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorist financing and organised crime remain significant problems which should be addressed at Union level. The soundness, integrity and stability of the system of transfers of funds and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates to disguise the origin of criminal proceeds or to transfer funds for criminal activities or terrorist purposes.
- (2) In order to facilitate their criminal activities, money launderers and financiers of terrorism are likely to take advantage of the freedom of capital movements within the Union's integrated financial area unless certain coordinating measures are adopted at Union level. International cooperation within the framework of the Financial Action Task Force (FATF) and the global implementation of its recommendations aim to prevent money laundering and terrorist financing while transferring funds.
- (3) By reason of the scale of the action to be undertaken, the Union should ensure that the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by FATF on

<sup>(1)</sup> OJ C 166, 12.6.2013, p. 2.

<sup>(2)</sup> OJ C 271, 19.9.2013, p. 31.

<sup>(3)</sup> Position of the European Parliament of 11 March 2014 (not yet published in the Official Journal) and position of the Council at first reading of 20 April 2015 (not yet published in the Official Journal). Position of the European Parliament of 20 May 2015 (not yet published in the Official Journal).

16 February 2012 (the 'revised FATF Recommendations'), and, in particular, FATF Recommendation 16 on wire transfers (the 'FATF Recommendation 16') and the revised interpretative note for its implementation, are implemented uniformly throughout the Union and that, in particular, there is no discrimination or discrepancy between, on the one hand, national payments within a Member State and, on the other, cross-border payments between Member States. Uncoordinated action by Member States acting alone in the field of cross-border transfers of funds could have a significant impact on the smooth functioning of payment systems at Union level and could therefore damage the internal market in the field of financial services.

- (4) In order to foster a coherent approach in the international context and to increase the effectiveness of the fight against money laundering and terrorist financing, further Union action should take account of developments at international level, namely the revised FATF Recommendations.
- (5) The implementation and enforcement of this Regulation, including FATF Recommendation 16, represent relevant and effective means of preventing and combating money-laundering and terrorist financing.
- (6) This Regulation is not intended to impose unnecessary burdens or costs on payment service providers or on persons who use their services. In this regard, the preventive approach should be targeted and proportionate and should be in full compliance with the free movement of capital, which is guaranteed throughout the Union.
- (7) In the Union's Revised Strategy on Terrorist Financing of 17 July 2008 (the 'Revised Strategy'), it was pointed out that efforts must be maintained to prevent terrorist financing and to control the use by suspected terrorists of their own financial resources. It is recognised that FATF is constantly seeking to improve its Recommendations and is working towards a common understanding of how they should be implemented. It is noted in the Revised Strategy that implementation of the revised FATF Recommendations by all FATF members and members of FATF-style regional bodies is assessed on a regular basis and that a common approach to implementation by Member States is therefore important.
- (8) In order to prevent terrorist financing, measures with the purpose of freezing the funds and the economic resources of certain persons, groups and entities have been taken, including Council Regulations (EC) No 2580/2001 <sup>(1)</sup>, (EC) No 881/2002 <sup>(2)</sup> and (EU) No 356/2010 <sup>(3)</sup>. To the same end, measures with the purpose of protecting the financial system against the channelling of funds and economic resources for terrorist purposes have also been taken. Directive (EU) 2015/849 of the European Parliament and of the Council <sup>(4)</sup> contains a number of such measures. Those measures do not, however, fully prevent terrorists or other criminals from accessing payment systems for transferring their funds.
- (9) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, detection and investigation of money laundering and terrorist financing, as well as in the implementation of restrictive measures, in particular those imposed by Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010, and in full compliance with Union regulations implementing such measures. It is therefore appropriate, in order to ensure the transmission of information throughout the payment chain, to provide for a system imposing the obligation on payment service providers to accompany transfers of funds with information on the payer and the payee.
- (10) This Regulation should apply without prejudice to the restrictive measures imposed by regulations based on Article 215 of the Treaty on the Functioning of the European Union (TFEU), such as Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010, which may require that payment service providers of payers and of payees, as well as intermediary payment service providers, take appropriate action to freeze certain funds or that they comply with specific restrictions concerning certain transfers of funds.

<sup>(1)</sup> Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).

<sup>(2)</sup> Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network (OJ L 139, 29.5.2002, p. 9).

<sup>(3)</sup> Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia (OJ L 105, 27.4.2010, p. 1).

<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 purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (see page 73 of this Official Journal).

- (11) This Regulation should also apply without prejudice to national legislation transposing Directive 95/46/EC of the European Parliament and of the Council <sup>(1)</sup>. For example, personal data collected for the purpose of complying with this Regulation should not be further processed in a way that is incompatible with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. Therefore, in applying this Regulation, the transfer of personal data to a third country which does not ensure an adequate level of protection in accordance with Article 25 of Directive 95/46/EC should be permitted in accordance with Article 26 thereof. It is important that payment service providers operating in multiple jurisdictions with branches or subsidiaries located outside the Union should not be prevented from transferring data about suspicious transactions within the same organisation, provided that they apply adequate safeguards. In addition, the payment service providers of the payer and of the payee and the intermediary payment service providers should have in place appropriate technical and organisational measures to protect personal data against accidental loss, alteration, or unauthorised disclosure or access.
- (12) Persons that merely convert paper documents into electronic data and are acting under a contract with a payment service provider and persons that provide payment service providers solely with messaging or other support systems for transmitting funds or with clearing and settlement systems do not fall within the scope of this Regulation.
- (13) Transfers of funds corresponding to services referred to in points (a) to (m) and (o) of Article 3 of Directive 2007/64/EC of the European Parliament and of the Council <sup>(2)</sup> do not fall within the scope of this Regulation. It is also appropriate to exclude from the scope of this Regulation transfers of funds that represent a low risk of money laundering or terrorist financing. Such exclusions should cover payment cards, electronic money instruments, mobile phones or other digital or information technology (IT) prepaid or postpaid devices with similar characteristics, where they are used exclusively for the purchase of goods or services and the number of the card, instrument or device accompanies all transfers. However, the use of a payment card, an electronic money instrument, a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics in order to effect a person-to-person transfer of funds, falls within the scope of this Regulation. In addition, Automated Teller Machine withdrawals, payments of taxes, fines or other levies, transfers of funds carried out through cheque images exchanges, including truncated cheques, or bills of exchange, and transfers of funds where both the payer and the payee are payment service providers acting on their own behalf should be excluded from the scope of this Regulation.
- (14) In order to reflect the special characteristics of national payment systems, and provided that it is always possible to trace the transfer of funds back to the payer, Member States should be able to exempt from the scope of this Regulation certain domestic low-value transfers of funds, including electronic giro payments, used for the purchase of goods or services.
- (15) Payment service providers should ensure that the information on the payer and the payee is not missing or incomplete.
- (16) In order not to impair the efficiency of payment systems, and in order to balance the risk of driving transactions underground as a result of overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether information on the payer or the payee is accurate should, in the case of transfers of funds where verification has not yet taken place, be imposed only in respect of individual transfers of funds that exceed EUR 1 000, unless the transfer appears to be linked to other transfers of funds which together would exceed EUR 1 000, the funds have been received or paid out in cash or in anonymous electronic money, or where there are reasonable grounds for suspecting money laundering or terrorist financing.
- (17) For transfers of funds where verification is deemed to have taken place, payment service providers should not be required to verify information on the payer or the payee accompanying each transfer of funds, provided that the obligations laid down in Directive (EU) 2015/849 are met.

<sup>(1)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>(2)</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

- (18) In view of the Union legislative acts in respect of payment services, namely Regulation (EC) No 924/2009 of the European Parliament and of the Council <sup>(1)</sup>, Regulation (EU) No 260/2012 of the European Parliament and of the Council <sup>(2)</sup> and Directive 2007/64/EC, it should be sufficient to provide that only simplified information accompany transfers of funds within the Union, such as the payment account number(s) or a unique transaction identifier.
- (19) In order to allow the authorities responsible for combating money laundering or terrorist financing in third countries to trace the source of funds used for those purposes, transfers of funds from the Union to outside the Union should carry complete information on the payer and the payee. Those authorities should be granted access to complete information on the payer and the payee only for the purposes of preventing, detecting and investigating money laundering and terrorist financing.
- (20) The Member State authorities responsible for combating money laundering and terrorist financing, and relevant judicial and law enforcement agencies in the Member States, should intensify cooperation with each other and with relevant third country authorities, including those in developing countries, in order further to strengthen transparency and the sharing of information and best practices.
- (21) As regards transfers of funds from a single payer to several payees that are to be sent in batch files containing individual transfers from the Union to outside the Union, provision should be made for such individual transfers to carry only the payment account number of the payer or the unique transaction identifier, as well as complete information on the payee, provided that the batch file contains complete information on the payer that is verified for accuracy and complete information on the payee that is fully traceable.
- (22) In order to check whether the required information on the payer and the payee accompanies transfers of funds, and to help identify suspicious transactions, the payment service provider of the payee and the intermediary payment service provider should have effective procedures in place in order to detect whether information on the payer and the payee is missing or incomplete. Those procedures should include *ex-post* monitoring or real-time monitoring where appropriate. Competent authorities should ensure that payment service providers include the required transaction information with the wire transfer or related message throughout the payment chain.
- (23) Given the potential threat of money laundering and terrorist financing presented by anonymous transfers, it is appropriate to require payment service providers to request information on the payer and the payee. In line with the risk-based approach developed by FATF, it is appropriate to identify areas of higher and lower risk, with a view to better targeting the risk of money laundering and terrorist financing. Accordingly, the payment service provider of the payee and the intermediary payment service provider should have effective risk-based procedures that apply where a transfer of funds lacks the required information on the payer or the payee, in order to allow them to decide whether to execute, reject or suspend that transfer and to determine the appropriate follow-up action to take.
- (24) The payment service provider of the payee and the intermediary payment service provider should exercise special vigilance, assessing the risks, when either becomes aware that information on the payer or the payee is missing or incomplete, and should report suspicious transactions to the competent authorities in accordance with the reporting obligations set out in Directive (EU) 2015/849 and with national measures transposing that Directive.
- (25) The provisions on transfers of funds in relation to which information on the payer or the payee is missing or incomplete apply without prejudice to any obligations on payment service providers and intermediary payment service providers to suspend and/or reject transfers of funds which breach a provision of civil, administrative or criminal law.
- (26) With the aim of assisting payment service providers to put effective procedures in place to detect cases in which they receive transfers of funds with missing or incomplete payer or payee information and to take follow-up actions, the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU)

<sup>(1)</sup> Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11).

<sup>(2)</sup> 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).

No 1093/2010 of the European Parliament and of the Council <sup>(1)</sup>, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council <sup>(2)</sup>, and the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(3)</sup>, should issue guidelines.

- (27) To enable prompt action to be taken in the fight against money laundering and terrorist financing, payment service providers should respond promptly to requests for information on the payer and the payee from the authorities responsible for combating money laundering or terrorist financing in the Member State where those payment service providers are established.
- (28) The number of working days in the Member State of the payment service provider of the payer determines the number of days to respond to requests for information on the payer.
- (29) As it may not be possible in criminal investigations to identify the data required or the individuals involved in a transaction until many months, or even years, after the original transfer of funds, and in order to be able to have access to essential evidence in the context of investigations, it is appropriate to require payment service providers to keep records of information on the payer and the payee for a period of time for the purposes of preventing, detecting and investigating money laundering and terrorist financing. That period should be limited to five years, after which all personal data should be deleted unless national law provides otherwise. If necessary for the purposes of preventing, detecting or investigating money laundering or terrorist financing, and after carrying out an assessment of the necessity and proportionality of the measure, Member States should be able to allow or require retention of records for a further period of no more than five years, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings.
- (30) In order to improve compliance with this Regulation, and in accordance with the Commission Communication of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector', the power to adopt supervisory measures and the sanctioning powers of competent authorities should be enhanced. Administrative sanctions and measures should be provided for and, given the importance of the fight against money laundering and terrorist financing, Member States should lay down sanctions and measures that are effective, proportionate and dissuasive. Member States should notify the Commission and the Joint Committee of EBA, EIOPA and ESMA (the 'ESAs') thereof.
- (31) In order to ensure uniform conditions for the implementation of Chapter V of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(4)</sup>.
- (32) A number of countries and territories which do not form part of the territory of the Union share a monetary union with a Member State, form part of the currency area of a Member State or have signed a monetary convention with the Union represented by a Member State, and have payment service providers that participate directly or indirectly in the payment and settlement systems of that Member State. In order to avoid the application of this Regulation to transfers of funds between the Member States concerned and those countries or territories having a significant negative effect on the economies of those countries or territories, it is appropriate to provide for the possibility for such transfers of funds to be treated as transfers of funds within the Member States concerned.

<sup>(1)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>(2)</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

<sup>(3)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

<sup>(4)</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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).



- (33) Given the number of amendments that would need to be made to Regulation (EC) No 1781/2006 of the European Parliament and of the Council <sup>(1)</sup> pursuant to this Regulation, that Regulation should be repealed for reasons of clarity.
- (34) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or 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 (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (35) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8), the right to an effective remedy and to a fair trial (Article 47) and the principle of *ne bis in idem*.
- (36) In order to ensure the smooth introduction of the anti-money laundering and terrorist financing framework, it is appropriate that the date of application of this Regulation be the same as the deadline for transposition of Directive (EU) 2015/849.
- (37) 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>(2)</sup> and delivered an opinion on 4 July 2013 <sup>(3)</sup>,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

### SUBJECT MATTER, SCOPE AND DEFINITIONS

#### Article 1

##### Subject matter

This Regulation lays down rules on the information on payers and payees, accompanying transfers of funds, in any currency, for the purposes of preventing, detecting and investigating money laundering and terrorist financing, where at least one of the payment service providers involved in the transfer of funds is established in the Union.

#### Article 2

##### Scope

1. This Regulation shall apply to transfers of funds, in any currency, which are sent or received by a payment service provider or an intermediary payment service provider established in the Union.
2. This Regulation shall not apply to the services listed in points (a) to (m) and (o) of Article 3 of Directive 2007/64/EC.
3. This Regulation shall not apply to transfers of funds carried out using a payment card, an electronic money instrument or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics, where the following conditions are met:
  - (a) that card, instrument or device is used exclusively to pay for goods or services; and
  - (b) the number of that card, instrument or device accompanies all transfers flowing from the transaction.

<sup>(1)</sup> Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ L 345, 8.12.2006, p. 1).

<sup>(2)</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>(3)</sup> OJ C 32, 4.2.2014, p. 9.



However, this Regulation shall apply when a payment card, an electronic money instrument or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics, is used in order to effect a person-to-person transfer of funds.

4. This Regulation shall not apply to persons that have no activity other than to convert paper documents into electronic data and that do so pursuant to a contract with a payment service provider, or to persons that have no activity other than to provide payment service providers with messaging or other support systems for transmitting funds or with clearing and settlement systems.

This Regulation shall not apply to transfers of funds:

- (a) that involve the payer withdrawing cash from the payer's own payment account;
- (b) that transfer funds to a public authority as payment for taxes, fines or other levies within a Member State;
- (c) where both the payer and the payee are payment service providers acting on their own behalf;
- (d) that are carried out through cheque images exchanges, including truncated cheques.

5. A Member State may decide not to apply this Regulation to transfers of funds within its territory to a payee's payment account permitting payment exclusively for the provision of goods or services where all of the following conditions are met:

- (a) the payment service provider of the payee is subject to Directive (EU) 2015/849;
- (b) the payment service provider of the payee is able to trace back, through the payee, by means of a unique transaction identifier, the transfer of funds from the person who has an agreement with the payee for the provision of goods or services;
- (c) the amount of the transfer of funds does not exceed EUR 1 000.

### Article 3

#### Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'terrorist financing' means terrorist financing as defined in Article 1(5) of Directive (EU) 2015/849;
- (2) 'money laundering' means the money laundering activities referred to in Article 1(3) and (4) of Directive (EU) 2015/849;
- (3) 'payer' means a person that holds a payment account and allows a transfer of funds from that payment account, or, where there is no payment account, that gives a transfer of funds order;
- (4) 'payee' means a person that is the intended recipient of the transfer of funds;
- (5) 'payment service provider' means the categories of payment service provider referred to in Article 1(1) of Directive 2007/64/EC, natural or legal persons benefiting from a waiver pursuant to Article 26 thereof and legal persons benefiting from a waiver pursuant to Article 9 of Directive 2009/110/EC of the European Parliament and of the Council <sup>(1)</sup>, providing transfer of funds services;
- (6) 'intermediary payment service provider' means a payment service provider that is not the payment service provider of the payer or of the payee and that receives and transmits a transfer of funds on behalf of the payment service provider of the payer or of the payee or of another intermediary payment service provider;
- (7) 'payment account' means a payment account as defined in point (14) of Article 4 of Directive 2007/64/EC;
- (8) 'funds' means funds as defined in point (15) of Article 4 of Directive 2007/64/EC;

<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).

- (9) 'transfer of funds' means any transaction at least partially carried out by electronic means on behalf of a payer through a payment service provider, with a view to making funds available to a payee through a payment service provider, irrespective of whether the payer and the payee are the same person and irrespective of whether the payment service provider of the payer and that of the payee are one and the same, including:
- (a) a credit transfer as defined in point (1) of Article 2 of Regulation (EU) No 260/2012;
  - (b) a direct debit as defined in point (2) of Article 2 of Regulation (EU) No 260/2012;
  - (c) a money remittance as defined in point (13) of Article 4 of Directive 2007/64/EC, whether national or cross border;
  - (d) a transfer carried out using a payment card, an electronic money instrument, or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics;
- (10) 'batch file transfer' means a bundle of several individual transfers of funds put together for transmission;
- (11) 'unique transaction identifier' means a combination of letters, numbers or symbols determined by the payment service provider, in accordance with the protocols of the payment and settlement systems or messaging systems used for the transfer of funds, which permits the traceability of the transaction back to the payer and the payee;
- (12) 'person-to-person transfer of funds' means a transaction between natural persons acting, as consumers, for purposes other than trade, business or profession.

## CHAPTER II

### OBLIGATIONS ON PAYMENT SERVICE PROVIDERS

#### SECTION 1

#### *Obligations on the payment service provider of the payer*

##### Article 4

#### **Information accompanying transfers of funds**

1. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payer:
  - (a) the name of the payer;
  - (b) the payer's payment account number; and
  - (c) the payer's address, official personal document number, customer identification number or date and place of birth.
2. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee:
  - (a) the name of the payee; and
  - (b) the payee's payment account number.
3. By way of derogation from point (b) of paragraph 1 and point (b) of paragraph 2, in the case of a transfer not made from or to a payment account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier rather than the payment account number(s).
4. Before transferring funds, the payment service provider of the payer shall verify the accuracy of the information referred to in paragraph 1 on the basis of documents, data or information obtained from a reliable and independent source.
5. Verification as referred to in paragraph 4 shall be deemed to have taken place where:
  - (a) a payer's identity has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or
  - (b) Article 14(5) of Directive (EU) 2015/849 applies to the payer.

6. Without prejudice to the derogations provided for in Articles 5 and 6, the payment service provider of the payer shall not execute any transfer of funds before ensuring full compliance with this Article.

#### Article 5

##### Transfers of funds within the Union

1. By way of derogation from Article 4(1) and (2), where all payment service providers involved in the payment chain are established in the Union, transfers of funds shall be accompanied by at least the payment account number of both the payer and the payee or, where Article 4(3) applies, the unique transaction identifier, without prejudice to the information requirements laid down in Regulation (EU) No 260/2012, where applicable.

2. Notwithstanding paragraph 1, the payment service provider of the payer shall, within three working days of receiving a request for information from the payment service provider of the payee or from the intermediary payment service provider, make available the following:

- (a) for transfers of funds exceeding EUR 1 000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, the information on the payer or the payee in accordance with Article 4;
- (b) for transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, at least:
  - (i) the names of the payer and of the payee; and
  - (ii) the payment account numbers of the payer and of the payee or, where Article 4(3) applies, the unique transaction identifier.

3. By way of derogation from Article 4(4), in the case of transfers of funds referred to in paragraph 2(b) of this Article, the payment service provider of the payer need not verify the information on the payer unless the payment service provider of the payer:

- (a) has received the funds to be transferred in cash or in anonymous electronic money; or
- (b) has reasonable grounds for suspecting money laundering or terrorist financing.

#### Article 6

##### Transfers of funds to outside the Union

1. In the case of a batch file transfer from a single payer where the payment service providers of the payees are established outside the Union, Article 4(1) shall not apply to the individual transfers bundled together therein, provided that the batch file contains the information referred to in Article 4(1), (2) and (3), that that information has been verified in accordance with Article 4(4) and (5), and that the individual transfers carry the payment account number of the payer or, where Article 4(3) applies, the unique transaction identifier.

2. By way of derogation from Article 4(1), and, where applicable, without prejudice to the information required in accordance with Regulation (EU) No 260/2012, where the payment service provider of the payee is established outside the Union, transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, shall be accompanied by at least:

- (a) the names of the payer and of the payee; and
- (b) the payment account numbers of the payer and of the payee or, where Article 4(3) applies, the unique transaction identifier.

By way of derogation from Article 4(4), the payment service provider of the payer need not verify the information on the payer referred to in this paragraph unless the payment service provider of the payer:

- (a) has received the funds to be transferred in cash or in anonymous electronic money; or
- (b) has reasonable grounds for suspecting money laundering or terrorist financing.

## SECTION 2

**Obligations on the payment service provider of the payee**

## Article 7

**Detection of missing information on the payer or the payee**

1. The payment service provider of the payee shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.
2. The payment service provider of the payee shall implement effective procedures, including, where appropriate, *ex-post* monitoring or real-time monitoring, in order to detect whether the following information on the payer or the payee is missing:
  - (a) for transfers of funds where the payment service provider of the payer is established in the Union, the information referred to in Article 5;
  - (b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1) and (2);
  - (c) for batch file transfers where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1) and (2) in respect of that batch file transfer.
3. In the case of transfers of funds exceeding EUR 1 000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, before crediting the payee's payment account or making the funds available to the payee, the payment service provider of the payee shall verify the accuracy of the information on the payee referred to in paragraph 2 of this Article on the basis of documents, data or information obtained from a reliable and independent source, without prejudice to the requirements laid down in Articles 69 and 70 of Directive 2007/64/EC.
4. In the case of transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, the payment service provider of the payee need not verify the accuracy of the information on the payee, unless the payment service provider of the payee:
  - (a) effects the pay-out of the funds in cash or in anonymous electronic money; or
  - (b) has reasonable grounds for suspecting money laundering or terrorist financing.
5. Verification as referred to in paragraphs 3 and 4 shall be deemed to have taken place where:
  - (a) a payee's identity has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or
  - (b) Article 14(5) of Directive (EU) 2015/849 applies to the payee.

## Article 8

**Transfers of funds with missing or incomplete information on the payer or the payee**

1. The payment service provider of the payee shall implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849, for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action.

Where the payment service provider of the payee becomes aware, when receiving transfers of funds, that the information referred to in Article 4(1) or (2), Article 5(1) or Article 6 is missing or incomplete or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1), the payment service provider of the payee shall reject the transfer or ask for the required information on the payer and the payee before or after crediting the payee's payment account or making the funds available to the payee, on a risk-sensitive basis.

2. Where a payment service provider repeatedly fails to provide the required information on the payer or the payee, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider, or restricting or terminating its business relationship with that payment service provider.

The payment service provider of the payee shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.

#### Article 9

### Assessment and reporting

The payment service provider of the payee shall take into account missing or incomplete information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the Financial Intelligence Unit (FIU) in accordance with Directive (EU) 2015/849.

#### SECTION 3

### Obligations on intermediary payment service providers

#### Article 10

### Retention of information on the payer and the payee with the transfer

Intermediary payment service providers shall ensure that all the information received on the payer and the payee that accompanies a transfer of funds is retained with the transfer.

#### Article 11

### Detection of missing information on the payer or the payee

1. The intermediary payment service provider shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.

2. The intermediary payment service provider shall implement effective procedures, including, where appropriate, *ex-post* monitoring or real-time monitoring, in order to detect whether the following information on the payer or the payee is missing:

- (a) for transfers of funds where the payment service providers of the payer and the payee are established in the Union, the information referred to in Article 5;
- (b) for transfers of funds where the payment service provider of the payer or of the payee is established outside the Union, the information referred to in Article 4(1) and (2);
- (c) for batch file transfers where the payment service provider of the payer or of the payee is established outside the Union, the information referred to in Article 4(1) and (2) in respect of that batch file transfer.

#### Article 12

### Transfers of funds with missing information on the payer or the payee

1. The intermediary payment service provider shall establish effective risk-based procedures for determining whether to execute, reject or suspend a transfer of funds lacking the required payer and payee information and for taking the appropriate follow up action.

Where the intermediary payment service provider becomes aware, when receiving transfers of funds, that the information referred to in Article 4(1) or (2), Article 5(1) or Article 6 is missing or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1) it shall reject the transfer or ask for the required information on the payer and the payee before or after the transmission of the transfer of funds, on a risk-sensitive basis.

2. Where a payment service provider repeatedly fails to provide the required information on the payer or the payee, the intermediary payment service provider shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider, or restricting or terminating its business relationship with that payment service provider.

The intermediary payment service provider shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.

### *Article 13*

#### **Assessment and reporting**

The intermediary payment service provider shall take into account missing information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious, and whether it is to be reported to the FIU in accordance with Directive (EU) 2015/849.

### CHAPTER III

#### **INFORMATION, DATA PROTECTION AND RECORD-RETENTION**

### *Article 14*

#### **Provision of information**

Payment service providers shall respond fully and without delay, including by means of a central contact point in accordance with Article 45(9) of Directive (EU) 2015/849, where such a contact point has been appointed, and in accordance with the procedural requirements laid down in the national law of the Member State in which they are established, to enquiries exclusively from the authorities responsible for preventing and combating money laundering or terrorist financing of that Member State concerning the information required under this Regulation.

### *Article 15*

#### **Data protection**

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

2. Personal data shall be processed by payment service providers on the basis of this Regulation only for the purposes of the prevention of money laundering and terrorist financing and shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for commercial purposes shall be prohibited.

3. Payment service providers shall provide new clients with the information required pursuant to Article 10 of Directive 95/46/EC before establishing a business relationship or carrying out an occasional transaction. That information shall, in particular, include a general notice concerning the legal obligations of payment service providers under this Regulation when processing personal data for the purposes of the prevention of money laundering and terrorist financing.

4. Payment service providers shall ensure that the confidentiality of the data processed is respected.

*Article 16***Record retention**

1. Information on the payer and the payee shall not be retained for longer than strictly necessary. Payment service providers of the payer and of the payee shall retain records of the information referred to in Articles 4 to 7 for a period of five years.
2. Upon expiry of the retention period referred to in paragraph 1, payment service providers shall ensure that the personal data is deleted, unless otherwise provided for by national law, which shall determine under which circumstances payment service providers may or shall further retain the data. Member States may allow or require further retention only after they have carried out a thorough assessment of the necessity and proportionality of such further retention, and where they consider it to be justified as necessary for the prevention, detection or investigation of money laundering or terrorist financing. That further retention period shall not exceed five years.
3. Where, on 25 June 2015, legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing are pending in a Member State, and a payment service provider holds information or documents relating to those pending proceedings, the payment service provider may retain that information or those documents in accordance with national law for a period of five years from 25 June 2015. Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of five years where the necessity and proportionality of such further retention has been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.

## CHAPTER IV

**SANCTIONS AND MONITORING***Article 17***Administrative sanctions and measures**

1. Without prejudice to the right to provide for and impose criminal sanctions, Member States shall lay down the rules on administrative sanctions and measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions and measures provided for shall be effective, proportionate and dissuasive and shall be consistent with those laid down in accordance with Chapter VI, Section 4, of Directive (EU) 2015/849.

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

2. Member States shall ensure that where obligations apply to payment services providers, in the event of a breach of provisions of this Regulation, sanctions or measures can, subject to national law, be applied to the members of the management body and to any other natural person who, under national law, is responsible for the breach.
3. By 26 June 2017, Member States shall notify the rules referred to in paragraph 1 to the Commission and to the Joint Committee of the ESAs. They shall notify the Commission and the Joint Committee of the ESAs without delay of any subsequent amendments thereto.
4. In accordance with Article 58(4) of Directive (EU) 2015/849, competent authorities shall have all the supervisory and investigatory powers that are necessary for the exercise of their functions. In the exercise of their powers to impose administrative sanctions and measures, competent authorities shall cooperate closely to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases.



5. Member States shall ensure that legal persons can be held liable for the breaches referred to in Article 18 committed for their benefit by any person acting individually or as part of an organ of that legal person, and having a leading position within the legal person based on any of the following:

- (a) power to represent the legal person;
- (b) authority to take decisions on behalf of the legal person; or
- (c) authority to exercise control within the legal person.

6. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 5 of this Article has made it possible to commit one of the breaches referred to in Article 18 for the benefit of that legal person by a person under its authority.

7. Competent authorities shall exercise their powers to impose administrative sanctions and measures in accordance with this Regulation in any of the following ways:

- (a) directly;
- (b) in collaboration with other authorities;
- (c) under their responsibility by delegation to such other authorities;
- (d) by application to the competent judicial authorities.

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

#### *Article 18*

#### **Specific provisions**

Member States shall ensure that their administrative sanctions and measures include at least those laid down by Article 59(2) and (3) of Directive (EU) 2015/849 in the event of the following breaches of this Regulation:

- (a) repeated or systematic failure by a payment service provider to include the required information on the payer or the payee, in breach of Article 4, 5 or 6;
- (b) repeated, systematic or serious failure by a payment service provider to retain records, in breach of Article 16;
- (c) failure by a payment service provider to implement effective risk-based procedures, in breach of Articles 8 or 12;
- (d) serious failure by an intermediary payment service provider to comply with Article 11 or 12.

#### *Article 19*

#### **Publication of sanctions and measures**

In accordance with Article 60(1), (2) and (3) of Directive (EU) 2015/849, the competent authorities shall publish administrative sanctions and measures imposed in the cases referred to in Articles 17 and 18 of this Regulation without undue delay, including information on the type and nature of the breach and the identity of the persons responsible for it, if necessary and proportionate after a case-by-case evaluation.

#### *Article 20*

#### **Application of sanctions and measures by the competent authorities**

1. When determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including those listed in Article 60(4) of Directive (EU) 2015/849.

2. As regards administrative sanctions and measures imposed in accordance with this Regulation, Article 62 of Directive (EU) 2015/849 shall apply.

#### *Article 21*

### **Reporting of breaches**

1. Member States shall establish effective mechanisms to encourage the reporting to competent authorities of breaches of this Regulation.

Those mechanisms shall include at least those referred to in Article 61(2) of Directive (EU) 2015/849.

2. Payment service providers, in cooperation with the competent authorities, shall establish appropriate internal procedures for their employees, or persons in a comparable position, to report breaches internally through a secure, independent, specific and anonymous channel, proportionate to the nature and size of the payment service provider concerned.

#### *Article 22*

### **Monitoring**

1. Member States shall require competent authorities to monitor effectively and to take the measures necessary to ensure compliance with this Regulation and encourage, through effective mechanisms, the reporting of breaches of the provisions of this Regulation to competent authorities.

2. After Member States have notified the rules referred to in paragraph 1 of this Article to the Commission and to the Joint Committee of the ESAs in accordance with Article 17(3), the Commission shall submit a report to the European Parliament and to the Council on the application of Chapter IV, with particular regard to cross-border cases.

## CHAPTER V

### **IMPLEMENTING POWERS**

#### *Article 23*

### **Committee procedure**

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing (the 'Committee'). The 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.

## CHAPTER VI

### **DEROGATIONS**

#### *Article 24*

### **Agreements with countries and territories which do not form part of the territory of the Union**

1. The Commission may authorise any Member State to conclude an agreement with a third country or with a territory outside the territorial scope of the TEU and the TFEU as referred to in Article 355 TFEU (the 'country or territory concerned'), which contains derogations from this Regulation, in order to allow transfers of funds between that country or territory and the Member State concerned to be treated as transfers of funds within that Member State.

Such agreements may be authorised only where all of the following conditions are met:

- (a) the country or territory concerned shares a monetary union with the Member State concerned, forms part of the currency area of that Member State or has signed a monetary convention with the Union represented by a Member State;
- (b) payment service providers in the country or territory concerned participate directly or indirectly in payment and settlement systems in that Member State; and
- (c) the country or territory concerned requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation.

2. A Member State wishing to conclude an agreement as referred to in paragraph 1 shall submit a request to the Commission and provide it with all the information necessary for the appraisal of the request.

3. Upon receipt by the Commission of such a request, transfers of funds between that Member State and the country or territory concerned shall be provisionally treated as transfers of funds within that Member State until a decision is reached in accordance with this Article.

4. If, within two months of receipt of the request, the Commission considers that it does not have all the information necessary for the appraisal of the request, it shall contact the Member State concerned and specify the additional information required.

5. Within one month of receipt of all the information that it considers to be necessary for the appraisal of the request, the Commission shall notify the requesting Member State accordingly and shall transmit copies of the request to the other Member States.

6. Within three months of the notification referred to in paragraph 5 of this Article, the Commission shall decide, in accordance with Article 23(2), whether to authorise the Member State concerned to conclude the agreement that is the subject of the request.

The Commission shall, in any event, adopt a decision as referred to in the first subparagraph within 18 months of receipt of the request.

7. By 26 March 2017, Member States that have been authorised to conclude agreements with a country or territory concerned pursuant to Commission Implementing Decision 2012/43/EU <sup>(1)</sup>, Commission Decision 2010/259/EU <sup>(2)</sup>, Commission Decision 2009/853/EC <sup>(3)</sup> or Commission Decision 2008/982/EC <sup>(4)</sup> shall provide the Commission with updated information necessary for an appraisal under point (c) of the second subparagraph of paragraph 1.

Within three months of receipt of such information, the Commission shall examine the information provided to ensure that the country or territory concerned requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation. If, after such examination, the Commission considers that the condition laid down in point (c) of the second subparagraph of paragraph 1 is no longer met, it shall repeal the relevant Commission Decision or Commission Implementing Decision.

<sup>(1)</sup> Commission Implementing Decision 2012/43/EU of 25 January 2012 authorising the Kingdom of Denmark to conclude agreements with Greenland and the Faroe Islands for transfers of funds between Denmark and each of these territories to be treated as transfers of funds within Denmark, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 24, 27.1.2012, p. 12).

<sup>(2)</sup> Commission Decision 2010/259/EU of 4 May 2010 authorising the French Republic to conclude an agreement with the Principality of Monaco for transfers of funds between the French Republic and the Principality of Monaco to be treated as transfers of funds within the French Republic, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 112, 5.5.2010, p. 23).

<sup>(3)</sup> Commission Decision 2009/853/EC of 26 November 2009 authorising France to conclude an agreement with Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna respectively for transfers of funds between France and each of these territories to be treated as transfers of funds within France, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 312, 27.11.2009, p. 71).

<sup>(4)</sup> Commission Decision 2008/982/EC of 8 December 2008 authorising the United Kingdom to conclude an agreement with the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man for transfers of funds between the United Kingdom and each of these territories to be treated as transfers of funds within the United Kingdom, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 352, 31.12.2008, p. 34).

Article 25

### Guidelines

By 26 June 2017, the ESAs shall issue guidelines addressed to the competent authorities and the payment service providers in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, on measures to be taken in accordance with this Regulation, in particular as regards the implementation of Articles 7, 8, 11 and 12.

## CHAPTER VII

### FINAL PROVISIONS

Article 26

### Repeal of Regulation (EC) No 1781/2006

Regulation (EC) No 1781/2006 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

Article 27

### Entry into force

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

It shall apply from 26 June 2017.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 20 May 2015.

*For the European Parliament*  
*The President*  
M. SCHULZ

*For the Council*  
*The President*  
Z. KALNIŅA-LUKAŠEVICA

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## ANNEX

## CORRELATION TABLE

Regulation (EC) No 1781/2006	This Regulation
Article 1	Article 1
Article 2	Article 3
Article 3	Article 2
Article 4	Article 4(1)
Article 5	Article 4
Article 6	Article 5
Article 7	Article 7
Article 8	Article 7
Article 9	Article 8
Article 10	Article 9
Article 11	Article 16
Article 12	Article 10
—	Article 11
—	Article 12
—	Article 13
Article 13	—
Article 14	Article 15
Article 15	Articles 17 to 22
Article 16	Article 23
Article 17	Article 24
Article 18	—
Article 19	—
—	Article 26
Article 20	Article 27

**REGULATION (EU) 2015/848 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 20 May 2015**  
**on insolvency proceedings**  
**(recast)**

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 81 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 Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) On 12 December 2012, the Commission adopted a report on the application of Council Regulation (EC) No 1346/2000 <sup>(3)</sup>. The report concluded that the Regulation is functioning well in general but that it would be desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings. Since that Regulation has been amended several times and further amendments are to be made, it should be recast in the interest of clarity.
- (2) The Union has set the objective of establishing an area of freedom, security and justice.
- (3) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively. This Regulation needs to be adopted in order to achieve that objective, which falls within the scope of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty.
- (4) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Union law. The insolvency of such undertakings also affects the proper functioning of the internal market, and there is a need for a Union act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.
- (5) It is necessary for the proper functioning of the internal market to avoid incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors (forum shopping).
- (6) This Regulation should include provisions governing jurisdiction for opening insolvency proceedings and actions which are directly derived from insolvency proceedings and are closely linked with them. This Regulation should also contain provisions regarding the recognition and enforcement of judgments issued in such proceedings, and provisions regarding the law applicable to insolvency proceedings. In addition, this Regulation should lay down rules on the coordination of insolvency proceedings which relate to the same debtor or to several members of the same group of companies.
- (7) Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings and actions related to such proceedings are excluded from the scope of Regulation (EU) No 1215/2012 of the European Parliament and of the Council <sup>(4)</sup>. Those proceedings should be covered by this Regulation. The interpretation of this Regulation should as much as possible avoid regulatory loopholes between the two instruments. However, the mere fact that a national procedure is not listed in Annex A to this Regulation should not imply that it is covered by Regulation (EU) No 1215/2012.

<sup>(1)</sup> OJ C 271, 19.9.2013, p. 55.

<sup>(2)</sup> Position of the European Parliament of 5 February 2014 (not yet published in the Official Journal) and position of the Council at first reading of 12 March 2015 (not yet published in the Official Journal). Position of the European Parliament of 20 May 2015 (not yet published in the Official Journal).

<sup>(3)</sup> Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).

<sup>(4)</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

- (8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Union measure which is binding and directly applicable in Member States.
- (9) This Regulation should apply to insolvency proceedings which meet the conditions set out in it, irrespective of whether the debtor is a natural person or a legal person, a trader or an individual. Those insolvency proceedings are listed exhaustively in Annex A. In respect of the national procedures contained in Annex A, this Regulation should apply without any further examination by the courts of another Member State as to whether the conditions set out in this Regulation are met. National insolvency procedures not listed in Annex A should not be covered by this Regulation.
- (10) The scope of this Regulation should extend to proceedings which promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs. It should, in particular, extend to proceedings which provide for restructuring of a debtor at a stage where there is only a likelihood of insolvency, and to proceedings which leave the debtor fully or partially in control of its assets and affairs. It should also extend to proceedings providing for a debt discharge or a debt adjustment in relation to consumers and self-employed persons, for example by reducing the amount to be paid by the debtor or by extending the payment period granted to the debtor. Since such proceedings do not necessarily entail the appointment of an insolvency practitioner, they should be covered by this Regulation if they take place under the control or supervision of a court. In this context, the term 'control' should include situations where the court only intervenes on appeal by a creditor or other interested parties.
- (11) This Regulation should also apply to procedures which grant a temporary stay on enforcement actions brought by individual creditors where such actions could adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. Such procedures should not be detrimental to the general body of creditors and, if no agreement on a restructuring plan can be reached, should be preliminary to other procedures covered by this Regulation.
- (12) This Regulation should apply to proceedings the opening of which is subject to publicity in order to allow creditors to become aware of the proceedings and to lodge their claims, thereby ensuring the collective nature of the proceedings, and in order to give creditors the opportunity to challenge the jurisdiction of the court which has opened the proceedings.
- (13) Accordingly, insolvency proceedings which are confidential should be excluded from the scope of this Regulation. While such proceedings may play an important role in some Member States, their confidential nature makes it impossible for a creditor or a court located in another Member State to know that such proceedings have been opened, thereby making it difficult to provide for the recognition of their effects throughout the Union.
- (14) The collective proceedings which are covered by this Regulation should include all or a significant part of the creditors to whom a debtor owes all or a substantial proportion of the debtor's outstanding debts provided that the claims of those creditors who are not involved in such proceedings remain unaffected. Proceedings which involve only the financial creditors of a debtor should also be covered. Proceedings which do not include all the creditors of a debtor should be proceedings aimed at rescuing the debtor. Proceedings that lead to a definitive cessation of the debtor's activities or the liquidation of the debtor's assets should include all the debtor's creditors. Moreover, the fact that some insolvency proceedings for natural persons exclude specific categories of claims, such as maintenance claims, from the possibility of a debt-discharge should not mean that such proceedings are not collective.
- (15) This Regulation should also apply to proceedings that, under the law of some Member States, are opened and conducted for a certain period of time on an interim or provisional basis before a court issues an order confirming the continuation of the proceedings on a non-interim basis. Although labelled as 'interim', such proceedings should meet all other requirements of this Regulation.
- (16) This Regulation should apply to proceedings which are based on laws relating to insolvency. However, proceedings that are based on general company law not designed exclusively for insolvency situations should not be considered to be based on laws relating to insolvency. Similarly, the purpose of adjustment of debt should not include specific proceedings in which debts of a natural person of very low income and very low asset value are written off, provided that this type of proceedings never makes provision for payment to creditors.



- (17) This Regulation's scope should extend to proceedings which are triggered by situations in which the debtor faces non-financial difficulties, provided that such difficulties give rise to a real and serious threat to the debtor's actual or future ability to pay its debts as they fall due. The time frame relevant for the determination of such threat may extend to a period of several months or even longer in order to account for cases in which the debtor is faced with non-financial difficulties threatening the status of its business as a going concern and, in the medium term, its liquidity. This may be the case, for example, where the debtor has lost a contract which is of key importance to it.
- (18) This Regulation should be without prejudice to the rules on the recovery of State aid from insolvent companies as interpreted by the case-law of the Court of Justice of the European Union.
- (19) Insolvency proceedings concerning insurance undertakings, credit institutions, investment firms and other firms, institutions or undertakings covered by Directive 2001/24/EC of the European Parliament and of the Council <sup>(1)</sup> and collective investment undertakings should be excluded from the scope of this Regulation, as they are all subject to special arrangements and the national supervisory authorities have wide-ranging powers of intervention.
- (20) Insolvency proceedings do not necessarily involve the intervention of a judicial authority. Therefore, the term 'court' in this Regulation should, in certain provisions, be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened.
- (21) Insolvency practitioners are defined in this Regulation and listed in Annex B. Insolvency practitioners who are appointed without the involvement of a judicial body should, under national law, be appropriately regulated and authorised to act in insolvency proceedings. The national regulatory framework should provide for proper arrangements to deal with potential conflicts of interest.
- (22) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope throughout the Union. The application without exception of the law of the State of the opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing national laws on security interests to be found in the Member States. Furthermore, the preferential rights enjoyed by some creditors in insolvency proceedings are, in some cases, completely different. At the next review of this Regulation, it will be necessary to identify further measures in order to improve the preferential rights of employees at European level. This Regulation should take account of such differing national laws in two different ways. On the one hand, provision should be made for special rules on the applicable law in the case of particularly significant rights and legal relationships (e.g. rights *in rem* and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of the opening of proceedings should also be allowed alongside main insolvency proceedings with universal scope.
- (23) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings. Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary insolvency proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main insolvency proceedings satisfy the need for unity in the Union.
- (24) Where main insolvency proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office, it should be possible to open secondary insolvency proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State, in accordance with the case-law of the Court of Justice of the European Union.
- (25) This Regulation applies only to proceedings in respect of a debtor whose centre of main interests is located in the Union.

<sup>(1)</sup> Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions (OJ L 125, 5.5.2001, p. 15).

- (26) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State should be established by the national law of the Member State concerned.
- (27) Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction.
- (28) When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests. This may require, in the event of a shift of centre of main interests, informing creditors of the new location from which the debtor is carrying out its activities in due course, for example by drawing attention to the change of address in commercial correspondence, or by making the new location public through other appropriate means.
- (29) This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.
- (30) Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests should be rebuttable, and the relevant court of a Member State should carefully assess whether the centre of the debtor's main interests is genuinely located in that Member State. In the case of a company, it should be possible to rebut this presumption where the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State. In the case of an individual not exercising an independent business or professional activity, it should be possible to rebut this presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence, or where it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction and where such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.
- (31) With the same objective of preventing fraudulent or abusive forum shopping, the presumption that the centre of main interests is at the place of the registered office, at the individual's principal place of business or at the individual's habitual residence should not apply where, respectively, in the case of a company, legal person or individual exercising an independent business or professional activity, the debtor has relocated its registered office or principal place of business to another Member State within the 3-month period prior to the request for opening insolvency proceedings, or, in the case of an individual not exercising an independent business or professional activity, the debtor has relocated his habitual residence to another Member State within the 6-month period prior to the request for opening insolvency proceedings.
- (32) In all cases, where the circumstances of the matter give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support its assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.
- (33) In the event that the court seised of the request to open insolvency proceedings finds that the centre of main interests is not located on its territory, it should not open main insolvency proceedings.
- (34) In addition, any creditor of the debtor should have an effective remedy against the decision to open insolvency proceedings. The consequences of any challenge to the decision to open insolvency proceedings should be governed by national law.
- (35) The courts of the Member State within the territory of which insolvency proceedings have been opened should also have jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them. Such actions should include avoidance actions against defendants in other Member States and actions concerning obligations that arise in the course of the insolvency proceedings, such as advance payment for costs of the proceedings. In contrast, actions for the performance of the obligations under a contract concluded by the debtor prior to the opening of proceedings do not derive directly from the proceedings. Where such an action is related to another action based on general civil and commercial law, the insolvency practitioner should be able to

bring both actions in the courts of the defendant's domicile if he considers it more efficient to bring the action in that forum. This could, for example, be the case where the insolvency practitioner wishes to combine an action for director's liability on the basis of insolvency law with an action based on company law or general tort law.

- (36) The court having jurisdiction to open the main insolvency proceedings should be able to order provisional and protective measures as from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are important to guarantee the effectiveness of the insolvency proceedings. In that connection, this Regulation should provide for various possibilities. On the one hand, the court competent for the main insolvency proceedings should also be able to order provisional and protective measures covering assets situated in the territory of other Member States. On the other hand, an insolvency practitioner temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those Member States.
- (37) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and public authorities, or to cases in which main insolvency proceedings cannot be opened under the law of the Member State where the debtor has the centre of its main interests. The reason for this restriction is that cases in which territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary.
- (38) Following the opening of the main insolvency proceedings, this Regulation does not restrict the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment. The insolvency practitioner in the main insolvency proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.
- (39) This Regulation should provide for rules to determine the location of the debtor's assets, which should apply when determining which assets belong to the main or secondary insolvency proceedings, or to situations involving third parties' rights *in rem*. In particular, this Regulation should provide that European patents with unitary effect, a Community trade mark or any other similar rights, such as Community plant variety rights or Community designs, should only be included in the main insolvency proceedings.
- (40) Secondary insolvency proceedings can serve different purposes, besides the protection of local interests. Cases may arise in which the insolvency estate of the debtor is too complex to administer as a unit, or the differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening of proceedings to the other Member States where the assets are located. For that reason, the insolvency practitioner in the main insolvency proceedings may request the opening of secondary insolvency proceedings where the efficient administration of the insolvency estate so requires.
- (41) Secondary insolvency proceedings may also hamper the efficient administration of the insolvency estate. Therefore, this Regulation sets out two specific situations in which the court seised of a request to open secondary insolvency proceedings should be able, at the request of the insolvency practitioner in the main insolvency proceedings, to postpone or refuse the opening of such proceedings.
- (42) First, this Regulation confers on the insolvency practitioner in main insolvency proceedings the possibility of giving an undertaking to local creditors that they will be treated as if secondary insolvency proceedings had been opened. That undertaking has to meet a number of conditions set out in this Regulation, in particular that it be approved by a qualified majority of local creditors. Where such an undertaking has been given, the court seised of a request to open secondary insolvency proceedings should be able to refuse that request if it is satisfied that the undertaking adequately protects the general interests of local creditors. When assessing those interests, the court should take into account the fact that the undertaking has been approved by a qualified majority of local creditors.
- (43) For the purposes of giving an undertaking to local creditors, the assets and rights located in the Member State where the debtor has an establishment should form a sub-category of the insolvency estate, and, when distributing them or the proceeds resulting from their realisation, the insolvency practitioner in the main insolvency proceedings should respect the priority rights that creditors would have had if secondary insolvency proceedings had been opened in that Member State.

- (44) National law should be applicable, as appropriate, in relation to the approval of an undertaking. In particular, where under national law the voting rules for adopting a restructuring plan require the prior approval of creditors' claims, those claims should be deemed to be approved for the purpose of voting on the undertaking. Where there are different procedures for the adoption of restructuring plans under national law, Member States should designate the specific procedure which should be relevant in this context.
- (45) Second, this Regulation should provide for the possibility that the court temporarily stays the opening of secondary insolvency proceedings, when a temporary stay of individual enforcement proceedings has been granted in the main insolvency proceedings, in order to preserve the efficiency of the stay granted in the main insolvency proceedings. The court should be able to grant the temporary stay if it is satisfied that suitable measures are in place to protect the general interest of local creditors. In such a case, all creditors that could be affected by the outcome of the negotiations on a restructuring plan should be informed of the negotiations and be allowed to participate in them.
- (46) In order to ensure effective protection of local interests, the insolvency practitioner in the main insolvency proceedings should not be able to realise or re-locate, in an abusive manner, assets situated in the Member State where an establishment is located, in particular, with the purpose of frustrating the possibility that such interests can be effectively satisfied if secondary insolvency proceedings are opened subsequently.
- (47) This Regulation should not prevent the courts of a Member State in which secondary insolvency proceedings have been opened from sanctioning a debtor's directors for violation of their duties, provided that those courts have jurisdiction to address such disputes under their national law.
- (48) Main insolvency proceedings and secondary insolvency proceedings can contribute to the efficient administration of the debtor's insolvency estate or to the effective realisation of the total assets if there is proper cooperation between the actors involved in all the concurrent proceedings. Proper cooperation implies the various insolvency practitioners and the courts involved cooperating closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the insolvency practitioner in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. In particular, the insolvency practitioner should be able to propose a restructuring plan or composition or apply for a suspension of the realisation of the assets in the secondary insolvency proceedings. When cooperating, insolvency practitioners and courts should take into account best practices for cooperation in cross-border insolvency cases, as set out in principles and guidelines on communication and cooperation adopted by European and international organisations active in the area of insolvency law, and in particular the relevant guidelines prepared by the United Nations Commission on International Trade Law (Uncitral).
- (49) In light of such cooperation, insolvency practitioners and courts should be able to enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies, where this is compatible with the rules applicable to each of the proceedings. Such agreements and protocols may vary in form, in that they may be written or oral, and in scope, in that they may range from generic to specific, and may be entered into by different parties. Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements may establish a framework of principles to govern multiple insolvency proceedings and may be approved by the courts involved, where the national law so requires. They may reflect an agreement between the parties to take, or to refrain from taking, certain steps or actions.
- (50) Similarly, the courts of different Member States may cooperate by coordinating the appointment of insolvency practitioners. In that context, they may appoint a single insolvency practitioner for several insolvency proceedings concerning the same debtor or for different members of a group of companies, provided that this is compatible with the rules applicable to each of the proceedings, in particular with any requirements concerning the qualification and licensing of the insolvency practitioner.
- (51) This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies.

- (52) Where insolvency proceedings have been opened for several companies of the same group, there should be proper cooperation between the actors involved in those proceedings. The various insolvency practitioners and the courts involved should therefore be under a similar obligation to cooperate and communicate with each other as those involved in main and secondary insolvency proceedings relating to the same debtor. Cooperation between the insolvency practitioners should not run counter to the interests of the creditors in each of the proceedings, and such cooperation should be aimed at finding a solution that would leverage synergies across the group.
- (53) The introduction of rules on the insolvency proceedings of groups of companies should not limit the possibility for a court to open insolvency proceedings for several companies belonging to the same group in a single jurisdiction if the court finds that the centre of main interests of those companies is located in a single Member State. In such cases, the court should also be able to appoint, if appropriate, the same insolvency practitioner in all proceedings concerned, provided that this is not incompatible with the rules applicable to them.
- (54) With a view to further improving the coordination of the insolvency proceedings of members of a group of companies, and to allow for a coordinated restructuring of the group, this Regulation should introduce procedural rules on the coordination of the insolvency proceedings of members of a group of companies. Such coordination should strive to ensure the efficiency of the coordination, whilst at the same time respecting each group member's separate legal personality.
- (55) An insolvency practitioner appointed in insolvency proceedings opened in relation to a member of a group of companies should be able to request the opening of group coordination proceedings. However, where the law applicable to the insolvency so requires, that insolvency practitioner should obtain the necessary authorisation before making such a request. The request should specify the essential elements of the coordination, in particular an outline of the coordination plan, a proposal as to whom should be appointed as coordinator and an outline of the estimated costs of the coordination.
- (56) In order to ensure the voluntary nature of group coordination proceedings, the insolvency practitioners involved should be able to object to their participation in the proceedings within a specified time period. In order to allow the insolvency practitioners involved to take an informed decision on participation in the group coordination proceedings, they should be informed at an early stage of the essential elements of the coordination. However, any insolvency practitioner who initially objects to inclusion in the group coordination proceedings should be able to subsequently request to participate in them. In such a case, the coordinator should take a decision on the admissibility of the request. All insolvency practitioners, including the requesting insolvency practitioner, should be informed of the coordinator's decision and should have the opportunity of challenging that decision before the court which has opened the group coordination proceedings.
- (57) Group coordination proceedings should always strive to facilitate the effective administration of the insolvency proceedings of the group members, and to have a generally positive impact for the creditors. This Regulation should therefore ensure that the court with which a request for group coordination proceedings has been filed makes an assessment of those criteria prior to opening group coordination proceedings.
- (58) The advantages of group coordination proceedings should not be outweighed by the costs of those proceedings. Therefore, it is necessary to ensure that the costs of the coordination, and the share of those costs that each group member will bear, are adequate, proportionate and reasonable, and are determined in accordance with the national law of the Member State in which group coordination proceedings have been opened. The insolvency practitioners involved should also have the possibility of controlling those costs from an early stage of the proceedings. Where the national law so requires, controlling costs from an early stage of proceedings could involve the insolvency practitioner seeking the approval of a court or creditors' committee.
- (59) Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in costs compared to the initially estimated costs and, in any case, where the costs exceed 10 % of the estimated costs, the coordinator should be authorised by the court which has opened the group coordination proceedings to exceed such costs. Before taking its decision, the court which has opened the group coordination proceedings should give the possibility to the participating insolvency practitioners to be heard before it in order to allow them to communicate their observations on the appropriateness of the coordinator's request.

- (60) For members of a group of companies which are not participating in group coordination proceedings, this Regulation should also provide for an alternative mechanism to achieve a coordinated restructuring of the group. An insolvency practitioner appointed in proceedings relating to a member of a group of companies should have standing to request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to other members of the group which are not subject to group coordination proceedings. It should only be possible to request such a stay if a restructuring plan is presented for the members of the group concerned, if the plan is to the benefit of the creditors in the proceedings in respect of which the stay is requested, and if the stay is necessary to ensure that the plan can be properly implemented.
- (61) This Regulation should not prevent Member States from establishing national rules which would supplement the rules on cooperation, communication and coordination with regard to the insolvency of members of groups of companies set out in this Regulation, provided that the scope of application of those national rules is limited to the national jurisdiction and that their application would not impair the efficiency of the rules laid down by this Regulation.
- (62) The rules on cooperation, communication and coordination in the framework of the insolvency of members of a group of companies provided for in this Regulation should only apply to the extent that proceedings relating to different members of the same group of companies have been opened in more than one Member State.
- (63) Any creditor which has its habitual residence, domicile or registered office in the Union should have the right to lodge its claims in each of the insolvency proceedings pending in the Union relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. This Regulation should not prevent the insolvency practitioner from lodging claims on behalf of certain groups of creditors, for example employees, where the national law so provides. However, in order to ensure the equal treatment of creditors, the distribution of proceeds should be coordinated. Every creditor should be able to keep what it has received in the course of insolvency proceedings, but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.
- (64) It is essential that creditors which have their habitual residence, domicile or registered office in the Union be informed about the opening of insolvency proceedings relating to their debtor's assets. In order to ensure a swift transmission of information to creditors, Regulation (EC) No 1393/2007 of the European Parliament and of the Council <sup>(1)</sup> should not apply where this Regulation refers to the obligation to inform creditors. The use of standard forms available in all official languages of the institutions of the Union should facilitate the task of creditors when lodging claims in proceedings opened in another Member State. The consequences of the incomplete filing of the standard forms should be a matter for national law.
- (65) This Regulation should provide for the immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which fall within its scope, and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States. The recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise that court's decision.
- (66) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main insolvency proceedings and for local proceedings. The *lex concursus* determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.
- (67) Automatic recognition of insolvency proceedings to which the law of the State of the opening of proceedings normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provision should be made for a number of exceptions to the general rule.

<sup>(1)</sup> Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

- (68) There is a particular need for a special reference diverging from the law of the opening State in the case of rights *in rem*, since such rights are of considerable importance for the granting of credit. The basis, validity and extent of rights *in rem* should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings. The proprietor of a right *in rem* should therefore be able to continue to assert its right to segregation or separate settlement of the collateral security. Where assets are subject to rights *in rem* under the *lex situs* in one Member State but the main insolvency proceedings are being carried out in another Member State, the insolvency practitioner in the main insolvency proceedings should be able to request the opening of secondary insolvency proceedings in the jurisdiction where the rights *in rem* arise if the debtor has an establishment there. If secondary insolvency proceedings are not opened, any surplus on the sale of an asset covered by rights *in rem* should be paid to the insolvency practitioner in the main insolvency proceedings.
- (69) This Regulation lays down several provisions for a court to order a stay of opening proceedings or a stay of enforcement proceedings. Any such stay should not affect the rights *in rem* of creditors or third parties.
- (70) If a set-off of claims is not permitted under the law of the State of the opening of proceedings, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off would acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.
- (71) There is also a need for special protection in the case of payment systems and financial markets, for example in relation to the position-closing agreements and netting agreements to be found in such systems, as well as the sale of securities and the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council <sup>(1)</sup>. For such transactions, the only law which is relevant should be that applicable to the system or market concerned. That law is intended to prevent the possibility of mechanisms for the payment and settlement of transactions, and provided for in payment and set-off systems or on the regulated financial markets of the Member States, being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules laid down in this Regulation.
- (72) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment should be determined by the law applicable to the relevant employment agreement, in accordance with the general rules on conflict of laws. Moreover, in cases where the termination of employment contracts requires approval by a court or administrative authority, the Member State in which an establishment of the debtor is located should retain jurisdiction to grant such approval even if no insolvency proceedings have been opened in that Member State. Any other questions relating to the law of insolvency, such as whether the employees' claims are protected by preferential rights and the status such preferential rights may have, should be determined by the law of the Member State in which the insolvency proceedings (main or secondary) have been opened, except in cases where an undertaking to avoid secondary insolvency proceedings has been given in accordance with this Regulation.
- (73) The law applicable to the effects of insolvency proceedings on any pending lawsuit or pending arbitral proceedings concerning an asset or right which forms part of the debtor's insolvency estate should be the law of the Member State where the lawsuit is pending or where the arbitration has its seat. However, this rule should not affect national rules on recognition and enforcement of arbitral awards.
- (74) In order to take account of the specific procedural rules of court systems in certain Member States flexibility should be provided with regard to certain rules of this Regulation. Accordingly, references in this Regulation to notice being given by a judicial body of a Member State should include, where a Member State's procedural rules so require, an order by that judicial body directing that notice be given.
- (75) For business considerations, the main content of the decision opening the proceedings should be published, at the request of the insolvency practitioner, in a Member State other than that of the court which delivered that decision. If there is an establishment in the Member State concerned, such publication should be mandatory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.

<sup>(1)</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).



- (76) In order to improve the provision of information to relevant creditors and courts and to prevent the opening of parallel insolvency proceedings, Member States should be required to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register. In order to facilitate access to that information for creditors and courts domiciled or located in other Member States, this Regulation should provide for the interconnection of such insolvency registers via the European e-Justice Portal. Member States should be free to publish relevant information in several registers and it should be possible to interconnect more than one register per Member State.
- (77) This Regulation should determine the minimum amount of information to be published in the insolvency registers. Member States should not be precluded from including additional information. Where the debtor is an individual, the insolvency registers should only have to indicate a registration number if the debtor is exercising an independent business or professional activity. That registration number should be understood to be the unique registration number of the debtor's independent business or professional activity published in the trade register, if any.
- (78) Information on certain aspects of insolvency proceedings is essential for creditors, such as time limits for lodging claims or for challenging decisions. This Regulation should, however, not require Member States to calculate those time-limits on a case-by-case basis. Member States should be able to fulfil their obligations by adding hyperlinks to the European e-Justice Portal, where self-explanatory information on the criteria for calculating those time-limits is to be provided.
- (79) In order to grant sufficient protection to information relating to individuals not exercising an independent business or professional activity, Member States should be able to make access to that information subject to supplementary search criteria such as the debtor's personal identification number, address, date of birth or the district of the competent court, or to make access conditional upon a request to a competent authority or upon the verification of a legitimate interest.
- (80) Member States should also be able not to include in their insolvency registers information on individuals not exercising an independent business or professional activity. In such cases, Member States should ensure that the relevant information is given to the creditors by individual notice, and that claims of creditors who have not received the information are not affected by the proceedings.
- (81) It may be the case that some of the persons concerned are not aware that insolvency proceedings have been opened, and act in good faith in a way that conflicts with the new circumstances. In order to protect such persons who, unaware that foreign proceedings have been opened, make a payment to the debtor instead of to the foreign insolvency practitioner, provision should be made for such a payment to have a debt-discharging effect.
- (82) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(1)</sup>.
- (83) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 8, 17 and 47 concerning, respectively, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.
- (84) Directive 95/46/EC of the European Parliament and of the Council <sup>(2)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(3)</sup> apply to the processing of personal data within the framework of this Regulation.
- (85) This Regulation is without prejudice to Regulation (EEC, Euratom) No 1182/71 of the Council <sup>(4)</sup>.

<sup>(1)</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>(2)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>(3)</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>(4)</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

- (86) Since the objective of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the creation of a legal framework for the proper administration of cross-border insolvency proceedings, 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 Regulation does not go beyond what is necessary in order to achieve that objective.
- (87) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.
- (88) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (89) The European Data Protection Supervisor was consulted and delivered an opinion on 27 March 2013 <sup>(1)</sup>,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

#### GENERAL PROVISIONS

##### *Article 1*

##### **Scope**

1. This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:

- (a) a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;
- (b) the assets and affairs of a debtor are subject to control or supervision by a court; or
- (c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).

Where the proceedings referred to in this paragraph may be commenced in situations where there is only a likelihood of insolvency, their purpose shall be to avoid the debtor's insolvency or the cessation of the debtor's business activities.

The proceedings referred to in this paragraph are listed in Annex A.

2. This Regulation shall not apply to proceedings referred to in paragraph 1 that concern:

- (a) insurance undertakings;
- (b) credit institutions;
- (c) investment firms and other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC; or
- (d) collective investment undertakings.

##### *Article 2*

##### **Definitions**

For the purposes of this Regulation:

- (1) 'collective proceedings' means proceedings which include all or a significant part of a debtor's creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them;

<sup>(1)</sup> OJ C 358, 7.12.2013, p. 15.

- (2) 'collective investment undertakings' means undertakings for collective investment in transferable securities (UCITS) as defined in Directive 2009/65/EC of the European Parliament and of the Council <sup>(1)</sup> and alternative investment funds (AIFs) as defined in Directive 2011/61/EU of the European Parliament and of the Council <sup>(2)</sup>;
- (3) 'debtor in possession' means a debtor in respect of which insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor's assets to an insolvency practitioner and where, therefore, the debtor remains totally or at least partially in control of its assets and affairs;
- (4) 'insolvency proceedings' means the proceedings listed in Annex A;
- (5) 'insolvency practitioner' means any person or body whose function, including on an interim basis, is to:
- (i) verify and admit claims submitted in insolvency proceedings;
  - (ii) represent the collective interest of the creditors;
  - (iii) administer, either in full or in part, assets of which the debtor has been divested;
  - (iv) liquidate the assets referred to in point (iii); or
  - (v) supervise the administration of the debtor's affairs.
- The persons and bodies referred to in the first subparagraph are listed in Annex B;
- (6) 'court' means:
- (i) in points (b) and (c) of Article 1(1), Article 4(2), Articles 5 and 6, Article 21(3), point (j) of Article 24(2), Articles 36 and 39, and Articles 61 to 77, the judicial body of a Member State;
  - (ii) in all other articles, the judicial body or any other competent body of a Member State empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;
- (7) 'judgment opening insolvency proceedings' includes:
- (i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings; and
  - (ii) the decision of a court to appoint an insolvency practitioner;
- (8) 'the time of the opening of proceedings' means the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not;
- (9) 'the Member State in which assets are situated' means, in the case of:
- (i) registered shares in companies other than those referred to in point (ii), the Member State within the territory of which the company having issued the shares has its registered office;
  - (ii) financial instruments, the title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary ('book entry securities'), the Member State in which the register or account in which the entries are made is maintained;
  - (iii) cash held in accounts with a credit institution, the Member State indicated in the account's IBAN, or, for cash held in accounts with a credit institution which does not have an IBAN, the Member State in which the credit institution holding the account has its central administration or, where the account is held with a branch, agency or other establishment, the Member State in which the branch, agency or other establishment is located;
  - (iv) property and rights, ownership of or entitlement to which is entered in a public register other than those referred to in point (i), the Member State under the authority of which the register is kept;
  - (v) European patents, the Member State for which the European patent is granted;

<sup>(1)</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

<sup>(2)</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (vi) copyright and related rights, the Member State within the territory of which the owner of such rights has its habitual residence or registered office;
  - (vii) tangible property, other than that referred to in points (i) to (iv), the Member State within the territory of which the property is situated;
  - (viii) claims against third parties, other than those relating to assets referred to in point (iii), the Member State within the territory of which the third party required to meet the claims has the centre of its main interests, as determined in accordance with Article 3(1);
- (10) 'establishment' means any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets;
- (11) 'local creditor' means a creditor whose claims against a debtor arose from or in connection with the operation of an establishment situated in a Member State other than the Member State in which the centre of the debtor's main interests is located;
- (12) 'foreign creditor' means a creditor which has its habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States;
- (13) 'group of companies' means a parent undertaking and all its subsidiary undertakings;
- (14) 'parent undertaking' means an undertaking which controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which prepares consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council <sup>(1)</sup> shall be deemed to be a parent undertaking.

### Article 3

#### International jurisdiction

1. The courts of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ('main insolvency proceedings'). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.

2. Where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.

<sup>(1)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

4. The territorial insolvency proceedings referred to in paragraph 2 may only be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 where
- (a) insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or
  - (b) the opening of territorial insolvency proceedings is requested by:
    - (i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or
    - (ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings.

When main insolvency proceedings are opened, the territorial insolvency proceedings shall become secondary insolvency proceedings.

#### *Article 4*

### **Examination as to jurisdiction**

1. A court seised of a request to open insolvency proceedings shall of its own motion examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).
2. Notwithstanding paragraph 1, where insolvency proceedings are opened in accordance with national law without a decision by a court, Member States may entrust the insolvency practitioner appointed in such proceedings to examine whether the Member State in which a request for the opening of proceedings is pending has jurisdiction pursuant to Article 3. Where this is the case, the insolvency practitioner shall specify in the decision opening the proceedings the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

#### *Article 5*

### **Judicial review of the decision to open main insolvency proceedings**

1. The debtor or any creditor may challenge before a court the decision opening main insolvency proceedings on grounds of international jurisdiction.
2. The decision opening main insolvency proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than a lack of international jurisdiction where national law so provides.

#### *Article 6*

### **Jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them**

1. The courts of the Member State within the territory of which insolvency proceedings have been opened in accordance with Article 3 shall have jurisdiction for any action which derives directly from the insolvency proceedings and is closely linked with them, such as avoidance actions.
2. Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the insolvency practitioner may bring both actions before the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, before the courts of the Member State within the territory of which any of them is domiciled, provided that those courts have jurisdiction pursuant to Regulation (EU) No 1215/2012.

The first subparagraph shall apply to the debtor in possession, provided that national law allows the debtor in possession to bring actions on behalf of the insolvency estate.

3. For the purpose of paragraph 2, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

## Article 7

**Applicable law**

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened (the 'State of the opening of proceedings').
2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. In particular, it shall determine the following:
  - (a) the debtors against which insolvency proceedings may be brought on account of their capacity;
  - (b) the assets which form part of the insolvency estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
  - (c) the respective powers of the debtor and the insolvency practitioner;
  - (d) the conditions under which set-offs may be invoked;
  - (e) the effects of insolvency proceedings on current contracts to which the debtor is party;
  - (f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits;
  - (g) the claims which are to be lodged against the debtor's insolvency estate and the treatment of claims arising after the opening of insolvency proceedings;
  - (h) the rules governing the lodging, verification and admission of claims;
  - (i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right *in rem* or through a set-off;
  - (j) the conditions for, and the effects of closure of, insolvency proceedings, in particular by composition;
  - (k) creditors' rights after the closure of insolvency proceedings;
  - (l) who is to bear the costs and expenses incurred in the insolvency proceedings;
  - (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.

## Article 8

**Third parties' rights *in rem***

1. The opening of insolvency proceedings shall not affect the rights *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immovable assets, both specific assets and collections of indefinite assets as a whole which change from time to time, belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.
2. The rights referred to in paragraph 1 shall, in particular, mean:
  - (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
  - (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
  - (c) the right to demand assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
  - (d) a right *in rem* to the beneficial use of assets.
3. The right, recorded in a public register and enforceable against third parties, based on which a right *in rem* within the meaning of paragraph 1 may be obtained shall be considered to be a right *in rem*.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

#### *Article 9*

##### **Set-off**

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of a debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

#### *Article 10*

##### **Reservation of title**

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect sellers' rights that are based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of the opening of proceedings.

2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

#### *Article 11*

##### **Contracts relating to immovable property**

1. The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated.

2. The court which opened main insolvency proceedings shall have jurisdiction to approve the termination or modification of the contracts referred to in this Article where:

(a) the law of the Member State applicable to those contracts requires that such a contract may only be terminated or modified with the approval of the court opening insolvency proceedings; and

(b) no insolvency proceedings have been opened in that Member State.

#### *Article 12*

##### **Payment systems and financial markets**

1. Without prejudice to Article 8, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.

2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

*Article 13***Contracts of employment**

1. The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.
2. The courts of the Member State in which secondary insolvency proceedings may be opened shall retain jurisdiction to approve the termination or modification of the contracts referred to in this Article even if no insolvency proceedings have been opened in that Member State.

The first subparagraph shall also apply to an authority competent under national law to approve the termination or modification of the contracts referred to in this Article.

*Article 14***Effects on rights subject to registration**

The effects of insolvency proceedings on the rights of a debtor in immovable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

*Article 15***European patents with unitary effect and Community trade marks**

For the purposes of this Regulation, a European patent with unitary effect, a Community trade mark or any other similar right established by Union law may be included only in the proceedings referred to in Article 3(1).

*Article 16***Detrimental acts**

Point (m) of Article 7(2) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

- (a) the act is subject to the law of a Member State other than that of the State of the opening of proceedings; and
- (b) the law of that Member State does not allow any means of challenging that act in the relevant case.

*Article 17***Protection of third-party purchasers**

Where, by an act concluded after the opening of insolvency proceedings, a debtor disposes, for consideration, of:

- (a) an immovable asset;
- (b) a ship or an aircraft subject to registration in a public register; or
- (c) securities the existence of which requires registration in a register laid down by law;

the validity of that act shall be governed by the law of the State within the territory of which the immovable asset is situated or under the authority of which the register is kept.

*Article 18***Effects of insolvency proceedings on pending lawsuits or arbitral proceedings**

The effects of insolvency proceedings on a pending lawsuit or pending arbitral proceedings concerning an asset or a right which forms part of a debtor's insolvency estate shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral tribunal has its seat.



## CHAPTER II

**RECOGNITION OF INSOLVENCY PROCEEDINGS***Article 19***Principle**

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings.

The rule laid down in the first subparagraph shall also apply where, on account of a debtor's capacity, insolvency proceedings cannot be brought against that debtor in other Member States.

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

*Article 20***Effects of recognition**

1. The judgment opening insolvency proceedings as referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under the law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.

2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

*Article 21***Powers of the insolvency practitioner**

1. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on it, by the law of the State of the opening of proceedings, in another Member State, as long as no other insolvency proceedings have been opened there and no preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. Subject to Articles 8 and 10, the insolvency practitioner may, in particular, remove the debtor's assets from the territory of the Member State in which they are situated.

2. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. The insolvency practitioner may also bring any action to set aside which is in the interests of the creditors.

3. In exercising its powers, the insolvency practitioner shall comply with the law of the Member State within the territory of which it intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures, unless ordered by a court of that Member State, or the right to rule on legal proceedings or disputes.

*Article 22***Proof of the insolvency practitioner's appointment**

The insolvency practitioner's appointment shall be evidenced by a certified copy of the original decision appointing it or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which it intends to act may be required. No legalisation or other similar formality shall be required.

#### Article 23

##### **Return and imputation**

1. A creditor which, after the opening of the proceedings referred to in Article 3(1), obtains by any means, in particular through enforcement, total or partial satisfaction of its claim on the assets belonging to a debtor situated within the territory of another Member State, shall return what it has obtained to the insolvency practitioner, subject to Articles 8 and 10.
2. In order to ensure the equal treatment of creditors, a creditor which has, in the course of insolvency proceedings, obtained a dividend on its claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

#### Article 24

##### **Establishment of insolvency registers**

1. Member States shall establish and maintain in their territory one or several registers in which information concerning insolvency proceedings is published ('insolvency registers'). That information shall be published as soon as possible after the opening of such proceedings.
2. The information referred to in paragraph 1 shall be made publicly available, subject to the conditions laid down in Article 27, and shall include the following ('mandatory information'):
  - (a) the date of the opening of insolvency proceedings;
  - (b) the court opening insolvency proceedings and the case reference number, if any;
  - (c) the type of insolvency proceedings referred to in Annex A that were opened and, where applicable, any relevant subtype of such proceedings opened in accordance with national law;
  - (d) whether jurisdiction for opening proceedings is based on Article 3(1), 3(2) or 3(4);
  - (e) if the debtor is a company or a legal person, the debtor's name, registration number, registered office or, if different, postal address;
  - (f) if the debtor is an individual whether or not exercising an independent business or professional activity, the debtor's name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth;
  - (g) the name, postal address or e-mail address of the insolvency practitioner, if any, appointed in the proceedings;
  - (h) the time limit for lodging claims, if any, or a reference to the criteria for calculating that time limit;
  - (i) the date of closing main insolvency proceedings, if any;
  - (j) the court before which and, where applicable, the time limit within which a challenge of the decision opening insolvency proceedings is to be lodged in accordance with Article 5, or a reference to the criteria for calculating that time limit.
3. Paragraph 2 shall not preclude Member States from including documents or additional information in their national insolvency registers, such as directors' disqualifications related to insolvency.
4. Member States shall not be obliged to include in the insolvency registers the information referred to in paragraph 1 of this Article in relation to individuals not exercising an independent business or professional activity, or to make such information publicly available through the system of interconnection of those registers, provided that known foreign creditors are informed, pursuant to Article 54, of the elements referred to under point (j) of paragraph 2 of this Article.

Where a Member State makes use of the possibility referred to in the first subparagraph, the insolvency proceedings shall not affect the claims of foreign creditors who have not received the information referred to in the first subparagraph.

5. The publication of information in the registers under this Regulation shall not have any legal effects other than those set out in national law and in Article 55(6).

#### Article 25

### Interconnection of insolvency registers

1. The Commission shall establish a decentralised system for the interconnection of insolvency registers by means of implementing acts. That system shall be composed of the insolvency registers and the European e-Justice Portal, which shall serve as a central public electronic access point to information in the system. The system shall provide a search service in all the official languages of the institutions of the Union in order to make available the mandatory information and any other documents or information included in the insolvency registers which the Member States choose to make available through the European e-Justice Portal.

2. By means of implementing acts in accordance with the procedure referred to in Article 87, the Commission shall adopt the following by 26 June 2019:

- (a) the technical specification defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of insolvency registers;
- (b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;
- (c) minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 24;
- (d) minimum criteria for the presentation of the results of such searches based on the information set out in Article 24;
- (e) the means and the technical conditions of availability of services provided by the system of interconnection; and
- (f) a glossary containing a basic explanation of the national insolvency proceedings listed in Annex A.

#### Article 26

### Costs of establishing and interconnecting insolvency registers

1. The establishment, maintenance and future development of the system of interconnection of insolvency registers shall be financed from the general budget of the Union.

2. Each Member State shall bear the costs of establishing and adjusting its national insolvency registers to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those registers. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programmes.

#### Article 27

### Conditions of access to information via the system of interconnection

1. Member States shall ensure that the mandatory information referred to in points (a) to (j) of Article 24(2) is available free of charge via the system of interconnection of insolvency registers.

2. This Regulation shall not preclude Member States from charging a reasonable fee for access to the documents or additional information referred to in Article 24(3) via the system of interconnection of insolvency registers.

3. Member States may make access to mandatory information concerning individuals who are not exercising an independent business or professional activity, and concerning individuals exercising an independent business or professional activity when the insolvency proceedings are not related to that activity, subject to supplementary search criteria relating to the debtor in addition to the minimum criteria referred to in point (c) of Article 25(2).

4. Member States may require that access to the information referred to in paragraph 3 be made conditional upon a request to the competent authority. Member States may make access conditional upon the verification of the existence of a legitimate interest for accessing such information. The requesting person shall be able to submit the request for information electronically by means of a standard form via the European e-Justice Portal. Where a legitimate interest is required, it shall be permissible for the requesting person to justify his request by electronic copies of relevant documents. The requesting person shall be provided with an answer by the competent authority within 3 working days.

The requesting person shall not be obliged to provide translations of the documents justifying his request, or to bear any costs of translation which the competent authority may incur.

#### *Article 28*

### **Publication in another Member State**

1. The insolvency practitioner or the debtor in possession shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing the insolvency practitioner be published in any other Member State where an establishment of the debtor is located in accordance with the publication procedures provided for in that Member State. Such publication shall specify, where appropriate, the insolvency practitioner appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2).

2. The insolvency practitioner or the debtor in possession may request that the information referred to in paragraph 1 be published in any other Member State where the insolvency practitioner or the debtor in possession deems it necessary in accordance with the publication procedures provided for in that Member State.

#### *Article 29*

### **Registration in public registers of another Member State**

1. Where the law of a Member State in which an establishment of the debtor is located and this establishment has been entered into a public register of that Member State, or the law of a Member State in which immovable property belonging to the debtor is located, requires information on the opening of insolvency proceedings referred to in Article 28 to be published in the land register, company register or any other public register, the insolvency practitioner or the debtor in possession shall take all the necessary measures to ensure such a registration.

2. The insolvency practitioner or the debtor in possession may request such registration in any other Member State, provided that the law of the Member State where the register is kept allows such registration.

#### *Article 30*

### **Costs**

The costs of the publication and registration provided for in Articles 28 and 29 shall be regarded as costs and expenses incurred in the proceedings.

#### *Article 31*

### **Honouring of an obligation to a debtor**

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the insolvency practitioner in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of the proceedings.

2. Where such an obligation is honoured before the publication provided for in Article 28 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings. Where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

*Article 32***Recognition and enforceability of other judgments**

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 19 and which concern the course and closure of insolvency proceedings, and compositions approved by that court, shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 39 to 44 and 47 to 57 of Regulation (EU) No 1215/2012.

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings or in connection with it.

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 of this Article shall be governed by Regulation (EU) No 1215/2012 provided that that Regulation is applicable.

*Article 33***Public policy**

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

## CHAPTER III

**SECONDARY INSOLVENCY PROCEEDINGS***Article 34***Opening of proceedings**

Where main insolvency proceedings have been opened by a court of a Member State and recognised in another Member State, a court of that other Member State which has jurisdiction pursuant to Article 3(2) may open secondary insolvency proceedings in accordance with the provisions set out in this Chapter. Where the main insolvency proceedings required that the debtor be insolvent, the debtor's insolvency shall not be re-examined in the Member State in which secondary insolvency proceedings may be opened. The effects of secondary insolvency proceedings shall be restricted to the assets of the debtor situated within the territory of the Member State in which those proceedings have been opened.

*Article 35***Applicable law**

Save as otherwise provided for in this Regulation, the law applicable to secondary insolvency proceedings shall be that of the Member State within the territory of which the secondary insolvency proceedings are opened.

*Article 36***Right to give an undertaking in order to avoid secondary insolvency proceedings**

1. In order to avoid the opening of secondary insolvency proceedings, the insolvency practitioner in the main insolvency proceedings may give a unilateral undertaking (the 'undertaking') in respect of the assets located in the Member State in which secondary insolvency proceedings could be opened, that when distributing those assets or the proceeds received as a result of their realisation, it will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that Member State. The undertaking shall specify the factual assumptions on which it is based, in particular in respect of the value of the assets located in the Member State concerned and the options available to realise such assets.

2. Where an undertaking has been given in accordance with this Article, the law applicable to the distribution of proceeds from the realisation of assets referred to in paragraph 1, to the ranking of creditors' claims, and to the rights of creditors in relation to the assets referred to in paragraph 1 shall be the law of the Member State in which secondary insolvency proceedings could have been opened. The relevant point in time for determining the assets referred to in paragraph 1 shall be the moment at which the undertaking is given.
3. The undertaking shall be made in the official language or one of the official languages of the Member State where secondary insolvency proceedings could have been opened, or, where there are several official languages in that Member State, the official language or one of the official languages of the place in which secondary insolvency proceedings could have been opened.
4. The undertaking shall be made in writing. It shall be subject to any other requirements relating to form and approval requirements as to distributions, if any, of the State of the opening of the main insolvency proceedings.
5. The undertaking shall be approved by the known local creditors. The rules on qualified majority and voting that apply to the adoption of restructuring plans under the law of the Member State where secondary insolvency proceedings could have been opened shall also apply to the approval of the undertaking. Creditors shall be able to participate in the vote by distance means of communication, where national law so permits. The insolvency practitioner shall inform the known local creditors of the undertaking, of the rules and procedures for its approval, and of the approval or rejection of the undertaking.
6. An undertaking given and approved in accordance with this Article shall be binding on the estate. If secondary insolvency proceedings are opened in accordance with Articles 37 and 38, the insolvency practitioner in the main insolvency proceedings shall transfer any assets which it removed from the territory of that Member State after the undertaking was given or, where those assets have already been realised, their proceeds, to the insolvency practitioner in the secondary insolvency proceedings.
7. Where the insolvency practitioner has given an undertaking, it shall inform local creditors about the intended distributions prior to distributing the assets and proceeds referred to in paragraph 1. If that information does not comply with the terms of the undertaking or the applicable law, any local creditor may challenge such distribution before the courts of the Member State in which main insolvency proceedings have been opened in order to obtain a distribution in accordance with the terms of the undertaking and the applicable law. In such cases, no distribution shall take place until the court has taken a decision on the challenge.
8. Local creditors may apply to the courts of the Member State in which main insolvency proceedings have been opened, in order to require the insolvency practitioner in the main insolvency proceedings to take any suitable measures necessary to ensure compliance with the terms of the undertaking available under the law of the State of the opening of main insolvency proceedings.
9. Local creditors may also apply to the courts of the Member State in which secondary insolvency proceedings could have been opened in order to require the court to take provisional or protective measures to ensure compliance by the insolvency practitioner with the terms of the undertaking.
10. The insolvency practitioner shall be liable for any damage caused to local creditors as a result of its non-compliance with the obligations and requirements set out in this Article.
11. For the purpose of this Article, an authority which is established in the Member State where secondary insolvency proceedings could have been opened and which is obliged under Directive 2008/94/EC of the European Parliament and of the Council <sup>(1)</sup> to guarantee the payment of employees' outstanding claims resulting from contracts of employment or employment relationships shall be considered to be a local creditor, where the national law so provides.

<sup>(1)</sup> Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36).

*Article 37***Right to request the opening of secondary insolvency proceedings**

1. The opening of secondary insolvency proceedings may be requested by:
  - (a) the insolvency practitioner in the main insolvency proceedings;
  - (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary insolvency proceedings is requested.
2. Where an undertaking has become binding in accordance with Article 36, the request for opening secondary insolvency proceedings shall be lodged within 30 days of having received notice of the approval of the undertaking.

*Article 38***Decision to open secondary insolvency proceedings**

1. A court seised of a request to open secondary insolvency proceedings shall immediately give notice to the insolvency practitioner or the debtor in possession in the main insolvency proceedings and give it an opportunity to be heard on the request.
2. Where the insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court referred to in paragraph 1 of this Article shall, at the request of the insolvency practitioner, not open secondary insolvency proceedings if it is satisfied that the undertaking adequately protects the general interests of local creditors.
3. Where a temporary stay of individual enforcement proceedings has been granted in order to allow for negotiations between the debtor and its creditors, the court, at the request of the insolvency practitioner or the debtor in possession, may stay the opening of secondary insolvency proceedings for a period not exceeding 3 months, provided that suitable measures are in place to protect the interests of local creditors.

The court referred to in paragraph 1 may order protective measures to protect the interests of local creditors by requiring the insolvency practitioner or the debtor in possession not to remove or dispose of any assets which are located in the Member State where its establishment is located unless this is done in the ordinary course of business. The court may also order other measures to protect the interest of local creditors during a stay, unless this is incompatible with the national rules on civil procedure.

The stay of the opening of secondary insolvency proceedings shall be lifted by the court of its own motion or at the request of any creditor if, during the stay, an agreement in the negotiations referred to in the first subparagraph has been concluded.

The stay may be lifted by the court of its own motion or at the request of any creditor if the continuation of the stay is detrimental to the creditor's rights, in particular if the negotiations have been disrupted or it has become evident that they are unlikely to be concluded, or if the insolvency practitioner or the debtor in possession has infringed the prohibition on disposal of its assets or on removal of them from the territory of the Member State where the establishment is located.

4. At the request of the insolvency practitioner in the main insolvency proceedings, the court referred to in paragraph 1 may open a type of insolvency proceedings as listed in Annex A other than the type initially requested, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings. The second sentence of Article 34 shall apply.

*Article 39***Judicial review of the decision to open secondary insolvency proceedings**

The insolvency practitioner in the main insolvency proceedings may challenge the decision to open secondary insolvency proceedings before the courts of the Member State in which secondary insolvency proceedings have been opened on the ground that the court did not comply with the conditions and requirements of Article 38.

*Article 40***Advance payment of costs and expenses**

Where the law of the Member State in which the opening of secondary insolvency proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

*Article 41***Cooperation and communication between insolvency practitioners**

1. The insolvency practitioner in the main insolvency proceedings and the insolvency practitioner or practitioners in secondary insolvency proceedings concerning the same debtor shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to the respective proceedings. Such cooperation may take any form, including the conclusion of agreements or protocols.
2. In implementing the cooperation set out in paragraph 1, the insolvency practitioners shall:
  - (a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, in particular any progress made in lodging and verifying claims and all measures aimed at rescuing or restructuring the debtor, or at terminating the proceedings, provided appropriate arrangements are made to protect confidential information;
  - (b) explore the possibility of restructuring the debtor and, where such a possibility exists, coordinate the elaboration and implementation of a restructuring plan;
  - (c) coordinate the administration of the realisation or use of the debtor's assets and affairs; the insolvency practitioner in the secondary insolvency proceedings shall give the insolvency practitioner in the main insolvency proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary insolvency proceedings.
3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to situations where, in the main or in the secondary insolvency proceedings or in any territorial insolvency proceedings concerning the same debtor and open at the same time, the debtor remains in possession of its assets.

*Article 42***Cooperation and communication between courts**

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings concerning the same debtor, a court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, shall cooperate with any other court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, to the extent that such cooperation is not incompatible with the rules applicable to each of the proceedings. For that purpose, the courts may, where appropriate, appoint an independent person or body acting on its instructions, provided that it is not incompatible with the rules applicable to them.
2. In implementing the cooperation set out in paragraph 1, the courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with, or request information or assistance directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.
3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:
  - (a) coordination in the appointment of the insolvency practitioners;
  - (b) communication of information by any means considered appropriate by the court;
  - (c) coordination of the administration and supervision of the debtor's assets and affairs;
  - (d) coordination of the conduct of hearings;
  - (e) coordination in the approval of protocols, where necessary.



*Article 43***Cooperation and communication between insolvency practitioners and courts**

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings opened in respect of the same debtor:
  - (a) an insolvency practitioner in main insolvency proceedings shall cooperate and communicate with any court before which a request to open secondary insolvency proceedings is pending or which has opened such proceedings;
  - (b) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open main insolvency proceedings is pending or which has opened such proceedings; and
  - (c) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open other territorial or secondary insolvency proceedings is pending or which has opened such proceedings;

to the extent that such cooperation and communication are not incompatible with the rules applicable to each of the proceedings and do not entail any conflict of interest.

2. The cooperation referred to in paragraph 1 may be implemented by any appropriate means, such as those set out in Article 42(3).

*Article 44***Costs of cooperation and communication**

The requirements laid down in Articles 42 and 43 shall not result in courts charging costs to each other for cooperation and communication.

*Article 45***Exercise of creditors' rights**

1. Any creditor may lodge its claim in the main insolvency proceedings and in any secondary insolvency proceedings.
2. The insolvency practitioners in the main and any secondary insolvency proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served by doing so, subject to the right of creditors to oppose such lodgement or to withdraw the lodgement of their claims where the law applicable so provides.
3. The insolvency practitioner in the main or secondary insolvency proceedings shall be entitled to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

*Article 46***Stay of the process of realisation of assets**

1. The court which opened the secondary insolvency proceedings shall stay the process of realisation of assets in whole or in part on receipt of a request from the insolvency practitioner in the main insolvency proceedings. In such a case, it may require the insolvency practitioner in the main insolvency proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary insolvency proceedings and of individual classes of creditors. Such a request from the insolvency practitioner may be rejected only if it is manifestly of no interest to the creditors in the main insolvency proceedings. Such a stay of the process of realisation of assets may be ordered for up to 3 months. It may be continued or renewed for similar periods.

2. The court referred to in paragraph 1 shall terminate the stay of the process of realisation of assets:
  - (a) at the request of the insolvency practitioner in the main insolvency proceedings;
  - (b) of its own motion, at the request of a creditor or at the request of the insolvency practitioner in the secondary insolvency proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main insolvency proceedings or in the secondary insolvency proceedings.

#### *Article 47*

### **Power of the insolvency practitioner to propose restructuring plans**

1. Where the law of the Member State where secondary insolvency proceedings have been opened allows for such proceedings to be closed without liquidation by a restructuring plan, a composition or a comparable measure, the insolvency practitioner in the main insolvency proceedings shall be empowered to propose such a measure in accordance with the procedure of that Member State.
2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary insolvency proceedings, such as a stay of payment or discharge of debt, shall have no effect in respect of assets of a debtor that are not covered by those proceedings, without the consent of all the creditors having an interest.

#### *Article 48*

### **Impact of closure of insolvency proceedings**

1. Without prejudice to Article 49, the closure of insolvency proceedings shall not prevent the continuation of other insolvency proceedings concerning the same debtor which are still open at that point in time.
2. Where insolvency proceedings concerning a legal person or a company in the Member State of that person's or company's registered office would entail the dissolution of the legal person or of the company, that legal person or company shall not cease to exist until any other insolvency proceedings concerning the same debtor have been closed, or the insolvency practitioner or practitioners in such proceedings have given consent to the dissolution.

#### *Article 49*

### **Assets remaining in the secondary insolvency proceedings**

If, by the liquidation of assets in the secondary insolvency proceedings, it is possible to meet all claims allowed under those proceedings, the insolvency practitioner appointed in those proceedings shall immediately transfer any assets remaining to the insolvency practitioner in the main insolvency proceedings.

#### *Article 50*

### **Subsequent opening of the main insolvency proceedings**

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 41, 45, 46, 47 and 49 shall apply to those opened first, in so far as the progress of those proceedings so permits.

#### *Article 51*

### **Conversion of secondary insolvency proceedings**

1. At the request of the insolvency practitioner in the main insolvency proceedings, the court of the Member State in which secondary insolvency proceedings have been opened may order the conversion of the secondary insolvency proceedings into another type of insolvency proceedings listed in Annex A, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.

2. When considering the request referred to in paragraph 1, the court may seek information from the insolvency practitioners involved in both proceedings.

#### Article 52

### Preservation measures

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of a debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that Member State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

#### CHAPTER IV

### PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS

#### Article 53

### Right to lodge claims

Any foreign creditor may lodge claims in insolvency proceedings by any means of communication, which are accepted by the law of the State of the opening of proceedings. Representation by a lawyer or another legal professional shall not be mandatory for the sole purpose of lodging of claims.

#### Article 54

### Duty to inform creditors

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the insolvency practitioner appointed by that court shall immediately inform the known foreign creditors.
2. The information referred to in paragraph 1, provided by an individual notice, shall in particular include time limits, the penalties laid down with regard to those time limits, the body or authority empowered to accept the lodgement of claims and any other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured *in rem* need to lodge their claims. The notice shall also include a copy of the standard form for lodging of claims referred to in Article 55 or information on where that form is available.
3. The information referred to in paragraphs 1 and 2 of this Article shall be provided using the standard notice form to be established in accordance with Article 88. The form shall be published in the European e-Justice Portal and shall bear the heading 'Notice of insolvency proceedings' in all the official languages of the institutions of the Union. It shall be transmitted in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that State has indicated it can accept, in accordance with Article 55(5), if it can be assumed that that language is easier to understand for the foreign creditors.
4. In insolvency proceedings relating to an individual not exercising a business or professional activity, the use of the standard form referred to in this Article shall not be obligatory if creditors are not required to lodge their claims in order to have their claims taken into account in the proceedings.

#### Article 55

### Procedure for lodging claims

1. Any foreign creditor may lodge its claim using the standard claims form to be established in accordance with Article 88. The form shall bear the heading 'Lodgement of claims' in all the official languages of the institutions of the Union.

2. The standard claims form referred to in paragraph 1 shall include the following information:
- (a) the name, postal address, e-mail address, if any, personal identification number, if any, and bank details of the foreign creditor referred to in paragraph 1;
  - (b) the amount of the claim, specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different;
  - (c) if interest is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest is claimed and the capitalised amount of interest;
  - (d) if costs incurred in asserting the claim prior to the opening of proceedings are claimed, the amount and the details of those costs;
  - (e) the nature of the claim;
  - (f) whether any preferential creditor status is claimed and the basis of such a claim;
  - (g) whether security *in rem* or a reservation of title is alleged in respect of the claim and if so, what assets are covered by the security interest being invoked, the date on which the security was granted and, where the security has been registered, the registration number; and
  - (h) whether any set-off is claimed and, if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened, the date on which they arose and the amount net of set-off claimed.

The standard claims form shall be accompanied by copies of any supporting documents.

3. The standard claims form shall indicate that the provision of information concerning the bank details and the personal identification number of the creditor referred to in point (a) of paragraph 2 is not compulsory.

4. When a creditor lodges its claim by means other than the standard form referred to in paragraph 1, the claim shall contain the information referred to in paragraph 2.

5. Claims may be lodged in any official language of the institutions of the Union. The court, the insolvency practitioner or the debtor in possession may require the creditor to provide a translation in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that Member State has indicated it can accept. Each Member State shall indicate whether it accepts any official language of the institutions of the Union other than its own for the purpose of the lodging of claims.

6. Claims shall be lodged within the period stipulated by the law of the State of the opening of proceedings. In the case of a foreign creditor, that period shall not be less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the State of the opening of proceedings. Where a Member State relies on Article 24(4), that period shall not be less than 30 days following a creditor having been informed pursuant to Article 54.

7. Where the court, the insolvency practitioner or the debtor in possession has doubts in relation to a claim lodged in accordance with this Article, it shall give the creditor the opportunity to provide additional evidence on the existence and the amount of the claim.

## CHAPTER V

### INSOLVENCY PROCEEDINGS OF MEMBERS OF A GROUP OF COMPANIES

#### SECTION 1

#### *Cooperation and communication*

#### *Article 56*

#### **Cooperation and communication between insolvency practitioners**

1. Where insolvency proceedings relate to two or more members of a group of companies, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate with any insolvency practitioner appointed in proceedings concerning another member of the same group to the extent that such cooperation is appropriate to

facilitate the effective administration of those proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interest. That cooperation may take any form, including the conclusion of agreements or protocols.

2. In implementing the cooperation set out in paragraph 1, insolvency practitioners shall:

- (a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;
- (b) consider whether possibilities exist for coordinating the administration and supervision of the affairs of the group members which are subject to insolvency proceedings, and if so, coordinate such administration and supervision;
- (c) consider whether possibilities exist for restructuring group members which are subject to insolvency proceedings and, if so, coordinate with regard to the proposal and negotiation of a coordinated restructuring plan.

For the purposes of points (b) and (c), all or some of the insolvency practitioners referred to in paragraph 1 may agree to grant additional powers to an insolvency practitioner appointed in one of the proceedings where such an agreement is permitted by the rules applicable to each of the proceedings. They may also agree on the allocation of certain tasks amongst them, where such allocation of tasks is permitted by the rules applicable to each of the proceedings.

#### Article 57

### Cooperation and communication between courts

1. Where insolvency proceedings relate to two or more members of a group of companies, a court which has opened such proceedings shall cooperate with any other court before which a request to open proceedings concerning another member of the same group is pending or which has opened such proceedings to the extent that such cooperation is appropriate to facilitate the effective administration of the proceedings, is not incompatible with the rules applicable to them and does not entail any conflict of interest. For that purpose, the courts may, where appropriate, appoint an independent person or body to act on its instructions, provided that this is not incompatible with the rules applicable to them.

2. In implementing the cooperation set out in paragraph 1, courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with each other, or request information or assistance directly from each other, provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

- (a) coordination in the appointment of insolvency practitioners;
- (b) communication of information by any means considered appropriate by the court;
- (c) coordination of the administration and supervision of the assets and affairs of the members of the group;
- (d) coordination of the conduct of hearings;
- (e) coordination in the approval of protocols where necessary.

#### Article 58

### Cooperation and communication between insolvency practitioners and courts

An insolvency practitioner appointed in insolvency proceedings concerning a member of a group of companies:

- (a) shall cooperate and communicate with any court before which a request for the opening of proceedings in respect of another member of the same group of companies is pending or which has opened such proceedings; and
- (b) may request information from that court concerning the proceedings regarding the other member of the group or request assistance concerning the proceedings in which he has been appointed;

to the extent that such cooperation and communication are appropriate to facilitate the effective administration of the proceedings, do not entail any conflict of interest and are not incompatible with the rules applicable to them.

*Article 59***Costs of cooperation and communication in proceedings concerning members of a group of companies**

The costs of the cooperation and communication provided for in Articles 56 to 60 incurred by an insolvency practitioner or a court shall be regarded as costs and expenses incurred in the respective proceedings.

*Article 60***Powers of the insolvency practitioner in proceedings concerning members of a group of companies**

1. An insolvency practitioner appointed in insolvency proceedings opened in respect of a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings:

- (a) be heard in any of the proceedings opened in respect of any other member of the same group;
- (b) request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, provided that:
  - (i) a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under point (c) of Article 56(2) and presents a reasonable chance of success;
  - (ii) such a stay is necessary in order to ensure the proper implementation of the restructuring plan;
  - (iii) the restructuring plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and
  - (iv) neither the insolvency proceedings in which the insolvency practitioner referred to in paragraph 1 of this Article has been appointed nor the proceedings in respect of which the stay is requested are subject to coordination under Section 2 of this Chapter;
- (c) apply for the opening of group coordination proceedings in accordance with Article 61.

2. The court having opened proceedings referred to in point (b) of paragraph 1 shall stay any measure related to the realisation of the assets in the proceedings in whole or in part if it is satisfied that the conditions referred to in point (b) of paragraph 1 are fulfilled.

Before ordering the stay, the court shall hear the insolvency practitioner appointed in the proceedings for which the stay is requested. Such a stay may be ordered for any period, not exceeding 3 months, which the court considers appropriate and which is compatible with the rules applicable to the proceedings.

The court ordering the stay may require the insolvency practitioner referred to in paragraph 1 to take any suitable measure available under national law to guarantee the interests of the creditors in the proceedings.

The court may extend the duration of the stay by such further period or periods as it considers appropriate and which are compatible with the rules applicable to the proceedings, provided that the conditions referred to in points (b)(ii) to (iv) of paragraph 1 continue to be fulfilled and that the total duration of the stay (the initial period together with any such extensions) does not exceed 6 months.

*SECTION 2***Coordination**

## Subsection 1

**Procedure***Article 61***Request to open group coordination proceedings**

1. Group coordination proceedings may be requested before any court having jurisdiction over the insolvency proceedings of a member of the group, by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group.

2. The request referred to in paragraph 1 shall be made in accordance with the conditions provided for by the law applicable to the proceedings in which the insolvency practitioner has been appointed.
3. The request referred to in paragraph 1 shall be accompanied by:
  - (a) a proposal as to the person to be nominated as the group coordinator ('the coordinator'), details of his or her eligibility pursuant to Article 71, details of his or her qualifications and his or her written agreement to act as coordinator;
  - (b) an outline of the proposed group coordination, and in particular the reasons why the conditions set out in Article 63(1) are fulfilled;
  - (c) a list of the insolvency practitioners appointed in relation to the members of the group and, where relevant, the courts and competent authorities involved in the insolvency proceedings of the members of the group;
  - (d) an outline of the estimated costs of the proposed group coordination and the estimation of the share of those costs to be paid by each member of the group.

#### *Article 62*

### **Priority rule**

Without prejudice to Article 66, where the opening of group coordination proceedings is requested before courts of different Member States, any court other than the court first seised shall decline jurisdiction in favour of that court.

#### *Article 63*

### **Notice by the court seised**

1. The court seised of a request to open group coordination proceedings shall give notice as soon as possible of the request for the opening of group coordination proceedings and of the proposed coordinator to the insolvency practitioners appointed in relation to the members of the group as indicated in the request referred to in point (c) of Article 61(3), if it is satisfied that:
  - (a) the opening of such proceedings is appropriate to facilitate the effective administration of the insolvency proceedings relating to the different group members;
  - (b) no creditor of any group member expected to participate in the proceedings is likely to be financially disadvantaged by the inclusion of that member in such proceedings; and
  - (c) the proposed coordinator fulfils the requirements laid down in Article 71.
2. The notice referred to in paragraph 1 of this Article shall list the elements referred to in points (a) to (d) of Article 61(3).
3. The notice referred to in paragraph 1 shall be sent by registered letter, attested by an acknowledgment of receipt.
4. The court seised shall give the insolvency practitioners involved the opportunity to be heard.

#### *Article 64*

### **Objections by insolvency practitioners**

1. An insolvency practitioner appointed in respect of any group member may object to:
  - (a) the inclusion within group coordination proceedings of the insolvency proceedings in respect of which it has been appointed; or
  - (b) the person proposed as a coordinator.
2. Objections pursuant to paragraph 1 of this Article shall be lodged with the court referred to in Article 63 within 30 days of receipt of notice of the request for the opening of group coordination proceedings by the insolvency practitioner referred to in paragraph 1 of this Article.

The objection may be made by means of the standard form established in accordance with Article 88.

3. Prior to taking the decision to participate or not to participate in the coordination in accordance with point (a) of paragraph 1, an insolvency practitioner shall obtain any approval which may be required under the law of the State of the opening of proceedings for which it has been appointed.

#### *Article 65*

### **Consequences of objection to the inclusion in group coordination**

1. Where an insolvency practitioner has objected to the inclusion of the proceedings in respect of which it has been appointed in group coordination proceedings, those proceedings shall not be included in the group coordination proceedings.

2. The powers of the court referred to in Article 68 or of the coordinator arising from those proceedings shall have no effect as regards that member, and shall entail no costs for that member.

#### *Article 66*

### **Choice of court for group coordination proceedings**

1. Where at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed that a court of another Member State having jurisdiction is the most appropriate court for the opening of group coordination proceedings, that court shall have exclusive jurisdiction.

2. The choice of court shall be made by joint agreement in writing or evidenced in writing. It may be made until such time as group coordination proceedings have been opened in accordance with Article 68.

3. Any court other than the court seised under paragraph 1 shall decline jurisdiction in favour of that court.

4. The request for the opening of group coordination proceedings shall be submitted to the court agreed in accordance with Article 61.

#### *Article 67*

### **Consequences of objections to the proposed coordinator**

Where objections to the person proposed as coordinator have been received from an insolvency practitioner which does not also object to the inclusion in the group coordination proceedings of the member in respect of which it has been appointed, the court may refrain from appointing that person and invite the objecting insolvency practitioner to submit a new request in accordance with Article 61(3).

#### *Article 68*

### **Decision to open group coordination proceedings**

1. After the period referred to in Article 64(2) has elapsed, the court may open group coordination proceedings where it is satisfied that the conditions of Article 63(1) are met. In such a case, the court shall:

(a) appoint a coordinator;

(b) decide on the outline of the coordination; and

(c) decide on the estimation of costs and the share to be paid by the group members.

2. The decision opening group coordination proceedings shall be brought to the notice of the participating insolvency practitioners and of the coordinator.



*Article 69***Subsequent opt-in by insolvency practitioners**

1. In accordance with its national law, any insolvency practitioner may request, after the court decision referred to in Article 68, the inclusion of the proceedings in respect of which it has been appointed, where:
  - (a) there has been an objection to the inclusion of the insolvency proceedings within the group coordination proceedings; or
  - (b) insolvency proceedings with respect to a member of the group have been opened after the court has opened group coordination proceedings.
2. Without prejudice to paragraph 4, the coordinator may accede to such a request, after consulting the insolvency practitioners involved, where
  - (a) he or she is satisfied that, taking into account the stage that the group coordination proceedings has reached at the time of the request, the criteria set out in points (a) and (b) of Article 63(1) are met; or
  - (b) all insolvency practitioners involved agree, subject to the conditions in their national law.
3. The coordinator shall inform the court and the participating insolvency practitioners of his or her decision pursuant to paragraph 2 and of the reasons on which it is based.
4. Any participating insolvency practitioner or any insolvency practitioner whose request for inclusion in the group coordination proceedings has been rejected may challenge the decision referred to in paragraph 2 in accordance with the procedure set out under the law of the Member State in which the group coordination proceedings have been opened.

*Article 70***Recommendations and group coordination plan**

1. When conducting their insolvency proceedings, insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan referred to in Article 72(1).
2. An insolvency practitioner shall not be obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan.

If it does not follow the coordinator's recommendations or the group coordination plan, it shall give reasons for not doing so to the persons or bodies that it is to report to under its national law, and to the coordinator.

*Subsection 2***General provisions***Article 71***The coordinator**

1. The coordinator shall be a person eligible under the law of a Member State to act as an insolvency practitioner.
2. The coordinator shall not be one of the insolvency practitioners appointed to act in respect of any of the group members, and shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members.

*Article 72***Tasks and rights of the coordinator**

1. The coordinator shall:
  - (a) identify and outline recommendations for the coordinated conduct of the insolvency proceedings;
  - (b) propose a group coordination plan that identifies, describes and recommends a comprehensive set of measures appropriate to an integrated approach to the resolution of the group members' insolvencies. In particular, the plan may contain proposals for:

- (i) the measures to be taken in order to re-establish the economic performance and the financial soundness of the group or any part of it;
  - (ii) the settlement of intra-group disputes as regards intra-group transactions and avoidance actions;
  - (iii) agreements between the insolvency practitioners of the insolvent group members.
2. The coordinator may also:
- (a) be heard and participate, in particular by attending creditors' meetings, in any of the proceedings opened in respect of any member of the group;
  - (b) mediate any dispute arising between two or more insolvency practitioners of group members;
  - (c) present and explain his or her group coordination plan to the persons or bodies that he or she is to report to under his or her national law;
  - (d) request information from any insolvency practitioner in respect of any member of the group where that information is or might be of use when identifying and outlining strategies and measures in order to coordinate the proceedings; and
  - (e) request a stay for a period of up to 6 months of the proceedings opened in respect of any member of the group, provided that such a stay is necessary in order to ensure the proper implementation of the plan and would be to the benefit of the creditors in the proceedings for which the stay is requested; or request the lifting of any existing stay. Such a request shall be made to the court that opened the proceedings for which a stay is requested.
3. The plan referred to in point (b) of paragraph 1 shall not include recommendations as to any consolidation of proceedings or insolvency estates.
4. The coordinator's tasks and rights as defined under this Article shall not extend to any member of the group not participating in group coordination proceedings.
5. The coordinator shall perform his or her duties impartially and with due care.
6. Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in the costs compared to the cost estimate referred to in point (d) of Article 61(3), and in any case, where the costs exceed 10 % of the estimated costs, the coordinator shall:
- (a) inform without delay the participating insolvency practitioners; and
  - (b) seek the prior approval of the court opening group coordination proceedings.

#### *Article 73*

#### **Languages**

1. The coordinator shall communicate with the insolvency practitioner of a participating group member in the language agreed with the insolvency practitioner or, in the absence of an agreement, in the official language or one of the official languages of the institutions of the Union, and of the court which opened the proceedings in respect of that group member.
2. The coordinator shall communicate with a court in the official language applicable to that court.

#### *Article 74*

#### **Cooperation between insolvency practitioners and the coordinator**

1. Insolvency practitioners appointed in relation to members of a group and the coordinator shall cooperate with each other to the extent that such cooperation is not incompatible with the rules applicable to the respective proceedings.
2. In particular, insolvency practitioners shall communicate any information that is relevant for the coordinator to perform his or her tasks.

*Article 75***Revocation of the appointment of the coordinator**

The court shall revoke the appointment of the coordinator of its own motion or at the request of the insolvency practitioner of a participating group member where:

- (a) the coordinator acts to the detriment of the creditors of a participating group member; or
- (b) the coordinator fails to comply with his or her obligations under this Chapter.

*Article 76***Debtor in possession**

The provisions applicable, under this Chapter, to the insolvency practitioner shall also apply, where appropriate, to the debtor in possession.

*Article 77***Costs and distribution**

1. The remuneration for the coordinator shall be adequate, proportionate to the tasks fulfilled and reflect reasonable expenses.
2. On having completed his or her tasks, the coordinator shall establish the final statement of costs and the share to be paid by each member, and submit this statement to each participating insolvency practitioner and to the court opening coordination proceedings.
3. In the absence of objections by the insolvency practitioners within 30 days of receipt of the statement referred to in paragraph 2, the costs and the share to be paid by each member shall be deemed to be agreed. The statement shall be submitted to the court opening coordination proceedings for confirmation.
4. In the event of an objection, the court that opened the group coordination proceedings shall, upon the application of the coordinator or any participating insolvency practitioner, decide on the costs and the share to be paid by each member in accordance with the criteria set out in paragraph 1 of this Article, and taking into account the estimation of costs referred to in Article 68(1) and, where applicable, Article 72(6).
5. Any participating insolvency practitioner may challenge the decision referred to in paragraph 4 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.

## CHAPTER VI

**DATA PROTECTION***Article 78***Data protection**

1. National rules implementing Directive 95/46/EC shall apply to the processing of personal data carried out in the Member States pursuant to this Regulation, provided that processing operations referred to in Article 3(2) of Directive 95/46/EC are not concerned.
2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation.

*Article 79***Responsibilities of Member States regarding the processing of personal data in national insolvency registers**

1. Each Member State shall communicate to the Commission the name of the natural or legal person, public authority, agency or any other body designated by national law to exercise the functions of controller in accordance with point (d) of Article 2 of Directive 95/46/EC, with a view to its publication on the European e-Justice Portal.

2. Member States shall ensure that the technical measures for ensuring the security of personal data processed in their national insolvency registers referred to in Article 24 are implemented.
3. Member States shall be responsible for verifying that the controller, designated by national law in accordance with point (d) of Article 2 of Directive 95/46/EC, ensures compliance with the principles of data quality, in particular the accuracy and the updating of data stored in national insolvency registers.
4. Member States shall be responsible, in accordance with Directive 95/46/EC, for the collection and storage of data in national databases and for decisions taken to make such data available in the interconnected register that can be consulted via the European e-Justice Portal.
5. As part of the information that should be provided to data subjects to enable them to exercise their rights, and in particular the right to the erasure of data, Member States shall inform data subjects of the accessibility period set for personal data stored in insolvency registers.

#### *Article 80*

### **Responsibilities of the Commission in connection with the processing of personal data**

1. The Commission shall exercise the responsibilities of controller pursuant to Article 2(d) of Regulation (EC) No 45/2001 in accordance with its respective responsibilities defined in this Article.
2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.
3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity of any transmission to and from the European e-Justice Portal.
4. The obligations of the Commission shall not affect the responsibilities of the Member States and other bodies for the content and operation of the interconnected national databases run by them.

#### *Article 81*

### **Information obligations**

Without prejudice to the information to be given to data subjects in accordance with Articles 11 and 12 of Regulation (EC) No 45/2001, the Commission shall inform data subjects, by means of publication through the European e-Justice Portal, about its role in the processing of data and the purposes for which those data will be processed.

#### *Article 82*

### **Storage of personal data**

As regards information from interconnected national databases, no personal data relating to data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national databases operated by the Member States or other bodies.

#### *Article 83*

### **Access to personal data via the European e-Justice Portal**

Personal data stored in the national insolvency registers referred to in Article 24 shall be accessible via the European e-Justice Portal for as long as they remain accessible under national law.

## CHAPTER VII

## TRANSITIONAL AND FINAL PROVISIONS

*Article 84***Applicability in time**

1. The provisions of this Regulation shall apply only to insolvency proceedings opened after 26 June 2017. Acts committed by a debtor before that date shall continue to be governed by the law which was applicable to them at the time they were committed.
2. Notwithstanding Article 91 of this Regulation, Regulation (EC) No 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened before 26 June 2017.

*Article 85***Relationship to Conventions**

1. This Regulation replaces, in respect of the matters referred to therein, and as regards relations between Member States, the Conventions concluded between two or more Member States, in particular:
  - (a) the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;
  - (b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;
  - (c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;
  - (d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;
  - (e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;
  - (f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;
  - (g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;
  - (h) the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;
  - (i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;
  - (j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;
  - (k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990;
  - (l) the Convention between the Federative People's Republic of Yugoslavia and the Kingdom of Greece on the Mutual Recognition and Enforcement of Judgments, signed at Athens on 18 June 1959;
  - (m) the Agreement between the Federative People's Republic of Yugoslavia and the Republic of Austria on the Mutual Recognition and Enforcement of Arbitral Awards and Arbitral Settlements in Commercial Matters, signed at Belgrade on 18 March 1960;

- (n) the Convention between the Federative People's Republic of Yugoslavia and the Italian Republic on Mutual Judicial Cooperation in Civil and Administrative Matters, signed at Rome on 3 December 1960;
- (o) the Agreement between the Socialist Federative Republic of Yugoslavia and the Kingdom of Belgium on Judicial Cooperation in Civil and Commercial Matters, signed at Belgrade on 24 September 1971;
- (p) the Convention between the Governments of Yugoslavia and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Paris on 18 May 1971;
- (q) the Agreement between the Czechoslovak Socialist Republic and the Hellenic Republic on Legal Aid in Civil and Criminal Matters, signed at Athens on 22 October 1980, still in force between the Czech Republic and Greece;
- (r) the Agreement between the Czechoslovak Socialist Republic and the Republic of Cyprus on Legal Aid in Civil and Criminal Matters, signed at Nicosia on 23 April 1982, still in force between the Czech Republic and Cyprus;
- (s) the Treaty between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of France on Legal Aid and the Recognition and Enforcement of Judgments in Civil, Family and Commercial Matters, signed at Paris on 10 May 1984, still in force between the Czech Republic and France;
- (t) the Treaty between the Czechoslovak Socialist Republic and the Italian Republic on Legal Aid in Civil and Criminal Matters, signed at Prague on 6 December 1985, still in force between the Czech Republic and Italy;
- (u) the Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships, signed at Tallinn on 11 November 1992;
- (v) the Agreement between Estonia and Poland on Granting Legal Aid and Legal Relations on Civil, Labour and Criminal Matters, signed at Tallinn on 27 November 1998;
- (w) the Agreement between the Republic of Lithuania and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters, signed at Warsaw on 26 January 1993;
- (x) the Convention between the Socialist Republic of Romania and the Hellenic Republic on legal assistance in civil and criminal matters and its Protocol, signed at Bucharest on 19 October 1972;
- (y) the Convention between the Socialist Republic of Romania and the French Republic on legal assistance in civil and commercial matters, signed at Paris on 5 November 1974;
- (z) the Agreement between the People's Republic of Bulgaria and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters, signed at Athens on 10 April 1976;
- (aa) the Agreement between the People's Republic of Bulgaria and the Republic of Cyprus on Legal Assistance in Civil and Criminal Matters, signed at Nicosia on 29 April 1983;
- (ab) the Agreement between the Government of the People's Republic of Bulgaria and the Government of the French Republic on Mutual Legal Assistance in Civil Matters, signed at Sofia on 18 January 1989;
- (ac) the Treaty between Romania and the Czech Republic on judicial assistance in civil matters, signed at Bucharest on 11 July 1994;
- (ad) the Treaty between Romania and the Republic of Poland on legal assistance and legal relations in civil cases, signed at Bucharest on 15 May 1999.

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of Regulation (EC) No 1346/2000.

3. This Regulation shall not apply:

- (a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that Member State with one or more third countries before the entry into force of Regulation (EC) No 1346/2000;
- (b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time Regulation (EC) No 1346/2000 entered into force.

*Article 86***Information on national and Union insolvency law**

1. The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC <sup>(1)</sup>, and with a view to making the information available to the public, a short description of their national legislation and procedures relating to insolvency, in particular relating to the matters listed in Article 7(2).
2. The Member States shall update the information referred to in paragraph 1 regularly.
3. The Commission shall make information concerning this Regulation available to the public.

*Article 87***Establishment of the interconnection of registers**

The Commission shall adopt implementing acts establishing the interconnection of insolvency registers as referred to in Article 25. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 89(3).

*Article 88***Establishment and subsequent amendment of standard forms**

The Commission shall adopt implementing acts establishing and, where necessary, amending the forms referred to in Article 27(4), Articles 54 and 55 and Article 64(2). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

*Article 89***Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 90***Review clause**

1. No later than 27 June 2027, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.
2. No later than 27 June 2022, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the group coordination proceedings. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.
3. No later than 1 January 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the cross-border issues in the area of directors' liability and disqualifications.
4. No later than 27 June 2020, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the issue of abusive forum shopping.

<sup>(1)</sup> Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

*Article 91***Repeal**

Regulation (EC) No 1346/2000 is repealed.

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

*Article 92***Entry into force**

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

It shall apply from 26 June 2017, with the exception of:

- (a) Article 86, which shall apply from 26 June 2016;
- (b) Article 24(1), which shall apply from 26 June 2018; and
- (c) Article 25, which shall apply from 26 June 2019.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 20 May 2015.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

Z. KALNIŅA-LUKAŠEVICA

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## ANNEX A

**Insolvency proceedings referred to in point (4) of Article 2**

## BELGIQUE/BELGIË

- Het faillissement/La faillite,
- De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif,
- De gerechtelijke reorganisatie door een minnelijk akkoord/La réorganisation judiciaire par accord amiable,
- De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice,
- De collectieve schuldenregeling/Le règlement collectif de dettes,
- De vrijwillige vereffening/La liquidation volontaire,
- De gerechtelijke vereffening/La liquidation judiciaire,
- De voorlopige ontneming van beheer, bepaald in artikel 8 van de faillissementswet/Le dessaisissement provisoire, visé à l'article 8 de la loi sur les faillites,

## БЪЛГАРИЯ

- Производство по несъстоятелност,

## ČESKÁ REPUBLIKA

- Konkurs,
- Reorganizace,
- Oddlužení,

## DEUTSCHLAND

- Das Konkursverfahren,
- Das gerichtliche Vergleichsverfahren,
- Das Gesamtvollstreckungsverfahren,
- Das Insolvenzverfahren,

## EESTI

- Pankrotimenetus,
- Võlgade ümberkujundamise menetlus,

## ÉIRE/IRELAND

- Compulsory winding-up by the court,
- Bankruptcy,
- The administration in bankruptcy of the estate of persons dying insolvent,
- Winding-up in bankruptcy of partnerships,
- Creditors' voluntary winding-up (with confirmation of a court),
- Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution,
- Examinership,
- Debt Relief Notice,
- Debt Settlement Arrangement,
- Personal Insolvency Arrangement,

## ΕΛΛΑΔΑ

- Η πτώχευση,
- Η ειδική εκκαθάριση εν λειτουργία,
- Σχέδιο αναδιοργάνωσης,
- Απλοποιημένη διαδικασία επί πτωχεύσεων μικρού αντικειμένου,
- Διαδικασία Εξυγίανσης,

## ESPAÑA

- Concurso,
- Procedimiento de homologación de acuerdos de refinanciación,
- Procedimiento de acuerdos extrajudiciales de pago,
- Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio,

## FRANCE

- Sauvegarde,
- Sauvegarde accélérée,
- Sauvegarde financière accélérée,
- Redressement judiciaire,
- Liquidation judiciaire,

## HRVATSKA

- Stečajni postupak,

## ITALIA

- Fallimento,
- Concordato preventivo,
- Liquidazione coatta amministrativa,
- Amministrazione straordinaria,
- Accordi di ristrutturazione,
- Procedure di composizione della crisi da sovraindebitamento del consumatore (accordo o piano),
- Liquidazione dei beni,

## ΚΥΠΡΟΣ

- Υποχρεωτική εκκαθάριση από το Δικαστήριο,
- Εκούσια εκκαθάριση από μέλη,
- Εκούσια εκκαθάριση από πιστωτές
- Εκκαθάριση με την εποπτεία του Δικαστηρίου,
- Διάταγμα Παραλαβής και πτώχευσης κατόπιν Δικαστικού Διατάγματος,
- Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα,

## LATVIJA

- Tiesiskās aizsardzības process,
- Juridiskās personas maksātnespējas process,
- Fiziskās personas maksātnespējas process,

## LIETUVA

- Įmonės restruktūrizavimo byla,
- Įmonės bankroto byla,
- Įmonės bankroto procesas ne teismo tvarka,
- Fizinio asmens bankroto procesas,

## LUXEMBOURG

- Faillite,
- Gestion contrôlée,
- Concordat préventif de faillite (par abandon d'actif),
- Régime spécial de liquidation du notariat,
- Procédure de règlement collectif des dettes dans le cadre du surendettement,

## MAGYARORSZÁG

- Csődeljárás,
- Felszámolási eljárás,

## MALTA

- Xoljiment,
- Amministrazzjoni,
- Stralċ volontarju mill-membri jew mill-kredituri,
- Stralċ mill-Qorti,
- Falliment f'każ ta' kummerċjant,
- Proċedura biex kumpanija tirkupra,

## NEDERLAND

- Het faillissement,
- De surséance van betaling,
- De schuldsaneringsregeling natuurlijke personen,

## ÖSTERREICH

- Das Konkursverfahren (Insolvenzverfahren),
- Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren),
- Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren),
- Das Schuldenregulierungsverfahren,
- Das Abschöpfungsverfahren,
- Das Ausgleichsverfahren,

## POLSKA

- Postępowanie naprawcze,
- Upadłość obejmująca likwidację,
- Upadłość z możliwością zawarcia układu,

## PORTUGAL

- Processo de insolvência,
- Processo especial de revitalização,

## ROMÂNIA

- Procedura insolvenței,
- Reorganizarea judiciară,
- Procedura falimentului,
- Concordatul preventiv,

## SLOVENIJA

- Postopek preventivnega prestrukturiranja,
- Postopek prisilne poravnave,
- Postopek poenostavljene prisilne poravnave,
- Stečajni postopek: stečajni postopek nad pravno osebo, postopek osebnega stečaja and postopek stečaja zapuščine,

## SLOVENSKO

- Konkurzné konanie,
- Reštrukturalizačné konanie,
- Oddĺženie,

## SUOMI/FINLAND

- Konkurssi/konkurs,
- Yrityssaneeraus/företagssanering,
- Yksityishenkilön velkajärjestely/skuldsanering för privatpersoner,

## SVERIGE

- Konkurs,
- Företagsrekonstruktion,
- Skuldsanering,

## UNITED KINGDOM

- Winding-up by or subject to the supervision of the court,
  - Creditors' voluntary winding-up (with confirmation by the court),
  - Administration, including appointments made by filing prescribed documents with the court,
  - Voluntary arrangements under insolvency legislation,
  - Bankruptcy or sequestration.
-

## ANNEX B

**Insolvency practitioners referred to in point (5) of Article 2**

## BELGIQUE/BELGIË

- De curator/Le curateur,
- De gedelegeerd rechter/Le juge-délégué,
- De gerechtsmandataris/Le mandataire de justice,
- De schuldbemiddelaar/Le médiateur de dettes,
- De vereffenaar/Le liquidateur,
- De voorlopige bewindvoerder/L'administrateur provisoire,

## БЪЛГАРИЯ

- Назначен предварително временен синдик,
- Временен синдик,
- (Постоянен) синдик,
- Служебен синдик,

## ČESKÁ REPUBLIKA

- Insolvenční správce,
- Předběžný insolvenční správce,
- Oddělený insolvenční správce,
- Zvláštní insolvenční správce,
- Zástupce insolvenčního správce,

## DEUTSCHLAND

- Konkursverwalter,
- Vergleichsverwalter,
- Sachwalter (nach der Vergleichsordnung),
- Verwalter,
- Insolvenzverwalter,
- Sachwalter (nach der Insolvenzordnung),
- Treuhänder,
- Vorläufiger Insolvenzverwalter,
- Vorläufiger Sachwalter,

## EESTI

- Pankrotihaldur,
- Ajutine pankrotihaldur,
- Usaldusisik,

## ÉIRE/IRELAND

- Liquidator,
- Official Assignee,
- Trustee in bankruptcy,

- Provisional Liquidator,
- Examiner,
- Personal Insolvency Practitioner,
- Insolvency Service,

## ΕΛΛΑΔΑ

- Ο σύνδικος,
- Ο εισηγητής,
- Η επιτροπή των πιστωτών,
- Ο ειδικός εκκαθαριστής,

## ESPAÑA

- Administrador concursal,
- Mediador concursal,

## FRANCE

- Mandataire judiciaire,
- Liquidateur,
- Administrateur judiciaire,
- Commissaire à l'exécution du plan,

## HRVATSKA

- Stečajni upravitelj,
- Privremeni stečajni upravitelj,
- Stečajni povjerenik,
- Povjerenik,

## ITALIA

- Curatore,
- Commissario giudiziale,
- Commissario straordinario,
- Commissario liquidatore,
- Liquidatore giudiziale,
- Professionista nominato dal Tribunale,
- Organismo di composizione della crisi nella procedura di composizione della crisi da sovraindebitamento del consumatore,
- Liquidatore,

## ΚΥΠΡΟΣ

- Εκκαθαριστής και Προσωρινός Εκκαθαριστής,
- Επίσημος Παραλήπτης,
- Διαχειριστής της Πτώχευσης,

## LATVIJA

- Maksātnespējas procesa administrators,

## LIETUVA

- Bankroto administratorius,
- Restruktūrizavimo administratorius,

## LUXEMBOURG

- Le curateur,
- Le commissaire,
- Le liquidateur,
- Le conseil de gérance de la section d'assainissement du notariat,
- Le liquidateur dans le cadre du surendettement,

## MAGYARORSZÁG

- Vagyongfelügyelő,
- Felszámoló,

## MALTA

- Amministratur Proviżorju,
- Riċevitur Uffiċjali,
- Stralċjarju,
- Manager Speċjali,
- Kuraturi f'każ ta' proċeduri ta' falliment,
- Kontrollur Speċjali,

## NEDERLAND

- De curator in het faillissement,
- De bewindvoerder in de surséance van betaling,
- De bewindvoerder in de schuldsaneringsregeling natuurlijke personen,

## ÖSTERREICH

- Masseverwalter,
- Sanierungsverwalter,
- Ausgleichsverwalter,
- Besonderer Verwalter,
- Einstweiliger Verwalter,
- Sachwalter,
- Treuhänder,
- Insolvenzgericht,
- Konkursgericht,

## POLSKA

- Syndyk,
- Nadzorca sądowy,
- Zarządca,

## PORTUGAL

- Administrador da insolvência,
- Administrador judicial provisório,

## ROMÂNIA

- Practician în insolvență,
- Administrator concordatar,
- Administrator judiciar,
- Lichidator judiciar,

## SLOVENIJA

- Upravitelj,

## SLOVENSKO

- Predbežný správca,
- Správca,

## SUOMI/FINLAND

- Pesänhoitaja/boförvaltare,
- Selvittäjä/utredare,

## SVERIGE

- Förvaltare,
- Rekonstruktör,

## UNITED KINGDOM

- Liquidator,
  - Supervisor of a voluntary arrangement,
  - Administrator,
  - Official Receiver,
  - Trustee,
  - Provisional Liquidator,
  - Interim Receiver,
  - Judicial factor.
-



## ANNEX C

**Repealed Regulation with list of the successive amendments thereto**

Council Regulation (EC) No 1346/2000

(OJ L 160, 30.6.2000, p. 1)

Council Regulation (EC) No 603/2005

(OJ L 100, 20.4.2005, p. 1)

Council Regulation (EC) No 694/2006

(OJ L 121, 6.5.2006, p. 1)

Council Regulation (EC) No 1791/2006

(OJ L 363, 20.12.2006, p. 1)

Council Regulation (EC) No 681/2007

(OJ L 159, 20.6.2007, p. 1)

Council Regulation (EC) No 788/2008

(OJ L 213, 8.8.2008, p. 1)

Implementing Regulation of the Council (EU) No 210/2010

(OJ L 65, 13.3.2010, p. 1)

Council Implementing Regulation (EU) No 583/2011

(OJ L 160, 18.6.2011, p. 52)

Council Regulation (EU) No 517/2013

(OJ L 158, 10.6.2013, p. 1)

Council Implementing Regulation (EU) No 663/2014

(OJ L 179, 19.6.2014, p. 4)

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded

(OJ L 236, 23.9.2003, p. 33)

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## ANNEX D

## Correlation table

Regulation (EC) No 1346/2000	This Regulation
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2, point (a)	Article 2, point (4)
Article 2, point (b)	Article 2, point (5)
Article 2, point (c)	—
Article 2, point (d)	Article 2, point (6)
Article 2, point (e)	Article 2, point (7)
Article 2, point (f)	Article 2, point (8)
Article 2, point (g), introductory words	Article 2, point (9), introductory words
Article 2, point (g), first indent	Article 2, point (9)(vii)
Article 2, point (g), second indent	Article 2, point (9)(iv)
Article 2, point (g), third indent	Article 2, point (9)(viii)
Article 2, point (h)	Article 2, point 10
—	Article 2, points (1) to (3) and (11) to (13)
—	Article 2, point (9)(i) to (iii), (v), (vi)
Article 3	Article 3
—	Article 4
—	Article 5
—	Article 6
Article 4	Article 7
Article 5	Article 8
Article 6	Article 9
Article 7	Article 10
Article 8	Article 11(1)
—	Article 11(2)
Article 9	Article 12
Article 10	Article 13(1)
—	Article 13(2)
Article 11	Article 14
Article 12	Article 15
Article 13, first indent	Article 16, point (a)
Article 13, second indent	Article 16, point (b)
Article 14, first indent	Article 17, point (a)
Article 14, second indent	Article 17, point (b)

Regulation (EC) No 1346/2000	This Regulation
Article 14, third indent	Article 17, point (c)
Article 15	Article 18
Article 16	Article 19
Article 17	Article 20
Article 18	Article 21
Article 19	Article 22
Article 20	Article 23
—	Article 24
—	Article 25
—	Article 26
—	Article 27
Article 21(1)	Article 28(2)
Article 21(2)	Article 28(1)
Article 22	Article 29
Article 23	Article 30
Article 24	Article 31
Article 25	Article 32
Article 26	Article 33
Article 27	Article 34
Article 28	Article 35
—	Article 36
Article 29	Article 37(1)
—	Article 37(2)
—	Article 38
—	Article 39
Article 30	Article 40
Article 31	Article 41
—	Article 42
—	Article 43
—	Article 44
Article 32	Article 45
Article 33	Article 46
Article 34(1)	Article 47(1)
Article 34(2)	Article 47(2)
Article 34(3)	—
—	Article 48
Article 35	Article 49
Article 36	Article 50
Article 37	Article 51

Regulation (EC) No 1346/2000	This Regulation
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Article 39	Article 53
Article 40	Article 54
Article 41	Article 55
Article 42	—
—	Article 56
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—	Article 58
—	Article 59
—	Article 60
—	Article 61
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—	Article 76
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—	Article 81
—	Article 82
—	Article 83
Article 43	Article 84(1)
—	Article 84(2)
Article 44	Article 85
—	Article 86
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Regulation (EC) No 1346/2000	This Regulation
—	Article 89
Article 46	Article 90(1)
—	Article 90(2) to (4)
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Article 47	Article 92
Annex A	Annex A
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Annex C	Annex B
—	Annex C
—	Annex D

# DIRECTIVES

## 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**

(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) Flows of illicit money can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorism financing and organised crime remain significant problems which should be addressed at Union level. In addition to further developing the criminal law approach at Union level, targeted and proportionate prevention of the use of the financial system for the purposes of money laundering and terrorist financing is indispensable and can produce complementary results.
- (2) The soundness, integrity and stability of credit institutions and financial institutions, and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates to disguise the origin of criminal proceeds or to channel lawful or illicit money for terrorist purposes. In order to facilitate their criminal activities, money launderers and financers of terrorism could try to take advantage of the freedom of capital movements and the freedom to supply financial services which the Union's integrated financial area entails. Therefore, certain coordinating measures are necessary at Union level. At the same time, the objectives of protecting society from crime and protecting the stability and integrity of the Union's financial system should be balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs.
- (3) This Directive is the fourth directive to address the threat of money laundering. Council Directive 91/308/EEC <sup>(4)</sup> defined money laundering in terms of drugs offences and imposed obligations solely on the financial sector.

<sup>(1)</sup> OJ C 166, 12.6.2013, p. 2.

<sup>(2)</sup> OJ C 271, 19.9.2013, p. 31.

<sup>(3)</sup> Position of the European Parliament of 11 March 2014 (not yet published in the Official Journal) and position of the Council at first reading of 20 April 2015 (not yet published in the Official Journal). Position of the European Parliament of 20 May 2015 (not yet published in the Official Journal).

<sup>(4)</sup> Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77).

Directive 2001/97/EC of the European Parliament and of the Council <sup>(1)</sup> extended the scope of Directive 91/308/EEC both in terms of the crimes covered and in terms of the range of professions and activities covered. In June 2003, the Financial Action Task Force (FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer identification and verification, the situations where a higher risk of money laundering or terrorist financing may justify enhanced measures and also the situations where a reduced risk may justify less rigorous controls. Those changes were reflected in Directive 2005/60/EC of the European Parliament and of the Council <sup>(2)</sup> and in Commission Directive 2006/70/EC <sup>(3)</sup>.

- (4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union in that field should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora. Union action should continue to take particular account of the FATF Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. With a view to reinforcing the efficacy of the fight against money laundering and terrorist financing, the relevant Union legal acts should, where appropriate, be aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the 'revised FATF Recommendations').
- (5) Furthermore, the misuse of the financial system to channel illicit or even lawful money into terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the preventive measures laid down in this Directive should address the manipulation of money derived from serious crime and the collection of money or property for terrorist purposes.
- (6) The use of large cash payments is highly vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by such cash payments, persons trading in goods should be covered by this Directive to the extent that they make or receive cash payments of EUR 10 000 or more. Member States should be able to adopt lower thresholds, additional general limitations to the use of cash and further stricter provisions.
- (7) The use of electronic money products is increasingly considered to be a substitute for bank accounts, which, in addition to the measures laid down in Directive 2009/110/EC of the European Parliament and of the Council <sup>(4)</sup>, justifies subjecting those products to anti-money laundering and countering the financing of terrorism (AML/CFT) obligations. However, in certain proven low-risk circumstances and under strict risk-mitigating conditions, Member States should be allowed to exempt electronic money products from certain customer due diligence measures, such as the identification and verification of the customer and of the beneficial owner, but not from the monitoring of transactions or of business relationships. The risk-mitigating conditions should include a requirement that exempt electronic money products be used exclusively for purchasing goods or services, and that the amount stored electronically be low enough to preclude circumvention of the AML/CFT rules. Such an exemption should be without prejudice to the discretion given to Member States to allow obliged entities to apply simplified customer due diligence measures to other electronic money products posing lower risks, in accordance with Article 15.
- (8) As concerns the obliged entities which are subject to this Directive, estate agents could be understood to include letting agents, where applicable.

<sup>(1)</sup> Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (OJ L 344, 28.12.2001, p. 76).

<sup>(2)</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

<sup>(3)</sup> Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L 214, 4.8.2006, p. 29).

<sup>(4)</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).

- (9) Legal professionals, as defined by the Member States, should be subject to this Directive when participating in financial or corporate transactions, including when providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client. Therefore, legal advice should remain subject to the obligation of professional secrecy, except where the legal professional is taking part in money laundering or terrorist financing, the legal advice is provided for the purposes of money laundering or terrorist financing, or the legal professional knows that the client is seeking legal advice for the purposes of money laundering or terrorist financing.
- (10) Directly comparable services should be treated in the same manner when provided by any of the professionals covered by this Directive. In order to ensure respect for the rights guaranteed by the Charter of Fundamental Rights of the European Union (the 'Charter'), in the case of auditors, external accountants and tax advisors, who, in some Member States, are entitled to defend or represent a client in the context of judicial proceedings or to ascertain a client's legal position, the information they obtain in the performance of those tasks should not be subject to the reporting obligations laid down in this Directive.
- (11) It is important expressly to highlight that 'tax crimes' relating to direct and indirect taxes are included in the broad definition of 'criminal activity' in this Directive, in line with the revised FATF Recommendations. Given that different tax offences may be designated in each Member State as constituting 'criminal activity' punishable by means of the sanctions as referred to in point (4)(f) of Article 3 of this Directive, national law definitions of tax crimes may diverge. While no harmonisation of the definitions of tax crimes in Member States' national law is sought, Member States should allow, to the greatest extent possible under their national law, the exchange of information or the provision of assistance between EU Financial Intelligence Units (FIUs).
- (12) There is a need to identify any natural person who exercises ownership or control over a legal entity. In order to ensure effective transparency, Member States should ensure that the widest possible range of legal entities incorporated or created by any other mechanism in their territory is covered. While finding a specified percentage shareholding or ownership interest does not automatically result in finding the beneficial owner, it should be one evidential factor among others to be taken into account. Member States should be able, however, to decide that a lower percentage may be an indication of ownership or control.
- (13) Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and obliged entities should look for the natural person(s) who ultimately exercises control through ownership or through other means of the legal entity that is the customer. Control through other means may, inter alia, include the criteria of control used for the purpose of preparing consolidated financial statements, such as through a shareholders' agreement, the exercise of dominant influence or the power to appoint senior management. There may be cases where no natural person is identifiable who ultimately owns or exerts control over a legal entity. In such exceptional cases, obliged entities, having exhausted all other means of identification, and provided there are no grounds for suspicion, may consider the senior managing official(s) to be the beneficial owner(s).
- (14) The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that entities incorporated within their territory in accordance with national law obtain and hold adequate, accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership. With a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law. Member States can, for that purpose, use a central database which collects beneficial ownership information, or the business register, or another central register. Member States may decide that obliged entities are responsible for filling in the register. Member States should make sure that in all cases that information is made available to competent authorities and FIUs and is provided to obliged entities when the latter take customer due diligence measures. Member States should also ensure that other persons who are able to demonstrate a legitimate interest with respect to money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax



crimes and fraud, are granted access to beneficial ownership information, in accordance with data protection rules. The persons who are able to demonstrate a legitimate interest should have access to information on the nature and extent of the beneficial interest held consisting of its approximate weight.

- (15) For that purpose, Member States should be able, under national law, to allow for access that is wider than the access provided for under this Directive.
- (16) Timely access to information on beneficial ownership should be ensured in ways which avoid any risk of tipping off the company concerned.
- (17) In order to ensure a level playing field among the different types of legal forms, trustees should also be required to obtain, hold and provide beneficial ownership information to obliged entities taking customer due diligence measures and to communicate that information to a central register or a central database and they should disclose their status to obliged entities. Legal entities such as foundations and legal arrangements similar to trusts should be subject to equivalent requirements.
- (18) This Directive should also apply to activities of obliged entities which are performed on the internet.
- (19) New technologies provide time-effective and cost-effective solutions to businesses and to customers and should therefore be taken into account when evaluating risk. The competent authorities and obliged entities should be proactive in combating new and innovative ways of money laundering.
- (20) The representatives of the Union in the governing bodies of the European Bank for Reconstruction and Development are encouraged to implement this Directive and to publish on its website AML/CFT policies, containing detailed procedures that would give effect to this Directive.
- (21) The use of gambling sector services to launder the proceeds of criminal activity is of concern. In order to mitigate the risks relating to gambling services, this Directive should provide for an obligation for providers of gambling services posing higher risks to apply customer due diligence measures for single transactions amounting to EUR 2 000 or more. Member States should ensure that obliged entities apply the same threshold to the collection of winnings, wagering a stake, including by the purchase and exchange of gambling chips, or both. Providers of gambling services with physical premises, such as casinos and gaming houses, should ensure that customer due diligence, if it is taken at the point of entry to the premises, can be linked to the transactions conducted by the customer on those premises. However, in proven low-risk circumstances, Member States should be allowed to exempt certain gambling services from some or all of the requirements laid down in this Directive. The use of an exemption by a Member State should be considered only in strictly limited and justified circumstances, and where the risks of money laundering or terrorist financing are low. Such exemptions should be subject to a specific risk assessment which also considers the degree of vulnerability of the applicable transactions. They should be notified to the Commission. In the risk assessment, Member States should indicate how they have taken into account any relevant findings in the reports issued by the Commission in the framework of the supranational risk assessment.
- (22) The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a holistic, risk-based approach should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision-making in order to target the risks of money laundering and terrorist financing facing the Union and those operating within it more effectively.
- (23) Underpinning the risk-based approach is the need for Member States and the Union to identify, understand and mitigate the risks of money laundering and terrorist financing that they face. The importance of a supranational approach to risk identification has been recognised at international level, and the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(1)</sup>, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council <sup>(2)</sup>, and the European Supervisory Authority (European Securities and Markets Authority) (ESMA),

<sup>(1)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>(2)</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(1)</sup>, should be tasked with issuing an opinion, through their Joint Committee, on the risks affecting the Union financial sector.

- (24) The Commission is well placed to review specific cross-border threats that could affect the internal market and that cannot be identified and effectively combatted by individual Member States. It should therefore be entrusted with the responsibility for coordinating the assessment of risks relating to cross-border activities. Involvement of the relevant experts, such as the Expert Group on Money Laundering and Terrorist Financing and the representatives from the FIUs, as well as, where appropriate, from other Union-level bodies, is essential for the effectiveness of that process. National risk assessments and experience are also an important source of information for the process. Such assessment of the cross-border risks by the Commission should not involve the processing of personal data. In any event, data should be fully anonymised. National and Union data protection supervisory authorities should be involved only if the assessment of the risk of money laundering and terrorist financing has an impact on the privacy and data protection of individuals.
- (25) The results of risk assessments should, where appropriate, be made available to obliged entities in a timely manner to enable them to identify, understand, manage and mitigate their own risks.
- (26) In addition, to identify, understand, manage and mitigate risks at Union level to an even greater degree, Member States should make available the results of their risk assessments to each other, to the Commission and to EBA, EIOPA and ESMA (the 'ESAs').
- (27) When applying this Directive, it is appropriate to take account of the characteristics and needs of smaller obliged entities which fall under its scope, and to ensure treatment which is appropriate to their specific needs, and the nature of the business.
- (28) In order to protect the proper functioning of the Union financial system and of the internal market from money laundering and terrorist financing, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in order to identify third-country jurisdictions which have strategic deficiencies in their national AML/CFT regimes ('high-risk third countries'). The changing nature of money laundering and terrorist financing threats, facilitated by a constant evolution of technology and of the means at the disposal of criminals, requires that quick and continuous adaptations of the legal framework as regards high-risk third countries be made in order to address efficiently existing risks and prevent new ones from arising. The Commission should take into account information from international organisations and standard setters in the field of AML/CFT, such as FATF public statements, mutual evaluation or detailed assessment reports or published follow-up reports, and adapt its assessments to the changes therein, where appropriate.
- (29) Member States should at least provide for enhanced customer due diligence measures to be applied by the obliged entities when dealing with natural persons or legal entities established in high-risk third countries identified by the Commission. Reliance on third parties established in such high-risk third countries should also be prohibited. Countries not included in the list should not be automatically considered to have effective AML/CFT systems and natural persons or legal entities established in such countries should be assessed on a risk-sensitive basis.
- (30) Risk itself is variable in nature, and the variables, on their own or in combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventative measures, such as customer due diligence measures. Therefore, there are circumstances in which enhanced due diligence should be applied and others in which simplified due diligence may be appropriate.
- (31) It should be recognised that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established, there are cases in which particularly rigorous customer identification and verification procedures are required.

<sup>(1)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (32) This is particularly true of relationships with individuals who hold or who have held important public functions, within the Union or internationally, and particularly individuals from countries where corruption is widespread. Such relationships may expose the financial sector in particular to significant reputational and legal risks. The international effort to combat corruption also justifies the need to pay particular attention to such persons and to apply appropriate enhanced customer due diligence measures with respect to persons who are or who have been entrusted with prominent public functions domestically or abroad and with respect to senior figures in international organisations.
- (33) The requirements relating to politically exposed persons are of a preventive and not criminal nature, and should not be interpreted as stigmatising politically exposed persons as being involved in criminal activity. Refusing a business relationship with a person simply on the basis of the determination that he or she is a politically exposed person is contrary to the letter and spirit of this Directive and of the revised FATF Recommendations.
- (34) Obtaining approval from senior management for establishing business relationships does not need to imply, in all cases, obtaining approval from the board of directors. It should be possible for such approval to be granted by someone with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and of sufficient seniority to take decisions affecting its risk exposure.
- (35) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers whose identification has been carried out elsewhere to be introduced to the obliged entities. Where an obliged entity relies on a third party, the ultimate responsibility for customer due diligence should remain with the obliged entity to which the customer is introduced. The third party, or the person that has introduced the customer, should also retain its own responsibility for compliance with this Directive, including the requirement to report suspicious transactions and maintain records, to the extent that it has a relationship with the customer that is covered by this Directive.
- (36) In the case of agency or outsourcing relationships on a contractual basis between obliged entities and external persons not covered by this Directive, any AML/CFT obligations upon those agents or outsourcing service providers as part of the obliged entities could arise only from the contract between the parties and not from this Directive. Therefore the responsibility for complying with this Directive should remain primarily with the obliged entity.
- (37) All Member States have, or should, set up operationally independent and autonomous FIUs to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. An operationally independent and autonomous FIU should mean that the FIU has the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and disseminate specific information. Suspicious transactions and other information relevant to money laundering, associated predicate offences and terrorist financing should be reported to the FIU, which should serve as a central national unit for receiving, analysing and disseminating to the competent authorities the results of its analyses. All suspicious transactions, including attempted transactions, should be reported, regardless of the amount of the transaction. Reported information could also include threshold-based information.
- (38) By way of derogation from the general prohibition against carrying out suspicious transactions, obliged entities should be able to carry out suspicious transactions before informing the competent authorities where refraining from such carrying out is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. This, however, should be without prejudice to the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.
- (39) For certain obliged entities, Member States should have the possibility to designate an appropriate self-regulatory body as the authority to be informed in the first instance instead of the FIU. In accordance with the case-law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard for upholding the protection of fundamental rights as concerns the reporting obligations applicable to lawyers. Member States should provide for the means and manner by which to achieve the protection of professional secrecy, confidentiality and privacy.
- (40) Where a Member State decides to designate such a self-regulatory body, it may allow or require that body not to transmit to the FIU any information obtained from persons represented by that body where such information has

been received from, or obtained on, one of their clients, in the course of ascertaining the legal position of their client, or in performing their task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings.

- (41) There have been a number of cases where employees who have reported their suspicions of money laundering have been subjected to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, it is crucial that this issue be addressed to ensure effectiveness of the AML/CFT system. Member States should be aware of this problem and should do whatever they can to protect individuals, including employees and representatives of the obliged entity, from such threats or hostile action, and to provide, in accordance with national law, appropriate protection to such persons, particularly with regard to their right to the protection of their personal data and their rights to effective judicial protection and representation.
- (42) Directive 95/46/EC of the European Parliament and of the Council <sup>(1)</sup>, as transposed into national law, applies to the processing of personal data for the purposes of this Directive. Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(2)</sup> applies to the processing of personal data by the Union institutions and bodies for the purposes of this Directive. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. This Directive is without prejudice to the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, including Council Framework Decision 2008/977/JHA <sup>(3)</sup>, as implemented in national law.
- (43) It is essential that the alignment of this Directive with the revised FATF Recommendations is carried out in full compliance with Union law, in particular as regards Union data protection law and the protection of fundamental rights as enshrined in the Charter. Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. Such processing of personal data should be permitted, while fully respecting fundamental rights, only for the purposes laid down in this Directive, and for the activities required under this Directive such as carrying out customer due diligence, ongoing monitoring, investigation and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, identification of a politically exposed person, sharing of information by competent authorities and sharing of information by credit institutions and financial institutions and other obliged entities. The collection and subsequent processing of personal data by obliged entities should be limited to what is necessary for the purpose of complying with the requirements of this Directive and personal data should not be further processed in a way that is incompatible with that purpose. In particular, further processing of personal data for commercial purposes should be strictly prohibited.
- (44) The revised FATF Recommendations demonstrate that, in order to be able to cooperate fully and comply swiftly with information requests from competent authorities for the purposes of the prevention, detection or investigation of money laundering and terrorist financing, obliged entities should maintain, for at least five years, the necessary information obtained through customer due diligence measures and the records on transactions. In order to avoid different approaches and in order to fulfil the requirements relating to the protection of personal data and legal certainty, that retention period should be fixed at five years after the end of a business relationship or of an occasional transaction. However, if necessary for the purposes of prevention, detection or investigation of money laundering and terrorist financing, and after carrying out an assessment of the necessity and proportionality, Member States should be able to allow or require the further retention of records for a period not exceeding an additional five years, without prejudice to the national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings. Member States should require that specific safeguards be put in place to ensure the security of data and should determine which persons, categories of persons or authorities should have exclusive access to the data retained.
- (45) For the purpose of ensuring the appropriate and efficient administration of justice during the period for transposition of this Directive into the Member States' national legal orders, and in order to allow for its smooth interaction with national procedural law, information and documents pertinent to ongoing legal proceedings for

<sup>(1)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>(2)</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>(3)</sup> Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

the purpose of the prevention, detection or investigation of possible money laundering or terrorist financing, which have been pending in the Member States on the date of entry into force of this Directive, should be retained for a period of five years after that date, and it should be possible to extend that period for a further five years.

- (46) The rights of access to data by the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to any information related to a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Exceptions to and restrictions of that right in accordance with Article 13 of Directive 95/46/EC and, where relevant, Article 20 of Regulation (EC) No 45/2001, may therefore be justified. The data subject has the right to request that a supervisory authority referred to in Article 28 of Directive 95/46/EC or, where applicable, the European Data Protection Supervisor, check the lawfulness of the processing and has the right to seek a judicial remedy referred to in Article 22 of that Directive. The supervisory authority referred to in Article 28 of Directive 95/46/EC may also act on an *ex-officio* basis. Without prejudice to the restrictions to the right to access, the supervisory authority should be able to inform the data subject that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question.
- (47) Persons that merely convert paper documents into electronic data and are acting under a contract with a credit institution or a financial institution and persons that provide credit institutions or financial institutions solely with messaging or other support systems for transmitting funds or with clearing and settlement systems do not fall within the scope of this Directive.
- (48) Money laundering and terrorist financing are international problems and the effort to combat them should be global. Where Union credit institutions and financial institutions have branches and subsidiaries located in third countries in which the requirements in that area are less strict than those of the Member State, they should, in order to avoid the application of very different standards within the institution or group of institutions, apply to those branches and subsidiaries Union standards or notify the competent authorities of the home Member State if the application of such standards is not possible.
- (49) Feedback on the usefulness and follow-up of the suspicious transactions reports they present should, where practicable, be made available to obliged entities. To make this possible, and to be able to review the effectiveness of their systems for combating money laundering and terrorist financing, Member States should maintain, and improve the quality of, relevant statistics. To further enhance the quality and consistency of the statistical data collected at Union level, the Commission should keep track of the Union-wide situation with respect to the fight against money laundering and terrorist financing and should publish regular overviews.
- (50) Where Member States require issuers of electronic money and payment service providers which are established in their territory in forms other than a branch and the head office of which is situated in another Member State, to appoint a central contact point in their territory, they should be able to require that such a central contact point, acting on behalf of the appointing institution, ensure the establishments' compliance with AML/CFT rules. They should also ensure that that requirement is proportionate and does not go beyond what is necessary to achieve the aim of compliance with AML/CFT rules, including by facilitating the respective supervision.
- (51) Competent authorities should ensure that, with regard to currency exchange offices, cheque cashing offices, trust or company service providers or gambling service providers, the persons who effectively direct the business of such entities and the beneficial owners of such entities are fit and proper. The criteria for determining whether or not a person is fit and proper should, as a minimum, reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal purposes.
- (52) Where an obliged entity operates establishments in another Member State, including through a network of agents, the competent authority of the home Member State should be responsible for supervising the obliged entity's application of group-wide AML/CFT policies and procedures. This could involve on-site visits in establishments based in another Member State. The competent authority of the home Member State should cooperate closely with the competent authority of the host Member State and should inform the latter of any issues that could affect their assessment of the establishment's compliance with the host AML/CFT rules.

- (53) Where an obliged entity operates establishments in another Member State, including through a network of agents or persons distributing electronic money in accordance with Article 3(4) of Directive 2009/110/EC, the competent authority of the host Member State retains responsibility for enforcing the establishment's compliance with AML/CFT rules, including, where appropriate, by carrying out onsite inspections and offsite monitoring and by taking appropriate and proportionate measures to address serious infringements of those requirements. The competent authority of the host Member State should cooperate closely with the competent authority of the home Member State and should inform the latter of any issues that could affect its assessment of the obliged entity's application of group AML/CFT policies and procedures. In order to remove serious infringements of AML/CFT rules that require immediate remedies, the competent authority of the host Member State should be able to apply appropriate and proportionate temporary remedial measures, applicable under similar circumstances to obliged entities under their competence, to address such serious failings, where appropriate, with the assistance of, or in cooperation with, the competent authority of the home Member State.
- (54) Taking into account the transnational nature of money laundering and terrorist financing, coordination and cooperation between FIUs are extremely important. In order to improve such coordination and cooperation, and, in particular, to ensure that suspicious transaction reports reach the FIU of the Member State where the report would be of most use, detailed rules are laid down in this Directive.
- (55) The EU Financial Intelligence Units' Platform (the 'EU FIUs Platform'), an informal group composed of representatives from FIUs and active since 2006, is used to facilitate cooperation among FIUs and exchange views on cooperation-related issues such as effective cooperation among FIUs and between FIUs and third-country financial intelligence units, joint analysis of cross-border cases and trends and factors relevant to assessing the risks of money laundering and terrorist financing at national and supranational level.
- (56) Improving the exchange of information between FIUs within the Union is particularly important in addressing the transnational character of money laundering and terrorist financing. The use of secure facilities for the exchange of information, in particular the decentralised computer network FIU.net (the 'FIU.net') or its successor and the techniques offered by FIU.net, should be encouraged by Member States. The initial exchange of information between FIUs relating to money laundering or terrorist financing for analytical purposes which is not further processed or disseminated should be permitted unless such exchange of information would be contrary to fundamental principles of national law. The exchange of information on cases identified by FIUs as possibly involving tax crimes should be without prejudice to the exchange of information in the field of taxation in accordance with Council Directive 2011/16/EU <sup>(1)</sup> or in accordance with international standards on the exchange of information and administrative cooperation in tax matters.
- (57) In order to be able to respond fully and rapidly to enquiries from FIUs, obliged entities need to have in place effective systems enabling them to have full and timely access through secure and confidential channels to information about business relationships that they maintain or have maintained with specified persons. In accordance with Union and national law, Member States could, for instance, consider putting in place systems of banking registries or electronic data retrieval systems which would provide FIUs with access to information on bank accounts without prejudice to judicial authorisation where applicable. Member States could also consider establishing mechanisms to ensure that competent authorities have procedures in place to identify assets without prior notification to the owner.
- (58) Member States should encourage their competent authorities to provide rapidly, constructively and effectively the widest range of cross-border cooperation for the purposes of this Directive, without prejudice to any rules or procedures applicable to judicial cooperation in criminal matters. Member States should in particular ensure that their FIUs exchange information freely, spontaneously or upon request, with third-country financial intelligence units, having regard to Union law and to the principles relating to information exchange developed by the Egmont Group of Financial Intelligence Units.
- (59) The importance of combating money laundering and terrorist financing should result in Member States laying down effective, proportionate and dissuasive administrative sanctions and measures in national law for failure to respect the national provisions transposing this Directive. Member States currently have a diverse range of administrative sanctions and measures for breaches of the key preventative provisions in place. That diversity could be detrimental to the efforts made in combating money laundering and terrorist financing and the Union's

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

response is at risk of being fragmented. This Directive should therefore provide for a range of administrative sanctions and measures by Member States at least for serious, repeated or systematic breaches of the requirements relating to customer due diligence measures, record-keeping, reporting of suspicious transactions and internal controls of obliged entities. The range of sanctions and measures should be sufficiently broad to allow Member States and competent authorities to take account of the differences between obliged entities, in particular between credit institutions and financial institutions and other obliged entities, as regards their size, characteristics and the nature of the business. In transposing this Directive, Member States should ensure that the imposition of administrative sanctions and measures in accordance with this Directive, and of criminal sanctions in accordance with national law, does not breach the principle of *ne bis in idem*.

- (60) For the purposes of assessing the appropriateness of persons holding a management function in, or otherwise controlling, obliged entities, any exchange of information about criminal convictions should be carried out in accordance with Council Framework Decision 2009/315/JHA <sup>(1)</sup> and Council Decision 2009/316/JHA <sup>(2)</sup>, as transposed into national law, and with other relevant provisions of national law.
- (61) Regulatory technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As bodies with highly specialised expertise, it would be efficient and appropriate to entrust the ESAs with the elaboration, for submission to the Commission, of draft regulatory technical standards which do not involve policy choices.
- (62) The Commission should adopt the draft regulatory technical standards developed by the ESAs pursuant to this Directive by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.
- (63) Given the very substantial amendments that would need to be made to Directives 2005/60/EC and 2006/70/EC in light of this Directive, they should be merged and replaced for reasons of clarity and consistency.
- (64) 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.
- (65) This Directive respects the fundamental rights and observes the principles recognised by the Charter, in particular the right to respect for private and family life, the right to the protection of personal data, the freedom to conduct a business, the prohibition of discrimination, the right to an effective remedy and to a fair trial, the presumption of innocence and the rights of the defence.
- (66) In accordance with Article 21 of the Charter, which prohibits discrimination based on any ground, Member States are to ensure that this Directive is implemented, as regards risk assessments in the context of customer due diligence, without discrimination.
- (67) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents <sup>(3)</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.
- (68) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 4 July 2013 <sup>(4)</sup>,

<sup>(1)</sup> Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

<sup>(2)</sup> Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33).

<sup>(3)</sup> OJ C 369, 17.12.2011, p. 14.

<sup>(4)</sup> OJ C 32, 4.2.2014, p. 9.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

SECTION 1

*Subject-matter, scope and definitions*

*Article 1*

1. This Directive aims to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing.
2. Member States shall ensure that money laundering and terrorist financing are prohibited.
3. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:
  - (a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;
  - (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;
  - (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity;
  - (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).
4. Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of another Member State or in that of a third country.
5. For the purposes of this Directive, 'terrorist financing' means the provision or collection of funds, by any means, directly or indirectly, with the intention that they be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA <sup>(1)</sup>.
6. Knowledge, intent or purpose required as an element of the activities referred to in paragraphs 3 and 5 may be inferred from objective factual circumstances.

*Article 2*

1. This Directive shall apply to the following obliged entities:
  - (1) credit institutions;
  - (2) financial institutions;
  - (3) the following natural or legal persons acting in the exercise of their professional activities:
    - (a) auditors, external accountants and tax advisors;
    - (b) notaries and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the:
      - (i) buying and selling of real property or business entities;
      - (ii) managing of client money, securities or other assets;
      - (iii) opening or management of bank, savings or securities accounts;

<sup>(1)</sup> Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).



- (iv) organisation of contributions necessary for the creation, operation or management of companies;
- (v) creation, operation or management of trusts, companies, foundations, or similar structures;
- (c) trust or company service providers not already covered under point (a) or (b);
- (d) estate agents;
- (e) other persons trading in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- (f) providers of gambling services.

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

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

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

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

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

- (a) the financial activity is limited in absolute terms;
- (b) the financial activity is limited on a transaction basis;
- (c) the financial activity is not the main activity of such persons;
- (d) the financial activity is ancillary and directly related to the main activity of such persons;
- (e) the main activity of such persons is not an activity referred to in points (a) to (d) or point (f) of paragraph 1(3);
- (f) the financial activity is provided only to the customers of the main activity of such persons and is not generally offered to the public.

The first subparagraph shall not apply to persons engaged in the activity of money remittance as defined in point (13) of Article 4 of Directive 2007/64/EC of the European Parliament and of the Council <sup>(1)</sup>.

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

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

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

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

7. In assessing the risk of money laundering or terrorist financing for the purposes of this Article, Member States shall pay particular attention to any financial activity which is considered to be particularly likely, by its nature, to be used or abused for the purposes of money laundering or terrorist financing.
8. Decisions taken by Member States pursuant to paragraph 3 shall state the reasons on which they are based. Member States may decide to withdraw such decisions where circumstances change. They shall notify such decisions to the Commission. The Commission shall communicate such decisions to the other Member States.
9. Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemption granted by decisions pursuant to this Article is not abused.

### Article 3

For the purposes of this Directive, the following definitions apply:

- (1) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(1)</sup>, including branches thereof, as defined in point (17) of Article 4(1) of that Regulation, located in the Union, whether its head office is situated within the Union or in a third country;
- (2) 'financial institution' means:
  - (a) an undertaking other than a credit institution, which carries out one or more of the activities listed in points (2) to (12), (14) and (15) of Annex I to Directive 2013/36/EU of the European Parliament and of the Council <sup>(2)</sup>, including the activities of currency exchange offices (bureaux de change);
  - (b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council <sup>(3)</sup>, insofar as it carries out life assurance activities covered by that Directive;
  - (c) an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council <sup>(4)</sup>;
  - (d) a collective investment undertaking marketing its units or shares;
  - (e) an insurance intermediary as defined in point (5) of Article 2 of Directive 2002/92/EC of the European Parliament and of the Council <sup>(5)</sup> where it acts with respect to life insurance and other investment-related services, with the exception of a tied insurance intermediary as defined in point (7) of that Article;
  - (f) branches, when located in the Union, of financial institutions as referred to in points (a) to (e), whether their head office is situated in a Member State or in a third country;
- (3) 'property' means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets;
- (4) 'criminal activity' means any kind of criminal involvement in the commission of the following serious crimes:
  - (a) acts set out in Articles 1 to 4 of Framework Decision 2002/475/JHA;
  - (b) any of the offences referred in Article 3(1)(a) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

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

<sup>(2)</sup> 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).

<sup>(3)</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

<sup>(4)</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

<sup>(5)</sup> Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3).

- (c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA <sup>(1)</sup>;
  - (d) fraud affecting the Union's financial interests, where it is at least serious, as defined in Article 1(1) and Article 2(1) of the Convention on the protection of the European Communities' financial interests <sup>(2)</sup>;
  - (e) corruption;
  - (f) all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;
- (5) 'self-regulatory body' means a body that represents members of a profession and has a role in regulating them, in performing certain supervisory or monitoring type functions and in ensuring the enforcement of the rules relating to them;
- (6) 'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:
- (a) in the case of corporate entities:
    - (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.  
  
A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, *inter alia*, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council <sup>(3)</sup>;
    - (ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;
  - (b) in the case of trusts:
    - (i) the settlor;
    - (ii) the trustee(s);
    - (iii) the protector, 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;

<sup>(1)</sup> Joint Action 98/733/JHA of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (OJ L 351, 29.12.1998, p. 1).

<sup>(2)</sup> OJ C 316, 27.11.1995, p. 49.

<sup>(3)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b);
- (7) 'trust or company service provider' means any person that, by way of its business, provides any of the following services to third parties:
- (a) the formation of companies or other legal persons;
  - (b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
  - (c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
  - (d) acting as, or arranging for another person to act as, a trustee of an express trust or a similar legal arrangement;
  - (e) acting as, or arranging for another person to act as, a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in accordance with Union law or subject to equivalent international standards;
- (8) 'correspondent relationship' means:
- (a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;
  - (b) the relationships between and among credit institutions and financial institutions including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers;
- (9) 'politically exposed person' means a natural person who is or who has been entrusted with prominent public functions and includes the following:
- (a) heads of State, heads of government, ministers and deputy or assistant ministers;
  - (b) members of parliament or of similar legislative bodies;
  - (c) members of the governing bodies of political parties;
  - (d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;
  - (e) members of courts of auditors or of the boards of central banks;
  - (f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
  - (g) members of the administrative, management or supervisory bodies of State-owned enterprises;
  - (h) directors, deputy directors and members of the board or equivalent function of an international organisation.
- No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials;
- (10) 'family members' includes the following:
- (a) the spouse, or a person considered to be equivalent to a spouse, of a politically exposed person;
  - (b) the children and their spouses, or persons considered to be equivalent to a spouse, of a politically exposed person;
  - (c) the parents of a politically exposed person;

- (11) 'persons known to be close associates' means:
- (a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;
  - (b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.
- (12) 'senior management' means an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors;
- (13) 'business relationship' means a business, professional or commercial relationship which is connected with the professional activities of an obliged entity and which is expected, at the time when the contact is established, to have an element of duration;
- (14) 'gambling services' means a service which involves wagering a stake with monetary value in games of chance, including those with an element of skill such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services;
- (15) 'group' means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU;
- (16) 'electronic money' means electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC;
- (17) 'shell bank' means a credit institution or financial institution, or an institution that carries out activities equivalent to those carried out by credit institutions and financial institutions, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group.

#### *Article 4*

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

#### *Article 5*

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

### SECTION 2

#### **Risk assessment**

#### *Article 6*

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

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

2. The report referred to in paragraph 1 shall cover at least the following:
  - (a) the areas of the internal market that are at greatest risk;

- (b) the risks associated with each relevant sector;
- (c) the most widespread means used by criminals by which to launder illicit proceeds.

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

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

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

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

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

#### *Article 7*

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

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

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

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

- (a) use it to improve its AML/CFT regime, in particular by identifying any areas where obliged entities are to apply enhanced measures and, where appropriate, specifying the measures to be taken;
- (b) identify, where appropriate, sectors or areas of lower or greater risk of money laundering and terrorist financing;
- (c) use it to assist it in the allocation and prioritisation of resources to combat money laundering and terrorist financing;
- (d) use it to ensure that appropriate rules are drawn up for each sector or area, in accordance with the risks of money laundering and terrorist financing;
- (e) make appropriate information available promptly to obliged entities to facilitate the carrying out of their own money laundering and terrorist financing risk assessments.

5. Member States shall make the results of their risk assessments available to the Commission, the ESAs and the other Member States.

#### *Article 8*

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

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

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

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

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

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

### SECTION 3

#### ***Third-country policy***

#### *Article 9*

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

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

- (a) the legal and institutional AML/CFT framework of the third country, in particular:
  - (i) criminalisation of money laundering and terrorist financing;
  - (ii) measures relating to customer due diligence;
  - (iii) requirements relating to record-keeping; and
  - (iv) requirements to report suspicious transactions;
- (b) the powers and procedures of the third country's competent authorities for the purposes of combating money laundering and terrorist financing;
- (c) the effectiveness of the AML/CFT system in addressing money laundering or terrorist financing risks of the third country.

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

4. The Commission shall take into account, as appropriate, when drawing up the delegated acts referred to in paragraph 2, relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, in relation to the risks posed by individual third countries.

## CHAPTER II

### CUSTOMER DUE DILIGENCE

#### SECTION 1

#### **General provisions**

##### *Article 10*

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

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

##### *Article 11*

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

- (a) when establishing a business relationship;
- (b) when carrying out an occasional transaction that:
  - (i) amounts to EUR 15 000 or more, whether that transaction is carried out in a single operation or in several operations which appear to be linked; or
  - (ii) constitutes a transfer of funds, as defined in point (9) of Article 3 of Regulation (EU) 2015/847 of the European Parliament and of the Council <sup>(1)</sup>, exceeding EUR 1 000;
- (c) in the case of persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- (d) for providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- (e) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
- (f) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

##### *Article 12*

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

- (a) the payment instrument is not reloadable, or has a maximum monthly payment transactions limit of EUR 250 which can be used only in that Member State;
- (b) the maximum amount stored electronically does not exceed EUR 250;

<sup>(1)</sup> 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 (see page 1 of this Official Journal).



- (c) the payment instrument is used exclusively to purchase goods or services;
- (d) the payment instrument cannot be funded with anonymous electronic money;
- (e) the issuer carries out sufficient monitoring of the transactions or business relationship to enable the detection of unusual or suspicious transactions.

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

2. Member States shall ensure that the derogation provided for in paragraph 1 is not applicable in the case of redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR 100.

### *Article 13*

1. Customer due diligence measures shall comprise:

- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) identifying the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts, companies, foundations and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;
- (c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;
- (d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds and ensuring that the documents, data or information held are kept up-to-date.

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

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

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

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

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

- (a) in the case of beneficiaries that are identified as specifically named persons or legal arrangements, taking the name of the person;
- (b) in the case of beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the credit institutions or financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.

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

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

#### Article 14

1. Member States shall require that verification of the identity of the customer and the beneficial owner take place before the establishment of a business relationship or the carrying out of the transaction.
2. By way of derogation from paragraph 1, Member States may allow verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if necessary so as not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing. In such situations, those procedures shall be completed as soon as practicable after initial contact.
3. By way of derogation from paragraph 1, Member States may allow the opening of an account with a credit institution or financial institution, including accounts that permit transactions in transferable securities, provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until full compliance with the customer due diligence requirements laid down in points (a) and (b) of the first subparagraph of Article 13(1) is obtained.
4. Member States shall require that, where an obliged entity is unable to comply with the customer due diligence requirements laid down in point (a), (b) or (c) of the first subparagraph of Article 13(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, and shall terminate the business relationship and consider making a suspicious transaction report to the FIU in relation to the customer in accordance with Article 33.

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

5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, including at times when the relevant circumstances of a customer change.

#### SECTION 2

#### ***Simplified customer due diligence***

#### Article 15

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

#### Article 16

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

*Article 17*

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

## SECTION 3

***Enhanced customer due diligence****Article 18*

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

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

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

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

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

*Article 19*

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

- (a) gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;
- (b) assess the respondent institution's AML/CFT controls;
- (c) obtain approval from senior management before establishing new correspondent relationships;
- (d) document the respective responsibilities of each institution;
- (e) with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent institution, and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.

*Article 20*

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

- (a) have in place appropriate risk management systems, including risk-based procedures, to determine whether the customer or the beneficial owner of the customer is a politically exposed person;
- (b) apply the following measures in cases of business relationships with politically exposed persons:
  - (i) obtain senior management approval for establishing or continuing business relationships with such persons;
  - (ii) take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons;
  - (iii) conduct enhanced, ongoing monitoring of those business relationships.

*Article 21*

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

- (a) inform senior management before payout of policy proceeds;
- (b) conduct enhanced scrutiny of the entire business relationship with the policyholder.

*Article 22*

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

*Article 23*

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

*Article 24*

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

## SECTION 4

**Performance by third parties***Article 25*

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

*Article 26*

1. For the purposes of this Section, 'third parties' means obliged entities listed in Article 2, the member organisations or federations of those obliged entities, or other institutions or persons situated in a Member State or third country that:
  - (a) apply customer due diligence requirements and record-keeping requirements that are consistent with those laid down in this Directive; and
  - (b) have their compliance with the requirements of this Directive supervised in a manner consistent with Section 2 of Chapter VI.
2. Member States shall prohibit obliged entities from relying on third parties established in high-risk third countries. Member States may exempt branches and majority-owned subsidiaries of obliged entities established in the Union from that prohibition where those branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 45.

*Article 27*

1. Member States shall ensure that obliged entities obtain from the third party relied upon the necessary information concerning the customer due diligence requirements laid down in points (a), (b) and (c) of the first subparagraph of Article 13(1).
2. Member States shall ensure that obliged entities to which the customer is referred take adequate steps to ensure that the third party provides, immediately, upon request, relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner.

*Article 28*

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

- (a) the obliged entity relies on information provided by a third party that is part of the same group;
- (b) that group applies customer due diligence measures, rules on record-keeping and programmes against money laundering and terrorist financing in accordance with this Directive or equivalent rules;
- (c) the effective implementation of the requirements referred to in point (b) is supervised at group level by a competent authority of the home Member State or of the third country.

*Article 29*

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

## CHAPTER III

**BENEFICIAL OWNERSHIP INFORMATION***Article 30*

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

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

2. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.
3. Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State, for example a commercial register, companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council <sup>(1)</sup>, or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The information on beneficial ownership contained in that database may be collected in accordance with national systems.
4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current.
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 person or organisation that can demonstrate a legitimate interest.

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

For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and may be subject to online registration and to the payment of a fee. The fees charged for obtaining the information shall not exceed the administrative costs thereof.

6. The central register referred to in paragraph 3 shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the entity concerned. It shall also allow timely access by obliged entities when taking customer due diligence measures.
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.
8. Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.
9. Member States may provide for an exemption to the access referred to in points (b) and (c) of paragraph 5 to all or part of the information on the beneficial ownership on a case-by-case basis in exceptional circumstances, where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable. Exemptions granted pursuant to this paragraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.
10. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring the safe and efficient interconnection of the central registers referred to in paragraph 3 via the European central platform established by Article 4a(1) of Directive 2009/101/EC. Where appropriate, that report shall be accompanied by a legislative proposal.

#### Article 31

1. Member States shall require that trustees of any express trust governed under their law 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;
  - (b) the trustee(s);
  - (c) the protector (if any);

<sup>(1)</sup> Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

- (d) the beneficiaries or class of beneficiaries; and
  - (e) any other natural person exercising effective control over the trust.
2. Member States shall ensure that trustees disclose their status and provide the information referred to in paragraph 1 to obliged entities in a timely manner where, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the thresholds set out in points (b), (c) and (d) of Article 11.
  3. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.
  4. Member States shall require that the information referred to in paragraph 1 is held in a central register when the trust generates tax consequences. The central register shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the parties to the trust concerned. It may also allow timely access by obliged entities, within the framework of customer due diligence in accordance with Chapter II. Member States shall notify to the Commission the characteristics of those national mechanisms.
  5. Member States shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and up-to-date.
  6. Member States shall ensure that obliged entities do not rely exclusively on the central register referred to in paragraph 4 to fulfil their customer due diligence requirements as laid down in Chapter II. Those requirements shall be fulfilled by using a risk-based approach.
  7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 4 to the competent authorities and to the FIUs of other Member States in a timely manner.
  8. Member States shall ensure that the measures provided for in this Article apply to other types of legal arrangements having a structure or functions similar to trusts.
  9. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring safe and efficient interconnection of the central registers. Where appropriate, that report shall be accompanied by a legislative proposal.

#### CHAPTER IV

### REPORTING OBLIGATIONS

#### SECTION 1

#### *General provisions*

#### *Article 32*

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

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

4. Member States shall ensure that their FIUs have access, directly or indirectly, in a timely manner, to the financial, administrative and law enforcement information that they require to fulfil their tasks properly. FIUs shall be able to respond to requests for information by competent authorities in their respective Member States when such requests for information are motivated by concerns relating to money laundering, associated predicate offences or terrorist financing. The decision on conducting the analysis or dissemination of information shall remain with the FIU.

5. Where there are objective grounds for assuming that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested, the FIU shall be under no obligation to comply with the request for information.

6. Member States shall require competent authorities to provide feedback to the FIU about the use made of the information provided in accordance with this Article and about the outcome of the investigations or inspections performed on the basis of that information.

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

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

- (a) an operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use of the information after dissemination; and
- (b) a strategic analysis addressing money laundering and terrorist financing trends and patterns.

#### *Article 33*

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

- (a) informing the FIU, including by filing a report, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, and by promptly responding to requests by the FIU for additional information in such cases; and
- (b) providing the FIU, directly or indirectly, at its request, with all necessary information, in accordance with the procedures established by the applicable law.

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

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

#### *Article 34*

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

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



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

#### *Article 35*

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

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

#### *Article 36*

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

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

#### *Article 37*

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

#### *Article 38*

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 protected from being exposed to threats or hostile action, and in particular from adverse or discriminatory employment actions.

### *SECTION 2*

#### ***Prohibition of disclosure***

#### *Article 39*

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

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

3. The prohibition laid down in paragraph 1 shall not prevent disclosure between the credit institutions and financial institutions or between those institutions and their branches and majority-owned subsidiaries located 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 laid down in this Directive.

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

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

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

## CHAPTER V

### DATA PROTECTION, RECORD-RETENTION AND STATISTICAL DATA

#### *Article 40*

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

- (a) in the case of customer due diligence, a copy of the documents and information which are necessary to comply with the customer due diligence requirements laid down in Chapter II, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction;
- (b) the supporting evidence and records of transactions, consisting of the original documents or copies admissible in judicial proceedings under the applicable national law, which are necessary to identify transactions, for a period of five years after the end of a business relationship with their customer or after the date of an occasional transaction.

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

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

#### *Article 41*

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

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

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

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

- (a) enable the obliged entity or competent national authority to fulfil its tasks properly for the purposes of this Directive; or
- (b) avoid obstructing official or legal inquiries, analyses, investigations or procedures for the purposes of this Directive and to ensure that the prevention, investigation and detection of money laundering and terrorist financing is not jeopardised.

#### *Article 42*

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

#### *Article 43*

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

#### *Article 44*

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

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

- (a) data measuring the size and importance of the different sectors which fall within the scope of this Directive, including the number of entities and persons and the economic importance of each sector;
- (b) data measuring the reporting, investigation and judicial phases of the national AML/CFT regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to those reports and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences, the types of predicate offences, where such information is available, and the value in euro of property that has been frozen, seized or confiscated;
- (c) if available, data identifying the number and percentage of reports resulting in further investigation, together with the annual report to obliged entities detailing the usefulness and follow-up of the reports they presented;
- (d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the FIU.

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

4. Member States shall transmit to the Commission the statistics referred to in paragraph 2.

## CHAPTER VI

**POLICIES, PROCEDURES AND SUPERVISION**

## SECTION 1

***Internal procedures, training and feedback****Article 45*

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

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

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

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

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

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

The ESAs shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 December 2016.

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

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

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

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

The ESAs shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 June 2017.

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

#### *Article 46*

1. Member States shall require that obliged entities take measures proportionate to their risks, nature and size so that their employees are aware of the provisions adopted pursuant to this Directive, including relevant data protection requirements.

Those measures shall include participation of their employees in special ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases.

Where a natural person falling within any of the categories listed in point (3) of Article 2(1) performs professional activities as an employee of a legal person, the obligations in this Section shall apply to that legal person rather than to the natural person.

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

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

4. Member States shall require that, where applicable, obliged entities identify the member of the management board who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with this Directive.

#### *SECTION 2*

#### ***Supervision***

#### *Article 47*

1. Member States shall provide that currency exchange and cheque cashing offices and trust or company service providers be licensed or registered and providers of gambling services be regulated.

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

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

#### *Article 48*

1. Member States shall require the competent authorities to monitor effectively, and to take the measures necessary to ensure, compliance with this Directive.

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

3. In the case of credit institutions, financial institutions, and providers of gambling services, competent authorities shall have enhanced supervisory powers.
4. Member States shall ensure that competent authorities of the Member State in which the obliged entity operates establishments supervise that those establishments respect the national provisions of that Member State transposing this Directive. In the case of the establishments referred to in Article 45(9), such supervision may include the taking of appropriate and proportionate measures to address serious failings that require immediate remedies. Those measures shall be temporary and be terminated when the failings identified are addressed, including with the assistance of or in cooperation with the competent authorities of the home Member State of the obliged entity, in accordance with Article 45(2).
5. Member States shall ensure that the competent authorities of the Member State in which the obliged entity operates establishments shall cooperate with the competent authorities of the Member State in which the obliged entity has its head office, to ensure effective supervision of the requirements of this Directive.
6. Member States shall ensure that when applying a risk-based approach to supervision, the competent authorities:
  - (a) have a clear understanding of the risks of money laundering and terrorist financing present in their Member State;
  - (b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities; and
  - (c) base the frequency and intensity of on-site and off-site supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in that Member State.
7. The assessment of the money laundering and terrorist financing risk profile of obliged entities, including the risks of non-compliance, shall be reviewed both periodically and when there are major events or developments in their management and operations.
8. Member States shall ensure that competent authorities take into account the degree of discretion allowed to the obliged entity, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of its internal policies, controls and procedures.
9. In the case of the obliged entities referred to in point (3)(a), (b) and (d) of Article 2(1), Member States may allow the functions referred to in paragraph 1 of this Article to be performed by self-regulatory bodies, provided that those self-regulatory bodies comply with paragraph 2 of this Article.
10. By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 on the characteristics of a risk-based approach to supervision and the steps to be taken when conducting supervision on a risk-based basis. Specific account shall be taken of the nature and size of the business, and, where appropriate and proportionate, specific measures shall be laid down.

### SECTION 3

#### **Cooperation**

##### Subsection I

#### **National cooperation**

##### *Article 49*

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

## Subsection II

**Cooperation with the ESAs***Article 50*

The competent authorities shall provide the ESAs with all the information necessary to allow them to carry out their duties under this Directive.

## Subsection III

**Cooperation between FIUs and with the Commission***Article 51*

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

*Article 52*

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

*Article 53*

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

A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used. Different exchange mechanisms may apply if so agreed between the FIUs, in particular as regards exchanges through the FIU.net or its successor.

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

2. Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its available powers which it would normally use domestically for receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU. The FIU to whom the request is made shall respond in a timely manner.

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

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

*Article 54*

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

*Article 55*

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

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

*Article 56*

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

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

*Article 57*

Differences between national law definitions of tax crimes shall not impede the ability of FIUs to exchange information or provide assistance to another FIU, to the greatest extent possible under their national law.

**SECTION 4****Sanctions***Article 58*

1. Member States shall ensure that obliged entities can be held liable for breaches of national provisions transposing this Directive in accordance with this Article and Articles 59 to 61. Any resulting sanction or measure shall be effective, proportionate and dissuasive.

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

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



3. Member States shall ensure that where obligations apply to legal persons in the event of a breach of national provisions transposing this Directive, sanctions and measures can be applied to the members of the management body and to other natural persons who under national law are responsible for the breach.
4. Member States shall ensure that the competent authorities have all the supervisory and investigatory powers that are necessary for the exercise of their functions.
5. Competent authorities shall exercise their powers to impose administrative sanctions and measures in accordance with this Directive, and with national law, in any of the following ways:
  - (a) directly;
  - (b) in collaboration with other authorities;
  - (c) under their responsibility by delegation to such other authorities;
  - (d) by application to the competent judicial authorities.

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

#### *Article 59*

1. Member States shall ensure that this Article applies at least to breaches on the part of obliged entities that are serious, repeated, systematic, or a combination thereof, of the requirements laid down in:
  - (a) Articles 10 to 24 (customer due diligence);
  - (b) Articles 33, 34 and 35 (suspicious transaction reporting);
  - (c) Article 40 (record-keeping); and
  - (d) Articles 45 and 46 (internal controls).
2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following:
  - (a) a public statement which identifies the natural or legal person and the nature of the breach;
  - (b) an order requiring the natural or legal person to cease the conduct and to desist from repetition of that conduct;
  - (c) where an obliged entity is subject to an authorisation, withdrawal or suspension of the authorisation;
  - (d) a temporary ban against any person discharging managerial responsibilities in an obliged entity, or any other natural person, held responsible for the breach, from exercising managerial functions in obliged entities;
  - (e) maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the breach where that benefit can be determined, or at least EUR 1 000 000.
3. Member States shall ensure that, by way of derogation from paragraph 2(e), where the obliged entity concerned is a credit institution or financial institution, the following sanctions can also be applied:
  - (a) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or 10 % of the total annual turnover according to the latest available accounts approved by the management body; where the obliged entity is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Article 22 of Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(b) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 25 June 2015.

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

#### Article 60

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

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

- (a) delay the publication of the decision to impose an administrative sanction or measure until the moment at which the reasons for not publishing it cease to exist;
- (b) publish the decision to impose an administrative sanction or measure on an anonymous basis in a manner in accordance with national law, if such anonymous publication ensures an effective protection of the personal data concerned; in the case of a decision to publish an administrative sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is foreseen that within that period the reasons for anonymous publication shall cease to exist;
- (c) not publish the decision to impose an administrative sanction or measure at all in the event that the options set out in points (a) and (b) are considered insufficient to ensure:
  - (i) that the stability of financial markets would not be put in jeopardy; or
  - (ii) the proportionality of the publication of the decision with regard to measures which are deemed to be of a minor nature.

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

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

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

- (a) the gravity and the duration of the breach;
- (b) the degree of responsibility of the natural or legal person held responsible;
- (c) the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;
- (d) the benefit derived from the breach by the natural or legal person held responsible, insofar as it can be determined;
- (e) the losses to third parties caused by the breach, insofar as they can be determined;

- (f) the level of cooperation of the natural or legal person held responsible with the competent authority;
  - (g) previous breaches by the natural or legal person held responsible.
5. Member States shall ensure that legal persons can be held liable for the breaches referred to in Article 59(1) committed for their benefit by any person, acting individually or as part of an organ of that legal person, and having a leading position within the legal person based on any of the following:
- (a) power to represent the legal person;
  - (b) authority to take decisions on behalf of the legal person; or
  - (c) authority to exercise control within the legal person.
6. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 5 of this Article has made it possible to commit one of the breaches referred to in Article 59(1) for the benefit of that legal person by a person under its authority.

#### *Article 61*

1. Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage the reporting to competent authorities of potential or actual breaches of the national provisions transposing this Directive.
2. The mechanisms referred to in paragraph 1 shall include at least:
  - (a) specific procedures for the receipt of reports on breaches and their follow-up;
  - (b) appropriate protection for employees or persons in a comparable position, of obliged entities who report breaches committed within the obliged entity;
  - (c) appropriate protection for the accused person;
  - (d) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC;
  - (e) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the obliged entity, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.
3. Member States shall require obliged entities to have in place appropriate procedures for their employees, or persons in a comparable position, to report breaches internally through a specific, independent and anonymous channel, proportionate to the nature and size of the obliged entity concerned.

#### *Article 62*

1. Member States shall ensure that their competent authorities inform the ESAs of all administrative sanctions and measures imposed in accordance with Articles 58 and 59 on credit institutions and financial institutions, including of any appeal in relation thereto and the outcome thereof.
2. Member States shall ensure that their competent authorities, in accordance with their national law, check the existence of a relevant conviction in the criminal record of the person concerned. Any exchange of information for those purposes shall be carried out in accordance with Decision 2009/316/JHA and Framework Decision 2009/315/JHA as implemented in national law.
3. The ESAs shall maintain a website with links to each competent authority's publication of administrative sanctions and measures imposed in accordance with Article 60 on credit institutions and financial institutions, and shall show the time period for which each Member State publishes administrative sanctions and measures.

## CHAPTER VII

## FINAL PROVISIONS

## Article 63

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

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

<sup>(\*)</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 purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

## Article 64

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

## Article 65

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

## Article 66

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

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

## Article 67

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

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

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

<sup>(1)</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

*Article 68*

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

*Article 69*

This Directive is addressed to the Member States.

Done at Strasbourg, 20 May 2015.

*For the European Parliament*  
*The President*  
M. SCHULZ

*For the Council*  
*The President*  
Z. KALNIŅA-LUKAŠEVICA

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*ANNEX I*

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

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

## ANNEX II

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

- (1) Customer risk factors:
    - (a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;
    - (b) public administrations or enterprises;
    - (c) customers that are resident in geographical areas of lower risk as set out in point (3);
  - (2) Product, service, transaction or delivery channel risk factors:
    - (a) life insurance policies for which the premium is low;
    - (b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;
    - (c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;
    - (d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;
    - (e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money);
  - (3) Geographical risk factors:
    - (a) Member States;
    - (b) third countries having effective AML/CFT systems;
    - (c) third countries identified by credible sources as having a low level of corruption or other criminal activity;
    - (d) third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements.
-

## ANNEX III

The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in Article 18(3):

- (1) Customer risk factors:
    - (a) the business relationship is conducted in unusual circumstances;
    - (b) customers that are resident in geographical areas of higher risk as set out in point (3);
    - (c) legal persons or arrangements that are personal asset-holding vehicles;
    - (d) companies that have nominee shareholders or shares in bearer form;
    - (e) businesses that are cash-intensive;
    - (f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;
  - (2) Product, service, transaction or delivery channel risk factors:
    - (a) private banking;
    - (b) products or transactions that might favour anonymity;
    - (c) non-face-to-face business relationships or transactions, without certain safeguards, such as electronic signatures;
    - (d) payment received from unknown or unassociated third parties;
    - (e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products;
  - (3) Geographical risk factors:
    - (a) without prejudice to Article 9, countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective AML/CFT systems;
    - (b) countries identified by credible sources as having significant levels of corruption or other criminal activity;
    - (c) countries subject to sanctions, embargos or similar measures issued by, for example, the Union or the United Nations;
    - (d) countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.
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## ANNEX IV

**Correlation table**

This Directive	Directive 2005/60/EC	Directive 2006/70/EC
—		Article 1
—		Article 3
—		Article 5
—		Article 6
—		Article 7
Article 1	Article 1	
Article 2	Article 2	
Article 2(3) to (9)		Article 4
Article 3	Article 3	
Article 3(9), (10) and (11)		Article 2(1), (2) and (3)
Article 4	Article 4	
Article 5	Article 5	
Articles 6 to 8	—	
Article 10	Article 6	
Article 11	Article 7	
Article 13	Article 8	
Article 14	Article 9	
Article 11(d)	Article 10(1)	
—	Article 10(2)	
Articles 15, 16 and 17	Article 11	
—	Article 12	
Articles 18 to 24	Article 13	
Article 22		Article 2(4)
Article 25	Article 14	
—	Article 15	
Article 26	Article 16	
—	Article 17	
Article 27	Article 18	
Article 28	—	
Article 29	Article 19	
Article 30	—	
Article 31	—	
—	Article 20	
Article 32	Article 21	
Article 33	Article 22	

This Directive	Directive 2005/60/EC	Directive 2006/70/EC
Article 34	Article 23	
Article 35	Article 24	
Article 36	Article 25	
Article 37	Article 26	
Article 38	Article 27	
Article 39	Article 28	
—	Article 29	
Article 40	Article 30	
Article 45	Article 31	
Article 42	Article 32	
Article 44	Article 33	
Article 45	Article 34	
Article 46	Article 35	
Article 47	Article 36	
Article 48	Article 37	
Article 49	—	
Article 50	Article 37a	
Article 51	Article 38	
Articles 52 to 57	—	
Articles 58 to 61	Article 39	
—	Article 40	
—	Article 41	
—	Article 41a	
—	Article 41b	
Article 65	Article 42	
—	Article 43	
Article 66	Article 44	
Article 67	Article 45	
Article 68	Article 46	
Article 69	Article 47	

**CORRIGENDA****Corrigendum to Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure**

*(Official Journal of the European Union L 199 of 31 July 2007)*

On page 12, point 4.7:

for: '4.7. Choice of court/tribunal agreed by the parties';

read: '4.7. Choice of court/tribunal agreed by the parties'.

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