

**MULTILATERAL AGREEMENT
ON THE PRACTICAL MODALITIES FOR EXCHANGE OF INFORMATION
PURSUANT TO ARTICLE 57a(2) OF DIRECTIVE (EU) 2015/849**

concluded between:

the European Central Bank (hereinafter the '**ECB**')

and

the undersigned **Competent Authorities**.

WHEREAS:

- (1) Having regard to the requirement of Article 57a(2) AMLD which requires the ECB and the Competent Authorities to conclude, with the support of the European Supervisory Authorities, an agreement on the practical modalities for exchange of information;
- (2) Having regard to the tasks and duties of Competent Authorities in the area of prevention of misuse of financial system for the purpose of money laundering and terrorist financing (ML/TF);
- (3) Having regard to the tasks and duties of the ECB in the area of prudential supervision pursuant to the SSM Regulation;
- (4) Having regard to the importance of information exchange between Competent Authorities and the ECB for their aforesaid tasks, and for enhancing the effectiveness of the AML/CFT regime in the EU where such exchange does not violate applicable laws,

the parties to this Agreement, referred to jointly as the '**Participants**' and individually as a '**Participant**', agree as follows:

Article 1

Definitions

1. For the purpose of this Agreement, the following definitions apply:
 - (a) **SSM Regulation** means Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, as amended by any subsequent legal instrument;
 - (b) **SSM Framework Regulation** means Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities, as amended by any subsequent legal instrument;
 - (c) **AMLD** means 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, as amended by any other subsequent legal instrument, including Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018;

- (d) **Applicable laws** means any laws applicable to the Participants;
- (e) **Supervised entity** means a supervised entity as defined in point (20) of Article 2 of the SSM Framework Regulation or a credit institution or a financial institution as defined respectively in points (1) and (2) of Article 3 of the AMLD, in each case to the extent it falls within the supervisory remit of the respective Participant;
- (f) **Competent authority** or **CA** means the authority or authorities designated as the competent authorities for supervising and ensuring supervised entities' compliance with the requirements of AMLD;
- (g) **AML** means anti-money laundering;
- (h) **CFT** means countering the financing of terrorism.

Article 2

Purpose

1. The purpose of this Agreement is to define practical modalities for the exchange of information between the CAs and the ECB, where such information is needed for the performance of tasks:
 - (i) of the ECB pursuant to the requirements of the SSM Regulation; or
 - (ii) of the CAs pursuant to the requirements of the AMLD or under other laws in the area of AML/CFT.
2. This Agreement does not prevent a Participant from taking other measures than those identified in this Agreement to obtain information necessary to ensure enforcement of, or compliance with, applicable laws.
3. This Agreement is not intended to stipulate conditions on the exchange of information between the CAs, or to substitute the exchange of information between Participants and entities or bodies which are not Participants.
4. This Agreement does not create any enforceable rights for any third party.

Article 3

Exchange of information

1. The exchange of information shall take place between the CAs and the ECB, on request or on their own initiative.
2. The ECB may submit a request to the CAs for information, which is gathered or created by the CA in the exercise of its AML/CFT functions, that is relevant and necessary for the exercise of the ECB's tasks under the SSM Regulation, including prudential supervision on a consolidated basis. Such request may include, but is not limited to information:
 - (a) related to AML/CFT sanctions or measures imposed on supervised entities;

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- (b) gathered from reports received in line with Article 61(1) of the AMLD;
- (c) related to material weaknesses in the supervised entity's AML/CFT governance, systems and controls framework;
- (d) related to the supervised entity's exposure to significant ML/TF risks;
- (e) that is relevant and necessary for the purposes of the assessment of acquisitions of qualifying holdings, the authorisation of supervised entities, notifications connected with the exercise of the freedom of establishment and the freedom to provide services and the assessment of the suitability of members of management bodies of the supervised entities.
3. CAs should, to the extent that no obstacles as envisaged in paragraph 3. of Article 6 of this Agreement exist, transmit to the ECB the information referred to in points (a) to (d) of paragraph 2 of this Article on their own initiative. CAs may also provide on their own initiative to the ECB information referred to in point (e) of paragraph 2 of this Article as well as any other information, which they deem to be relevant and necessary for the exercise of the ECB's tasks.
4. The CAs may submit a request to the ECB for information gathered or created by the ECB in the exercise of its direct supervisory tasks under the SSM Regulation that is relevant and necessary for the performance of their tasks in the area of AML/CFT supervision. Such request may include, but is not limited to information:
- (a) related to sanctions or measures imposed by the ECB, in the exercise of its direct supervisory powers, on the supervised entities for shortcomings in their internal governance arrangements;
- (b) related to notifications connected with the exercise of the freedom of establishment and the freedom to provide services;
- (c) received by the ECB as part of breach reports¹ where that information relates to the supervised entity's internal systems and controls;
- (d) related to other decisions issued by the ECB, in the exercise of its direct supervisory powers, including but not limited to:
- i. capital requirements imposed on a supervised entity that are related to operational risk;
 - ii. decisions rejecting acquisitions of qualified holdings in supervised entities on the grounds of operational and reputational risk or AML/CFT concerns;
 - iii. negative decisions on the suitability of proposed members of the management bodies of supervised entities on the grounds of operational and reputational risk or AML/CFT concerns.
- (e) on business model and governance arrangements gathered during the authorisation process or other information related to AML/CFT gathered for the purposes of the assessment of acquisitions of qualifying holdings and suitability of members of management bodies of the supervised entities.
5. The ECB should, to the extent that no obstacles as envisaged in paragraph 3. of Article 6 of this Agreement exist, transmit to the CAs the information referred to in points (a) to (d) of paragraph 4.

¹ Article 23 of the SSM Regulation.

of this Article on its own initiative. The ECB may also provide on its own initiative to CAs the information referred to in point (e) of paragraph 4. of this Article as well as any other information gathered or created by the ECB in the exercise of its direct supervisory tasks under the SSM Regulation, which it deems relevant and necessary for the exercise of a CA's supervisory tasks.

Article 4

Procedure for requesting information

1. Each Participant agrees to send a request for information primarily via contact points provided on the basis of Annex to this Agreement. Where the information is requested through other contacts than those provided on the basis of Annex to this Agreement, the contact points should be notified of this.
2. To facilitate the information exchange, a requesting Participant should specify the following:
 - (a) a general description of the information requested;
 - (b) a short description of the facts underlying the request;
 - (c) the purpose for which the information is requested;
 - (d) the reasons why the information is needed for the proper performance of the requesting Participant's tasks;
 - (e) to whom, if already known, onward disclosure of information provided to the requesting Participant is likely to be necessary as well as the need to know and the purpose such disclosure would serve;
 - (f) any information known to, or in the possession of, the requesting Participant that might assist the requested Participant in fulfilling the request;
 - (g) the date by which the reply is expected, including the context and urgency of the request, if any.

Article 5

Procedure for providing information

1. Each Participant agrees to provide information primarily via contact points provided on the basis of the Annex to this Agreement. Where the information is provided through other contacts than those provided on the basis of the Annex to this Agreement, the contact points should be notified of this.
2. When providing the information, each Participant should specify the following:
 - (a) a general description of the information provided;
 - (b) a short description of the facts underlying the provided information;
 - (c) the purpose for which the information is provided;
 - (d) to whom onward disclosure of provided information is possible if known at the time;
 - (e) if the requested Participant can provide only part of the information requested, other sources of information, if known, which the requesting Participant could potentially use.
3. The requested Participant should endeavour to submit the requested information within the period set in the request by the requesting Participant.

4. Where the requested Participant is unable to meet the time period set by the requesting Participant, an alternative, realistic date should be agreed.
5. When Participants disclose information on their own initiative as referred to in paragraphs 3. or 5. of Article 3 of this Agreement, they shall do so within a reasonable time.

Article 6

Assessing requests for information

1. The requested Participant shall assess the received request for information on a case-by-case basis in order to determine whether the requested information is available and can be provided under the terms of this Agreement and the applicable laws.
2. Where the request cannot be fulfilled in part or in whole, the requested Participant shall cooperate to the fullest extent possible and will consider whether it can provide other assistance or whether there is another Participant who could provide the required assistance.
3. The requested Participant may decline a request for information where:
 - (a) the request does not conform with this Agreement or the applicable laws; or
 - (b) fulfilling the request would require the requested Participant to act in a manner that would violate any applicable laws.
4. Where a request for information is declined, in whole or in part, or the information requested is not available, the requested Participant shall provide a brief explanation with the reasons for not sharing the information including, when applicable, the law restricting the exchange of information.

Article 7

Confidentiality and data protection

1. The Participants shall keep the information received under this Agreement confidential as required by applicable laws, and use or disclose it only as permitted by applicable laws.
2. Exchange of information between the Participants has to be in compliance with the applicable laws governing data protection².
3. The Participants shall put in place the required safeguards where the information exchanged is gathered from breach reports³.

² For national authorities Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC and national implementing laws of this Regulation, and for the ECB Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

³ Article 61 of AMLD, Article 23 of the SSM Regulation, Article 37 and 38 of the SSM Framework Regulation.

Article 8

Communication and language

1. The Participants should exchange information in writing, regardless of its format (paper, electronic communication or other). Both the request for information and the communication of the information shall be addressed between the Participants through the designated contact points provided on the basis of Annex to this Agreement, unless specified otherwise in the request for information.
2. When deemed necessary by one of the Participants, for instance in a case of urgency or emergency, the information may be exchanged or requested by telephone or at a physical meeting between the Participants. Such requests and exchanged information are to be confirmed in writing as soon as feasible following the procedure set out in Article 4 of this Agreement.
3. Communications between the Participants should be in English. Where items of the information are not available in English, the Participants may exchange the information in its original language, with an English summary attached to it.

Article 9

Review and amendment

1. The Participants shall review the functioning and effectiveness of the information exchange under this Agreement as necessary.
2. Any amendment to this Agreement requires the consent of all Participants and shall be done in writing.
3. Changes to the contact points provided on the basis of Annex to this Agreement do not require the consent of the other Participants. Each Participant is responsible for processing their own changes regarding contact points and for communicating these changes to the ECB without delay.

Article 10

Settlement of disputes

In accordance with point (c) of Article 31 of each of the ESAs' Regulations,⁴ any Participant may refer any dispute about the application or interpretation of this Agreement to the relevant ESA.

⁴ 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; 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; 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.

Article 11**Transitional period**

During the transitional period set out for transposition of Directive (EU) 2018/843⁵ under Article 4 of that Directive, the Participants shall endeavour:

- (i) to advise each other of any changes in legislation where such changes are relevant to the operation of this Agreement; and
- (ii) to cooperate in overcoming any existing obstacles for exchange of information under this Agreement to the greatest extent permitted by the applicable laws.

Article 12**Entry into force**

1. This Agreement enters into force for the ECB and each Competent Authority once signed⁶ by an official/s authorised to sign on behalf of the ECB and an official/s authorised to sign on behalf of that Competent Authority.
2. The European Commission should be informed of the conclusion of the Agreement.
3. If a CA that has been a Participant ceases to be a CA, it shall cease to be a party to this Agreement but this Agreement will continue to apply to the ECB and the other CAs, which signed this Agreement. Such a change does not require the consent of the leaving or remaining Competent Authorities or the ECB.
4. If a new CA is established after this Agreement has been signed by one or more CAs, and the newly established CA agrees to become a Participant to this Agreement, it may enter into this Agreement without the consent of the other Participants.
5. This Agreement shall be signed by each Participant in the English language in one original and sent immediately after signature, together with an additional unattached signed signatory page (page 8 of this Agreement in case of the ECB and page 9 of this Agreement in case of each CA), to the European Banking Authority. In addition, each Participant shall send immediately after signature a scanned copy of the Agreement, including the page with signature(s) and filled in Annex, to the European Banking Authority. Upon the request of a CA which completed the steps described above in this paragraph, after the ECB receives the hard copies of the Agreement with the original signatures of that CA from the European Banking Authority, the ECB will provide that CA with a hard copy version of the Agreement signed on behalf of the ECB.

⁵ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

⁶ Article 57(2) of the AMLD requires that an agreement on the practical modalities for exchange of information has to be concluded between the ECB and Competent Authorities by 10 January 2019.

Done at Frankfurt am Main, 10 January 2019

For the European Central Bank



Sabine Lautenschläger

For the European Central Bank



Yves Mersch

Done at [include place of signature], [date/month/year]

For the [include the name of the competent authority]

[name/s of the official/s]

[title/s of the official/s authorised to sign this Agreement]

ANNEX – CONTACT POINTS

Last updated:	10 January 2019		
Participants	Contact Person	Contact Phone number	Contact email address ⁷
European Central Bank	For the exchange of information in relation to banking supervision:		
	<u>Maria Macedo</u> Head of the Planning and Coordination of the Supervisory Examination Programme Division, Directorate General Micro-prudential Supervision IV	+49691344 4640	ssm-amlco@ecb.europa.eu
	<u>Dany Goerig</u> Principal Supervisor, Planning and Coordination of the Supervisory Examination Programme Division, Directorate General Micro-prudential Supervision IV	+49691344 4853	
	For the exchange of information in relation to central banking and cross-cutting legal issues:		
	<u>Niall Lenihan</u> Senior Adviser, Directorate General Legal Services	+49691344 7964	AML-CFT-TaskForce@ecb.europa.eu
	<u>Pavel Sykora</u> Legal Counsel, Directorate General Legal Services	+49691344 8111	

⁷ It is recommended that this should be a functional email address in order to avoid the need for updates in the case of changes of the responsible staff member.