FINANSFÖRBUNDET

2014-03-07

Finansdepartementet
Finansmarknadsavdelningen
103 33 Stockholm

YTTRANDE
Vår referens: 2014/BK/183
Er referens: Fi2014/496

EU-kommissionens förordningsförslag om strukturförändringar i kreditinstitut COM(2014) 43 final

Impact assesment
Finansförbundet konstaterar att av de ettusen och en sidor som utgör Kommissionens konsekvensanalys så berör 2 paragrafer konsekvenser för nuvarande anställda. Slutsatserna är löst hållna – "likely to have *some* impact" samt "unlikely to face a *significant* detoriation" – och någon analys, argument eller underlag för påståendena presenteras inte. Konsekvensanalysen för andra intressegrupper (*stakeholders)* är mer ambitiös om inte annat. Det är oacceptabelt ur ett fackligt, svenskt och demokratiskt perspektiv.

Preamble (20)
Lönebildning i Sverige ansvarar arbetsmarknadens parter för enligt den så kallade svenska modellen vilken värnas av regering och riksdag. Löneprinciper och lönekriterier i branschen bestäms av centrala och lokala kollektivavtal. Under inga omständigheter ska EU-reglering inkräkta på dessa eller övriga bestämmelser i kollektivavtal vilket behöver framgå av texten. Däremot är det inte orimligt att begära att ersättning i individfallet inte ska uppmuntra lagbrott (jmf art.7).

Remuneration policies which encourage excessive risk-taking can undermine sound and effective risk management of banks. By complementing relevant existing Union law in this area, remuneration provisions should contribute to preventing circumvention of the prohibition of proprietary trading. Similarly, it should curtail any residual or hidden proprietary trading activity by core credit institutions when carrying out prudent risk management.	Remuneration policies which encourage excessive risk-taking can undermine sound and effective risk management of banks. By complementing relevant existing Union law in this area, remuneration provisions should **not encourage** circumvention of the prohibition of proprietary trading. Similarly, it should curtail any residual or hidden proprietary trading activity by core credit institutions when carrying out prudent risk management. **The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) TFEU, general principles of national contract and labour law, Union and national law regarding the right of social partners to conclude and enforce collective agreements.**

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Preamble (31)
Anställda ska informeras innan och under en separationsprocess och förhandlingar ska föras med arbetstagarorganisationen om förändringar i verksamheten, arbets- och anställnings-förhållanden. I Sverige ska det ske bland annat i enlighet med Lag (1976:580) om medbestämmande i arbetslivet och vedertaget bruk samt kollektivavtal.

Separation has a significant impact on banking groups' legal, organisational and operational structure. To insure an effective and efficient application of separation and to prevent separation of groups along geographic lines, separation decisions should be taken at group level by the consolidating supervisor, having consulted the competent authorities of a banking group's significant subsidiaries as appropriate.	Separation has a significant impact on banking groups' legal, organisational and operational structure. To insure an effective and efficient application of separation and to prevent separation of groups along geographic lines, separation decisions should be taken at group level by the consolidating supervisor, having consulted the competent authorities of a banking group's significant subsidiaries as appropriate. **The banking group shall establish procedures for informing and consulting with the employees before and throughout the separation. This should be done according to national law or where applicable, such procedures can be established through collective agreements or other arrangements provided for by social partners.**

Preamble (34)
Anställda ska informeras innan och under en separationsprocess och förhandlingar ska föras med arbetstagarorganisationen om förändringar i verksamheten, arbets- och anställnings-förhållanden. I Sverige ska det ske bland annat i enlighet med Lag (1976:580) om medbestämmande i arbetslivet och vedertaget bruk samt kollektivavtal.

Anställda ska inte drabbas av kostnader eller kostnadsbesparingar på grund av förslaget.

Separation entails changes to the legal, organisation and operational structure of affected banking groups, all of which generate costs. In order to limit the risk of costs being passed on to clients and grant the credit institutions the time necessary to execute a separation decision in an orderly fashion, separation should not be applicable immediately upon entry into force of the Regulation but apply as of [OP please enter the exact date 18 months from the date of publication of this Regulation].	Separation entails changes to the legal, organisation and operational structure of affected banking groups, all of which generate costs. In order to limit the risk of costs being passed on to clients **or employees** and grant the credit institutions the time necessary to execute a separation decision in an orderly fashion, separation should not be applicable immediately upon entry into force of the Regulation but apply as of [OP please enter the exact date 18 months from the date of publication of this Regulation]. **The banking**

	group shall establish procedures for informing and consulting with the employees before and throughout the separation. This should be done according to national law or where applicable, such procedures can be established through collective agreements or other arrangements provided for by social partners.

Preamble **(xx)**
Förslaget ska inte inkräkta på möjligheten för en anställd att konfidentiellt rådslå med en förtroendevald eller anställd vid ett fackförbund eller juridiskt ombud, till exempel vad gäller överträdelser (*breaches)* i förslagets mening. Inte heller ska möjligheten för förtroendevalda eller anställda att diskutera frågan sinsemellan eller med experter eller juridiska ombud begränsas. De ska inte heller tvingas utlämna konfidentiell information. Detta behöver framgå med tydlighet i förslaget. Jämför med Council Regulation (EU) No 1024/2013.

	Legal profession privilege is a fundamental principle of Union law, protecting the confidentiality of communications between natural or legal persons and their advisors, in accordance with the conditions laid down in the case-law of the Court of Justice of the European Union (CJEU).

Articles 3 & 4
Det vore olyckligt om situationen uppstod att kreditinstitut som i Sverige bedöms som systemviktiga inte täcks in av denna reglering samtidigt som andra gör det. Det riskerar att snedvrida konkurrensen och minska stabiliteten.

Article 7
Lönebildning i Sverige ansvarar arbetsmarknadens parter för enligt den så kallade svenska modellen vilken värnas av regering och riksdag. Löneprinciper och lönekriterier i branschen bestäms av centrala och lokala kollektivavtal. Under inga omständigheter ska EU-reglering inkräkta på dessa eller övriga bestämmelser i kollektivavtal vilket behöver framgå av texten. Däremot är det inte orimligt att begära att ersättning i individfallet inte ska uppmuntra lagbrott.

Orden ”*or reward”* fyller ingen egen funktion i sammanhanget.

Rules on remuneration	Rules on remuneration
Without prejudice to the remuneration rules laid down in Directive 2013/36/EU, the remuneration policy of the entities referred to in Article 3 shall be designed and implemented in such a way that it does not, directly or indirectly, encourage or reward the carrying out by any staff member of activities prohibited in Article 6(1).	Without prejudice to the remuneration rules laid down in Directive 2013/36/EU, the remuneration policy of the entities referred to in Article 3 shall be designed and implemented in such a way that it does not, directly~~ or indirectly~~, encourage~~ or reward~~ the carrying out by any staff member of activities prohibited in Article 6(1). **The provisions on remuneration should be without prejudice to the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs.**

Article 8
Rubriken kan möjligtvis ändras till ”*Negative scope of trading activities*” eller ”*Scope of non-trading activities*”.

Tolkningen är inte helt klar. Inkluderar *trading activities*[1] alla aktiviteter i kreditinstitutionen som inte listas? Rimligtvis inte, i vilket fall första meningen då kan lyda ”*trading activities shall **not** include*:”.

[1] *Trading* och *trading activities* bör inte översättas med ”handel”.

Article 11.2
Lönebildning i Sverige ansvarar arbetsmarknadens parter för enligt den så kallade svenska modellen vilken värnas av regering och riksdag. Löneprinciper och lönekriterier i branschen bestäms av centrala och lokala kollektivavtal. Under inga omständigheter ska EU-reglering inkräkta på dessa eller övriga bestämmelser i kollektivavtal vilket behöver framgå av texten. Däremot är det inte orimligt att begära att ersättning i individfallet inte ska uppmuntra lagbrott. Se ingress (20) och artikel 7.

2.(b) ska helst strykas helt, om inte ändras enligt nedan.

Prudent management of own risk	Prudent management of own risk
2. Without prejudice to the remuneration rules laid down in Directive 2013/36/EU, the remuneration policy applicable to staff of the core credit institution engaged in hedging activities shall:	2. Without prejudice to the remuneration rules laid down in Directive 2013/36/EU **and to the full exercise of fundamental rights guaranteed by Article 153(5) TFEU, general principles of national contract and labour law, Union and national law regarding the right of social partners to conclude and enforce collective agreements,** the remuneration policy applicable to staff of the core credit institution engaged in hedging activities shall:
(a) aim at preventing any residual or hidden proprietary trading activities, whether disguised as risk management or otherwise;	(a) **not encourage** any residual or hidden proprietary trading activities, whether disguised as risk management or otherwise;
(b) reflect the legitimate hedging objectives of the core credit institution as a whole and ensure that remuneration awarded is not directly determined by reference to the profits generated by such activities but takes account of the overall effectiveness of the activities in reducing or mitigating risk.	(b) **[styk helst hela 2.(b)]** reflect the legitimate hedging objectives of the core credit institution as a whole and ensure that remuneration awarded is not **solely** determined by reference to the profits generated by such activities but takes account of the overall effectiveness of the activities in reducing or mitigating risk **as well as remuneration criteria set in individual and collective agreements.**
The management body shall ensure that the remuneration policy of the core credit institution is in line with the provisions set out in the first subparagraph, acting on the advice of the risk committee, where such a committee is established in accordance with Article 76(3) of Directive 2013/36/EU.	The management body shall ensure that the remuneration policy of the core credit institution is in line with the provisions set out in the first subparagraph, acting on the advice of the risk committee, where such a committee is established in accordance with Article 76(3) of Directive 2013/36/EU.

Article 18.1
Anställda ska informeras innan och under en separationsprocess samt förhandlingar ska föras med arbetstagarorganisationen om förändringar i verksamheten, arbets- och anställningsförhållanden. I Sverige ska det ske bland annat i enlighet med Lag (1976:580) om medbestämmande i arbetslivet och vedertaget bruk samt kollektivavtal.

Separation plan	Separation plan
1. When a competent authority has made a decision in accordance with Article 10(3) that a core credit institution cannot carry out certain trading activities, the core credit institution or, where appropriate, its EU parent shall submit a separation plan to the competent authority within 6 months from the date of the decision referred to in the second sub-paragraph of Article 10(3). Similarly, when an entity referred to in Article 9(1) has decided to separate trading activities covered by the duty to review in Article 9 from the core credit institution, it shall submit a plan detailing its separation at the start of the assessment period referred to Article 9. The plan shall contain at least the information required in points (a) and (b) of paragraph 2 of this Article.	1. When a competent authority has made a decision in accordance with Article 10(3) that a core credit institution cannot carry out certain trading activities, the core credit institution or, where appropriate, its EU parent shall submit a separation plan to the competent authority within 6 months from the date of the decision referred to in the second sub-paragraph of Article 10(3). Similarly, when an entity referred to in Article 9(1) has decided to separate trading activities covered by the duty to review in Article 9 from the core credit institution, it shall submit a plan detailing its separation at the start of the assessment period referred to Article 9. The plan shall contain at least the information required in points (a) and (b) of paragraph 2 of this Article. **The core credit institution shall establish procedures for informing and consulting with the employees before and throughout the separation and take into account the impact of the plan on employees. This should be done according to national law or where applicable, such procedures can be established through collective agreements or other arrangements provided for by social partners.**

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Article 18.2

2. The separation plan shall explain in detail how the separation will be carried out. That plan shall contain at least the following: (a) specification of assets and activities that will be separated from the core credit institution; (b) details on how the rules referred to in Article 13 are applied; (c) a timeline for the separation.	2. The separation plan shall explain in detail how the separation will be carried out. That plan shall contain at least the following: (a) specification of assets and activities that will be separated from the core credit institution; (b) details on how the rules referred to in Article 13 are applied; (c) a timeline for the separation. **(d) an assessment of the effects that a separation would have on the employees of the credit institution.**

*Article 18.**10***

	10. When implementing the separation plan, national law and customs, collective agreements, or other arrangements provided for by social partners, shall be respected where applicable.

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Article 28.1
Finansförbundet ser det som mycket viktigt att ansvaret faller på rätt (juridisk) person. En anställd som följt företagets rutiner, instruktioner eller praxis och därmed omedvetet begått någon form av överträdelse ska inte kunna straffas för detta. Bristande rutiner, instruktioner, praxis, utbildning, översyn eller kontroll lägger ansvaret på arbetsgivaren som juridisk person.

En anställd som följt företagets rutiner, instruktioner eller praxis och därmed medvetet begått någon form av överträdelse bär ett ansvar men huvudansvaret ska ligga på hos arbetsgivaren som juridisk person om denna har initierat eller, direkt eller indirekt, uppmanat till överträdelse eller brustit i regler och kontroll.

Administrative sanctions and measures	Administrative sanctions and measures
1. Without prejudice to the supervisory powers of competent authorities under Article 26 and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to impose administrative sanctions and other administrative measures in relation to at least the following breaches: (a) breach of the prohibition laid down in Article 6; (b) any manipulation of information to be submitted in accordance with Article 24(1). Member States shall provide for competent authorities the power to impose administrative sanctions and measures on a credit institution and on any group entity, including a mixed activity holding company, an insurance undertaking or reinsurance undertaking. Where the provisions referred to in the first subparagraph apply to legal persons, in case of a breach Member States shall provide for competent authorities the power to apply sanctions, subject to the conditions laid down in national law, to members of the management body and to other individuals who under national law are responsible for the	1. Without prejudice to the supervisory powers of competent authorities under Article 26 and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to impose administrative sanctions and other administrative measures in relation to at least the following breaches: (a) breach of the prohibition laid down in Article 6; (b) any manipulation of information to be submitted in accordance with Article 24(1). Member States shall provide for competent authorities the power to impose administrative sanctions and measures on a credit institution and on any group entity, including a mixed activity holding company, an insurance undertaking or reinsurance undertaking. Where the provisions referred to in the first subparagraph apply to legal persons, in case of a breach Member States shall provide for competent authorities the power to apply sanctions, subject to the conditions laid down in national law, to members of the management body and to other individuals who under national law are responsible for the breach. **No sanctions shall be applied to an**

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breach.	**employee at a credit institution, who has followed internal rules, instructions or practices, be they explicit or implicit, within the institution.**

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Article 28.3
Det är viktigt att straffrättsliga sanktioner samordnas med administrativa sanktioner för att undvika dubbelbestraffning.

3. Where Member States have chosen to lay down criminal sanctions for the breaches of the provisions referred to in paragraph 1, they shall ensure that appropriate measures are in place so that a competent authority has all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible violations of Article 6 and for manipulating information to be submitted in accordance with 24(1), and to provide the same to other competent authorities and EBA to fulfil their obligation to cooperate with each other and, where relevant with EBA for the purposes of paragraph 1.	3. Where Member States have chosen to lay down criminal sanctions for the breaches of the provisions referred to in paragraph 1, they shall ensure that appropriate measures are in place so that a competent authority has all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible violations of Article 6 and for manipulating information to be submitted in accordance with 24(1), and to provide the same to other competent authorities and EBA to fulfil their obligation to cooperate with each other and, where relevant with EBA for the purposes of paragraph 1. **Member States shall also ensure that there is a clear division of responsibilities, aiming at proper demarcation between administrative, civil and criminal proceedings and the accompanying rights and responsibilities different authorities might have according to national law.** **Member States shall have in place appropriate procedures to ensure that a person is not to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.**
Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the exercise of their sanctioning powers.	Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the exercise of their sanctioning powers.

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Article 28.4
Skrivningarna kring nivåerna på sanktioner är svårtolkad. Texten lyder: ”*The power to apply….at least…maximum...pecuniary sanctions…of at least…[X] amount.*”.
Avses med detta miniminivån, eller maximinivån, eller maximala miniminivån eller minimala maximinivån? Att det är svårtolkat syns också i den svenska översättningen som gör olika översättningar i (g) och (h) jämfört med (i).

4. Member States shall, in conformity with national law, confer on competent authorities the power to apply at least the following administrative sanctions and other measures in the event of the breaches referred to in paragraph 1:	4. Member States shall, in conformity with national law, confer on competent authorities the power to apply at least the following administrative sanctions and other measures in the event of the breaches referred to in paragraph 1:
(a) an order requiring the person responsible for the breach to cease the unlawful conduct and to desist from a repetition of that conduct;	(a) an order requiring the person responsible for the breach to cease the unlawful conduct and to desist from a repetition of that conduct;
(b) the disgorgement of the profits gained or losses avoided due to the breach in so far as they can be determined;	(b) the disgorgement of the profits gained or losses avoided due to the breach in so far as they can be determined;
(c) a public warning which indicates the person responsible and the nature of the breach;	(c) a public warning which indicates the person responsible and the nature of the breach;
(d) withdrawal or suspension of the authorisation;	(d) withdrawal or suspension of the authorisation;
(e) a temporary ban of any natural person, who is deemed responsible, from exercising management functions of an entity referred to in Article 3;	(e) a temporary ban of any natural person, who is deemed responsible, from exercising management functions of an entity referred to in Article 3;
(f) in the event of repeated breaches, permanent ban of any natural person who is deemed responsible, from exercising management functions in an entity referred to in Article 3;	(f) in the event of repeated breaches, permanent ban of any natural person who is deemed responsible, from exercising management functions in an entity referred to in Article 3;
(g) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the breach where those can be	(g) ~~maximum~~ administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the breach where those can be

determined;	determined;
(h) in respect of a natural person, a maximum administrative pecuniary sanction of at least EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry to force of this Regulation;	(h) in respect of a natural person, a maximum administrative pecuniary sanction of ~~at least~~ EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry to force of this Regulation;
	(i) No sanctions shall be applied to an employee at a credit institution, who has followed internal rules, instructions and/or practices, be they official or unofficial, within the institution.
(i) in respect of legal persons, maximum administrative pecuniary sanctions of at least 10 per cent of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.	**(j)** in respect of legal persons, ~~**maximum**~~ administrative pecuniary sanctions of at least 10 per cent of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.
Member States may provide that competent authorities may have powers in addition to those referred to in this paragraph and may provide for a wider scope of sanctions and higher levels of sanctions than those established in this paragraph.	Member States may provide that competent authorities may have powers in addition to those referred to in this paragraph and may provide for a wider scope of sanctions and higher levels of sanctions than those established in this paragraph.

Svensk översättning i *SWD(2014) 30/31 final* (egen understrykning):

(g) Administrativa böter på minst tre gånger de vinster som erhållits eller de förluster som undvikits genom överträdelsen, om dessa kan fastställas.

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(h) För fysiska personer administrativa böter på minst 5 000 000 euro eller, i medlemsstater som inte har euron som valuta, motsvarande värde i nationell valuta den dag då denna förordning träder i kraft.

(i) För juridiska personer maximala administrativa böter på minst 10 procent av den juridiska personens totala årsomsättning enligt den senaste tillgängliga redovisning som ledningen godkänt. Om den juridiska personen är ett moderbolag eller dotterbolag till det moderbolag som ska upprätta sammanställd redovisning enligt direktiv 2013/34/EU, ska den relevanta totala årsomsättningen vara den totala årsomsättningen eller motsvarande typ av inkomst enligt den relevanta redovisningsordningen i den senast tillgängliga sammanställda redovisning som godkänts av ledningen för det yttersta moderbolaget.

Medlemsstaterna får ge behöriga myndigheter fler befogenheter än dem som avses i denna punkt och får föreskriva om mer omfattande påföljder och högre böter än som fastställs i denna punkt.

Article 29

Finansförbundet ser det som mycket viktigt att ansvaret faller på rätt (juridisk) person. En anställd som följt företagets rutiner, instruktioner eller praxis och därmed omedvetet begått någon form av överträdelse ska inte kunna straffas för detta. Bristande rutiner, instruktioner, praxis, utbildning, översyn eller kontroll lägger ansvaret på arbetsgivaren som juridisk person.

En anställd som följt företagets rutiner, instruktioner eller praxis och därmed medvetet begått någon form av överträdelse bär ett ansvar men huvudansvaret ska ligga på hos arbetsgivaren som juridisk person om denna har initierat eller, direkt eller indirekt, uppmanat till överträdelse eller brustit i regler och kontroll.

Exercise of supervisory powers and sanctions	Exercise of supervisory powers and sanctions
1. Member States shall ensure that when determining the type and level of administrative sanctions and other measures, competent authorities shall take into account all relevant circumstances, including, where appropriate:	1. Member States shall ensure that when determining the type and level of administrative sanctions and other measures, competent authorities shall take into account all relevant circumstances, including, where appropriate:
(a) the gravity and duration of the breach;	(a) the gravity and duration of the breach;
(b) the degree of responsibility of the person responsible for the breach;	(b) the degree of responsibility of the person responsible for the breach;
	(c) whether the natural person followed internal rules, instructions or practices, be they explicit or implicit, in which case no sanctions shall be applied;
(c) the financial strength of the person responsible for the breach, by	**(d)** the financial strength of the person responsible for the breach, by considering factors such as the total turnover

considering factors such as the total turnover in the case of a legal person, or the annual income in the case of a natural person; (d) the importance of the profits gained or losses avoided by the person responsible for the breach, insofar as they can be determined; (e) the level of cooperation of the person responsible for the breach with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person; (f) previous breaches by the person responsible for the breach; (g) measures taken by the person responsible for the breach to prevent its repetition; (h) any potential systemic consequences of the breach.	in the case of a legal person, or the annual income in the case of a natural person; **(e)** the importance of the profits gained or losses avoided by the person responsible for the breach, insofar as they can be determined; **(f)** the level of cooperation of the person responsible for the breach with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person; **(g)** previous breaches by the person responsible for the breach; **(h)** measures taken by the person responsible for the breach to prevent its repetition; **(i)** any potential systemic consequences of the breach.

Article 30
Vad som är ett minimum av *appropriate protection* måste klargöras i förslaget. Skyddet behöver bli mer konkret, det vill säga adekvat, förutsägbart och tydligt. Det ska bland annat innehålla ett effektivt skydd mot arbetsrättsliga och andra repressalier samt ett efterforskningsförbud. Ett tillbörligt skydd bör inbegripa att:

1. Lagskyddet gäller för alla anställda, inklusive de med tidsbegränsad anställning, samt även personer utanför det traditionella anställningsförhållandet (till exempel konsulter och praktikanter) och innehåller ett repressalieförbud, tvistebestämmelser och ersättningsregler. Ett sådant skydd skulle vara i linje med internationell rätt och Europadomstolens praxis.
2. Skyddet bör utformas som en huvudregel utformad som en positiv rättighet att rapportera överträdelser kompletterad med ett indirekt konkret och adekvat skydd för den som lämnar uppgifter.
3. Arbetsgivaren och chefen förbjuds efterforska vem som lämnat uppgifter till berörd myndighet. Förbudet bör vara straffrättsligt och straff inträda vid culpa/vårdslöshet från arbetsgivarens sida.
4. Man bör också uppmärksamma att andra personkategorier än anställda också kan förtjäna lagens skydd mot repressalier, till exempel kunder och leverantörer.

5. Uppgiftslämnarens identitet inte röjs för mer än ett fåtal individer som alla behöver känna till identiteten i sin myndighetsutövning vid mottagande myndighet. Mer än 3 personer bör inte komma i fråga. (Konfidentiell rapportering).
6. En persons identitet endast röjs efter samtycke.
7. Tystnadsplikt bör gälla för de som mottar rapporten vad avser uppgiftslämnarens identitet.
8. Uppgiftslämnaren kan välja att vara helt anonym även gentemot myndigheten (anonym rapportering). Myndigheten ordnar med rapporteringskanaler, tekniska eller andra lösningar, som gör detta möjligt. Att skapa ett sådant skydd ligger helt i linje med internationella konventioner (Europarådets och ILOs) samt riksdagens tillkännagivande (rskr 2010/11:179).
9. Oberoende utredningar av rapporter ska utföras. Utredningen ska fokuseras på påståendena i rapporten och inte på personen som lämnar uppgifterna.
10. De anställda upplyses om reglerna och möjliga konsekvenser. De anställda behöver också upplysas om värdet av rapportering av överträdelser.
11. Anmälare som trots detta regelverk åsamkats skada (även ideell) av repressalier eller vars identitet röjs av myndighet ska kunna få upprättelse och skadestånd i proportion till skadan.
12. Arbetsgivaren ska ha ett ansvar för att det finns en företagskultur och information som underlättar rapportering.

Finansförbundet vill i detta sammanhang även framhålla vikten av att reglerna rörande möjligheten till så kallad *whistleblowing* och rapportering av överträdelser inom den finansiella sektorn blir enhetlig, oavsett vilken reglering frågan gäller (MAD/MAR, MiFID/MiFIR, CRD/CRR, SSM etc.). Med en enhetlig reglering på området ökar förutsebarheten för de individer som kan komma att använda möjligheten.

Reporting of breaches	Reporting of breaches
1. A competent authority shall establish effective mechanisms to enable reporting of actual or potential breaches referred to in Article 28(1).	1. A competent authority shall establish effective mechanisms to enable reporting of actual or potential breaches referred to in Article 28(1).
2. The mechanisms referred to in paragraph 1 shall include at least:	2. The mechanisms referred to in paragraph 1 shall include at least:
(a) specific procedures for the receipt of reports of breaches and their follow-up, including the establishment of secure communication channels for such reports;	(a) specific procedures for the receipt of reports of breaches and their follow-up, including the establishment of secure communication channels for such reports;
(b) appropriate protection for persons working under a contract of employment, who report breaches or who are	(b) **full** protection for persons working under a contract of employment, who report breaches **to the authority or**

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accused of breaches, against retaliation, discrimination or other types of unfair treatment;	**internally,** or who are accused of breaches, against retaliation, discrimination or other types of unfair treatment. **Credit institutions shall be prohibited from trying to identify the source**;
(c) protection of personal data both of the person who reports the breach and the natural person who allegedly committed the breach, including protection in relation to preserving the confidentiality of their identity, at all stages of the procedure without prejudice to disclosure of information being required by national law in the context of investigations or subsequent judicial proceedings.	(c) protection of personal data both of the person who reports the breach and the natural person who allegedly committed the breach, including protection in relation to preserving the confidentiality of their identity, at all stages of the procedure without prejudice to disclosure of information being required by national law in the context of investigations or subsequent judicial proceedings.
3. Member States shall require employers to have in place appropriate internal procedures for their employees to report breaches referred to in Article 28(1).	3. Member States shall require employers to have in place appropriate internal procedures for their employees to report breaches referred to in Article 28(1). **Such procedures may also be established through arrangements provided for by social partners. The same protection as referred to in points (b) and (c) of paragraph 2 shall apply.**
4. Member States may provide for financial incentives to persons who offer relevant information about potential breaches of this Regulation to be granted in accordance with national law where such persons do not have other pre-existing legal or contractual duties to report such information, and provided that the information is new, and it results in the imposition of an administrative sanction or other measure taken for a breach of this Regulation or a criminal sanction.	4. Member States may provide for financial incentives to persons who offer relevant information about potential breaches of this Regulation to be granted in accordance with national law where such persons do not have other pre-existing legal or contractual duties to report such information, and provided that the information is new, and it results in the imposition of an administrative sanction or other measure taken for a breach of this Regulation or a criminal sanction.
	5. **Member States shall provide for proportional reparations and damages to those who have suffered harm due to the actions of the authority or credit institution because of the report of a breach.**

Article 32
Skrivningen "*…jeopardise…the stability of the financial markets*" är otydligt och öppet för en mycket bred tolkning. Om en publicering sannolikt allvarligt påverkar stabiliteten på de finansiella marknaderna kan det vara rimligt att frångå en sådan.

Orden "*ongoing investigation*" är dubblerade i samma mening.

Formuleringen i 32.3 är sämre än motsvarande i ingress (33): "*In particular, personal data shall be retained by the competent authority only for the period necessary, in accordance with the applicable data protection rules.*" Finansförbundet finner det inte motiverat att visa personliga uppgifter på en sådan hemsida längre än 5 år.

Publication of decisions	Publication of decisions
1. Subject to the third subparagraph, a competent authority shall publish any decision imposing an administrative sanction or other measure in relation to a breach of Article 6 and for manipulating financial reporting referred to in Article 28(1) on its website immediately after the person subject to that decision has been informed of that decision.	1. Subject to the third subparagraph, a competent authority shall publish any decision imposing an administrative sanction or other measure in relation to a breach of Article 6 and for manipulating financial reporting referred to in Article 28(1) on its website immediately after the person subject to that decision has been informed of that decision.
The information published pursuant to the first subparagraphs shall specify at least the type and nature of the breach and the identity of the person subject to the decision.	The information published pursuant to the first subparagraphs shall specify at least the type and nature of the breach and the identity of the person subject to the decision.
The first and second subparagraphs do not apply to decisions imposing measures that are of an investigatory nature.	The first and second subparagraphs do not apply to decisions imposing measures that are of an investigatory nature.
Where a competent authority considers, following a case-by-case assessment, that the publication of the identity of the legal person subject to the decision, or the personal data of a natural person, would be disproportionate, or where such publication would jeopardise an ongoing investigation or the stability of the financial markets or an on-going investigation, it shall do one of the following:	Where a competent authority considers, following a case-by-case assessment, that the publication of the identity of the legal person subject to the decision, or the personal data of a natural person, would be disproportionate, or where such publication would jeopardise an ongoing investigation or **severely affect** the stability of the financial markets~~ or an on-going investigation~~, it shall do one of the following:
	(a) defer publication of the decision

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(a) defer publication of the decision until the reasons for that deferral cease to exist; (b) publish the decision on an anonymous basis in a manner which is in accordance with national law where such publication ensures the effective protection of the personal data concerned and, where appropriate, postpone publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication will cease to exist during that period; (c) not publish the decision in the event that the competent authority is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure: (i) that the stability of financial markets is not jeopardised; (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature. 2. Where the decision is subject to an appeal before a national judicial, administrative or other authority, a competent authority shall also publish immediately on their website such information and any subsequent information on the outcome of such an appeal. Moreover, any decision annulling a decision subject to appeal shall also be published. 3. A competent authority shall ensure that any decision that is published in accordance with this Article shall remain accessible on their website for a period of at least five years after its publication. Personal data contained in those decisions shall be kept on the website of the competent authority for the period which is necessary in accordance	until the reasons for that deferral cease to exist; (b) publish the decision on an anonymous basis in a manner which is in accordance with national law where such publication ensures the effective protection of the personal data concerned and, where appropriate, postpone publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication will cease to exist during that period; (c) not publish the decision in the event that the competent authority is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure: (i) that the stability of financial markets is **not severely affected**; (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature. 2. Where the decision is subject to an appeal before a national judicial, administrative or other authority, a competent authority shall also publish immediately on their website such information and any subsequent information on the outcome of such an appeal. Moreover, any decision annulling a decision subject to appeal shall also be published. 3. A competent authority shall ensure that any decision that is published in accordance with this Article shall remain accessible on their website for a period of at least five years after its publication. Personal data contained in those decisions shall be kept on the website of the competent **authority only for the period necessary and at most five years and** in accordance with ~~the~~

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with the applicable data protection rules.	applicable data protection rules.

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