



How to improve transparency of corporate ownership structures and beneficial ownership in the AML/CFT framework ?

Czech Permanent Representation to the European Union
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DG Justice and Consumer
European Commission

DG JUST – Unit financial crime

- **Objective: Prevention of money laundering and terrorist financing in the financial system**
- **legislation on AML/CFT for financial and non-financial sector**
- **Coordination of COM policy on AML/CFT (FATF HoD) and support to line DGs**



DG JUST core missions in AML/CFT



 **Analyse AML/CFT risks** in EU market



 **Negotiate AML/CFT standards** at global level



 **Adopt robust EU rules** aligned with FATF standards



 **Enforce effective application** by Member States

EU framework on AML/CFT – Transparency of beneficial ownership information

4th AML/CTF Directive

Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (4th AML Directive)

- *adopted on 20 May 2015;*
- *transposition deadline on 26 June 2017.*



Who is the BO?

Very detailed definition in EU law

The natural persons who ultimately controls/owns the entity must be identified

➤ Beneficial owner for companies:

- **25% ownership threshold**
- **direct or indirect control**
- **if no suspicion and no other person can be identified: senior manager**

➤ Beneficial owner for trusts:

Settlor, trustee, protector, beneficiaries of the trust or any other natural person exercising ultimate control

Information shall be adequate, accurate and current

Transparency of BO information

Storage in a central registry at national level for companies and trusts

- In case of companies, *e.g.* commercial register, companies register or public register
- Information shall be adequate, accurate and current
- ONLY trusts that generate tax consequences

Access to information: Legitimate interest; different levels for obliged entities; ensured for competent authorities

- 4AMLD allows public access to BO information

Interconnection of national registers (**future**)

JULY 2016 Amending Proposal

Game changers: terrorist attacks and Panama Papers

COM's urgent reaction:

- Action Plan against Terrorist Financing (Communication COM(2016) 50 final)
- Strengthening the transparency and the fight against tax evasion (Communication COM(2016) 451 final)

Objectives:

- **TF operational needs:** Prepaid cards, virtual currencies, Centralised bank account registers, access to information by FIUs, harmonising Enhanced CDD for high risk third countries
- Enhanced traceability of the financial transactions involving legal entities and legal arrangements: **beneficial owner**

BO amendments for companies

Full public access to BO info:

Amendment to Company Law Directive: compulsory disclosure of a limited set of BO information

Lower threshold: 10% for "passive" entities

Additional guarantees for third parties wishing to do business with those entities; greater scrutiny of information by civil society

Interconnection via BRIS

EU-wide access to BO information



BO amendments for trusts

(i) Registration of ALL trusts

Consistent with requirement to identify BO of trusts (whatever the nature of trusts)

(ii) Registration where the trust is administered

"Administered": where the trustee is established

Binding for ALL Member States, including those who do not have trusts in their MS law

(iii) Wider access to BO information on trusts

Mandatory access for obliged entities when conducting CDD ("shall")

Public - when trusts involved in business-like activities

⇒ amendment to the Company Law Directive: compulsory disclosure of a limited set of BO information (similar provision as for corporate and other legal entities)

Legitimate interest for trusts which are not profit making

(iv) Direct interconnection via BRIS



State of play – legislative negotiations

Commission proposal: July 2016

Council position: December 2016

Trilogues:

- **5 under Maltese Presidency**
- **2 already under Estonian Presidency**
- **1 further scheduled November**

Main issues at stake in the BO discussions

- **Public access to the registers**
 - For profit vs not for-profit
 - Range of data available (e.g. full date of birth, address...)
- **Place of registration for trusts**
 - Residence? Operations? Assets?
- **Verification mechanisms of the BO information** (who's responsible? which consequences?)
- **Dispersed ownership (nominee)**
 - Part of the CDD process or definition?
- **Handling of 3rd countries companies**

Thank you for your attention

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