



# European Economic and Social Committee

## Proposal for a Directive amending Directive 2015/849

**16.09.2016**

---

**European Commission**  
DG Justice and Consumer

## CONTEXT OF THE PROPOSAL

The adoption of the 4AMLD in May 2015 was a major step forward in improving the existing AML/CFT framework.

**Recent game changers:** terrorist attacks and Panama Papers

➤ **Urgent action was needed**

- **Action Plan against TF** (see communication COM(2016) 50 final)
- **Strengthening the transparency and the fight against tax evasion** (see communication COM(2016) 451)

## Structure of the proposal

- **Tracing terrorists through financial movements and preventing them from moving funds or other assets**
  - Limiting the anonymity of the transactions: virtual currencies and prepaid cards;
  - Enhancing the role of financial intelligence services : powers of Financial Intelligence Units; bank and payment accounts registers; high risk third countries

- **Enhancing transparency of beneficial ownership information**

Clearer rules on nature and access to the information

# VIRTUAL CURRENCY EXCHANGES AND CUSTODIAN WALLET PROVIDERS

**Issue:** objective to reduce anonymity as much as possible by targeting two major types of market players:

- **Exchange platforms = bureau de change**
- **Custodian wallet providers = bank/payment accounts**

**Proposal:** anti-money laundering requirements (identification of the customer, monitoring and reporting suspicious transaction)

# ANONYMOUS PREPAID INSTRUMENTS

- **Issue:** to find the right balance between less anonymity in the prepaid card market and full respect of such payment means
- **Proposal**
  - **Lower thresholds** (from 250 to 150 EUR) for anonymous, reloadable or non-reloadable, prepaid instruments
  - **No CDD exemption for online use of prepaid cards**
  - **Foreign prepaid cards in the Union:** equivalence requirements

# POWERS OF FIUS – ACCESS TO AND EXCHANGE OF INFORMATION

**Issue:** limitations in FIUs timely access to – and exchange of – information held by obliged entities

**Proposal:** in line with FATF standards (INR40 and c29.3)

- **FIU shall be able to obtain additional information from an obliged entity even without prior STR**
- **FIUs shall be able to obtain information directly**
- **FIUs shall be able to exchange this information with other FIUs**

# MECHANISMS – IDENTIFICATION HOLDERS OF BANK AND PAYMENT ACCOUNTS

**Issue:** FIUs and other AML/CFT competent authorities lack access or have a delayed access to information on holders of bank and payment accounts

**Proposal:** create an automated central mechanism (IT-tool) at Member State level allowing to swiftly match an account to an identity:

- free choice for IT tool
- harmonised set of information
- less burden on the financial institutions
- data protection rules

# ENHANCED CDD TOWARDS HIGH RISK THIRD COUNTRIES

**Issue:** no clarification on the nature of enhanced measures to apply to high risk countries (Article 18.4 AMLD4) and no reference to possible additional mitigating measures

- ✓ Lack of harmonised controls put in place by MSs
- ✓ Risk of regulatory arbitrage
- ✓ Unlevel playing field for obliged entities

**Proposal:** mandatory set of enhanced CDD measures and illustrative list of additional mitigating measures- EU list

- List of enhanced CDD: "Member States shall apply at least all the following ECDD measures"
- List of additional mitigating measures: "Member States may apply one of the following measures" + notification requirement



# BENEFICIAL OWNERSHIP TRANSPARENCY – Corporate and other legal entities (1)

- **2 issues**

- **(i) Article 30.5 - legitimate interest**

Third parties cannot have access to BO information concerning their business counterparts

- **(ii) Article 30.10 – interconnection of the BO registers**

No EU-wide access to BO information to address cross-border misuses of legal entities

# BENEFICIAL OWNERSHIP TRANSPARENCY –

## Corporate and other legal entities (2)

- **Proposal**

- **(i) Full public access**

- Amendment to the Directive 2009/101/EC: compulsory disclosure of a limited set of BO information (same set as current AMLD4)
    - Additional guarantees for third parties wishing to do business with those entities; greater scrutiny of information by civil society

- **(ii) Interconnection via BRIS**

- EU-wide access to BO information

# BENEFICIAL OWNERSHIP TRANSPARENCY-

## Trusts and similar legal arrangements (1)

- **Issues** (identified also during the transposition workshops)

### **(i) Scope of the registration :**

- "*trusts governed under their law*" – where shall registration occur?
- "*trusts which generate tax consequences*" – which trusts shall be registered?

### **(ii) Scope of the access to BO information on trusts**

- Mandatory for competent authorities but only optional for obliged entities
- No mandatory access by the public

### **(iii) Interconnection of the BO registers**

No EU-wide access to BO information to address cross-border misuses of legal arrangements

# BENEFICIAL OWNERSHIP TRANSPARENCY-

## Trusts and similar legal arrangements (2)

- Proposal

- (i) Registration of ALL trusts

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

- (ii) Registration where the trust is administered

"Administered": where the trustee is established

Binding for ALL Member States, including those who do not recognise 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 Directive 2009/101/EC: 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) Interconnection via BRIS

- EU-wide access to BO information

NB: other modifications are for consistency (competent authorities; exceptional circumstances)

# BENEFICIAL OWNERSHIP TRANSPARENCY– other modifications (3)

- **Identification of the beneficial owner – Article 3.6**  
10% for certain types of entities which present a specific risk- focus on intermediary structures Passive Non-Financial Entities (Directive 2011/16/EU)
- **Systematic monitoring of existing customers when they present a specific risk – Article 14. 5**
  - When the relevant circumstances of the customer change
  - When duty to contact the customer BO in the context of Directive 2011/16/EU

**Thank you for your attention!**

