European Economic and Social Committee


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!