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*Plenary sitting*

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**A8-0056/2017**

9.3.2017

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# **REPORT**

on the proposal for a directive of the European Parliament and of the Council 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 Directive 2009/101/EC (COM(2016)0450 – C8-0265/2016 – 2016/0208(COD))

Committee on Economic and Monetary Affairs  
Committee on Civil Liberties, Justice and Home Affairs

Rapporteurs: Krišjānis Kariņš, Judith Sargentini

(Joint committee procedure – Rule 55 of the Rules of Procedure)

***Symbols for procedures***

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

***Amendments to a draft act*****Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

**Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council 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 Directive 2009/101/EC (COM(2016)0450 – C8-0265/2016 – 2016/0208(COD))

### **(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0450),
  - having regard to Article 294(2) and Articles 50 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0265/2016),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 19 October 2016<sup>1</sup>,
  - having regard to the opinion of the European Central Bank of 14 October 2016<sup>2</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the joint deliberations of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs under Rule 55 of the Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Development, the Committee on International Trade and the Committee on Legal Affairs (A8-0056/2017),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> Not yet published in the Official Journal.

<sup>2</sup> Not yet published in the Official Journal.

## Amendment 1

### AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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Proposal for a

### **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**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 Directive 2009/101/EC**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive (EU) 2015/849 of the European Parliament and the Council<sup>3</sup> constitutes the main legal instrument in the prevention of the use of the Union's financial system for

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ***■***.

<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> 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

the purposes of money laundering and terrorist financing. That Directive, which is to be transposed by 26 June 2017, sets out ***an updated, transparent, efficient and comprehensive legal*** framework to address the collection of money or property for terrorist purposes by requiring Member States to identify, understand, mitigate ***and prevent*** risks related to money laundering and terrorist financing.

- (2) Recent terrorist attacks have brought to light emerging new trends, in particular regarding the way terrorist groups finance and conduct their operations. Certain modern technology services are becoming more and more popular as alternative financial systems and remain outside the scope of Union legislation or benefit from exemptions that may no longer be justified. In order to keep pace with evolving trends, further measures ***should be taken to ensure increased transparency of financial transactions and of corporate entities under the preventive legal framework in place in the Union, with a view to improving the existing preventive framework and countering the terrorist financing more effectively. It is important to note that the measures taken must be proportionate to the risks.***
- (2a) ***The United Nations (UN), Interpol and Europol have been reporting for years on the increasing convergence between organised crime and terrorism. Given the increased convergence between organised crime and terrorism, fighting against organised crime networks should be part of any strategy in the fight against the terrorist financing. Illicit trade in firearms, drugs, cigarettes and counterfeit goods, trade in human beings, racketeering and extortion have become very lucrative ways for terrorist groups to obtain funding, generating around 110 billion euros every year (without trade in counterfeit goods). The nexus between terrorism and organised crime and the links between criminal and terrorist groups constitute an increased security threat to the Union.***
- (2b) ***Also money laundering, illicit trade in goods, including but not limited to crude oil, narcotics, works of art, weapons and protected species, serious tax fraud and tax evasion of illegally acquired money are typically committed in respect of the terrorist financing. Without prejudice to [the new anti-terrorism directive] Member States should take the necessary measures to criminalize these behaviours and to make sure that terrorists and terrorist organisations cannot benefit from profits resulting from those criminal activities.***
- (3) While the aims of Directive (EU) 2015/849 should be pursued, any amendments to that Directive should be consistent with the Union's ongoing action in the field of countering terrorism and terrorism financing, ***with due regard for the fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union, as well as the observance and application of the proportionality principle.*** The European Agenda on Security<sup>1</sup> ***identified as a priority for the upgrading of the EU legal framework to combat terrorism, indicating the need for***

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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 (OJ L 141, 5.6.2015, p. 73).

<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "The European Agenda on Security", COM(2015) 185 final.

measures to address terrorist financing in a more effective and comprehensive manner, highlighting that infiltration of financial markets allows terrorism financing. The European Council conclusions of 17-18 December 2015 also stressed the need to take rapidly further action against terrorist finance in all domains.

- (4) The Commission has adopted an Action Plan to further step up the fight against the financing of terrorism<sup>1</sup> which underscores the need to adapt to new threats and to amend Directive (EU) 2015/849 to that effect.
- (5) Union measures must also accurately reflect developments and commitments undertaken at international level. *Therefore, UN Security Council Resolution 2195 (2014) on links between terrorism and transnational organised crime, Resolution 2199 (2015) on preventing terrorist groups from gaining access to international financial institutions and Resolution 2253 (2015) expanding Sanctions Framework to Include Islamic State in Iraq and Levant should be taken into account.*
- (5a) *Money laundering activities are carried out by making large use of cash transactions. The spread and the use of on-line bank accounts and other similar payments systems has largely increased in recent years, implying that there is scope to consider adopting a limit to cash transfers at EU level, without imposing a strong burden on households and firms. The Commission should assess the size of a maximum threshold of cash transfers to be adopted at EU level, leaving to Member States the choice to impose lower thresholds. The assessment should be carried out within 2 years from the date of entry into force of this Directive. Policies and actions in other relevant areas of Union competence, for instance in international trade and development cooperation, should be utilised, where possible, to complement the work to fight money laundering and terrorist financing through the financial system. Those policies and actions should seek to complement and not undermine other policy goals of the Union.*
- (6) Providers of exchange services between virtual currencies and fiat currencies (that is to say currencies declared to be legal tender) as well as custodian wallet providers for virtual currencies are under no obligation to identify suspicious activity. Terrorist groups are thus able to transfer money into the Union's financial system or within virtual currency networks by concealing transfers or by benefiting from a certain degree of anonymity on those platforms. It is therefore essential to extend the scope of Directive (EU) 2015/849 so as to include virtual currency exchange platforms and custodian wallet providers. Competent authorities should be able to monitor the use of virtual currencies. This would provide a balanced and proportional approach, safeguarding technical advances and the high degree of transparency attained in the field of alternative finance and social entrepreneurship.
- (7) The credibility of virtual currencies will not rise if they are used for criminal purposes. In this context, anonymity will become more a hindrance than an asset for virtual currencies taking up and their potential benefits to spread. The inclusion of virtual exchange platforms and custodian wallet providers will not entirely address the issue of anonymity attached to virtual currency transactions, as a large part of the virtual

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<sup>1</sup> Communication from the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing, COM(2016) 50 final.



currency environment will remain anonymous because users can also transact without exchange platforms or custodian wallet providers. To combat the risks related to the anonymity, national Financial Intelligence Units (FIUs) should be able to associate virtual currency addresses to the identity of the owner of virtual currencies. In addition, the possibility to allow users to self-declare to designated authorities on a voluntary basis should be further assessed.

- (8) Local currencies (also known as complementary currencies) that are used in very limited networks such as a city or a region and among a small number of users should not be considered as virtual currencies.
- (9) When dealing with natural persons or legal entities established in high-risk third countries, Member States must require obliged entities to apply enhanced customer due diligence measures to manage and mitigate risks. Each Member State therefore determines at national level the type of enhanced due diligence measures to be taken towards high-risk third countries. Those different approaches between Member States create weak spots on the management of business relationships involving high risk third countries identified by the Commission. Those gaps can be exploited by terrorists to channel funds in and out the Union financial system. It is important to improve the effectiveness of the list of high-risk third countries established by the Commission by providing for a harmonised treatment of those countries at Union level. This harmonised approach should primarily focus on enhanced customer due diligence measures. Nevertheless, Member States and obliged entities should be allowed to apply additional mitigating measures in addition to enhanced customer due diligence measures, in accordance with international obligations. International organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing may call to apply appropriate counters measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risks emanating from countries. Member States should enact and apply additional mitigating measures regarding high risk third countries identified by the Commission by taking into account calls for countermeasures *and recommendations* such as those expressed by the Financial Action Task Force (FATF) *and responsibilities resulting from international agreements. Besides counter measures taken towards high-risk third countries, a comprehensive assessment of AML/CFT regime in place in EEA countries and third countries should constitute a necessary condition for granting passporting and equivalence for the access to the internal market. Access to the internal market might be generally limited, or limited with respect to certain sectors and obliged entities, when weaknesses in the AML/CFT regime are identified.*
- (9a) *Both the Union and its Member States, on the one hand, and third countries, on the other hand, share a responsibility in the fight against money laundering and the terrorist financing. Cooperation with third countries should also further focus on strengthening the financial systems and administrations of developing countries to allow them to better participate in the global process of tax reform, in order to deter financial crime and related illicit activities, and to implement anti-laundering mechanisms that would contribute to a better exchange of data and information with other countries in order to identify fraud and terrorists.*

- (10) Given the evolving nature of ML/TF threats and vulnerabilities, the Union should adopt an integrated approach on the compliance of national AML/CFT regimes with the requirements at Union level, by taking into consideration an effectiveness assessment of those national regimes. For the purpose of monitoring the correct transposition of the Union requirements in the national regimes, their effective implementation and their capacity to accomplish a strong preventive regime in the field, the Commission should base its assessment on the national risk regimes, which shall be without prejudice to those conducted by international organisations and standards setters with competence in the field of preventing money laundering and combating terrorist financing, such as the FATF or Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL). *International organisations and standards setters with competence in the field of preventing money laundering and combating terrorist financing should work in close cooperation with Member States in order to establish a set of common indicators for assessing national risk regimes, as well as harmonized preventive measures.*
- (10a) *The monitoring of the transposition of Union requirements in national regimes is not sufficient to ensure that national AML/CFT regimes are effective to tackle AML/CFT activities, since shortcomings often stem from the ineffective enforcement of the rules. In this respect, it is crucial for the internal market that the Commission and the ESAs have additional powers to evaluate the consistency of national AML/CFT regimes with the Union framework monitoring implementation and enforcement of national rules. ESAs shall be assigned additional powers in the field of AML/CFT, including the powers to carry out onsite assessments in Member States competent authorities, compel the production of any information that is relevant to assessing compliance, issue recommendations for remedial action, make those recommendations public and take measures that are necessary to ensure that their recommendations are effectively implemented;*
- (10b) *Money laundering and tax evasion are increasingly channelled through trade transactions, by means of price, quantity or quality manipulation. Financial and tax transparency are top priorities of the Union trade policy and that, therefore, countries tolerating money laundering and tax evasion should not be granted any trade privilege with the Union.*
- (10c) *In line with the “Trade for All” strategy, further effective action should be taken concerning trade in services to prevent it from being used for illicit financial flows, bearing in mind that free trade in goods and services with developing countries increases the threat of money laundering, and that the Union’s trade in services with tax havens is six times larger than with comparable countries, whereas no such differences exists in trade in goods.*
- (10d) *Within a year from the entry into force of this Directive, the Commission should provide a report to Member States on possible loopholes in the chapters on financial services and establishment in Union trade agreements with third countries already in force, in particular the definition of investment and establishment, scope and time limits of prudential carve outs, the existence or non-existence of ceilings for money transfer between parties of the trade agreements, currencies allowed for this*

*transfer, confirmation of bank secret and the existence of provisions on data exchange.*

- (10e) *The chapters on financial services and establishment in future trade agreements should contain narrow definitions of investment, so as to exclude products which have a high potential to carry undeclared money; provide for the establishment of public ultimate beneficial ownership registers of companies, trusts and similar legal arrangements created, administered or operated in the territories the trade agreement comprises; include arrangements on cooperation in the control of financial flows and lifting the bank secret, in accordance with data protection rules and open data standards; enlarge scope and time limits for prudential carve-outs beyond "imbalance of payments necessities", and replace "best endeavour" commitments by compulsory provisions.*
- (11) General purpose prepaid cards, *which are considered to have a social value*, have legitimate uses and constitute an instrument contributing to financial inclusion. However, anonymous prepaid cards are easy to use in financing terrorist attacks and logistics. It is therefore essential to deny *terrorists, terrorist organizations, terrorism sponsors and other intermediaries and facilitators* these means of financing their operations, by further reducing the limits and maximum amounts under which obliged entities are allowed not to apply certain customer due diligence measures provided by Directive (EU) 2015/849. Thus, while having due regard to consumers' needs in using general purpose prepaid instruments and not preventing the use of such instruments for promoting social and financial inclusion, it is essential to lower the existing thresholds for general purpose anonymous prepaid cards■ .
- (12) While the use of anonymous prepaid cards issued in the Union is essentially limited to the Union territory only, that is not always the case with similar cards issued in third countries. It is therefore important to ensure that anonymous prepaid cards issued outside the Union can be used in the Union only where they can be considered to comply with requirements equivalent to those set out in Union legislation. The rule should be enacted in full compliance with Union obligations in respect of international trade, especially the provisions of the General Agreement on Trade in Services.
- (13) FIUs play an important role in identifying the financial operations of terrorist networks, especially across borders, and in detecting their financial backers. *Financial investigations may be fundamental in uncovering the facilitation of terrorist offences and the networks and schemes of terrorist organisations.* Due to a lack of prescriptive international standards, FIUs maintain significant differences as regards their functions, competences and powers. *Member States should endeavour to ensure a more efficient and coordinated approach to deal with financial investigations, including those related to the misuse of virtual currencies, into terrorism. The current* differences should however not affect an FIU's activity, particularly its capacity to develop preventive analyses in support of all the authorities in charge of intelligence, investigative and judicial activities, and international cooperation. FIUs should have access to information and be able to exchange it without impediments, including through appropriate cooperation with law enforcement authorities. In all cases of suspected criminality and, in particular, in cases involving terrorism financing, information should flow directly and quickly without undue delays. It is

therefore essential to further enhance FIUs' effectiveness and efficiency, by clarifying the powers of and cooperation between FIUs.

- (13a) *In order to overcome the current cooperation difficulties which exist between national FIUs, a Union FIU should be set up in order to coordinate, assist and support Member States FIUs in cross-border cases. It would also be particularly suited to an integrated Union financial market and effective in combatting money laundering and terrorist financing in the internal market. The Member States FIU would still be primarily responsible for receiving suspicious transaction reports, analysing them and disseminating them to the national competent authority. The Union FIU would lend support to those Member States especially in maintaining and developing the technical infrastructure for ensuring the exchange of information, assisting them in joint analysis of cross border cases and strategic analysis, and coordinate the work of Member States FIUs for cross-border cases.*
- (14) FIUs should be able to obtain from any obliged entity all the necessary information relating to their functions. Unfettered access to information is essential to ensure that flows of money can be properly traced and illicit networks and flows detected at an early stage. When FIUs need to obtain additional information from obliged entities based on a suspicion of money laundering, such suspicion may be triggered by a prior suspicious transaction report reported to the FIU, but also through other means such as FIU's own analysis, intelligence provided by competent authorities or information held by another FIU. FIUs should therefore be able to obtain *the financial, administrative and law enforcement* information *they need to perform their duties properly* from any obliged entity, even without a prior report being made by the individual obliged entity. A FIU should also be able to obtain such information on a request made by another Union FIU and to exchange the information with the requesting FIU.
- (14a) *Competent authorities supervising credit and financial institutions for compliance with this Directive should be able to cooperate and exchange confidential information, regardless of their respective nature or status. To this end, such competent authorities should have an adequate legal basis for exchanging confidential information and cooperate to the widest extent possible, consistent with the applicable international standards in this field.*
- (14b) *Information of a prudential nature relating to credit and financial institutions, such as information relating to fit and properness of directors and shareholders, the internal control mechanisms, the governance or the compliance and risk management, is often indispensable for an adequate AML/CFT supervision of such institutions. Vice-versa, AML/CFT information is also important for the prudential supervision of these institutions. Therefore, exchange of confidential information and collaboration between AML/CFT competent authorities of credit and financial institutions and prudential supervisors should not be hampered unintentionally by legal uncertainty which may stem from a lack of explicit provisions in this field. Such clarification of the legal framework is even more important since prudential supervision has, in a number of cases, been entrusted to non-AML/CFT supervisors, such as the European Central Bank.*

- (15) Delayed access to information by FIUs and other competent authorities on the identity of holders of bank and payment accounts *and safe deposit boxes, especially anonymous ones* hampers the detection of transfers of funds relating to terrorism. National data allowing the identification of bank and payments accounts *and safe deposit boxes* belonging to one person is fragmented and therefore not accessible to FIUs and other competent authorities in a timely manner. It is therefore essential to establish centralised automated mechanisms, such as a register or data retrieval system in all Member States as an efficient means to get timely access to information on the identity of holders of bank and payment accounts *and safe deposit boxes*, their proxy holders, and their beneficial owners.
- (15a) *Information on holding and control of immovable property such as buildings and land are not available in all Member States nor do consolidated data exist on life insurance beneficiaries. Money laundering activities are carried out also by relying on real estate transactions and through life insurance products. The establishment of central automated mechanisms, such as a register or a data retrieval system, in all Member States is essential to track this information and to support the investigation phase. Member States authorities need to have timely access to this data in order to proceed with cross-border checks and inquiries.*
- (15b) *In view of the constant technological changes that make money laundering and the funding of terrorism possible, it is proposed that a Union monitoring, coordination and technological intelligence instrument be created, to assist the various FIUs in their work.*
- (16) In order to respect privacy and protect personal data, such registries should store the minimum data necessary to the performance of AML investigations. The concerned data subjects should be informed that their data are recorded and accessible by FIUs and should be given a contact point for exercising their rights of access and rectification. *The* maximum retention periods *should be set* for the registration of personal data in registries and provide for their destruction once the information is no longer needed for the stated purpose. Access to the registries and databases should be limited on a need to know basis.
- (17) Accurate identification and verification of data of natural and legal persons is essential for fighting money laundering or terrorist financing. Latest technical developments in the digitalisation of transactions and payments enable a secure remote or electronic identification, those means of identification as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council *and any other remote identification means based on new technologies presenting an adequate level of security equivalent to the substantial assurance level of e-IDAS*, should be taken into account, in particular with regard to notified electronic identification schemes and means that offer high level secure tools and provide a benchmark against which assessing the identification methods set up at national level may be checked. Therefore, it is essential to recognise secure electronic copies of original documents as well as electronic assertions, attestations or credentials as valid means of identity. *The principle of technology neutrality should be taken into account in the application of this Directive.*

- (17a) *The European Union Agency for Network and Information Security (ENISA) is the Union centre of network and information security expertise, and ENISA should be empowered to exchange information with law enforcement authorities without impediment in order to enable cyber security cooperation, which plays an important role in fighting against the financing of criminal activities, including terrorism.*
- (17b) *The European Banking Authority (EBA) should be called upon to update its transparency exercise to face today's challenges in order to better prevent the use of financial systems for the purpose of money laundering or terrorist financing.*
- (18) The beneficial ownership threshold set out in Article 3(6)(a) of Directive (EU) 2015/849 does not distinguish between genuine commercial corporate entities and those that have no active business and are mostly used as an intermediary structure between the assets or income and the ultimate beneficial owner. For the latter, the set threshold is easily circumvented, leading to no identification of the natural persons who ultimately own or control the legal entity. In order to better clarify beneficial ownership information as regards intermediary structures that adopt a corporate form, it is necessary to establish a specific threshold from which indication of ownership is inferred. ***That threshold should be low enough to cover most situations.***
- (19) The approach for the review of existing customers in the current framework relies on a risk-based approach. However, given the higher risk for money laundering, terrorist financing and associated predicate offenses associated with some intermediary structures, that approach may not allow the timely detection and assessment of risks. It is therefore important to ensure that certain clearly specified categories of already existing customers are also monitored on a methodical basis.
- (20) Member States are currently required to ensure that legal entities incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership. The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise be able to hide their identity behind a corporate structure. The globally interconnected financial system makes it simple to hide and move funds around the world, and money launderers and terrorist financiers as well as other criminals have increasingly made use of that possibility.
- (21) The specific factor determining the Member State responsible for the monitoring and registration of beneficial ownership information of trusts and similar legal arrangements should be clarified. In order to avoid that, due to differences in the legal systems of Member States, certain trusts ***and similar legal arrangements*** are not monitored or registered anywhere in the Union, ***and to avoid distorting the internal market*** all trusts and similar legal arrangements, ***including inter alia Treuhand, Stiftung, Privatstiftung, Usufruct Fiducia*** should be registered ***in the Member State(s)*** where they are ***created, administered or operated. They should be obliged to publicly disclose certain beneficial ownership information.*** In order to ensure the effective monitoring and registration of information on the beneficial ownership of trusts ***and similar legal arrangements***, cooperation ***and exchange of relevant information*** among Member States is also necessary.

- (21a) *Criminals move illicit proceeds through numerous financial intermediaries to avoid detection, therefore it is important to allow financial and credit institutions to exchange information not only between group members, but also other financial and credit institutions, provided that data protection is ensured.*
- (22) Public access by way of compulsory disclosure of certain information on the beneficial ownership of companies, *trusts and other entities and legal arrangements* provides additional guarantees to third parties wishing to do business with those companies. Certain Member States have taken steps or announced their intention to make information contained in registers of beneficial ownership available to the public. The fact that not all Member States would make information publicly available or differences in the information made available and its accessibility may lead to different levels of protection of third parties in the Union. In a well-functioning internal market, there is a need for coordination to avoid distortions. ***Therefore, such information should be publicly available in all the Member States.***
- (23) Public access also allows greater scrutiny of information by civil society, including by the press or civil society organisations, and contributes to preserving trust in the integrity of business transactions and of the financial system. It can contribute to combating the misuse of legal entities and legal arrangements both by helping investigations and through reputational effects, given that anyone who could enter into transactions with them is aware of the identity of the beneficial owners. It also facilitates the timely and efficient availability of information for financial institutions as well as authorities, including authorities of third countries, involved in the fight against these offences.
- (24) Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This is particularly true for corporate governance systems that are characterized by concentrated ownership, such as the one in the Union. On the one hand, large investors with significant voting and cash-flow rights may encourage long-term growth and firm performance. On the other hand, however, controlling beneficial owners with large voting blocks may have incentives to divert corporate assets and opportunities for personal gain at the expense of minority investors.
- (25) Member States should therefore allow access to beneficial ownership information in a sufficiently coherent and coordinated way, through the central registers in which beneficial ownership information is set out, by establishing a clear rule of public access, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of companies. It is therefore necessary to amend Directive 2009/101/EC of the European Parliament and the Council<sup>1</sup> in order to harmonise the national provisions on disclosure of information on the beneficial ownership of companies, particularly for the purpose of protecting the interests of third parties.

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<sup>1</sup> Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

- (26) A fair balance should be sought in particular between the general public interest in corporate transparency and in the prevention of money laundering and the data subjects' fundamental rights. The set of data to be made available to the public should be limited, clearly and exhaustively defined, and should be of a general nature, so as to minimize the potential prejudice to the beneficial owners. At the same time, information made accessible to the public should not significantly differ from the data currently collected. In order to limit the interference with the right to respect for their private life in general and to protection of their personal data in particular, that that information should relate essentially to the status of beneficial owners of businesses and trusts, and should strictly concern the sphere of economic activity in which the beneficial owners operate.
- (27) The disclosure of beneficial ownership information should be designed to give governments and regulators the opportunity to respond quickly to alternative investment techniques, such as cash-settled equity derivatives. On the other hand, legitimate majority shareholding should not be deterred from taking an active role in monitoring management in listed companies. For the functioning of financial markets that have become increasingly internationally-oriented and complex, it is essential that legal rules and requirements that enable information sharing on an international level be available and effectively implemented by national supervisory authorities.
- (28) The personal data of beneficial owners should be publicly disclosed in order to enable third parties and civil society at large to know who the beneficial owners are. The enhanced public scrutiny will contribute preventing the misuse of legal entities and legal arrangements, including tax avoidance. Therefore, it is essential that this information remains publicly available through the national registers and through the system of interconnection of registers for 10 years after the company has been struck off from the register. However, Member States should be able to provide by law for the processing of the information on beneficial ownership, including personal data for other purposes if such processing meets an objective of public interest and constitutes a necessary and proportionate measure in a democratic society to the legitimate aim pursued.
- (29) Moreover, with the same aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, Member States should provide for exemptions to the disclosure of and to the access to beneficial ownership information in the registers, in exceptional circumstances, where the information would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation.
- (30) Directive 95/46/EC of the European Parliament and of the Council<sup>1</sup>, which will be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>2</sup>, applies to the processing of personal data under this Directive.

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<sup>1</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281 , 23.11.1995, p.31).

<sup>2</sup> 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



- (31) As a consequence, natural persons whose personal data are held in the national registers as beneficial ownership information should be informed of the publication of their personal data before that publication takes place. Furthermore, only the personal data that is up to date and corresponds to the actual beneficial owners should be made available and the beneficiaries should be informed about their rights under the current Union legal data protection framework, as set out in Regulation (EU) 2016/679 and Directive (EU) 2016/680<sup>1</sup>, and the procedures applicable for exercising these rights.
- (32) This Directive is without prejudice to the protection of personal data processed by competent authorities in accordance with Council Framework Decision 2008/977/JHA<sup>2</sup>, which will be replaced by Directive (EU) 2016/680 of the European Parliament and of the Council<sup>3</sup>.
- (33) Currently, companies and similar legal entities active in the Union are under an obligation to register their beneficial ownership information, whereas the same obligation does not apply to all trusts and other legal arrangements which present similar characteristics such as Treuhand, fiducies or fideicomiso set up in the Union. ***Member States are called upon to review which legal arrangements in their legal framework have a structure and function similar to trusts.*** With a view to ensure that the beneficial owners of all legal entities and legal arrangements operating in the Union are properly identified and monitored under a coherent and equivalent set of conditions, rules regarding the registration of the beneficial ownership information of trusts by their trustees should be consistent with those in place in respect of the registration of beneficial ownership information of companies.
- I**
- (36) With a view to ensure a coherent and efficient registration and information exchange, Member States should ensure that their authority in charge of the register set up for the beneficial ownership information of trusts ***and other legal arrangements similar to trusts*** cooperates with its counterparts in other Member States, sharing information concerning trusts ***and other similar legal arrangements to trusts***.
- (37) It is important to ensure that anti-money laundering and terrorist financing rules are correctly implemented by obliged entities. In that context, Member States should

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movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>1</sup> Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>2</sup> Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

<sup>3</sup> Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

strengthen the role of public authorities acting as competent authorities with designated responsibilities for combating money laundering or terrorist financing, including the FIUs, the authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing or freezing and confiscating criminal assets, as well as anti-corruption authorities, tax authorities, authorities receiving reports on cross-border transportation of currency and bearer-negotiable instruments and authorities that have supervisory or monitoring responsibilities aimed at ensuring compliance by obliged entities.

- (37a) *Regardless of their nature or status, competent authorities supervising credit and financial institutions for compliance with this Directive should be able to cooperate and exchange confidential information in this context. For this reason, an adequate legal basis is needed to allow such competent authorities to exchange confidential information and cooperate to the widest extent possible. In addition, prudential information gathered via the supervision of credit and financial institutions will often prove indispensable for an adequate AML/CFT supervision of such institutions and vice-versa. Therefore, exchange of confidential information and cooperation between AML/CFT competent authorities of credit and financial institutions and prudential supervisors should not be hampered by legal uncertainty which may follow from a lack of explicit provisions in this field.***
- (37b) *Existing data included in the Eurostat special report on anti-money laundering show that the number of suspicious transaction reports submitted varies significantly across Member States and obliged entities. Data collection needs to be improved with the objective of extending data coverage and enable the information are updated. Member States shall submit to Eurostat statistics on AML to allow the European Statistical office to publish every two years a report summarising and explaining these statistics.***
- (37c) *Key transparency standards should be binding and guide the negotiation and renegotiation of Union trade agreements and partnerships. Trade partners should lose the benefits granted by trade agreements with the Union where they fail to respect relevant international standards, such as the Common Reporting Standard of the OECD, the Action Plan on Base Erosion and Profit Shifting of the OECD, the central register of beneficial ownership and FATF recommendations. In the framework of the implementation of the OECD BEPS, it is essential to fully apply the country by country reporting system for multinational enterprises.***
- (37d) *A relatively large number of suspicious transactions reports are submitted by credit institutions whereas very few or almost no suspicious transactions reports are submitted by certain other obliged entities, in particular the different types of professional advisers, lawyers and trusts.***
- (37e) *Trade Sustainability Impact Assessments (TSIAs) should contain precise information on the performance of the respective third country or countries in this respect, including implementation of the relevant legislation. Strengthening good governance clauses in bilateral agreements with third countries and providing them with technical assistance should be a key element of those agreements, even when such clauses are not binding.***

- (38) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>1</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (39) Since the objective of this Directive, namely the protection of the financial system by means of prevention, detection and investigation of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States, as individual measures adopted by Member States to protect their financial systems could be inconsistent with the functioning of the internal market and with the prescriptions of the rule of law and Union public policy, but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (40) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7 of the Charter), the right to the protection of personal data (Article 8 of the Charter), the freedom to conduct a business (Article 16 of the Charter).
- (41) Given the need to urgently implement measures adopted with a view to strengthen the Union's regime set in place for the prevention of money laundering and terrorism financing, and seeing the commitments undertaken by Member States to quickly proceed with the transposition of Directive (EU) 2015/849, this Directive should be transposed by 1 January 2017. For the same reasons, the amendments to Directive (EU) 2015/849 and Directive 2009/101/EC should also be transposed by 1 January 2017.
- (41a) *The European Central Bank delivered an opinion on 12 October 2016<sup>2</sup>.***
- (42) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>3</sup> [and delivered an opinion on ...<sup>4</sup>],
- (43) Directives (EU) 2015/849 and 2009/101/EC should therefore be amended accordingly,

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<sup>1</sup> OJ C 369, 17.12.2011, p. 14.

<sup>2</sup> ***Not yet published in the Official Journal.***

<sup>3</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

<sup>4</sup> OJ C ...

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Amendments to Directive (EU) 2015/849*

Directive (EU) 2015/849 is amended as follows:

**(-1) in point (3) of Article 2(1), point (a) is replaced by the following:**

"(a) auditors, external accountants and tax advisors, **or any other persons offering tax-related services and advice;**"

**(-1a) in point (3) of Article 2(1), points (d) and (e) are replaced by the following:**

"(d) estate agents **including letting agents;**

(e) other persons trading in goods **or services** to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;"

**(1) in point (3) of Article 2(1), the following points (g), (h), (ha) and (hb) are added:**

"(g) providers engaged primarily and professionally in exchange services between virtual currencies and fiat currencies;

(h) wallet providers offering custodial services of credentials necessary to access virtual currencies;

**(ha) persons trading in works of art, art galleries, auction houses and platforms for storing, servicing and trading in works of art and other valuables (for example freports);**

**(hb) electronic money issuers and distributors."**

**(1b) in Article 2, paragraph 4 is replaced by the following:**

"4. For the purposes of point (a) of paragraph 3, Member States shall require that the total turnover of the financial activity does not exceed a threshold, which must be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity. **The threshold shall be reported to the Commission and assessed in the risk analyses performed by the Commission and each Member States in accordance with Articles 6 and 7 of this Directive.**"

**(2) Article 3 is amended as follows:**

**(-a) in point (4), point (f) is replaced by the following:**

"(f) all offences **■** as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;"

**(-aa) in point (4), the following point is added:**

**"(fa) offences relating to direct taxes and indirect taxes as defined in the national law of the Member States, taking into account Article 57 of this Directive."**

**(-ab) in point (6)(a)(i), second subparagraph is replaced by the following:**

"A shareholding of **10 %** plus one share or an ownership interest of more than **10 %** in the customer held by a natural person shall be an indication of direct ownership. A shareholding of **10 %** plus one share or an ownership interest of more than **10 %** in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council."

**■**

**(aa) in point (6)(a), the following point is inserted:**

**"(ia) senior managers, nominee directors, administrators and other proxies or agents shall not be identified as beneficial owners, unless they meet the criteria of a beneficial owner;"**

**(ab) in point (6)(a), point (ii) is replaced by the following:**

**"(ii) if, after having exhausted all possible means, *the entity fails to provide the identity of any natural person who meets the criteria set out in point (i), the obliged entities shall record that no beneficial owner exists and keep records of the actions taken in order to identify the beneficial ownership under point (i).***

**Where there is any doubt that the person(s) identified are the beneficial owner(s), a record of that doubt shall be made.**

**In addition, obliged entities shall identify and verify the identity of the relevant natural person who holds the position of senior managing official, who shall be identified as the "senior manager" (and not as "beneficial owner"), and record details of all legal owners of the entity;"**

(ac) *in point (6), point (b) is replaced by the following:*

"(b) in the case of trusts - *all following persons:*

- (i) the *settlor(s)*;
- (ii) the trustee(s);
- (iii) the *protector(s)*, if any;
- (iv) the beneficiaries; or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

*If any of the above categories (i) - (v) involves, instead of or in addition to natural persons, one or several legal entities, the beneficial owners of that entity, as defined in the paragraph above, shall in turn be considered as part of the beneficial owners of the trust."*

(ad) *in point (9), the following point is added:*

*"(ha) members of public administration, who are in charge of awarding public procurement contracts exceeding the thresholds referred to in Article 4 of Directive 2014/24/EU."*

(b) point (16) is replaced by the following:

"(16) 'electronic money' means electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC, but excluding monetary value as referred to in Article 1(4) and (5) of that Directive;" ;

(c) the following *points (18), (18a) and (18b) are added:*

"(18) 'virtual currencies' means a digital representation of value that is neither issued by a central bank or a public authority, nor attached to a **legally established** fiat currency, **which does not possess a legal status of currency or money**, but is accepted by natural or legal persons, as a means of **exchange**, **and possibly also for other purposes, and which** can be transferred, stored or traded electronically.

*(18a) 'electronic money issuer' means an institution as defined in point (3) of Article 2 of Directive 2009/110/EC.*

*(18b) "custodian wallet provider" means an entity that provides services to safeguard private cryptographic keys on behalf of their customers, to holding, store and transfer virtual currencies."*

(2a) *The following Article 5a is inserted:*

**"Article 5a**

***Member States shall ensure that, in addition to obliged entities as laid down in this Directive, national authorities perform customer due diligence measures as described in Articles 13, 18a, 19 and 20 with regards to third country nationals who apply for residence rights or citizenship in the Member State under national laws which grant residence rights and/or citizenship to third country nationals in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities in that Member State."***

**(2b) Article 6 is amended as follows:**

**(a) in paragraph (2), points (b) and (c) are replaced by the following:**

***"(b) the risks associated with each relevant sector, including estimates of the monetary volumes of money-laundering for each of those sectors;***

***(c) the most widespread means used by criminals to launder illicit proceeds, including those particularly used in transactions between Member States and third countries, independently of the latter's classification as regards the list drawn up on the basis of Article 9 (2)."***

**(b) paragraph (3) is replaced by the following:**

***"3. The Commission shall make the report referred to in paragraph 1 available to the Member States and obliged entities in order to assist them to identify, understand, manage and mitigate the risk of money laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the ESAs, and representatives from FIUs to better understand the risks. Reports shall be made public six months after having been made available to Member States."***

**(c) paragraph (4) is replaced by the following:**

***"4. If either the justification provided by a Member State is not deemed satisfactory with the purpose of ensuring a strong AML regimes across the Union or a Member State continues failing to enforce measures to comply with those recommendations, the Commission might additionally recommend that Member States require obliged entities to apply enhanced customer due diligence measures when dealing with natural persons or legal entities operating in a sector or carrying out activities which are identified to be at high risk of money laundering and terrorist financing."***

**(2c) Article 7 is amended as follows:**

**(a) in paragraph 2, the following subparagraph is added:**

***"If a Member State confers the competence of its authority from the first subparagraph on other authorities, in particular those at regional or local level, efficient and effective coordination shall be ensured between all the***

*authorities involved. If more than one unit within an authority to which the competence was conferred is in charge of tasks from the first subparagraph, efficient and effective coordination and cooperation shall be ensured between the different units."*

(b) *in paragraph (4), the following points are added:*

*"(ea) report the institutional structure and broad procedures of their AML/CFT regime, including inter alia the FIU, tax agencies and legal prosecutors, as well as the allocated human and financial resources;*

*(eb) inquire and report on national efforts and resources (labour forces and budget) allocated to combat money-laundering and terrorist financing."*

(c) *paragraph 5 is replaced by the following:*

*"5. Member States shall make the results of their risk assessments available to the Commission, the ESAs and the other Member States. Other Member States may provide relevant additional information, where appropriate, to the Member State carrying out the risk assessment. A summary of the assessment shall be made publicly available. That summary shall not contain classified information."*

(d) *the following paragraph 5a is added:*

*"5a. The ESAs, through the Joint Committee, and the Commission shall make the recommendations to Member States on the measures suitable for addressing the identified risks. In the event that Member States decide not to apply any of the recommendations in their national AML/CFT regimes, they shall notify the ESAs and the Commission thereof and provide a justification of such a decision. If either the justification provided is not deemed satisfactory with the purpose of ensuring a strong AML regimes across the Union or a Member State continues failing to enforce measures to comply with those recommendations, the Commission might additionally recommend that Member States require obliged entities to apply enhanced customer due diligence measures when dealing with natural persons or legal entities operating in a sector or carrying out activities which are identified to be at high risk of money laundering and terrorist financing."*

(2d) *Article 9 is amended as follows:*

(a) *paragraph 2 is replaced by the following:*

*"2. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 in order to identify high-risk third countries, taking into account deficiencies both in law and actual administrative and commercial practice, in particular in relation to:*

*(a) the legal and institutional AML/CFT framework of the third country, in particular:*



- (i) *the criminalisation of money laundering and terrorist financing;*
  - "(ia) the existence of robust systems to ensure that information on beneficial ownership of corporations and other entities or arrangements is available to competent authorities and the transparency of beneficial ownership information."*
  - (ii) measures relating to customer due diligence;
  - (iii) requirements relating to record-keeping; and
  - (iv) requirements to report suspicious transactions;
- (b) the powers, **■** procedures *and political independence* of the third country's competent authorities for the purposes of combating money laundering and terrorist financing *including appropriately dissuasive and effective penalties and sanctions, as well as its practices in cooperation with competent authorities in member states or the Union;*
- (c) the effectiveness of the AML/CFT system in addressing money laundering or terrorist financing risks of the third country, *including an analysis of governance indicators, such as control of corruption, government effectiveness, political stability and absence of violence/terrorism, regulatory quality, the rule of law and accountability;*
- (ca) the exchange of information between competent authorities and EU Member States;*
- (cb) measures in place to protect whistleblowers who uncover information related to money laundering activities."*
- (aa) *new paragraph 2a is inserted:*
- 2a. Points (a), (b) and (c) of Article 9(2) shall be taken into account during the negotiation of any trade, association and partnership agreements by the Commission or any Member State with a third country. The final agreement shall provide provisions for minimum standards and good governance clauses as provided in Annex II of the Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation in the field of AML/CFT, improved cooperation and effective retaliatory measures if the third country fails to enforce these provisions.*
- (ab) *paragraph 4 is replaced by the following:*
4. The Commission, **■** when drawing up the delegated acts referred to in paragraph 2, *shall conduct its assessment in relation to the risks posed by individual third countries by taking into account, but not solely relying on, evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing."*

(2e) *in Article 10, paragraph 1 is replaced by the following:*

"1. Member States shall prohibit their credit institutions and financial institutions from keeping anonymous accounts, ***anonymous passbooks or anonymous safe deposit boxes***. Member States shall, in any event, require that the owners and beneficiaries of existing anonymous accounts, anonymous passbooks ***or anonymous safe deposit boxes*** be subject to customer due diligence measures ***no later than six months after the entry into force of this Directive*** and in any event before such accounts, passbooks ***or deposit boxes*** are used in any way."

(2f) *Article 11 is amended as follows:*

(a) *point (c) is replaced by the following:*

"(c) in the case of persons trading in goods ***or services***, when carrying out occasional transactions in cash amounting to EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;"

(b) *point (e) is replaced by the following:*

"(e) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold; ***the following goods are considered sensitive in the context of money laundering or terrorist financing: oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or rare scientific value, as well as ivory and protected species.***"

(3) Article 12 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the first subparagraph, points (a), (b) ***and (e)*** are replaced by the following:

"(a) the payment instrument is not reloadable, or has a maximum monthly payment transactions limit of EUR 150 which can be used only in ***the Union***;

(b) the maximum amount stored electronically does not exceed EUR 150;"

(e) the issuer carries out sufficient monitoring ***and ensures the traceability*** of the transactions or business relationship to enable the detection of unusual or suspicious transactions.

(ii) the second subparagraph is deleted;

(b) paragraph 2 is replaced by the following:

"2. Member States shall ensure that the derogation provided for in paragraph 1 is not applicable in the case ■ of redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR 50.";

(c) the following paragraph 3 is added:

"3. Member States shall ensure that Union credit institutions and financial institutions acting as acquirers only accept payments carried out with prepaid cards issued in third countries where such cards meet requirements equivalent to those set out in points (a), (b), (c) of the first subparagraph of Article 13(1) and Article 14, or can be considered to meet the requirements in paragraphs 1 and 2 of this Article. ***The information shall be monitored regularly and financial institutions shall allocate appropriate resources to carry out this task.***"

(4) in Article 13(1), point (a) is replaced by the following:

"(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source, including, where available, electronic identification means as set out in Regulation (EU) No 910/2014<sup>1</sup> ***or any other remote identification processes recognised and approved by the competent authority;***"

(4a) in Article 13(1), the following point is added:

"(aa) ***screening the customer's and beneficial owner's names against the Union sanction list;***"

(4b) in Article 13, the following paragraph (6a) is added:

***"6a. Member States shall ensure that when customer due diligence measures, as described in this Article, do not allow the identification of the beneficial owner, or where there are reasonable doubts that the person(s) identified are the beneficial owner(s), the business relationship is refused or terminated, and that no transactions are executed."***

(5) in Article 14, paragraph 5 is replaced by the following:

"5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or when the obliged entity has a duty in the course of the relevant calendar year, to contact the customer for the purpose of reviewing any information related to the beneficial owner(s), in particular under Directive 2011/16/EU. ***Member States shall require that obliged entities contact the customer for the purpose of reviewing***

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<sup>1</sup> Regulation (EU) No 910/2014 of the European Parliament and the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

*any information related to the beneficial owner(s) not later than ... [one year after the date of the entry into force of this amending Directive]."*

- (6) in Article 18 (1), the first subparagraph is replaced by the following:

"In the cases referred to in **Articles 18a** to 24, as well as in other cases of higher risk that are identified by Member States or obliged entities, Member States shall require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.";

- (6a) *in Article 18, paragraph 2 is replaced by the following:*

"2. Member States shall require obliged entities to examine the background and purpose of *all transactions that fulfil one of the following conditions*:

- (i) *they are complex transactions;*
- (ii) *they are unusually large transactions;*
- (iii) *the are conducted in an unusual pattern* of transactions;
- (iv) *they do not seem to have an entirely* lawful purpose.

*In particular, obliged entities shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious."*

- (7) The following Article 18a is inserted:

*"Article 18a*

1. With respect to **business relationships or** transactions involving high risk third countries, Member States shall require that, when dealing with natural persons or legal entities established in the third countries identified as high-risk third countries pursuant to Article 9 (2), obliged entities shall apply at least all the following enhanced customer due diligence measures:

- (a) obtaining additional information on the customer, *including beneficial owner(s)*;
- (b) obtaining addition information on the intended nature of the business relationship;
- (c) obtaining information on the source of funds or source of wealth of the customer, *including beneficial owner(s)*;
- (d) obtaining information on the reasons for the intended or performed transactions;
- (e) obtaining the approval of senior management for establishing or continuing the business relationship;

(f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;

(g) requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.

***1a. In addition to the measures provided in paragraph 1, Member States shall apply the following measures to third countries identified as high-risk third countries pursuant to Article 9(2) in compliance with international obligations of the Union:***

***(a) requiring increased supervisory examination or external audit requirements for branches and subsidiaries of financial institutions established in the country concerned;***

***(b) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned.***

2. In addition to the measures provided in paragraph 1 and ***1a*** and in compliance with international obligations of the Union, Member States may require obliged entities, when dealing with natural persons or legal entities established in the third countries identified as high-risk third countries pursuant to Article 9(2) to apply one or several additional mitigating measures:

(a) requiring financial institutions to apply additional elements of enhanced due diligence;

(b) introducing enhanced relevant reporting mechanisms or systematic reporting of financial transactions;

(c) limiting business relationships or financial transactions with natural persons or legal entities from the identified country.

***(ca) the existence of robust systems to ensure that the relevant authorities have the minimum amount of information required on final beneficiaries, with no barriers linked to the national system or management that are used as pretexts to refuse the provision of information.***

3. In addition to the measures provided in paragraph 1 ***and 1a***, Member States may apply one of the following measures to third countries identified as high-risk third countries pursuant to Article 9(2) in compliance with international obligations of the Union:

(a) refusing the establishment of subsidiaries or branches or representative offices of financial institutions from the country concerned, or otherwise taking into account the fact that the relevant financial institution is from a country that does not have adequate AML/CFT systems;

(b) prohibiting financial institutions from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AML/CFT systems;

(c) prohibiting financial institutions from relying on third parties located in the country concerned to conduct elements of the customer due diligence process;

(d) requiring financial institutions to review and amend, or if necessary terminate, correspondent relationships with financial institutions in the country concerned;

■

4. When enacting or applying the measures set out in paragraphs 2 and 3, Member States shall take into account, as appropriate relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combatting terrorist financing, in relation to the risks posed by individual third countries.

5. Member States shall notify the Commission before enacting or applying the measures set out in paragraphs 2 and 3.";

**(7a) in Article 20(b), point (ii) is replaced by the following:**

"(ii) take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons, ***including the corporate structure used for business relations or transactions;***"

**(7b) The following Article 20a is inserted:**

***"Article 20a***

***1. Member States shall enact national legislation providing for the elaboration of lists of politically exposed persons resident in their territory.***

***2. The Commission, in cooperation with the Member States and gathering data submitted by Member States and international organisations, shall assemble a list of politically exposed persons resident in the Union. The list shall be accessible by competent authorities and by obliged entities.***

***3. Paragraphs 1 and 2 shall not exempt obliged entities from their customer due diligence obligations, and obliged entities shall not rely exclusively on that information as sufficient to fulfil those obligations.***

***4. Member States shall take all appropriate measures to prevent the trade of information for commercial purposes on politically exposed persons, or persons who are or who have been entrusted with a prominent function by an international organisation."***

**(7c) Article 22 is replaced by the following:**

"Where **a** politically exposed person is no longer entrusted with a prominent function by a Member State or a third country or with a prominent function by an international organisation, obliged entities shall for at least **36 months**, be required to take into account the continuing risk posed by that person and to apply appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk specific to politically exposed persons."

(7d) *in Article 26, paragraph (2) is replaced by the following:*

"2. Member States shall prohibit obliged entities from relying on third parties established in high-risk third countries.█"

(8) *in Article 27, paragraph 2 is replaced by the following:*

"2. Member States shall ensure that obliged entities to which the customer is referred take adequate steps to ensure that the third party provides immediately, upon request, relevant copies of identification and verification data, including, where available, data obtained through electronic identification means as set out in Regulation (EU) No 910/2014 **or any other remote identification processes recognised and approved by the competent authority**, and other relevant documentation on the identity of the customer or the beneficial owner.";

(8a) *in Article 28, point c is replaced by the following:*

"(c) the effective implementation of the requirements referred to in point (b) is supervised at group level by a competent authority of the home Member State█."

(9) Article 30 is amended as follows:

(-a) *in paragraph 1, the following subparagraph is added:*

***"Member States shall ensure that owners of shares or voting rights or ownership interest in corporate and other legal entities, including through bearer shareholdings, or through control via other means, disclose to those entities whether they are holding the interest in their own name and on their own account or on behalf of another natural person. In case they act on behalf of someone else, they shall disclose to the register the identity of the natural person on behalf of whom they are acting. Member States shall ensure that the natural person(s) who hold the position of senior managing official(s) in corporate and other legal entities, disclose to those entities whether they are holding the position in their own name or on behalf of another person. In case they act on behalf of someone else, they shall disclose to the register the identity of the person on behalf of whom they are acting."***

(-aa) *paragraph 4 is replaced by the following:*

"4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current. **Member States shall put in place mechanisms to ensure the information in the**

*register is verified on a regular basis. Obligated entities, FIUs and competent authorities shall report any discrepancy they find between the beneficial ownership information held in the central registers and the beneficial ownership information collected as part of their customer due diligence procedures or investigations."*

- (a) **■** paragraph 5 is replaced by the following:

"Member States shall ensure that the information on the beneficial ownership is accessible *free of charge* in all cases to:

- (a) competent authorities and FIUs, without any restriction;
- (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II."

**■**

- (aa) *The following paragraph 5a is inserted:*

*"5a. The information held in the register referred to in paragraph 3 of this Article on any corporate and legal entities other than those referred to in Article 1a(a) of Directive (EC) 2009/101 shall be publicly accessible.*

*The information publicly accessible shall consist of at least the name, the date of birth, the nationality, the country of residence, contact details (without disclosure of a home address), the nature and extent of the beneficial interest held of the beneficial owner as defined in Article 3(6)(a).*

*For the purpose of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and open data standards, and subject to online registration. Member States may introduce a fee to cover the administrative costs."*

- (b) paragraph 6 is replaced by the following:

"6. The central register referred to in paragraph 3 shall ensure timely and unrestricted access by competent authorities and FIUs to all information held in the central register without any restriction and without alerting the entity concerned. It shall also allow timely access by obliged entities when taking customer due diligence measures in accordance with Chapter II.

Competent authorities granted access to the central register referred to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including tax authorities, *supervisors* and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets.";

- (ba) *paragraph 8 is replaced by the following:*



"8. Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach. ***Whenever entering into a new customer relationship with a corporate or other legal entity subject to registration of beneficial ownership information pursuant to paragraph 3, the obliged entities shall collect proof of registration.***"

(c) paragraphs 9 and 10 are replaced by the following:

"9. In exceptional circumstances to be laid down in national law, where the access referred to in point (b) of paragraph 5 ***and paragraph 5a*** would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. ***Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances, with the evaluation accessible to the Commission upon request. Exemptions shall be reassessed at regular intervals to avoid abuse. When an exemption is granted, this has to be clearly indicated in the register. The rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. Member States shall publish annual statistical data on the amount of exemptions granted and reasons stated and report the data to the Commission.***

Exemptions granted pursuant to this paragraph shall not apply to credit institutions and financial institutions, and to the obliged entities as referred to in point (3)(b) of Article 2(1) that are public officials.

10. Member States shall ensure that the central registers referred to in paragraph 3 of this Article are interconnected via the European Central Platform established by Article 4a(1) of Directive 2009/101/EC. The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 4c of Directive 2009/101/EC.

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 4a(2) of Directive 2009/101/EC, in accordance with Member States' national laws implementing paragraph 5 of this Article.

***The information referred to in paragraph 1 of this Article shall be available through the national registers and through the system of interconnection of registers for 10 years after the corporate or other legal entity has been struck off from the register.*** Member States shall cooperate among themselves and with the Commission in order to implement the different types of access in accordance with paragraph 5."

(ca) *the following paragraph 10a is added:*

***"10a. Member States shall ensure that corporate and other legal entities incorporated outside their territory and/or their jurisdiction are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held, and submit that information to the public register in similar terms as those described in paragraphs 1, 3, 5 and 6 of this Article and in Article 7b of Directive 2009/101/EC in the following circumstances:***

***(a) when the corporate or legal entity opens a bank account or requests a loan in the Member State;***

***(b) when the corporate or legal entity acquires real estate, either by purchase or other legal means, such as donation;***

***(c) when the corporate or legal entity is a party to any commercial transaction whose validity under national law is dependent on a certain formality or validation act, such as certification by a notary.***

***Member States shall provide for adequate sanctions for the failure to comply with the obligation to register in accordance with this paragraph, such as the nullity of the contract."***

(10) Article 31 is amended as follows:

(a) paragraph 1 is replaced by the following:

***"1. Member States shall ensure that this Article applies to trusts and other types of legal arrangements having a structure or functions similar to trusts, such as, inter alia, fiducie, Treuhand, waqf or fideicomiso, Stiftung, Privatstiftung, Usufruct Fiducia and all other similar, in terms of structure or function, existing or future legal arrangements. Member States shall define the characteristics to determine where legal arrangements have a structure or functions similar to trusts and other arrangements referred to in this subparagraph..***

***Each Member State shall require that trustees of any express trust, or persons holding equivalent or similar positions in other types of legal arrangements as referred to in the first subparagraph, created, administered or operated in that Member State obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of all beneficial owners as referred to in points (b) and (c) of Article 3(6)."***

(aa) *paragraph 2 is replaced by the following:*

***2. Member States shall ensure that trustees or persons holding equivalent or similar positions in other types of legal arrangements as referred to in the first subparagraph of Article 31(1), disclose their status and provide the information referred to in paragraph 1 to obliged entities in a timely manner*** .

(ab) *paragraph 3 is replaced by the following:*

3. Member States shall require that the information referred to in paragraph 1 can be directly accessed in a timely manner by competent authorities and FIUs. ***Obligated entities, FIUs and competent authorities shall report any discrepancy they find between the beneficial ownership information held in the central registers and the beneficial ownership information collected as part of their customer due diligence procedures or investigations.***

(b) the following paragraph 3a is inserted:

"3a. The information referred to in paragraph 1 shall be held in a central register ***referred to in Article 30(3)*** set up by *each* Member State where the ***legal arrangement referred to in paragraph 1*** is ***created, administered or operated.***";

(c) paragraph 4 is replaced by the following:

"4. Member States shall ensure that the information held in the register referred to in paragraph 3a is accessible in a timely and unrestricted manner ***free of charge*** by competent authorities and FIUs, without alerting the parties to the ***legal arrangement*** concerned. They shall also ensure that obliged entities are allowed timely access to that information, pursuant to the provisions on customer due diligence laid down in Chapter II. Member States shall notify to the Commission the characteristics of those mechanisms.

Competent authorities granted access to the central register referred to in paragraph 3a shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including, tax authorities, ***supervisors*** and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing and seizing or freezing and confiscating criminal assets.";

(d) the following paragraphs 4a and 4b are inserted:

"4a. The information held in the register referred to in paragraph 3a of this Article with respect to any ***legal arrangements referred to in paragraph 1*** other trusts than those referred to in ***Article 1a(b)*** of Directive (EC) 2009/101 shall be ***publicly*** accessible■ .

The information ***publicly*** accessible ■ shall consist of ***at least*** the name, the ***date*** of birth, the nationality, the country of residence, ***contact details (without disclosure of a home address), the nature and extent of the beneficial interest held*** of the beneficial owner as defined in ***points (b) and (c) of Article 3(6)***.

***For the purpose of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and open data standards and subject to online registration. Member States may introduce a fee to cover the administrative costs.***

4b. Whenever entering into a new customer relationship with a trust or other legal arrangement subject to registration of beneficial ownership information pursuant to paragraph 3a, the obliged entities shall collect proof of registration█ .";

(da) *paragraph 5 is replaced by the following:*

5. Member States shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and up-to-date. ***Member States shall put in place mechanisms to ensure the information in the register is verified on a regular basis. Obligated entities, FIUs and competent authorities shall report any discrepancy they find between the beneficial ownership information held in the central registers and the beneficial ownership information collected as part of their customer due diligence procedures or investigations.***

(e) the following paragraph 7a is inserted:

"7a. In exceptional circumstances laid down in national law, where the access referred to in paragraphs 4 and 4a would expose the beneficial owner to the risk of █ kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. ***Member States shall ensure that these exemptions are granted upon an evaluation of the exceptional nature of the circumstances, with the evaluation accessible to the Commission upon request. Exemptions shall be reassessed at regular intervals to avoid abuse. When an exemption is granted, this shall be clearly indicated in the register. The rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. Member States shall publish annual statistical data on the amount of exemptions granted and reasons stated and report the data to the Commission.***

Exemptions granted pursuant to the first subparagraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.

Where a Member State decides to establish an exemption in accordance with the first subparagraph, it shall not restrict access to information by competent authorities and FIUs.";

(f) paragraph 8 is deleted;

(g) paragraph 9 is replaced by the following:

"9. Member States shall ensure that the central registers referred to in paragraph 3a of this Article are interconnected via the European Central Platform established by Article 4a(1) of Directive 2009/101/EU. The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established

by implementing acts adopted by the Commission in accordance with Article 4c of Directive 2009/101/EC.

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 4a(2) of Directive 2009/101/EU, in accordance with Member States' national laws implementing paragraphs 4 and 5 of this Article.

Member States shall ensure that only the information referred to in paragraph 1 that is up to date and corresponds to the actual ownership beneficiaries is made available through their national registers and through the system of interconnection of registers, and the access to that information shall be in accordance with data protection rules.

***The information referred to in paragraph 1 of this Article shall be available through the national registers and through the system of interconnection of registers for 10 years after the legal arrangement referred to in paragraph 1 has been struck off from the register.*** Member States shall cooperate with the Commission in order to implement the different types of access in accordance with paragraphs 4 and 4a of this Article.";

(h) the following paragraph 10 is added:

"10. For the purposes of this Article, a ***legal arrangement referred to in paragraph 1, similar to*** trust, is considered to be ***created***, administered or operated in each Member State where:

(a) ***it is created according to or governed by the Member State's law or has its ultimate court of appeal in the Member State's jurisdiction; or***

(b) ***it is connected to the Member State by:***

(i) ***having one or more of the beneficial owners resident in that Member State;***

(ii) ***holding real estate in that Member State;***

(iii) ***holding shares or voting rights or ownership interest in a legal entity incorporated in that Member State; or***

(iv) ***holding a bank or payment account in a credit institution situated in that Member State.***";

(ha) the following paragraph 10a is added:

***"10.a Member States shall notify to the Commission the categories and characteristics of the legal arrangements that have been identified pursuant to the paragraph 1 within 12 months from the entry into the force of this Directive and upon expiry of that period the Commission should publish within 2 months in the Official Journal of the European Union the consolidated list of such legal arrangements. By 26 June 2020, the***

*Commission shall submit a report to the European Parliament and to the Council assessing whether all legal arrangements which have a structure or function similar to trusts governed under the law of Member States were duly identified and made subject to the obligations as set out in this Directive. Where appropriate, the Commission shall take the necessary steps to act upon the findings of that report."*

(11) Article 32 is amended as follows:

(a) in the first subparagraph of paragraph 3, the fourth sentence is replaced by the following:

"It shall be able to **request**, obtain and use **additional** information from any obliged entity.";

(b) the following paragraph 9 is added:

"9. In the context of its functions, each FIU shall be able to obtain from any obliged entity, **without prejudice to Article 53**, information for the purpose set in paragraph 1 of this Article , even if such obliged entity did not file a prior report pursuant to Article 33(1)(a).";

(12) the following Article 32a is inserted:

*"Article 32a*

1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts as defined in Directive 2007/64/EC, **financial instruments as defined in Directive 2014/65/EU** and bank accounts **and safe deposit boxes** held by a credit institution within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.

2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible, at national level, to FIUs and competent authorities for fulfilling their obligations under this Directive. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 to any other FIUs in a timely manner in accordance with Article 53.

3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:

– for the customer-account holder and any person purporting to act on behalf of the customer: the name, complemented by the other identification data required under the national provisions transposing Article 13(1) (a) or a unique identification number;

- for the beneficial owner of the customer-account holder: the name, complemented by the other identification data required under the national provisions transposing Article 13(1)(b) or a unique identification number;
- for the bank or payment account: the IBAN number and the date of account opening and closing.
- *for the safe deposit box: the name and the duration of the lease period;*

**3a. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring secure and efficient interconnection of the central registries. Where appropriate, that report shall be accompanied by a legislative proposal. ";**

**(12a) the following Article 32b is inserted:**

**"Article 32b**

**1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal person holding or controlling land and buildings within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.**

**2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible, at national level, to FIUs and competent authorities. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 to any other FIUs in a timely manner in accordance with Article 53.**

**3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:**

- *regarding real property owner and any person purporting to act on behalf of the owner: the name, complemented by the other identification data required under the national provisions transposing Article 13(1)(a) or a unique identification number;*
- *regarding beneficial owner of the real property: the name, complemented by the other identification data required under the national provisions transposing Article 13(1)(b) or a unique identification number;*
- *regarding real property: date and cause of ownership acquisition, mortgage and rights other than ownership;*
- *regarding land: location, parcel number, land category (current state of land), parcel area (area of land);*

- *regarding building: location, parcel number, building number, type, structure, floor area.*

*4. Member States shall cooperate among themselves and with the Commission in order to establish by 1 January 2018 a European real property register in accordance with paragraph 1 building on the European Land Information Service (EULIS)."*

*(12b) The following article 32c is inserted:*

*"Article 32c*

*1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling life insurance contracts or investment related services such as insurance contracts with premium refund held within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.*

*2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible, at national level, to FIUs and competent authorities. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 to any other FIUs in a timely manner in accordance with Article 53.*

*3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:*

- *for the contracting partner and any person purporting to act on behalf of the contracting partner: the name, complemented by the other identification data required under the national provisions transposing Article 13(1) (a) or a unique identification number;*
- *for the beneficial owner of the life insurance contract: the name, complemented by the other identification data required under the national provisions transposing Article 13(1)(b) or a unique identification number;*
- *for the life insurance contract: date of conclusion of contract and insured amount.*

*4. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring safe and efficient interconnection of the central registries. Where appropriate, that report shall be accompanied by a legislative proposal."*

*(13) Article 33 is amended as follows:*

*(a) paragraph 1, introductory part is replaced by the following:*



"1. Member States shall require obliged entities, and, where applicable, their directors, *employees and externally hired consultants and professionals* to cooperate fully by promptly:

(aa) *paragraph 1, point (b) is replaced by the following:*

"(b) providing the FIU directly, at its request, with all necessary information.";

(13a) *Article 34 is amended as follows:*

(a) *paragraph 2 is replaced by the following:*

"2. Member States shall not apply the obligations laid down in Article 33(1) to notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such exemption relates to information they receive from, or obtain on, one of their clients, in the course of ascertaining the legal position of their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, whether such information is received or obtained before, during or after such proceedings.

*In cases of tax evasion, tax avoidance or tax fraud, and without prejudice to the presumption of innocence and the right to a fair trial, Member States shall ensure these professions keep records of the actions taken in order to provide evidence, if necessary, of genuine performance of job-related tasks."*

(aa) *the following paragraph 2a is added:*

*"2a. Self-regulatory bodies designated by Member States under paragraph 1 shall publish an annual report containing information about:*

- (a) *measures taken under Articles 58, 59 and 61;*
- (b) *number of reports of breaches received;*
- (c) *number of reports filed to the FIU;*
- (d) *number and description of measures carried out to verify compliance by obliged entities with their obligations under:*
  - i. *Articles 10 to 24 (customer due diligence);*
  - ii. *Articles 33, 34 and 35 (suspicious transaction reporting);*
  - iii. *Article 40 (record-keeping); and*
  - iv. *Articles 45 and 46 (internal controls)."*

(13b) *Article 37 is replaced by the following:*

"Disclosure of information in good faith by an obliged entity or by an employee or director of such an obliged entity, ***FIUs or other relevant public bodies*** in accordance with Articles 33 and 34 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the obliged entity or its directors or employees in liability of any kind even in circumstances where they were not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred."

(13c) *Article 38 is amended as follows:*

(a) *paragraph 1 is replaced by the following:*

"Member States shall ensure that individuals, including employees and representatives of the obliged entity who report suspicions of money laundering or terrorist financing internally, ***externally*** or to the FIU, are ***legally*** protected from being exposed to threats, ***retaliatory*** or hostile action, and in particular from adverse or discriminatory employment actions, ***civil claims and criminal charges linked to such disclosure.***"

(aa) *the following paragraph 1a is added:*

***"1a. Member States shall ensure that individuals who are exposed to threats, hostile actions, or adverse or discriminatory employment actions for reporting suspicions of money laundering or terrorist financing internally or to the FIU are able to present a complaint in a safe manner to the respective competent authorities. Member States shall ensure that competent authorities have the legal duty to carry out an investigation and emit a decision. Judicial redress against the decision shall always be possible."***

(14) in Article 39, paragraph 3 is replaced by the following:

"3. The prohibition laid down in paragraph 1 shall not prevent disclosure between the credit institutions and financial institutions from the Member States provided that they belong to the same group, or between these entities and their branches and majority owned subsidiaries established in third countries, provided that these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the group, in accordance with Article 42 and that the group-wide policies and procedures comply with the requirements set out in this Directive.";

(15) in Article 40, paragraph 1 is amended as follows:

(a) points (a) and (b) are replaced by the following:

"(a) in the case of customer due diligence, a copy of the documents and information which are necessary to comply with the customer due diligence requirements laid down in Chapter II, including, where available, information obtained through electronic identification means as set out in Regulation (EU) No 910/2014 ***or alternative remote identification techniques subject to the approval of the competent authorities***, for a period of five years after the end

of the business relationship with their customer or after the date of an occasional transaction;

(b) the supporting evidence and records of transactions, consisting of the original documents or copies admissible in judicial proceedings under the applicable national law, including, where available, information obtained through electronic identification means as set out in Regulation (EU) No 910/2014 *or alternative remote identification techniques subject to the approval of the competent authorities*, which are necessary to identify transactions, for a period of five years after the end of a business relationship with their customer or after the date of an occasional transaction.";

(b) the following subparagraph is added:

"The second subparagraph shall also apply in respect of the data accessible through the centralised mechanisms referred to in Article 32a.";

**(15a) Article 43 is replaced by the following:**

"The processing of personal data on the basis of this Directive for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 shall be considered to be a matter of public interest under **Regulation (EU) 2016/679**."

**(15b) Article 44 is amended as follows**

**(a) in paragraph 2, point (d) is replaced by the following:**

"(d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the FIU, **broken down by counterpart country**."

**(aa) paragraph 4 is replaced by the following:**

"Member States shall transmit to **Eurostat and** the Commission the statistics referred to in paragraph 2. **Eurostat shall publish an annual report summarising and explaining the statistics referred to paragraph 2, which has to be made available on its website.**"

**(16) in Article 47, paragraph 1 is replaced by the following:**

"1. Member States shall ensure that providers of exchanging services between virtual currencies and fiat currencies, custodian wallet providers, currency exchange and cheque cashing offices, and trust or company service providers are licensed or registered, and that providers of gambling services are regulated.";

**(16a) Article 48 is amended as follows:**

**(a) paragraph 1 is replaced by the following:**

"**In particular**, Member States shall require the competent authorities to monitor effectively **activities of persons whom AML/CFT related tasks are delegated by obliged entities and self-regulatory bodies.**"

**(aa) paragraph 1a is inserted:**

*"1a. Member States shall ensure that one competent authority operates as supervising AML/CFT authority, which shall be structurally independent. The supervising AML/CFT authority shall ensure supervision and coordination of anti-money laundering activities carried out by other competent authorities and law enforcement bodies to ensure that all obliged entities are subject to adequate supervision including inspections, preventions, monitoring and remedial actions. The supervising AML/CFT authority shall serve as a contact point for the supervising AML/CFT authorities of the other Member States, the Commission and the ESAs."*

*(ab) paragraph 2 is replaced by the following:*

*"2. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities maintain high professional standards, including standards of confidentiality and data protection that they are of high integrity and are appropriately skilled. Member States shall ensure that staff of those authorities have sufficient rules and mechanisms in place to prevent and sanction situations of conflict of interest."*

*(16b) the following Article 48a is inserted:*

*"Article 48a*

*1. Commission experts shall carry out general and specific audits in the competent authorities of the Member States. The Commission may appoint experts from Member States to assist its own experts. General and specific audits shall be carried out on a regular basis. Their main purpose shall be to verify that competent authorities take action in accordance with the risk assessments and in compliance with this Directive. The Commission may, in advance of carrying out such audits, request that the Member States provide, as soon as possible, any relevant information.*

*2. Specific audits and inspections in one or more specific areas may supplement general audits. These specific audits and inspections shall in particular serve to:*

- (a) verify the implementation of the recommendations on the measures suitable for addressing the risks identified in risk assessments and may include, as appropriate, on-the-spot inspections of competent authorities;*
- (b) verify the functioning and organisation of competent authorities;*
- (c) investigate important or recurring problems in the Member States;*
- (d) investigate emergency situations, emerging problems or new developments in the Member States.*

3. *The Commission shall report on the findings of each audit carried out. Its report shall, if appropriate, contain recommendations for Member States to be included into the recommendations referred to in Article 7(5a). The Commission shall make its reports publicly available. The Commission shall provide the relevant competent authority with a draft report for comments, take those comments into consideration in preparing the final report and publish the competent authority's comments together with the final report.*

4. *The Commission shall establish an annual control programme, communicate it to Member States in advance, and report on its results. The Commission may amend the programme to take account of developments in the fields of AML/CFT.*

5. *Member States shall:*

(a) *take appropriate follow-up action in the light of the recommendations resulting from the audits;*

(b) *give all necessary assistance and provide all documentation and other technical support that Commission experts request to enable them to carry out the audits efficiently and effectively;*

(c) *ensure that Commission experts have access to all premises or parts of premises and to information, including computing systems, relevant to the execution of their duties.*

6. *The Commission shall be empowered to adopt delegated acts in accordance with Article 64 in order to draw up detailed rules concerning the audits."*

(17) Article 49 is replaced by the following:

*"Article 49*

*Member States shall ensure that policy makers, the FIUs, supervisors and other competent authorities involved in AML/CFT, such as tax authorities **and law enforcement authorities**, have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing, including with a view to fulfilling their obligation under Article 7."*

(17a) *Article 50 is replaced by the following:*

*"The competent authorities shall provide the ESAs with all the information necessary to allow them to carry out their duties under this Directive. **By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities on the modalities of cooperation and information exchange between competent authorities, in relation to the AML/CFT supervision of credit and financial institutions that operate on a cross-border basis.**"*

(18) in Section 3 of Chapter VI, the following subsection IIa is added:

*"Subsection IIa*

## *Cooperation between competent authorities*

### *Article 50a*

Member States shall **ensure** exchange of information **and** assistance between competent authorities. In particular Member States shall ensure that competent authorities do not refuse a request for assistance on the grounds that:

- (a) the request is also considered to involve tax matters;
- (b) national legislation requires obliged entities to maintain secrecy or confidentiality, except where the relevant information that is sought is held in circumstances where legal privilege or legal professional secrecy applies;
- (c) there is an inquiry, investigation or proceeding underway in the requested Member State, unless the assistance would impede that inquiry, investigation or proceeding;
- (d) the nature or status of the requesting counterpart authority is different from that of requested competent authority.

***Member States shall ensure that competent authorities supervising credit and financial institutions, cooperate with each other to the greatest extent possible, regardless of their respective nature or status. Such cooperation also includes the ability to conduct, within the powers of the requested competent authority, inquiries on behalf of a requesting competent authority, and the subsequent exchange of the information obtained through such inquiries."***

***(18a) the following Articles 51a and 51b are inserted:***

### ***"Article 51a***

***By June 2017, the Commission shall present a legislative proposal to create a European FIU that would coordinate, assist and support Member States FIUs. This European FIU shall lend support national FIUs in maintaining and developing the technical infrastructure for ensuring the exchange of information, assist them in joint analysis of cross border cases and produce its own case analysis and coordinate the work of Member States FIUs for cross border cases. For this purpose, the national FIU shall automatically exchange information with this European FIU when investigating on a money laundering case. This legislative proposal shall take into account the results of the Commission mapping of the Member States FIUs powers and obstacles to cooperation in order to design a well-balanced and tailor made system of cooperation.***

### ***Article 51b***

***1. Member States shall ensure their FIU can cooperate and exchange relevant information with their foreign counterparts.***

**2. Member States shall ensure that their FIU is able to make inquiries on behalf of foreign counterparts where this could be relevant to an analysis of financial transactions. At a minimum, inquiries should include:**

- Searching its own databases, which would include information related to suspicious transaction reports.**
- Searching other databases to which it may have direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases.**

**Where permitted to do so, FIUs shall also contact other competent authorities and financial institutions in order to obtain relevant information.";**

**(19) Article 53 is amended as follows:**

**(a) in paragraph 1, the following subparagraph is added:**

**"A request shall contain the relevant facts, background information, the reasons for the request and a description of how the information sought will be used."**

**(b) in the second subparagraph of paragraph 2, the second sentence is replaced by the following:**

**"That FIU shall obtain information in accordance with Article 32(9) and transfer the answers promptly.";**

**(ba) paragraph 3 is replaced by the following:**

**"3. An FIU may refuse to exchange information only in exceptional circumstances where the exchange could be contrary to fundamental principles of its national law. Those exceptions shall be specified in a way which prevents misuse of, and undue limitations on, the free exchange of information for analytical purposes. When such exceptional circumstances are invoked, the requested FIU shall send a report to the Commission.";**

**(bb) the following paragraphs 3a and 3b are added:**

**"3a. The FIU of each Member State shall annually publish summary statistics on its collaboration and the exchange of information with other FIUs.**

**3b. The commission shall draw up a report on barriers experienced by competent authorities regarding the exchange of information and assistance between authorities of different member states. This report shall be published every two years."**

**(19a) in Article 54, the following paragraph is added:**

**"1a. Member States shall ensure that FIUs designate at least one official to be responsible for receiving requests for information or mutual legal assistance from**

***homologous entities in other Member States and ensuring that those requests are treated in a timely manner."***

(20) Article 55 ***is amended as follows:***

(a) paragraph 2 is replaced by the following:

"2. Member States shall ensure that the requested FIU's prior consent to disseminate the information to competent authorities is granted promptly and to the largest extent possible, regardless of the type of associated predicate offences. The requested FIU shall not refuse its consent to such dissemination unless this would fall beyond the scope of application of its AML/CFT provisions, could lead to impairment of a criminal investigation, would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State of the requested FIU, or would otherwise not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained.";

(aa) ***the following paragraph 2a is added:***

***"2a. By 31 December 2017, the Commission shall submit a legislative proposal to the European Parliament and to the Council addressing the necessary and efficient coordination of the FIUs and to coordinate the fight against financial criminality at the EU level via a European FIU."***

(21) Article 57 is replaced by the following:

***"Article 57***

Differences between national law definitions of ***predicate offences*** shall not impede the ability of FIUs to provide assistance to another FIU and shall not limit the exchange, dissemination and the use of information pursuant to Articles 53, 54 and 55.";

(21a) ***in Section 3 of Chapter VI the following Subsection is inserted:***

***"Subsection IIIa***

***Cooperation between competent authorities supervising credit and financial institutions and professional secrecy***

***Article 57a***

***1. Member States shall provide that all persons working for or who have worked for competent authorities supervising credit and financial institutions for compliance with this Directive, as well as auditors or experts acting on behalf of competent authorities, shall be bound by the obligation of professional secrecy.***

***No confidential information which they may receive in the course of their duties under this Directive may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual obliged entities cannot be identified, without prejudice to cases covered by criminal law.***

***2. Paragraph 1 shall not prevent these competent authorities from transmitting or exchanging information with each other in accordance with this Directive or***



*other Directives or Regulations relating to the supervision of credit and financial institutions. Transmitting or exchanging information shall be subject to the receiving authority being bound by national law to comply with conditions of professional secrecy as indicated in paragraph 1.*

*3. Competent authorities receiving confidential information according to paragraph 1, shall only use this information:*

- in the discharge of their duties under this Directive, including sanctioning ;*
- in the discharge of their duties under other Directives or Regulation, including sanctioning;*
- in an appeal against a decision of the competent authority, including court proceedings;*
- in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of credit and financial institutions.*

*4. Member States shall ensure that competent authorities supervising credit and financial institutions cooperate with each other to the greatest extent possible, regardless of their respective nature or status. Such cooperation also includes the ability to conduct, within the powers of the requested competent authority, inquiries on behalf of a requesting competent authority, and the subsequent exchange of the information obtained through such inquiries.*

*5. Member States may conclude cooperation agreements providing for collaboration and exchanges of confidential information with the competent authorities that constitute counterparts of the competent authorities mentioned in paragraph 1. Such cooperation agreements shall be concluded on the basis of reciprocity and only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in paragraph 1. Confidential information exchanged according to these cooperation agreements shall be used for the purpose of performing the supervisory task of the authorities mentioned.*

*Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.*

#### *Article 57b*

*1. Notwithstanding Article 57a (1) and (3), Member States may authorise exchange of information, in the same Member State or in a different Member State, between the competent authorities and the following, in the discharge of their supervisory functions :*

- authorities entrusted with the public duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets;*
- bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;*

- *persons responsible for carrying out statutory audits of the accounts of credit and financial institutions.*

*The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1).*

*2. Notwithstanding Article 57a (1) and (3), Member States may, by virtue of provisions laid down in national law, authorise the disclosure of certain information to other departments of their central government administrations responsible for law on the supervision of credit and financial institutions, and to inspectors acting on behalf of those departments.*

*However, such disclosures may be made only where necessary for the supervision of those institutions for compliance with this directive. Persons having access to the information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1).*

*3. Member States shall authorise the disclosure of certain information relating to the supervision of credit institutions for compliance with this Directive to Parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State, under the following conditions:*

- (a) that the entities have a precise mandate under national law to investigate or scrutinise the actions of authorities responsible for the supervision of these institutions or for laws on such supervision;*
- (b) that the entities consider the information necessary for fulfilling the mandate referred to in point (a);*
- (c) the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in Article 57a (1);*
- (d) where the information originates in another Member State, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their agreement.*

*4. This Subsection shall not prevent the competent authorities supervising credit and financial institutions for compliance with this Directive from transmitting confidential information, for the purposes of their tasks, to other authorities responsible for supervising credit and financial institutions according to other Directives or Regulations, including the European Central Bank acting according to Regulation 1024/2013."*

*(21b) in Section 3 of Chapter VI, the following subsection is inserted :*

*"Subsection IIIb*

*International Cooperation*

*Article 57c*

*1. Member State should ensure that their competent authorities supervising credit and financial institutions as well as their law enforcement authorities, provide the widest possible range of international cooperation with the competent*

*authorities of third countries that constitute counterparts of the national competent authorities.*

**2.** *Member state shall ensure that there are effective gateways to facilitate the prompt and constructive exchange directly between counterparts, either spontaneously or upon request, of information relating to money laundering."*

**(21c)** *Article 58 is amended as follows:*

**(a)** *in paragraph (2), the following subparagraph is added:*

*"Member States shall ensure that, in cases of breaches which are subject to criminal sanctions, law enforcement authorities are properly informed about such breaches."*

**(b)** *the following paragraph is inserted:*

*"4a. Member States shall ensure that competent authorities and self-regulatory bodies inform the Commission when national laws hamper their supervisory and investigatory powers that are necessary for the exercise of their functions."*

**(21d)** *Article 59 is amended as follows:*

**(a)** *the introductory part of paragraph 1 is replaced by the following:*

*"1. Member States shall ensure that this Article applies at least to breaches on the part of obliged entities of the requirements laid down in:"*

**(b)** *in paragraph 1, the following subparagraph is added:*

*"Member States shall also ensure that this Article applies at least to breaches on the part of corporate and other legal entities, trusts and other types of legal arrangements having a structure or functions similar to trusts, that are serious, repeated, systematic, or a combination thereof, of the requirements laid down in Articles 30 and 31."*

**(c)** *in paragraph(2), point (c) is replaced by the following:*

*"(c) for cases that are serious, repeated, systematic, or a combination thereof and where an obliged entity is subject to an authorisation, the withdrawal or suspension of the authorisation;"*

**(d)** *in paragraph (3), the following point is inserted:*

*"(ba) for cases that are serious, repeated, systematic, or a combination thereof the withdrawal of the authorisation to operate;"*

**(21e)** *Article 61 is amended as follows:*

**(a)** *paragraph 1 is replaced by the following:*

*"1. Member States shall ensure that competent authorities and self-regulatory bodies establish effective and reliable mechanisms to encourage the reporting to competent authorities and self-regulatory bodies of potential or actual breaches of the national provisions transposing this Directive.";*

**(b)** *in paragraph 3, the following subparagraph is added:*

***"The competent authorities shall provide one or more secure communication channel for persons to report suspicions of money laundering or terrorist financing. Such channels shall ensure that the identity of persons providing information is known only to the competent authorities."***

**(21f) Article 64 is replaced by the following:**

**(a) paragraph 2 is replaced by the following:**

***"2. The power to adopt delegated acts referred to in Article 9 and Article 48a shall be conferred on the Commission for an indeterminate period of time from 25 June 2015."***

**(b) paragraph 5 is replaced by the following:**

***"5. A delegated act adopted pursuant to Article 9 and Article 48a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council."***

**(21g) in article 65 the following subparagraph 1a is added:**

***"The report shall be accompanied, if necessary, by appropriate proposals, including, where appropriate, with respect to improving cooperation between Asset Recovery Offices of the Member States, cash payments, virtual currencies, empowerments to set-up and maintain a central database registering users' identities and wallet addresses accessible to FIUs, as well as self-declaration forms for the use of virtual currency users."***

***By the end of 2017, the Commission shall draw up a report on the Member States' FIUs powers and obstacles to cooperation. This evaluation shall include the assessment of means to support joint analysis of cross-border cases and solutions to increase the level of financial intelligence within the EU. The report shall be accompanied, if necessary, by appropriate proposals to remedy the obstacles in cooperation regarding access to, exchange of and use of information. The report shall include an assessment of the need for:***

- (a) operational guidance on the proper implementation of this Directive;**
- (b) facilitation of information exchange on cross-border cases;**
- (c) a dispute settlement mechanism;**
- (d) support of joint strategic risk analysis at Union level;**
- (e) joint analysis teams for cross-border cases;**
- (f) obliged entities to report directly to FIU.net;**
- (g) establishment of a European Financial Intelligence Unit to enhance cooperation and coordination among national FIUs.";**

**(22) in Article 65, the following second paragraph is added:**

"The report shall be accompanied, if necessary, by appropriate proposals, including, where appropriate, with respect to virtual currencies, empowerments to set-up and maintain a central database registering users' identities and wallet addresses accessible to FIUs, as well as self-declaration forms for the use of virtual currency users.";

- (23) in Article 66, the first paragraph is replaced by the following:

"Directives 2005/60/EC and 2006/70/EC are repealed with effect from 1 January 2017.";

- (24) in Article 67(1), the first subparagraph is replaced by the following:

"Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2017. They shall immediately communicate the text of those measures to the Commission.";

- (24a) in Annex II, the introductory part of point (3) is replaced by the following:**

"(3) Geographical risk factors - **registration in:**"

- (25) in point (2) of Annex III, point (c) is replaced by the following:

"(c) non-face-to-face business relationships or transactions, without certain safeguards, such as electronic identification means or relevant trust services as defined in Regulation (EU) 910/2014 **or alternative remote identification techniques subject to the approval of the competent authorities;**".

## Article 2

### *Amendments to Directive 2009/101/EC*

Directive 2009/101/EC is amended as follows:

- (1) in Chapter 1, the following Article 1a is inserted:

#### *"Article 1a*

##### *Scope*

The measures on the disclosure of information on the beneficial ownership apply in in respect of the laws, regulations and administrative provisions of the Member States relating to:

- (a) corporate and other legal entities referred to in Article 30 of Directive 2015/849 of the European Parliament and of the Council<sup>1</sup>, including the types of companies referred to in Article 1 of this Directive■ ;

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<sup>1</sup> 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 (OJ L 141, 5.6.2015, p. 73).";

(b) trusts which comprise any property held by, or on behalf of, a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business with a view to gain profit, and other types of legal arrangements having a structure or functions similar to such trusts."

(1a) *Article 7 is amended as follows:*

(a) *the following point is inserted:*

*"(aa) failure to disclose accurately and completely beneficial ownership information as required by Article 7b;"*

(b) *the following point is added:*

*"(ba) failure to disclose beneficial ownership information as required by Article 7b."*

(c) *the following paragraph is added:*

*"Member States shall ensure that where obligations apply to legal persons, penalties can be applied to the members of the management body or to any other individuals who under national law are responsible for the breach."*

(2) in Chapter 2, the following Article 7b is inserted:

*"Article 7b*

*Disclosure of beneficial ownership information*

1. Member States shall take the measures required to ensure compulsory disclosure by the entities referred to in Article 1a(a) and (b) of this Directive of adequate, accurate and current information on their beneficial ownership, in accordance with Articles 30 and 31 of Directive 2015/849.

The information shall consist of ***at least*** the name, ***date*** of birth, the nationality and the country of residence of the beneficial owner, ***contact details (without disclosure of a home address)***, as well as the nature and extent of the beneficial interest held.

2. The disclosure of beneficial ownership information as referred to in paragraph 1 shall be ensured through the central registers referred to in Article 30(3) of Directive 2015/849.

3. Member States shall ensure that the beneficial ownership information referred to in paragraph 1 of this Article shall also be made publicly available through the system of interconnection of registers referred to in Article 4a(2) ***in accordance with data protection rules an open data standards, and subject to on-line registration, Member States may introduce a fee to cover the administrative costs.***

4. In exceptional circumstances laid down in national law, where the access to the information set out in paragraph 1 would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from the compulsory disclosure of to all or part of the information on the beneficial ownership on a case-by-case basis. ***Member States shall ensure that these exemptions***

*are granted upon a detailed evaluation of the exceptional nature of the circumstances, with the evaluation accessible to the Commission upon request. Exemptions shall be reassessed at regular intervals to avoid abuse. When an exemption is granted, this has to be clearly indicated in the register. The rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. Member States shall publish annual statistical data on the amount of exemptions granted and reasons stated and report the data to the Commission.*

5. The personal data of beneficial owners referred to in paragraph 1 shall be disclosed for the purpose of enabling third parties and civil society at large to know who are the beneficial owners, thus contributing to prevent the misuse of legal entities and legal arrangements through enhanced public scrutiny. For this purpose the information shall be publicly available through the national registers and through the system of interconnection of registers for 10 years after the *entity or arrangement* has been struck off from the register.

*5a. Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of this article. Member states shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities maintain high professional standards, including standards of confidentiality and data protection, are of high integrity and appropriately skilled."*

#### *Article 2a*

#### *Amendments to Directive 2013/36/EU*

*In Article 56(1) of Directive 2013/36/EU, the following point is added:*

*(fa) authorities responsible for supervising the obliged entities mentioned in Article 2, paragraph 1, (1) and (2) of Directive 2015/849 for compliance with that Directive."*

#### *Article 3*

#### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2017 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 4*

*Entry into force*

This Directive shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

*Article 5*

*Addressees*

This Directive is addressed to the Member States.

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



1.12.2016

## **OPINION OF THE COMMITTEE ON DEVELOPMENT**

for the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council 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 Directive 2009/101/EC (COM(2016)0450 – C8-0265/2016 – 2016/0208(COD))

Rapporteur: Elly Schlein

### **SHORT JUSTIFICATION**

The Commission has presented to the European Parliament and the Council a proposal aimed at further reinforcing EU rules on anti-money laundering to counter terrorist financing and increase transparency about who really owns companies and trusts, in order to strengthen the fight against tax avoidance.

The Rapporteur welcomes the amendments proposed by the Commission, which represent some positive steps forward on the issue of tax evasion and money laundering. The Panama Papers once again have proven the urgent need for effective rules for the verification of the beneficial ownership of companies and other legal persons. In particular, a huge amount of resources are lost by developing countries due to shady deals and a web of corrupt activities involving the use of anonymous shell companies and trusts.

However, the proposal as it stands still fails to respond with the boldness and urgency that citizens expect. The Rapporteur believes that some serious loopholes remain: not all trusts would have to reveal their so-called beneficial owners (BO)s to the public, and some of them could keep them secret to all but those who can prove ‘legitimate interest’. With respect to companies, the current Directive includes a clause which states that if the beneficial owner cannot be identified then a member of senior management can be named instead. Moreover, although the threshold for beneficial ownership has been reduced from a 25 % ownership stake down to a 10 % stake, such change is fragile since it concerns only ‘passive non-financial entit[ies]’.

While the Rapporteur supports the efforts taken by the Commission, she believes that the

European Parliament and the Council need to go further in addressing the shortcomings that risk weakening anti-money laundering and the fight against tax avoidance and tax evasion around the globe. If these loopholes are not closed, developing countries' authorities will continue to find it difficult to penetrate the corporate veil created by shell companies in Europe in order to recover stolen assets and counter illicit financial flows. The EU should not miss the opportunity to further reinforce EU rules on anti-money laundering and increasing transparency, by also taking into consideration the particular needs of developing countries, which are particularly affected by the plague of illicit financial flows. Policy Coherence for Development invites us to enable developing countries to mobilise their own domestic resources notably through taxation. Only full public disclosure will allow citizens from developing countries to ensure anonymous shell companies are not used to launder away essential resources for development.

## AMENDMENTS

The Committee on Development calls on the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs, as the committees responsible, to take into account the following amendments:

### Amendment 1

#### Proposal for a directive Recital 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(9a) Both the Union and its Member States, on the one hand, and third countries, on the other hand, share a responsibility in the fight against money laundering and the financing of terrorism. Cooperation with third countries should also further focus on strengthening the financial systems and administrations of developing countries to allow them to better participate in the global process of tax reform, in order to deter financial crime and related illicit activities, and to implement anti-laundering mechanisms that would contribute to a better exchange of data and information with other countries in order to identify fraud and terrorists.***

### Amendment 2

#### Proposal for a directive Recital 21

*Text proposed by the Commission*

*Amendment*

(21) The specific factor determining the Member State responsible for the monitoring and registration of beneficial ownership information of trusts and similar legal arrangements should be clarified. In order to avoid that, due to differences in the legal systems of Member States, certain

(21) The specific factor determining the Member State responsible for the monitoring and registration of beneficial ownership information of trusts and similar legal arrangements should be clarified. In order to avoid that, due to differences in the legal systems of Member States, certain

trusts are not monitored or registered anywhere in the Union, all trusts and similar legal arrangements should be registered where they are administered. In order to ensure the effective monitoring and registration of information on the beneficial ownership of trusts, cooperation among Member States is also necessary.

trusts are not monitored or registered anywhere in the Union, all trusts and similar legal arrangements should be registered where they are **created**, administered **or operated**. In order to ensure the effective monitoring and registration of information on the beneficial ownership of trusts, cooperation among Member States is also necessary.

### Amendment 3

#### Proposal for a directive Recital 35

*Text proposed by the Commission*

*Amendment*

**(35) In order to ensure proportionality, the beneficial ownership information in respect of any other trusts than those which consist of any property held by, or on behalf of, a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business with a view to gain profit should only be available to parties holding a legitimate interest. The legitimate interest with respect to money laundering, terrorist financing and the associated predicate offences should be justified by readily available means, such as statutes or mission statement of non-governmental organisations, or on the basis of demonstrated previous activities relevant to the fight against money laundering and terrorist financing or associated predicate offences, or a proven track record of surveys or actions in that field.**

**deleted**

### Amendment 4

#### Proposal for a directive Recital 35 a (new)

*Text proposed by the Commission*

*Amendment*

**(35a) While the fight against money laundering and terrorism is a legitimate aim, the measures set out in this Directive should in no way impede the financial inclusion, without discrimination, of all persons within the Union and in third countries.**

## **Amendment 5**

**Proposal for a directive  
Recital 35 b (new)**

*Text proposed by the Commission*

*Amendment*

**(35b) Remittances represent an important contribution to family and community development. While recognising the importance of preventing money laundering, measures taken pursuant to this Directive should not impede remittance transfers from international migrants.**

## **Amendment 6**

**Proposal for a directive  
Recital 35 c (new)**

*Text proposed by the Commission*

*Amendment*

**(35c) Humanitarian aid is designed to provide aid and assistance to people in need globally and is of the utmost importance. Measures aimed at tackling money laundering, terrorism financing and tax evasion should not prevent persons and organisations from financing such aid for the benefit of people in need.**

## **Amendment 7**

**Proposal for a directive**

**Article 1 – point 2 – point -a (new)**

Directive (EU) 2015/849

Article 3 – point 6 – point a

*Present text*

- (a) in the case of corporate entities:
- (i) the natural **person(s)** who ultimately **owns** or **controls** a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of **25 %** plus one share or an ownership interest of more than **25 %** in the customer held by a natural person shall be an indication of direct ownership. A shareholding of **25 %** plus one share or an ownership interest of more than **25 %** in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council <sup>(3)</sup>;

- (ii) if, ***after having exhausted all possible means and provided there are no grounds for suspicion, no person*** under

*Amendment*

***(-a) in point (6), point (a) is replaced by the following:***

- ‘(a) in the case of corporate entities:
- (i) ***all*** the natural ***persons (who cannot be nominees, agents, proxies or equivalent)*** who ultimately ***own*** or ***control*** a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of **5 %** plus one share or an ownership interest of more than **5 %** in the customer held by a natural person shall be an indication of direct ownership. A shareholding of **5 %** plus one share or an ownership interest of more than **5 %** in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council <sup>(3)</sup>;

- (ii) if ***the entity fails to provide the identity of any natural person that meets the criteria*** under point (i), or if there is

point (i) **is identified**, or if there is any doubt that the person(s) identified are the beneficial owner(s), the **natural person(s) who hold the position of senior managing official(s), the obliged entities shall** keep records of the actions taken in order to identify the beneficial ownership under point (i) **and this point;**"

any doubt that the person(s) identified are the beneficial owner(s), the **obliged entities shall record that no beneficial owner exists and** keep records of the actions taken in order to identify the beneficial ownership under point (i).

***In addition, the obliged entities should identify and verify the identity of the relevant natural person who holds the position of senior managing official, who should be identified as 'senior manager' (and not as 'beneficial owner'), and record details of all legal owners of the entity;***

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(<sup>3</sup>) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

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(<sup>3</sup>) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).'

(<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&rid=1>)

## **Amendment 8**

### **Proposal for a directive**

#### **Article 1 – point 2 – point a**

Directive (EU) 2015/849

Article 3 – point 6 – point a – point i

*Text proposed by the Commission*

***(a) in point (6)(a)(i), the following subparagraph is added:***

***"For the purposes of Article 13(1)(b) and Article 30 of this Directive, the indication of ownership or control set out in the second paragraph is reduced to 10% whenever the legal entity is a Passive Non-Financial Entity as defined in***

*Amendment*

***deleted***

## **Amendment 9**

### **Proposal for a directive**

#### **Article 1 – point 2 – point a a (new)**

Directive (EU) 2015/849

Article 3 – point 6 – point b

#### *Present text*

- (b) in the case of trusts:
  - (i) the *settlor*;
  - (ii) the trustee(s);
  - (iii) the *protector*, if any;
  - (iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
  - (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

#### *Amendment*

***(aa) in point 6, point (b) is replaced by the following:***

- ‘(b) in the case of trusts:
  - (i) the *settlor(s)*;
  - (ii) the trustee(s);
  - (iii) the *protector(s)* if any;
  - (iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
  - (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

***With regard to trusts that are designated by characteristics or by class, the trust deed or related document should provide sufficient information concerning the beneficiary so that any person would be able to establish the identity of the beneficiary at the time of the distribution or when the beneficiary intends to exercise vested rights.’***

*<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1479387654876&uri=CELEX:32015L0849>*

#### *Justification*

*Since a trust may have more than one settlor or protector, beneficial ownership definitions should refer to “settlor(s)” and “protector(s)”, just as it (already) refers to “trustee(s)” and “beneficiary(ies)”. Otherwise, this ambiguity could be exploited to register only one of possibly many settlors or protectors. Plurals for all related parties of a trust are already*



*prescribed by the OECD's Commentaries to the CRS for automatic exchange of information.*

## **Amendment 10**

### **Proposal for a directive**

#### **Article 1 – point 8 a (new)**

Directive (EU) 2015/849

Article 28 – point c

#### *Present text*

(c) the effective implementation of the requirements referred to in point (b) is supervised at group level by a competent authority of the home Member State ***or of the third country.***

#### *Amendment*

***(8a) in Article 28, point c is replaced by the following:***

"(c) the effective implementation of the requirements referred to in point (b) is supervised at group level by a competent authority of the home Member State."

*(<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&qid=1479377482666&from=EN>)*

## **Amendment 11**

### **Proposal for a directive**

#### **Article 1 – point 9 – point -a (new)**

Directive (EU) 2015/849

Article 30 – paragraph 4

#### *Present text*

4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current.

#### *Amendment*

***(-a) paragraph 4 is replaced by the following:***

‘4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current. ***Member States shall require that the obliged entities report cases of missing or inaccurate disclosures.***’

*(<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&qid=1479377482666&from=EN>)*

## Amendment 12

### Proposal for a directive

#### Article 1 – point 9 – point a

*Text proposed by the Commission*

*(a) in paragraph 5, point (c) of the first subparagraph and the second subparagraph are deleted;*

*Amendment*

*deleted*

## Amendment 13

### Proposal for a directive

#### Article 1 – point 9 – point a (new)

Directive (EU) 2015/849

Article 30 – paragraph 5

*Present text*

5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:

- (a) competent authorities and FIUs, without any restriction;
- (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;
- (c) *any person or organisation that can demonstrate a legitimate interest;*

*The persons or organisations referred to in point (c) shall access* at least the name, the *month and year* of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.

For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and *may be subject to online registration and to the payment of a fee. The fees charged for obtaining the*

*Amendment*

*(aa) paragraph 5 is replaced by the following:*

‘5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:

- (a) competent authorities and FIUs, without any restriction;
- (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;
- (c) *the public*

*The information accessible to the public shall consist of* at least the name, the *date* of birth, the nationality, *a business or service address* and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.

For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with *both* data protection rules and *open data standards*.’;

*information shall not exceed the administrative costs thereof.*

*<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1479387654876&uri=CELEX:32015L0849>*

#### *Justification*

*The information in the BO registers should be publicly accessible in an open data format. Requiring member states to create the registers according to open data standards also prevents registers where you can search using only one parameter, such as the company name. Moreover, it immensely facilitates the interconnection of the Member States registers which is due in coming years.*

#### **Amendment 14**

##### **Proposal for a directive**

##### **Article 1 – point 9 – point c**

Directive (EU) 2015/849

Article 30 – paragraph 9

#### *Text proposed by the Commission*

“9. In exceptional circumstances to be laid down in national law, where the access referred to in point (b) of paragraph 5 would expose the beneficial owner to the risk of ***fraud***, kidnapping, blackmail, violence or intimidation, ***or where*** the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis.

Exemptions granted pursuant to this paragraph shall not apply to credit institutions and financial institutions, and to the obliged entities as referred to in point (3)(b) of Article 2(1) that are public officials.

#### *Amendment*

“9. In exceptional circumstances to be laid down in national law, where the access referred to in point (b) ***and (c)*** of paragraph 5 would expose the beneficial owner to the risk of kidnapping, blackmail, violence or intimidation, ***in particular when*** the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis.  
***Exemptions shall never be indefinite and shall be reassessed at regular intervals to avoid abuse.***

***Where an exemption is granted, it must be clearly noted in the register accessible to entities referred to in point (b) and (c) of paragraph 5.***

Exemptions granted pursuant to this paragraph shall not apply to credit institutions and financial institutions, and to the obliged entities as referred to in point (3)(b) of Article 2(1) that are public officials.

## Justification

*The wording could be interpreted in a way that creates an automatic blanket exemption for all companies that have at least one person under a certain age listed as their beneficial owner. The current reference to the risk of fraud could be used to apply for an exemption based entirely on an economic loss. When an exemption is made, it has to be clearly visible in the register available to the public. Moreover, these exemptions should not be granted without any time constraints.*

### Amendment 15

#### Proposal for a directive

##### Article 1 – point 10 – point a

Directive (EU) 2015/849

Article 31 – paragraph 1

#### *Text proposed by the Commission*

“1. Member States shall ensure that this Article applies to trusts and other types of legal arrangements having a structure or functions similar to trusts, such as, inter alia, fiducie, Treuhand or fideicomiso.

*Each Member State* shall require that trustees of any express trust administered in that Member State obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

- (a) the *settlor*;
- (b) the *trustee*;
- (c) the *protector* (if any);
- (d) the beneficiaries or class of beneficiaries;
- (e) any other natural person exercising effective control of the trust.”;

### Amendment 16

#### Proposal for a directive

##### Article 1 – point 10 – point b

Directive (EU) 2015/849

Article 31 – paragraph 3a

#### *Amendment*

“1. Member States shall ensure that this Article applies to trusts and other types of legal arrangements having a structure or functions similar to trusts, such as, inter alia, fiducie, Treuhand, *waqf* or fideicomiso, **and all other similar, in terms of structure or function, existing or future legal arrangements.**

*Member States* shall require that trustees of any express trust **created**, administered **and/or operating** in that Member state obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

- (a) the *settlor(s)*;
- (b) the *trustee(s)*;
- (c) the *protector(s)* (if any);
- (d) the beneficiaries or class of beneficiaries; **and**
- (e) any other natural person exercising effective control over the trust.”;

*Text proposed by the Commission*

*Amendment*

“3a. The information referred to in paragraph 1 shall be held in a central register set up by the Member State where the trust is administered.”;

“3a. The information referred to in paragraph 1 shall be held in a central register set up by the Member State where the trust is ***created***, administered ***or operates***. ***Member States shall notify to the Commission the characteristics of the national central register.***”;

*Justification*

*All current and future legal arrangements that are similar to trusts should be covered. Member States should require registration of all trusts governed under their law or that are administered by an EU resident even if all the other parties of the trust and its assets are not in the EU. This way Member States can ensure that their law or residents are not facilitating money laundering or tax evasion elsewhere in the world, which is particularly important for developing countries.*

**Amendment 17**

**Proposal for a directive**

**Article 1 – point 10 – point d**

Directive (EU) 2015/849

Article 31 – paragraph 4 a

*Text proposed by the Commission*

*Amendment*

“4a. The information held in the register referred to in paragraph 3a of this Article ***with respect to any other trusts than those referred to in Article 7b (b) of Directive (EC) 2009/101 shall be accessible to any person or organisation that can demonstrate a legitimate interest.***

The information accessible to ***persons and organisations that can demonstrate a legitimate interest*** shall consist of the name, the ***month and year*** of birth, the nationality and the country of residence of the beneficial owner as defined in Article 3(6)(b).

“4a. The information held in the register referred to in paragraph 3a of this Article ***shall be accessible to the public in an open data format.***

The information accessible to ***the public*** shall consist of the name, the ***date*** of birth, the nationality and the country of residence of the beneficial owner as defined in Article 3(6)(b), ***as well as the nature and extent of the beneficial interest held.***

***Member States shall ensure that, in exceptional circumstances and under specific terms to be laid down in national law, a settlor and/or a trustee may request***

*national authorities not to make that information about the trust or legal arrangement in question publicly accessible, for the purpose of protecting the privacy of vulnerable beneficiaries. Where the national authority agrees to that request, a statement shall be inserted in the public register stating that the available information on the trust or legal arrangement is incomplete. It shall always be possible to challenge such decisions.*

*Justification*

*Open data format is crucial in order to prevent hiding of beneficial ownership of trusts: it enables the compilation and analysis of large amounts of data in order to better detect anomalies, patterns, errors, red flags, etc., as well as combine BO data with information from other relevant data sources important for detecting corruption across the value chain, i.e. contracts & procurement processes.*

**Amendment 18**

**Proposal for a directive**

**Article 1 – point 10 – point d**

Directive (EU) 2015/849

Article 31 – paragraph 4 b

*Text proposed by the Commission*

4b. Whenever entering into a new customer relationship with a trust or other legal arrangement subject to registration of beneficial ownership information pursuant to paragraph 3a, the obliged entities shall collect proof of registration whenever applicable.”;

*Amendment*

4b. Whenever entering into a new customer relationship with a trust or other legal arrangement subject to registration of beneficial ownership information pursuant to paragraph 3a, the obliged entities shall collect proof of registration whenever applicable ***and report any discrepancy they find between the beneficial ownership information held in the central register and the beneficial ownership information collected as part of their customer due diligence procedures.***”;

*Justification*

*Requiring obliged entities to report on discrepancies between their own CDD and the public BO registers would strengthen the data on the public BO registers. It should also be stressed that obliged entities are not to rely on the information on the BO registers but continue performing their independent customer due diligence in order to know who their customers are.*

## Amendment 19

### Proposal for a directive

#### Article 1 – point 10 – point d a (new)

Directive (EU) 2015/849

Article 31 – paragraph 5

#### *Present text*

5. Member States shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and up-to-date.

#### *Amendment*

*(da) paragraph 5 is replaced by the following:*

"5. Member States shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and up-to-date. **Member States shall require that the obliged entities report cases of missing or inaccurate disclosures.**"

(<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&qid=1479377482666&from=EN>)

## Amendment 20

### Proposal for a directive

#### Article 1 – point 10 – point e

Directive (EU) 2015/849

Article 31 – paragraph 7a – subparagraph 1

#### *Text proposed by the Commission*

"In exceptional circumstances laid down in national law, where the access referred to in paragraphs 4 and 4a would expose the beneficial owner to the risk of ***fraud***, kidnapping, blackmail, violence or intimidation, ***or where*** the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis.

#### *Amendment*

"In exceptional circumstances laid down in national law, where the access referred to in paragraphs 4 and 4a would expose the beneficial owner to the risk of kidnapping, blackmail, violence or intimidation, ***in particular when*** the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. ***Exemptions shall never be indefinite and shall be reassessed at regular intervals.***

#### *Justification*

*See Article 1 paragraph 1 – point 9 – point c*

## Amendment 21

### Proposal for a directive

#### Article 1 – point 10 – point h

Directive (EU) 2015/849

Article 31 – paragraph 10

#### *Text proposed by the Commission*

“10. For the purposes of this Article, a trust is considered to be administered in each Member State *where the trustees are established*”;

#### *Amendment*

“10. For the purposes of this Article, a trust is considered to be *created*, administered *or to operate* in a Member State *when it*:

(a) *is created according to, or governed by, the law of that Member State or has its ultimate court of appeal in the jurisdiction of that Member State; or*

(b) *is connected to that Member State by:*

(i) *having one or more of the beneficial owners of the trust, as defined in Article 3(6)(b), resident in that Member State;*

(ii) *holding real estate in that Member State;*

(iii) *holding shares or voting rights or ownership interest in a legal entity incorporated in that Member State; or*

(iv) *holding a bank or payment account in a credit institution operating in that Member State.”;*

#### *Justification*

*A trust should be registered in all the Member States where it has a connection point.*

## Amendment 22

### Proposal for a directive

#### Article 2 – point 1 a (new)

Directive 2009/101/EC

Article 7 – point b a (new)

#### *Text proposed by the Commission*

#### *Amendment*

(1a) *in Article 7, the following point ba*



*is added:*

*‘(ba) failure to disclose beneficial ownership information as required by Article 7b.’;*

*(<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0101&rid=1>)*

## **Amendment 23**

### **Proposal for a directive**

#### **Article 2 – point 1 b (new)**

Directive 2009/101/EC

Article 7 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*(1b) in Article 7, the following second paragraph is added:*

*‘Member States shall ensure that where obligations apply to legal persons, penalties can be applied to individuals who under national law are responsible for the breach, including within the management body.’;*

*(<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0101&rid=1>)*

## **Amendment 24**

### **Proposal for a directive**

#### **Article 2 – point 2**

Directive 2009/101/EC

Article 7 b – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

The information shall consist of the name, ***the month and year*** of birth, the nationality ***and*** the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.

The information shall consist of the name, ***date*** of birth, the nationality, the country of residence ***and contact details (without disclosure of a home address)*** of the beneficial owner as well as the nature and extent of the beneficial interest held.

## Amendment 25

### Proposal for a directive

#### Article 2 – point 2

Directive 2009/101/EC

Article 7 b – paragraph 3

#### *Text proposed by the Commission*

3. Member States shall ensure that the beneficial ownership information referred to in paragraph 1 of this Article shall also be made publicly available through the system of interconnection of registers referred to in Article 4a(2).

#### *Amendment*

3. Member States shall ensure that the beneficial ownership information referred to in paragraph 1 of this Article shall also be made publicly available through the system of interconnection of registers referred to in Article 4a(2), ***in accordance with both data protection rules and open data standards, and subject to online registration.***

## Amendment 26

### Proposal for a directive

#### Article 2 – point 2

Directive 2009/101/EC

Article 7 b – paragraph 4

#### *Text proposed by the Commission*

4. In exceptional circumstances laid down in national law, where the access to the information set out in paragraph 1 would expose the beneficial owner to the risk of ***fraud***, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from the compulsory disclosure of to all or part of the information on the beneficial ownership on a case-by-case basis.

#### *Amendment*

4. In exceptional circumstances laid down in national law, where the access to the information set out in paragraph 1 would expose the beneficial owner to the risk of kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from the compulsory disclosure of to all or part of the information on the beneficial ownership on a case-by-case basis. ***Exemptions shall never be indefinite and shall be reassessed at regular intervals to avoid abuse. When an exemption is granted, this shall be clearly noted in the register accessible to entities referred to in points (b) and (c) of Article 30(5) of Directive (EU) 2015/849.***

## **Amendment 27**

### **Proposal for a directive**

#### **Article 2 – point 2**

Directive 2009/101/EC

Article 7 b – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of this Article. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities maintain high professional standards, including standards of confidentiality and data protection, and that they be of high integrity and be appropriately skilled.”***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Prevention of the use of the financial system for the purposes of money laundering or terrorist financing
<b>References</b>	COM(2016)0450 – C8-0265/2016 – 2016/0208(COD)
<b>Committees responsible</b> Date announced in plenary	ECON 12.9.2016 LIBE 12.9.2016
<b>Opinion by</b> Date announced in plenary	DEVE 12.9.2016
<b>Rapporteur</b> Date appointed	Elly Schlein 21.10.2016
<b>Rule 55 – joint committee meetings</b> Date announced in plenary	6.10.2016
<b>Discussed in committee</b>	7.11.2016
<b>Date adopted</b>	29.11.2016
<b>Result of final vote</b>	+: 19 –: 1 0: 2
<b>Members present for the final vote</b>	Ignazio Corrao, Nirj Deva, Raymond Finch, Doru-Claudian Frunzulică, Charles Goerens, Enrique Guerrero Salom, Maria Heubuch, Teresa Jiménez-Becerril Barrio, Linda McAvan, Norbert Neuser, Eleni Theocharous, Paavo Väyrynen, Bogdan Brunon Wenta, Rainer Wieland
<b>Substitutes present for the final vote</b>	Marina Albiol Guzmán, Seb Dance, Ádám Kósa, Adam Szejnfeld, Patrizia Toia
<b>Substitutes under Rule 200(2) present for the final vote</b>	Xabier Benito Ziluaga, Dariusz Rosati, Jarosław Wałęsa

8.12.2016

## OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

for the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council 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 Directive 2009/101/EC (COM(2016)0450 – C8-0265/2016 – 2016/0208(COD))

Rapporteur: Emmanuel Maurel

### AMENDMENTS

The Committee on International Trade calls on the Committee on Economic and Monetary Affairs, and the Committee on Civil Liberties, Justice and Home Affairs, as the committees responsible, to take into account the following amendments:

#### Amendment 1

##### **Proposal for a directive Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) Policies and actions in other relevant areas of Union competence, for instance in international trade and development cooperation, should be utilised, where possible, to complement the work to fight money laundering and terrorist financing through the financial system. Those policies and actions should seek to complement and not undermine other policy goals of the Union.***

## **Amendment 2**

### **Proposal for a directive**

#### **Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) Money laundering and tax evasion are increasingly channelled through trade transactions, by means of price, quantity or quality manipulation. Financial and tax transparency are top priorities of the Union trade policy and that, therefore, countries tolerating money laundering and tax evasion should not be granted any trade privilege with the Union.***

## **Amendment 3**

### **Proposal for a directive**

#### **Recital 10 b (new)**

*Text proposed by the Commission*

*Amendment*

***(10b) In line with the “Trade for All” strategy, further effective action should be taken concerning trade in services to prevent it from being used for illicit financial flows, bearing in mind that free trade in goods and services with developing countries increases the threat of money laundering, and that the Union’s trade in services with tax havens is six times larger than with comparable countries, whereas no such differences exists in trade in goods.***

## **Amendment 4**

### **Proposal for a directive**

#### **Recital 10 c (new)**

*Text proposed by the Commission*

*Amendment*

***(10c) Within a year from the entry into force of this Directive, the Commission should provide a report to Member States***

*on possible loopholes in the chapters on financial services and establishment in EU trade agreements with third countries already in force, in particular the definition of investment and establishment, scope and time limits of prudential carve outs, the existence or non-existence of ceilings for money transfer between parties of the trade agreements, currencies allowed for this transfer, confirmation of bank secret and the existence of provisions on data exchange.*

## **Amendment 5**

### **Proposal for a directive Recital 10 d (new)**

*Text proposed by the Commission*

*Amendment*

*(10d) Liberalisation of financial services should be subject to a better scrutiny, and to ex-ante analysis by the competent authorities. With regard to the exponential financial innovation, inclusion of financial services in Union trade agreements and partnerships should be based on positive lists.*

## **Amendment 6**

### **Proposal for a directive Recital 10 e (new)**

*Text proposed by the Commission*

*Amendment*

*(10e) The chapters on financial services and establishment in future trade agreements should contain narrow definitions of investment, so as to exclude products which have a high potential to carry undeclared money; provide for the establishment of public ultimate beneficial ownership registers of companies, trusts and similar legal arrangements created, administered or*

*operated in the territories the trade agreement comprises; include arrangements on cooperation in the control of financial flows and lifting the bank secret, in accordance with data protection rules and open data standards; enlarge scope and time limits for prudential carve-outs beyond "imbalance of payments necessities", and replace "best endeavour" commitments by compulsory provisions.*

## **Amendment 7**

### **Proposal for a directive Recital 37 a (new)**

*Text proposed by the Commission*

*Amendment*

*(37a) Key transparency standards should be binding and guide the negotiation and renegotiation of Union trade agreements and partnerships. Trade partners should lose the benefits granted by trade agreements with the Union where they fail to respect relevant international standards, such as the Common Reporting Standard of the OECD, the Action Plan on Base Erosion and Profit Shifting of the OECD, the central register of beneficial ownership and FATF recommendations. In the framework of the implementation of the OECD BEPS, it is essential to fully apply the country by country reporting system for multinational enterprises.*

## **Amendment 8**

### **Proposal for a directive Recital 37 b (new)**

*Text proposed by the Commission*

*Amendment*

*(37b) Trade Sustainability Impact Assessments (TSIAs) should contain precise information on the performance*



*of the respective third country or countries in this respect, including implementation of the relevant legislation. Strengthening good governance clauses in bilateral agreements with third countries and providing them with technical assistance should be a key element of those agreements, even when such clauses are not binding.*

## **Amendment 9**

### **Proposal for a directive Recital 37 c (new)**

*Text proposed by the Commission*

*Amendment*

*(37c) Where trade agreements with developing countries exist or are under negotiation, sufficient funds must be earmarked, as part of the agreement, for the creation of technical, human and institutional capacity to carry out the above mentioned requirements. Annual reports on implementation of the trade agreement the Union has concluded with third countries should have a special section on financial services and establishment and contain verifiable information on compliance with the requirements mentioned above.*

## **Amendment 10**

### **Proposal for a directive Article 1 – paragraph 1 – point -1 (new) Directive 2015/849/EU Article 2 – paragraph 1 – point 3 – point e**

*Present text*

*Amendment*

(e) other persons trading in goods to the extent that payments are made or received in cash in an amount of EUR 10

*(-1) in Article 2, paragraph 1, point 3 point e is replaced by the following:*

(e) other persons trading in goods *or services* to the extent that payments are made or received in cash in an amount of

000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;"

EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;"

(<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=IT>)

## Amendment 11

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2 a (new)

Directive 2015/849/EU

Article 11 – point c

#### *Present text*

(c) in the case of persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;"

#### *Amendment*

**(2a) in Article 11, point c is replaced by the following:**

(c) in the case of persons trading in goods **or services**, when carrying out occasional transactions in cash amounting to EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;"

(<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=IT>)

## Amendment 12

### Proposal for a directive

#### Article 1 – paragraph 1 – point 7

Directive (EU) 2015/849

Article 18 a – paragraph 1 – introductory part

#### *Text proposed by the Commission*

1. With respect to transactions, involving high risk third countries, Member States shall require that, when dealing with natural persons or legal entities established in the third countries identified as high-risk third countries pursuant to Article 9 (2), obliged entities shall apply at least all the following enhanced customer due diligence

#### *Amendment*

1. With respect to transactions, **including trade transactions**, involving high risk third countries, Member States shall require that, when dealing with natural persons or legal entities established in the third countries identified as high-risk third countries pursuant to Article 9 (2), obliged entities shall apply at least all the following enhanced customer due diligence

measures:

measures:

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Prevention of the use of the financial system for the purposes of money laundering or terrorist financing
<b>References</b>	COM(2016)0450 – C8-0265/2016 – 2016/0208(COD)
<b>Committees responsible</b> Date announced in plenary	ECON 12.9.2016 LIBE 12.9.2016
<b>Opinion by</b> Date announced in plenary	INTA 12.9.2016
<b>Rapporteur</b> Date appointed	Emmanuel Maurel 12.10.2016
<b>Rule 55 – joint committee meetings</b> Date announced in plenary	6.10.2016
<b>Discussed in committee</b>	29.11.2016
<b>Date adopted</b>	5.12.2016
<b>Result of final vote</b>	+: 16 –: 4 0: 7
<b>Members present for the final vote</b>	Laima Liucija Andrikienė, Maria Arena, Tiziana Beghin, Karoline Graswander-Hainz, Jude Kirton-Darling, Bernd Lange, Marine Le Pen, David Martin, Anne-Marie Mineur, Sorin Moisă, Alessia Maria Mosca, Godelieve Quisthoudt-Rowohl, Inmaculada Rodríguez-Piñero Fernández, Tokia Saïfi, Marietje Schaake, Helmut Scholz, Joachim Schuster, Joachim Starbatty
<b>Substitutes present for the final vote</b>	Bendt Bendtsen, Reimer Böge, Klaus Buchner, Edouard Ferrand, Agnes Jongerius, Sander Loones
<b>Substitutes under Rule 200(2) present for the final vote</b>	Mairead McGuinness, Molly Scott Cato, Ramón Luis Valcárcel Siso

18.1.2017

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council 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 Directive 2009/101/EC (COM(2016)0450 – C8-0265/2016 – 2016/0208(COD))

Rapporteur: Kostas Chrysogonos

### **SHORT JUSTIFICATION**

#### **I. Introduction**

The present proposal aims to amend two pieces of recent EU legislation on financial checks and transparency in order to further the fight against money laundering and terrorist financing, which both rely on loopholes in financial controls<sup>1</sup>.

In this context, the following five main problems have been identified: 1. suspicious transactions involving high-risk third countries are not efficiently monitored owing to unclear and uncoordinated customer due diligence requirements; 2. suspicious transactions using virtual currencies are not sufficiently monitored by the authorities, which are unable to link identities and transactions; 3. the current measures to mitigate money laundering/terrorist financing risks associated with anonymous prepaid instruments are insufficient; 4. financial intelligence units (FIUs) do not have the timely access to – and do not exchange – information held by obliged entities; 5. FIUs lack access, or have delayed access, to information on the identity of holders of bank and payment accounts<sup>2</sup>.

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<sup>1</sup> 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, OJ L 141, 5.6.2015, p. 73; and Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent, OJ L 258, 1.10.2009, p. 11.

<sup>2</sup> Commission Impact Assessment, SWD(2016)0223, SWD(2016)0224.

In this area, it is important to strike the right balance between putting in place sufficient checks to effectively avoid financial crimes and terrorist financing, and protecting privacy and fundamental rights. In recent years, the increasing damage caused by both financial improprieties and terrorist activity has led to a shift in this balance, as stronger measures have been required to protect society as a whole. The question is thus one of balance between these interests, which can conflict to some extent, as well as of proportionality.

## **II. Regulation of virtual currencies**

Virtual currencies are a marginal phenomenon at present, but it is possible that they will become increasingly important. At the same time, it is clear that they can be misused for criminal purposes. The Commission therefore proposes to make virtual currency exchange platforms and custodian wallet providers subject to some of the same reporting obligations as traditional financial service providers. In this framework, national FIUs should be able to associate virtual currency addresses with the identity of the owner of virtual money.

The rapporteur approves of this step, but agrees with the European Central Bank when it states that the introduction of this reporting obligation should not be worded in such a way that it can be seen as an endorsement of virtual currencies.

## **III. Restrictions on anonymous prepaid cards**

Anonymous prepaid cards can be useful means of payment, especially for relatively small amounts. However, they can be used for fraudulent reasons<sup>1</sup>. The Commission proposes to reduce the threshold for payments using such cards without carrying out systematic due diligence checks, as well as end the due diligence check exemption for online payments.

Your rapporteur approves of certain tighter checks on such cards, as there are proven instances of their misuse, but considers that the restrictions must not be so tight that such cards become unusable in practice. Moreover, he considers that the impact of the proposed measures on competitiveness and in particular on SMEs active in the field of prepaid instruments and virtual currencies needs to be more thoroughly examined.

## **IV. Powers of FIUs to access information**

The Commission's proposal increases the powers of the FIUs of the Member States to request information from financial institutions. Currently, FIUs can only request information if the financial institution in question has alerted them to unusual activity. The proposal therefore permits *motu proprio* requests by FIUs. Central registries of the holders of bank accounts are also to be set up in the Member States.

The rapporteur considers that the restrictions on financial secrecy are justified in view of the current conditions. The fundamental rights of all parties must in any case be fully respected.

## **V. Common approach to high-risk third countries**

The EU now has a relatively short, common list of high-risk third countries, in relation to

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<sup>1</sup> See also 'The law enforcement challenges of cybercrime: are we really playing catch up?', Study for the LIBE Committee, Policy Department C, European Parliament, 2015.

which financial transactions should be subject to particular attention. The proposal sets out common standards for dealing with financial transactions to and from those jurisdictions.

The rapporteur considers that such a common approach is necessary.

## **VI. Access to beneficial ownership information**

One of the most important aspects of the proposal concerns increased obligations to declare, and provide access to, information on the beneficial ownership of corporate structures, trusts, and similar arrangements. Many recent financial and political scandals have shown that such arrangements can be a way of avoiding taxes or proper supervision of financial affairs. The proposal aims to give public access to a more comprehensive register containing certain information on the beneficial ownership of corporate structures or trusts, instead of granting access only to certain bodies. Furthermore, the rules on the place of registration of trusts are also clarified.

Your rapporteur considers that this increased transparency is essential in order to maintain public confidence in the financial system. It is particularly important that the threshold for declaring a beneficial interest should be sufficiently low – the Commission’s proposal to lower it from 25% to 10% can be approved.

## **VII. Conclusion**

Your rapporteur considers that this proposal is a timely one, as it is needed in order to reinforce the Union’s legal framework against money laundering and terrorist financing. The main lines of the Commission’s proposal can be approved, with, however, some amendments that aim to further strengthen the combat against money laundering and terrorist financing whilst ensuring respect for fundamental rights in this area.

## **AMENDMENTS**

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs, as the committees responsible, to take into account the following amendments:

### **Amendment 1**

#### **Proposal for a directive**

#### **Recital 1**

##### *Text proposed by the Commission*

(1) Directive (EU) 2015/849 of the European Parliament and the Council<sup>24</sup> constitutes the main legal instrument in the prevention of the use of the Union's financial system for the purposes of money laundering and terrorist financing. That Directive, which is to be transposed by 26

##### *Amendment*

(1) Directive (EU) 2015/849 of the European Parliament and the Council<sup>24</sup> constitutes the main legal instrument in the prevention of the use of the Union's financial system for the purposes of money laundering and terrorist financing. That Directive, which is to be transposed by 26

June 2017, sets out **a** comprehensive framework to address the collection of money or property for terrorist purposes by requiring Member States to identify, understand **and** mitigate risks related to money laundering and terrorist financing.

June 2017, sets out **an updated, transparent, efficient and legal** comprehensive framework to address the collection of money or property for terrorist purposes by requiring Member States to identify, understand, mitigate **and prevent** risks related to money laundering and terrorist financing.

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<sup>24</sup> 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 (OJ L 141, 5.6.2015, p. 73).

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<sup>24</sup> 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 (OJ L 141, 5.6.2015, p. 73).

## Amendment 2

### Proposal for a directive Recital 2

#### *Text proposed by the Commission*

(2) Recent terrorist attacks have brought to light emerging new trends, in particular regarding the way terrorist groups finance and conduct their operations. Certain modern technology services are becoming more and more popular as alternative financial systems and remain outside the scope of Union legislation or benefit from exemptions that may no longer be justified. In order to keep pace with evolving trends, further measures **to improve** the existing preventive framework **should be taken**.

#### *Amendment*

(2) Recent terrorist attacks have brought to light emerging new trends, in particular regarding the way terrorist groups finance and conduct their operations. Certain modern technology services are becoming more and more popular as alternative financial systems and remain outside the scope of Union legislation or benefit from exemptions that may no longer be justified. In order to keep pace with evolving trends, further measures **should be taken to ensure increased transparency of financial transactions and of corporate entities under the preventive legal framework in place in the Union, with a view to improving** the existing preventive framework **and countering the financing**



*of terrorism more effectively.*

### Amendment 3

#### Proposal for a directive

##### Recital 3

###### *Text proposed by the Commission*

(3) While the aims of Directive (EU) 2015/849 should be pursued, any amendments to that Directive should be consistent with the Union's ongoing action in the field of countering terrorism and terrorism financing. The European Agenda on Security<sup>25</sup> **indicated** the need for measures to address terrorist financing in a more effective and comprehensive manner, highlighting that infiltration of financial markets allows terrorism financing. The European Council conclusions of 17-18 December 2015 also stressed the need to take rapidly further action against terrorist finance in all domains.

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<sup>25</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "The European Agenda on Security", COM(2015) 185 final.

###### *Amendment*

(3) While the aims of Directive (EU) 2015/849 should be pursued, any amendments to that Directive should be consistent with the Union's ongoing action in the field of countering terrorism and terrorism financing, ***with due regard for the fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union, as well as the observance and application of the proportionality principle.*** The European Agenda on Security<sup>25</sup> ***identified as a priority the upgrading of the EU legal framework to combat terrorism, indicating*** the need for measures to address terrorist financing in a more effective and comprehensive manner, highlighting that infiltration of financial markets allows terrorism financing. The European Council conclusions of 17-18 December 2015 also stressed the need to take rapidly further action against terrorist finance in all domains.

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<sup>25</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "The European Agenda on Security", COM(2015) 185 final.

### Amendment 4

#### Proposal for a directive

##### Recital 5

(5) Union measures must also accurately reflect developments and commitments undertaken at international level. UN Security Council **Resolution** 2199 (2015) **urges** States to prevent terrorist groups from gaining access to international financial institutions.

(5) Union measures must also accurately reflect developments and commitments undertaken at international level. UN Security Council **Resolutions** 2199 (2015) **and 2253 (2015) urge** States to prevent terrorist groups from gaining access to international financial institutions.

## **Amendment 5**

### **Proposal for a directive**

#### **Recital 6**

(6) Providers of exchange services between virtual currencies and fiat currencies (that is to say currencies declared to be legal tender) **as well as** custodian wallet providers for virtual currencies are under no obligation to identify suspicious activity. Terrorist groups are thus able to transfer money into the Union's financial system or within virtual currency networks by concealing transfers or by benefiting from a certain degree of anonymity on those platforms. It is therefore essential to extend the scope of Directive (EU) 2015/849 so as to include virtual currency exchange platforms **and custodian wallet** providers. Competent authorities should be able to monitor the use of virtual currencies. This would provide a balanced and proportional approach, safeguarding technical advances and the high degree of transparency attained in the field of alternative finance and social entrepreneurship.

(6) Providers of exchange services between virtual currencies and fiat currencies (that is to say currencies declared to be legal tender), custodian wallet providers for virtual currencies, **issuers, administrators, intermediaries and distributors of virtual currencies, and administrators and providers of systems for online payments** are under no obligation to identify suspicious activity. Terrorist groups are thus able to transfer money into the Union's financial system or within virtual currency networks by concealing transfers or by benefiting from a certain degree of anonymity on those platforms. It is therefore essential to extend the scope of Directive (EU) 2015/849 so as to include virtual currency exchange platforms, **custodian wallet providers, issuers, administrators, intermediaries and distributors of virtual currencies, and administrators and providers of systems for online payments**. Competent authorities should be able to monitor the use of virtual currencies **in order to identify suspicious activities**. This would provide a balanced and proportional approach, **at the same time** safeguarding **both the innovative** technical advances **offered by such currencies** and the high

degree of transparency attained in the field of alternative finance and social entrepreneurship.

## Amendment 6

### Proposal for a directive Recital 7

*Text proposed by the Commission*

(7) *The credibility of virtual currencies will not rise if they are used for criminal purposes. In this context, anonymity will become more a hindrance than an asset for virtual currencies taking up and their potential benefits to spread. The inclusion of virtual exchange platforms and custodian wallet providers will not entirely address the issue of anonymity attached to virtual currency transactions, as a large part of the virtual currency environment will remain anonymous because users can also transact without exchange platforms or custodian wallet providers.* To combat the risks related to *the* anonymity, national Financial Intelligence Units (FIUs) should be able to associate virtual currency addresses to the identity of the owner of virtual currencies. *In addition, the possibility to allow users to self-declare to designated authorities on a voluntary basis should be further assessed.*

*Amendment*

(7) To combat the risks related to the anonymity, ***virtual currencies should not be anonymous and*** national Financial Intelligence Units (FIUs) should be able to associate virtual currency addresses to the identity of the owner of virtual currencies.

*(See the opinion of the European Central Bank of 12 October 2016 – CON/2016/49)*

*Justification*

*Whilst it is desirable to lay down rules to prevent the use of virtual currencies for money laundering, the European Union should not necessarily do so in such a way that endorses the use of such currencies.*

## Amendment 7

### Proposal for a directive Recital 11

(11) General purpose prepaid cards have legitimate uses and constitute an instrument contributing to financial inclusion. However, anonymous prepaid cards are easy to use in financing terrorist attacks and logistics. It is therefore essential to deny terrorist this means of financing their operations, by further reducing the limits and maximum amounts under which obliged entities are allowed not to apply certain customer due diligence measures provided by Directive (EU) 2015/849. Thus, while having due regard to consumers' needs in using general purpose prepaid instruments and not preventing the use of such instruments for promoting social and financial inclusion, it is essential to lower the existing thresholds for general purpose anonymous prepaid cards ***and suppress the customer due diligence exemption for their online use.***

(11) General purpose prepaid cards, ***which are considered to have a social value,*** have legitimate uses and constitute an ***accessible*** instrument contributing to financial inclusion. However, anonymous prepaid cards are easy to use in financing terrorist attacks and logistics. It is therefore essential to deny terrorist this means of financing their operations, by further reducing the limits and maximum amounts under which obliged entities are allowed not to apply certain customer due diligence measures provided by Directive (EU) 2015/849. Thus, while having due regard to consumers' needs in using general purpose prepaid instruments ***for legitimate purposes*** and not preventing the use of such instruments for promoting social and financial inclusion, it is essential to lower the existing thresholds for general purpose anonymous prepaid cards.

## **Amendment 8**

### **Proposal for a directive Recital 13**

(13) ***FIUs*** play an important role in identifying the financial operations of terrorist networks, especially across borders, and in detecting their financial backers. Due to a lack of prescriptive international standards, FIUs maintain significant differences as regards their functions, competences and powers. Those differences should however not affect an FIU's activity, particularly its capacity to develop preventive analyses in support of all the authorities in charge of intelligence, investigative and judicial activities, and international cooperation. FIUs should have access to information and be able to exchange it without impediments,

(13) ***Financial Intelligence Units (FIUs), as a decentralised and sophisticated network, help Member States to better cooperate with each other.*** ***They*** play an important role in identifying the financial operations of terrorist networks, especially across borders, and in detecting their financial backers. Due to a lack of prescriptive international standards, FIUs maintain significant differences as regards their functions, competences and powers. Those differences should however not affect an FIU's activity, particularly its capacity to develop preventive analyses in support of all the authorities in charge of intelligence, investigative and judicial

including through appropriate cooperation with law enforcement authorities. In all cases of suspected criminality and, in particular, in cases involving terrorism financing, information should flow directly and quickly without undue delays. It is therefore essential to further enhance FIUs' effectiveness and efficiency, by clarifying the powers of and cooperation between FIUs.

activities, and international cooperation. FIUs should have access to information and be able to exchange it without impediments, including through appropriate cooperation with law enforcement authorities. In all cases of suspected criminality and, in particular, in cases involving terrorism financing, information should flow directly and quickly without undue delays. It is therefore essential to further enhance FIUs' effectiveness and efficiency, by clarifying the powers of and cooperation between FIUs.

## **Amendment 9**

### **Proposal for a directive Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) The creation of a European FIU assisting and supporting Member States' FIUs in their tasks would be an efficient and cost-effective means to ensure reception, analysis and dissemination of money laundering and terrorist financing reports in the Internal Market.***

## **Amendment 10**

### **Proposal for a directive Recital 14**

*Text proposed by the Commission*

*Amendment*

(14) FIUs should be able to obtain from any obliged entity all the necessary information relating to their functions. Unfettered access to information is essential to ensure that flows of money can be properly traced and illicit networks and flows detected at an early stage. When FIUs need to obtain additional information from obliged entities based on a suspicion of money laundering, such suspicion may

(14) FIUs should be able to obtain from any obliged entity all the necessary information relating to their functions. Unfettered access to information is essential to ensure that flows of money can be properly traced and illicit networks and flows detected at an early stage. When FIUs need to obtain additional information from obliged entities based on a suspicion of money laundering, such suspicion may

be triggered by a prior suspicious transaction report reported to the FIU, but also through other means such as FIU's own analysis, intelligence provided by competent authorities or information held by another FIU. FIUs should therefore be able to obtain information from any obliged entity, even without a prior report being made by the individual obliged entity. A FIU should also be able to obtain such information on a request made by another Union FIU and to exchange the information with the requesting FIU.

be triggered by a prior suspicious transaction report reported to the FIU, but also through other means such as FIU's own analysis, intelligence provided by competent authorities or information held by another FIU. FIUs should therefore be able to obtain *the financial, administrative and law enforcement* information *they need to perform their duties properly* from any obliged entity, even without a prior report being made by the individual obliged entity. A FIU should also be able to obtain such information on a request made by another Union FIU and to exchange the information with the requesting FIU.

## Amendment 11

### Proposal for a directive

#### Recital 15

##### *Text proposed by the Commission*

(15) Delayed access to information by FIUs and other competent authorities on the identity of holders of bank and payment accounts hampers the detection of transfers of funds relating to terrorism. National data allowing the identification of bank and payments accounts belonging to one person is fragmented and therefore not accessible to FIUs and other competent authorities in a timely manner. It is therefore essential to establish centralised automated mechanisms, such as a register or data retrieval system in all Member States as an efficient means to get timely access to information on the identity of holders of bank and payment accounts, their proxy holders, and their beneficial owners.

##### *Amendment*

(15) Delayed access to information by FIUs and other competent authorities on the identity of holders of bank and payment accounts *and safe deposit boxes, especially anonymous ones*, hampers the detection of transfers of funds relating to terrorism. National data allowing the identification of bank and payments accounts *and safe deposit boxes* belonging to one person is fragmented and therefore not accessible to FIUs and other competent authorities in a timely manner. It is therefore essential to establish centralised automated mechanisms, such as a register or data retrieval system in all Member States as an efficient means to get timely access to information on the identity of holders of bank and payment accounts *and safe deposit boxes*, their proxy holders, and their beneficial owners.

## Amendment 12

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

(16) In order to respect privacy and protect personal data, such registries should store the minimum data necessary to the performance of AML investigations. The concerned data subjects should be informed that their data are recorded and accessible by FIUs and should be given a contact point for exercising their rights of access and rectification. When transposing these provisions, Member States should set out maximum retention periods (supported by adequate reasoning as to their duration) for the registration of personal data in registries and provide for their destruction once the information is no longer needed for the stated purpose. Access to the registries and databases should be limited on a need to know basis.

*Amendment*

(16) In order to respect privacy and protect personal data, such registries should store the minimum data necessary to the performance of AML investigations ***or investigations on the financing of terrorism***. The concerned data subjects should be informed that their data are recorded and accessible by FIUs and should be given a contact point for exercising their rights of access and rectification. When transposing these provisions, Member States should set out maximum retention periods (supported by adequate reasoning as to their duration) for the registration of personal data in registries and provide for their destruction once the information is no longer needed for the stated purpose. Access to the registries and databases should be limited on a need to know basis ***following a risk assessment***.

**Amendment 13**

**Proposal for a directive**  
**Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17a) The European Union Agency for Network and Information Security (ENISA) is the Union centre of network and information security expertise, and ENISA should be empowered to exchange information with law enforcement authorities without impediment in order to enable cyber security cooperation, which plays an important role in fighting against the financing of criminal activities, including terrorism.***

## Amendment 14

### Proposal for a directive Recital 17 b (new)

*Text proposed by the Commission*

*Amendment*

***(17b) The European Banking Authority (EBA) should be called upon to update its transparency exercise to face today's challenges in order to better prevent the use of financial systems for the purpose of money laundering or terrorist financing.***

## Amendment 15

### Proposal for a directive Recital 18

*Text proposed by the Commission*

*Amendment*

(18) The beneficial ownership threshold set out in Article 3(6)(a) of Directive (EU) 2015/849 does not distinguish between genuine commercial corporate entities and those that have no active business and are mostly used as an intermediary structure between the assets or income and the ultimate beneficial owner. For the latter, the set threshold is easily circumvented, leading to no identification of the natural persons who ultimately own or control the legal entity. In order to better clarify beneficial ownership information as regards intermediary structures that adopt a corporate form, it is necessary to establish a specific threshold from which indication of ownership is inferred.

(18) The beneficial ownership threshold set out in Article 3(6)(a) of Directive (EU) 2015/849 does not distinguish between genuine commercial corporate entities and those that have no active business and are mostly used as an intermediary structure between the assets or income and the ultimate beneficial owner. For the latter, the set threshold is easily circumvented, leading to no identification of the natural persons who ultimately own or control the legal entity. In order to better clarify beneficial ownership information as regards intermediary structures that adopt a corporate form, it is necessary to establish a specific threshold from which indication of ownership is inferred. ***That threshold should be low enough to cover most situations.***

### *Justification*

*The threshold needs to be low enough to cover most situations where legal persons are used to hide the identity of the beneficial owner. The threshold proposed to be inserted in Article 3, point (6)(a)(i) of Directive (EU) 2015/849 is 10%.*



## Amendment 16

### Proposal for a directive

#### Recital 21

##### *Text proposed by the Commission*

(21) The specific factor determining the Member State responsible for the monitoring and registration of beneficial ownership information of trusts and similar legal arrangements should be clarified. In order to avoid that, due to differences in the legal systems of Member States, certain trusts are not monitored or registered anywhere in the Union, all trusts and similar legal arrangements should be registered where they are administered. In order to ensure the effective monitoring and registration of information on the beneficial ownership of trusts, cooperation among Member States is also necessary.

##### *Amendment*

(21) The specific factor determining the Member State responsible for the monitoring and registration of beneficial ownership information of trusts and similar legal arrangements should be clarified. In order to avoid that, due to differences in the legal systems of Member States, certain trusts are not monitored or registered anywhere in the Union, all trusts and similar legal arrangements should be registered where they are ***created, administered or operated***. In order to ensure the effective monitoring and registration of information on the beneficial ownership of trusts, cooperation among Member States is also necessary.

## Amendment 17

### Proposal for a directive

#### Recital 22

##### *Text proposed by the Commission*

(22) Public access by way of compulsory disclosure of certain information on the beneficial ownership of companies provides additional guarantees to third parties wishing to do business with those companies. Certain Member States have taken steps or announced their intention to make information contained in registers of beneficial ownership available to the public. The fact that not all Member States would make information publicly available or differences in the information made available and its accessibility may lead to different levels of protection of third parties in the Union. In a well-functioning internal market, there is a need for ***coordination*** to avoid distortions.

##### *Amendment*

(22) Public access by way of compulsory disclosure of certain information on the beneficial ownership of companies provides additional guarantees to third parties wishing to do business with those companies. Certain Member States have taken steps or announced their intention to make information contained in registers of beneficial ownership available to the public. The fact that not all Member States would make information publicly available or differences in the information made available and its accessibility may lead to different levels of protection of third parties in the Union. In a well-functioning internal market, there is a need for ***a coordinated approach*** to avoid ***this***

*sort of distortions and for greater transparency, which is key to maintaining public confidence in the financial system.*

## **Amendment 18**

### **Proposal for a directive Recital 35**

*Text proposed by the Commission*

(35) In order to ensure proportionality, the beneficial ownership information in respect of any other trusts than those which consist of any property held by, or on behalf of, a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business with a view to gain profit should only be available to parties holding a legitimate interest. The legitimate interest with respect to money laundering, terrorist financing and the associated predicate offences should be justified by readily available means, such as statutes or mission statement of non-governmental organisations, or on the basis of demonstrated previous activities relevant to the fight against money laundering and terrorist financing or associated predicate offences, or a proven track record of surveys or actions in that field.

*Amendment*

(35) In order to ensure ***legitimacy and*** proportionality, the beneficial ownership information in respect of any other trusts than those which consist of any property held by, or on behalf of, a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business with a view to gain profit should only be available to parties holding a legitimate interest. The legitimate interest with respect to money laundering, terrorist financing and the associated predicate offences should be justified by readily available means, such as statutes or mission statement of non-governmental organisations, or on the basis of demonstrated previous activities relevant to the fight against money laundering and terrorist financing or associated predicate offences, or a proven track record of surveys or actions in that field. ***A legitimate interest could be envisaged where the beneficial owner or the trustee has a public function or has had a public function in the last five years.***

## **Amendment 19**

### **Proposal for a directive Recital 41 a (new)**

*Text proposed by the Commission*

*Amendment*

***(41a) The European Central Bank delivered an opinion on 12 October***

2016<sup>1a</sup>.

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<sup>1a</sup> *Not yet published in the Official Journal.*

*Justification*

*It is appropriate to refer to the opinion of the European Central Bank.*

**Amendment 20**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive (EU) 2015/849

Article 2 – paragraph 1 – point 3 – point g

*Text proposed by the Commission*

(g) providers engaged primarily and professionally in exchange services between virtual currencies and ***fiat*** currencies;

*Amendment*

(g) providers engaged primarily and professionally in exchange services between virtual currencies and ***legally established*** currencies;

*(See the opinion of the European Central Bank of 12 October 2016 – CON/2016/49)*

*Justification*

*Reference should more properly be made to ‘legally established currencies’.*

**Amendment 21**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive (EU) 2015/849

Article 2 – paragraph 1 – point 3 – point h a (new)

*Text proposed by the Commission*

*Amendment*

***(ha) issuers, administrators, intermediaries and distributors of virtual currencies;***

**Amendment 22**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive (EU) 2015/849

Article 2 – paragraph 1 – point 3 – point h b (new)

*Text proposed by the Commission*

*Amendment*

**(hb) administrators and providers of  
online payment system services.**

**Amendment 23**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2 – point -a (new)**

Directive (EU) 2015/849

Article 3 – paragraph 1 – point 4 – point f

*Present text*

*Amendment*

**(f) all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months.**

**(-a) in point (4), point (f) is replaced by the following:**

**“(f) offences relating to direct taxes and indirect taxes as defined in the national laws of the Member States, taking into account Article 57 of this Directive.”**

**Amendment 24**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2 – point a**

Directive (EU) 2015/849

Article 3 – paragraph 1 – point 6 – point a – point i – subparagraph 2 a

*Text proposed by the Commission*

*Amendment*

For the purposes of Article 13(1)(b) and Article 30 of this Directive, the indication of ownership or control set out in the second **paragraph** is reduced to 10% **whenever the legal entity is a Passive**

For the purposes of Article 13(1)(b) and Article 30 of this Directive, the indication of ownership or control set out in the second **subparagraph** is reduced to 10%”;

## **Amendment 25**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2 – point a a (new)**

Directive (EU) 2015/849

Article 3 – paragraph 1 – point 6 – point a – point ii

#### *Present text*

(ii) if, after having exhausted all possible means ***and provided there are no grounds for suspicion, no person under point (i) is identified, or if*** there is any doubt that the person(s) identified are the beneficial owner(s), ***the*** natural person(s) ***who hold*** the position of senior managing official(s), ***the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;***

#### *Amendment*

***(aa) in point (6) (a), point (ii) is replaced by the following:***

***“(ii) if, after having exhausted all possible means, the entity fails to provide the identity of any natural person who meets the criteria set out in point (i), the obliged entities shall record that no beneficial owner exists and keep records of the actions taken in order to identify the beneficial ownership under point (i). Where there is any doubt that the person(s) identified are the beneficial owner(s), a record of that doubt shall be made. In addition, obliged entities shall identify and verify the identity of the relevant natural person who holds the position of senior managing official, who shall be identified as the "senior manager" (and not as "beneficial owner"), and record details of all legal owners of the entity;”***

## **Amendment 26**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2 – point c**

Directive (EU) 2015/849

Article 3 – paragraph 1 – point 18

#### *Text proposed by the Commission*

(18) 'virtual currencies' means a digital representation of value that is neither issued by a central bank or a public authority, nor ***necessarily*** attached to a ***fiat***

#### *Amendment*

(18) 'virtual currencies' means a digital representation of value that is neither issued by a central bank or a public authority, nor attached to a ***legally***

currency, but is accepted by natural or legal persons as a means of **payment** and can be transferred, stored or traded electronically.

**established** currency, **which does not possess the legal status of currency or money**, but is accepted by natural or legal persons as a means of **exchange or for other purposes**, and can be transferred, stored or traded electronically. **Virtual currencies cannot be anonymous.**

*(See the opinion of the European Central Bank of 12 October 2016 – CON/2016/49)*

#### *Justification*

*The definition of virtual currency needs improving, as suggested by the European Central Bank.*

### **Amendment 27**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 2 a (new)**

Directive (EU) 2015/849

Article 7 – paragraph 2 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**(2a) in Article 7(2), the following subparagraph is added:**

**“If a Member State confers the competence assigned to the authority referred to in the first subparagraph to other authorities, in particular those at regional or local level, efficient and effective coordination shall be ensured between all the authorities involved. If more than one unit within an authority to which the competence is conferred is in charge of the tasks referred to in the first subparagraph, efficient and effective coordination and cooperation shall be ensured between the different units.”**

### **Amendment 28**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 2 b (new)**

Directive (EU) 2015/849

Article 9 – paragraph 2 – point c a (new)

**(2b) in Article 9(2), the following point is added:**

**“(ca) the existence of robust systems to ensure that information on beneficial ownership is available to the competent authorities of the third country without impediment;”**

## **Amendment 29**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2 c (new)**

Directive (EU) 2015/849

Article 9 – paragraph 2 – point c b (new)

**(2c) in Article 9(2), the following point is added:**

**“(cb) the existence of a proper sanctions regime in case of breach of law;”**

## **Amendment 30**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2 d (new)**

Directive (EU) 2015/849

Article 10 – paragraph 1

1. Member States shall prohibit their credit institutions and financial institutions from keeping anonymous accounts **or** anonymous passbooks. Member States shall, in any event, require that the owners and beneficiaries of existing anonymous accounts **or** anonymous passbooks be subject to customer due diligence measures as soon as possible and in any event before such accounts **or** passbooks are used in any

**(2d) in Article 10, paragraph 1 is replaced by the following:**

“1. Member States shall prohibit their credit institutions and financial institutions from keeping anonymous accounts, anonymous passbooks **or anonymous safe deposit boxes**. Member States shall, in any event, require that the owners and beneficiaries of existing anonymous accounts, anonymous passbooks **or anonymous safe deposit boxes** be subject to customer due diligence measures as soon as possible and in any event before

way.

such accounts, passbooks *or deposit boxes* are used in any way”.

## Amendment 31

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3 – point c

Directive (EU) 2015/849

Article 12 – paragraph 3

#### *Text proposed by the Commission*

3. Member States shall ensure that Union credit institutions and financial institutions acting as acquirers only accept payments carried out with prepaid cards issued in third countries where such cards meet requirements equivalent to those set out in points (a), (b), (c) of the first subparagraph of Article 13(1) and Article 14, or can be considered to meet the requirements in paragraphs 1 and 2 of this Article.

#### *Amendment*

3. Member States shall ensure that Union credit institutions and financial institutions acting as acquirers only accept payments carried out with prepaid cards issued in third countries where such cards meet requirements equivalent to those set out in points (a), (b), (c) of the first subparagraph of Article 13(1) and Article 14, or can be considered to meet the requirements in paragraphs 1 and 2 of this Article. ***The mailing or shipping of prepaid cards out of the jurisdiction of the Member States must be immediately reported and registered by the competent persons.***

## Amendment 32

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4 a (new)

Directive (EU) 2015/849

Article 13 – paragraph 1 – subparagraph 1 – point a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(4a) in the first subparagraph of Article 13(1), the following point is added:***

***“(aa) screening the customer’s and beneficial owner’s names against the EU, UN and other relevant sanctions lists;”***

## Amendment 33



**Proposal for a directive**  
**Article 1 – paragraph 1 – point 4 b (new)**  
Directive (EU) 2015/849  
Article 13 a (new)

*Text proposed by the Commission*

*Amendment*

**(4b) the following Article is inserted:**

**“Article 13a**

***By January 2018, the Commission shall set up a publicly accessible platform that interconnects UN, EU, Member States’s, and other relevant lists of persons, groups, and entities subject to sanctions”.***

**Amendment 34**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive (EU) 2015/849  
Article 14 – paragraph 5

*Text proposed by the Commission*

*Amendment*

5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or when the obliged entity has a duty in the course of the relevant calendar year, to contact the customer for the purpose of reviewing any information related to the beneficial owner(s), in particular under Directive 2011/16/EU.

5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or when the obliged entity has a duty in the course of the relevant calendar year, to contact the customer ***as soon as possible*** for the purpose of reviewing any information related to the beneficial owner(s), in particular under Directive 2011/16/EU. ***Member States shall require obliged entities to contact the customer for the purpose of reviewing any information related to the beneficial owner(s) not later than ... [one year after the date of the entry into application of this directive].***

**Amendment 35**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 6**

Directive (EU) 2015/849

Article 18 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

In the cases referred to in Articles 19 to 24, as well as in other cases of **higher** risk that are identified by Member States or obliged entities, Member States shall require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.

*Amendment*

In the cases referred to in Articles 19 to 24, as well as in other cases of risk that are identified by Member States or obliged entities, Member States shall require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.

*Justification*

*It is not just in cases of higher risk, but also in all other cases of identified risk that Member States should require the obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.*

**Amendment 36**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 7**

Directive (EU) 2015/849

Article 18 a – paragraph 1 – point a

*Text proposed by the Commission*

(a) obtaining additional information on the customer;

*Amendment*

(a) obtaining additional information on the customer **and on the beneficial owner**;

**Amendment 37**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 7**

Directive (EU) 2015/849

Article 18 a – paragraph 1 – point c

*Text proposed by the Commission*

(c) obtaining information on the source of funds or source of wealth of the customer;

*Amendment*

(c) obtaining information on the source of funds or source of wealth of the customer **and of the beneficial owner**;

## Amendment 38

### Proposal for a directive

#### Article 1 – paragraph 1 – point 7 a (new)

Directive (EU) 2015/849

Article 26 – paragraph 2

#### *Present text*

2. Member States shall prohibit obliged entities from relying on third parties established in high-risk third countries. ***Member States may exempt branches and majority-owned subsidiaries of obliged entities established in the Union from that prohibition where those branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 45.***

#### *Amendment*

***(7a) Article 26(2) is replaced by the following:***

“2. Member States shall prohibit obliged entities from relying on third parties established in high-risk third countries.”

## Amendment 39

### Proposal for a directive

#### Article 1 – paragraph 1 – point 9 – point -a (new)

Directive (EU) 2015/849

Article 30 – paragraph 1 – subparagraph 2 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(-a) in paragraph 1, the following subparagraph is added:***

***“Member States shall ensure that owners of shares or voting rights or ownership interest in corporate and other legal entities, including through bearer shareholdings, or through control via other means, disclose to those entities whether they are holding the interest in their own name and on their own account or on behalf of another person. Member States shall ensure that the natural person(s) who hold the position of senior managing official(s) in corporate and other legal entities, disclose to those***

*entities whether they are holding the position in their own name or on behalf of another person.”*

#### **Amendment 40**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 9 – point a a (new)**

Directive (EU) 2015/849

Article 30 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

*(aa) the following paragraph is inserted:*

*“5a. The information held in the register referred to in paragraph 3 of this Article on any corporate and legal entities other than those referred to in point (a) of Article 1a of Directive 2009/101/EC shall be publicly accessible.*

*The information publicly accessible shall consist of at least the name, the date of birth, the nationality, the country of residence, contact details (without disclosure of a home address), the nature and extent of the beneficial interest held of the beneficial owner as defined in point (6) of Article 3.*

*For the purpose of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and open data standards, and subject to online registration. Member States may introduce a fee to cover the administrative costs.”*

#### **Amendment 41**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 9 – point b**

Directive (EU) 2015/849

Article 30 – paragraph 6 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

6. The central register referred to in paragraph 3 shall ensure timely and unrestricted access by competent authorities and FIUs to all information held in the central register without any restriction and without alerting the entity concerned. It shall also allow timely access by obliged entities when taking customer due diligence measures in accordance with Chapter II.

6. The central register referred to in paragraph 3 shall ensure, ***with a view to guaranteeing efficiency***, timely and unrestricted access by competent authorities and FIUs to all information held in the central register without any restriction and without alerting the entity concerned. It shall also allow timely ***and unrestricted*** access by obliged entities when taking customer due diligence measures in accordance with Chapter II.

*Justification*

*Ensuring timely and unrestricted access by competent authorities and FIUs to all information held in the central register without any restriction and without alerting the entity concerned will guarantee the efficiency of the central register referred to in this amending proposal.*

**Amendment 42**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 9 – point b**

Directive (EU) 2015/849

Article 30 – paragraph 6 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

Competent authorities granted access to the central register referred to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including tax authorities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets."

Competent authorities granted access to the central register referred to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including tax authorities, ***supervisory authorities*** and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets.

*Justification*

*A sound financial system equipped with suitable supervisory and analytical resources able to detect abnormal transaction patterns can help to ensure:*

*- greater awareness of terrorist and criminal connections and networks, as well as any*

*threats arising in this connection;*

*- effective preventive measures by all relevant authorities (including supervisory authorities).*

*Supervisory authorities must therefore be included in the list.*

#### **Amendment 43**

##### **Proposal for a directive**

**Article 1 – paragraph 1 – point 9 – point b a (new)**

Directive (EU) 2015/849

Article 30 – paragraph 8 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) in paragraph 8, the following subparagraph is added:***

***“Before entering into a new customer relationship with a corporate or other legal entity subject to the registration of beneficial ownership information, the obliged entities shall collect proof of that registration”.***

#### **Amendment 44**

##### **Proposal for a directive**

**Article 1 – paragraph 1 – point 9 – point c**

Directive (EU) 2015/849

Article 30 – paragraph 9 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

***In exceptional circumstances to be laid down in national law, where the access referred to in point (b) of paragraph 5 would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis.***

***deleted***

#### **Amendment 45**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 9 – point c**

Directive (EU) 2015/849

Article 30 – paragraph 10 – subparagraph 3

*Text proposed by the Commission*

Member States shall cooperate among themselves and with the Commission in order to implement the different types of access in accordance with paragraph 5.

*Amendment*

Member States shall cooperate among themselves and with the Commission in order to implement the different types of access in accordance with paragraph 5 **and taking into account the latest international standards applicable.**

*Justification*

*A harmonized approach is necessary at EU level, while ensuring complete fulfilment of international commitments.*

*Implementation of the latest international standards highlights the importance of extending the scope of information available to financial intelligence units and access thereto.*

**Amendment 46**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 10 – point a**

Directive (EU) 2015/849

Article 31 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

Member States shall ensure that this Article applies to trusts and other types of legal arrangements having a structure or functions similar to trusts, such as, inter alia, fiducie, Treuhand or fideicomiso.

*Amendment*

Member States shall ensure that this Article applies to trusts and other types of **legal instrument or** legal arrangements having a structure or functions similar to trusts, such as, inter alia, fiducie, Treuhand, **waqf** or fideicomiso, **and all existing or future legal arrangements, which are similar in terms of structure or function.**

**Amendment 47**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 10 – point a**

Directive (EU) 2015/849

Article 31 – paragraph 1 – subparagraph 2 – introductory part

*Text proposed by the Commission*

Each Member State shall require that trustees of any express trust administered in that Member State obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

*Amendment*

Each Member State shall require that trustees of any express trust ***created***, administered ***or operated*** in that Member State ***under the law of a Member State or of a third country*** obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

**Amendment 48**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 10 – point b**

Directive (EU) 2015/849

Article 31 – paragraph 3 a

*Text proposed by the Commission*

3a. The information referred to in paragraph 1 shall be held in a central register set up by the Member State where the trust is administered;

*Amendment*

3a. The information referred to in paragraph 1 shall be held in a central register set up by the Member State where the trust is ***created***, administered ***or operated***;

**Amendment 49**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 10 – point c**

Directive (EU) 2015/849

Article 31 – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

Competent authorities granted access to the central register referred to in paragraph 3a shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including, tax authorities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing and seizing or freezing and confiscating criminal assets.

*Amendment*

Competent authorities granted access to the central register referred to in paragraph 3a shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including, tax authorities, ***supervisory authorities*** and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing and seizing or freezing and confiscating criminal



assets.

### *Justification*

*Supervisory authorities are among those fulfilling an essential function.*

## **Amendment 50**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 10 – point d**

Directive (EU) 2015/849

Article 31 – paragraph 4 a – subparagraph 1

#### *Text proposed by the Commission*

The information held in the register referred to in paragraph 3a of this Article with respect to any other trusts than those referred to in **Article 7b (b)** of Directive (EC) 2009/101 shall be ***accessible to any person or organisation that can demonstrate a legitimate interest.***

#### *Amendment*

The information held in the register referred to in paragraph 3a of this Article with respect to any other trusts than those referred to in ***point (b) of Article 1a*** of Directive 2009/101/EC shall be ***publicly accessible.***

## **Amendment 51**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 10 – point d**

Directive (EU) 2015/849

Article 31 – paragraph 4 a – subparagraph 2

#### *Text proposed by the Commission*

The information accessible ***to persons and organisations that can demonstrate a legitimate interest shall consist of*** the name, ***the month and year*** of birth, the nationality ***and*** the country of residence of the beneficial owner as defined in Article 3(6)(b).

#### *Amendment*

The information ***publicly accessible shall consist of at least*** the name, ***the date*** of birth, the nationality, the country of residence, ***contact details (without disclosure of a home address), the nature and extent of the beneficial interest held*** of the beneficial owner as defined in ***point (6) of Article 3.***

## **Amendment 52**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 10 – point d**

Directive (EU) 2015/849

*Text proposed by the Commission*

*Amendment*

***For the purpose of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and open data standards, as defined in Article 2(7) of Directive 2003/98/EC of the European Parliament and of the Council<sup>1a</sup>, and subject to online registration.***

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<sup>1a</sup> *Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90).*

## **Amendment 53**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 10 – point d**

Directive (EU) 2015/849

Article 31 – paragraph 4 b

*Text proposed by the Commission*

*Amendment*

(4b) Whenever entering into a new customer relationship with a trust or other legal arrangement subject to registration of beneficial ownership information pursuant to paragraph 3a, the obliged entities shall collect proof of registration whenever applicable.

(4b) Whenever entering into a new customer relationship with a trust or other ***type of legal instrument or*** legal arrangement subject to registration of beneficial ownership information pursuant to paragraph 3a, the obliged entities shall collect proof of registration whenever applicable.

### *Justification*

*In addition to legal arrangements, there may also be legal instruments, as indicated above. Legal instruments are distinct from legal arrangements and must therefore be listed separately. To ensure that this directive applies to all legal structures having functions similar to trusts, the phrase ‘legal instruments’ must be added.*

## Amendment 54

### Proposal for a directive

#### Article 1 – paragraph 1 – point 10 – point e

Directive (EU) 2015/849

Article 31 – paragraph 7 a – subparagraph 1

#### *Text proposed by the Commission*

7a. In exceptional circumstances laid down in national law, where the access referred to in paragraphs 4 and 4a would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis.

#### *Amendment*

7a. In exceptional circumstances laid down in national law, where the access referred to in paragraphs 4 and 4a would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. ***Exemptions must be reassessed at regular intervals in order to avoid abuse. Where an exemption is granted, this must be clearly indicated in the register and justified in writing.***

## Amendment 55

### Proposal for a directive

#### Article 1 – paragraph 1 – point 11 – point a

Directive (EU) 2015/849

Article 32 – paragraph 3 – subparagraph 1 – fourth sentence

#### *Text proposed by the Commission*

It shall be able to obtain and use information from any obliged entity.

#### *Amendment*

It shall be able to ***request***, obtain and use ***additional*** information from any obliged entity.

## Amendment 56

### Proposal for a directive

#### Article 1 – paragraph 1 – point 12

Directive (EU) 2015/849

Article 32 a – paragraph 1

#### *Text proposed by the Commission*

#### *Amendment*

1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts as defined in Directive 2007/64/EC and bank accounts held by a credit institution within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.

1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts as defined in Directive 2007/64/EC and bank accounts **and safe deposit boxes** held by a credit institution within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.

## **Amendment 57**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 12**

Directive (EU) 2015/849

Article 32 a – paragraph 3 – indent 3 a (new)

*Text proposed by the Commission*

*Amendment*

- ***for the safe deposit boxes: the name of the renter and the duration of the lease.***

## **Amendment 58**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 12**

Directive (EU) 2015/849

Article 32 a – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Member States may introduce exemptions from the obligations referred to in paragraphs 1 to 3 regarding passive bank accounts.***

***For the purpose of this paragraph, ‘passive bank account’ means a bank account with a balance of no more than EUR 5000 to and from which no payments, excluding interest payments and other normal service fees charged by***

*the service provider, have been made during the past 36 months.*

## **Amendment 59**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 12 a (new)**

Directive (EU) 2015/849

Article 32 b (new)

*Text proposed by the Commission*

*Amendment*

**(12a) the following Article is inserted:**

#### **“Article 32b**

**1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling land and buildings within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.**

**2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible, at national level, to FIUs and competent authorities. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 to any other FIUs in a timely manner in accordance with Article 53.**

**3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:**

**– for the real property owner and any person purporting to act on behalf of the owner: the name, complemented by the other identification data required under the national provisions transposing point (a) of Article 13(1) or a unique identification number;**

– *for the beneficial owner of the real property: the name, complemented by the other identification data required under the national provisions transposing point (b) of Article 13(1) or a unique identification number;*

- *for the real property: date and cause of ownership acquisition, mortgage and rights other than ownership;*

- *for the land: location, parcel number, land category (current state of land), parcel area (area of land);*

- *for the building: location, parcel number, building number, type, structure, floor area.*

**4. Member States shall cooperate among themselves and with the Commission in order to establish by 1 January 2018 a European real property register in accordance with paragraph 1 building on the European Land Information Service (EULIS)".**

## Amendment 60

### Proposal for a directive

#### Article 1 – paragraph 1 – point 16

Directive (EU) 2015/849

Article 47 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall ensure that providers of exchanging services between virtual currencies and *fiat* currencies, custodian wallet providers, currency exchange and cheque cashing offices, and trust or company service providers are licensed or registered, and that providers of gambling services are regulated."

#### *Amendment*

1. Member States shall ensure that providers of exchanging services between virtual currencies and ***legally established*** currencies, custodian wallet providers, currency exchange and cheque cashing offices, ***issuers, administrators, intermediaries and distributors of virtual currencies, administrators and providers of systems for online payments,*** and trust or company service providers are licensed or registered, and that providers of gambling services are regulated, ***including by the implementation of measures on the prevention of the use of the financial***

*system for the purposes of money laundering or terrorist financing.*

## **Amendment 61**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 18**

Directive (EU) 2015/849

Article 50 a – introductory part

#### *Text proposed by the Commission*

Member States shall ***not prohibit or place unreasonable or unduly restrictive conditions on*** the exchange of information ***or*** assistance between competent authorities. In particular Member States shall ensure that competent authorities do not refuse a request for assistance on the grounds that:

#### *Amendment*

Member States shall ***ensure*** the exchange of information ***and*** assistance between competent authorities ***without setting unreasonable or unduly restrictive conditions***. In particular Member States shall ensure that competent authorities do not refuse a request for assistance on the grounds that:

## **Amendment 62**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 18 a (new)**

Directive (EU) 2015/849

Article 51 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(18a) the following Article is inserted:***

#### ***“Article 51a***

***By June 2017, the Commission shall present a legislative proposal to create a European FIU that is to coordinate, assist and support Member States FIUs. This European FIU shall lend support to national FIUs in maintaining and developing the technical infrastructure for ensuring the exchange of information, assist them in joint analysis of cross border cases and produce its own strategic analysis and coordinate the work of Member States FIUs for cross border cases. For this purpose, the national FIUs shall automatically exchange information***

*with this European FIU when investigating a money laundering case. This legislative proposal shall take into account the results of the Commission mapping of the Member States FIUs' powers and obstacles to cooperation in order to design a well-balanced and tailor-made system of cooperation”.*

## **Amendment 63**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 18 b (new)**

Directive (EU) 2015/849

Article 51 b (new)

*Text proposed by the Commission*

*Amendment*

**(18b) the following Article is inserted:**

**“Article 51b**

**1. Member States shall ensure that their FIUs are able to cooperate and exchange relevant information with their foreign counterparts.**

**2. Member States shall ensure that EU FIUs are able to make inquiries on behalf of foreign counterparts where this can be relevant to an analysis of financial transactions. At a minimum, inquiries shall include:**

- searching its own databases, which would include information related to suspicious transaction reports;**
- searching other databases to which it may have direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases.**

**Where permitted to do so, FIUs shall also contact other competent authorities and financial institutions in order to obtain relevant information”.**



## Amendment 64

### Proposal for a directive

#### Article 1 – paragraph 1 – point 20

Directive (EU) 2015/849

Article 55 – paragraph 2

#### *Text proposed by the Commission*

2. Member States shall ensure that the requested FIU's prior consent to disseminate the information to competent authorities is granted promptly and to the largest extent possible, regardless of the type of associated predicate offences. The requested FIU shall not refuse its consent to such dissemination unless this would fall beyond the scope of application of its AML/CFT provisions, could lead to impairment of a criminal investigation, would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State of the requested FIU, or would otherwise not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained.

#### *Amendment*

2. Member States shall ensure that the requested FIU's prior consent to disseminate the information to competent authorities is granted promptly and to the largest extent possible, regardless of the type of associated predicate offences. The requested FIU shall not refuse its consent to such dissemination unless this would fall beyond the scope of application of its AML/CFT provisions, could lead to impairment of a criminal investigation, would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State of the requested FIU, or would otherwise not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained. ***The fundamental rights of all parties, including the right to data protection, must always be fully respected.***

## Amendment 65

### Proposal for a directive

#### Article 2 – paragraph 1 – point 2

Directive 2009/101/EC

Article 7 b – paragraph 3

#### *Text proposed by the Commission*

3. Member States shall ensure that the beneficial ownership information referred to in paragraph 1 of this Article shall also be made publicly available through the system of interconnection of registers referred to in Article 4a(2).

#### *Amendment*

3. Member States shall ensure that the beneficial ownership information referred to in paragraph 1 of this Article shall also be made publicly available through the system of interconnection of registers referred to in Article 4a(2), ***in accordance with data protection rules and open data***

*standards, as defined in Article 2(7) of Directive 2003/98/EC, and subject to online registration.*

## **Amendment 66**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 2**

Directive 2009/101/EC

Article 7 b – paragraph 4

#### *Text proposed by the Commission*

4. In exceptional circumstances laid down in national law, where the access to the information set out in paragraph 1 would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from the compulsory disclosure of to all or part of the information on the beneficial ownership on a case-by-case basis.

#### *Amendment*

4. In exceptional circumstances laid down in national law, where the access to the information set out in paragraph 1 would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from the compulsory disclosure of to all or part of the information on the beneficial ownership on a case-by-case basis. ***Exemptions must be reassessed at regular intervals in order to avoid abuse. Where an exemption is granted, this must be clearly indicated in the register and justified in writing.***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Prevention of the use of the financial system for the purposes of money laundering or terrorist financing
<b>References</b>	COM(2016)0450 – C8-0265/2016 – 2016/0208(COD)
<b>Committees responsible</b> Date announced in plenary	ECON 12.9.2016 LIBE 12.9.2016
<b>Opinion by</b> Date announced in plenary	JURI 12.9.2016
<b>Rapporteur</b> Date appointed	Kostas Chrysogonos 12.10.2016
<b>Rule 55 – joint committee meetings</b> Date announced in plenary	6.10.2016
<b>Discussed in committee</b>	28.11.2016
<b>Date adopted</b>	12.1.2017
<b>Result of final vote</b>	+: 18 –: 1 0: 0
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Therese Comodini Cachia, Mady Delvaux, Mary Honeyball, Gilles Lebreton, António Marinho e Pinto, Julia Reda, Evelyn Regner, József Szájer, Axel Voss, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Daniel Buda, Sergio Gaetano Cofferati, Angel Dzhambazki, Heidi Hautala, Constance Le Grip, Victor Negrescu
<b>Substitutes under Rule 200(2) present for the final vote</b>	Andrey Novakov

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Prevention of the use of the financial system for the purposes of money laundering or terrorist financing		
<b>References</b>	COM(2016)0450 – C8-0265/2016 – 2016/0208(COD)		
<b>Date submitted to Parliament</b>	5.7.2016		
<b>Committees responsible</b> Date announced in plenary	ECON 12.9.2016	LIBE 12.9.2016	
<b>Committees asked for opinions</b> Date announced in plenary	DEVE 12.9.2016	INTA 12.9.2016	JURI 12.9.2016
<b>Rapporteurs</b> Date appointed	Krišjānis Kariņš 15.6.2016	Judith Sargentini 15.6.2016	
<b>Rule 55 – Joint committee procedure</b> Date announced in plenary	6.10.2016		
<b>Discussed in committee</b>	1.12.2016	12.1.2017	
<b>Date adopted</b>	28.2.2017		
<b>Result of final vote</b>	+: –: 0:	88 1 4	
<b>Members present for the final vote</b>	Burkhard Balz, Hugues Bayet, Heinz K. Becker, Pervenche Berès, Malin Björk, Udo Bullmann, Caterina Chinnici, Fabio De Masi, Agustín Díaz de Mera García Consuegra, Frank Engel, Cornelia Ernst, Tanja Fajon, Markus Ferber, Raymond Finch, Sven Giegold, Neena Gill CBE, Ana Gomes, Nathalie Griesbeck, Roberto Gualtieri, Danuta Maria Hübner, Cătălin Sorin Ivan, Eva Joly, Othmar Karas, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Georgios Kyrtos, Alain Lamassoure, Juan Fernando López Aguilar, Olle Ludvigsson, Monica Macovei, Ivana Maletić, Fulvio Martusciello, Gabriel Mato, Roberta Metsola, Bernard Monot, Claude Moraes, Luigi Morgano, Alessandra Mussolini, József Nagy, Luděk Niedermayer, Péter Niedermüller, Stanisław Ożóg, Dimitrios Papadimoulis, Soraya Post, Dariusz Rosati, Pirkko Ruohonen-Lerner, Judith Sargentini, Molly Scott Cato, Pedro Silva Pereira, Birgit Sippel, Csaba Sógor, Theodor Dumitru Stolojan, Paul Tang, Traian Ungureanu, Bodil Valero, Marco Valli, Miguel Viegas, Jakob von Weizsäcker, Cecilia Wikström, Kristina Winberg, Tomáš Zdechovský		
<b>Substitutes present for the final vote</b>	Richard Corbett, Pál Csáky, Mady Delvaux, Herbert Dorfmann, Bas Eickhout, Maria Grapini, Anna Hedh, Ramón Jáuregui Atondo, Teresa Jiménez-Becerril Barrio, Krišjānis Kariņš, Jean Lambert, Jeroen Lenaers, Paloma López Bermejo, Thomas Mann, Angelika Mlinar, John Procter, Emil Radev, Michel Reimon, Andreas Schwab, Barbara Spinelli, Tibor Szanyi, Romana Tomc, Nils Torvalds, Elissavet Vozemberg-Vrionidi, Lieve Wierinck		
<b>Substitutes under Rule 200(2) present for the final vote</b>	Luke Ming Flanagan, Kinga Gál, Peter Kouroumbashev, Monica Macovei, Momchil Nekov, Paul Tang, Pavel Telička, Traian Ungureanu, Elissavet Vozemberg-Vrionidi, Lieve Wierinck, Branislav		

	Škripek
<b>Date tabled</b>	9.3.2017

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

88	+
ALDE	Nathalie Griesbeck, Angelika Mlinar, Pavel Telička, Nils Torvalds, Lieve Wierinck, Cecilia Wikström
ECR	Monica Macovei, Stanisław Ożóg, John Procter, Pirkko Ruohonen-Lerner, Branislav Škripek
EFDD	Marco Valli, Kristina Winberg
ENF	Bernard Monot
GUE/NGL	Malin Björk, Fabio De Masi, Cornelia Ernst, Luke Ming Flanagan, Paloma López Bermejo, Dimitrios Papadimoulis, Barbara Spinelli, Miguel Viegas
PPE	Heinz K. Becker, Pál Csáky, Herbert Dorfmann, Agustín Díaz de Mera García Consuegra, Kinga Gál, Danuta Maria Hübner, Teresa Jiménez-Becerril Barrio, Othmar Karas, Krišjānis Kariņš, Barbara Kudrycka, Georgios Kyrtos, Alain Lamassoure, Jeroen Lenaers, Ivana Maletić, Thomas Mann, Fulvio Martusciello, Gabriel Mato, Roberta Metsola, Alessandra Mussolini, József Nagy, Luděk Niedermayer, Emil Radev, Dariusz Rosati, Theodor Dumitru Stolojan, Csaba Sógor, Romana Tomc, Traian Ungureanu, Elissavet Vozemberg-Vrionidi, Tomáš Zdechovský
S&D	Hugues Bayet, Pervenche Berès, Udo Bullmann, Caterina Chinnici, Richard Corbett, Mady Delvaux, Tanja Fajon, Neena Gill CBE, Ana Gomes, Maria Grapini, Roberto Gualtieri, Anna Hedh, Cătălin Sorin Ivan, Ramón Jáuregui Atondo, Peter Kouroumbashev, Cécile Kshetu Kyenge, Dietmar Köster, Olle Ludvigsson, Juan Fernando López Aguilar, Claude Moraes, Luigi Morgano, Momchil Nekov, Péter Niedermüller, Soraya Post, Pedro Silva Pereira, Birgit Sippel, Tibor Szanyi, Paul Tang, Jakob von Weizsäcker
VERTS/ALE	Bas Eickhout, Sven Giegold, Eva Joly, Jean Lambert, Michel Reimon, Judith Sargentini, Molly Scott Cato, Bodil Valero

1	-
EFDD	Raymond Finch

4	0
PPE	Frank Engel, Burkhard Balz, Markus Ferber, Andreas Schwab

Key to symbols:

+ : in favour

- : against

0 : abstention