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**NOTE**

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From: Presidency  
To: Permanent Representatives Committee

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Subject: 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  
- Preparation for the trilogue

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**I. INTRODUCTION**

1. On 5 July 2016, the Commission presented a proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("Amendment to the 4th AMLD ")<sup>1</sup>.
2. On 20 December 2016, Coreper adopted a negotiating mandate, as set out in doc. 15605/16. Since March 2017, the Presidency has engaged in trilogue negotiations with the European Parliament on the Amendment to the 4th AMLD with a view to possible agreement at first reading.

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<sup>1</sup> Doc. ST 10678/16

3. As a result of the negotiations to date, the Presidency considers that there is already a broad convergence of views between the Council and the European Parliament on the delineation of the final political agreement for the Amendment to the 4th AMLD (the next and possibly the final trilogue is scheduled for 13 December 2017).
4. The Presidency has identified one key issue set out below on which, for a successful conclusion of trilogue negotiations, agreement on a mandate from Coreper is necessary.

## **II. KEY OPEN ISSUE: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION**

5. According to the 4th Anti-Money Laundering Directive ("4th AMLD")<sup>2</sup>, Member States should ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold information of their beneficial ownership. This information should be held in a central register in each Member State, and it should be accessible to competent authorities and Financial Intelligence Units (FIUs), without any restriction, to obliged entities, in the framework of their customer due diligence, and to any person or organisation that can demonstrate a legitimate interest.

According to the 4th AMLD, Member States should also require that trustees of any express trust governed under their law obtain and hold information on beneficial ownership regarding the trust. This information should be accessible to competent authorities and FIUs in a timely manner. When the trust generates tax consequences, the information should be held in a central register. This register should be accessible to competent authorities and FIUs, without any restriction, and it may also allow access by obliged entities, in the framework of their customer due diligence.

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<sup>2</sup> Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

6. The original Commission proposal introduced an amendment to the Company Law Directive<sup>3</sup> to ensure public access to the beneficial ownership information of corporate and other legal entities and of business-related trusts and similar legal arrangements. The beneficial ownership information of other trusts, according to the Commission proposal, should be accessible to any person or organisation that can demonstrate a legitimate interest. The negotiating mandate of the Council provided for a more restrictive approach, allowing for access based on a legitimate interest for all types of companies and trusts. While this means that for companies the status quo of the 4th AMLD is maintained, with regard to trusts it goes a step further than the 4th AMLD which did not provide for any kind of public access to the beneficial ownership information of such arrangements. The Council's negotiating mandate also allows Member States to provide for a wider access to the information in accordance with their national law.
7. The European Parliament, on the other hand, agrees with the Commission's proposal as regards public access to beneficial ownership information of both companies and business-related trusts and, moreover, has extended it to all types of trust.
8. In the ongoing negotiations, the Council has already indicated that it could move towards public access to the beneficial ownership information of companies. The level of access to beneficial ownership information on trusts remains outstanding.

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<sup>3</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.06.2017, p. 46).

9. On 21 November, the Presidency has proposed to delegations another compromise proposal on Articles 30 and 31. The proposal provides for access based on a legitimate interest to the beneficial ownership information of trusts. In addition, it provides that any person that files a written request would be able to access the beneficial ownership information of trusts or similar legal arrangements which hold or own a controlling interest in any corporate or other legal entity through direct or indirect ownership, including through bearer shareholdings, or through control via other means. In view of this wider access than what was originally foreseen in the Council's negotiating mandate, and to address concerns on the legal soundness of such access, the circumstances for a (partial) exemption from access by obliged entities and public access to beneficial ownership information of both companies and trusts have been widened.
10. The new proposal was discussed by the Working Party on Financial services (attachés) on 27 November. Following this discussion, some clarifications of a more technical nature have been made to address concerns raised (see the text set out in the Annex to this note). The overall view, however, was that the Presidency's compromise proposal reaches the best achievable balance in view of the Council's and the European Parliament's respective positions.
11. The Presidency considers therefore that the compromise proposal for both Articles 30 and 31 that is currently on the table should be the basis for the final compromise between the Council and the Parliament, and asks Coreper to confirm this mandate for the last trilogue negotiations.

### **III. CONCLUSION**

12. Against this background the Permanent Representatives Committee is invited to:
  - agree the final negotiating mandate for the Presidency on the issue delineated in points 5 to 11 above, on the basis of the text set out in the Annex to this note;
  - invite the Presidency to continue, and bring to a rapid close, negotiations with the European Parliament on the key open issues, in line with the mandate set out above.

**Consolidated text of proposed new Articles 30 and 31**

Changes to the 4th AMLD are indicated in **bold and underlined**

Article 30

1. Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. **Member States shall ensure that breaches of this paragraph are subject to effective, proportionate and dissuasive measures or sanctions.**

Member States shall ensure that those entities are required to provide, in addition to information about their legal owner, information on the beneficial owner to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter II.

**Member States shall require that the beneficial owners of corporate or other legal entities, including through shares, voting rights, ownership interest, through bearer shareholdings, or through control via other means, provide those entities with all the information necessary for the corporate or legal entity to comply with the requirements in Article 30(1).**

2. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.

3. Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State, for example a commercial register, companies register as referred to in **Article 16 of Directive 2017/1132/EU** of the European Parliament and of the Council<sup>4</sup>, or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The information on beneficial ownership contained in that database may be collected in accordance with national systems.

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<sup>4</sup> **Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.06.2017, p. 46).**

4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current, and shall put in place mechanisms to this effect. These mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In case of reported discrepancies Member States shall ensure that appropriate actions will be taken to resolve the discrepancies in a timely manner and, if appropriate, that in the meantime a specific mention is included in the central register.

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.

5a. Member States shall ensure that the information on the beneficial ownership is accessible to any member of general public. Member States may choose to make the information available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs to ensure the maintenance and developments of the register. The persons or organisations referred to in this paragraph and in paragraph 5 shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held. Member States may, under conditions to be determined in national law, provide for access of additional information enabling the identification of the beneficial owner, at least the date of birth or contact details in accordance with data protection rules.

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, as well as tax authorities, supervisors of obliged entities 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.**

7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of other Member States in a timely manner.

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.

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 disproportionate risk, in particular, 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. The rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. A Member State that has granted exemptions 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 22(1) of Directive 2017/1132/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 24 of Directive 2017/1132/EU and with Article 31a of this Directive.**

**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 22(2) of Directive 2017/1132/EU, in accordance with Member States' national laws implementing paragraph 5, 5a and 6 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 at least 5 years and no more than 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 this Article.**

#### Article 31

1. **Member States shall ensure that this Article applies to trusts and other types of legal arrangements, such as, inter alia, fiducie, certain types of Treuhand or fideicomiso when having a structure or functions similar to trusts. Member States shall identify the characteristics to determine where legal arrangements have a structure or functions similar to trusts with regard to such legal arrangements governed under their law.**



**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(s);**

**(b) the trustee(s);**

**(c) the protector(s) (if any);**

**(d) the beneficiaries or class of beneficiaries;**

**(e) any other natural person exercising ultimate control of the trust.**

**Member States shall ensure that breaches of this paragraph are subject to effective, proportionate and dissuasive measures or sanctions.**

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 where, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the thresholds set out in points (b), (c) and (d) of Article 11.**

3. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.

**3a. Member States shall require that the beneficial ownership information of express trust and other types of legal arrangements when having a structure or functions similar to trusts shall be held in a central beneficial ownership register set up by the Member State where the trustee of the trust or similar legal arrangement is established or resides.**

**Where the place of establishment or residence of the trustee of the trust or similar legal arrangement is outside the Union, the information referred to in paragraph 1 shall be held in a central register set up by the Member State where the trustee enters into a business relationship in the name of the trust or similar legal arrangement.**

**Where the trustee of the trust or similar legal arrangement enters into multiple business relationships in the name of the trust or similar legal arrangement in different Member States, a certificate of proof of registration or an excerpt of the beneficial ownership information in a register held by one Member State may be considered as sufficient to consider the registration obligation fulfilled.**

4. **Member States shall ensure that the information on the beneficial ownership of a trust or a similar legal arrangement 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;**

**(d) any person that files a written request in relation to a trust or similar legal arrangement which holds or owns a controlling interest in any corporate or other legal entity through direct or indirect ownership, including through bearer shareholdings, or through control via other means.**

**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, as well as tax authorities, supervisors of obliged entities 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.**

**The information accessible to persons and organisations referred to in points (c) and (d) of this paragraph shall consist of the name, the month and year of birth and the country of residence and nationality of the beneficial owner as defined in points (b) or (c) of Article 3(6), as well as nature and extent of beneficial interest held. The access to information by persons and organisations referred to in points (a) to (d) of this paragraph may be subject to online registration and to the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs to ensure the maintenance and developments of the register. Member States may, under conditions to be determined in national law, provide for access of additional information enabling the identification of the beneficial owner, at least the date of birth or contact details, in accordance with data protection rules. Member States may allow for a wider access to the information held in the register in accordance with their national law.**

5. **Member States shall require that the information held in the central register referred to in paragraph 3a is adequate, accurate and current, and shall put in place mechanisms to this effect. These mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In case of reported discrepancies Member States shall ensure that appropriate actions will be taken to resolve the discrepancies in a timely manner and, if appropriate, that in the meantime a specific mention is included in the central register.**

6. Member States shall ensure that obliged entities do not rely exclusively on the central register referred to in paragraph 4 to fulfil their customer due diligence requirements as laid down in Chapter II. Those requirements shall be fulfilled by using a risk-based approach.

7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 4 to the competent authorities and to the FIUs of other Member States in a timely manner.

**7a. In exceptional circumstances laid down in national law, where the access referred to in paragraph 4 would expose the beneficial owner to disproportionate risk, in particular, 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. The rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. Member State that has granted exemptions 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.**

8. — ~~Member States shall ensure that the measures provided for in this Article apply to other types of legal arrangements having a structure or functions similar to trusts. [deleted]~~

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 22(1) of Directive 2017/1132/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 24 of Directive 2017/1132/EU.**

**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 22(2) of Directive 2017/1132/EU, in accordance with Member States' national laws implementing paragraphs 4 and 5 of this Article.**

**Member States shall take adequate measures to ensure that only the information referred to in paragraph 1 that is up to date and corresponds to the actual beneficial ownership 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 at least 5 years and no more than 10 years after the beneficial ownership information of 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.**

**10. Member States shall notify to the Commission the categories, description of the characteristics, names and where applicable legal basis of the trusts and legal arrangements referred to in paragraph 1 within 12 months from the entry into 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 trusts and legal arrangements having a structure or functions similar to trusts.**

**By 26 June 2020, the Commission shall submit a report to the European Parliament and to the Council assessing whether all trusts and legal arrangements which have a structure or functions 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.**