



Euro Tax Flash from KPMG's EU Tax Centre



[Background](#)

[Details of the Agreement](#)

[Next steps](#)

[EU Tax Centre comment](#)

Agreement reached by the Council and the European Parliament on 5th Anti-Money Laundering Directive

[Anti-Money Laundering Directive – Ultimate Beneficial Owner Registers – Ordinary Legislative Procedure](#)

On December 20, 2017, EU ambassadors confirmed that agreement had been reached between the European Parliament and the Council regarding the latest amendments to the Anti-Money Laundering Directive (AMLD 5) proposed by the European Commission in July 2016. The amended Directive contains especially extended provisions regarding the implementation and design of Ultimate Beneficial Ownership registers within the EU.

Background

On July 5, 2016, the European Commission proposed a fifth revision of the Anti-Money Laundering Directive as part of its Action Plan for strengthening the fight against terrorist financing, announced in February 2016. The proposal included, in particular, several measures to enhance the powers of the EU Financial Intelligence Units, introduce stricter safeguards for financial flows from high-risk countries, and tackle risks linked to virtual currencies and anonymous pre-paid instruments. As a reaction to the Panama Papers revelations of April 2016, the Commission's proposals also contained rules to increase transparency within the EU, by granting public access to beneficial ownership registers on companies and business-related trusts, interconnecting national registers to facilitate cooperation between Member States, and extending the information available to national authorities.

This update of the legal texts was proposed under the ordinary legislative procedure, requiring adoption by both the European Parliament and the Council. On February 28, 2017, the European Parliament adopted a report suggesting several amendments to the Commission's proposals, together with a mandate for negotiations with the Council in trilogue. The Council

Presidency had presented several compromise texts during the last quarter of 2016, and ultimately agreed on its negotiating stance on December 20, 2016 (Austria, Poland, and Slovenia voiced concerns regarding the draft Council position).

The respective positions of the Council and the European Parliament were subsequently discussed during informal meetings attended by representatives of both parties, as well as the European Commission ("trilogue"). On December 20, 2017, an agreement was reached on a compromise text, which will have to be approved by the formal procedures applicable within each of the three institutions.

Details of the Agreement

The updated Directive aims to prevent the use of the financial system for the funding of criminal activities and to strengthen transparency rules to prevent the large-scale concealment of funds.

With the objective of enhancing access to information on beneficial ownership, the following measures will be introduced:

- Registers of beneficial owners of companies operating within the EU will be made publicly accessible and national registers will be subsequently better interconnected, to facilitate cooperation between Member States.
- Registers of beneficial ownerships of trusts and similar legal arrangements will only be publicly accessible where there is a legitimate interest. As it is recognized that trusts may also be set up for non-commercial purposes (e.g. for charity or the use of family assets), accessibility will be limited to essential data. In addition, access to beneficial ownership information on trusts will be granted upon written request, in cases where the trust owns a company that is not incorporated in the EU.
- Information on national bank accounts and safe deposit boxes will be registered as well as information on real estate ownership, although the latter will only be accessible to public authorities.
- Member States will retain the right to provide broader access to information, in accordance with their national law.

Although the possibility to collect beneficial ownership information on life insurance contracts and financial instruments was discussed during the trilogue negotiations, it will not be covered by the new provisions of the Directive.

In order to address the risks derived from prepaid cards and virtual currencies, the scope of the Directive will be widened to cover electronic wallet providers and virtual currency exchange service providers. Furthermore, the threshold for identifying the holders of prepaid cards will be lowered from EUR 250 to EUR 150.

The proposed amendments also emphasize the role of national Financial Intelligence Units (FIUs), which collect and analyze information about suspicious transactions related to money laundering or terrorism financing at the national level. The revised Directive provides for extended responsibility and reporting obligations and for facilitated cooperation between national FIUs and bank supervisors regarding the exchange of information. As a consequence,

national FIUs will have access to information in centralized bank and payment account registers, enabling them to identify account holders.

With respect to transactions with third countries identified by the European Commission as presenting an increased risk of money laundering, the amended Directive provides tougher criteria regarding the obligation to report suspicious transactions and provides for possible sanctions against violations.

Next steps

The final compromise text still needs to be formally endorsed and signed by both the Council and the European Parliament, before being published in the Official Journal of the EU. The amended Directive is expected to enter into force by the end of 2019, i.e. 18 months after its publication, expected in mid-2018. In respect of the specific provisions of the Directive, it is foreseen that national registers of beneficial owners of companies will be made public by the end of 2019, while national beneficial ownership registers of trusts will be accessible to persons with a legitimate interest in early 2020. In addition, the implementation of national bank account registers is expected as from 2020, whereas the interconnection of all national registers will proceed from 2021.

EU Tax Centre comment

Unlike in the field of taxation, proposals made under the ordinary legislative procedure do not require unanimity between Member States, and the European Parliament and the Council adopt legislation jointly, having equal rights and obligations. The relatively short time in which agreement was reached reflects both the priorities set by the Estonian Presidency in respect of combatting terrorism financing and money laundering, and the European Parliament's increasing political pressure with regard to transparency initiatives.

Nevertheless, it remains to be seen to what extent the Member States will be able to transpose the proposed changes by the end of 2019, the expected date of entry into force of the amended Directive. Several Member States have still to implement the fourth revision of the Directive, as the European Commission has issued warnings to several Member States for failing to properly transpose the text into national legislation.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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