

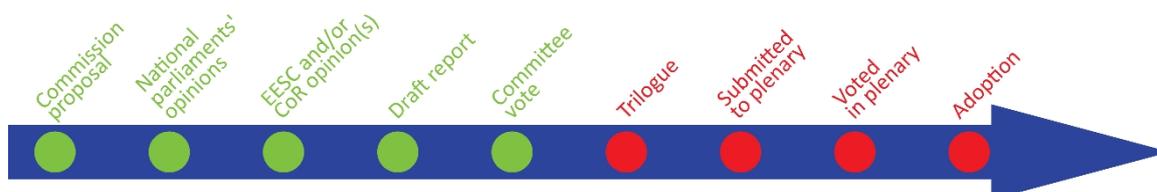
Revision of the Fourth Anti-Money-Laundering Directive

OVERVIEW

Directive (EU) 2015/849, which forms part of the EU regulatory framework to combat financial crime, has shown gaps in the light of recent terrorist attacks and the 'Panama papers' revelations. In this context, the European Commission proposed to amend the directive, along with Directive 2009/101/EC, to broaden their scope, lower thresholds benefiting from exemptions and provide for the creation of automated centralised mechanisms (e.g. central electronic data retrieval systems). The European Parliament and Council have each put forward substantial modifications to the Commission proposal. These include: the obligation for Member States to provide data on trusts and legal arrangements to the Commission; specific professional secrecy obligations for staff working, or having worked for, competent authorities supervising credit and financial institutions; cooperation between competent authorities; and the creation of an independent authority to supervise and coordinate anti-money-laundering activities carried out by national competent authorities and law enforcement bodies.

Prevention of the use of the financial system for the purposes of money laundering or terrorist financing: transparency of financial transactions and of corporate entities

<i>Committees responsible:</i>	Economic and Monetary Affairs & Civil Liberties, Justice and Home Affairs (jointly responsible under Rule 55)	COM(2016) 450 5.7.2016 2016/0208 (COD)
<i>Rapporteurs:</i>	Krišjānis Kariņš (EPP, Latvia) Judith Sargentini (Greens/EFA, the Netherlands)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Trilogue negotiations	



Introduction

The current EU regulatory framework for [financial crime](#) is composed of [Directive \(EU\) 2015/849](#) (the Fourth Anti-Money-Laundering Directive) and [Regulation \(EU\) 2015/847](#) on information accompanying transfers of funds.

The challenge for this framework is to keep pace with technological innovation in financial services – despite its benefits, it can also create new opportunities to conceal financing – as well as the exploitation by criminals of loopholes in the system. In this context, while Directive (EU) 2015/849 represented a significant step in improving the effectiveness of the EU's efforts to combat the laundering of money from criminal activities and to counter the financing of terrorist activities, recent terrorist attacks and revelations such as the 'Panama papers' demonstrated that further steps are needed to improve this framework. Indeed, gaps have been identified in the oversight of the many financial means used by terrorists, from cash and trade in cultural artefacts to virtual currencies and anonymous pre-paid cards. In addition to terrorist financing issues, offshore jurisdictions – often used as locations of intermediary entities that distance owners from their assets to avoid or evade tax – are also cause for concern.

Parliament's starting position

In its 8 July 2015 [resolution](#) on **tax avoidance and tax evasion as challenges in developing countries**, Parliament noted that 'the EU should be taking a leading role in driving international efforts to combat tax havens, tax fraud and evasion' and called 'for information on beneficial ownership of companies, trusts and other institutions to be made publicly available ... in order to prevent anonymous shell companies and comparable legal entities from being used to launder money, finance illegal or terrorist activities, conceal the identity of corrupt and criminal individuals, and hide ... profits from illegal traffic and illegal tax evasion'. It further noted that 'all countries should at minimum adopt and fully implement the [Financial Action Task Force's](#) anti-money-laundering recommendations'.

In its 25 November 2015 [resolution](#) on the **prevention of radicalisation and recruitment of European citizens by terrorist organisations**, Parliament 'urges the [European] Commission and the competent agencies to look into ways of dismantling terrorist networks and identifying how they are funded; to this end, calls for better cooperation between the Financial Intelligence Units of the Member States and for the speedy transposition and implementation of the Anti-Money-Laundering Package; encourages the Commission to propose a regulation on identifying and blocking terrorism funding channels and countering the ways in which they are funded ... encourages Member States to implement the highest standards of transparency concerning access to information on beneficiary owners of all corporate structures in the EU and in opaque jurisdictions which may be vehicles for financing terrorist organisations'.

In its 26 May 2016 [resolution](#) on **virtual currencies**, Parliament noted that virtual currencies 'entail risks, which need to be addressed appropriately', including the potential for 'money laundering, terrorist financing, tax fraud and evasion and other criminal activities'.

Lastly, in its 6 July 2016 [resolution](#) on the strategic priorities for the Commission work programme 2017, Parliament called on the Commission 'to monitor closely the transposition and implementation of EU counter-terrorism measures, including effective police and judicial cooperation, timely sharing of information among national authorities

and through Europol and Eurojust, and measures to tackle emerging trends of terrorism financing’.

Preparation of the proposal

On 2 February 2016, the European Commission published a [communication](#) on an ‘action plan for strengthening the fight against terrorist financing’. In this communication, the Commission identified actions that could be taken immediately (swift transposition of the Fourth Anti-Money-Laundering Directive (AMLD IV), identification of third countries with strategic deficiencies in the areas of anti-money-laundering or countering of terrorist financing (CFT)), actions that should be taken (amendments to AMLD IV, cooperation to track and freeze terrorist financing), as well as other initiatives (such as harmonising money laundering criminal offenses and sanctions) that could be taken to complement the existing legal framework.

In the [impact assessment](#) accompanying the proposed amendments to AMLD IV, the Commission has identified five problems to be addressed in relation to the financing of terrorism: (i) suspicious transactions involving high-risk third countries are not efficiently monitored, due to unclear and uncoordinated customer due diligence requirements; (ii) suspicious transactions made through virtual currencies are not sufficiently monitored by the authorities, which are unable to link identities and transactions; (iii) the current measures to mitigate money laundering or terrorist financing risks associated with anonymous prepaid instruments are insufficient; (iv) [financial intelligence units](#) (FIUs, i.e. public authorities that collect and analyse information) have limitations in the timely access to, and exchange of, information held by obliged entities (e.g. credit and financial institutions); (v) FIUs lack access, or have delayed access, to information on the identity of holders of bank and payment accounts.

To tackle these problems, the Commission considered many alternatives, including legislative and non-legislative options.¹ The options it finally chose (see next section) were selected ‘to strike a balance between achieving the objectives and the possible adverse impacts on market participants, in particular compliance costs’.

In its [initial appraisal](#) of the Commission’s Impact Assessment (IA), published in October 2016, the European Parliamentary Research Service noted that, while the IA was generally based on useful information and data, the fact that it was apparently prepared under severe time constraints has affected the overall quality of the analysis which, as a result, does not entirely meet the quality standards set out in the Better Regulation Guidelines. The structure of the IA itself, organised in two parts, but amending a single piece of legislation, does not provide a fully coherent picture of the issues at stake and does not necessarily facilitate the co-legislators’ understanding of the reasoning. Quality weaknesses appear to apply particularly to the second part of the IA, which was added as a direct consequence of the ‘Panama papers’ revelations. The problems in this case are not clearly defined, the analysis and research are rather weak, and the economic and social impacts remain largely unaddressed. Moreover, the reader often has to make assumptions and deductions in order to try to understand the content of the IA. The first part of the IA, on the other hand, provides some useful information and evidence, with a better problem definition, incorporating the views of stakeholders. Some weaknesses concern the definition of the options and some of the conclusions drawn, where additional elements might have been useful.

The changes the proposal would bring

The Commission [proposed](#) to amend two directives.

[Directive \(EU\) 2015/849](#), with the following major amendments to the following articles:

- Article 2, adding virtual currency exchange platforms as well as custodian wallet providers to the list of obliged entities within the scope of the directive;
- Article 3, adding the definitions for 'electronic money' and 'virtual currencies' to the list of definitions and lowering the threshold for the indication of ownership or control to 10 % (from the previous 25 %), for certain limited types of entities which present a specific risk of being used for money laundering and tax evasion;
- Article 12 para. 1, lowering (from €250 to €150) the thresholds for non-reloadable pre-paid payment instruments to which certain customer due diligence (CDD) measures apply; and Article 12 para. 2, suppressing the CDD exemption for online use of prepaid cards;
- Article 18, giving Member States the possibility to require obliged entities to apply enhanced CDD measures when involved in higher-risk cases or when dealing with entities established in high-risk countries;
- Article 30, specifying which competent authorities can obtain access to information on beneficial ownership, and to ensure that the central registers referred to in the article are interconnected via the European Central Platform established by Directive 2009/101/EC;
- Article 31 (beneficial ownership information), ensuring the article not only applies to trusts, but also to other types of legal arrangements having a structure or functions similar to trusts, such as, inter alia, *fiducie*, *Treuhand* or *fideicomiso*; and to specify that a trust is considered to be administered in each Member State where the trustees are established;
- Article 32, enabling financial intelligence units to request information on money laundering and terrorist financing from any obliged entity;
- Article 32a (new article) ensuring that Member States put automated centralised mechanisms in place, (e.g. central registries or central electronic data retrieval systems) which allow for the timely identification of any natural or legal persons holding or controlling payment accounts, and bank accounts held by a credit institution within their territory, and ensuring that the information held in those centralised mechanisms is directly accessible, at national level, to financial intelligence units and competent authorities.

[Directive 2009/101/EC](#), with amendments including: Article 1a, broadening the scope of application of the directive to corporate and other legal entities referred to in Article 30 of Directive 2015/849 and to certain trusts; and Article 7b, ensuring that Member States take the necessary measures to disclose specific beneficial ownership information through central registers and – except in exceptional circumstances – ensure that it is publicly available through the system of interconnection of registers, so that third parties and civil society at large can identify the beneficial owners.

Advisory committees

On 25 October 2016, the European Economic and Social Committee (EESC) adopted an [opinion](#) on the Commission's proposal for a directive.

The EESC in principle welcomed the measures included in the proposed amendments to the directive and agreed that its transposition is urgent.

Given that the enhanced due diligence measures mentioned in the proposed directive are applied only to third countries which are deemed to be high-risk, and that the list of high-risk third countries, published by the Commission on 14 July 2016, is incomplete,² the EESC proposed either drawing up a new list of high-risk third countries, or broadening the scope of the measures under Article 18a of AMLD. With regards to high-risk third countries, the EESC further proposed that surveillance measures are also introduced for the subsidiaries (and not only for clients) of obliged entities.

Lastly, the EESC considered that free trade and economic partnership agreements should include a chapter on measures to tackle tax fraud and avoidance, money laundering and terrorist financing. It therefore called on the Commission to include this chapter as an EU proposal in the ongoing negotiations, in particular on TTIP, and in the treaties already in force when they come to be revised.

National parliaments

The deadline for raising subsidiarity concerns expired on 27 October 2016. None of the National Parliaments that examined the proposal raised any subsidiarity issues.

Legislative process

On 14 October 2016, the **European Central Bank** published an [opinion](#) on the proposal. While the ECB strongly supported the directive's provisions, which it noted are in line with the Financial Action Task Force recommendations, it warned against appearing to promote the wider use of virtual currencies, as they do not constitute legal tender and could, if their use is substantially increased, present risks to price stability. In the same vein, it recommended defining virtual currencies more specifically, so that it is clear that they are neither legal currencies, nor money, and so that it is understood that they may be used for more than just payment purposes.

In addition – given that Member States are free to designate their national Central Bank as administrator of the central register under Article 30 – the ECB emphasised that, national legislation should include a cost recovery mechanism with explicit procedures for monitoring, allocating and invoicing all costs incurred by the NCBs that are associated with operating and granting access to the central register, in order to safeguard the financial independence of the European system of Central Banks and to dispel any monetary financing concerns associated with carrying out this task.

On [28 October](#), [14 November](#), [25 November](#), and [13 December 2016](#), the **Council** adopted compromise positions. The Council finally gave its [negotiating mandate](#) on 13 December 2016.

The final text introduces the following main **amendments to Directive (EU) 2015/849**:

- adds the definitions of 'custodian wallet providers' (Article 2 (1)) and 'domestic politically exposed persons' (Article 3);
- Member States must ensure that, in the case of remote payment transactions,³ the customer has to be identified when the amount paid exceeds €50 (Article 12);⁴
- persons or organisations that can access information on the beneficial ownership,⁵ cannot access the nationality of the beneficial owner (Article 30);

- access to the information on beneficial ownership will be in accordance with data protection rules and may be subject to online registration and to the payment of a fee (Articles 30 and 31);
- within a year from the entry into force of the directive, Member States shall notify the Commission of the categories, description of the characteristics, names and legal basis of the trusts and legal arrangements, and based on this the Commission should publish a consolidated list of such trusts and legal arrangements having similar structure and functions; also, by June 2020 the Commission should submit to the Parliament and the Council a report assessing whether all those trusts and legal arrangements were duly identified and made subject to the obligation of the directive (also Article 31);
- the Commission will adopt implementing acts to lay down the technical specifications and procedures for the interconnection of Member States central registers with regards to certain data, criteria and modalities and, while doing so, should pay use-proven technology and routines and not incur costs beyond those necessary to implement the directive (Article 31a);
- in the case of credit and financial institutions that are part of a group, Member States should ensure that their national competent authorities cooperate in monitoring them and that supervision may include the taking of temporary, appropriate and proportionate measures to address serious failings that require immediate remedies (Article 48);
- persons working or having worked for competent authorities supervising credit and financial institutions are bound by the obligation of professional secrecy and confidential information they receive can only be disclosed in summary or aggregate form,⁶ competent authorities supervising those institutions can only use confidential information received in specific situations, Member States should ensure that their competent authorities cooperate, and they may authorise them to conclude cooperation agreements with competent authorities of third countries to exchange confidential information with them (Article 57a);
- Member States can authorise the exchange of information (under similar limitations) between competent authorities and authorities responsible for the supervision of financial markets, and they can also authorise the disclosure of specific information to national authorities that investigate money laundering or terrorist financing (Article 57b);
- a committee composed of representatives of the Member States⁷ will assist the Commission (Article 64a);
- Member States should set up the central beneficial ownership registers mentioned in Articles 30(3) and 31(3a), as well as the central registries in Article 32a within two and three years respectively after the entry into force of the amended Directive (Article 67(1)).

The amendments proposed by the Commission with regard to **Directive 2009/101/EC** were rejected by the Council; it proposes instead to amend Article 56 of the fourth [Capital Requirements Directive \(2013/36/EC\)](#) and Article 68 of Solvency II ([Directive 2009/138/EC](#)), in order to add the authorities responsible for supervising the obliged entities to the list of authorities, the exchange of information between which is not precluded by those two regulatory acts.

On 7 November 2016, the **European Parliament** co-rapporteurs presented their [draft report](#) on the Commission proposal. On 28 February 2017, the ECON and LIBE

committees, working together under the joint committee procedure (Rule 55 of the Rules of Procedure), adopted their [report](#) together with a mandate for negotiations with the Council in trilogue, which was announced in plenary in March.

With regard to **Directive (EU) 2015/849**, Parliament proposes the following main amendments:

- European Supervisory Agencies (ESAs) must make recommendations to Member States on the measures suitable for addressing the identified risks and, in case Member States do not apply them, they should notify the ESAs and the Commission and justify their choice (Article 7 (5a));
- Member States must legislate for the elaboration of lists of politically exposed persons resident in their territory and take all appropriate measures to prevent the trade of information for commercial purposes of such persons. Based on the data collected, the Commission must assemble a list of politically exposed persons in the EU, which is accessible to competent authorities and to obliged entities (Article (20a));
- Member States must ensure that owners of shares, voting rights, or ownership interest in corporate and other legal entities, including through control via other means, disclose to those entities whether they hold the interest in their own name and on their own account, or on behalf of another natural person⁸ (Article 30 (1));
- Member States must require that the information held in the central register⁹ is adequate, accurate and current, and must put in place mechanisms to ensure that it is verified regularly. Furthermore, obliged entities, FIUs and NCAs must report any discrepancy they find between the beneficial ownership information held in the central registers and beneficial ownership information they collect as part of their customer due diligence procedures or investigations (Article 30 (4));
- The information held in the register¹⁰ must be publicly accessible. Access to it must be in accordance with data protection rules and open data standards, and subject to online registration. Member States can introduce a fee to cover administrative costs (Article 30 (5a) (new));
- In exceptional circumstances – which must be laid down in national law – Member States can provide for exemptions from such access to all or part of the information on the beneficial ownership on a case-by-case basis. They must also ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances, and are reassessed at regular intervals to avoid abuse. Lastly, the right to an administrative review of the exemption decision and to an effective judicial remedy must be guaranteed. (Article 30 (9));
- Member States must ensure that, in specific circumstances,¹¹ 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. They further must provide for adequate sanctions (such as the nullity of the contract) for failure to comply with the obligation to register (Article 30 (10a));
- Member States must put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the timely identification of any natural or legal person holding or controlling land and buildings within their territory.¹² They (Member States) must notify the Commission of their characteristics and ensure that the information held in them is directly accessible, at national level, to FIUs and competent authorities (Article 32b). They must also put in

place such mechanisms for the identification of persons controlling life insurance contracts or investment related services¹³ (Article 32c);

- Member States must ensure that individuals adversely exposed¹⁴ for reporting suspicions of money laundering or terrorist financing internally or to an FIU, are able to safely present a complaint to the competent authorities and that those authorities have the legal duty to carry out an investigation and issue a decision (Article 38 (1a));
- Member States must ensure that a competent and independent authority operates as AML/CFT supervisor and coordinator of anti-money-laundering activities carried out by other competent authorities and law enforcement bodies and as a contact point for the supervisors of other Member States, the Commission and the ESAs (Article 48 (1a)).

Parliament also proposes that Commission experts carry out general¹⁵ and specific¹⁶ audits in national competent authorities and report – if appropriate, formulating recommendations – on their findings. Member States must assist them with this task, ensuring that experts have access to premises and information and providing documentation and technical support, as well as follow-up on their recommendations (Article 48a). Parliament also proposes that the Commission presents, by June 2017, a legislative proposal to create a European FIU that would coordinate, assist and support Member States' FIUs (Article 51a) and that Member States' FIUs are able to cooperate, exchange relevant information with their foreign counterparts and make enquiries on their behalf (Article 51b).

As is the case in the Council document, importance is given to cooperation between competent authorities supervising credit and financial institutions, to the obligation of professional secrecy binding those working, or having worked for those competent authorities and to the treatment of confidential information received (Article 57a). Exchange of information may be also permitted between those competent authorities and authorities such as those supervising financial markets or involved in the liquidation of institutions (Article 57b). In addition, Parliament proposes that Member States ensure that those competent authorities cooperate as widely as possible with third country counterpart competent authorities (Article 57c).

Finally, Parliament proposes that, by the end of the year, the Commission draft an evaluation on Member States' FIUs powers and obstacles to cooperation, followed by proposals to remedy the obstacles in cooperation, access to, exchange and use of information¹⁷ (Article 65 (1a)).

As far as **amendments to Directive 2009/101/EC** are concerned, Parliament proposes that, with regard to the disclosure of beneficial ownership information, the information disclosed by entities referred to in the first article of the Directive is made publicly available in accordance with data protection rules and open data standards, is subject to online registration, and that Member States may introduce a fee to cover administrative costs. When exemptions from compulsory disclosure are provided in national law, they should be granted following a detailed evaluation of the exceptional nature of the circumstances, which should be reassessed at regular intervals to avoid abuse. In addition, the evaluation of the circumstances should be available to the Commission and the exemptions granted should be indicated in the register. Lastly, Member States should ensure that competent authorities have adequate powers to effectively monitor and take the necessary measures, with a view to ensuring compliance with the requirements of the article (Article 7b).

The procedure is now being discussed in trilogue with the Council, with a vote in the European Parliament's plenary session tentatively scheduled for October 2017.

EP supporting analysis

- [Combating money laundering - EU law in an international context](#), EP Library Briefing, 2012.
- [Changes to EU anti-money-laundering rules](#), EP Library Briefing, 2013.
- EPRS [Initial Appraisal](#) of the Commission impact assessment.
- [Access to anti-money-laundering information by tax authorities](#), EPRS 'at a glance' note, 2016.
- [Fighting tax crimes – Cooperation between Financial Intelligence Units](#), EPRS study, 2017.

Other sources

[Prevention of the use of the financial system for the purposes of money laundering or terrorist financing: transparency of financial transactions and of corporate entities](#), European Parliament, Legislative Observatory (OEIL), 2016.

Endnotes

- ¹ The non-legislative options included measures such as best practices, or recommendations to Member States on a 'comply or explain' basis.
- ² According to the EESC, 'It does not include many of the countries or jurisdictions which – on the basis of credible evidence – are believed to be acting as tax havens for money laundering, or any of the 21 territories mentioned in the Panama papers'.
- ³ Payment transactions initiated via internet or through a device that can be used for distance communication.
- ⁴ And three years after the entry into force of the amended Directive, the customers will have to be identified in **all** remote payment transactions.
- ⁵ According to Article 30 (5c) 'any person or organisation that can demonstrate a legitimate interest'.
- ⁶ Although this should not be seen as a reason to prevent the exchange of information between competent authorities supervising such institutions, within one or several Member States.
- ⁷ Reference is made here to [Regulation \(EU\) No 182/2011](#) laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of its implementing powers.
- ⁸ In cases where they are acting on behalf of someone else, they must additionally disclose the identity of the natural person on behalf of whom they are acting to the register.
- ⁹ A commercial register, companies register, or public register.
- ¹⁰ That is, at least the name, the date of birth, the nationality, the country of residence, contact details (without disclosure of a home address), and the nature and extent of the beneficial interest held, of the beneficial owner
- ¹¹ i.e. when the corporate or legal entity (a) opens a bank account or requests a loan in the Member State; (b) acquires real estate, either by purchase or other legal means, such as donation; or (c) 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.
- ¹² By providing information such as the name and other data required of the beneficial owner of the real property or of any person purporting to act on his/her behalf, the date and cause of ownership acquisition, or the location of the property.
- ¹³ By providing such information as the name and other identification data of the contracting partner and any person purporting to act on his/her behalf, the name and other data of the beneficial owner of the life insurance contract, the date of conclusion of the insurance contract or the insured amount.
- ¹⁴ 'Threats, hostile actions, or discriminatory employment actions'.
- ¹⁵ To verify that competent authorities take action in accordance with the risk assessments and in compliance with the directive.
- ¹⁶ Among other things, to verify the functioning and organisation of competent authorities, as well as to investigate important or recurring problems, or emergency situations in the Member States.
- ¹⁷ The report should include an assessment of the need for, among other things, facilitation of information exchange on cross-border cases, a dispute settlement mechanism and the establishment of a European Financial Intelligence Unit to enhance cooperation and coordination among national FIUs.

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