



2016/0208(COD)

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

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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 controls¹.

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 accounts².

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

¹ 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.

² Commission Impact Assessment, SWD(2016)0223, SWD(2016)0224.

amounts. However, they can be used for fraudulent reasons¹. 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 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

¹ 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.

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 Council²⁴ 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.

²⁴ 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

(1) Directive (EU) 2015/849 of the European Parliament and the Council²⁴ 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 **an updated, transparent, efficient and 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.

²⁴ 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 Security²⁵ **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

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 Security²⁵ **identified as a priority the upgrading of the EU legal framework to combat terrorism,**

finance in all domains.

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.

²⁵ 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.

²⁵ 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

Text proposed by the Commission

(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.

Amendment

(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

Text proposed by the Commission

(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

Amendment

(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**

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.

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***

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.

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.*

(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

Text proposed by the Commission

(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.*

Amendment

(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

Text proposed by the Commission

(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, 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

(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 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

(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

(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.

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 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

Amendment

(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.

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

(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.

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

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.

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^{1a}.

^{1a} 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

Amendment

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

(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***

***(-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***

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.

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

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 Directive 2011/16/EU**;

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 **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**

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**

point (i) and this point;

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

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 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)

Text proposed by the Commission

Amendment

(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)

Text proposed by the Commission

Amendment

(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

Present text

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 way.

Amendment

(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 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

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.

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 ***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***

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

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.

Amendment

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

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."

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, **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

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.

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

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;

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

Article 31 – paragraph 4 a – subparagraph 2 a (new)

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^{1a}, and subject to online registration.

^{1a} 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

(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 ***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

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.

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 **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

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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

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.

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

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***

a case-by-case basis.

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

Title	Prevention of the use of the financial system for the purposes of money laundering or terrorist financing
References	COM(2016)0450 – C8-0265/2016 – 2016/0208(COD)
Committees responsible Date announced in plenary	ECON 12.9.2016 LIBE 12.9.2016
Opinion by Date announced in plenary	JURI 12.9.2016
Rapporteur Date appointed	Kostas Chrysogonos 12.10.2016
Rule 55 – joint committee meetings Date announced in plenary	6.10.2016
Discussed in committee	28.11.2016
Date adopted	12.1.2017
Result of final vote	+ : 18 - : 1 0 : 0
Members present for the final vote	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
Substitutes present for the final vote	Daniel Buda, Sergio Gaetano Cofferati, Angel Dzhambazki, Heidi Hautala, Constance Le Grip, Victor Negrescu
Substitutes under Rule 200(2) present for the final vote	Andrey Novakov