



## **Money Laundering: Compromise EP/council text adopted by EP ECON and LIBE Committees wants to put in place central registers of ultimate owners of companies**

The ultimate owners of companies will have to be listed in central registers in EU countries, open both to the authorities and to people with a "legitimate interest", such as journalists, under a Parliament/Council deal endorsed by the Economic and Monetary Affairs and Civil Liberties committees on 27/01/2015. The new anti-money laundering directive aims to help to fight money laundering, tax crimes and terrorist financing. New rules to make it easier to trace transfers of funds were also approved.

The fourth anti-money laundering directive (AMLD) will for the first time oblige EU member states to keep central registers of information on the ultimate "beneficial" owners of corporate and other legal entities, as well as trusts. (A "beneficial" owner actually owns or controls a company and its activities and ultimately authorizes transactions, whether such ownership is exercised directly or by a proxy). **These central registers were not envisaged in the European Commission's initial proposal, but were included by MEPs in negotiations.**

Recital 11 and article 29 of the proposal state that it **will be up to the Member States to decide if these central registers are central database or business register or another central register**, leaving possibility for public /private partnerships on the register maintenance. However, the data processed in these registers will be used for money laundering fight and activities considered in the directive, as recital 31 makes it clear that further processing of personal data for commercial purposes is prohibited;

Article **29 -3** states that *" Member States shall ensure that the information on beneficial ownership is held in a central register in each Member State, for example a commercial register, companies register as referred to in article 3 of the Directive 2009/101/EC of the European Parliament and of the Council, or a public register. Member States shall notify to the Commission the characteristics of these national mechanisms. The information on beneficial ownership contained in this database may be collected in accordance with national systems."*

Article **29-4** insists that the information held in the central register is *"adequate, accurate and current"*. And article **29-5** says that information on beneficial ownership should be available to people with legitimate interest access and that *"[...] Access to the information on beneficial ownership shall be in accordance with data protection rules and may be subject to online registration and to the payment of a fee. The fees charged for obtaining the information shall not exceed the administrative costs thereof."*

And **Art 39 a 2** clearly states that *"Personal data shall only be processed by obliged entities on the basis of this Directive for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 and not further processed in a way incompatible with those purposes. The processing of personal data on the basis of this Directive for any other purposes such as commercial purposes, shall be prohibited."*

The text also requires banks, auditors, lawyers, real estate agents and casinos, among others, to be more vigilant about suspicious transactions made by their clients.



### **"Legitimate interest" access**

The central registers will be accessible to the authorities and their financial intelligence units (without any restriction), to "obliged entities" (such as banks conducting their "customer due diligence" duties), and also to the public (although public access may be subject to online registration of the person requesting it and to a fee to cover administrative costs). To access a register, a person will in any event have to demonstrate a "legitimate interest" in suspected money laundering, terrorist financing and in "predicate" offences that may help to finance them, such as corruption, tax crimes and fraud.

These persons (e.g. investigative journalists) could access information such as the beneficial owner's name, month and year of birth, nationality, country of residence and details of ownership. Any exemption to the access provided by member states will be possible only "on a case-by-case basis, in exceptional circumstances". Central register information on trusts will be accessible only to the authorities and "obliged entities".

### **Special measures for "politically-exposed" persons**

The deal also clarifies the rules on "politically-exposed" persons", i.e. people at a higher than usual risk of corruption due to the political positions they hold, such as heads of state, members of government, supreme court judges, and members of parliaments, as well as their family members. Where there are high-risk business relationships with such persons, additional measures should be put in place, e.g. to establish the source of wealth and source of funds involved, says the text.

### **Tracing transfers of funds**

MEPs also approved a deal on a draft "transfers of funds" regulation, which aims to improve the traceability of payers and payees and their assets.

The two deals still need to be endorsed by the full Parliament (March or April) and by the EU Council of Ministers. Member states will then have two years to transpose the anti-money laundering directive into their national laws.