



EU's proposes changes to 4AMLDD

Introduction

On 5 July 2016, the EU Commission published proposed amendments to the EU's 4th Anti-Money Laundering Directive (**4AMLDD**). The proposal indicates that the amendments are born out of the recent increased terrorist threat to European States and so seek to strengthen the fight against terrorist financing. By consequence, the proposals increase transparency. Some proposals will affect companies and other legal entities, such as foundations, but the fundamental proposals will affect trusts and the requirement to make public beneficial ownership information in relation to trusts.

Corporate and legal entities

4AMLDD currently proposes that EU Member States ensure compulsory disclosure (i.e. public access) to a limited set of information on beneficial owners, firms and legal entities engaging in profit-making activities as laid down in Article 54 TFEU (Treaty on the Functioning of the EU). In this regard, 4AMLDD currently requires the identification of beneficial owners with a shareholding of 25% or more. The EU Commission proposes to lower the threshold to 10% in respect of certain limited types of entities which are perceived as presenting a specific risk of being used for money laundering and tax evasion. This is on the basis that a 25% threshold is "fairly easy to circumvent" and that the 10% threshold will enable "better detection of beneficial owner(s) with particular focus on entities that function as intermediary structures".

Trusts and other legal arrangements

4AMLDD currently requires that, where a trust generates "tax consequences", a Member State must have in place a register containing the beneficial ownership information which is open to "competent authorities" and members of the public who display a "legitimate interest".

Proposed changes include clarifying the meaning of "legitimate interest" "generating tax consequences" and "competent authorities", but, more importantly, it is proposed that:

- trusts, which comprise 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, will need to publicly disclose beneficial ownership information (i.e. the removal of the requirement to show a "legitimate interest"); whereas
- trusts preserving and setting conditions on use of family assets, charitable aims, or other purposes beneficial to the community will only be accessible to persons or organisations holding a legitimate interest.

It mentions that EU Member States may provide for an exception to all or part of the information being publicly available where it would expose the beneficial owner to the risk of fraud, kidnap, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable. This restriction would be assessed on a case-by-case basis.

Registers and monitoring

The proposal suggests setting up a direct inter-connection of registers between EU Member States to allow competent authorities, financial intelligence units and obliged entities to identify the beneficial owners in an easy and efficient way, increasing transparency requirements on companies and trusts. It will also allow the public to access EU-wide the beneficial ownership information.

It also proposes “systematic monitoring” of beneficial owners of trusts, other legal arrangements and legal entities such as foundations. This is to ensure the detection and assessment of risks in a timely manner.

Comment

The onset of beneficial ownership information of trusts being made fully public, rather than subject to the demonstration of a legitimate interest, is a significant change of position. Some commentators had suggested that transparency would, following Brexit, fall further down the political agenda, and perhaps it will in the UK, but this seems unlikely from the EU’s perspective. You may be aware that a US citizen living in France has recently brought legal proceedings against the French Government for publishing his beneficial ownership information on the French Register of Trusts which went live on 30 June 2016. We will have to wait to see if his actions cause France, and the EU Commission, to back-track on public registers for trusts.



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