

## **PROPOSED LANDING ZONE AML PACKAGE FOR MEMBER STATES' CONSIDERATION**

Member states delegates are kindly requested to find below a proposal for a landing zone on both the AMLR as well as the AMLD. The Belgian Presidency aims to reach a political agreement during the Political Trilogues of January 16 and 17. Reaching agreement on January 17 is the best way to allow for the adoption of the legislative texts in this legislature without recourse to the corrigendum procedure.



You will find that the Note below builds further on what has been achieved by the Spanish Presidency. On AMLR, the Spanish Presidency was close to landing during the Political Trilogue of December 12th. We are therefore proposing an incremental approach, building on what has been achieved so far. We believe this will enhance the odds of success in light of the very short timing ahead of us.

With this note, we are seeking your guidance, support and flexibility. In good faith towards the Council, we have attempted to prioritize in the compromise proposal below those areas that are most important for the Council.

### **I. AMLR**

#### **A. BENEFICIAL OWNERSHIP.**

##### ***Overall package***

The Presidency proposes to adhere to all the tenets of the Council General Approach, including the 25% threshold, the approach to funds, as well as the distinction between corporate and other legal entities. We also propose not to accept predetermined lower thresholds for higher risks in the AMLR.

As it emerged during the December 11-12 Political Trilogues, the EP's main political priority is to increase the number of beneficial owners to be identified. In this regard the Parliament could consent to the Council General Approach's multiplication method, provided that the overall threshold was lowered to 15% and to 5% for certain higher risk sectors such as extractive industries.

We propose not to go along with the lowering of the threshold. We trust this is feasible, provided we show flexibility to the Parliament regarding the calculation method, by accepting an every-step-in-the-chain-method.

##### ***Threshold***

In order to ensure a level-playing field between EU rules and those applied in third countries, the standard threshold for the identification of beneficial owners through ownership should be set at 25% of the shares or voting rights. Consistency with the 25% approach would also avoid the administrative burden associated with a default lower threshold. It would also avoid the proliferation of beneficial owners that would bring little value for competent authorities, blurring the picture.

##### ***Methodology***

We propose to go along with the proposal of the EP to calculate the 25% threshold using an every-step-in-the-chain-method that would have the sizeable benefit of bringing harmonization to a highly fragmented field of calculation regimes. While retaining the 25% thresholds leads to less BO's

identified, the every-step-in-the-chain method admittedly increases the number of natural persons identified as beneficial owners than would be the case under the multiplication method.

In terms of administrative burden however, there is no great difference between the Council General Approach and the every-step-in-the-chain model. The General Approach indeed combines a multiplication approach with the addition of another means of control through ownership interest, defined as direct or indirect ownership of 50% plus one of the shares/voting rights/other ownership interests in the legal entity.

### **Higher Risk Situations**

The Presidency considers that the option to lower the threshold should be reserved only for situations of higher risk where a lower threshold can be an adequate way of mitigating those risks. In light of the ever evolving risk landscape, we propose to allow for a flexible, risk-based methodology to identify higher risk categories of corporate entities. We therefore would not consent to regulate this in the Level 1 text, but would propose to empower the Commission to adopt Delegated Acts to determine these categories, based on situations or sectors identified as higher risk in National or Supranational Risk Assessments.

### **Foreign entities (art. 48)**

Agreement on Article 48 is a key piece of the puzzle in an overall compromise. Council and Parliament have moved close to each other on this point, based on a proposal prepared by the Commission, attached herewith. We propose to work along the lines of this compromise. The two key open points under Article 48 are two points proposed by the Parliament:

- (i) the registration for foreign entities when they own stakes in an EU public body; and
- (ii) the retroactive application of the registration requirement for foreign entities owning real estate in the Union.

With regard to (i), the Presidency proposes to reject it as the registration appears to serve a purpose unrelated to AML/CFT, i.e. the control of foreign influence.

With regard to (ii), the Parliament requires registration of the beneficial ownership of all foreign entities that on the date of application of the AML Regulation own real estate. In its redrafting proposal, the Commission had initially limited this requirement to 1<sup>st</sup> January 2005, following the 2004 enlargement. The Presidency understands the rationale for dealing with a 'legacy' issue of historically acquired real estate. Requiring retroactivity would also mirror the initial registration phase for *EU* legal entities when registers were set up. Nonetheless, for reasons of administrative feasibility, the Presidency would propose a shorter lookback period. The Presidency would propose to limit retroactivity to January 1, 2014 (last EU enlargement). Moreover, foreign entities owning real estate would have a three-year period for registration as of the entry into application of the Regulation.

Agreement on Article 48 would be a strong argument to hold firm against the Parliament's demand related to registers on high-value goods (art. 16b) and goods traded in free trade zones (art. 16c) in the AMLD (see below).

### **B. CASH**

We propose to defend the main red lines of the Council, namely:

- (i) the 10.000 EUR threshold,
- (ii) the mandate for the report under Article 63 AMLR as "adjusting" the threshold (rather than 'lowering'),
- (iii) the introduction of a *force majeure* clause and
- (iv) an extension of the exception to the limit to both PSPs and e-money service providers.

In exchange, we propose to accept the introduction of threshold-based reporting to the FIU, provided that it is clarified that those reports do not replace STRs and that they are submitted on a monthly basis.

On discrimination between residents and non-residents, we note that the Commission considers a differential treatment to be already not in line with the case law of the ECJ, and that, therefore, the Parliament's proposal would, according to the Commission, be of a mere clarificatory nature. Despite these concerns, the Presidency proposes to defend the Council position to remain silent on this matter, in light of the importance to some member states.

On customer due diligence requirements, we propose not to agree with the Parliament's proposal for a EUR 5000 threshold, but to stick to EUR 3000 compromise as outlined by the Spanish Presidency. In order for these customer due diligence requirements to have any practical significance, we also propose to follow the Council's general approach to include record keeping requirements for identification and identity verification.

### C. FOOTBALL

Thanks to the Spanish Presidency, the Council's and the Parliament's position have been brought close to each other. The Spanish Presidency had indeed proposed as a compromise to make football clubs obliged entities with the possibility for Member States to exempt them in full or in part, along the lines of the exemption envisaged for gambling under Article 4 AMLR (as per option 2 in the ES presidency note WK 16493/2023 of 6 December 2023).

Option 2 looks as follows:

- Professional football clubs only, and not agents or football associations. (\*)
- AML/CFT requirements would be applied only to the riskiest transactions (transactions with investors, sponsors, players' agents or other intermediaries, transfers).
- Member States would be able to exempt clubs active in divisions below the first upon proven low risk, in particular in relation to the cross-border dimension of transactions.
- Date of application of AMLR requirements for the sector: 5 years after entry into force of the AMLR (as opposed to 3 years for other new obliged entities).

(\*) Where needed to reach a deal, the Presidency believes agents could also be included in the scope as suggested to the Parliament.

### D. HNWI

On HNWIs, the Presidency deems it crucial to retain the Council's attachment to preserving the risk-based approach, without stigmatising customers merely on the basis of their wealth. The Presidency also understands that, in order to reach a compromise with the Parliament, we will need to cater for certain measures to HNWI that are associated with higher risks.

In a spirit to compromise both interests, we propose not to depart from the general principles of CDD in AMLR but to build on them by adding a third subparagraph to Article 16(2) (which requires the assessment of risks associated with customers and application of EDD in cases of higher risk). In case of business relationship with HNWI associated with higher risk, credit and financial institutions as well as trust company service providers ('TCSPs') would be required to take additional risk mitigating measures, if and only if the following conditions are met:

- Assets under management are above the 5 million EUR threshold liquid;
- Provision of personalised services to the customer;
- The service provides is wealth management through investment.

The additional risk mitigating measures would be the following:

- the application of specific risk mitigation measures and procedures in relation to bespoke services and products offered to those customers;
- obtaining additional information on the source of funds;
- the application of enhanced measures to prevent and manage conflicts of interest between HNWI's and senior managers or employees of the obliged entity that undertake tasks related to the obliged entity's compliance in relation to those customers.

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## II. AMLD

### A. POWERS OF BO REGISTERS (ART. 10)

In its negotiating mandate, the European Parliament had significantly strengthened the powers of beneficial ownership registers. During discussions at technical level, several of the Parliament's proposals have been discarded, in particular those that might have created unintended legal consequences for legal entities' employees, creditors etc. We are expecting two points that will have to be dealt with at political level:

- i) the power of the entity/ies in charge of the registers to carry out onsite inspections at trustees/lawyers that set up or run legal entities or arrangements; and
- ii) the ability of registers to resort to automated tools to cross-check information they receive from the legal entity/arrangement.

On i) we propose to show flexibility to the Parliament by reverting to the original wording of the proposal, to grant registers the power to carry out inspections at the premises of legal entities (rather than an option for Member States to grant this power). It is to be highlighted that the actual difference between both options is somewhat subdued, as registers would be under no obligation to use it. Onsite inspections could be reserved for extreme cases where they would be warranted, *i.e.* when the entity in charge of the register has serious doubts regarding the accuracy of the information in their possession. For the same reason, the power to carry out inspections could be expanded also towards legal arrangements. In this case, while the Presidency is convinced that registers should have this power, the Presidency also considers that specific safeguards should be in place in case of legal professions and TCSPs, akin to those agreed in relation to AMLA's inspections at the premises of service providers (*i.e.* limited to business premises and, where the business premises are the same as the legal professional or TCSP's private residence, onsite inspections should be subject to a judicial authorisation).

On ii), while the goal of the Parliament is laudable, the requirement to provide automated technology to carry out verifications of beneficial ownership information appears too detailed and not in line with the flexibility that a Directive intends to grant Member States. The Presidency proposes to replace this requirement with a more flexible one that requires Member States to provide registers with sufficient means to ensure that the information they hold is adequate, accurate and up-to-date and to notify those means to the Commission. The Presidency notes that the requirement for information to be adequate, accurate and up-to-date has been detailed in the new FATF standards with increased expectations in this regard, and that all Member States will be assessed against those standards and will thus have to implement such means. Thus, this compromise would support the mechanisms to be put in place by Member States under FATF rules.

### B. ACCESS TO THE BO BASED ON LEGITIMATE INTEREST (ART. 12)

On this point, the Presidency is skeptical regarding the Parliament's request to have commercial database providers included in the category of persons deemed to have a legitimate interest. In case member states would be willing to meet Parliament's request, at a minimum, it cannot be agreed that products containing BO information obtained from the registers be sold to non-EU competent authorities and obliged entities. In that case indeed, the conditions for access by third country entities/authorities would be bypassed by purchasing products of private operators.

The Presidency is also skeptical concerning the Parliament's proposal for the delays to approve access by the registers. The Parliament proposes 10 working days. The Commission proposes 14 working days. For the Presidency both delays are too short. The registers can from an operational point of view not guarantee that they can process the demands for access within these timeframes.

A possible way forward would be to have a transition period (for example 6 months) in the beginning of the application of the regulation during which a longer delay would apply to approve (or refuse)

demands for access. Added to this there could also be a longer delay if the registers would be faced with exceptional circumstances.

### C. REAL ESTATE REGISTERS AND INTERCONNECTION (ART. 16 AND 16A)

At the political trilogue on AMLD of 23 October 2023, co-legislators tasked the Commission to propose a possible compromise that would provide competent authorities with access to real estate information through a single access point, and which would achieve an acceptable level of harmonisation across Member States. The Commission's proposal was issued on January 5, 2024 and is attached herewith. It identifies information that competent authorities deem relevant for their analyses and investigations into criminal schemes involving real estate. Such information is to be provided by digital means to competent authorities through a single access point. In the view of the Presidency, this approach strikes a possible balance between the legitimate needs of competent authorities and the administrative burden and costs of a full harmonisation and interconnection of real estate registers, since it:

- (a) avoids the need to amend the content of real estate and land registers;
- (b) allows Member States to set up the single access point in the way that they find most suitable, with only a limited set of conditions;
- (c) limits the information to be provided to competent authorities to what is strictly necessary, and what is consistent with the Council GA, which had not amended the Commission proposal on Article 16 AMLD;
- (d) grants sufficient time to Member States to set up those single access points (i.e. 5 years after transposition), and
- (e) does not require interconnection of those single access points but tasks the Commission to report to the Council and the European Parliament in 8 years' time regarding their interconnection. In the meantime, cross-border exchanges will rely on cooperation between counterparts in the Member States.

The proposal also ensures that beneficial ownership information remains recorded only in the beneficial ownership registers. Member States remain free to connect those beneficial ownership registers to the single access point if they so wish. The Presidency recognises that the compromise might require a limited number of Member States to undertake digitalisation initiatives. However, we understand that this would be the case only for a very few instances and that such initiatives are in some cases already ongoing. We are of the view that the objective pursued, which was supported by the Council in its GA, justifies this effort.

### D. OWNERSHIP OF HIGH-VALUE ASSETS (ART. 16B) AND ASSETS IN FREE TRADE ZONES (ART. 16C)

The Presidency proposes not to accept the Parliament's proposals related to high-value asset registers and free trade zone registers, provided we agree on the proposal on Article 48 AMLR (foreign legal entities) as prepared by the Commission, and provided we agree on a form of threshold based reporting of transactions in certain high-value goods (below).

#### High-value assets (16b)

During the political trilogues held on 11 and 12 December 2023, co-legislators agreed with the Commission's proposal to deal with beneficial ownership of high-value assets under Article 48 AMLR. The Commission's redrafting of Article 48 AMLR covers additional situations where trusts interact with the internal market and specifies the reporting requirements of foreign entities and arrangements. In the case of acquisition of high value goods, the Parliament's requirement under Article 16b concerning information on all the parties to the transaction, the means of payment and the source of funds are not covered by the redrafting of Article 48. This is more of a customer due diligence requirement and has no relevance for the purposes of transparency of legal entities and arrangements, as it does not assist in the identification of the beneficial owner. Consequently, there

is no evident justification for the increase in additional data, including personal data, where this is not in line with the purpose of beneficial ownership registers.

The Presidency proposes to accept the redrafting of Article 48 AMLR, which would then replace Article 16b AMLD.

#### Assets in Free Trade Zones (art. 16c)

The Parliament proposed a requirement on Member States to provide a single access point for beneficial ownership information of assets stored, traded or transiting in free trade zones, whether through a register or an electronic data retrieval system. The Presidency notes that the inclusion of traders of high value goods as obliged entities (art. 3 AMLR) already covers beneficial ownership information if the asset is owned by an EU entity. The extended scope of foreign legal entities that would be subject to beneficial ownership registration (art.48 AMLR) would likewise cover goods owned by foreign entities. As for the interconnection of such information, we understand that there is only one Member State with a free trade zone for luxury goods, which would mean that that on a practical level there is no such need for interconnection. Provided that the compromise above in relation to art. 48 AMLR is supported, we propose not to consent to the Parliament's proposal on a Register on assets in FTZs.

#### Threshold based reporting

The Presidency understands the Parliament's concerns regarding ownership of high value goods and the misuse of free trade zones but the approach towards these risks is resource intensive and would propose instead an approach that does away with the requirement to create a single access point to a register or electronic data retrieval system.

This would be based on the mandatory reporting of transactions involving the purchase of certain limited high value goods used for private purposes. Specifically, obliged entities would report to the FIU transactions concerning the purchase of:

- motor vehicles for non-commercial purposes of at least EUR 300 000;
- Watercrafts for non-commercial purposes of at least EUR 10 000 000; and
- Aircrafts for non-commercial purposes of at least EUR 10 000 000.

Bearing in mind that these transactions would already be subject to CDD and AML requirements, this approach would not create an additional burden on the customer as it would not require the collection of additional information. Likewise, the competitiveness of the EU market is not impacted. The scope of goods captured would also be in line with the redrafted Article 48 AMLR, which requires foreign entities to register their beneficial ownership information when acquiring such goods within the EU. Finally, Member States are reminded that mandatory threshold-based reporting is different to suspicious transaction reporting – such reports do not imply suspicion, and would not automatically trigger an FIU analysis.

If necessary to achieve a compromise, the Presidency would consider increasing the scope of reportable transactions to cover other high value goods that are already in scope of the AMLR, specifically works of art and precious metals and stones. The threshold for such reports would be higher than the threshold that brings them in scope of the AMLR. For example, for works of art the scope could be limited to those under the categories (c) and (g) of the Annex to Regulation 2009/116, with their associated thresholds in that Regulation.

This Presidency considers this to be a reasonable landing zone to replace the Parliament's proposal under Article 16b and 16c. As newly obliged entities do often not notify significant amounts of suspicious transactions, this threshold based reporting would allow FIUs to gain a better insight without a great administrative burden.

#### E. CREDIT AND FINANCIAL INSTITUTIONS UNDER ENHANCED SUPERVISION (ART. 31A)

In its negotiating position, the European Parliament mandates that supervisors should draw up lists of credit and financial institutions that are under enhanced supervision due to serious and structural weaknesses and vulnerabilities in the application of AML/CFT requirements. Credit and financial institutions that carry out transactions with such listed institutions would be required to consider applying enhanced due diligence measures against those listed institutions.

The Presidency's preferred approach would be to reject this proposal for several reasons:

- (i) The Article interferes with the application of pecuniary sanctions and administrative measures to address breaches of AML/CFT requirements, particularly since under the redrafted compromise administrative measures can also be applied to prevent the commission of breaches.
- (ii) In addition, the Presidency considers that it is not appropriate for supervisors to disclose the level of risk at which entities under their oversight are placed. This information is of a confidential nature and its publication or dissemination may lead to significant risks for the stability of the financial system.
- (iii) Finally, the Presidency notes that under the compromise reached on the AMLA Regulation, supervisors will be able to consult in the database managed by AMLA both the risk profile of credit and financial institutions across the EU (whether supervised nationally or by AMLA) and the pecuniary sanctions imposed and administrative measures applied by supervisors.

#### F. FIUS

On the chapter on FIUs in AMLD (chapter III), technical work has continued and solutions were sought – together with the Parliament and the COM- for remaining points of importance for the Council:

- direct and immediate access from FIUs to financial and administrative information;
- restriction of access possible for law enforcement information on a case-by-case basis;
- responses to requests from competent authorities;
- cooperation with counterparts in third countries;
- matching in FIU.net;
- distinction between implementing technical standards;
- regulatory technical standards and guidance on exchange of information between FIUs;
- response time between FIUs and joint analyses.

New proposals, changes and inserts cover a lot of grounds asked for by the Council. Some new articles are proposed, e.g. on exchange of information by electronic means, and provision of information from FIU to supervisors and the confidentiality of reporting. The Presidency drafted a new proposal on Article 20 on Suspension Powers that should meet the demands from all parties involved. This new proposal still needs to be discussed during a technical meeting with the Parliament.

Enclosed you will find a note dedicated to the Chapter III on FIUs, giving a complete overview of the state of play, the progress made and in case of new (parts of) articles more details are shared to give the Member States a complete picture.

Given the limited time left, the Presidency kindly requests Member States to revert only where clarification is needed or where red lines are crossed. In the latter case, we would be grateful for your indication which particular points are raising difficulties and why.

**ANNEXES:**

- Commission Proposal on Foreign Legal Entities (art. 48 AMLR)
- Commission Proposal on Real Estate Registers (art. 16 and 16a-c AMLD)
- Presidency Note on FIUs

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