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| From: | General Secretariat of the Council |
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| Subject: | 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 = Presidency compromise text |

Delegations will find below a Presidency compromise text on the abovementioned proposal.

With respect to the third Presidency compromise (doc. 14884/16), the new text is marked in **underlined bold** and deletions are indicated in ~~striketrough~~.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

- (1) Directive (EU) 2015/849 of the European Parliament and the Council³ 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.
- (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.
- (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 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled "The European Agenda on Security" 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 finance in all domains.

³ 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).

- (4) The Communication from the Commission to the European Parliament and the Council entitled "Action Plan for strengthening the fight against terrorist financing" underscores the need to adapt to new threats and to amend Directive (EU) 2015/849 to that effect.
- (5) Union measures should 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.
- (6) Providers of exchange services between virtual currencies and fiat currencies (that is to say coins, banknotes and electronic money of a country that is designated as a legal tender and is accepted as a medium of exchange in the issuing country) as well as custodian wallet providers are under no obligation to identify suspicious activity. Terrorist groups may thus be 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 providers engaged in exchange services between virtual currencies and fiat currencies as well as custodian wallet providers. For anti-money laundering and countering the financing of terrorism (AML/CFT) purposes, competent authorities should be able to monitor through obliged entities 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.
- (7) The anonymity of virtual currencies allows their potential misuse for criminal purposes. The inclusion of providers engaged in exchange services between virtual currencies and fiat currencies 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 transact without these providers. To combat the risks related to the anonymity, national Financial Intelligence Units (FIUs) should be able to obtain information allowing 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.

- (8) Local currencies (also known as complementary currencies) that are used in very limited networks such as a city or a region and among a small number of users should not be considered as virtual currencies.
- (9) When dealing with cases of high-risk and with natural persons or legal entities established in high-risk third countries, Member States are to require obliged entities to apply enhanced customer due diligence measures to manage and mitigate these risks. Each Member State therefore determines at national level the type of enhanced due diligence measures to be taken towards high-risk third countries. Those different approaches between Member States create weak spots on the management of business relationships involving high risk third countries identified by the Commission. It is important to improve the effectiveness of the list of high-risk third countries established by the Commission by providing for a harmonised treatment of those countries at Union level. This harmonised approach should primarily focus on enhanced customer due diligence measures, **when such measures are not already required by the previous customer due diligence measures foreseen in each of the national regimes**. Furthermore, **in accordance with international obligations**, Member States and obliged entities should be allowed to apply additional mitigating measures ~~in addition to~~ **(‘where applicable’) complementary to the** enhanced customer due diligence measures, in accordance with ~~international obligations~~ **a risk based approach and taking into account the specific circumstances of a business relationships or transactions**. International organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing may call to apply appropriate counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risks emanating from countries. Member States should enact and apply additional mitigating measures regarding high risk third countries identified by the Commission by taking into account calls for countermeasures such as those expressed by the Financial Action Task Force (FATF).

- (10) Given the evolving nature of money laundering and terrorism financing threats and vulnerabilities, the Union should adopt an integrated approach on the compliance of national AML/CFT regimes with the requirements at Union level, by taking into consideration an effectiveness assessment of those national regimes. For the purpose of monitoring the correct transposition of the Union requirements in the national regimes, their effective implementation and their capacity to accomplish a strong preventive regime in the field, the Commission should base its assessment on the national risk regimes, which shall be without prejudice to those conducted by international organisations and standards setters with competence in the field of preventing money laundering and combating terrorist financing, such as the FATF or Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL).
- (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 terrorists 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 to identify the customer in the case of remote payment transactions where the amount paid exceeds EUR 50. In order to mitigate the aforementioned risks and having due regard market participants and the sensitivity of this specific market segment, the zero ~~threshold~~ **threshold** should subsequently be applied to all remote payment transactions only after a sufficient transitional period is given allowing the adaptation to new regulatory framework.
- (12) While the use of anonymous prepaid cards issued in the Union is essentially limited to the Union territory only, that is not always the case with similar cards issued in third countries. It is therefore important to ensure that anonymous prepaid cards issued outside the Union can be used in the Union only where they can be considered to comply with requirements equivalent to those set out in the Union legislation. The rule should be enacted in full compliance with Union obligations in respect of international trade, especially the provisions of the General Agreement on Trade in Services (GATS).

- (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. In the exercise of their tasks, FIUs should have access to information and be able to exchange it without impediments, including through appropriate cooperation with competent authorities. In all cases involving money laundering, the associated predicate offences and 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.
- (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 or terrorism financing, such suspicion**action** 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 ~~in cases of suspicion of money laundering or terrorism financing~~ **in the context of their functions** be able to obtain information from any obliged entity, even without a prior report being made ~~by the individual obliged entity~~. **This does not include indiscriminate requests for information to the obliged entities in the context of the FIU's analysis, but only information requests based on sufficiently defined conditions.** 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.

(14a) The purpose of the FIU is to analyse suspicious transactions **collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing**, and to disseminate the results of its analysis as well as additional information to the competent authorities where there are grounds to suspect money laundering, **associated predicate offences or** terrorism financing ~~or associated predicate offences~~. With respect to this analysis function, it is essential that FIUs can exchange with ~~another~~ **other** FIUs any information that may be relevant for the processing or analysis of information related to money laundering, **associated predicate offences** and terrorism financing regardless of the type of **associated** predicate offence and even if the type of **associated** predicate offence is not identified at the time of the exchange. ~~While the FIUs perform analysis and not law enforcement activities, the identification of possible predicate offences does not fall into their remit; this may be instead the responsibility of the competent authority which receives the information disseminated by the FIU, based on the relevant EU law and national law. Hence FIUs acting in their analysis function defined in this Directive are not expected to identify a specific predicate offence in order to request assistance to another FIU. As a consequence FIUs should not refuse the exchange of information to another~~ **other** FIU, spontaneously or upon request, for reasons such as lack of identification of **associated** predicate offence, features of criminal national laws, differences of **associated** predicate offence definitions or reference to particular **associated** predicate offences ~~such as tax crime~~. Similarly FIUs should grant their prior consent to forward the information to competent authorities regardless of the type of possible **associated** predicate offences in order to allow the dissemination function to be carried out effectively. In any cases differences between national law definitions of **associated** predicate offences should not limit the exchange, the dissemination to competent authorities and the use of this information as defined in this Directive. Such measure applies to all forms of ~~predicate offences including tax crimes~~ **associated predicate offences**. **Having regard to the fact that FIUs have reported difficulties in exchanging information based on differences in national definitions of some of the associated predicate offences which are not harmonised under the European law, such as tax crimes, such differences in national law should not hamper the exchange, dissemination and use of such information by and between FIUs.**

- (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 money laundering or terrorism financing. 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. When applying the access provisions, it is appropriate for pre-existing mechanisms to be used so long as national FIUs can access the data they require in an immediate and unfiltered manner. Member States should consider to feed such mechanism with other information deemed to be necessary and proportionate for more effective mitigation of money laundering and terrorism financing risks. Full confidentiality should be ensured on the enquiries and related information by FIUs and competent authorities other than those authorities responsible for prosecution.
- (16) In order to respect privacy and protect personal data, such registries should store at least the data necessary to the performance of AML/CFT investigations. When transposing these provisions, Member States should set out retention periods equivalent to the period for retention of the documentation and information obtained within the application of customer due diligence measures. **Member States should have the possibility to extend the retention period on a general basis by law, while not requiring case-by-case decisions.** Access to the registries and databases should be limited on a need to know basis.

- (17) Accurate identification and verification of data of natural and legal persons is essential for fighting money laundering or terrorist financing. Latest technical developments in the digitalisation of transactions and payments enable a secure remote or electronic identification. Those means of identification as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council⁴ should be taken into account, in particular with regard to notified electronic identification schemes and means that offer high level secure tools and provide a benchmark against which assessing the identification methods set up at national level may be checked. Therefore, it is essential to recognise secure electronic copies of original documents as well as electronic assertions, attestations or credentials as valid means of identity.
- (18) *deleted*
- (19) The approach for the review of existing customers in the current framework relies on a risk-based approach. However, given the higher risk for money laundering, terrorist financing and associated predicate offenses associated with some intermediary structures, that approach may not allow the timely detection and assessment of risks. It is therefore important to ensure that certain clearly specified categories of already existing customers are also monitored on a regular basis.

⁴ Regulation (EU) No 910/2014 of the European Parliament and the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

- (20) Member States are currently required to ensure that corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership. The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise be able to hide their identity behind a corporate structure. The globally interconnected financial system makes it ~~simple~~ **possible** to hide and move funds around the world, and money launderers and terrorist financiers as well as other criminals have increasingly -made use of that possibility.
- (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 in 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.
- (22) ~~Public access based on legitimate interest allowing access to certain information on the beneficial ownership of corporate and other legal entities contributes to preventing the misuse of these legal entities and arrangements through enhanced scrutiny. The same applies to information on the beneficial ownership of trusts and other types of legal arrangements having a structure and functions similar to such trusts. Certain Member States have taken steps or announced their intention to make information contained in registers of beneficial ownership available to the public. Member States may decide to opt for such wider access in their national legislation in case they choose to do so having regard to the utmost importance to retain balance and proportionality in the aim of transparency and the aim of protection of fundamental rights of the individuals especially the right to privacy.~~ **It is essential to also establish a coherent legal framework that ensures better access to information regarding the beneficial ownership of trusts and similar legal arrangements once they are registered across the Union. Rules that apply to trust and similar legal arrangements in respect to access to their beneficial ownership information should be comparable to the corresponding rules that currently apply to corporate and other legal entities.**

- (22a) Information on beneficial ownership of trusts and similar legal arrangements should be made available to any person demonstrating a legitimate interest. It will also contribute to increased trust in the integrity of the financial system by enabling those who are in a position to demonstrate legitimate interest to become aware of the identity of the beneficial owners. Access to this information would help investigations on money laundering, associated predicate offences and terrorist financing. Member States should define the conditions under which the legitimate interest can be claimed and the access to the beneficial owner information is granted. It also facilitates the timely and efficient access to information for obliged entities and competent authorities, including authorities of third countries, involved in the fight against these money laundering, associated predicate offences and terrorist financing.**
- (22b) With a view to further enhance transparency of business transactions and financial system, Member States may grant wider public access in their national legislation to information on beneficial ownership. Where a Member State decides so, it should have due regard to right balance between the public interest to combat the money laundering and terrorist financing and the protection of fundamental rights of individuals in particular the right to privacy and protection of personal data. Member States should be allowed to require online registration in order to identify any person who requests information from the register.**
- (22c) In order to ensure legal certainty and a level playing field, it is essential to clearly set out which legal arrangements established across the Union must be considered to be similar to trusts by effect of their functions and structure. Therefore, each Member State should be required to identify the trusts, if recognised by the national law and similar legal arrangements that may be set up pursuant to its national legal framework or custom and which have structure and functions similar to trusts, such as enabling a separation or disconnection between the legal and the beneficial ownership of assets. Thereafter, Member States should notify to the Commission the categories, description of the characteristics, names and where applicable legal basis of those trusts and similar legal arrangements in view of their publication in the Official Journal of the European Union in order to enable their identification by other Member States.**

- (23) ~~Public access based on legitimate interest also allows greater scrutiny of beneficial ownership information on corporate and other legal entities as well as on trusts and similar legal arrangements by those holding a legitimate interest. It can contribute to combating the misuse of legal entities and legal arrangements both by helping investigations and through reputational effects. It also facilitates the timely and efficient availability of information for financial institutions as well as authorities, including authorities of third countries, involved in the fight against these offences.~~deleted
- (24) *deleted*
- (25) ~~Member States should allow access to beneficial ownership information in a sufficiently coherent and coordinated way, through the central registers in which beneficial ownership information is set out, by establishing a clear rule of access based on legitimate interest, so that third parties holding a legitimate interest are able to ascertain, throughout the Union, who are the beneficial owners of corporate and other legal entities.~~deleted
- (26) ~~A fair balance should be sought in particular between the interest in transparency, interest in the prevention of money laundering and terrorist financing and in the data subjects' fundamental rights. The set of data to be made available upon legitimate interest should be limited, clearly and exhaustively defined, and should be of a general nature, so as to minimize the potential prejudice to the beneficial owners. In order to limit the interference with the right to respect for their private life in general and to protection of their personal data in particular, that that information should relate essentially to the status and strictly concern the sphere of activity of beneficial owners in the businesses and trusts concerned. Member States should be allowed to identify any person, who requests information from the register.~~deleted

- (27) ~~The disclosure of beneficial ownership information should be designed to give governments and regulators the opportunity to respond quickly to alternative investment techniques, such as cash-settled equity derivatives. For the functioning of financial markets that have become increasingly internationally oriented and complex, it is essential that legal rules and requirements that enable information sharing on an international level be available and effectively implemented by national supervisory authorities.~~deleted
- (28) ~~The enhanced scrutiny will contribute to preventing of the misuse of legal entities and legal arrangements for money laundering, terrorism financing purposes or for predicate offences such as tax evasion. This objective can be attended only by ensuring a certain degree of information to be delivered to the knowledge of these holding legitimate interest. It is also essential that this information remains available through the national registers and through the system of interconnection of registers for 10 years after the company has been struck off from the commercial or company register. The availability of that information should be made in such a way as to cause less interference with the beneficiaries' right to respect for their private life in general and to protection of their personal data in particular, rights recognised by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. Therefore, Member States should provide by law for the processing of the information on beneficial ownership, including personal data for other purposes if such processing meets an objective of public interest and constitutes a necessary and proportionate measure in a democratic society to the legitimate aim pursued.~~deleted
- (29) Moreover, with the same aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, Member States ~~should~~may provide for exemptions to the disclosure of and to the access to beneficial ownership information in the registers, in exceptional circumstances, where the information would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation.

(29a) The interconnection of Member States' central registers holding beneficial ownership information via the European Central Platform established by Directive 2009/101/EU necessitates the coordination of national systems having varying technical characteristics. This entails the adoption of technical measures and specifications which need to take account of differences between registers. In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to tackle these technical and operational issues. Those powers should be exercised in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011. In any case, the involvement of Member States in the functioning of the whole system should be ensured by means of a regular dialogue between the Commission and the representatives of Member States on the issues concerning the operation of the system and its future development.

- (30) Directive 95/46/EC of the European Parliament and of the Council⁵, which will be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council⁶, applies to the processing of personal data under this Directive.
- (31) Member States should take adequate measures to ensure that information made available through their national registers and through the system of interconnection of registers is up to date, and the access to that information should be in accordance with data protection rules.

⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281 , 23.11.1995, p.31).

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (32) This Directive is without prejudice to the protection of personal data processed by competent authorities in accordance with Council Framework Decision 2008/977/JHA⁷, which will be replaced by Directive (EU) 2016/680 of the European Parliament and of the Council⁸.
- (33) Currently, corporate and other legal entities active in the Union are under an obligation to register their beneficial ownership information, whereas the same obligation does not apply to all trusts and ~~other~~ legal arrangements which present similar characteristics. It should be taken into account that ~~other~~**these** legal arrangements, such as Treuhand, fiducies or fideicomiso set up in the Union, may have different legal characteristics throughout the Union. Member States should require that all legal arrangements governed under their law when having a structure and functions similar to trusts are treated as legal arrangements similar to trusts. By 2020, the Commission should assess whether all **trusts and** legal arrangements which have a structure and function similar to trusts governed under the law of Member States were duly identified and made subject to the obligations as set out in this Directive. With a view to ensure that the beneficial owners of all legal entities and legal arrangements operating in the Union are properly identified and monitored under a coherent and equivalent set of conditions, rules regarding the registration of the beneficial ownership information of trusts ~~by their trustees~~**and similar legal arrangements** ~~should~~**could** be consistent with those in place in respect of the registration of beneficial ownership information of corporate and other legal entities.
- (34) *deleted*

⁷ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

⁸ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

- (35) In order to ~~ensure proportionality~~ **avoid disproportionate impacts on the privacy of individuals**, the beneficial ownership information in respect of corporate and other legal entities as well as trusts and similar legal arrangements should ~~only be available to parties holding~~ **persons or organisations that can demonstrate a legitimate interest in accessing the beneficial ownership information**. ~~The legitimate interest with respect to money laundering, terrorist financing and the associated predicate offences should be at least given to those who demonstrated previous relevant activities related to the fight against money laundering and terrorist financing or associated predicate offences, or a proven track record of actions in that field.~~ **Member States shall define legitimate interest, both as a general concept and as a criterion for accessing beneficial ownership information of each and every category of corporate or other legal entity or trust or similar legal arrangement in their national law. Once the interconnection of Member States' beneficial ownership registers is in place, both national and cross-border access to each Member State's register shall be granted based on the definition of legitimate interest of the Member State where the corporate or other legal entity is incorporated or where the trust or similar legal arrangement is administered. In relation to Member States' beneficial ownership registers of trusts and similar legal arrangements, Member States shall also have competence to establish appeal mechanisms against decisions which grant or deny access to beneficial ownership information.**
- (36) With a view to ensure a coherent and efficient registration and information exchange, Member States should ensure that their authority in charge of the register set up for the beneficial ownership information of trusts and other legal arrangements similar to trusts cooperates with its counterparts in other Member States, sharing information concerning trusts and other legal arrangements similar to trusts governed by the law of the first Member State and administered in another Member State.

- (37) It is important to ensure that anti-money laundering and terrorist financing rules are correctly implemented by obliged entities. In that context, Member States should strengthen the role of public authorities acting as competent authorities with designated responsibilities for combating money laundering or terrorist financing, including the FIUs, the 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, authorities receiving reports on cross-border transportation of currency and bearer-negotiable instruments and authorities that have supervisory or monitoring responsibilities aimed at ensuring compliance by obliged entities. Member States should strengthen the role of other relevant authorities including anti-corruption authorities and tax authorities.
- (37a) Competent authorities supervising obliged entities for compliance with this Directive should be able to cooperate and exchange confidential information, regardless of their respective nature or status. To this end, such competent authorities should have an adequate legal basis for exchange of confidential information, and collaboration between AML/CFT competent supervising authorities and prudential supervisors should not be hampered unintentionally by legal uncertainty which may stem from a lack of explicit provisions in this field.
- (38) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

⁹ OJ C 369, 17.12.2011, p. 14.

- (39) Since the objective of this Directive, namely the protection of the financial system by means of prevention, detection and investigation of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States, as individual measures adopted by Member States to protect their financial systems could be inconsistent with the functioning of the internal market and with the prescriptions of the rule of law and Union public policy, but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (40) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (hereinafter "the Charter"), in particular the right to respect for private and family life (Article 7 of the Charter), the right to the protection of personal data (Article 8 of the Charter) and the freedom to conduct a business (Article 16 of the Charter).

(40a) When drawing up a report evaluating the implementation of this Directive, the Commission should give due consideration to the respect of the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union.

- (41) Given the need to urgently implement measures adopted with a view to strengthen the Union's regime set in place for the prevention of money laundering and terrorism financing, and seeing the commitments undertaken by Member States to quickly proceed with the transposition of Directive (EU) 2015/849, the amendments to Directive (EU) 2015/849 should be transposed within ~~6~~12 months after the publication in the Official Journal of the European Union. Access to the information recorded in the registries pursuant to this Directive should be granted within 18 months after the implementation date. Central registers should be interconnected via the European Central Platform within ~~18~~24 months after the implementation date.

(42) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council¹⁰ [and delivered an opinion on ...¹¹],

(43) Directive (EU) 2015/849- should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹⁰ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

¹¹ OJ C ...

Article 1

Amendments to Directive (EU) 2015/849

Directive (EU) 2015/849 is amended as follows:

(1) in point (3) of Article 2(1), the following points (g) and (h) are added:

"(g) providers engaged in exchange services between virtual currencies and fiat currencies;

(h) custodian wallet providers;

(2) Article 3 is amended as follows:

(a) *deleted*

(aa) the following point (9a) is added:

“(9a) ‘domestic politically exposed persons’ means a politically exposed person as referred to in point 9 who is or who has been entrusted with prominent public functions by any Member State or by an institution of the European Union;” ;

(b) point (16) is replaced by the following:

"(16) 'electronic money' means electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC, but excluding monetary value as referred to in Article 1(4) and (5) of that Directive;" ;

(c) the following point (18) is added:

"(18) 'virtual currencies' means a digital representation of value that can be digitally transferred, stored or traded and is accepted by natural or legal persons as a medium of exchange, but does not have legal tender status and which is not funds as defined in point (25) of Article 4 of the Directive 2015/2366/EC nor monetary value stored on instruments exempted as specified in Article 3(k) and 3(l) of that Directive.";

(d) the following point (19) is added:

"(19) “custodian wallet provider” means an entity that provides services to safeguard private cryptographic keys on behalf of their customers, to holding, store and transfer virtual currencies."

(3) Article 12 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the first subparagraph, points (a) and (b) are replaced by the following:

"(a) the payment instrument is not reloadable, or has a maximum monthly payment transactions limit of EUR 150 which can be used only in that Member State;

(b) the maximum amount stored electronically does not exceed EUR 150;"

(ii) the second subparagraph is deleted;

(b) paragraph 2 is replaced by the following:

"2. Member States shall ensure that the derogation provided for in paragraph 1 is not applicable in the case of redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR 50.

(ba) the following paragraph 2a is added:

"2a. Member States shall ensure that in case of remote payment transactions as defined in point (6) of Article 4 of the Directive 2015/2366/EC where the amount paid exceeds EUR 50 the customer has to be identified. After 36 months from entry into force of this directive identification shall be applied to all remote payment transactions.";

(c) the following paragraph 3 is added:

"3. Member States shall ensure that payment card schemes as defined in point 16 of the Article 2 of the Regulation No 2015/751 allow only the use of anonymous prepaid cards issued in third country where the issuer has proven to the card scheme that it meets requirements equivalent to those set out in points (a), (b), (c) of the first subparagraph of Article 13(1) and Article 14, or the requirements in paragraphs 1 and 2 of this Article. Member States may decide not to accept on their territory payments carried out by the anonymous prepaid cards."

(4) in Article 13(1), point (a) is replaced by the following:

"(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source, including, where available, electronic identification means and relevant trust services as set out in Regulation (EU) No 910/2014* or national law;

* Regulation (EU) No 910/2014 of the European Parliament and the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73)."

(5) in Article 14, paragraph 5 is replaced by the following:

"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 any legal duty in the course of the relevant calendar year, to contact the customer for the purpose of reviewing any relevant information related to the beneficial owner(s), in particular under Directive 2011/16/EU.";

(6) in Article 18 (1), the first subparagraph is replaced by the following:

"In the cases referred to in Articles 18a 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.";

(7) The following Article 18a is inserted:

"Article 18a

1. With respect to business relationships or transactions involving high risk third countries identified pursuant to Article 9 (2), Member States shall require obliged entities to apply the following enhanced customer due diligence measures:

- (a) obtaining additional information on the customer and on the beneficial owner;
- (b) obtaining additional information on the intended nature of the business relationship;
- (c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner;

- (d) obtaining information on the reasons for the intended or performed transactions;
- (e) obtaining the approval of senior management for establishing or continuing the business relationship;
- (f) conduct monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination
- (g) *deleted*

Member States may require obliged entities to ensure where applicable that the first payment be carried out through an account in the customer's name with a credit institution subject to CDD standards that are not less robust than those laid down in this Directive.

2. In addition to the measures provided in paragraph 1 and in compliance with international obligations of the Union, Member States shall require obliged entities to apply where applicable one or several additional mitigating measures **to high risk third countries identified pursuant to Article 9(2)**:

- (a) additional elements of enhanced due diligence;
- (b) introducing enhanced relevant reporting mechanisms or systematic reporting of transactions;
- (c) limiting business relationships or transactions with natural persons or legal entities from the third countries identified as high risk countries pursuant to Article 9(2).

3. In addition to the measures provided in paragraph 1, Member States shall apply where applicable one or several of the following measures to high risk third countries identified pursuant to Article 9(2) in compliance with international obligations of the Union:

- (a) refusing the establishment of subsidiaries or branches or representative offices of obliged entities from the country concerned, or otherwise taking into account the fact that the relevant obliged entity is from a country that does not have adequate AML/CFT systems;
- (b) prohibiting obliged entities from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AML/CFT systems;
- (c) *deleted*
- (d) requiring credit and financial institutions to review and amend, or if necessary terminate, correspondent relationships with obliged entities in the country concerned;
- (e) requiring increased supervisory examination or external audit requirements for branches and subsidiaries of obliged entities based in the country concerned;
- (f) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned.

4. When enacting or applying the measures set out in paragraphs 2 and 3, Member States shall take into account, as appropriate relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combatting terrorist financing, in relation to the risks posed by individual third countries.

5. Member States shall notify the Commission before enacting or applying the measures set out in paragraphs 2 and 3.";

(7a) in Article 20, new paragraph 2 is added:

"2. With respect to domestic politically exposed persons, Member States may allow, by way of derogation from paragraph 1(b) of this Article, the application of the customer due diligence measures laid down in Article 13, provided that there are no risk variables indicating an overall higher risk."

(8) in Article 27, paragraph 2 is replaced by the following:

"2. Member States shall ensure that obliged entities to which the customer is referred take adequate steps to ensure that the third party provides immediately, upon request, relevant copies of identification and verification data, including, where available, data obtained through electronic identification means and relevant trust services as set out in Regulation (EU) No 910/2014 or national law, and other relevant documentation on the identity of the customer or the beneficial owner.";

(9) Article 30 is amended as follows:

(a) ~~deleted~~ **paragraph 5 is amended as follows:**

"5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:

(a) competent authorities and FIUs, without any restriction;

(b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;

(c) any person or organisation that can demonstrate a legitimate interest.

The persons or organisations referred to in point (c) shall access at least the name, the month and year of birth and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held. In conformity with paragraph 3, Member States may allow for a wider access to the information held in the register in accordance with their national law.

For the purposes of this paragraph, 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."

(b) paragraph 6 is replaced by the following:

"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.

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, as well as 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.";

(ba) in paragraph 8 a new subparagraph is added:

"Whenever entering into a new customer relationship with a corporate or other legal entity subject to registration of beneficial ownership information pursuant to paragraph 3, the obliged entities shall collect proof of registration whenever applicable.";

(c) paragraphs 9 and 10 are replaced by the following:

"9. In exceptional circumstances to be laid down in national law, where the access referred to in point (b) and (c) 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. Member States shall ensure that these exemptions are granted upon an evaluation of the exceptional nature of the circumstances.

Exemptions granted pursuant to this paragraph shall not apply to credit institutions and financial institutions, and to the obliged entities as referred to in point (3)(b) of Article 2(1) that are public officials.

10. Member States shall ensure that the central registers referred to in paragraph 3 of this Article are interconnected via the European Central Platform established by Article 4a(1) of Directive 2009/101/EC. The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 4c of Directive 2009/101/EC **and with Article 31a of this Directive**.

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 4a(2) of Directive 2009/101/EC, in accordance with Member States' national laws implementing paragraph 5 **and 6** of this Article.

~~The information referred to in paragraph 1 of this Article shall be available through the national registers and through the system of interconnection of registers for no longer than 10 years after the corporate or other legal entity has been struck off from the commercial or company register.~~

Member States shall cooperate among themselves and with the Commission in order to implement the different types of access in accordance with paragraphs 5.";

(10) Article 31 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall ensure that this Article applies to trusts and other types of legal arrangements, such as, inter alia, fiducie, Treuhand or fideicomiso when having a structure and functions similar to trusts. Member States shall ~~define~~**identify** the characteristics to determine where legal arrangements have a structure and functions similar to trusts **with regard to such legal arrangements governed under their law.**

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:

- (a) the settlor;
- (b) the trustee(s);
- (c) the protector (if any);
- (d) the beneficiaries or class of beneficiaries;
- (e) any other natural person exercising ultimate control of the trust.";

(b) the following paragraph 3a is inserted:

"3a. The information referred to in paragraph 1 shall be held in a central beneficial ownership register such as the ~~ones~~**ones** referred to in the Article 30 paragraph 3 set up by the Member State where the trust **or similar legal arrangement** is administered, **unless there is sufficient proof that the beneficial ownership information of the trust or similar legal arrangement has been registered in a central beneficial ownership register of another Member State.**";

(c) paragraph 4 is replaced by the following:

"4. Member States shall ensure that the information held in the register referred to in paragraph 3a is accessible in a timely and unrestricted manner by competent authorities and FIUs, without alerting the parties to the trust **or similar legal arrangement** concerned. They shall also ensure that obliged entities are allowed timely access to that information, pursuant to the provisions on customer due diligence laid down in Chapter II. Member States shall notify to the Commission the characteristics of those mechanisms.

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, as well as 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.";

(d) the following paragraphs 4a and 4b are inserted:

4a. The information held in the register referred to in paragraph 3a of this Article shall be accessible to any person or organisation that can demonstrate a legitimate interest. **Member States shall define the conditions under which the legitimate interest is granted.**

The information accessible to persons and organisations that can demonstrate a legitimate interest shall consist of the name, the month and year of birth and the country of residence of the beneficial owner as defined in Article 3(6)(b).

In conformity with paragraph 3a, Member States may allow for a wider access to the information held in the register ~~referred to in the paragraph 3a~~ in accordance with their national law.

For the purposes of this paragraph, 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 fee charged for obtaining the information shall not exceed the administrative costs thereof.

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.";

(e) the following paragraph 7a is inserted:

"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. Member States shall ensure that these exemptions are granted upon an evaluation of the exceptional nature of the circumstances.

Exemptions granted pursuant to the first subparagraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.

Where a Member State decides to establish an exemption in accordance with the first subparagraph, it shall not restrict access to information by competent authorities and FIUs.";

(f) paragraph 8 is deleted;

(g) paragraph 9 is replaced by the following:

"9. Member States shall ensure that the central registers referred to in paragraph 3a of this Article are interconnected via the European Central Platform established by Article 4a(1) of Directive 2009/101/EU. The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 4c of Directive 2009/101/EC.

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 4a(2) of Directive 2009/101/EU, in accordance with Member States' national laws implementing paragraphs 4, **4a** and 5 of this Article.

Member States shall take adequate measures to ensure that only the information referred to in paragraph 1 that is up to date and corresponds to the actual ownership beneficiaries is made available through their national registers and through the system of interconnection of registers, and the access to that information shall be in accordance with data protection rules.

~~The information referred to in paragraph 1 of this Article shall be available through the national registers and through the system of interconnection of registers for no longer than 10 years after the trust or other legal arrangement similar to a trust has been struck off from the commercial or company register.~~

Member States shall cooperate with the Commission in order to implement the different types of access in accordance with paragraphs 4 and 4a of this Article.";

(h) the following paragraphs 10 and 10a are added:

"10. For the purposes of this Article, a trust or similar legal arrangement is considered to be administered in each Member State where the trustees are established.

10a. Member States shall notify to the Commission the categories ~~and~~, **description of the characteristics, names and where applicable legal basis** of the **trusts and** legal arrangements ~~that have been identified pursuant to the~~**referred to in** paragraph 1 within 12 months from the entry into ~~the~~ force of this Directive and upon expiry of that period the Commission should publish within 2 months in the Official Journal of the European Union the consolidated list of such **trusts and** legal arrangements **having a structure and functions similar to trusts**.

By 26 June 2020, the Commission shall submit a report to the European Parliament and to the Council assessing whether all **trusts and** legal arrangements which have a structure and function similar to trusts governed under the law of Member States were duly identified and made subject to the obligations as set out in this Directive. Where appropriate, the Commission shall take the necessary steps to act upon the findings of that report. "

(10a) the following Article 31a is inserted:

Article 31a

Implementing acts

Where necessary in addition to the implementing acts adopted by the Commission in accordance with Article 4c of Directive 2009/101/EC, the Commission shall adopt by means of implementing acts the following with a view to the interconnection of Member States' central registers as referred to in Article 30(10) and Article 31(9):

- (a) the technical specification defining the set of the data necessary for the platform to perform its functions as well as the method of storage, use and protection of such data;**
- (b) the harmonised criteria according to which beneficial ownership information is available through the system of interconnection of registers;**
- (c) the details of the information on beneficial owners to be made available;**
- (d) the technical conditions of availability of services provided by the system of interconnection of registers;**
- (e) the modalities how to implement the different types of access to information on beneficial ownership;**
- (f) the payment modalities, taking into account available payment facilities such as remote payment transactions.**

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64a(2).

(11) Article 32 is amended as follows:

(a) in the first subparagraph of paragraph 3, the fourth sentence is replaced by the following:

"Without prejudice to Article 34(2), in the context of its functions, each FIU shall be able to obtain and use the information relating to a suspicion of money laundering and terrorist financing from any obliged entity for the purpose set in paragraph 1 of this Article, even if such obliged entity did not file an prior report is filed pursuant to Article 33(1)(a) and/or Article 34(2~~1~~).";

(b) *deleted*

(12) the following Article 32a is inserted:

"Article 32a

1. Member States shall put in place centralised automated 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 2015/2366 identified by IBAN, and bank accounts held by a credit institution identified by IBAN¹² 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 in an immediate and unfiltered way to national FIUs and also accessible to national competent authorities for fulfilling their obligations under this Directive. 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.

¹² Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L94, 30.03.2012, p. 28)

3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:

- for the customer-account holder and any person purporting to act on behalf of the customer: the name, complemented by either the other identification data required under the national provisions transposing Article 13(1) (a) or a unique identification number;
- for the beneficial owner of the customer-account holder: the name, complemented by either the other identification data required under the national provisions transposing Article 13(1)(b) or a unique identification number;
- for the bank or payment account: the IBAN number and the date of account opening and closing.

3a. Member States may consider requiring other information deemed essential for FIUs and competent authorities for fulfilling their obligations under this Directive to be accessible and searchable through the centralised mechanisms.";

(13) in Article 33(1), point (b) is replaced by the following:

"(b)providing the FIU directly, at its request, with all necessary information.";

(14) in Article 39, paragraph 3 is replaced by the following:

"3. The prohibition laid down in paragraph 1 shall not prevent disclosure between the credit institutions and financial institutions from the Member States provided that they belong to the same group, or between these entities and their branches and majority owned subsidiaries established in third countries, provided that these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the group, in accordance with Article 45 and that the group-wide policies and procedures comply with the requirements set out in this Directive.";

(15) in Article 40, paragraph 1 is amended as follows:

(a) points (a) and (b) are replaced by the following:

"(a) in the case of customer due diligence, a copy of the documents and information which are necessary to comply with the customer due diligence requirements laid down in Chapter II, including, where available, information obtained through electronic identification means and relevant trust services as set out in Regulation (EU) No 910/2014 or national law, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction;

(b) the supporting evidence and records of transactions, consisting of the original documents or copies admissible in judicial proceedings under the applicable national law, which are necessary to identify transactions, for a period of five years after the end of a business relationship with their customer or after the date of an occasional transaction.";

(b) the following subparagraph is added:

"The retention period referred to in this paragraph, including the further retention period that shall not exceed five additional years, shall also apply in respect of the data accessible through the centralised mechanisms referred to in Article 32a.";

(15a) Article 45 paragraph 4 is replaced by the following:

"4. The Member States and the ESAs shall inform each other of instances in which a third country's law does not permit the implementation of the policies and procedures required under paragraph 1. In such cases, coordinated actions may be taken to pursue a solution. In the assessing which third countries do not permit the implementation of the policies and procedures required under paragraph 1, Member States and the ESAs shall take into account any legal constraints that may hinder proper implementation of those policies and procedures, including secrecy, data protection and other constraints limiting the exchange of information that may be relevant for that purpose.";

(16) in Article 47, paragraph 1 is replaced by the following:

"1. Member States shall ensure that providers of exchange services between virtual currencies and fiat currencies, and custodian wallet providers, are registered, that currency exchange and cheque cashing offices, and trust or company service providers are licensed or registered, and that providers of gambling services are regulated.";

(16a) in Article 48(4), the following sub-paragraphs is inserted:

“In the case of credit and financial institutions that are part of a group, Member States shall ensure that, for the purposes laid down in the previous subparagraph, the competent authorities of the Member State where a parent undertaking is established cooperate with the competent authorities of the Member States where the establishments that are part of group are established.”;

(16b) in Article 48(5), the following sub-paragraphs is inserted:

“In the case of credit and financial institutions that are part of a group, Member States shall ensure that the competent authorities of the Member State where a parent undertaking is located supervise the effective implementation of the group-wide policies and procedures referred to in Article 45 (1). For that purpose, Member States shall ensure that the competent authorities of the Member State where credit and financial institutions part of the group are located cooperate with the competent authorities of the Member State where the parent undertaking is located.”;

- (17) Article 49 is replaced by the following:

"Article 49

Member States shall ensure that policy makers, the FIUs, supervisors and other competent authorities involved in AML/CFT, as well as tax authorities when acting within the scope of this Directive, have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing, including with a view to fulfilling their obligation under Article 7.";

- (18) in Section 3 of Chapter VI, the following subsection IIa is added:

"Subsection IIa

Cooperation between competent authorities of the Member States

Article 50a

Member States shall not prohibit or place unreasonable or unduly restrictive conditions on the exchange of information or assistance between competent authorities for the purposes of this Directive. In particular Member States shall ensure that competent authorities do not refuse a request for assistance on the grounds that:

- (a) the request is also considered to involve tax matters;
- (b) national legislation requires obliged entities to maintain secrecy or confidentiality, except those cases where the relevant information that is sought is protected by legal privilege or legal professional secrecy as described in Article 34(2);
- (c) there is an inquiry, investigation or proceeding underway in the requested Member State, unless the assistance would impede that inquiry, investigation or proceeding;
- (d) the nature or status of the requesting counterpart competent authority is different from that of the requested competent authority.";

(19) in Article 53, the first subparagraph of paragraph 1 is replaced by the following:

"1. Member States shall ensure that FIUs exchange, spontaneously or upon request, any information that may be relevant for the processing or analysis of information by the FIU related to money laundering or terrorist financing and the natural or legal person involved, regardless of the type of associated predicate offences and even if the type of associated predicate offences is not identified at the time of the exchange.";

(b) in the second subparagraph of paragraph 2, the second sentence is replaced by the following:

"That FIU shall obtain information in accordance with Article 33(1) and transfer the answers promptly.";

(20) In Article 55, paragraph 2 is replaced by the following:

"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 or could lead to impairment of an investigation, 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. Those exceptions shall be specified in a way which prevents misuse of, and undue limitations on, the dissemination to competent authorities.";

(21) Article 57 is replaced by the following:

"Article 57

Differences between national law definitions of predicate offences as referred in Article 3(4) shall not impede the ability of FIUs to provide assistance to another FIU and shall not limit the exchange, dissemination and the use of information pursuant to Articles 53, 54 and 55.";

(21a) In Section 3 of Chapter VI, the following subsection IIIa is added:

“Subsection IIIa

Cooperation between competent authorities supervising credit and financial institutions and other authorities bound by professional secrecy”

Article 57a

1. Member States shall provide that all persons working for or who have worked for competent authorities supervising credit and financial institutions for compliance with this Directive and auditors or experts acting on behalf of such competent authorities shall be bound by the obligation of professional secrecy.

Confidential information which they receive in the course of their duties under this Directive may be disclosed only in summary or aggregate form, such that individual credit and financial institutions cannot be identified, without prejudice to cases covered by criminal law.

2. Paragraph 1 shall not prevent the exchange of information between competent authorities supervising credit and financial institutions within a Member States or between competent authorities supervising credit and financial institutions in different Member States in accordance with this Directive or other directives or regulations relating to the supervision of credit and financial institutions. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

3. Competent authorities supervising credit and financial institutions receiving confidential information as referred to in paragraph 1, shall only use this information:

- in the discharge of their duties under this Directive or under other directives or regulations in the field of AML/CFT, prudential regulation and supervising credit and financial institutions, including sanctioning;
- in an appeal against a decision of the competent authority supervising credit and financial institutions, including court proceedings;
- in court proceeding initiated pursuant to special provisions provided for in Union law adopted in the field of this Directive or in the field of prudential regulations and supervision of credit and financial institutions.

4. Member States shall ensure that competent **authorities** supervising ~~authorities~~ **credit and financial institutions** cooperate with each other for the purposes of this Directive to the greatest extent possible, regardless of their respective nature or status. Such cooperation also includes the ability to conduct, within the powers of the requested competent authority, inquiries on behalf of a requesting competent authority, and the subsequent exchange of the information obtained through such inquiries.

5. Member States may authorize their national competent authorities supervising credit and financial institutions to conclude cooperation agreements providing for collaboration and exchanges of confidential information with the competent authorities of third countries that constitute counterparts of the national competent authorities supervising credit and financial institutions mentioned in paragraph 1. Such cooperation agreements shall be concluded on the basis of reciprocity and only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in paragraph 1. Confidential information exchanged according to these cooperation agreements shall be used for the purpose of performing the supervisory task of those authorities.

Where the exchanged information originates in another Member State, it shall only be disclosed with the explicit agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Article 57b

1. Notwithstanding Article 57a (1) and (3) **and without prejudice to Article 34(2)**, Member States may authorise exchange of information between competent authorities, in the same Member State or in a different Member State, between the competent authorities and authorities entrusted with the public duty of supervising financial sector entities and natural or legal persons acting in the exercise of their professional activities as referred to in Article 2(1)(3) of this Directive and the authorities responsible for the supervision of financial markets in the discharge of their respective supervisory functions.

The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1).

2. Notwithstanding Article 57a (1) and (3), Member States may, by virtue of provisions laid down in national law, authorise the disclosure of certain information to other national authorities responsible for law on the supervision of the financial markets, or **with designated responsibilities in the field of combating or** ~~the~~ investigation of money laundering, the associated predicate offences **and/or** terrorist financing.

However, confidential information exchanged according to paragraph 2 shall only be used for the purpose of performing the legal tasks of the authorities mentioned. Persons having access to such information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1).

3. This Subsection shall not prevent the competent authorities supervising credit and financial institutions for compliance with this Directive from transmitting confidential information, for the purposes of their tasks, to other authorities responsible for supervising credit and financial institutions according to other directives or regulations, including the European Central Bank acting according to Regulation 1024/2013.

(21b) the following Article 64a is inserted:

"Article 64a

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹³.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply."

(22) in Article 65, the following second **and third** paragraphs **is**~~are~~ added:

"The report shall include an evaluation of how fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union have been respected.

The report shall be accompanied, if necessary, by appropriate proposals, including, where appropriate, with respect to virtual currencies, empowerments to set-up and maintain a central database registering users' identities accessible to FIUs, as well as self-declaration forms for the use of virtual currency users.";

(23) *deleted*

¹³ OJ L 55, 28.2.2011, p. 13.

(24) ~~Article 67 is amended as follows:~~

(a) *deleted*

(b) ~~the following paragraph 1a is inserted:~~

~~"(1a) Notwithstanding paragraph 1, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 30(10) and Article 31(9) within 18 months after the implementation date.";~~*deleted*

(25) in point (2) of Annex III, point (c) is replaced by the following:

"(c) non-face-to-face business relationships or transactions, without certain safeguards, such as electronic identification means or relevant trust services as defined in Regulation (EU) 910/2014;"

Article 2

Amendments to Directive 2009/101/EC

deleted

Article 2a

Amendments to Directive 2013/36/EC

(1) in Article 56 in paragraph 1 the following point is added:

(g) authorities responsible for supervising the obliged entities mentioned in Article 2, paragraph 1, (1) and (2) of Directive 2015/849 for compliance with that Directive."

Article 2b

Amendments to Directive 2009/138/EC

(1) in Article 68 in paragraph 1 (b) the following point is added:

(iv) authorities responsible for supervising the obliged entities mentioned in Article 2, paragraph 1, (1) and (2) of Directive 2015/849 for compliance with that Directive."

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest within ~~six~~**twelve** months after the publication of this Directive in the ~~Official~~**Official** Journal of the European Union. They shall immediately communicate the text of those measures to the Commission.

Access to the information recorded in the registries **referred to Article 31(3a), (4), (4a), (5) and Article 32a** pursuant to this Directive shall be granted within 18 months after the implementation date.

Notwithstanding the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 30(10) and Article 31(3a), (9) of Directive 2015/849 within 24 months after the date referred to in the second subparagraph of this Article.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive(s) repealed by this Directive shall be construed as references to this Directive **in case they are not updated**. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the ~~third~~twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament

The President

For the Council

The President