31 Rue du Commerce, 1000 Brussels
http://www.transparency.eu/
+32 (0) 4 97 49 90 81
brussels@transparency.org
@TI_EU
Transparency Register ID: 501222919-71

Transparency International EU's assessment of the adopted Anti-Money Laundering Package

The adoption of the Anti-Money Laundering (AML) package means the years-long work and negotiations that took place in the EU institutions have come to an end. But while this may mark the end of the legislative process, in many senses, the real work is just about to start. Hopefully, this will be the beginning of a concerted effort to shine light on the dark flows of dirty money, with a commitment to justice and transparency.

The finalised package, which consists of four legislative instruments, is a success. The package includes: a new Directive (the 6th Anti-Money Laundering Directive, or 'AMLD'), which deals with the powers and obligations of national supervisory bodies and Financial Intelligence Units; a new Regulation to establish detailed and directly applicable rules for so-called obliged entities; the establishment of a new EU Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA); and a recast of a regulation on transfers of funds and crypto assets. The final agreement is even stronger than the original Commission proposal: both the Council (Member States' representatives) and the European Parliament proposed crucial additions to make the system stronger. They understood what is at stake, and that the influence of illicit money in our financial system is a serious threat.

Know your customer – even if they are hidden behind shell companies

An important novelty of the package is the growing scope of the list of obliged entities. An obliged entity, in the context of AML rules, is a term encompassing entities such as banks, financial institutions, lawyers and certain businesses that are mandated to adhere to anti-money laundering and counter-terrorism financing measures. Based on the Parliament's proposal, top football clubs will now need to screen sponsorship agreements and transfers of players among other transactions. Another addition is extended AML obligations for entities processing **residency-by-investment programmes:** applicants will be required to go through enhanced due diligence process. These golden visa programmes can pose serious corruption and security risks if they are not coupled with the necessary checks, as we have seen in a number of cases. While

TRANSPARENCY INTERNATIONAL EU

31 Rue du Commerce, 1000 Brussels
http://www.transparency.eu/
+32 (0) 4 97 49 90 81
brussels@transparency.org
@TI_EU
Transparency Register ID: 501222919-71

including some language in the Directive about the Member States' obligations to report and assess the risk for such programmes is welcome, this should not be regarded as a comprehensive solution to mitigate the risks of European golden visa programmes. The European Commission should still come forward with a separate comprehensive regulation addressing residency-by-investment programmes, aiming to enhance transparency, mitigate the risks of abuse and safeguard against potential security and integrity threats. At the same time, measures must be implemented to unequivocally prohibit those programmes, which even provide citizenship for those investing in a country (citizenship-by-investment or 'golden passports').

One of the keystones of an effective AML system is knowing who owns and controls companies. This is why obliged entities need to identify the **beneficial owners of all legal entities** they engage with. Unfortunately, there have been too many avenues to hide the real persons behind an entity by opaque chains of shell companies, trusts and other complex vehicles. The rules make sure that if someone owns 25% or more of the shares, voting rights, or other ownership interests in a company, they are considered a beneficial owner. An important change here is that this needs to be calculated by considering all intermediate layers, should the entity's ownership include various chains. A new article of the regulation also clarifies the notion of control, i.e. when significant influence is exercised directly or indirectly, either through ownership interest or other ways. Where individuals have majority voting rights, the right to appoint or remove members of key office holders, or the right to decide profit distribution, they are also considered beneficial owners. Such control shall be identified independently of and in parallel to the existence of an ownership interest.

For a company in the high-risk sector, the ownership threshold may be lower than 25%; this can be proposed by a Commission delegated act at a later stage, which is a reasonable compromise. Extractive sectors, for example, have lower thresholds in a number of countries, and we believe this instrument should be used to mitigate risks. A wider scope and clearer definition of politically exposed persons will also help to mitigate corruption risks. The new package strengthens an independent EU list of high-risk third countries, and customers from those countries will need to go through enhanced due diligence checks.

The regulation provides additional clarification of beneficial ownership rules for specific types of legal entities that have so far operated under grey zones and diverging national systems. Rules for **express trusts** and other similar legal arrangements are much more

TRANSPARENCY INTERNATIONAL EU

31 Rue du Commerce, 1000 Brussels
http://www.transparency.eu/
+32 (0) 4 97 49 90 81
brussels@transparency.org
@TI_EU
Transparency Register ID: 501222919-71

detailed than previously, and **collective investment undertakings** will also need to register their beneficial owners. However, in adhering to the 25% ownership threshold, the identity of end investors will be kept hidden, which reinforces an existing loophole.

To make sure that obliged entities are able to do their jobs properly, beneficial ownership registers need to have adequate and accurate data they can consult. So far, in many Member States, there is no mechanism to independently verify the **beneficial ownership register data,** which raises questions about the quality of the data**.** The Directive now obliges the registers to verify the data they receive by cross-checking data with other databases. Member States have the possibility to grant important powers to the registers, such as requesting documents from legal entities, carrying out on-site inspections, and arming them with the powers to sanction entities that do not comply with their obligations. This legal framework gives registers the option to do what is necessary to establish a functioning system. We hope that Member States will provide the public bodies operating the registers with the necessary resources to improve the data contained in the register. Explicit language on the data format used in the registers would have been welcome, as this would support data interoperability; we hope that the upcoming secondary legislation will address this gap.

Who can access data: presumption of legitimate interest

Transparency International EU firmly believes that company ownership information should be publicly accessible. By operating in the public field and doing business, companies are using the systems and infrastructure the state provides them: legal entities are not meant to hide the people behind them. This is why we believe that the **ECJ's decision to invalidate public access** to beneficial ownership registers is a major setback in the fight against dirty money. Nevertheless, the Court's ruling acknowledged the role civil society, journalists and academia play in this fight, and that they have a legitimate interest in accessing this information. The final text of the 6th AMLD provides a short-term solution by ensuring access for those with legitimate interest.

Once these AMLD rules apply (two years after entering into force), journalists and civil society representatives working on countering terrorism financing, anti-money laundering or any of the predicate offences (such as corruption, tax fraud, environmental crime, or trafficking) will be able to consult the data in the register (provided they provide verified information about their occupation) **without being required to justify their**

TRANSPARENCY INTERNATIONAL EU

31 Rue du Commerce, 1000 Brussels
http://www.transparency.eu/
+32 (0) 4 97 49 90 81
brussels@transparency.org
@TI_EU
Transparency Register ID: 501222919-71

reasons for scrutinising a specific entity. Moreover, the tip-off risk is reduced, as sharing concrete information on those enquiring with the entity being scrutinised is forbidden. Once someone is registered as having a legitimate interest in one Member State, other countries will need to deem this registration valid too. In the future, the European Commission will prepare an implementing act to create a template for registration, to ensure all Member States apply the same procedures.

A breadth of public authorities will only have access to the register on a case-by-case basis. For foreign competent authorities, unfortunately, the new system will create an additional burden. Companies who are planning to establish business relations with an entity may also consult the BO registers. However, in all of these cases, the link to the entity in question must be demonstrated. While new system is something of a band-aid in the wake of the ECJ ruling, **BO information is much more** than a simple AML tool. In the long run, we need to think about how to avoid the abuse of privacy arguments, and how can we provide access to company ownership information on a much wider scale.

Asset ownership: from real estate to yachts.

The adopted package includes steps in the right direction about registering asset ownership, but does not go far enough. Channelling illicit money into high-value assets such as luxury cars, yachts or planes is a well-known phenomenon. Above a certain threshold, information about purchasing high-value assets (luxury cars, luxury watercraft and aircraft) needs to be submitted to the Financial Intelligence Units (FIU), even if there is no suspicious activity. While these measures represent progress, they still lack the comprehensive scope necessary to combat sophisticated financial schemes effectively. A **European Asset Register** would serve as a centralised database, providing authorities with a comprehensive view of asset ownership across borders. This would significantly enhance the detection and prevention of illicit fund channels, particularly those involving the acquisition of high-value assets.

Once the regulation applies, foreign entities entering into business relationship with an EU obliged entity or **buying real estate in the EU** will also need to register their beneficial owners. This closes a significant loophole, as we have seen that tracing the real owners behind luxurious homes is challenging. These rules will apply retroactively to purchases as of January 2014.

TRANSPARENCY INTERNATIONAL EU

31 Rue du Commerce, 1000 Brussels
http://www.transparency.eu/
+32 (0) 4 97 49 90 81
brussels@transparency.org
@TI_EU
Transparency Register ID: 501222919-71

The directive's provisions on **real estate registers** are long overdue. Member States that do not yet have a single digital access point for authorities to access information about real estate ownership will need to establish one now. However, the Directive should have included a stronger mandate for the Commission to start working on the interconnectedness of these registers. The agreed text only stipulates a report on the potential of interconnectedness that is to be published around mid-2032.

Information sharing, information sharing, and sharing more information: the way forward.

The package steps up the opportunities for cross-border cooperation among competent authorities. The new Anti-Money Laundering Authority will be an important **central hub with all information on ML activities**, patterns, and risks. The co-legislators here had in mind a framework in which competent authorities cooperate and AMLA coordinates and helps the work of national FIUs, including with joint analyses.

Establishing legal framework for **partnerships for information sharing** between obliged entities and competent authorities can be game-changing, if properly applied. While complying with the necessary privacy rules, pro-active information sharing can help put the pieces together, as one financial institution often can only see just one part of the puzzle. In the new framework, supervisors are also encouraged to work together, both in the financial sector as well as non-financial entities that supervise the same group or entity in several Member States. This will give authorities a better picture and encourage the private sector to improve compliance systems across countries.

One of the critical issues in the current system is **lack of oversight, especially in some of the non-financial sectors**. Unfortunately, the package does not go far enough in this regard. While compulsory national-level oversight of self-regulatory bodies of certain obliged entities (such as notaries, lawyers or auditors) is a necessary first step to an effective system, this might not be enough if national bodies are not proactive enough in pursuing breaches. Evidence suggests that while the majority of these sectors are doing an honest job, enabling financial crimes is an industry. There is virtually no large-scale money laundering without the involvement of lawyers, service providers and other enablers.

TRANSPARENCY INTERNATIONAL EU

31 Rue du Commerce, 1000 Brussels
http://www.transparency.eu/
+32 (0) 4 97 49 90 81
brussels@transparency.org
@TI_EU
Transparency Register ID: 501222919-71

AMLA: Guards of the guardians

The newly established AMLA, which will have its seat in Frankfurt, will have multiple functions. Besides the aforementioned FIU coordination task, it will also act as a supervisor. It will **directly supervise the 40 riskiest financial entities**, which are operational in at least six Member States. The selection procedure will separately assess residual and inherent risk profiles, and entities with high residual risks are the first to be selected. There are additional rules for the selection process to ensure that the AMLA has a presence in all 27 Member States. Recent scandals have shown that larger financial institutions often do not have the same effectiveness in their compliance work across countries. It is important to highlight that these future selected obliged entities are not on any kind of blacklist, and they should not be treated as such. The role of the AMLA here is to help them do their work, as well as to ensure there are complex answers to cross-border challenges.

The AMLA will have powers to **assume supervision of certain obliged entities** in case of supervisory failures – or in case the supervisory authority asks for such a takeover. Compared with the original draft proposal, the final text also gives additional powers to the Authority to investigate potential breaches of Union law and assess the work of the FIUs and supervisory authorities. It remains to be seen how frequently these powers will be used; we hope that the AMLA's leadership, an independent Executive Board, will not be blocked by politicised decisions, and can truly represent the EU's interest.

The adopted package is certainly a good starting point for the EU in stepping up its fight against illicit financial flows. However, the true test lies in the implementation of national regulations and secondary legislation, which will ultimately determine the effectiveness and success of these new rules. We must appreciate the work of the European Commission, the European Parliament and the Council to work on such an ambitious new legislative framework, and we hope that those rules will be properly implemented and enforced, as our resilience is only as strong as the weakest link in the common market.