



Council of the European Union  
General Secretariat

Brussels, 31 August 2022

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**Interinstitutional files:**  
**2021/0239 (COD)**  
**2021/0250 (COD)**

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WK 11279/2022 INIT

**LIMITE**

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## INFORMATION

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**From:** General Secretariat of the Council  
**To:** Financial Services Attachés  
Working Party on Financial Services and the Banking Union (AML)

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**Subject:** AML Rulebook: ddl 12.08.2022  
- Questionnaire on beneficial ownership (BO) following the AML working party meeting of 18.07.2022  
- Replies from 17 MS: PL PT ES IE AT EL NL SE SI SK DE EE FI IT LT LV RO

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WK 11279/2022 INIT

**LIMITE**

**EN**

# Presidency note on the beneficial ownership definition and registration (WK 10589/22) - questionnaire for Member States' input to be sent by 12 August 2022 COB

Replies from: PL PT ES IE AT EL NL SE SI SK DE EE FI IT LT LV RO (17 MS)

Questions from WK 10589/22	Member States' reply
<p>Q.1.1.A. Do Member States consider that the AMLR should in addition to the means of control also define the concept of control itself? If so, suggestions in this regard are welcome.</p>	<p>PL: (Comments): PL definitely is in favour of defining the concept of the control in the AMLR. In Polish AML/CTF act the person who controls the customer should be understood as a “every natural person who controls, whether directly or indirectly, a client through their powers which result from legal or factual circumstances and enable exerting a decisive impact on a client’s acts or actions”.</p> <p>PT: (Comments): <b>PT:</b> In our view, the elements of “<i>control through an ownership interest</i>” and “<i>control via other means</i>” are sufficient to delimitate the boundaries of what constitutes “<i>control</i>” for the purposes of the beneficial owner framework.</p> <p>Actually, the <a href="#">Glossary to the FATF Recommendations</a> defines beneficial owner as «(...) <i>the natural person(s) who ultimately owns or controls a customer and/or the natural</i></p>

*person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement».*

According to the [FATF Guidance on Transparency and Beneficial Ownership](#): « (...) *control refers to the ability of taking relevant decisions within the legal person and impose those resolutions, which can be acquired by several means».*

As such, and because of that diversity of means of acquiring control, creating an overly rigid definition of “*control*” may give rise to the risk that, due to the particularities of each Member States’ corporate arrangement, situations that could be relevant to assess control are not considered in the determination of the beneficial owner.

Moreover, the fact that Article 2(22) defines the “*beneficial owner*” as “*any natural person who ultimately **owns or controls** (...) a legal entity (...)*” collides with the provision of Article 42(1), which describes ownership as an (mere) instrument of control.

Thus, in our view, for a matter of coherence and legal certainty, it is essential to align these provisions. For example, an alternative drafting for Article 2(22) that includes the expression “*through ownership interest or via other means*” in the initial part of the revised definition, namely:

“*‘beneficial owner’ means any natural person who ultimately controls, **through ownership***

***interest or via other means**, according to Articles 42 and 43 of this regulation, a legal entity, an express trust or a similar legal arrangement, or any other organisation that has legal capacity under national law, as well as any natural person on whose behalf or for the benefit of whom a transaction or activity is being conducted;”.*

ES:

(Comments):

Not sure whether such a definition is necessary. We consider it is sufficient to define when control can be presumed to exist (as in the AMLD draft)

IE:

(Comments):

In our opinion, the individual who is in control of an entity is the one who has the most power and should be captured. From a first principle view of tackling money laundering, control is the primary factor. It is very important that any language drafted is as simple as possible to ensure widespread understanding and reduce the risk of loopholes being exploited.

FATF have expressed the view that “*control refers to the ability of taking relevant decisions within the legal person and impose those resolutions, which can be acquired by several means (for example, by owning a controlling a block of shares).*”

Consideration should also be given to the control criteria set out in Commission Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and

Security Policy ([link](#)). This guidance sets-out the criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party (page 20 onwards).

Hungary proposed a definition of BO that would have 3 categories: ownership above a threshold, capacity of exercising control/influence and entitlement to gains above a threshold. We agree with this proposal for a 3 tier definition of BO but think it should go further and have separate definitions for companies and trusts (as per ongoing discussions re FATF Rec 25), including the concept of control within a trust or company. For example, professional shareholder advice companies who provide a stewardship role, such as Glass House, can exercise power over the board of the company they are advising clients on without being a trustee, trustor or beneficiary. There can also be passive investors in companies, who on paper might appear to be in control but who play no active role. There is a difference between a passive or active investor. Perhaps filing information could be used to ascertain levels or purposes of control.

Questions also arise as to who then is the Ultimate BO in a case where more than 1 is found? Perhaps that could be resolved by saying that all BOs of corporates are jointly and severally liable in cases of breach/wrongdoing. This would not be possible for trusts however, as often a beneficiary is unaware they are one and that trusts are used for many purposes such as care of an incapacitated person. Problems also arise where many beneficiaries are found. This could overwhelm competent authorities, registrars and FIUs.

Care must be taken to ensure that once a BO is found, the search does not stop there and that all BOs are identified.

Do not agree that AMLA should provide guidance on this matter as there would be insufficient expertise at general board level on trusts etc

AT:

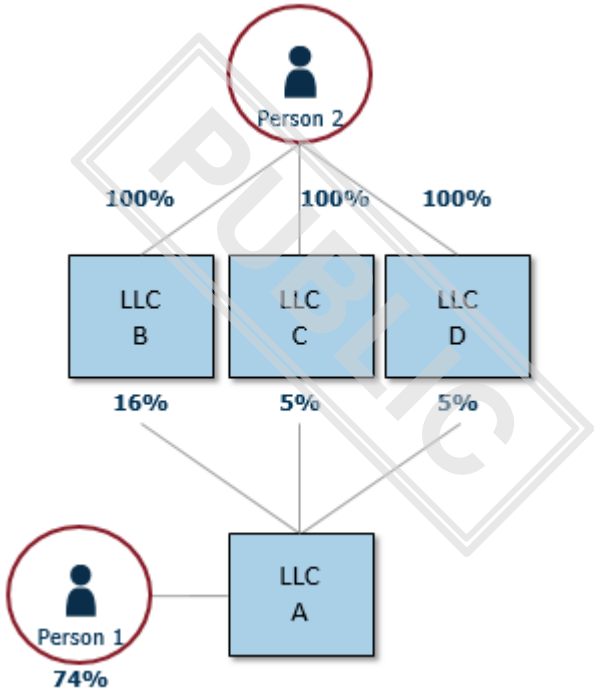
(Comments):

**Yes**, that is extremely important.

After having assessed the proposed definition on bases of our case studies we think, that the proposed definition is **too vague and is not sufficient** to harmonize the application of beneficial ownership rules in the European Union. Our experience of the last years shows clearly that cooperate entities, foundations and trusts engage law firms with legal opinions on how beneficial owners should be reported or not reported. If the definition is not specified in more detail, those **entities will circumvent this provision with ease**. That is a major difference to the way credit institutions apply the rules on beneficial ownership, because they have no primary interest to hide certain beneficial owners.

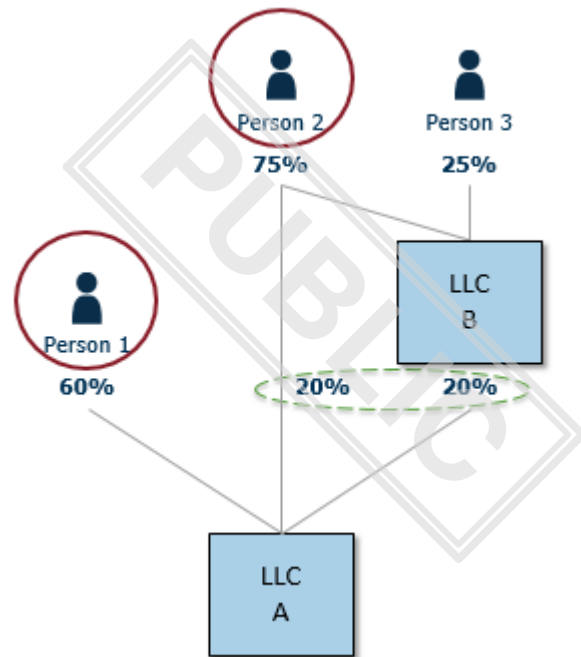
**We have identified a number of loopholes, which would require to further refine the concept of control and to clarify the terminology.**

The following case is not clear according to the definition:



Proposed text: *If several legal entities, where the same natural person(s) have a direct or indirect ownership interest or control via other means, hold a total of shares or voting rights of more than 25 % of the legal entity directly or indirectly, then this/these natural person(s) shall be considered as beneficial owners.*

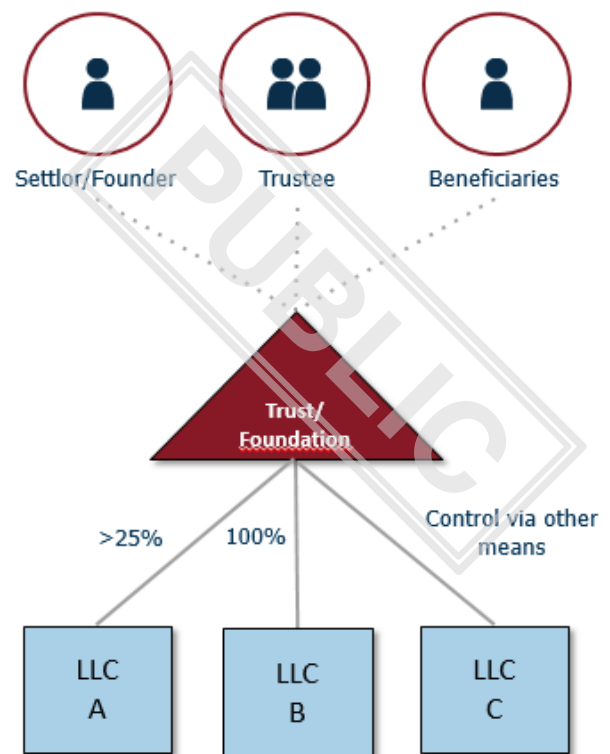
However according to the definition the following case is not clear:



**Thus we suggest to add the sentence:** *Directly held shares or voting rights shall be added respectively.*

In Austria and many other Member States as well, private foundations often have holding functions, holding shares of more than 25% of multiple corporate entities. According to the definition proposed the following case is not clear:

According to our understanding the settler/founder, trustee or beneficiary is beneficial owner of LLC A, B and C. As a general rule the beneficial owners of the foundation or the trust shall be the beneficial owners of all participations where foundation or the trust has an ownership interest or through control via other means. Otherwise LLC A, B or C will not report the link to the Trust or foundation, which will obscure beneficial ownership in this cases.



Drafting suggestion: Adding a new variant of control: **(f) performing a function according to Article 43 paragraph 1 point (a) to (e).**

**In addition, some elements of Art. 43 (1)**

**AMLR are also very problematic:**

- **Lit. b)** We think that veto rights, which usually exist in case of shareholdings over 25%, are not sufficient to exercise control. In addition, they are already covered under the term “control through an ownership interest” The term “leading to a shift in assets” is very unclear and should be specified.
- **Lit d)** The term “link” is not defined and unclear. The manager or director itself is not considered as beneficial owner. Thus is not clear why a link with its family would constitute control. **Thus, lit d should be deleted.**

EL:

(Comments):

We consider that the definition of various means of control is sufficient and it could be seen as an indirect definition of control itself.

NL:

(Comments):

We agree that it could be beneficial to further clarify control. The definition would however need to remain sufficiently open to prevent a more rule-based approach.

An important aspect of a definition of control in our view would also be that it should be clear that the influence a person exercises is bound to them as a person, rather than a specific job. For example, we see cases where senior management is identified as having control, despite the fact that the control is tied to their job as senior manager, rather than a personal interest. The problem with this is that it allows OEs to bypass the stricter requirements that exist when designating senior management as BO's, in case no BOs with control or ownership can be found.

SE:

(Comments):

We are content with the current provisions but do not oppose clarifications.

SI:

(Comments):

SI:

We welcome the PCY's proposal to define the concept of control itself. The definition could comprise elements of "having the ability to

exercise, directly or indirectly, decisive/significant influence on the decision-making” both by control through “ownership interest” or “other means”.

SK:

(Comments):

Yes. Any definition is beneficial for clear orientation in legal acts. In practical application, this may not appear to be significant, but we consider the existence of such a definition to be beneficial. We currently have no proposals for the wording of the definition, but we think it should be the subject of further discussions.

DE:

(Comments):

Yes, there should exist an abstract definition of what control means. The given example “Control means the ability to impose/exercise one’s own will on the decision-making of a legal person, directly or indirectly and by any means whatsoever” is an adequate formulation.

Additionally and parallel there should be a formalistic definition of beneficial ownership through ownership. This should be solved through a certain threshold which has to be exceeded. As an exception of the former definition of control, there should be no need to have decision-making power out of this threshold. (Please see our answer to Q.1.1.B)

Because of that a BO can be defined by

ownership or control by other means. Therefore, we agree with the following statements:

“A share capital alone (without voting rights) does not logically allow control. Nevertheless, even a shareholding without control is seen as relevant for the determination of the beneficial owner.”

and

“On the other hand, someone who has only the share capital (without voting rights and without a share in the profits) is the beneficial owner, even though he has neither control nor benefit associated with his or her "empty" share.”.

Some definitions (lit. (d)) of control by other means are too far-reaching: That is, just because someone is a linked family member to a manager or director controlling an entity does not give that person control and therefore is not automatically a BO.”

EE:

(Comments):

As a general note, we do support the goal of the AML package to provide more detailed rules to identify the beneficial owner(s) of corporate and other legal entities, and to lay down a harmonised approach to the identification of beneficial ownership. Considering the definition of the control, we are not categorically against defining the control, but we call for caution.

According to FATF recommendations and the

interpretative note to the recommendation 10 the identification of BO is laid out as the following: “Identify the beneficial owners of the customer and take reasonable measures to verify the identity of such persons, through the following information:

For legal persons:

(i.i) The identity of the natural persons (if any – as ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership) who ultimately have a controlling ownership interest in a legal person; and

(i.ii) **to the extent that there is doubt under (i.i)** as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means.

(i.iii) **Where no natural person is identified under (i.i) or (i.ii) above,** financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.”.

This means that the first round of the BO identification is the mapping of the ownerships structure. It is important to note that the only criteria for the ownership is the “controlling” nature that may be based on a threshold. The EU has chosen the threshold as the general rule in the assessment of the controlling nature of the

ownership. There are no other criteria for the ownership in the FATF recommendations. The concept of the control is a general concept that is divided in the AML package into two categories: control through ownership interest and control via other means. This means that defining the concept of control affect the scope of the control via ownership *i.e.* it will give an additional criteria besides the threshold criteria to the controlling ownership. In our view in the context of BO the concept of ownership should remain as wide as possible to encompass all forms of ownership. If there will be some additional criteria for the controlling ownership, then it will make the determination of BO even harder task, decrease the consistency and would drift the EU framework further away from the FATF recommendations.

FI:

(Comments):

We welcome the clarification of means of control to have more legal certainty and to increase harmonisation.

IT:

(Comments):

We do not believe that there is a need to define the concept of control itself under the AMLR. This is because a common definition of control would be not fully consistent with the current identification process of BO based on two different rationales: the first one is based on the ownership criterion, whereby the 25% threshold is envisaged by law as an indicative percentage

of beneficial ownership and consequent control according to a merely formalistic approach, meaning that the person/s who owns more than 25% threshold is assumed to be the beneficial owner of the company regardless of his power to steer and determine any of the corporate decisions.

On the other hand, we have the concept of “control through other means” which recalls the civil law concept of substantial ownership, as demonstrated by reference to art.44 of Directive 2013/34/EU. Moreover, this criterion residually captures any relevant position that does not fall under the above presumption of the 25% threshold.

We are more in favour of keeping this distinction which is in line with the current AMLD and the FATF Standards.

LT:

(Comments):

Yes, we support idea of providing more clarity and legal certainty through harmonization of the term.

LV:

(Comments):

Yes, because a beneficial owner (BO) can exercise control in several ways. AMLR with specific examples should describe in which cases there are grounds for believing that the status of BO stems from direct or indirect control over the legal entity.

RO:

(Comments):

As a general point, we believe that setting an ownership threshold (which is below the limit of what would be considered majority ownership) is not, per se, a measure of knowing the beneficial owner, but a measure of transparency of the shareholding or legal ownership, where all persons holding a percentage of shares/voting rights/profits are simply identified.

This measure alone has no implication/effectiveness in revealing the true beneficial owner, especially when it is knowingly hidden through the use of intermediaries.

Thus, the only criterion with effectiveness in revealing the true beneficial owner remains that of control by other means, even though for most entities this will probably coincide with legal ownership.

Equally, it must be understood that entities wishing to conceal the identity of the true beneficial owner will not be prevented from doing so regardless of the complexity of the definition provided.

In this regard, we advocate that the proposed regulation be simple and predictable enough to be understood by any person required to declare (who is not a required entity and therefore not familiar with this legislation).

On the other hand, the definition must ensure that the judicial authorities and courts are able to make decisions under this legal rule.

We therefore believe that it is essential to have a clear distinction between the notion of detention and that of control, but above all a prioritisation

and clear instructions as to who and on the basis of which arguments is ultimately entitled to decide the correct formula.

In this respect, we take into account the Commission's clarification in the last round of discussions that both tests, that of possession and that of control, should be carried out simultaneously.

However, this does not clarify the order of priority to be allocated; e.g. person A owns 60% of the shares and person B 40%, but informally person B is the one in control (either person A is just a proxy for B or person A is not interested in exercising control so delegates control to person B).

In this example it is unclear whether the Registry should retain as beneficiary both persons or, at the explicit direction of the declarant, retain only person B as the controlling person, despite the percentage held by A.

In conclusion, we believe that it is not necessarily the definition of control that will resolve these ambiguities, but rather the establishment of clear priorities between the two criteria or the maintenance of a clear distinction between the two notions, i.e. control should NOT include ownership, as it is possible to have control even at 0% formal ownership.

An optimal solution would be to retain both criteria, i.e. the entries in the Register should mention separately both ownership (where A appears 60% and B 40%) and control (where only B will appear).

We note, however, that the definition of beneficial owner in Art. 2 para. (22), ownership

	<p>is not regarded as a means of control (owns or controls).</p> <p>The BO definition should be clear and provided for in the AMLR in order to ensure a level playing field. Also, efforts should be made to clarify as much as possible how are the BO to be determined (i.e. in the case of control through informal agreements; in the case of control through links with family members of managers or directors; when identifying the company's senior managing officials). In this context, we welcome your intention to define the concept of control and any additional clarifications. Also, we would welcome a clarification on the determination of the BO in case of investment funds (with or without legal personality).</p>
<p>Q.1.1.B. Do Member States consider that there should be clarification of the basis on which a person is the beneficial owner of a company when he or she does not have decisive influence? Are Member States inclined towards any of these solutions?</p> <p>A. The first solution may be to refer in Art. 42(1) not only to control as a defining feature, but also to ownership. This is essentially what the current AMLD does.</p> <p>B. The second solution could be to use an irrefutable presumption: the beneficial owner is deemed to be the one who holds more than 25% of the shares.</p>	<p>PL: (Comments): PL leans towards solution A.</p> <p>ES: (Comments): Should the difference between the two options be based on the possibility to refute the beneficial ownership of the owner of more than 25% in case of control by a third party, and such proof of control could be carried out, we would support option A.</p> <p>IE: (Comments):</p>

B is the most practical and workable, but I would refer you to the points made in our response to 1.1.A. Option B would need to be carefully worded so as to clearly provide that simply because a shareholding does not amount to 25%, this should not be taken by an obliged entity as excluding the possibility of ownership or control i.e. an individual may hold less than 25% but still have control over the entity through their position, title agreements with other shareholders etc. Simply put, it must be clear that shareholdings of below 25% should also be examined in line with the risk based approach.

AT:

(Comments):

**We prefer Option A.**

EL:

(Comments):

We prefer option A. We do not agree with the second option as we consider that this could lead to misleading situations and this criterion could be also easily abused by criminals.

NL:

(Comments):

Both ownership and control are relevant when it comes to beneficial ownership in our view. These are parallel grounds. Meaning that a person can own the 75%+ of the shares and thus be a BO, while another person who exercises control via other means can simultaneously also be a BO. The fact that these grounds should be applied in parallel should be explicitly included in the article

(and not just in the recital).

SE:

(Comments):

We prefer option A.

SI:

(Comments):

SI:

The relevant threshold for controlling ownership interest has been and is proposed to be set at “25 % plus one”, regardless of the distribution of the remaining share. A change of this concept should be well thought out and justified. We see benefits both in solution A (maintaining the current framework) and solution B (straightforward and easy to apply for obliged entities as well as companies themselves). However, to address the situations in practice that fall under the example of the non-paper (40 % + 60 %), we are open to explore more detailed and diversified provisions on how the threshold for controlling ownership interest relates to different ownership structures, e.g., in cases where one person owns more than 50 %, she or he could be regarded as the sole beneficial owner. The criterion could set a general threshold at 25 % plus one, with the addition that it applies unless the share doesn't exceed 50 % and at the same time doesn't enable the shareholder to exercise decisive influence on the decision-making.

SK:

(Comments):

Yes, there should be clarification of the basis on which a person is the BO of a company when he or she does not have decisive influence.

We prefer solution A.

DE:

(Comments):

We agree that such a clarification is necessary and that solution B should be followed.

EE:

(Comments):

We prefer A as the FATF recommendations only accounts for the controlling ownership. The term “ownership” can have different meanings and different set of rights and obligations depending on the legal situation and the jurisdiction, meaning that in some circumstances the ownership does not have a controlling nature all the time or at all. For example in some procedures (bankruptcy, enforcement of court decisions) the natural person is nominally an owner but factually does not have any control over the legal person not does she/he have any rights vis-à-vis the property of the legal person, including the profits. In our opinion if some natural person has ownership rights that exceed the controlling threshold, then the default approach should be to consider that person to be a BO, but nevertheless additional checks should be made to make sure that there are no exceptional circumstances due to which the holder of the ownership does not have the rights

that gives the holder the control over the legal person. That is why always there should be conducted a check whether someone controls the legal person via other means. So we would prefer if the wording of the AMLR would state clearly that the control of the ownership structure is conducted first and that the control via ownership has a prevailing nature. We would like to recall that one of the reasons to create the BO framework was to mitigate the concealing effect of the complex ownership structures, including when ownership structures “cross” jurisdictions. In addition it is usually easier to obtain information about the directors and the members of the board, then about the UBOs. This is why the publication about the information concerning the members of the board would have limited effect in the increase of transparency of legal person. Considering the order of checks and the prevailing nature of the ownership rights, please also refer to our answer to the question 1.1.A..

FI:

(Comments):

We support clarifying these issues, but think that we must keep in mind proportionality and that we should not go too far in reaching the definition to for example family members etc. We support option B.

We want to note that regarding shareholding percentages, we support lowering the threshold from 25 percent to 10 percent.

IT:

(Comments):

We lean on option A, which is in line with the definition of “beneficial owner” contained in article 2(2) of the AMLR proposal and in the FATF Glossary

LT:

(Comments):

We support current wording (so prefer A).

LV:

(Comments):

We support option B - there is a legal assumption that a natural person is a BO if it holds, directly or indirectly, more than 25% of the voting shares.

RO:

(Comments):

We would welcome such a clarification.

From the wording and explanations provided by the Commission, it appears that the first criterion (ownership of 25%) is the starting point for the assessment, and then from those persons identified as owning a certain percentage, those who actually control that company/entity are selected.

Therefore, we do not believe that the purpose of the register should be to formally record ownership shares even if that person does not have effective influence and, in any case, an artificial notion of a beneficial owner who does not exercise effective control should not be

	<p>created by law.</p> <p>We also do not believe that the notion of ownership should be included in the notion of control, as the nature of the two is different, i.e. ownership is an objective, verifiable matter, while control (in the meaning of the Regulation) can be a fluid and hardly verifiable notion, depending exclusively on the good faith of the persons declaring.</p> <p>For this reason we support a separation between the two notions, the problem of ownership being easier to solve by introducing an obligation to declare ownership (on all chains) above a certain threshold.</p>
<p>Q.1.2.A. Do Member States consider that the concept of ownership should also be relevant in the case of entities other than corporations? Do Member States agree that the substance of the notion of owning or controlling a trust/foundation needs to be clarified (e.g. at least by reference to the rules on control by other means pursuant to Article 42(1))?</p>	<p>PL: (Comments): PL agrees that the substance of the notion of owning or controlling a trust/foundation needs to be clarified.</p> <p>ES: (Comments): We do not see the special need to do so, but we do not oppose to a further clarification</p> <p>IE: (Comments): As per our response to 1.1.A, these should be separated between companies and trusts as ownership is a different concept for each type.</p> <p>AT: (Comments):</p>

We assume this question relates to Art. 43 para 1 lit. e 6. AMLR. Yes, due to our understanding this “ultimate control” is already defined as

- direct or indirect ownership (e.g. the beneficiary is a legal entity, which is owned by a natural person (direct) or by a legal entity, which is indirectly owned by a natural person (indirect))
- control “by other means” which relates directly to Art. 42 para 1 (e.g. a trust is set up by a lawyer who also has the function of the settlor. The money comes from person X (Russian oligarch), who has the right, according to the trust deed, to appoint the beneficiaries. In our understanding, the Russian oligarch would be beneficial owner by other means (Art. 42 para 1 a or e)

Thus an explicit reference could be added, that would clarify this situation.

EL:

(Comments):

As regards non profit entities we consider that the concept of ownership is not relevant, due to their non profit/voluntary character. The notion of controlling seems to be more relevant and needs to be clarified.

NL:

(Comments):

The concept of ownership could be relevant for entities other than corporations, but it depends on the type of legal entity. The difficulty is that different law systems have different types of legal entities with various methods of control and ownership. A legal entity such as a foundation may nominally be the same in various MS, while being

different from a legal perspective. For foundations under NL law having more than 25% ownership interest is one of the grounds for qualifying as a BO of a foundation. This includes being the beneficiary of more than 25% of the assets of the foundation. We are not a priori opposed to exploring what is meant by "*exercising ultimate control over the express trust by means of direct or indirect ownership or by other means*" but would like to caution for a clarification that is too narrow as legal arrangements can vary in many ways.

SE:

(Comments):

We support a clarification regarding other entities than corporations.

SI:

(Comments):

SI:

With regard to legal entities other than corporate entities, we should first strive for a common EU understanding, that this means all legal entities which cannot be owned in the legal sense of share ownership and are typically not designed to be established for pursuing free economic initiative. This is what separates them from corporate entities, which are subject to rules on the organisational forms that should be used for the establishment of entities pursuing free economic initiative. On that ground, we would prefer that for legal entities other than corporations the concept of (legal) ownership should not be used. We believe it would be adequate to only use the concept of "control via other means" for them, hence assessing the relevance of points (a) to (e) of Art 42(1) in each case. We assume based on our national

experience that practically in all cases of legal entities other than corporations no beneficial owner will be identified. We wonder whether it makes at all sense to merely duplicate the information on the natural persons holding the position of senior managing official, once as the legal representative and again as the beneficial owner under Art 45(3). Having in mind the large number of legal entities outside the field of corporate business, which generally pose an insignificant ML/TF risk, we would favour a less strict framework for them, built on a risk-based-approach and not impose undue and disproportionate administrative burdens.

With regard to the clarification of the substance of the notion of owning or controlling a trust or foundation, we could support adding a reference to the rules on control by other means pursuant to Article 42(1).

SK:

(Comments):

Yes, we consider that the concept of ownership should also be relevant in the case of entities other than corporations.

Yes, it should be clarified.

DE:

(Comments):

No. Other entities often have no “real owner”.

Therefore the determination of the BO should be done by means of the “position” or “power” of a participant.

EE:

(Comments):

It depends how the ownership is defined.

According to Estonian legal system there is no concept of ownership over the legal person. In the context of companies there are multiple positions that definitely are encompassed with the FATF concept of ownership: shareholder, general partner, limited partner etc). On the other hand foundations, NPO-s and other non-business legal entities do not have any relations with any individuals who would have the same set of rights and obligations as the shareholders and other similar positions have vis-à-vis the companies. So it would be more helpful to make a list of rights that are characteristic to ownership. The list should not be exclusive as this would limit the concept of ownership, but the list could be really helpful in the situations when the board of the legal person, OE or someone else is trying to assess who is the BO of the legal person and it would harmonize the practices in the EU (for example in Estonia it is not clear who is more likely a BO of foundations – the founders or the members of the board).

The examples of the criteria could be: the right to name board members, the right to liquidate the legal person, the right for the profits or other rights to gain economic benefits at the expense of the legal person etc.

FI:

(Comments):

We support clarification regarding trusts and foundations.

	<p>IT: (Comments): We believe that, as regards trusts and legal arrangements, the concept of “control through other means” is more adequate than the criterion of “control through ownership”.</p> <p>LT: (Comments): Yes, we support the idea of clarification.</p> <p>LV: (Comments): If the legal entity does not consist of the capital shares, which grants its holder voting rights, it is difficult to establish BO status through ownership rights. In most cases, the number of members is assessed for nonprofit organizations (NPO). For example, if there are three to four members in an NPO, applying the 25% threshold, these members should be considered as BO of NPO.</p> <p>RO: (Comments): Yes</p>
<p>Q.1.2.B. Do Member States agree that a rule should be added whereby the beneficial owner of an entity that is a party to a trust would subsequently also be the beneficial owner of the trust?</p>	<p>PL: (Comments): PL is not certain if this rule can treated as a default rule in each and every case. If so PL does not oppose adding such a rule.</p>

ES:

(Comments):

Yes

IE:

(Comments):

Yes. In cases where a company is an owner of a trust, the structure should be looked through to find the ultimate BO. Concern that this might not solve the problem where nominee arrangements are in place.

AT:

(Comments):

**No**, we do not think that is necessary. If the trust fulfils the definition of a trust, the settlor, the trustee and the beneficiary are beneficial owners. In cases of nominee arrangements, the rules for nominee arrangements should apply.

**Thus we do not support such changes**, because they might blur the distinction between trusts and nominee arrangements.

NL:

(Comments):

Yes, this would make it clear that if a legal entity is the settlor of a trust or is appointed as the trustee, protector or beneficiary of a trust or otherwise exercises ultimate control over a trust, the BOs of that legal entity should be deemed the BOs of the trust (next to any possible other BOs).

SE:

(Comments):

We do not oppose such an idea.

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

No. The current definition in regard of trust is sufficient.

EE:

(Comments):

As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.

FI:

(Comments):

This would seem logical to us.

LT:

(Comments):

Yes.

LV:

(Comments):

Yes, because the BO of a legal entity indirectly exercises control over trust and therefore should be considered as a BO of trust.

	<p>RO:</p> <p>(Comments):</p> <p>-</p>
<p>Q.1.3.A Do Member States agree that it should be clarified which shares and the rights attached to them are in general determinative of the beneficial owner?</p>	<p>PL:</p> <p>(Comments):</p> <p>PL understands the point of view of the PREZ and sees a lot of merit in this approach but would like to notice that information on rights and privileges attached to the shares is not always widely accessible which could hinder the identifying the BO.</p> <p>PT:</p> <p>(Comments):</p> <p><b>PT:</b> In our view, the current definition is sufficiently clear and, by referring to “<i>shares or voting rights</i>”, ensures that the different possible relevant rights (under the national laws, to determine control through ownership interest) are considered.</p> <p>ES:</p> <p>(Comments):</p> <p>Yes, as far as the identification of the beneficial owner should take into consideration the rights attached to the shares</p> <p>IE:</p> <p>(Comments):</p> <p>Yes otherwise passive investors may be incorrectly registered instead of the person who has active control.</p>

AT:

(Comments):

**No**, we think that shares should be taken into account either by their share of ownership or their voting rights. Because of the different legal characteristic throughout Europe further distinctions are not supported.

EL:

(Comments):

We acknowledge the usefulness of clarifications but we have doubts if it is within the AMLR scope to analyze financial instruments that represent ownership rights in a business and rights to the management and profits of the business.

NL:

(Comments):

Although we do not disagree in principle, we believe this might be difficult in practice, given the variance in company law across the EU and the various structures that might be possible. Also, a concern would be that this would lead to a more rule-based approach, which could create loopholes.

SE:

(Comments):

We support a clarification, but at the same time we understand that this is a complex issue that needs to take into consideration that the rules on shares and rights attached to them are different between MS.

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes, it should be clarified which shares are relevant for the determination of the BO. In our view capital and voting rights should be relevant. Shareholding without actual control is relevant for the determination of the BO because ownership is a formalistic type of control.

EE:

(Comments):

To create a list of shares and the rights would be an unsuccessful endeavour, as the framework of private law is different in every MS. There could be inconsistencies in the lists and if there is a flaw in the list, then it would be harder to change the practice to be more in line with the general concepts and approach of the AMLR, as this would need an amendment to the list. The creation of general list or rights attached to the ownership would have a stronger harmonizing effect. EU could consider drafting the lists of shares after the further harmonization is achieved thanks to the aforementioned list of rights. The rights should be named at least in the recital, but we prefer the text of the regulation.

FI:

(Comments):

We support the clarification.

IT:

(Comments):

We believe that any kind of share should be relevant for the calculation of the 25% threshold, be it shares granting voting rights, because of their ability to influence the entity's decision making, be it shares that only grant profits (because of the need to trace the benefit deriving from the entity's activity). To this end, we consider the current wording sufficiently generic to cover all of these shares.

LT:

(Comments):

It would be very difficult to determine in level 1 text. We are of a view that current wording is appropriate.

LV:

(Comments):

BO's definition focuses on both ownership and control. The entity's BO should also be regarded as an individual who holds more than 25% of the capital shares, even if the shares give voting rights. In this case individual also benefits from the activities of the legal entity (dividends, etc.).

RO:

	<p>(Comments):</p> <p>It may be beneficial to clarify what type of shares and the rights attached to them qualify as beneficial owners, but we doubt that this is the intended meaning of the regulation.</p> <p>We do not believe that ownership of 25% of any type of shares should be equated with control, nor do we believe that this was the intent of the regulation.</p> <p>Rather, it may be a transparency requirement and, in this case, the idea of identifying these persons without further consideration of whether they also exercise control can be addressed.</p> <p>Thus, in the register of beneficial owners there will be 2 categories which may or may not overlap: holders of more than 25% and controlling persons (these may be other than the former).</p> <p>We would welcome such a clarification.</p>
<p>Q.1.3.B According to the Member States, what rights and what shares should be relevant to the concept of ownership in determining beneficial ownership?</p> <p>A. Share capital or voting rights (current state)</p> <p>B. Share capital or voting rights or share of profits, other internal resources or liquidation balance</p> <p>C. Voting rights or share of profits, other internal resources or liquidation balance</p>	<p>PL:</p> <p>(Comments):</p> <p>PL leans towards option B.</p> <p>PT:</p> <p>(Comments):</p> <p><b>PT:</b> In our view, <b>Option A</b> contains the relevant elements to define “<i>control through an ownership interest</i>”.</p> <p>We agree that the right to a share of profits, other internal resources or liquidation balance without ownership of share capital should be considered relevant in determining beneficial</p>

ownership. However, in our view, such criterion should be considered under “control via other means”, since the right to a share of profits may not, in itself, implicate any form of ownership, but may be relevant in the overall assessment of the control structure.

ES:

(Comments):

We are open to both option A and B. Being this latter the case, there could be different thresholds based on the criteria used. E.g: 25% threshold where based on share capital or voting rights; a higher threshold where the criteria is the share of profits or other internal resources or liquidation balance

IE:

(Comments):

Need to consider “linked with” transfer of rights or benefit consideration, particularly in relation to sanctions circumvention given our experiences with same since February.

Our option would be for A but we feel that voting rights is the primary factor as they determine control (the primary factor)

In relation to the last paragraph above this question, there would be tax implications if the profit of a share was given to a 3<sup>rd</sup> party but the share was retained. It is our opinion they would still be the BO and would have an added tax bill.

AT:

(Comments):

**We prefer the current state (A).**

EL:

(Comments):

**B. Share capital or voting rights or share of profits, other internal resources or liquidation balance**

NL:

(Comments):

We would consider ownership and control separate but related grounds for qualifying as a BO. From our perspective ownership of shares always relates to an ownership of the company, even though there might not be a right to vote attached to them. Therefore, they should be included in the scope of the BO-definition. Similarly voting rights should be within scope as they relate to control. Often this will relate to the same persons but not always.

SE:

(Comments):

We prefer option A. As we understand it, share of profits, other internal resources or liquidation balance can be taken into account when considering who has beneficial ownership *control*.

SI:

(Comments):

SI:

We would prefer option B, as it is the most comprehensive, if it would be clear how the obliged entity would be able to obtain all the needed information. If the information (esp.

“other internal resources or liquidation balance”) is not publicly available, it must be clear to obliged entities how to obtain it otherwise. Simply relying on the preparedness of customers to disclose all needed information, doesn't seem to be effective. Also, the obliged entity may not even be aware of the existence of some of the relevant information/documentation at all and hence wouldn't be able to specifically ask for it during CDD.

On ground of that we are not sure whether we can at this point fully support option B, which may be further explored. In case that option B wouldn't seem to be feasible, we would be more inclined to support the current state, hence option A.

SK:

(Comments):

We prefer B (Share capital or voting rights or share of profits, other internal resources or liquidation balance)

DE:

(Comments):

In our view Option A (current state is sufficient) and no other participation rights should be accounted.

EE:

(Comments):

We would like to rephrase the question as theoretically there is endless amount of different

types of shares that could be created. We should look for the most common general characteristics of the ownership, leaving the door open to take into consideration other rights as well. Share capital is not a clear concept without definition. Voting right could be substantiated further – in the context of naming the board members, changing the form of the legal persons, deciding the allocation of the profits and other recourses of the legal person etc. Although usually the ownership rights entail rights concerning the profits, internal resources, liquidation balance, but the FATF standards and guidance do not mention any of these, so this would be too limiting. That is why we prefer option A, but we would like to note that concerning non-companies the movement of assets and funds could still be an indicator.

FI:

(Comments):

We support option B.

IT:

(Comments):

We support Option B, which represents in our view the most comprehensive solution, in line with our previous response.

LT:

(Comments):

A. current state

In our opinion control through other means would cover the cases if no voting rights are attached.

	<p>LV: (Comments): We support option B – as mentioned before, even if shares don't give voting rights, shareholder benefits from shares in other ways.</p> <p>RO: (Comments): - Current state (A)</p>
<p>Q.1.4. In the light of international trends, do Member States consider that the concept of beneficial owner should expressly include the element of benefit?</p>	<p>PL: (Comments): PL is of the opinion that the concept of beneficial owner should expressly include the element of benefit as one of the possible features on which the beneficial ownership could be based on.</p> <p>ES: (Comments): Yes, but it would be all the more useful to the extent that this interpretation of the international standards is broadly understood</p> <p>IE: (Comments): We reiterate our belief that control is the primary element of BO if we want to prevent ML.  We would have considered that the concept of BO always considered the concept of benefit.</p>

However, if it was expressly stated then it would be useful where, in the case of trusts, it would be useful if it included individuals who had use or enjoyment of the assets contained in the trust.

AT:

(Comments):

**No**, we do not think that this could be practically applied in international context. Benefit could only be determined after intensive studying of statutes of each layer of complex structures.

That will overstrain most of the obligated entities and will only work in theory. **Therefore we strictly decline the inclusion of “benefit” for legal persons.** We could be more flexible with regard to natural persons.

EL:

(Comments):

We see merit in the inclusion of the element of benefit. We consider that the element of benefit could be one of the BO determinatives, although there could be cases where the notion of profit/benefit could also be a characteristic of an investor with no exercise of control.

NL:

(Comments):

Generally, we agree, but we view benefit as a possible component of ownership. For example, regarding Dutch foundations (which have no ownership) we have the rule that the person who are the beneficiaries of more than 25% of the assets are considered BO's. It could be included more specifically in the wording as an aspect of ownership.

	<p>SE: (Comments): Possibly, but at the same time we see a risk that this leads to an even more complex regulation.</p> <p>SI: (Comments): SI: We would be open to explore possible solutions.</p> <p>SK: (Comments): Yes. We also would appreciate if the term of economic benefit (element of benefit) would be specified/defined.</p> <p>DE: (Comments): No. Benefit often depends on ad-hoc decisions and is therefore very volatile.</p> <p>EE: (Comments): We do not see the need for it.</p> <p>FI: (Comments): Yes.</p> <p>IT: (Comments): Yes. We believe that the benefit should also be a relevant element to identify the beneficial</p>
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	<p>owner.</p> <p>LT: (Comments): In the framework where the other means of control is used as an element for defining BO we do not see the merit to expressly include element of benefit or any threshold of it.</p> <p>LV: (Comments): Element of benefit should be regarded as an independent element of BO, alongside elements of ownership and control.</p> <p>RO: (Comments): In principle, we agree with this interpretation, as it is in line with FATF, except for entities that are set up specifically for the purpose of providing relief; in these cases, obtaining a direct benefit by the person/category of persons in need of such relief should not automatically be considered as an element of control. For example, the receipt of funds by a socially disadvantaged group should not result in them being considered as a real beneficiary if they have no means of influencing/deciding how the funds are allocated.</p>
<p>Q.2.1. In the opinion of the Member States, which of the described approaches should be regulated in the AMLR? Either:</p> <ul style="list-style-type: none"> <li>option B (the status quo ) or</li> </ul>	<p>PL: (Comments): PL leans towards the option that combines the options A, B and C.</p>

<ul style="list-style-type: none"> <li>• a combination of option A or B and C (it would be necessary to provide that the aggregate share (the result of multiplying the shares in the return) is always also determined in addition to the control determination) or</li> <li>• option D.</li> </ul>	<p>PT:</p> <p>(Comments):</p> <p><b>PT:</b> We favour the maintenance of the <i>status quo</i>, <b>Option B</b>, since it is essential to differentiate between ownership (control through an ownership interest) and control via other means. While following the criteria set out in Option B ensures that the beneficial owner (considering the objective threshold of ownership of 25% of share capital) is identified, that does not exclude the possibility of identifying other beneficial owners, who fulfil other criteria for assessing control via other means.</p> <p>In fact, a combination of more stringent beneficial ownership criteria (as is proposed by the Presidency) with other forms of control for identification of the beneficial owner would be very burdensome for obliged entities. Moreover, such Option could promote a “<i>tick-box approach</i>” by obliged entities instead of looking for the real risk, following a risk-based, case-by-case assessment.</p> <p><b>Additionally</b>, we take this opportunity to highlight that, in our view, if under the abovementioned criteria it is not possible to identify any beneficial owner, the persons in senior management should not only be identified, pursuant to Article 45(3) (b), but should also be considered the beneficial owners of that customer. We believe that such addition is essential, namely to ensure compliance with the Interpretative Note to FATF’s</p>
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Recommendation 10, which explicitly states, in point 5. (under C. CDD for legal persons and arrangements) the following:

*“(b) Identify the beneficial owners of the customer and take reasonable measures to verify the identity of such persons, through the following information:*

*(i) For legal persons:*

*(i.i) The identity of the natural persons (if any – as ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership) who ultimately have a controlling ownership interest<sup>35</sup> in a legal person; and*

*(i.ii) to the extent that there is doubt under (i.i) as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means.*

*(i.iii) Where no natural person is identified under (i.i) or (i.ii) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.”*

Moreover, considering the persons in senior management as the beneficial owners as a subsidiary criterion would ensure, for example, the possibility of applying enhanced due diligence measures to such persons when they

fulfil a rule-based high-risk category, such as politically exposed persons.

As such, we propose the inclusion of a new Article 43a, enshrining such subsidiary criterion, applicable to the entities referred to in Articles 42 and 43:

*Article 43a*

*Where, after having exhausted all possible means of identification pursuant to Articles 42 and 43, no person is identified as beneficial owner, the beneficial owners shall be the natural person(s) who hold the position of senior managing official(s) in the corporate or legal entity.*

ES:

(Comments):

We currently do apply simultaneously A + B + C. However, according to our answers to Q.1.1.b, we can be open to the second option proposed: A or B and C

IE:

(Comments):

Agree with the position that “it is necessary to clarify what is the goal”.

In our opinion, it is more important to disclose control and/or ownership relationships. Who is ‘pulling the strings’ or able to move money/assets around? That is who we want to capture.

The treatment generally of nominee relationships is something that must be agreed before these options can be considered.

Determining the BO is very difficult when using one or more intermediaries. Ownership and/or control should be disclosed.

Companies and trusts must be treated differently as their structures are fundamentally different.

We must be careful not to make it so difficult that it is unworkable. The exercise involved in finding who ultimately controls an entity is a complex one and perhaps this would be better suited to guidance issued by AMLA.

AT:

(Comments):

**We prefer option B.** It provides a well balanced approach between costs and benefit of the evaluation. Whereas the other options seem to add an additional complexity, which will lead to an increase of compliance costs.

EL:

(Comments):

***a combination of option A or B and C (it would be necessary to provide that the aggregate share (the result of multiplying the shares in the return) is always also determined in addition to the control determination)***

NL:

(Comments):

We do not agree with option D as we believe it would lead to a ballooning of BO's who might have little to no actual ownership or control. In that

regard we believe it overshoots the mark of beneficial ownership. Option C is closest to our current implementation under national law. Which is based on the premise that the person who directly or indirectly owns more than 25% of the shares is a BO through ownership, which we distinguish from control. That said, we believe in example A it would make sense to also consider this person a BO, not because of ownership but because of control via other means. The person under option B could under circumstances also be consider a BO through control.

SE:

(Comments):

We prefer option B.

SI:

(Comments):

SI:

We would like to explore a combination of options B and C. Option D indeed seems to burdensome without significant added value.

SK:

(Comments):

We prefer the option consisting in the combination of A or B and C.

DE:

(Comments):

A combination of the approaches B and C should be regulated in the AMLR. A parallel approach is necessary since B covers indirect control and C covers indirect ownership. If one condition is met, beneficial ownership can be affirmed. At the moment some MS already have

this parallel approach in place.

EE:

(Comments):

We support A, B and C in combination, as in all those situations the natural person has more than 25% influence in the legal person. In the situation C the possibilities for the Mr ZX to directly influence the company A are usually very limited but nevertheless the same is for example in a situation where there are two shareholders and the shares are divided 40/60 between them – minority BO has almost no direct influence.

FI:

(Comments):

We would be in favour of combination of option B and C. Option C works better for example in situations where ownership of the same company's stocks is formed through several different companies or chains. All different ownerships should be included.

IT:

(Comments):

As outlined in previous EBA surveys, the criteria to determine the 25% threshold in case of indirect ownership is a critical point to clarify here, given the lack of a common approach across countries on this particular topic.

Preliminarily, we have to understand that any regulatory option in place should primarily ensure what is the main purpose behind the BO identification, basically meaning the

	<p>identification of the person/s who owns/controls the company/customer. To this purpose, we believe that Option B is more advisable because it applies the 25% threshold just at customer level, while the corporate law criterion of substantial control is applied to the subsequent layers of ownership control.</p> <p>Instead, Option D applies the 25% threshold at each level of the ownership chain: this option would imply an undue proliferation in the number of BOs, some of whom would not exercise in practice any effective power over the final customer. This would contradict the rationale behind the BO provisions which are an important tool for the KYC due diligence and the awareness of the activities carried out by the customers.</p> <p>LT: (Comments): We support option B (status quo). Do not agree with option D.</p> <p>LV: (Comments): Combination of option A or B and C.</p> <p>RO: (Comments): Status Quo (B)</p>
<p>Q.2.2. Do Member States consider that the AMLR should clarify who can be an intermediary link to the indirect beneficial</p>	<p>PL: (Comments): PL welcomes every clarification in the text of</p>

<p>owner?</p>	<p>the AMLR but wonders if it is possible to clarify the intermediary link to the indirect beneficial owner in the exhaustive manner.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes.</p> <p>AT: (Comments): <b>Yes</b>, as mentioned in the answer to Q.1.1.A. it should be clarified that also trusts or foundations could be an intermediary link. Please refer to our comments above.</p> <p>EL: (Comments): Yes so as to determine the beneficial owner when his or her position is established indirectly through one or more intermediaries.</p> <p>NL: (Comments): Intermediary links can exist both for corporate and for other types of legal entities. Thus, this should not be limited to corporate entities.</p> <p>SE: (Comments): Yes</p>
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SI:

(Comments):

SI:

In our view, not only corporations are able to be a link in an ownership structure and we don't understand the wording of AMLR in such a restricted way.

SK:

(Comments):

Yes.

DE:

(Comments):

No. Each and every natural or legal person, which has legal capacity, should be considered. This depends on the national laws within the MS and cannot be altered by the AMLR.

EE:

(Comments):

No such question has been raised based on the current practice. That is why we do not see the need for it, but we are not against either.

FI:

(Comments):

Yes.

IT:

(Comments):

In our view, according to the current rules, when the shares of a company are placed in a trust, the "top-down regime" only should apply in order to

	<p>determine its beneficial owner.</p> <p>LT: (Comments): Yes, we support clarification</p> <p>LV: (Comments): Yes. Since indirect control of BO can be carried out in many ways, in certain cases it is difficult to detect BO operating through another person.</p> <p>RO: (Comments): Yes, we would welcome such a clarification.</p>
<p>Q.2.3.A. Do Member States consider that the AMLR should clarify how to determine the beneficial owner of a corporation when its shares are managed in a legal arrangement?</p>	<p>PL: (Comments): PL welcomes every clarification of the beneficial ownership concept.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): Our remarks on Q.1.1.A and 4.B. are related to this question.</p>

NL:

(Comments):

We believe this might be too detailed to clarify in the AMLR. Also, it would be inflexible. In a more general sense, we believe AMLA should be able to provide guidance on how to determine BOs to OE's, especially on how to apply 'control via other means' criterion.

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We can support such a development in the provision.

SK:

(Comments):

Yes.

DE:

(Comments):

No. No additional rules are necessary because the concept of ownership and control covers those cases. Within in the determination of the relevant capital shares such an arrangement has to be seen as an intermediary link. In regard of control it is necessary to have a decisive influence on the "decision" of the legal arrangement to become a BO.

EE:

(Comments):

	<p>As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.</p> <p>FI: (Comments): Yes.</p> <p>IT: (Comments): If needed, this aspect could be clarified in a recital.</p> <p>LT: (Comments): Yes</p> <p>LV: (Comments): Yes, because it is difficult to detect BO in legal arrangements. There are no shares in legal arrangements and therefore, control over legal arrangements is exercised differently than in capital companies.</p> <p>RO: (Comments): Yes, we would welcome such a clarification.</p>
<p>Q.2.3.B. If yes, which regime are Member States leaning towards - formal (“top-down”) or substantive?</p>	<p>PL: (Comments): PL leans towards the substantive approach.</p>

ES:

(Comments):

Not a strong position here

IE:

(Comments):

A substantive regime will allow the identification of the beneficial ownership of the company. This allows for the listing of the trust on the register of beneficial owners of the company. The registration of the trust should require the trust to provide its trust registration identifier on the basis that the trust itself is also on the trust register. This should allow cross referencing with the trust register where a competent authority and those with a legitimate interest can look for the “top down” list of beneficial owners of the trust. This allows for easy access to the full list of beneficial owners for those acting in an AML role but also prevents the privacy concerns associated with open access to the trusts members.

AT:

(Comments):

Please refer to our remarks on Q.1.1.A and 4.B., which are closer to a top-down regime.

Please also note that we strictly oppose a system of legitimate interest for beneficial owners of legal arrangements.

NL:

(Comments):

A substantive approach makes more sense in our view, as the basis are the rules for determining the BOs for legal entities given that the client is a legal entity. As such, the OE should identify who owns or controls the legal entity.

SE:

(Comments):

Formal, but we can support the alternative

SI:

(Comments):

SI:

We would lean more towards a formal approach.

SK:

(Comments):

We prefer “substantive „approach – BO of a company

DE:

(Comments):

-

EE:

(Comments):

As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.

FI:

(Comments):

No strong views on this.

IT:

(Comments):

As clarified above, we deem that the top-down regime should be applied (i.e. determine the

	<p>beneficial ownership of a corporation formally, by notifying all beneficial owners of the trust). We believe that the privacy issues do not justify <i>per se</i> the introduction of a substantive discretion to determine the beneficial ownership of trusts (and thereby of the company held by a trust).</p> <p>LT: (Comments): We would support “top-down” regime.</p> <p>LV: (Comments): No strong views.</p> <p>RO: (Comments): -</p>
<p>Q.2.3.C. If MS support the “top-down” regime, do they agree to modify the minimum public data requirements for beneficial owners of companies?</p>	<p>PL: (Comments): See the answer above.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): N/A</p> <p>AT: (Comments):</p>

	<p>-</p> <p>NL: (Comments): n/a</p> <p>SE: (Comments): Yes</p> <p>SI: (Comments): SI: We would be open to the proposed approach.</p> <p>SK: (Comments): N/A (see answer to Q 2.3.B)</p> <p>DE: (Comments): -</p> <p>EE: (Comments): As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.</p> <p>FI: (Comments): See answer above.</p> <p>IT:</p>
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	<p>(Comments):</p> <p>Yes. We believe that the disadvantages of making information on the trust's BO available to the general public might be overcome by exceptionally applying, in cases where trusts directly or indirectly control legal entities, the regime set out in article 12.1(b) of the AMLD6 (i.e., requiring the demonstration of a legitimate interest).</p> <p>LT:</p> <p>(Comments):</p> <p>We are open to consider this, but would like to hear other MS opinions.</p> <p>LV:</p> <p>(Comments):</p> <p>No strong views.</p> <p>RO:</p> <p>(Comments):</p> <p>-</p>
<p>Q.2.4. Do Member States agree that the definition under the AMLR should be clarified so that it covers situation where the beneficial owner's position is based on multiple chains with different corporations (e.g. by adopting the relevant wording from the existing AMLD)?</p>	<p>PL:</p> <p>(Comments):</p> <p>Again PL welcomes every clarification of the beneficial ownership concept.</p> <p>ES:</p> <p>(Comments):</p> <p>Yes</p> <p>IE:</p> <p>(Comments):</p>

	<p>Yes</p> <p>AT: (Comments): <b>Yes, we think that this is very important.</b> Please refer also to our answer to question Q.1.1.A.</p> <p>EL: (Comments): Yes, clarification relevant with the wording of the existing AMLD seems appropriate.</p> <p>NL: (Comments): It should be clear from the text that the example of the PCY is covered as well. It would in our view be beneficial, in a broader sense, if AMLA would have a role in providing guidance on determining BOs in more complex situations.</p> <p>SE: (Comments): Yes</p> <p>SI: (Comments): SI: We agree.</p> <p>SK: (Comments): Yes.</p> <p>DE: (Comments):</p>
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Yes. It should be clarified that in regard of ownership and control multiple chains have to be considered cumulatively.

EE:

(Comments):

Yes. As we understand the AMLR, there is no will to change the effects of the provisions compared to the current state, if the same person is connected with the legal entity based on multiple chains of ownership. Every omission in the AMLR text from the current AMLD5 text should be substantiated as otherwise this could lead to misinterpretations. That is why the current wordings should be maintained as much as possible and the main goal should be to give more detail to the BO regulation.

FI:

(Comments):

Yes.

IT:

(Comments):

We support the introduction of a clarification aimed at covering ownership through multiple corporate entities, in line with the current AMLD framework.

LT:

(Comments):

Yes, we agree that clarification is needed.

LV:

(Comments):

	<p>Yes, because in practice, BO divides its control through ownership among a number of companies, seeking to hide its status of BO.</p> <p>RO: (Comments): Yes, we would welcome such a clarification.</p>
<p>Q.3.A. Do Member States consider that the threshold should be set lower than on exceeding 25%?</p>	<p>PL: (Comments): PL is not convinced that threshold should be set lower than on exceeding 25%.</p> <p>ES: (Comments): We understand this flexibility within a <i>general framework</i> that allows for the preservation of stricter national standards than the proposed See answers from Spain on this issue in the questionnaires on CDD and AMLD</p> <p>IE: (Comments): No</p> <p>AT: (Comments): <b>No</b>, we would not support a further lowering of this threshold.</p> <p>EL: (Comments): We think that the use of a threshold could be a clear, easy to adopt criterion, which has though</p>

the constant inherent risk to be easily abused by criminals through the use of straw men.

Regarding the 25% threshold, it could be an adequate threshold but we don't oppose to setting lower so as to cover the maximum cases of control.

NL:

(Comments):

We have our reservations. Our concern in lowering the threshold would be the possible increase in burdens for legal entities, while adding little benefit in practice. Thus, in our view lowering the threshold should only be considered if there are good arguments that it is necessary/sufficiently beneficial for the effectiveness of the AML/CFT-framework. It is also important that the threshold is indicative.

SE:

(Comments):

No

SI:

(Comments):

SI:

We fail to see the benefit of lowering the threshold.

SK:

(Comments):

No.

DE:

(Comments):

We reserve further comments.

EE:

(Comments):

No. Lower threshold will as a result give bigger number of BO-s, but this will not make the ownership structures and the understanding of transactions more clear to the OEs and to the general public. We are ready to discuss whether the whole ownership structure of companies should be transparent in the future, but we do not see the need to inflate the number of BOs. A shareholder with a quite small share (for example 12%) is usually BO, if that person also has some additional rights in relation to the legal person to effectively influence it.

FI:

(Comments):

Yes, we would support lowering the threshold to 10 %.

IT:

(Comments):

No. We see a risk that a lower presumptive threshold would capture also holdings which do not determine, neither potentially, a control over the customer. This would result in an additional burden for obliged entities who would be required to identify a greater number of beneficial owners without a significant added value in terms of efficacy of the AML/CFT control framework.

LT:

	<p>(Comments):</p> <p>We support the current 25% threshold.</p> <p>LV:</p> <p>(Comments):</p> <p>No, lowering threshold means increasing the number of BO for company. As companies BO should be considered only individuals with significant influence in the company.</p> <p>RO:</p> <p>(Comments):</p> <p>As the Com's explanations show, the threshold should not be used alone, but in combination with other means of control.</p> <p>From this perspective the threshold set seems irrelevant if it is not simultaneously accompanied by the means of control, just as the beneficial owner can be established on the basis of alternative control, even if he has no holdings. We reiterate, in this respect, the view that the register should differentiate, for transparency purposes, between holdings above a certain threshold and control by other means.</p>
<p>Q.3.B. Do Member States assume that even within the framework of the AMLR it should somehow be possible to allow Member States to adopt stricter rules?</p>	<p>PL:</p> <p>(Comments):</p> <p>PL prefers the uniformed, harmonized rules stipulated un the AMLR.</p> <p>ES:</p> <p>(Comments):</p> <p>See previous comment</p>

IE:

(Comments):

No – would undermine harmonisation and result in inconsistent information on registers which would affect BORIS

AT:

(Comments):

**No**, the definition should be harmonised.

EL:

(Comments):

We fear that such discretion would result in different approaches and thresholds across EU with the risk of regulatory arbitrage.

NL:

(Comments):

No. It is important to harmonise the rules as much as possible.

SE:

(Comments):

No

SI:

(Comments):

SI:

Stricter rules would seem appropriate in cases of determined risk for the abuse of certain legal forms of establishment. However, the harmonisation of the threshold should be the primary goal of AMLR, hence we are not in favour for MSs to adopt lower thresholds.

SK:

(Comments):

No.

DE:

(Comments):

No.

EE:

(Comments):

We think this approach would not be in line with the general aims of the AMLR as the recital (2) of the AMLR states that: “Therefore, it is necessary that rules on matters currently covered in Directive (EU) 2015/849 which may be directly applicable by the obliged entities concerned are addressed in a new Regulation in order to achieve the desired uniformity of application.”.

FI:

(Comments):

We support harmonisation, since fragmentation of rules in EU can result in legal uncertainty and would also make possible to move activities to Member States with less strict rules, which would result in distortion of the internal market.

IT:

(Comments):

We do not support the inclusion of additional granularity to address nation-specific risks when setting out minimum CDD thresholds. We believe this would hamper the efforts for

reaching a full harmonisation of the CDD requirements. We also share the concerns regarding the risk of regulatory arbitrage, fragmentation, increase in administrative costs and legal uncertainties. Moreover, we deem that the power granted to AMLA to develop ad hoc thresholds in relation to specific obliged entities, sectors or transactions, already ensures an appropriate calibration of the thresholds, while safeguarding the need for a common approach across the EU.

LT:

(Comments):

No, we believe that we should have as much harmonisation as possible.

LV:

(Comments):

No, because giving the Member States wide freedom of action to register BO, it would be difficult to transfer the data to a BO registers interconnection system. Similarly, individual Member States could be more suited to the more liberal requirements for registration of BO to attract investments.

RO:

(Comments):

No, we believe that regulation should be unitary, in order to ensure a level playing field, all MS should apply the same rules, especially having in mind the interconnection of the beneficial owner registers. Moreover, the adoption of stricter rules

	<p>(lower thresholds) supports the view that this exercise is solely dedicated to the transparency of legal ownership and not to the identification of the person who actually controls.</p>
<p>Q.3.C. Do Member States consider that the threshold should be purely indicative? If a person with a shareholding above 25% would not necessarily be the beneficial owner, what would be the determining criterion?</p>	<p>PL: (Comments): PL does not consider that the threshold should be purely indicative, but such should not also be consider as only determining factor. In our opinion the control understood as a possibility to influence actions is the key.</p> <p>ES: (Comments): The applicable threshold is one of the objective criteria to determine the beneficial ownership “through an ownership interest” of a corporate. Nevertheless, it may not be relevant if control is exercised by “other means”.</p> <p>IE: (Comments): Yes but in line with the risk based approach MS should be able to examine holdings of less than the threshold in cases where a lower threshold of ownership would ultimately control the entity via for example a veto right.</p> <p>AT: (Comments): <b>No</b>, clear rules are very important to ensure harmonisation and allow an effective sanctioning of breaches of reporting obligations.</p>

EL:

(Comments):

It seems valid to argue that 25% would not necessarily lead to the beneficial ownership in all cases and we agree that the threshold could be indicative. In these cases, the determining criterion would be the voting rights or other means of control.

NL:

(Comments):

A person that owns more than 25% of the shares is generally an indication that this person is a beneficial owner through ownership. However, that does not mean that this is the only BO, as there could also be other BOs through ownership or control.

SE:

(Comments):

Yes, as is the case under the current AMLD

SI:

(Comments):

SI:

We prefer a clear provision on the threshold relevant for identifying beneficial owners, therefore we would not support a purely indicative threshold.

SK:

(Comments):

No. The threshold should be set as a definite figure and it should be binding, not only

indicative.

DE:

(Comments):

No. The exceeding of the threshold should constitute an irrefutable presumption.

EE:

(Comments):

The default approach should be that the person who owns more than 25% of the shares is a BO. Nevertheless the text should be open to exemptions where such person has very limited or no control over the legal person and in these cases further assessment of the control structure is needed

FI:

(Comments):

We do not think that the threshold should be purely indicative. We suggest lowering the threshold to 10 percent.

IT:

(Comments):

No, we believe that the current approach is more effective, i.e. a mix between i) an objective and presumptive criterion that represents a minimum safeguard (control through ownership) and ii) a substantive and flexible criterion that relies on the capacity of obliged entities to detect other relevant situations of control (control through other means).

LT:

	<p>(Comments):</p> <p>We are open to this proposal, would like to discuss it further.</p> <p>LV:</p> <p>(Comments):</p> <p>AMLR should determine the percentage at which a natural person would be regarded as a BO, regardless of other circumstances. It should also be established that other circumstances would also be assessed. BO can also be an individual with lower percentage of control but, in the light of other circumstances, the individual would be considered BO of legal entity.</p> <p>RO:</p> <p>(Comments):</p> <p>The threshold set is already, in essence, only indicative, as it does not represent a majority ownership; moreover, the very next paragraph sets out other indicators (closer to reality) that will be used to determine beneficial ownership. The use of any ownership threshold is, in our view, a form of reflection of legal ownership.</p> <p>No.</p>
<p>Q.3.D. Do Member States agree with deletion of the recital 65?</p>	<p>PL:</p> <p>(Comments):</p> <p>PL would favour rather redrafting the recital 65 but not necessary deleting it as a whole.</p> <p>ES:</p> <p>(Comments):</p>

Recital 65 refers to cases of “ownership or control”. In our opinion, it is not contradictory with article 42 (1), as the threshold defined in article 42 (1) applies only to determine cases of “control through an ownership interest”. In fact, as mentioned above, there could be cases where, even with a lower threshold, the natural or legal person could have control “via other means” and, in those cases, the threshold becomes irrelevant. We suggest to clarify both situations in recital 65, so as to avoid misinterpretations about the possibility for MS to adopt stricter rules regarding the threshold applicable to determine cases of “control through an ownership interest”

IE:

(Comments):

Yes

AT:

(Comments):

**Yes**

EL:

(Comments):

We agree with the deletion of recital 65 as it gives MS the possibility to decide that a percentage lower than 25% may be an indication of ownership or control and this can lead to regulatory arbitrage.

NL:

(Comments):

We would support a rewording, especially regarding the lowering of the threshold and the assessment on every level of ownership. We do not agree with the latter (every level of ownership\_, and regarding the former (lowering the threshold), we agree with the wording insofar that a person with less than 25% can also be a BO due to control (for example in a structure with many shareholders someone who has 20% can have factual control), but we do not agree with a MS option of setting a lower threshold in general. It should be harmonized.

SE:

(Comments):

We'd like to delete the possibility for MS to lower the threshold but would like to keep the recital in other parts so that it's clear that the threshold should be purely indicative.

SI:

(Comments):

SI:

We are not sure whether simply deleting recital 65 would be the best option, however we are open to further discussions.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

EE:

(Comments):

After all the amendments in the text of the AMLR, the recital 65 should be amended in accordance with the amendments and it should reflect the content of the discussions in the WPs.

FI:

(Comments):

Yes.

IT:

(Comments):

Yes, we agree that the recital is inconsistent with the presumptive nature of the threshold (see our answer to Q.3.C). Moreover, as stated in our answer to Q.3.B above), we do not agree with leaving MS margins of flexibility in determining the relevant threshold to determine control through ownership.

LT:

(Comments):

We are flexible in this matter.

LV:

(Comments):

No, because this would lead to different concepts of BO in the Member States. As mentioned before Member States should not be given wide freedom of action regarding concept of BO, because it would lead to Member States with more liberal approach to BO registration.

RO:

(Comments):

Only deletion of the reference to the possibility

	<p>for Member States to set other thresholds.</p> <p>We consider that the recital should be amended to explain and reflect the rules set by AMLR.</p>
<p>Q.4.A. Do Member States agree that the list of other means of control should be formulated as illustrative?</p>	<p>PL: (Comments): PL is of the opinion that it would be difficult to formulate such list as an exhaustive one, therefore it should be formulated as an illustrative list but as broad as it is possible.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes it should not be exhaustive</p> <p>AT: (Comments): <b>Yes</b></p> <p>EL: (Comments): Yes, as although the list seems sufficient, the illustrative formulation would cover every potential form or mean of control.</p> <p>NL: (Comments): Yes, the list should be non-exhaustive.</p> <p>SE:</p>

(Comments):

Yes

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

No. If there is a clear enough definition of control itself, no presumptive examples are necessary.

EE:

(Comments):

There could be an illustrative list of the means, but it must be noted that the basis of the determination should be the content of the control.

FI:

(Comments):

Yes.

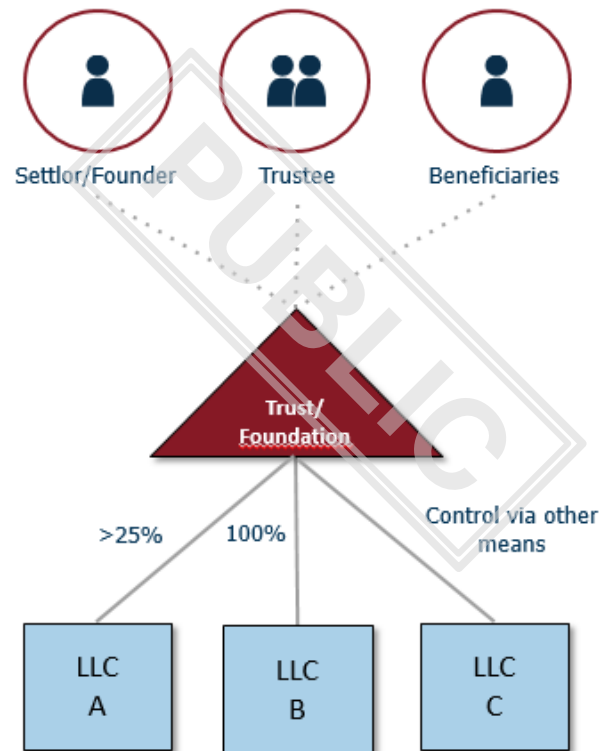
IT:

(Comments):

Yes, we agree. As stated in answer to Q.3.C, we believe that the criterion of “control through other means” should counterbalance the objective and presumptive criterion of “control

	<p>through ownership”</p> <p>LT: (Comments): We are open to consider illustrative list.</p> <p>LV: (Comments): Yes, because a BO can exercise control in several ways. AMLR with specific examples should describe in which cases there are grounds for believing that the status of BO stems from other means of control over the legal entity.</p> <p>RO: (Comments): No, as described above, we consider that the AMLR should ensure a level playing field and in this regard we appreciate that the means of control should be detailed as much as possible. This article must make it clear explicitly and beyond any doubt to the persons obliged to declare the beneficial owner the content of this obligation. Equally, this legal text must directly serve law enforcement authorities and courts to pronounce binding decisions. The proposed text must be formulated in such a way that it is reasonably foreseeable to an obligated person what a possible decision of the above-mentioned authorities might be, which cannot be achieved if the provisions of the Regulation are only indicative.</p>
<p>Q.4.B. Do Member States consider that some</p>	<p>PL:</p>

<p>possible means of control are missing from the list?</p>	<p>(Comments): The means of control seem to be drafted in the general manner, in a way that allows to cover all essential ways of controlling the entity.</p> <p>ES: (Comments): No</p> <p>IE: (Comments): Yes, as you will never cater for every possibility hence our belief that the list should not be exhaustive</p> <p>AT: (Comments): <b>Yes</b>, according to our understanding the settler/founder, trustee or beneficiary is beneficial owner of LLC A, B and C. As a general rule the beneficial owners of the foundation or the trust shall be the beneficial owners of all participations where foundation or the trust has an ownership interest or through control via other means. Otherwise LLC A, B or C will not report the link to the Trust or foundation, which will obscure beneficial ownership in these cases.</p>
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Drafting suggestion: Adding a new variant of control: **(f) performing a function according to Article 43 paragraph 1 point (a) to (e).**

EL:

(Comments):

The illustrative formulation will address the issue.

SE:

(Comments):

-

SI:

(Comments):

SI:

There are probably a variety of means of control relevant for specific forms of establishment and specific national rules on different forms of legal

personalities. However, we don't believe it would be beneficial to go too much into detail in the AMLR.

SK:

(Comments):

N/A

DE:

(Comments):

No.

EE:

(Comments):

Yes. More clarity is needed, if the legal person in question is in the process of liquidation or bankruptcy, if the ownership rights are part of the estate inherited, if the ownership rights are part of the joint property of the spouses, or if the ownership rights are held by a person under guardianship.

FI:

(Comments):

Nothing comes to mind.

IT:

(Comments):

As stated above, we believe that the list of possible means of control should not be considered exhaustive. Nonetheless, the AMLR might benefit from the examples that the FATF provides (and will provide) in its Guidance on beneficial ownership which is currently under

	<p>review.</p> <p>LT: (Comments): At the moment we do not see any means missing from the list.</p> <p>LV: (Comments): Probably, because in practise there are to many ways how BO exercise control. AMLR should determine that control can be exercised in other ways and case by case principle should be applied.</p> <p>RO: (Comments): - We rather consider that the existing means of control should be detailed/better explained at least in the recitals.</p>
<p>Q.4.C.Do Member States consider that the definition of material control (in point (b)) should be distinguished from means of control?</p>	<p>PL: (Comments): We are not convinced if definition from point b should be distinguished from means of control.</p> <p>ES: (Comments): No</p> <p>IE: (Comments): Yes, they are two different concepts</p>

AT:

(Comments):

No

NL:

(Comments):

It would make sense to capture the first part as part of a more general definition of control.

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

EE:

(Comments):

Yes, as one of the problems with the current text is that it does not clearly differentiate the contents of the control and the means of the control. By content we mean what rights/criteria are relevant in the context of measuring control. If certain rights are present/criteria are met then

it can be assumed that the person has control. If no person has all the rights or his/her position does not meet all the criteria then the aforementioned criteria and set of right and if needed additional elements of criteria and rights can be used to determine the BO.

FI:

(Comments):

No strict views on this point.

IT:

(Comments):

Yes. We suggest the following redrafting:

~~“the ability to exert a significant influence on the decisions taken by the corporate entity, including veto rights and, decision rights and any decisions that allow to exercise a significant influence on decisions-regarding profit distributions or leading to a shift in assets [or on other relevant decisions]”~~

LT:

(Comments):

We are more of the opinion that it should not be distinguished.

LV:

(Comments):

No, since the main purpose of business is profit-making, material control is an important aspect in BO definition.

RO:

(Comments):

	No
<p>Q.4.D. Do Member States support the proposed construction that meeting any of the criteria amounts to the person being considered a beneficial owner? Or should the provision rather merely list what can be used for control purposes without automatically implying that a person who has those means is the beneficial owner?</p>	<p>PL: (Comments): PL is of the opinion that person who meets certain criteria should be by default treated as a BO, which does not exclude situation that also other person who do not meet these criteria could be treated as a BO if they are able to control the entity.</p> <p>ES: (Comments): We do not have a strong position here but can support the proposed construction if it provides for more clarity</p> <p>IE: (Comments): Yes. Since the list is non-exhaustive, one of the listed criteria could be determinative. We do not think that multiple criteria are required. However, we think that the proposal at 42(1)(d) requires further clarification as to what constitutes a link</p> <p>AT: (Comments): <b>We strictly support the proposed construction.</b> The definition should be as clear as possible in order to achieve harmonisation and allow a proper sanctioning regime.</p> <p>NL:</p>

(Comments):

There should be room to make a judgment, however it also depends on the criterion. A person who has personal veto rights or rights to determine profit distribution would generally be considered a BO. However, having a link with a family member of director should not automatically qualify someone as BO.

SE:

(Comments):

We prefer option B, so that meeting any criteria creates a (rebuttable) presumption of a person being a BO

SI:

(Comments):

SI:

If we start from the premise that a natural person who has one of the means of control listed in in points (a) to (e) is not automatically to be identified as the beneficial owner, then we need to decide what further criteria need to be fulfilled in order to have a harmonised approach on how to identify beneficial owner exercising control via other means. In this light, we find it preferable to follow the proposed idea by COM that by meeting the criteria, a person is considered a beneficial owner.

SK:

(Comments):

Yes. We support the proposed construction that meeting any of the criteria amounts to the person being considered a beneficial owner.

No, the provision should not merely list what can be used for control purposes.

DE:

(Comments):

Please see Q.4.A.

EE:

(Comments):

We agree with the approach to use criteria. If certain criteria is met then by default the person is considered to be BO. If no person meets the criteria then there should be a set of criteria that should be taken into consideration when determining the BO. The criteria that should be taken into account in the second situation described can be the same criteria used in the first situation or these two sets of criteria can have an overlap. It would be logical that the second set of criteria is bigger than the first set.

IT:

(Comments):

We deem that a distinction should be done between the different criteria provided by art. 42. In fact, where the conditions under letters a), b) and c) are met, in our view, the natural person identified accordingly must necessarily be identified as beneficial owner. On the contrary, the criteria provided under letters d) and e) are merely indicative of a situation of potential influence on the company. Hence, in such cases, it should always be assessed whether the person meeting any of these criteria actually has

	<p>ultimate effective control on the entity.</p> <p>LT: (Comments): Meeting any of the criteria should be considered as being BO.</p> <p>LV: (Comments): AMLR should just list what can be used for exercising control over a legal entity, without implying that a person who has those means is a BO. Individual should automatically be considered as a BO only when BO status results from ownership of legal entity.</p> <p>RO: (Comments): See also the answer to point A. Given that the identification of the beneficial owner is to be controlled by public authorities, precise criteria are needed that explicitly set out the framework for this control, both for the controlled entity and the controlling entity. In our opinion, we support the first option: meeting any of the criteria amounts to the person being considered a beneficial owner.</p>
<p>Q.4.E. Do Member States consider that the term of significant influence under point (b) should be clarified or modified? See also question Q.1.1.A.</p>	<p>PL: (Comments): We are in favour of clarifying this term as much as it would be possible. Certainly point (b) could be clarified.</p>

ES:

(Comments):

We are open to further clarifications

IE:

(Comments):

Yes and it should be linked to the outcome of the exercise of the control

AT:

(Comments):

**No**, the term is clear, but **a new term should be added**. Please refer to Q.4.B.

EL:

(Comments):

It seems appropriate to be clarified.

NL:

(Comments):

We would be open to further clarification, however, we have concerns about using a term such as 'decisive influence' as it could exclude persons who are very influential but still make the decisions on conjunction with one or two other persons (thus not having a decisive influence on their own).

SE:

(Comments):

We are content with the current provisions but do not oppose clarifications.

SI:

(Comments):

SI:

As stated under Q1.1.A, we are in favour of

introducing a definition of the concept of control itself. We are of the view that any additional clarification of the phrase “significant influence” should be addressed in that definition. We don’t see particular need to clarify the term further, however we are open to discuss this.

SK:

(Comments):

Yes.

DE:

(Comments):

Please see Q.4.A.

EE:

(Comments):

Yes, it could be clarified, but it should be an open list of rights stemming from the law, contract or other regulatory provision giving the person right to make certain decisions or giving some control in some other form over the legal person.

FI:

(Comments):

Yes.

IT:

(Comments):

See redrafting proposal above.

	<p>LT: (Comments): The term should be clarified.</p> <p>LV: (Comments): Significant influence should be left as a general clause and applied to individual cases to determine if an individual is a BO or not.</p> <p>RO: (Comments): The assessment of the term of significance should rest with the entity declaring the beneficial owner. For example, there may be entities under the control of parent companies where, although formally the management of the entity has full autonomy, in reality it does not take any major decisions without consulting the parent company. We would welcome such clarification.</p>
<p>Q.4.F. Do Member States agree that point (d) should be removed, or at least reformulated to make it clear that being a family member does not automatically imply control?</p>	<p>PL: (Comments): PL would rather support redrafting point (d) accordingly to the PREZ suggestion.</p> <p>ES: (Comments): It should be reformulated, not removed These situations, in which control is exercised through family ties or arrangements, occur in practice</p> <p>IE:</p>

(Comments):

Yes. we think that the proposal at 42(1)(d) requires further clarification as to what constitutes a link, with the potential for removal.

AT:

(Comments):

**Point (d) should be removed.** The term “link” is not defined and unclear. The manager or director itself is not considered as beneficial owner. Thus is not clear why a link with its family would constitute control.

EL:

(Comments):

We would agree with the reformulation so as to clarify that being a family member does not automatically imply control.

NL:

(Comments):

It should be reformulated, to clarify that those links can be indicators of control via other means, if there are indications that the person possibly exercises control through those links.

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We believe that indirect links through family

members need to be taken into account when determining beneficial ownership through control via other means.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes, it should be removed.

EE:

(Comments):

Yes. The situation when the person who would be otherwise BO is under a legal guardianship should be expanded on instead. Please also refer to our answer to Q.4.B..

FI:

(Comments):

Yes. If we would keep the reference to family members, it should be noted that there should be a definition of what family member of managers or directors means. It should be noted that some of these persons in large companies can be quite far from decision making powers and the same applies to the influence their family members might have.

IT:

(Comments):

The reference to “links with family members” is too vague and not necessarily significant. Since

this criterion might give rise to legal uncertainties and divergent interpretations, we suggest to delete it. As an alternative, we suggest to limit the scope of this criterion to “close” and “intimate” family relationships.

LT:

(Comments):

The point should be reformulated and clarified to avoid any uncertainties.

LV:

(Comments):

AMLR should define that one of the most popular modes of indirect control is the exercise of control through family members.

RO:

(Comments):

We assume that this point is judicially required for attribution of beneficial ownership following criminal investigations.

We cannot imagine other situations where the entity would declare in good faith that it is in fact controlled by a third party who has no apparent formal connection with the company. It is also unlikely that such a link can be demonstrated by administrative control bodies, let alone obliged entities.

In any case, as this article is worded, it is not intended to attribute the status of beneficial owner to family members, but to third parties who exercise control through the links they have with family members.

We would welcome additional clarifications.

<p>Q.4.G. Do Member States agree that nominee agreements should be listed under point (c) rather than listed in a separate and conceptually distinct provision under point (e)?</p>	<p>PL: (Comments): In our view it just a matter of legislative technique, that does not amend the legal norm therefore we can accept both solutions.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>No</b>, we prefer the wording of the proposal.</p> <p>NL: (Comments): Yes.</p> <p>SE: (Comments): Yes</p> <p>SI: (Comments): SI: We agree.</p> <p>SK: (Comments):</p>

We prefer if a nominee agreements should be listed under point (c).

DE:

(Comments):

No. Point (c) should be deleted.

EE:

(Comments):

Yes, but we do not have strong feelings in this particular question.

FI:

(Comments):

No strong view on this.

IT:

(Comments):

We note that the current FATF Guidance on beneficial ownership treats the possible use of nominee shareholders in the same context as formal or informal agreements through which shareholders collaborate to increase their level of control (although the Guidance considers, unlike the AMLR proposal, this case as a possible way to exercise “indirect ownership” and not “control through other means”). This would suggest to move the reference to nominee shareholders into letter c).

LT:

(Comments):

The two points could be merged.

LV:

	<p>(Comments): Yes, nominee agreements should be listed under point (c).</p> <p>RO: (Comments): - We consider that nominee agreements should be listed under point (c), but we want to point out that, in our opinion, the informal nominee arrangements or informal contract cannot be traced.</p>
<p>Q.4.H. Do Member States agree that the reference to Directive 2013/34/EU is unnecessary and inappropriate in the context of the AMLR?</p>	<p>PL: (Comments): The forms of influence/control described in the Directive 2013/34/EU could still be valid in relation to the beneficial ownership concept, therefore we do not perceive them as an inappropriate.</p> <p>ES: (Comments): No. we do not see that keeping it as it is now is inappropriate</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>Yes</b>, the relevant criteria should be listed explicitly in AMLR. Directive 2013/34/EU may</p>

be transposed differently throughout Member States and in addition it includes Member State options.

EL:

(Comments):

We do not consider that the reference to Directive 2013/34/EU is inappropriate in the context of the AMLR, due to the complexity/variations of company law.

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We agree with the PCY's assessment.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

EE:

(Comments):

As long as there are no additional sources that could give more clarity and depth, the reference is useful. The reference is not inappropriate in our view.

FI:

(Comments):

No strong views on this issue.

IT:

(Comments):

Yes, in our view it could be sufficient to clarify how the criteria are to be applied in the group context without necessarily cross-referencing to Directive 2013/34/EU.

LT:

(Comments):

If the requirements are formulated in a manner that the list is not exhaustive, it would be not necessary to provide the reference to Directive 2013/34/EU, which by the way allows some national derogation as well.

LV:

(Comments):

Reference to Directive 2013/34/EU is unnecessary in the context of the AMLR, because all means of control in Article 22(1) to (5) of Directive 2013/34/EU are already present in the draft.

RO:

(Comments):

-

Considering PRES' point that all the means of control in Directive 2013/34/EU are already included in AMLR, we see no reason to keep the reference in AMLR.

<p>Q.5. Do Member States agree that the definition of beneficial owner of a transaction should be singled out, or that it should also be clarified?</p>	<p>PL: (Comments): In our opinion the BO is identified in relation to the customer/entity not in relation to the transaction. If we understood the proposal correctly, it is providing the definition of the beneficiary of the transaction in the economic sense. This beneficiary (in the economic sense) should not be confused with the BO. Therefore we disagree with adding the definition of BO of the transaction, but we do not oppose adding the definition of the beneficiary of transaction (in the economic sense) if there is such a necessity.</p> <p>ES: (Comments): We consider the formulation is clear enough but open to improving the wording if deemed necessary</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): We think that the definition of the beneficial owner of a transaction should be carved out from the beneficial owner of a legal entity.</p> <p>EL: (Comments): We do not find the existing BO definition confusing, taking into account the preceding</p>
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definitions in article 2.

NL:

(Comments):

We agree that it makes sense to clarify the difference. Although often the BO might be the same, there could be instances where this is not the case. We also wonder how this relates to the receiving end of the transaction (not the client), and if this person should also be considered the BO.

SE:

(Comments):

Option A, i.e. singled out

SI:

(Comments):

SI:

We agree with the PCY's approach.

SK:

(Comments):

Yes, It should be clarified.

DE:

(Comments):

It should be singled out.

EE:

(Comments):

Yes. The BO of the transaction can differ from the BO of the legal person that is a party in a transaction. The determination of the BO of the transaction can also differ from the determination of the BO of the legal person, as it

depends a lot on the assessment of the purpose and intended nature of the business relationship.

FI:

(Comments):

We would support removing the definition and if not possible, it should be divided to two different parts and also define, in what situations and transactions the BO should be recognized.

IT:

(Comments):

We point out that the AMLR proposal defines the beneficial owner, in continuity with the current AMLD, not only as i) “any natural person who ultimately owns or controls a legal entity or express trust or similar legal arrangement”, but also as ii) “any natural person on whose behalf or for the benefit of whom a transaction or activity is being conducted”. Nevertheless, it seems to us that the current proposal does not contain any specific provision nor any mandate to the AMLA, in order to provide criteria to identify the beneficial owner in the case under ii). In particular, unlike article 13, par. 1.b) of the current AMLD, article 16, par. 1.b) of the AMLR proposal only requires the identification of the beneficial owner “pursuant to article 42 and 43”, without leaving the possibility to refer such obligation also to beneficial owners other than those explicitly considered under these articles. Such an approach leaves out a number of situations which fall under the current definition of BO as set out in the FATF standards and in the current

AMLD (as well as in the proposed AMLR definition). As a confirmation of this, it is worth noticing that the EBA Revised Risk factor Guidelines foresees/allows the application of CDD measures also to beneficial owners falling under the case ii) above and namely in the case of pooled accounts (GL 9.16) and in the one of financial intermediaries purchasing fund's share/units in their own name but on behalf and pursuant to specific instructions from third parties (GL 16.20). In the light of this and of the fact that the future Regulation will not leave any margin for national regulation to fill this gap, we would welcome the inclusion in the AMLR of provisions specifically regulating the CDD measures obliged entities shall carry out towards beneficial owners on whose behalf a transaction or activity is being conducted (directly in the text, e.g. by including in article 18 a provision requiring the obliged entity to invite the customer to declare whether the business relationship or the transaction is requested for the benefit of a third party, or by mandating the AMLA to provide some specific criteria on how to fulfil the CDD obligations towards this type of beneficial owner with RTS pursuant article 22.1 point a).

LT:

(Comments):

We agree to split BO definition in two parts.

LV:

(Comments):

Yes, definition of BO of a transaction should be

	<p>singled out from definition of BO of a legal entity. The definition of BO of the transaction is tied to each individual transaction and aims to define the person at whose instigation or on whose behalf a particular transaction is carried out. The BO of a transaction may be different from the BO of the legal entity carrying out the transaction.</p> <p>RO: (Comments): We oppose to the inclusion of such a definition, since it could create confusion.</p>
<p>Q.6.A. Do Member States consider that the rules for determining the beneficial owner of basic types of legal persons other than companies should be explicitly developed and clarified (for association, foundation, institute)?</p>	<p>PL: (Comments): PL welcomes every clarification in the field of beneficial ownership. In our vie it would be desirable at least to analyse the possibility of developing separate rules for other types of entities.</p> <p>ES: (Comments): We do not see this as strictly necessary, but we would not oppose it should it be seen to bring more clarity and transparency</p> <p>IE: (Comments): Yes</p> <p>AT:</p>

(Comments):

**No**, we do not think that this is necessary.

EL:

(Comments):

We consider that clarifications would be useful in the case of legal persons/entities of a non profitable character (associations, unions, foundations, civic non-profit companies, non-profit organizations, political parties and local associations of parties, trade unions) as referring to the rules for companies does not seem reasonable and the rules of companies cannot reasonably be applied.

NL:

(Comments):

This matter should be further examined. Although we are proponents of further harmonisation the problem we see with this, is that these legal entities, although nominally similar, might actually be very different depending on the national legal system. Harmonisation could thus be counterproductive.

SE:

(Comments):

Yes, but needs to take account differences between MS.

SI:

(Comments):

SI:

We support further clarification of rules that need to be applied to non-corporate legal

entities. We also see the need to lay down common criteria, by which these basic types of non-corporate legal entities should be identified.

SK:

(Comments):

Yes.

DE:

(Comments):

No. Since there are a lot of specialties on the MS level it should be done on this level.

EE:

(Comments):

There is no uniform definition of association or foundation. In addition the same types of legal persons could have different internal structures and governing bodies depending on the jurisdiction. Making a detailed list encompassing all the types of legal persons in Europe, with all the exemptions would be an enormous task, with a high risk of flaws. Instead it would be more helpful to give general characteristics or name the relevant criteria that should be used in determining the BO

FI:

(Comments):

We support clarifying this issue.

IT:

(Comments):

Yes. More detail on how to determine beneficial

	<p>ownership of legal persons other than companies would certainly be useful. It could be considered to demand the definition of ad hoc criteria to the AMLA. Against this background, it should be noted that the criteria to identify the BOs of foundations should be defined in analogy with the criteria laid down by the draft AMLR for trusts, given the similarities between trusts and foundations (along the lines followed by the AMLD4: see article 3, paragraph 6, of the Directive EU 849/2015).</p> <p>LT: (Comments): Yes, the clarification will be useful and ensure unite practice through Member States.</p> <p>LV: (Comments): Yes, one BO definition isn't suitable for all types of legal entities. Therefore, there is a need to separate BO definition for all popular types of legal entities.</p> <p>RO: (Comments): Yes, additional clarifications would be welcomed.</p>
<p>Q.6.B. Would Member States support, for example, the introduction of a simple rule or presumption that in the case of such legal entities (most often associations) the members of their management are the beneficial owners?</p>	<p>PL: (Comments): PL can accept proposed solution in regard to the associations.</p>

ES:

(Comments):

Not clear whether we are talking about an additional rule or we do want to directly identify members of the management as beneficial owners. Please clarify

IE:

(Comments):

Yes, this aligns with our issue re registering a class of beneficiaries in the case of foundations.

AT:

(Comments):

**No**, foundations need to be treated similar to trusts. According to the definition, the beneficial owner of an association is the management if nobody exercises control via other means.

EL:

(Comments):

We support the proposed presumption, especially the members who hold the position of the President, the Secretary and the Cashier of the Management Board.

NL:

(Comments):

No. (see 6.a)

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We could support such proposal (please also see our reply under Q.1.2.A.).

SK:

(Comments):

No.

DE:

(Comments):

No. Because even an association could have “real” BOs (e.g. only three members left and therefore every member has 33% of the voting rights).

EE:

(Comments):

No, we would prefer to move towards more functional assessment. Based on the criteria of control the BO should be determined. The status of the board member is a strong indicator of the control.

FI:

(Comments):

Yes.

IT:

(Comments):

Yes, we would be in favour of introducing a presumption in that sense, even though in some cases, there might still be the possibility to identify a substantial (as opposed to a fictitious) beneficial owner.

	<p>LT: (Comments): Yes, we support introduction of simple rule suitable for legal persons other than companies in cases where does not exist control <i>in other means</i>.</p> <p>LV: (Comments): Such simple rules exclude possibility that other individual, who do not hold such a position on legal entity, is registered as BO of legal entity. Individual can exercise indirect control over legal entity, even if they don't hold such a position on legal entity. For example, individual can come to an agreement with members of management, in with individual gives orders to managers and they are following them. In such cases BO should be considered individual, who doesn't hold any position on legal entity.</p> <p>RO: (Comments): If such a presumption is introduced, the criteria that may rebut the presumption should also be indicated.</p>
<p>Q.6.C. Do Member States consider that in the case of associations it would be more appropriate to designate a substitute beneficial owner directly?</p>	<p>PL: (Comments): We are not convinced if it would be appropriate to designate a substitute beneficial, but we are open to explore such solution.</p>

ES:

(Comments):

No

IE:

(Comments):

No. Without any real understanding of how you would designate a substitute we could not support.

AT:

(Comments):

**No**, because persons with control may exist: A person which provides the main funding of an association, might have controlling rights according to the statute of the association (soccer clubs as associations).

EL:

(Comments):

Yes.

NL:

(Comments):

Associations under Dutch law generally have no BOs through ownership or control and thus the senior management is identified as BO's. There are exceptions however.

SI:

(Comments):

SI:

We are not able to respond to this suggestion, as it is unclear, what the concept of a substitute BO and direct designation would encompass.

SK:

(Comments):

Yes.

DE:

(Comments):

No. The current rules to try to determine a “real” BO and if there is none to use the “fictitious” BO (senior management) is sufficient.

EE:

(Comments):

No.

FI:

(Comments):

In Finland, for associations, the members of the board are regarded as BOs. It is not clear to us what benefit there would be in assigning a substitute BO.

IT:

(Comments):

Yes.

LT:

(Comments):

Could the suggestion be clarified in order to understand it correctly?

LV:

(Comments):

	<p>In the case of associations, such an approach should be supported. In most cases, it is not possible to identify BO. Also, in most cases, objectives of association are not directed towards members' interests.</p> <p>RO: (Comments): Such an approach completely renders meaningless the notion of real beneficiary, in which case its usefulness is questionable. In other words, a more appropriate solution in this case would be an exemption from declaration.</p>
<p>Q.7. Do Member States consider the Commission's recommendations to be an appropriate solution to address the absence of rules in the AMLR?</p>	<p>PL: (Comments): We do not oppose the solution that involves the EC issuing the recommendations in this regard, but taking into account the differences between different types of entities we are wondering if this recommendations would have significant added value.</p> <p>PT: (Comments): <b>PT:</b> For the motives presented in the Presidency' note, namely the possibility of the Commission not being able to properly assess national specificities and the fact that the recommendations are non-binding, we believe this provision should be further discussed.</p> <p>In our opinion, the specific rules and criteria to identify the beneficial owner(s) of legal entities</p>

other than corporate entities should preferably be established directly in Level 1.

However, as an alternative option, we can foresee the drafting of RTS by AMLA specifying some of the rules and criteria that can be used to identify the beneficial owner(s) of entities (in a non-exhaustive manner). This option would address the aforementioned concerns providing guidance to MS on the relevant criteria and rules.

ES:

(Comments):

If rules are explicitly developed, as it seems to be the goal here, it would not be necessary for the COM to make further recommendations

IE:

(Comments):

No. MS are better placed to understand national specificities. Perhaps MS should be submitting a list of entity types to AMLA instead of the Commission. In addition, if the definition of BO is right then this should not be needed

AT:

(Comments):

**No**, we do not think that is appropriate.

EL:

(Comments):

The ex post determination of the rules seems problematic.

NL:

(Comments):

No, such legal entities are governed by national law and there could be great disparity in national company law regarding certain types of entities, although they are nominally similar. It would be better if MS determine this, but that the information is bundled at the EU-level.

SE:

(Comments):

We agree with the PCY arguments.

SI:

(Comments):

SI:

We understand the concerns expressed by the PCY in the non-paper. The nature of recommendations indeed implies that MSs are not bund, however this also implies that MSs remain able to govern their national specificities as they find best. Nevertheless, we are open for further discussions on this topic.

SK:

(Comments):

No.

DE:

(Comments):

Because special knowledge of the national situation in every MS is needed to provide proper rules, every MS should have their own regulations concerning non-business legal

entities. National regulations are enough and no recommendations are needed.

EE:

(Comments):

It does not address it, but it can provide valuable information. Estonia has provided some guidance in this field for the market participants and it has decreased the volume of questions concerning the determination of the BO.

FI:

(Comments):

We do not think that the Commission's recommendations would be the best tools, because of the non-binding nature of them and the fact that the rules will only be known ex post.

IT:

(Comments):

We suggest to consider, as an alternative to recommendations, the possibility to demand the identification of common criteria to AMLA guidelines. This solution would ensure a certain consistency throughout the Union in the identification of the BO under similar circumstances, while leaving directly to MS the necessary flexibility to address residual national specificities, since MS are likely to be more familiar with such peculiar entities/situations.

LT:

(Comments):

We have some doubts whether national

	<p>specificities could be best assessed by other than national authorities.</p> <p>Maybe it could be considered other means, e.g. guidelines.</p> <p>LV: (Comments): No strong views.</p> <p>RO: (Comments): No, we appreciate that all the criteria concerning the identification of the BO should be included in a legal act that is binding in order to make the obligations enforceable, to ensure transparency and a level playing field for all the entities across the EU. In this regard, we take into account the fact that all the BO registers will be interconnected, according to art. 10 para. 11 of the proposal for the Directive (AMLD6).</p>
<p>Q.8.1.A. Do Member States consider that an exemption for listed companies is appropriate and justified in light of the FATF recommendations?</p>	<p>PL: (Comments): We are not certain if our interpretation is correct, but if we are not mistaken the FATF standard does not explicitly provides the exemption for listed companies. The footnote 35 to the FATF Methodology seems to allow such exemption. In our opinion if exemption for publicly listed companies is to be introduced not only definition needs to be amended but also the provisions regarding CDD need to envisage this exemption.</p>

ES:

(Comments):

Yes

IE:

(Comments):

Yes

AT:

(Comments):

**No**, we do not support that exemption. Also listed companies may have beneficial owners, which might be sanctioned persons. If they are not entered into the beneficial owner register, beneficial ownership of those persons might not be detected.

EL:

(Comments):

We agree with the exception of listed companies, taking into account that they are subject to sectoral requirements ensuring transparency.

NL:

(Comments):

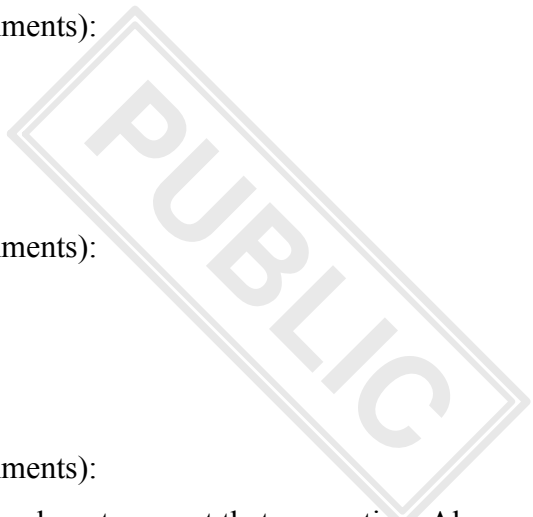
Generally, yes. However, we believe it should be further clarified which transparency rules are sufficiently similar to those of the EU.

SE:

(Comments):

Yes

SI:



(Comments):

SI:

We support the exemption.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

Yes, if these listed companies are subject to extensive disclosure requirements.

FI:

(Comments):

Yes.

IT:

(Comments):

First of all, we assume that the exemption from “the provisions of this Chapter” does not put into question the CDD obligation for obliged entities to identify the customer’s beneficial owner and verify their identity under article 16.1(b). As in the current AMLD, the fact that the customer is listed on a stock exchange should only be regarded as a low risk factor, possibly leading to the application of SDD measures (and not to a full exemption). We believe that this should be made explicit in the

AMLR text.

We are aware that the R.10 of the FATF clearly allows an exemption from the CDD obligation to identify and verify the BO when *“the customer or the owner of the controlling interest is a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company”*. Nonetheless, we agree with the PCY’s view that there is currently no EU legislation or equivalent international standard that would ensure for listed companies the same adequacy level of transparency and disclosure of BO information as the one set out in the AML framework. On the other hand, it would not be opportune to leave this assessment of equivalence to the obliged entities on a case-by-case basis, because this would lead to inevitable divergencies of approaches

If CDD measures are fully kept in place, we also see merit in requiring listed companies, like all other companies, to obtain and hold adequate, accurate and current beneficial ownership information and to provide such information to obliged entities where the obliged entities are taking customer due diligence measures. In our view, this would be consistent with the multi-pronged approach set out in FATF INR.24, under which information held by stock exchanges are considered a supplementary measure (see letter c) of para 7) and are not regarded *per se* an alternative to the obligation to so-called company approach (i.e. the obligation for companies to obtain and hold adequate, accurate and current BO information, see para 7, letter a).

	<p>LT: (Comments): Yes, we support this proposal.</p> <p>LV: (Comments): Yes, entities owned or controlled by listed companies are already required to identify their BO. In addition, public companies' shares are the subject of public offerings and there might be frequent changes in the ownership structure.</p> <p>RO: (Comments): - Yes.</p>
<p>Q.8.1.B. If Member States support the exemption, do they support to extend it to subsidiary companies?</p>	<p>PL: (Comments): If the exemption is introduced we are in favour of extending it to subsidiary companies.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Only if subsidiaries are also listed</p> <p>AT: (Comments): <b>No</b>, that is not supported.</p>

NL:

(Comments):

Yes, to full subsidiaries if covered by the same transparency rules.

SE:

(Comments):

Yes, as there would be no BO for the listed company.

SI:

(Comments):

SI:

We support the extension to its subsidiary companies, as otherwise in those cases no beneficial owner is identified, and Art 45(3) would be applied.

SK:

(Comments):

No.

DE:

(Comments):

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EE:

(Comments):

No, as the chain of control towards the listed company might not be transparent, especially if the listed company and the company in question are located in different jurisdictions.

	<p>FI: (Comments): We do not support extending the exemption to unlisted subsidiary companies. The subsidiary of a listed company can also have a different BO than the listed company, if the ownership is not 100 %.</p> <p>LT: (Comments): It would be appropriate to have some minimal data of legal entities, names of the companies etc.</p> <p>LV: (Comments): Yes, such exemption should be applied to companies which are wholly owned by the state.</p> <p>RO: (Comments): -</p>
<p>Q.8.2.A. Do Member States support an exemption for bodies governed by public law?</p>	<p>PL: (Comments): PL definitely supports such exemption if it is admissible by the FATF standard.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments):</p>

	<p>Yes</p> <p>AT: (Comments): They are not in the definition anyway, because they are no corporate entities. <b>No exemption is needed.</b></p> <p>EL: (Comments): We agree with the exception of bodies governed by public law as defined under Article 2(1), point (4) of Directive 2014/24/EU of the European Parliament and of the Council, taking into account that they meet the condition of adequate transparency and mainly that the beneficial owner concept is not suitable in their case.</p> <p>NL: (Comments): Yes.</p> <p>SE: (Comments): Yes</p> <p>SI: (Comments): SI: We support the exemption.</p> <p>SK: (Comments):</p>
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	<p>Yes.</p> <p>DE: (Comments): Yes.</p> <p>EE: (Comments): Yes.</p> <p>FI: (Comments): Usually there are no BO's in public companies, so beneficial owners are considered to be the members of the board or CO and we think that this is sufficient.</p> <p>IT: (Comments): Yes, as long as we use a definition for public sector bodies different from the one used in EU public procurement law. Whether in that context the width of the definition is useful to catch most entities that may avoid public procurement rules given their specific legal nature, here it could be used to circumvent the application of the BO transparency rules. Thus, we should limit the exemption to those entities governed by public law whose governance and control structure is fixed by legislation and is already subject to information disclosure duties.</p> <p>LT: (Comments): Yes.</p>
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	<p>LV: (Comments): Yes.</p> <p>RO: (Comments): Yes</p>
<p>Q.8.2.B. Do Member States consider the definition of bodies governed by public law to be sufficient and clear?</p>	<p>PL: (Comments): The definition seems to be broad enough, but the last sentence of point (a) seems to exclude the companies owned by the State or municipal companies for example sewage companies, because even though they are established for the general interest they still have an industrial or commercial character.</p> <p>ES: (Comments): Not a position yet</p> <p>IE: (Comments): Delete the text in (a) after "<i>interest</i>"</p> <p>AT: (Comments): <b>Yes</b></p> <p>EL: (Comments):</p>

In our case, in order to have clear determination of the entities and in order to cover the changes over time, we provide that the bodies governed by public law are considered to be the bodies, legal entities and legal arrangements listed in the Register of General Government Entities maintained by the Hellenic Statistical Authority. In particular, the Register of General Government Entities is kept under the responsibility of the Hellenic Statistical Authority as provided national law and includes those entities, which, based on the criteria of EU Regulation 549/2013 (European System of Accounts 2010), are characterized as General Government Entities. In accordance with the above Regulation and Methodological Note for the ELSTAT ESL 2010 classification criteria, in order for an entity to be characterized as General Government Entity, the assistance of a number of quantitative and qualitative criteria related, inter alia, to actual control of the entity by the public sector, is considered. The entities are not obliged to determine their BO only as long as they are included in the Register of General Government Entities.

NL:

(Comments):

Not completely. This definition is based on a specific directive which deals with different matters (not AML/CFT). It could be wise to have a definition that is more tailored to AML/CFT and/or give AMLA power to draft RTS in which it can set out in more details what type of public bodies are meant here. Either way, we believe international and intergovernmental organisations (such as UN-bodies) should be included in the definition.

SE:

(Comments):

We think the definition is too narrow. For us, it would be preferable to prescribe that legal persons in which the state, regions, municipalities or municipal associations, either individually or together, exercise direct or indirect legal effective control should be excluded (i.e. where they have a controlling interest).

SI:

(Comments):

SI:

We have introduced this concept in our national law and find it sufficiently clear.

SK:

(Comments):

No.

DE:

(Comments):

No. It should be clarified that only those legal entities are regarded as bodies governed by public law that are not set up in a private legal form and only owned by a public body/state.

EE:

(Comments):

Yes.

FI:

	<p>(Comments): Yes in principle, but we are open on discussing possible clarification suggestions.</p> <p>IT: (Comments): No, see answer to Q.8.2.A. above.</p> <p>LT: (Comments): It seems sufficiently clear.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): Yes</p>
<p>Q.8.2.C. Do Member States agree that an exemption from the registration obligation in Article 10 AMLD6 should also be explicitly introduced?</p>	<p>PL: (Comments): PL is of the opinion that any exemptions should be introduced explicitly.</p> <p>ES: (Comments): Not a position yet</p> <p>IE: (Comments): Yes</p> <p>AT:</p>

(Comments):

**No, we strictly reject such exemption.** It is not reasonable, why a limited company owned directly or indirectly by a member state should not be registered in the beneficial owner register and will create many problems in practice:

- State owned companies cannot be found in the BO-Registers, which would create confusion. Before verifying the beneficial owners an authority or and obligated entity will not know that a company is state owned. The technical help line will have to deal with this cases
- If some of the companies are exempted and others are not, it will no longer be possible to enforce the reporting requirements by automated coercive penalties. This would be a major setback for the transparency of legal entities.
- The definition of state control might be difficult to establish, as many mixed forms exist. We see in other areas (for instance competition law) that the determination of state control can be very difficult and time-consuming to carry out.

We strongly recommend to stick to the current system, where legal entities owned by a state report their management as beneficial owners.

NL:

(Comments):

Yes.

SE:

(Comments):

	<p>Yes</p> <p>SI: (Comments):</p> <p>SI: We agree with the PCY's assessment and proposal.</p> <p>SK: (Comments): Yes.</p> <p>DE: (Comments): Yes.</p> <p>EE: (Comments): Yes.</p> <p>FI: (Comments): We think this could clarify the rules, so we do support introducing this.</p> <p>IT: (Comments): Yes.</p> <p>LT: (Comments): Yes, it should be introduced.</p> <p>LV: (Comments):</p>
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	<p>Yes.</p> <p>RO: (Comments): Yes</p>
<p>Q.8.2.D. Does Member States agree that the exemption should explicitly target only entities controlled by an EU State?</p>	<p>PL: (Comments): We agree that exemption could target only EU or EEA States.</p> <p>ES: (Comments): Yes. We suggest to also cover exceptions for UE financial entities not listed herewith</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>We strictly reject the aforementioned exemption.</b></p> <p>NL: (Comments): No, it should include international and intergovernmental organisations.</p> <p>SE: (Comments): Yes</p>

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

No. See Answer Q.8.2.B. If a “private law” entity is controlled by a public body/state and no natural person, then the “fictitious” BOs (senior management) have to be regarded as BOs and therefore registered.

EE:

(Comments):

Yes, as there might be lack of information on the legal entities controlled by third states.

FI:

(Comments):

Yes, we think expanding the exception to third countries could bring forward more risks.

IT:

(Comments):

Yes.

LT:

(Comments):

PUBLIC

	<p>Yes, we agree.</p> <p>LV: (Comments): No, because regardless of if the entity is controlled by an EU State or not, it doesn't change the fact that the entity is controlled by the state.</p> <p>RO: (Comments): Yes</p>
<p>Q.8.3.A. Do Member States consider that other exemptions should be covered by the AMLR?</p>	<p>PL: (Comments): Currently we do not identify need to provide further exemptions if state and municipal owned companies would be covered by the definition of the bodies governed by public law</p> <p>ES: (Comments): No</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>Yes</b>, if there are some exemptions, they should only be Member State options.</p> <p>NL:</p>

(Comments):

Yes, there should be room to exempt entities that by their very nature cannot be used for AML/CFT due to their legal structure.

SE:

(Comments):

We'd like to – as is the case in SE today – keep estates of dead persons and bankruptcy estates exempted.

SI:

(Comments):

SI:

We agree with the PCY's assessment, that in cases of companies in liquidation and also in cases where the BO has passed and the transition of the legal ownership under succession rules is still in process, the determination of the BO adds no value for AML/CFT purposes.

Hence, we would support further exemptions.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

No.

FI:

(Comments):

No other examples in mind but we are open to discuss this.

IT:

(Comments):

We suggest to investigate whether the exemption set out in this article may be extended to further entities for which the identification of the UBO is intrinsically not possible and the identification of the senior manager is not significant, because such person is anyway not in the position to influence the will of the entity (such as churches, trade unions, residential condominiums).

LT:

(Comments):

Yes, some flexibility in other cases should be provided as well. Setting up some clear criteria would ensure similar practice and treatment in different MS.

LV:

(Comments):

Exceptions would only be expected if there is no point in clarifying BO. In other cases, legal entity shall submit application that it is no possible to find its BO, including justification for reasons why BO cannot be identified.

RO:

(Comments):

Yes

<p>Q.8.3.B. Do Member States consider that the AMLR should explicitly address situations where the beneficial owner cannot be identified due to circumstances consisting in a special condition in which the legal person is in (e.g. liquidation)?</p>	<p>PL: (Comments): It would be desirable to envisage in the text of AMLR as many typical, repetitive situations (liquidation) in which the principal rules of determining the BO are difficult to apply directly.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): No. This should be in an RTS issued by AMLA so that when new examples arise they can be added, and it is still binding on MS.</p> <p>AT: (Comments): <b>No</b>, when the beneficial owner cannot be determined, the management should be identified as beneficial owner. By the way, in case of liquidations all the proceeds of sale of asset will be distributed to the legal owners. Thus it is very important to identify the beneficial owners. Only in insolvency proceedings there might not be issues in determining the beneficial owner, in cases where no senior management of the legal entity exist. In that case the liquidator could be deemed to be the beneficial owner (instead of senior management).</p>

EL:

(Comments):

In our case in order to address the issue, for companies in bankruptcy, liquidation or special liquidation or similar insolvency proceedings, the receiver, insolvency practitioner, liquidator or special liquidator registers the details of the beneficial owners. In case of documented inability to find details of beneficial owners, the natural person(s) who had the legal representation of the legal entity in the last Board of Directors before the legal entity was placed in bankruptcy, liquidation, special liquidation or other insolvency procedure are registered as beneficial owners.

NL:

(Comments):

We are unsure of the possible ramifications of such an exclusion. For example, entities in liquidation can be used in bankruptcy fraud schemes. Information on the BOs can be relevant to discover such schemes.

SE:

(Comments):

Yes, see above.

SI:

(Comments):

SI:

As stated above, we support such an extension.

SK:

(Comments):

Yes.

DE:

(Comments):

No. The current rules to try to determine a “real” BO and if there is none to use the “fictitious” BO (senior management; liquidator) are sufficient.

EE:

(Comments):

As mentioned before in our answer to the Q.4.B. these kind of situations should be explicitly addressed. It might be necessary to give some general characteristics to this situations as well.

The characteristics might be the following:

- Transitional
- Natural or legal person acting in the interests or on behalf of someone else

The framework is provided by the law.

FI:

(Comments):

Yes.

IT:

(Comments):

We agree that there are a number of special conditions and situations under which ordinary criteria for identifying the BO do not or do not easily/effectively apply. However, we believe it might be difficult and not opportune to single out in the L1 text every possible specificity.

	<p>Therefore, we would rather introduce a mandate for the AMLA to develop ad hoc criteria in L2 acts.</p> <p>LT: (Comments): Yes, we support this proposal.</p> <p>LV: (Comments): Yes, in practise there are cases, where it is not possible to identify BO. AMLR should describe most common cases where BO cannot be identified.</p> <p>RO: (Comments): Yes, we would welcome such a clarification - liquidation, suspension of activity.</p>
<p>Q.9.A. Do Member States consider that the AMLR should define what is meant by express trust? If so, suggestions in this regard are welcome.</p>	<p>PL: (Comments): PL welcomes every clarification or definition that facilitates the interpretation of the AMLR. Polish law does not recognize trusts therefore the broad definition (see below) of trust in Polish AML/CTF Act relates to the entities governed by the foreign law (trust - this shall be understood as a legal relationship, which is regulated by the provisions of foreign law, resulting from a legal event, contract or arrangement, including a combination of such events or acts in law, on the basis of which the transfer of ownership right or possession of</p>

property values is done in favour of a trustee in order to exercise fiduciary management and make these values available to the beneficiaries of this relationship).

ES:

(Comments):

Yes

IE:

(Comments):

Yes. The definition of express trust proposed in the Presidency note on definitions that was discussed at WP 16-18 May, namely:  
*“Express trust’ means a trust clearly intentionally created by the settlor, usually in the form of a document e.g. a written deed or written instrument of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g. constructive trust, escrow arrangement or agency relationship).”*

AT:

(Comments):

**Yes**, it would be beneficial for Member States, which do not have a trust law.

NL:

(Comments):

We would prefer not to have a definition in AMLR, because trusts cannot be established under Dutch law but NL is party to the Hague Trust Convention which already gives a definition of a trust that is

recognized under Dutch law. We need to avoid any conflict between the definition used in the Hague Trust Convention and a definition in the AMLR. Therefore, we would prefer to not have a definition in AMLR.

SE:

(Comments):

We do not oppose such a definition.

SI:

(Comments):

SI:

We support the introduction of a definition of express trusts. We would like to point out that our national legal framework does not regulate the establishment or operation of trusts and legal arrangements. Slovenia is not a Party to the Hague Convention on Laws Applicable to Trusts and their Recognition. At the same time there are no provisions precluding trusts or similar legal arrangements established under foreign law from conducting their activities through the Slovenian financial system, and there are no prohibitions for persons under the jurisdiction of Slovenia to act as trustees of such foreign legal arrangements. Hence, beneficial ownership information for them is also included in the Beneficial Ownership Register. On this ground, we find it important that while lacking practical experience with the concept of trusts in our legal tradition, we need as specific provisions as possible to be able to understand and comply with them.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.

FI:

(Comments):

This could make the issue clearer, but we have no suggestions on the definition. We have no domestic trusts in Finland, but some of our obliged entities have customers which are trusts and the definition in either AMLR or reference to a definition in some other legislation could make it easier to apply the legislation .

IT:

(Comments):

We support the introduction of a definition of “express trust”. The FATF definition might be a good blueprint.

LT:

(Comments):

More clarity is welcome.

	<p>LV: (Comments): No strong views.</p> <p>RO: (Comments): - We would welcome such a clarification.</p>
<p>Q.9.B. Do Member States consider that the AMLR should address the issue of the term “beneficiary class” in more detail? If so, suggestions in this regard are welcomed.</p>	<p>PL: (Comments): PL welcomes every clarification or definition that facilitates the interpretation of the AMLR.</p> <p>ES: (Comments): We are open to it</p> <p>IE: (Comments): Yes, and any text should address the issue of fluctuating membership in trusts such as pensions, employee share schemes and student unions</p> <p>AT: (Comments): <b>Yes</b>, it could be defined as follows: A group of persons from whom the beneficiaries are selected on the basis of a separate determination.</p> <p>NL: (Comments):</p>

In our opinion the individual beneficiaries need to be registered. However, in some cases it is sufficient to describe the class(es) of beneficiaries in as much detail as possible until it is possible to determine the individual beneficiaries. Such cases will arise when (a) it is not yet possible to determine the individual beneficiaries (for instance, if a trust has been set up for a larger, vaguely described group of people and/or in cases where certain conditions need to be met before the individual beneficiaries can be determined) or (b) the number of beneficiaries is very high (and in many cases subject to changes) while those individual beneficiaries have relatively little individual ownership or control (for instance, in case of pension schemes).  
The abovementioned should be reflected in article 43 AMLR.

SE:

(Comments):

Yes, the current wording seems impractical.

SI:

(Comments):

SI:

We support the PCY's suggestion and recall our reply to the previous question.

SK:

(Comments):

Yes.

DE:

(Comments):

No. The current definition is enough.

EE:

(Comments):

As Estonia is not a trust law country and we have not identified trusts in Estonia, we would

	<p>prefer to refrain commenting on questions relating to trusts.</p> <p>FI: (Comments): We agree that it will be difficult to register beneficiaries if the definition is very broad, but we don't have any suggestions on how to clarify who belongs to a beneficiary class.</p> <p>IT: (Comments): We understand that the scope of the obligation to register information on the beneficiary class is unclear. A possible solution would be to refer such obligation only to beneficiaries that are "identified or easily identifiable".</p> <p>LT: (Comments): Yes, it should be addressed in more detail.</p> <p>LV: (Comments): No strong views.</p> <p>RO: (Comments): Yes, in particular it is necessary to clarify the usefulness of such a generic class identification.</p>
<p>Q.9.C. Do Member States consider that the phrase "through a chain of control or ownership" shall be clarified?</p>	<p>PL: (Comments): PL welcomes every clarification or definition</p>

that facilitates the interpretation of the AMLR.

ES:

(Comments):

Yes

IE:

(Comments):

Yes

AT:

(Comments):

**No**

NL:

(Comments):

It should be deleted entirely as it doesn't seem to have much added value (it is already indicated by the words "indirect" and "other means") and could potentially cause confusion.

SE:

(Comments):

-

SI:

(Comments):

SI:

We support the PCY's suggestion and recall our reply to question Q9.A.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.

FI:

(Comments):

We are open to discuss on how this could be clarified.

IT:

(Comments):

We believe the expression is quite clear, but we would not oppose the inclusion of a clarification, e.g., in a recital.

LT:

(Comments):

Yes, it should be clarified.

LV:

(Comments):

Yes, it should be clarified as cases were BO status steams from indirect ownership.

RO:

(Comments):

-

	We would welcome such a clarification.
<p>Q.10.A. Do Member States consider that AMLR should define which general types of legal persons and arrangements should be covered by the rule (such as foundation, institute)?</p>	<p>PL: (Comments): It would be desirable, but we are wondering if it would be possible to exhaustively define even types of those types of legal persons and arrangements.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes and it should include both specific and general types</p> <p>AT: (Comments): <b>No, we strictly object.</b> Types of legal persons and arrangements vary greatly throughout the Member State. This task might be too complex and there is a risk that some legal persons and arrangements are missing or listed wrongfully.</p> <p>EL: (Comments): Yes.</p> <p>NL: (Comments): In the Dutch context the reference to "legal entities" in article 43(2) AMLR does not make much sense as legal entities are already covered by</p>

article 42 AMLR (in NL foundations are legal entities and would not be considered similar to trusts). Also, if any general definition would be considered it needs to always take into account the variety of legal systems across the EU. For instance, foundations would not be considered legal arrangements under Dutch law as they are legal entities.

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We support the suggestion to define general types of such similar entities and arrangements and also point out that it is necessary to include the distinguishing criteria in relation to “ordinary” legal entities.

SK:

(Comments):

Yes.

DE:

(Comments):

No. If it is necessary to give such a definition it should be done by the MS.

EE:

(Comments):

A general characteristics could be added, but it should be kept in mind that foundations differ a lot depending on the jurisdiction. For example in

Estonia the foundations are legal persons and the general rules of determining the BO are applicable to them.

FI:

(Comments):

No strong views on this.

IT:

(Comments):

We believe that it would be important to obtain further details on what kind of entities and arrangements MSs are expected to notify to the Commission and to subject to the same regime as trusts, in order to ensure that MSs follow a coherent and harmonized approach. If including more details in the L1 text is considered not opportune, we suggest to demand the identification of common features, examples or case studies to the AMLA.

LT:

(Comments):

Yes, the coverage should be clarified.

LV:

(Comments):

Yes.

RO:

(Comments):

-

Yes.

<p>Q.10.B. Do Member States consider that the rules for determining the beneficial owner of legal entities and legal arrangements similar to express trusts should be developed and clarified?</p>	<p>PL: (Comments): PL is in favour of developing and clarifying such rules.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>No, the same rules should be applied.</b> This is the approach of the 5. AMLD, which works in practice.</p> <p>EL: (Comments): Yes.</p> <p>NL: (Comments): Yes, it could be useful to explore with regard to legal arrangements similar to trusts.</p> <p>SE: (Comments): -</p> <p>SI: (Comments): SI:</p>
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We support such intention, again for all the reasons cited in our reply under Q9.A.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.

FI:

(Comments):

Yes, this would bring more clarity.

IT:

(Comments):

We understand that the category embraces a number of different entities and arrangements that are subject to national specificities and regulation and that it would be difficult to map them exhaustively and provide ad hoc rules for each of them. Nonetheless, we believe that more granularity might be obtained through demanding the AMLA to better define the scope of relevant arrangement/entities (see answer to Q.10A above).

	<p>LT: (Comments): Yes, they should be developed and clarified.</p> <p>LV: (Comments): Apart from companies, law should more clearly define BO of other legal entities and arrangements.</p> <p>RO: (Comments): - We would welcome such a clarification.</p>
<p>Q.10.C. Do Member States consider that the beneficial ownership rules should also apply to mutual funds?</p>	<p>PL: (Comments): We are of the opinion that in general these rules should also apply to the mutual funds but we are open to modify them accordingly if such modification is justified in this regard.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): Need to be further investigated.</p>

NL:

(Comments):

Mutual funds can be used in a similar way trusts are used. In NL a broad definition of "similar legal arrangement" is used and it is determined that in any case mutual funds (*fonds voor gemene rekening*) are considered similar legal arrangements. Therefore, the BO-rules regarding trusts and similar legal arrangements apply to mutual funds.

SE:

(Comments):

We are sceptical, considering that a mutual fund often will have a large class of beneficiaries.

SI:

(Comments):

SI:

We would be open to explore such a proposal.

SK:

(Comments):

Yes.

DE:

(Comments):

So far, mutual funds have not come into focus in connection with BO information.

EE:

(Comments):

As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions

	<p>relating to trusts.</p> <p>FI: (Comments): Yes.</p> <p>IT: (Comments): Yes.</p> <p>LT: (Comments): Yes, it should apply to mutual funds.</p> <p>LV: (Comments): Yes, the same principles as the regular fund should apply.</p> <p>RO: (Comments): -</p>
<p>Q.10.D. Do Member States consider the Commission's recommendations to be an appropriate solution to address the absence of rules in the AMLR?</p>	<p>PL: (Comments): We do not oppose the solution that involves the EC issuing the recommendations in this regard, but taking into account the differences between different types of entities we are wondering if this recommendations would have significant added value.</p> <p>ES:</p>

(Comments):

No. Se answer to question 7

IE:

(Comments):

Yes as per our answer to question 8.3.B, this should be in an RTS issued by AMLA

AT:

(Comments):

**No, we think that Art. 42 para 4 should be deleted.** All kind of relevant legal persons and arrangements are covered by Art. 42 and 43 anyway.

EL:

(Comments):

We do acknowledge the rational of the Presidency's remarks both on the non-binding character of the recommendations and the ex post knowledge of the rules which are included in a Regulation.

On the other hand the proposal for a non-binding guidance by the Commission will provide member states the chance to have guidance on the effective implementation of the rules.

We agree with the justified non-binding character of the guidance giving the chance to the member states to assess national specificities and adopt the guidance on the national legal framework.

We believe that consultation with the national competent authorities is needed and has to be included in the wording of the text.

NL:

(Comments):

No.

SE:

(Comments):

We are sceptical to the recommendations. (vi tycker väl inte det är någon "solution?")

SI:

(Comments):

SI:

We understand the concerns if Art 43(3) adequately regulates this issue and wonder whether this is the same situation as under Art 42(4) in terms of flexibility for MSs. We are open for further discussions on this topic.

SK:

(Comments):

No.

DE:

(Comments):

No.

EE:

(Comments):

Non-binding guidelines could be useful in providing further depth to the regulation. Anything further than that, i.e. having more

regulatory power, would probably increase the complexity of implementation.

FI:

(Comments):

No, because of the non-binding nature of recommendations.

IT:

(Comments):

We suggest to consider, as an alternative to recommendations, the possibility to demand the identification of common criteria to AMLA guidelines. This solution would ensure a certain consistency throughout the Union in the identification of the BO under similar circumstances, while leaving directly to MS the necessary flexibility to address residual national specificities, since MS are likely to be more familiar with such peculiar entities/situations.

LT:

(Comments):

Maybe it could be considered other means, e.g. guidelines.

LV:

(Comments):

No strong views.

RO:

(Comments):

-

<p>Q.11.A. Do Member States consider it appropriate to change the proposed scope of beneficial owner information?</p>	<p>PL: (Comments): We are in favour of maintaining the current level of BO information.</p> <p>ES: (Comments): Yes. "Adequate" information of the BO means that this should be enough or satisfactory to properly identify the BO. Hence, at a minimum it must contain, up to date and with respect to each actual holder, the information listed in art.44 (1) AMLR</p> <p>IE: (Comments): No</p> <p>AT: (Comments): <b>No</b>, we do not support an extension of the scope in Art. 42 para 4 AMLR.</p> <p>EL: (Comments): Following recital 69, mentioning among others that it is appropriate to introduce precise requirements concerning the information that should be collected in each case and that the information includes a minimum set of personal data of the beneficial owner, we consider appropriate to have the minimum possible scope.</p> <p>NL:</p>
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(Comments):

We agree with the level in the original proposal.

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We share the concerns with regard to difficulty of establishing and verifying certain data that is included in Art 44(1), especially referring to “nationalities” and “tax identification number”, as the other data from point (a) should be able to be retrieved from a personal identification document. Under point (b) we propose to include besides the date of acquisition also the date of termination. Under point (c) we would prefer to have a clarification what is meant with the “description of control and ownership structure”.

SK:

(Comments):

Yes.

DE:

(Comments):

There should be a moderate change to the scope of the BO information.

EE:

(Comments):

No strong feelings. The general approach should be that every collected item of information should be collected for a reason.

FI:

(Comments):

Special attention should be paid to the GDPR rules of data minimization and the question of whether the place of birth is in all cases relevant for the purposes of identifying a BO.

IT:

(Comments):

See answer below.

LT:

(Comments):

Expansion of scope of information should be justified.

LV:

(Comments):

No, Member States have already created their BO registers and adding additional information about already registered BO might be challenging. Also, it is hard to find purpose of additional information and how it would help better identify BO.

RO:

(Comments):

-

No. Please see our answer below.

<p>Q.11.B. Do Member States require a reduction in the scope of personal data, e.g. to the current level (first name and surname, date of birth, residential address, nationality or nationalities and national identification number, if assigned)? If so, proposals in this regard are welcome.</p>	<p>PL: (Comments): We are in favour of maintaining the current level of BO information.</p> <p>PT: (Comments): <b>PT:</b> We do not agree with the reduction in the scope of personal data contained in article 44. As referred in the Presidency’s note «(...) the registering of beneficial ownership information is one of the important measures in the fight against money laundering and terrorist financing» and, therefore, limiting the information available on the beneficial owner(s) might hinder the overall effectiveness of the AML/CTF regime.</p> <p>In fact, in our view, obliged entities should also gather “<i>the tax identification number or other equivalent number assigned to the person by his or her country of usual residence</i>”, considering that, in many jurisdictions, it is an essential element to identify natural persons.</p> <p>ES: (Comments): No. With the exception of “country of residence” data, all others were listed by FATF as examples of information to be requested. (INR 24, footnote 59). In fact, we would suggest to add a) the final ownership percentage of the legal entity, and, where appropriate, and b) data of the intermediary companies</p>
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IE:

(Comments):

No

AT:

(Comments):

**Yes, because some of the information is problematic:**

full place of birth: the exact address is very likely to be not known. Realistically, the city of birth and the country of birth are known, because they are entered in the passport

tax identification number: the tax identification number of foreign nationals will be difficult to obtain and to verify

national identification number: this number might be used only internally by a country for the means of online verification and may be used internally, but not submitted to obliged entities. Thus the text should be more open to the use of different numbers, as long as they guarantee an identification of the person.

EL:

(Comments):

Due to reasons of compliance with the personal data protection legal framework, we support the scope of the status of the Directive 2015/849.

NL:

(Comments):

No.

SE:

(Comments):

Yes. E.g, we don't see the need for the tax-identity number to be submitted (punkt?)

SI:

(Comments):

SI:

We could support such a reduction of required data.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

There are concerns about an excessive collection of personal data when it comes to the residential address of beneficial owners. This additional data field will cause a significant burden for the registries also with the view to ongoing updates of addresses and requests for exceptions to the disclosure of such an information (Art. 13 of AML DIR)

In Germany no national identification number is in place and passports or other national identity document numbers do not serve as an

identification number. Therefore, the national identification number – if added at all – may only be added as “where applicable”. The passport or national identity document number should not be used either, since this number isn’t attached to the person but to the document and changes if a new document is issued. We would also like to call attention to the fact that legal entities that must report to registers often do not know the tax identification number of their beneficial owners, or must at least make a considerable effort to obtain such numbers. On the other hand, tax identification number could bring added value for the clear identification of the beneficial owner. In light of this, the national identification number and tax identification number should be included where applicable unless they cannot be obtained with reasonable effort. The obliged entity should be able to demonstrate that it has made reasonable efforts to obtain the data.

We propose the following drafting:

*(a) the first name and surname, full place and date of birth, residential address, place and country of residence and nationality or nationalities of the beneficial owner, national identification number and source of it, such as passport or national identity document, and, where applicable, the national identification number and source of it, such as passport or national identity document, and the tax identification number or other equivalent number assigned to the person by his or her country of usual residence;*

EE:

(Comments):

Nationality is a problematic term that should be defined. Under the current framework Estonia has collected information on residency that is more relevant in the context of AML/CFT.

FI:

(Comments):

Please see answer above.

IT:

(Comments):

While we don't necessarily see the need to reduce the set of UBO data that corporate, legal entities and trusts, are required to hold and transmit to the central register, we caution against the choice of defining the UBO data obliged entities are required to collect for CDD purposes by making a cross-reference to article 44 (1), point (a). To this regard, we would prefer to set out an autonomous and narrower list of information that obliged entities shall collect on UBOs for CDD purposes, which should not include, for instance, "the national identification number and source of it" and "the tax identification number".

In fact, requiring obliged entities to collect an extensive set of information also in cases where this information cannot be found in the register (e.g. in cases where the UBO is not the natural person owning or controlling the customer but the natural person on whose behalf the customer is acting), could result in a considerable burden

for obliged entities without having a significant added value in terms of AML risk mitigation. Moreover, even if such information is to be found in the register, requiring the collection of such a broad and detailed set of data might discourage obliged entities to identify as UBO a person other than the one the customer has declared to the register. We are concerned that this might result in turning the identification of the UBO into a mere tick-the-box exercise, instead of the result of a substantial analysis.

LT:

(Comments):

Requirement to obtain the expanded scope of beneficial owner information (especially such data as full place of birth, identity document, the date of acquisition of the beneficial interest held) should be justified. It should be noted that such information is not collected and stored in national registers. We would suggest keeping the requirements as currently stated in the AMLD.

LV:

(Comments):

Residential address of BO unnecessary information which doesn't help identification of BO.

RO:

(Comments):

Yes, we welcome the simplification (a reduction in the scope of personal data required for the beneficial owner) since it is absolutely necessary

	<p>to make the distinction between the verification of the customer identity and the verification of the fact that the beneficial owner was properly qualified as such from the KYC perspective, it is important to make sure that the BO of the client is the person indicated by the client (or found in the BO register), the identity verification has a meaning only in relation to the client and we appreciate that there should be less information required concerning the BO than the ones concerning the client.</p>
<p>Q.11.C. Do the Member States agree to refer generally to the date of becoming a beneficial owner?</p>	<p>PL: (Comments): PL agrees with this suggestion.</p> <p>ES: (Comments): We are in favour of maximum transparency and of reporting information as soon as possible. In addition, we believe that the important information here is to report,</p> <ul style="list-style-type: none"> <li>• in case of ownership interest, the percentage of shares or voting rights, jointly with the social/para-social agreements in this regard (e.g. those concerning the existence of non-voting shares, multiple voting shares, or the suspension of voting rights for shareholder who infringe certain rules in the Articles of Association...)</li> <li>• in case of control interest, the type of control (effectively exercised or potentially to be exercised) and where appropriate: the complete shareholding structure if the control is exercised</li> </ul>

through a chain of companies, and the agreements through which the control is/may be exercised by other means (e.g. corporate agreements, other legal affairs...)

IE:

(Comments):

Yes

AT:

(Comments):

**Yes**, but we think that this is already a standard feature of BO-Registers.

NL:

(Comments):

Yes.

SE:

(Comments):

Inget svar?

SI:

(Comments):

SI:

We could support the proposal and also add to include the date of termination of the status of beneficial owner.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

EE:

(Comments):

Yes.

FI:

(Comments):

No, since this information could be very difficult to get, update and verify especially in cases where the ownership is formed through more complex arrangements.

IT:

(Comments):

The wording “acquisition of beneficial interest” is, in our view, not necessarily problematic if considered as a general, non-technical expression (“interest” does not coincide with “shareholding”). In any case, we do not oppose to using the different expression “the date of becoming a beneficial owner” but we note that such wording might have similar drawbacks as the reference to the date of acquisition of the beneficial interest. In fact, the problem is more substantial: not all criteria set out in the AMLR proposal, especially those aimed at determining “control through other means”, have a clear starting date, e.g. links with family members or informal agreements. A possible solution would be to require that such information is disclosed only “where available”. The risk of abuse of a similar clause would be mitigated by the fact that the nature and extent of the beneficial

	<p>interest has also to be disclosed and this would easily allow to verify whether a date of acquisition should be available or not. Moreover, to capture also informal means of control, the wording could refer to “the date or period of acquisition”.</p> <p>LT: (Comments): Yes, it could be addressed generally.</p> <p>LV: (Comments): In practise it would be hard to establish date of becoming a BO.</p> <p>RO: (Comments): - Not necessarily.</p>
<p>Q.11.D. Do Member States agree that the name and identification number of the legal entity should be collected?</p>	<p>PL: (Comments): We do not oppose the collecting of the name and identification number of the legal entity.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): What is meant by a ‘legal entity’ here? Is it a trust or a company? What is an ID number in</p>

this case as we do not provide trusts with an ID number in the same way as a company would have one. Not all trusts have a tax presence. Perhaps the text 'where available' should be included?

AT:

(Comments):

**Yes**

NL:

(Comments):

Yes. However, this does not necessarily need to be a part of the BO-register, as long as the information in the BO-register can be traced to an entry in another public register (such as the company register).

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

No. It is unclear what is meant by this. There is a need to collect sufficient information to identify the legal entity which is fulfilled with

	<p>the current situation.</p> <p>EE: (Comments): Yes.</p> <p>FI: (Comments): Yes.</p> <p>IT: (Comments): The expression “<i>information on the legal entity....as well as the description of the control and ownership structure</i>” is in fact very generic and would deserve further clarification. We support that the name and identification number are collected as a minimum requirements.</p> <p>LT: (Comments): Yes.</p> <p>LV: (Comments): Yes, such information helps to identify BO.</p> <p>RO: (Comments): Yes</p>
<p>Q.11.E. Do Member States consider that other information should be collected?</p>	<p>PL: (Comments): Currently we do not identify such data.</p>

ES:

(Comments):

Yes. See Q.11.C

IE:

(Comments):

If a trust is owned by a company then the companies register number should be included. Nominee information should also be captured – who the nominee is holding on behalf of. This should not be publicly accessible to align with FATF Rec 24.

AT:

(Comments):

**Yes**, the following information could be collected:

- Name of the register were the legal entity was incorporated
- Legal form
- address details

NL:

(Comments):

Se answer to Q.11.D.

SE:

(Comments):

-

SI:

(Comments):

SI:

We propose to add also the address and the date of establishment of the legal entity or arrangement.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

No.

FI:

(Comments):

We are open to discuss this issue. Please see our remarks on gathering information regarding place of birth.

IT:

(Comments):

We would also add the address of the registered office.

LT:

(Comments):

It should be stated / clarified what is meant by "other information".

LV:

	<p>(Comments): No.</p> <p>RO: (Comments): -</p>
<p>Q.11.F. Do Member States agree that the AMLR should clarify what information is collected about legal arrangements?</p>	<p>PL: (Comments): Every clarification is welcomed, in this regard as well.</p> <p>ES: (Comments): Yes. See Q.11.C</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>Yes</b>, please see above.</p> <p>NL: (Comments): Article 44(1)(c) AMLR is indeed quite vague about what information needs to be collected about the legal entity or the legal arrangement. In the case of legal entities this could relate to information mentioned in article 18(1)(b) AMLR, but in the case of legal arrangements this is very unclear. In our opinion it should relate to the following information (which should therefore also be registered in the BO-register): the name of the legal arrangement (if any), the type of legal arrangement (for instance,</p>

trust or mutual fund), the date and place of creation of the legal arrangement, and the (type of) purpose for which the legal arrangement was created (for instance, charity or investment).

SE:

(Comments):

Could be done at level 2.

SI:

(Comments):

SI:

We support this proposal.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

Yes.

FI:

(Comments):

Yes.

IT:

(Comments):

Yes, it would be useful to increase legal certainty and harmonisation, although for legal arrangement the set of data might vary according

	<p>to the specific feature of each arrangement.          [Therefore it could be worth entrusting the AMLA with the task of identifying the essential information regarding legal arrangements.</p> <p>LT:          (Comments):          Yes, it could be clarified in AMLR.</p> <p>LV:          (Comments):          Same BO identification information should be collected. Changes only BO nature of control.</p> <p>RO:          (Comments):          Yes</p>
<p>Q.11.G. According to Member States, should the AMLR specify what information on the structure of relationships has to be collected?</p>	<p>PL:          (Comments):          Such specification would be desirable.</p> <p>ES:          (Comments):          Yes. See Q.11.C</p> <p>IE:          (Comments):          Yes</p> <p>AT:          (Comments):  <b>No</b>, Only the type of the legal arrangements should be recorded: Trust, Fiducie etc.</p>

EL:

(Comments):

Yes, we support that specification of the information would provide the regulation with the necessary clarity.

NL:

(Comments):

Yes. It should also be clear that information only needs to be collected in case of legal structures involving more than one legal entity.

SE:

(Comments):

Could be done at level 2.

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

Yes.

FI:

	<p>(Comments): Yes.</p> <p>IT: (Comments): Yes, as for letter a) and b), the AMLR should expressly list a number of minimum information on the ownership and control structure that have to be present in all the BO registers across the EU, as a precondition for an effective interconnection of such registers.</p> <p>LT: (Comments): Yes, it could be clarified in AMLR.</p> <p>LV: (Comments): Yes, AMLR should more specify identify what information on the structure of relationships and middlemen's needs to be collected.</p> <p>RO: (Comments): Yes, we would welcome such a clarification.</p>
<p>Q.11.H. According to Member States, should identification data on the intermediary links (e.g. names of entities) and intermediary relationships (e.g. size of intermediary shares, concerted action) expressly stipulated in the Regulation?</p>	<p>PL: (Comments): We are open to explore such solutions.</p> <p>ES: (Comments): Yes. See Q.11.B</p>

IE:

(Comments):

Yes – this would help with sanctions circumvention

AT:

(Comments):

**No**, that would add an massive administrative burden for reportable legal entities and trusts.

NL:

(Comments):

Yes, insofar relevant. It should not be an administrative exercise.

SE:

(Comments):

Could be done at level 2.

SI:

(Comments):

SI:

If this is what is expected to be obtained, then it should be expressly stipulated.

SK:

(Comments):

Yes.

DE:

(Comments):

It would have to be examined what benefit such information would bring, considering the burden it would cause for the registered associations.

EE:

(Comments):

General answer would be negative. This seems to be too excessive, vague and it does not have clear added value. It could be considered to disclose all of the ownership structure, but as long as such a requirement does not exist then the obligation to collect and disclose data on intermediary links would make harder the fulfilment of the obligation to submit and make publicly available the information about BOs.

FI:

(Comments):

Yes. Also the business identity code could be added to this information.

IT:

(Comments):

Yes, information on the identity and size of intermediate links and chains of control should be included in the AMLR, although it could be left to directly applicable L2 acts to further detail the required data. It might also be worth including other information that might impact on the decision making in the entity, such as voting agreements or rights, or on the destination of the entity's turnover, such as economic rights. The set of data to be collected should in any case take into due account the requirements set out in FATF IN.R.24.

LT:

(Comments):

Yes, it could be clarified in AMLR.

	<p>LV: (Comments): Yes, it helps to identify the nature of BO control.</p> <p>RO: (Comments): Yes, all the obligations in relation to the chain of control should be established in AMLR.</p>
<p>Q.12.A. Do Member States agree that it should be made clear who is targeted by the rule?</p>	<p>PL: (Comments): We agree that it should be made clear who is targeted by the rule. In Polish AML/CTF Act the obligation is addressed to the persons who are authorized to represent the legal person/entity registered in the BOR. These persons are also personally liable if the requirements are not met.</p> <p>ES: (Comments): Yes. There should be no doubt that the onus/responsibility lies with the legal person</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): We assume that this question relates to Art. 44 AMLR. <b>Yes</b>, that should be clarified. We would assume</p>

that this should apply to obliged entities as well as to BO-Registers.

EL:

(Comments):

Yes.

NL:

(Comments):

Yes.

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes. It is not clear to whom this provision is addressed: to the legal entity that must report the information (which is likely the case, since these entities have the obligation to be entered in the register), or also to the transparency register itself (in this case the provision would have to be located in the Directive). We kindly request a

more precise formulation here.

EE:

(Comments):

Yes. Current text is not clear on whether it is an obligation of the board or it is in the context of the public register.

FI:

(Comments):

Yes.

IT:

(Comments):

Yes

LT:

(Comments):

Yes, it necessary to clarify the addressee of this requirement.

LV:

(Comments):

Yes, it should be made clear that this applies to any individual of legal entity, trough witch BO exercise its BO status.

RO:

(Comments):

Yes, the clarification would be welcomed. In addition to this clarification, we believe that a 14-day period from the creation of a new entity is not necessary, it should know and declare the beneficial owner at the moment of creation (once the necessary formalities for creation have

	<p>been completed). Allowing a time limit is only reasonable for pre-regulatory entities, which need time to comply with the new requirements.</p>
<p>Q.12.B. Do Member States consider that it should be clarified exactly how to apply the time limit?</p>	<p>PL: (Comments): We agree that running of time limit should be clarified. In Polish AML/CTF Act the running of time limit is initiated either by the registration of the company or a change in any information already provided to the BOR.</p> <p>ES: (Comments): We are of the opinion that the 14 days should be calculated once the information on the BO has changed</p> <p>In addition, should the legal person detect any change in the ownership of registered shares and holdings, they must immediately update the Shareholder's Book and then incorporated those changes in the Registers.</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>It should be clarified</b>, who is responsible for the application of this time limit: the management of the legal entity and the trustee of an express trust etc.</p>

EL:

(Comments):

Yes.

NL:

(Comments):

Yes

SE:

(Comments):

Yes – but this might depend on the target of the rule.

SI:

(Comments):

SI:

We support this suggestion.

SK:

(Comments):

Yes.

DE:

(Comments):

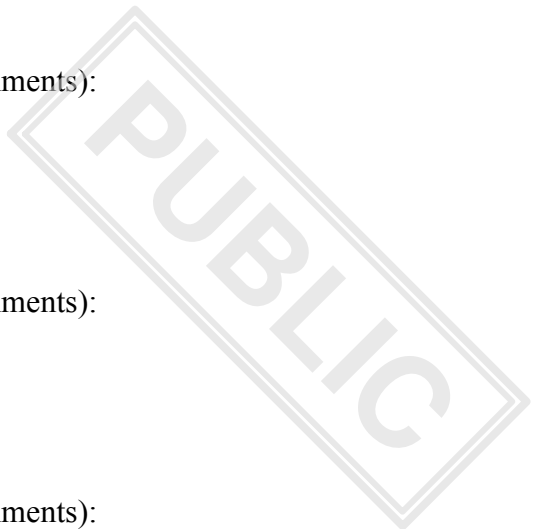
No.

EE:

(Comments):

We have detected a practical problem when the board does not have information about the BO. The owners of the legal entity are not obliged to provide information about the BO to the board.

FI:



	<p>(Comments):          Yes. In Finland BO information is mandatory when establishing a limited liability company.</p> <p>IT:          (Comments):          Yes.</p> <p>LT:          (Comments):          Yes, it should be clarified.</p> <p>LV:          (Comments):          Yes.</p> <p>RO:          (Comments):          -          Clarifications may be useful in order to to explain the rule applicable among all Member States.</p>
<p>Q.12.C. Do Member States support a 14-day time limit, a longer time limit or a general time limit that allows to address specific situations (e.g. “without undue delay”)?</p>	<p>PL:          (Comments):          We can support a 14-day time limit which seems to be appropriate.</p> <p>ES:          (Comments):          We support the 14-day time limit</p> <p>IE:          (Comments):</p>

We think it should apply to (1) and use the text  
“*without undue delay*”

AT:

(Comments):

**We strictly object to a 14-day time limit.**

Our experience shows that with regard to international ownership structures it will not be possible to get a proof of existence and ownership of all intermediary entities within 14 days. Therefore, we suggest to extend this period to 28 days. Otherwise quality of beneficial owner data will be dramatically reduced in beneficial owner registers.

EL:

(Comments):

We consider that the proposed time limit of update in 14 days may not be feasible due to reasons regarding documents sign and validation especially in complex corporate structures, so we propose an extension up to 60 days.

NL:

(Comments):

We believe the time limit should not be too long. A time limit of 14 days or less (for example a week) should apply.

SE:

(Comments):

We would like OE:s to register information of their BO at the same time that they register their creation, as there otherwise is a risk that a company can be used for ML without having a

BO registered. Regarding the other situation – the obligation to hold up to date BO information – we think that it's sufficient with a general time limit.

SI:

(Comments):

SI:

We are not in favour of a general time limit, as we believe that the obligation for obliged entities and legal entities and arrangements should be as clear as possible, also in terms of time limits that apply to them. Regarding the duration of the limit, we can support the Commission's proposal of 14 days.

SK:

(Comments):

Do Member States would like to suggest a 30-day time limit.

DE:

(Comments):

We support a time limit that allows to address specific situations. Therefore "without undue delay" suits us.

EE:

(Comments):

The BO information should be provided with the registration of the legal entity. No BO information, no registration.

FI:

	<p>(Comments):</p> <p>No strong view on the time limit, but a clear and feasible requirement would be the best solution. If the obligation concerns obliged entities, then 14 days is too short for them to update the information.</p> <p>IT:</p> <p>(Comments):</p> <p>We fear that the term “without undue delay” may be interpreted in an inconsistent manner and does not add clarity in this respect. On the proposed 14-day time limit, we support a longer timeframe (e.g. 30 days at least).</p> <p>LT:</p> <p>(Comments):</p> <p>We support 14 day limit.</p> <p>LV:</p> <p>(Comments):</p> <p>In most cases, 14-day time limit is enough to submit BO information. In cases of complex cooperative structures, more time is needed to collect documents. We support idea of 14-day time limit.</p> <p>RO:</p> <p>(Comments):</p> <p>We support an explicit deadline, but only for making changes - see Q12.A</p>
<p>Q.12.D. Do Member States consider that there</p>	<p>PL:</p>

<p>should always be an annual data check? If so, do Member States wish to clarify to whom the obligation is addressed?</p>	<p>(Comments):</p> <p>We are of the opinion that there is no need to introduce an annual data check. In our view this obligation does not add any value. The obligation to update information in the 14 days term is sufficient.</p> <p>ES:</p> <p>(Comments):</p> <p>Yes. We do believe that the duty should fall once again on the legal person. On the contrary, we do not believe that the checks to be carried out represent a significant undue burden.</p> <p>IE:</p> <p>(Comments):</p> <p>Yes – the Registrars</p> <p>AT:</p> <p>(Comments):</p> <p><b>Yes</b>, we support an annual data check and an annual obligation for legal entities to report any changes or state that no changes have occurred. The experience gained by operating the Austrian BO-Register shows clearly that without yearly obligation to verify and report beneficial owner’s data will be reported once and will be soon out of date.</p> <p>Our experience shows that without yearly reporting obligation the majority of legal entities do not report any changes of beneficial ownership information to the BO-register:</p> <ul style="list-style-type: none"><li>• Legal undertakings tend to forget that there is a reporting obligation at all</li></ul>
--	--

Are not used to the rules if there is no continuous engagement with this topic

NL:

(Comments):

No. A lot of entities do not change the BO-structure often. This would thus amount to an additional burden with little benefit.

SE:

(Comments):

Yes, such a clarification is needed. We can see positives and negatives with both solutions. It can be beneficial for OE:s and companies to show that their BO information is up-to-date through information recorded in BOR:s. At the same time, this can create problems of enforceability and lead to significant administrative burdens, especially for small companies with only one or a few owners.

SI:

(Comments):

SI:

We agree with the PCY's assessment that this would present a significant administrative burden to entities where no change occurred and don't see the need for such an obligation.

SK:

(Comments):

No.

DE:

(Comments):

. The legal entities are obliged to continuously update their data and to keep the BOs up to date. Thus, the added value of periodical data checks could be questionable.

If an annual data check is introduced it should apply to the legal entity itself.

EE:

(Comments):

The register should proactively contact all the entities obliged to provide information on BO. This contact can be achieved for example while receiving the annual report from the legal entity.

FI:

(Comments):

We support the annual data check, but think there could be some leeway for example smaller companies, where BO information does not necessarily change that often.

IT:

(Comments):

Yes to both questions.

LT:

(Comments):

It will create more administrative burden. Changes should be registered without undue delay (14 days), no need for annual check.

LV:

(Comments):

	<p>No, changes in BO information should be submitted only when such changes occur. Also, changing members of board, new board should update BO information or submit application that registered BO information haven't changed.</p> <p>RO: (Comments): The annual update obligation certifies that the data recorded is correct and up to date; this obligation can be linked to the obligation to file annual financial statements, i.e. with the filing of these statements the updating of the beneficiary should also be carried out, in order to avoid an additional burden on the entities.</p>
<p>Q.12.E. Do Member States consider it appropriate that the annual data check should also cover situations where the beneficial owner does not change in the long term and where the beneficial owner is registered on the basis of the automatic exchange of information within national registers?</p>	<p>PL: (Comments): See the answer above.</p> <p>ES: (Comments): Yes, it should be applied without exceptions. The legal entity should be responsible for updating this information and, then, also inform the registry (and not the other way around).</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>Yes</b>, also in this case there should be an annual</p>

data check, where the management verifies that no nominee arrangements exist. A reporting obligation in this cases is not necessary.

EL:

(Comments):

Despite the advantages of the annual check, if it were to apply to cases where there is no long-term change of beneficial ownership, it would involve significant administrative burden.

NL:

(Comments):

No.

SE:

(Comments):

If an annual check is introduced, it should encompass every BO.

SI:

(Comments):

SI:

No, we are not in favour of such obligation.

SK:

(Comments):

No.

DE:

(Comments):

No. The registration within the BO-Register should always be done by the legal entity. The annual check is in our view not necessary.

Please see answer to Q.12.D.

	<p>EE: (Comments): Yes, this approach is proportionate as it does not significantly burden the legal entity. In addition the AMLD6 foresees that the register provides timely information. Word “timely” is not substantiated, but annual data check is probably the minimum that the register can do to ensure the timeliness of the data.</p> <p>FI: (Comments): See our answer above.</p> <p>IT: (Comments): Yes.</p> <p>LT: (Comments): No, it is not necessary in such cases.</p> <p>LV: (Comments): No, it would be unnecessary administrative burden. Instead, Member States need to strengthen cooperation between the competent authorities, ensuring the accuracy of BO data.</p>
<p>Q.13.A. Do Member States consider that the rule should be specified to include knowledge of the ownership structure?</p>	<p>PL: (Comments): It could be desirable to include the knowledge of the ownership structure.</p>

ES:

(Comments):

Yes. See answers to Q.11.B and Q.11.C

IE:

(Comments):

Yes

AT:

(Comments):

**Yes, definitely.** An inevitable requirement for holding adequate beneficial owner data are strict rules on verifying beneficial owners. In practice lawyers or tax advisors will verify beneficial owners on behalf of their clients. For that reasons it would be appropriate to have the same rules for obliged entities, legal entities and Trustees of any express trust.

Without clear obligations, which need to be applied yearly, beneficial owner data will have an unusable low quality. In addition, it should be clarified that foundations fall in the scope of Article 45.

All corporate and other legal entities **such as foundations** incorporated in the Union shall **identify their beneficial owner(s) pursuant to Articles 42 and 43 and take reasonable measures to verify their identity at least yearly so that they are satisfied to know who their beneficial owner is and that they understand their ownership and control structure and shall** obtain and hold adequate, accurate and current beneficial ownership information.

NL:

(Comments):

Yes, but only for the legal entities where this is relevant. I.e. when the ownership structure consists of several legal entities.

SE:

(Comments):

We are sceptical that this is possible to do without first clearly defining what is meant by ownership structure.

SI:

(Comments):

SI:

We could support this proposal.

SK:

(Comments):

No.

DE:

(Comments):

Yes.

EE:

(Comments):

Yes.

FI:

(Comments):

Yes.

IT:

	<p>(Comments):</p> <p>Yes.</p> <p>LT:</p> <p>(Comments):</p> <p>Yes.</p> <p>LV:</p> <p>(Comments):</p> <p>Yes.</p> <p>RO:</p> <p>(Comments):</p> <p>Yes</p>
<p>Q.13.B. According to Member States, should it be clarified who within the legal person fulfils this obligation (senior managing officials)?</p>	<p>PL:</p> <p>(Comments):</p> <p>It definitely should be clarified. See the answer to Q.12.A.</p> <p>ES:</p> <p>(Comments):</p> <p>Yes. Given the practical hurdles that obliged entities face on occasion in accessing this information, it is important that Member states shall ensure that legal entities identify a senior manager within the organization to maintain such information. Accordingly, we would suggest to add a para.</p> <p><i>Member states shall require that updated information on beneficial ownership shall be maintained by a senior manager of the legal entity.</i></p>

Our law details who should hold this info:

- a) The sole director or joint or solidary directors.*
- b) The Board of Directors, as well as, in particular, the secretary of the Board of Directors, whether or not he/she is a director.*
- c) The board of trustees and the secretary.*
- d) The association's representative body and the secretary*

IE:

(Comments):

Yes – the compliance officer

AT:

(Comments):

**We think that this is not necessary**, as it is a general rule of company law that the legal representatives of a legal entity are responsible.

EL:

(Comments):

We consider that it would be helpful for the obliged legal persons to have such a clarification provided.

NL:

(Comments):

No.

SE:

(Comments):

We do not see the need for such a clarification.

SI:

(Comments):

SI:

We agree to clarify who is bound by this obligation and support the solution to include senior managing officials.

SK:

(Comments):

No.

DE:

(Comments):

No.

EE:

(Comments):

Yes.

FI:

(Comments):

If this is clarified, we think the senior managing officials (already in register) should have to fulfill this obligation. Defining this otherwise could cause unnecessary administrative burden and complications with roles and authorizations in the register.

IT:

(Comments):

Yes.

LT:

(Comments):

Yes, it could be clarified.

LV:

	<p>(Comments): Yes.</p> <p>RO: (Comments): Yes</p>
<p>Q.13.C. Do Member States agree to extend the obligation to cooperate to intermediary persons who are part of the ownership and control structure?</p>	<p>PL: (Comments): We are not convinced if such obligation should be extended to intermediary persons who are part of the ownership and control structure. We are afraid that this cooperation obligation could be difficult to execute.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>Yes</b></p> <p>NL: (Comments): Yes</p> <p>SE: (Comments): This might be difficult? to introduce without</p>

first introducing a definition on what is meant by “ownership and control structure”.

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

EE:

(Comments):

Yes. It would be welcomed to mention other boards in the group, supervisory board and other similar bodies of the legal entity that could have information on BOs.

FI:

(Comments):

Yes, but the rules should remain clear.

IT:

(Comments):

Yes.

LT:

(Comments):

Yes.

	<p>LV: (Comments): Yes, intermediary persons shall immediately report to the legal entity if they act for the benefit of another person (BO) and shall identify such person.</p> <p>RO: (Comments): Yes, but this would only be applicable if intermediaries are established in non-EU states. in which case it is questionable how they can be bound by the EU Regulation. If intermediary entities are established in EU states and they too have the same obligation to identify and register their own BO.</p>
<p>Q.14.1.A. Do Member States agree that it is necessary to elaborate further on what information is to be registered if the entity does not have a beneficial owner?</p>	<p>PL: (Comments): We are in favour of further elaboration in this field.</p> <p>IE: (Comments): Yes. Information on nominees and TCSPs should be registered and not made publicly accessible</p> <p>AT: (Comments): <b>No</b>, in that case the senior management of this legal entity is registered.</p> <p>NL:</p>

(Comments):

Yes.

SE:

(Comments):

-

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

EE:

(Comments):

Yes, there should be a note in the register that would inform user, why there is no BO info. The notification should state the reason and if possible give contacts of the liquidator, bankruptcy trustee, notary or other person that is managing the legal person or the assets of the legal person. The notification is necessary because otherwise the user would not differentiate the situations when the BO information is missing due to the lack of submission, technical failures or due to the fact that the accessibility of the information has been limited from the situation where no BO exists.

	<p>FI: (Comments): Yes.</p> <p>IT: (Comments): We point out that it could be more opportune to request, for the identification of senior managers, the collection of the same set of information provided for the identification of the actual UBOs, in order to avoid the reference to an equivalence assessment which might lead to divergent interpretations.</p> <p>LT: (Comments): Yes.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): Yes.</p>
<p>Q.14.1.B. Are Member States inclined towards any of the presented solutions?</p> <p>A. Status quo – senior managing officials are beneficial owners and are registered and viewed in the CCD framework as such.</p> <p>B. Senior managing officials are not</p>	<p>PL: (Comments): We are leaning towards maintaining the status quo.</p> <p>ES:</p>

<p>beneficial owners and are not registered (and are not viewed in the CCD framework as such), instead information about why there is no beneficial owner is registered and demanded.</p> <p>C. Senior managing officials are not beneficial owners (and are not viewed in the CCD framework as such), but they are registered (as part of the information about the absence of a beneficial owner).</p>	<p>(Comments):</p> <p>Option A.</p> <p>The current draft Guidance on BO, under consultation, states :</p> <p><i>In the context of customer due diligence by reporting entities, in situations where a beneficial owner cannot be identified as per paragraph 3 above, the Glossary sets out that reporting entities identify a natural person who holds the position of senior managing official and record him/her as holding this position (as per R.10). As clarified in the Glossary, this provision of R.10 does not amend or supersede the definition of who the beneficial owner is, but sets out how CDD should be conducted in situations where no beneficial owner can be identified.</i></p> <p>IE:</p> <p>(Comments):</p> <p>C but also any nominees and TCSPS, not publicly accessible</p> <p>AT:</p> <p>(Comments):</p> <p><b>We can support either A and can accept C.</b></p> <p>EL:</p> <p>(Comments):</p> <p>We prefer option C with the following differentiation: Senior managing officials are not beneficial owners, but they are registered (as part of the information about the inability to define a beneficial owner).</p> <p>As regards the CCD framework, the obliged</p>
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persons are not to rely exclusively on the BO registries.

NL:

(Comments):

We are inclined towards A. There might be cases where the senior management is not already registered in an accessible manner (for example in case of foreign legal entities). This means that if they are not identified as BOs (or otherwise) their identities remain unknown, thus losing the only link to natural persons involved in an entity. Also, the registration obligation in the BO-register could provide impetus for a legal entity to update the senior management as registered in – for example – a company register.

SE:

(Comments):

We prefer the status quo.

SI:

(Comments):

SI:

We would support option C.

SK:

(Comments):

We prefer Option C.

DE:

(Comments):

Yes. We support solution A.

We advocate that – to satisfy the requirement of a justification – the legal entity subject to registration must specify exactly why it is

making use of the figure of the fictitious beneficial owner, e.g. due to dispersed ownership or the inability to identify the ultimate beneficial owner.

EE:

(Comments):

We would prefer the answer C. Please refer to our previous answers for the reasoning why the fact of ownership should prevail over the fact of managing the company, when determining the BO.

FI:

(Comments):

We are inclined towards option A.

According to FATF Recommendations (Glossary) only a natural person can be an ultimate beneficial owner.

AMLR Article 42

For the purpose of this Article, 'control via other means' shall include at least one of the following:

(b) the ability to exert a significant influence on the decisions taken by the corporate entity [--]

(d) links with family members of managers or directors/those owning or controlling the corporate entity;

Options B and C would leave the legal person with no BO at all. Wouldn't that essentially

mean that the company itself were to be considered its own BO? It would also seem to be in contradiction with AMLR Article 42 where i.e. links with family members of managers or directors would suffice to bring the BO status.

Registering of senior management as BOs does not necessarily mean that the company would have to notify the natural persons in senior management separately, when that information is already in register. If the company notifies that no BO is identified and thus senior management is deemed to BO's, the details might be technically derived (to OE's or BO register) from company register or other such source available in the jurisdiction. That would lessen the administrative burden.

While Options B and C might suffice for single data needs (e.g. an obliged entity doing CDD for a single company) it might not be sufficient for the needs of LEAs. Option A would allow the possibility to show in BORIS also natural persons in senior management in case they are deemed to be BO's ex officio and thus they could be included in search results when searching by name of a natural person

IT:

(Comments):

We support Option A. The identification of senior managing officials is in our view not always a "formal" and fictitious solution. In some cases, senior managing officials are the

	<p>only ones who are effectively in the position to determine the legal entity's will. We therefore see added value in including information on them in the register, in cases where no other beneficial owner is present.</p> <p>LT: (Comments): We would support solution A – the status quo.</p> <p>LV: (Comments): We support option B because it's user friendlier for BO registers users. There been cases when nominee BO (bord member) is considered as BO.</p> <p>RO: (Comments): Option A, in line with FATF.</p>
<p>Q.14.1.C. Do Member States agree that the reference to Article 43 AMLR in Article 45(2) AMLR is incorrect and to be deleted?</p>	<p>PL: (Comments): We are not convinced that in light of wording of art. 45 there reference to art. 43 could be perceived as a redundant.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): No – the trustee would be the senior managing</p>

official

AT:

(Comments):

**Yes, that is incorrect.** Trusts or foundations will always be able to identify their beneficial owners.

NL:

(Comments):

This could indeed be a mistake, but it could also be meant for cases in which a trust or similar legal arrangement is involved in the ownership and control structure of a legal entity. In such cases article 43 AMLR might be useful.

SE:

(Comments):

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SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

EE:

	<p>(Comments): As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.</p> <p>FI: (Comments): We support the deletion.</p> <p>IT: (Comments): Yes, we agree that for trusts it would be difficult that no BO is identified, and it would make little sense to refer to senior managing officials.</p> <p>LT: (Comments): We are not sure whether it is a mistake as Article 45(2) provides the solution in cases where's "any doubt that the person(s) identified is the beneficial owner(s)".</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): Yes</p>
Q.14.2.A. Do Member States consider it desirable to define the concept of senior	PL: (Comments):

managing officials in the AMLR?	<p>We consider it to be desirable.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>No</b>, that is not necessary and will be quite complex, because company law is not harmonised.</p> <p>EL: (Comments): We consider that the registration process would merit by a definition of the term senior managing officials in order to achieve homogenous implementation.</p> <p>NL: (Comments): Although we are not opposed, given the various types of legal entities across the EU it would need to be sufficiently broad.</p> <p>Furthermore, we believe the text should clarify that in case the senior managing officials are identified as BOs, <u>all</u> members of the senior management should be identified/registered as such. This would emphasize that these persons are registered/identified because of their function, rather than a personal interest. Also, currently this obligation leads to quite a bit of confusion as some OEs only choose one or two managers, whereas others identify all senior managers as BOs. Such variance in application also</p>
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leads to unnecessary discrepancy reports to the BO-register.

SE:

(Comments):

Yes

SI:

(Comments):

SI:

Yes.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes. All persons who are legal representatives of a legal entity by their position should be regarded as senior management. A person which has power of representation only because of contractual agreements should not be seen as senior management.

EE:

(Comments):

Yes, as there can be multiple managing bodies governing the legal person. For example day-to-day managing and the strategic decision-making can be separated between two or more bodies.

FI:

(Comments):

Senior management are individuals at the

	<p>highest level of management of an organization, we have no strong views if this should be explicitly stated in the AMLR, or if it should be already otherwise clear.</p> <p>IT: (Comments): Yes, we believe that the introduction of a definition of “senior managing official” would be beneficial and would avoid inconsistent interpretations across the EU.</p> <p>LT: (Comments): Yes, we support to add more clarity and define the concept of senior managing officials in the AMLR in context for determining the beneficial owner</p> <p>LV: (Comments): Yes, definition for senior managing officials is necessary because in the same legal entity there could be multiple administrative bodies. Senior managing officials needs to be defined as administrative body in legal entity with an executive role.</p> <p>RO: (Comments): Yes, the clarification would be welcomed.</p>
<p>Q.14.2.B. Do Member States consider that the term “senior managing officials” (used in Art.</p>	<p>PL: (Comments):</p>

<p>45) should be unified with term “senior management” used in different context?</p>	<p>Each of the instances in which these terms are used need to be analysed before deciding to unify those terms.</p> <p>ES: (Comments): No</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>No, definitely not. We strictly object this idea.</b> The definition of ‘senior management’ in Art. 2 (28) is much broader and covers a much larger number of persons: (28) ‘senior management’ means, in addition to executive members of the board of directors or, if there is no board, of its equivalent governing body, an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure; In the case of Art. 45 we only want to cover the top level of the management and not an officer or employee with sufficient knowledge. The purpose of the obligation in Art. 45 is completely different to e.g. Art. 25 para 4 lit. e.</p> <p>NL: (Comments): No, since they serve different needs.</p>
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SE:

(Comments):

No, as the terms serve different purposes.

SI:

(Comments):

SI:

We could support this proposal.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

EE:

(Comments):

No, senior management is a specific term in the OE context. These rules apply to all legal entities.

FI:

(Comments):

We don't support unifying the terms. Senior management entails AML officers and these persons should be ideally not dependent on the other management.

It should also be clarified what is meant by executive members of the board of directors; the whole board or just the chair?

IT:

(Comments):

No. The concept of “senior management” is defined and used in a different context and for a different purpose (approval of a business relationship as an EDD measure). In the latter case, what is important is the ability to understand how a certain high risk relationship might impact on the risk exposure of the OE and to be able to take decisions affecting its risk exposure. It does not imply, on the contrary, the possibility to determine the OEs will.

LT:

(Comments):

No, it is used for different purposes, to it should be clearly defined

LV:

(Comments):

Yes.

RO:

(Comments):

No, in this context it should refer to the person who controls/decides on behalf of the entity and not the person who makes decisions affecting the risk exposure. In addition, the notion of risk exposure is only relevant in the context of obligated entities, whereas this article refers to any category of legal persons.

In addition, we would appreciate if a definition would be added for *senior managing officials*.

<p>Q.14.2.C. According to the Member States, should the term “senior managing officials” refer only to the officials with executive functions (in line with Art. 3(9) of Directive 2013/36/EU)?</p>	<p>PL: (Comments): It should refer only to those officials with executive functions.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Not necessarily, there may also be persons with non-executive functions such as the chairman of the Board or board members who could also be regarded as SMOs.</p> <p>AT: (Comments): <b>Yes</b></p> <p>NL: (Comments): Yes.</p> <p>SE: (Comments): Yes</p> <p>SI: (Comments): SI: We agree.</p> <p>SK: (Comments):</p>
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	<p>Yes.</p> <p>DE: (Comments): See answer Q.14.2.A.</p> <p>EE: (Comments): Yes.</p> <p>FI: (Comments): We are unsure if the definition should be narrowed down to only executive functions. The definition should be such, that it would apply to all persons who are in charge in different companies.</p> <p>IT: (Comments): Yes, we agree.</p> <p>LT: (Comments): Yes, we agree.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): -</p>
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<p>Q.14.3. Do Member States agree that the rule should be revised so that it does not allow legal persons to determine their substitute beneficial owner when there is any doubt?</p>	<p>PL: (Comments): We are open to revising mentioned rule.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>Yes</b></p> <p>NL: (Comments): Yes. Only when they truly have no BOs with ownership or control should this be a substitute. We believe this obligation does not make sense in regard to the legal entities themselves and the registration obligation in the BO-register. Legal entities are not a third party (contrary to an OE), and should therefore always know their BOs, and correctly register them. In other words, for the legal entity itself there should not be 'doubt' (in the sense of 45(2)) about the identity of their BO's. Either they have BOs or they don't. Thus, it should be clarified that identifying the BOs from the perspective of a legal entity is a performance obligation and that they are only allowed to register senior management in case there are no (other) BOs.</p> <p>SE: (Comments): Yes</p>
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SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

If there is a declaration “why” the fictitious BO is registered we see no need to change the system.

EE:

(Comments):

No, the legal person itself is the one that is most informed.

FI:

(Comments):

We agree with the proposal to revise the rule.

IT:

(Comments):

Yes, we agree that the element of “doubt” is only meaningful in the CDD context.

LT:

(Comments):

The rule could be applied by other legal entities

	<p>than corporates. If the AMLR will set forth clear rules for all forms of legal entities, the rule applicable when in doubt could be revised.</p> <p>LV: (Comments): Yes, in practise if a legal entity wants to avoid the standard BO determination, it will use substitute BO. Therefore, legal entity should give justification why on their case they cannot identify BO.</p> <p>RO: (Comments): Yes</p>
<p>Q.14.4.A. Do Member States support the requirement for the register to include this statement?</p>	<p>PL: (Comments): We can support the requirement for the register to include this statement.</p> <p>ES: (Comments): Not a strong position here</p> <p>IE: (Comments): We do not believe that there should ever be a scenario where a BO cannot be identified, particularly because PCY are proposing to enhance the definition of BO to eliminate this scenario. However, if this does occur then yes a statement should be provided. An example from</p>

the Commission of where a BO cannot be identified having followed all the steps and taking the revised BO definition into account would be useful to help our understanding of such a case.

AT:

(Comments):

**Yes**, but there is one important clarification: In Austria as well as in other member states as well, legal forms exist, where by definition no beneficial owner exists. This is in particular true for legal forms which do not have any owners, like Associations. In that case paragraph 3 point (a) should not apply. The following sentence should be added: **This shall not apply to corporate or other legal entities which do not have any beneficial owners by definition.**

NL:

(Comments):

No. We believe that the entity, when it truly has no other BO's, does not need to register this statement. It would suffice to keep this information as part of their own records, which could then be requested/subpoenaed if necessary.

SE:

(Comments):

We favour option 14.4.C. Keeping such information in a register might lead to gathering of unnecessary amounts of data.

SI:

(Comments):

SI:

We see benefit in this statement as it could be an incentive to not circumvent the obligation to obtain and hold BO information.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes. We support a declaration why the (substitute) “fictitious” BO is registered.

EE:

(Comments):

Yes.

FI:

(Comments):

No strong views on this issue, unsure of the added value of the statement.

IT:

(Comments):

Yes. We believe it is useful to provide proof and justification that a legal entity has no BO in the registry and not only to the registering authority. This information might be helpful also for obliged entities carrying out CDD.

LT:

(Comments):

Yes (at least provide it to register).

	<p>LV: (Comments): Yes, we provide following certification: “All the means of determination have been exhausted and it is not possible to determine any natural person – beneficial owner, as well as the doubts that the legal person has beneficial owner have been excluded”.</p> <p>RO: (Comments): -</p>
<p>Q.14.4.B. Do Member States consider that the requirements for this statement should be clarified?</p>	<p>PL: (Comments): We support clarifying the requirements for this statement.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): See our response to 14.4.A</p> <p>AT: (Comments): <b>Yes</b></p> <p>NL: (Comments): See our answer above.</p>

SE:

(Comments):

We favour option 14.4.C.

SI:

(Comments):

SI:

We agree that the requirements should be clarified more in detail.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes. We support a simple selection of the reason for the registration of the fictitious BO.

EE:

(Comments):

We do not see the need.

FI:

(Comments):

Yes, if the statement is kept in the AMLR .

IT:

(Comments):

Yes, we believe it would be opportune to extend the scope of the statement to include the reasons why there is no beneficial owner or that the beneficial owner(s) could not be identified and verified; in addition, legal entities should be

	<p>required to provide supporting evidence and documents which should be accessible to obliged entities.</p> <p>LT: (Comments): Yes, it could be clarified.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): -</p>
<p>Q.14.4.C. Are Member States in favour of providing that, instead of storing a statement in the register, the registrant should be required to prove that the beneficial owner does not exist or that the registrant has tried unsuccessfully to identify him/her?</p>	<p>PL: (Comments): We do not oppose such solution – the statement should be duly justified/documented.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): See our response to 14.4.A</p> <p>AT: (Comments): <b>No</b>, the registrant should state why there are no beneficial owners. This should be done by selecting one or more of predefined options:</p>

- No natural person holds more than 25% direct or indirectly
- No natural person has been identified after exhausting all means
- Etc.

In that case the reasons for not reporting beneficial owners may be analyzed for statistical reasons and the results may be used for the national risk assessment of legal persons and trusts.

EL:

(Comments):

Yes.

NL:

(Comments):

No, proving seems too high a bar, because it is difficult to prove a negative. This could lead to a significant burden for many entities that generally (correctly) register their senior management, such as associations and foundations.

SE:

(Comments):

Yes

SI:

(Comments):

SI:

We would prefer for this statement to be included in the register.

SK:

(Comments):

Yes. We would like to note that it would be meaningful if “proof and justification documents” would be stored in the register as well.

DE:

(Comments):

No.

EE:

(Comments):

This kind of statement should be allowed only on exceptional circumstances. All the possible circumstances can be mapped beforehand so the statement can be standardized. The statement cannot be used when it is hard to identify the BO, so effort to identify the BO by the registrant is not relevant in this context. The registrant can make efforts to identify whether the published information is correct, but the providers of the correct data should be the legal entities themselves and we should continue to use OEs as the validators.

FI:

(Comments):

We are unsure how this could be proved, the registrant could list the measures they have taken, but these would be difficult to verify.

IT:

(Comments):

We favour an approach enhancing transparency, even in form of a description of the entity.

	<p>LT: (Comments): We are not in favour of this proposal, a statement should suffice.</p> <p>LV: (Comments): Both are necessary - statement in the register and documents justifying the certification that it is not possible to determine the BO.</p> <p>RO: (Comments): -</p>
<p>Q.14.5. Do Member States consider that it would be appropriate to identify and record the possible structure of relationships in situations where another legal person has ultimate control? Should this issue be clarified by AMLR?</p>	<p>PL: (Comments): We can agree that obtaining and registering such information seems to be appropriate. If such decision is taken it should be clarified by AMLR.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes and should be in the AMLR</p> <p>AT:</p>

(Comments):

**Yes**, a pdf document with an organigram of the ownership structure might be helpful in all cases.

NL:

(Comments):

It can be relevant in certain circumstances to register, for example, an organizational chart to substantiate the registration.

SE:

(Comments):

In certain high-risk situations maybe, for example if an entity is controlled by a high-risk third country, but otherwise no

SI:

(Comments):

SI:

We can support the proposed approach and are in favour of clarification in AMLR.

SK:

(Comments):

Yes.

DE:

(Comments):

It would have to be examined what benefit such information would bring, taking into account the burden it would cause for the registered associations.

EE:

	<p>(Comments): It would increase transparency and Estonia is already doing it, so no objections.</p> <p>FI: (Comments): We are open on exploring this option, but need to think about the feasibility.</p> <p>IT: (Comments): Yes</p> <p>LT: (Comments): Yes.</p> <p>LV: (Comments): No, since BO can be only natural person, ownership structure without individuals (BO) would be confusing for BO registers users.</p> <p>RO: (Comments): Yes, we would welcome such a clarification.</p>
<p>Q.14.6. Do Member States consider the obligation to be too broad? Should it be made more specific? If so, how?</p>	<p>PL: (Comments): We do not consider the obligation to be too broad or not specific enough.</p> <p>ES:</p>

(Comments):

No necessarily

IE:

(Comments):

Yes it should be more specific as to the type of competent authority that can access and the specific circumstances. Consideration needs to be given to GDPR issues, particularly in relation to trusts and cases concerning minors.

AT:

(Comments):

**No**

NL:

(Comments):

The current wording seems too broad, as there are a wide range of 'competent authorities.' An alternative would be to use 'relevant competent authorities identified by the Member State.' Where the MS should be able to determine which the relevant authorities are.

SE:

(Comments):

We are OK with the current draft of the provision.

SI:

(Comments):

SI:

We can support the Commission's proposal on this, as we don't see any need to make it more specific. However, we are open to discuss this further.

SK:

(Comments):

No.

DE:

(Comments):

It is unclear what the benefit would be, because the same data is stored in the transparency register.

EE:

(Comments):

It is not clear which obligation is referred in the question.

FI:

(Comments):

We do not think it is too broad, since it concerns authorities.

IT:

(Comments):

No, the obligation seems reasonably clear and drafted in standard terms.

LT:

(Comments):

No, we don't. It is clear.

LV:

(Comments):

No, there is no need to specify obligation.

	<p>RO: (Comments): No</p>
<p>Q.14.7. Do Member States consider the proposed rule necessary or would they be inclined to delete it?</p>	<p>PL: (Comments): We are not inclined to delete the rule in question.</p> <p>IE: (Comments): Yes, this should be kept to allow for adequate CDD to be conducted.</p> <p>AT: (Comments): <b>Yes</b>, it would help to understand the ownership structure, but would in turn increase the administrative burden for undertakings.</p> <p>SE: (Comments): .</p> <p>SI: (Comments): SI: When it is provided that all relevant information and documentation (e.g., statement) is included in the register, we don't see the need for the rule in Art 45(5).</p>

SK:

(Comments):

We prefer to delete it.

DE:

(Comments):

It should be deleted.

EE:

(Comments):

It is not clear which rule is referred in the question.

FI:

(Comments):

We are not clear on what should be provided for the register: a statement, justification or proof?  
Should there be a person who is named responsible if some information is missing?

IT:

(Comments):

We would support the deletion because of its ambiguity.

LT:

(Comments):

If all information is available and stored in registers, the rule might be deleted.

LV:

(Comments):

This rule is not necessary if BO register hold documents regarding BO information.

	<p>RO:</p> <p>(Comments):</p> <p>We believe that original documents may be required and not records from the Register in the event of legal proceedings.</p>
<p>Q.15.A. Do Member States support the intention to identify and record beneficial owners also in the case of non-EU entities?</p>	<p>PL:</p> <p>(Comments):</p> <p>We cannot state that we are very enthusiastic about this requirement but abandoning this obligation would be a step back compering to the requirements of current legislation.</p> <p>PT:</p> <p>(Comments):</p> <p><b>PT:</b> We support the intention to identify and record beneficial owners also in the case of non-EU entities due to the fact that the activity of such entities might pose relevant ML/TF risks to the obliged entities.</p> <p>ES:</p> <p>(Comments):</p> <p>Yes. In line with the recently amended INR24 FATF</p> <p>IE:</p> <p>(Comments):</p> <p>Yes we support the intention but acknowledge there could be huge difficulties with this element</p> <p>AT:</p>

(Comments):

**Yes**

EL:

(Comments):

Taking into consideration the legal, practical and technical difficulties of the proposed regime, we would support the idea of registering the BO of legal entities incorporated outside the Union which have though a nexus with the member state identified by an establishment and tax obligations. This will cover the necessity for legal bond of the entity with the member state so as to justify the obligation for the registration.

NL:

(Comments):

Although we are not principally opposed, we have some concerns on the feasibility. Especially when it comes to enforcement, but also how the register is supposed to accurately check/verify the correctness of the registration of a foreign legal entity, which might be very different legally from national legal entities.

SE:

(Comments):

We don't see how this could be implemented in practice.

SI:

(Comments):

SI:

We agree that it is an ambitious proposal and challenge, however we are generally supportive

of the idea as it enhances the level of transparency in the Union.

SK:

(Comments):

Yes.

DE:

(Comments):

We support this initiative. In Germany there are already rules in place to identify and record BOs of foreign (non-EU) legal entities if they acquire real estate. Under Article 48(1)(a), the beneficial ownership information of legal entities incorporated outside the EU must also be held in the transparency register if and as soon as they enter into a business relationship with a domestic obliged entity. We would be interested in practical implications of this new provision and estimates how many companies would be addressed by this requirement.

EE:

(Comments):

This is something that is extremely complicated to enforce. It is not clear who are obliged to submit data, when are they obliged to submit it, how often do they have to update the submitted data and how can the authorities assure the accuracy of data provided.

FI:

(Comments):

We think this option is interesting and are ready

to discuss it, but don't know how feasible it would be. The registering would be difficult and it is also worth to note, that the FATF does not require this, only in cases where there is higher risk this can be one of the means to mitigate the risk.

Perhaps this could be information that obliged entities should collect and retain. Also for property the information when property is registered could be added to the property register.

IT:

(Comments):

We understand that article 48 of the AMLR proposal is aligned with the FATF standards (R.24) which require competent authorities to be able to obtain, or have access in a timely fashion to, adequate, accurate and up-to-date information on the beneficial ownership and control of companies and other legal persons, other than those created in their country, that have sufficient links with their country.

Nonetheless, we wonder how the mechanism set out in article 48 shall work in practice and in particular who carries the responsibility for ensuring that the foreign legal entity/foreign administered trust actually communicates accurate, adequate and up to date information to be held in the central register. In fact, we doubt that the enforcement and sanctioning powers set out in article 10, par. 8 and 9 might be legally assigned to and practically exercised by entities in charge of EU registers with reference to non-EU legal entities. In any case, the wording of

article 10, par. 8 and 9 should clearly define the scope of such powers, especially considering that the current version of article 10 AMLD **does not** make any cross-reference to article 48 AMLR (these two provisions should more in general be better coordinated and aligned).

We understand that the mandatory acquisition of a proof of registration provided in art. 19(4) intends to ensure that foreign entities, entering into a relationship with EU OEs, have reported their UBO information to the register.

Nonetheless we wonder how the accuracy of the reported information is meant to be guaranteed, also considering that, as said above, entities in charge of EU registers are not, and cannot be, granted with enforcement powers vis-à-vis foreign entities

LT:

(Comments):

It is unclear how the requirement will be implemented in practice. Who will have the responsibility to ensure that foreign entities information is held in national registers?

LV:

(Comments):

Yes.

RO:

(Comments):

The definition of beneficial owner in this Regulation does not apply to non-EU entities, therefore they could declare anything they wish to the Registry, they cannot be obliged to

	<p>comply with the identification rules for the beneficial owner provided by this Regulation.</p> <p>On the other hand, there is the issue of ensuring the protection of personal data, which is carried out according to EU law and not according to the national law of the entity in question.</p> <p>Last but not least, there may also be a language barrier, as it is not clear whether the entity is obliged to provide the information in the language of the country of registration, in the language of the country of origin or another language of international circulation.</p> <p>In particular, for countries using a different alphabet, providing documents that are not translated/transliterated could prove completely unnecessary.</p>
<p>Q.15.B. Do Member States consider the triggers (entry into a business with an obliged entity or acquisition of a real estate) to be well-chosen? Are there different triggers which could be considered?</p>	<p>PL:</p> <p>(Comments):</p> <p>We accept those triggers as the essential ones that need to be considered.</p> <p>ES:</p> <p>(Comments):</p> <p>The key factor for the identification and registration of the BO in these cases should be, according to FATF, that the entity has "sufficient links" with the host country.</p> <p>Although countries may determine what is considered a sufficient link on the basis of risk, FATF provide different examples, among which there are none of the suggested ones.</p> <p>Therefore, we support the intention as long as the criteria are defined by the non-EU entity's</p>

significant links to the country

IE:

(Comments):

Yes they are well chosen. However, is there a conflict where a company does not have to register such as in a case where they are publicly listed on a stock exchange?

AT:

(Comments):

**Yes**

NL:

(Comments):

We refer to our concerns above. That said, we can see how these triggers would make sense and in line with the checks that exist in the AML-framework for EU-legal entities (i.e. OEs cannot enter into a business relationship with an entity that has not registered their BOs)

SE:

(Comments):

See above.

SI:

(Comments):

SI:

We have no concerns with the two proposed triggers, however, are open to discuss further possibilities.

SK:

(Comments):

Yes.

DE:

(Comments):

In cases of acquisition of real estate, the triggering event (acquisition of real estate) is sufficiently clarified. In regard of the “business relationship” it is in our opinion not sufficient. The definition of “business relationship” needs to have aspects of time (one-time contract; continuing contract) and intensity (Value of the relationship). Additionally, the practical impact (different jurisdiction, different languages and unknown quantity of legal entities) is not foreseeable. Due to the difficulties in establishing a coherent and clearly delineable definition, we would argue for deletion.

EE:

(Comments):

Acquisition of real-estate could be considered, but the entry into business relationship is too vague trigger. For example if the owner of the business partner changes, when does the OE have to submit updated data and how often does the OE have to update the data. Currently the requirements to update the data in the BO register are not in line with the requirements of the ongoing monitoring conducted by the OE.

FI:

(Comments):

We have no further triggers in mind.

IT:

(Comments):

	<p>We note that the triggers could be further detailed (in L1 or L2 acts), e.g. is any kind of business relevant or only “business relationships” as defined in article 2(16) relevant? Are partnerships [or correspondent relationships] with EU obliged entities irrelevant? The FATF (INR.24) more generally refers to “business relations” and requires these relations to be “ongoing” and “significant” (“<i>in relation to the size of the relevant market and/or the impact of the business activity in the relevant market or the areas/sectors in which a legal person operates</i>”). Also, when referring to real estate acquisition the FATF mentions the element of “significance”.</p> <p>LT: (Comments): Yes.</p> <p>LV: (Comments): It should also include foreign legal persons or legal arrangements which registers a branch or representative office in the Member state.</p>
<p>Q.15.C. Do Member States consider that the rules of the proposed regime should be more detailed?</p>	<p>PL: (Comments): The details are always welcomed.</p> <p>ES: (Comments): Yes. Better framed</p>

IE:

(Comments):

Yes but there could be technical difficulties regarding verification and the case of listed companies as referred to in 15.B

AT:

(Comments):

**No**, it should only be made clear that obligated entities have to inspect the register, whenever they are entering into a new business relationship with a foreign entity and are performing a transaction on behalf of a foreign entity. This is essential in order to execute this requirement.

SE:

(Comments):

If

SI:

(Comments):

SI:

Additional details would be welcomed.

SK:

(Comments):

No.

DE:

(Comments):

See answer Q.15.A. and Q.15.B.

	<p>EE: (Comments): Yes. We would like to see more detailed provisions on what set of data should be stored about the legal entities and arrangements.</p> <p>FI: (Comments): No suggestions on more detailed rules.</p> <p>IT: (Comments): See answers above (Q.15.A and Q.15.B).</p> <p>LT: (Comments): It could be further clarified.</p> <p>LV: (Comments): Yes.</p>
<p>Q.15.D. Do Member States agree that the proof of registration rule is unnecessary in the light of exchange of information via BORIS?</p>	<p>PL: (Comments): We do not consider the proof of registration as a unnecessary even in the light of exchange of information via BORIS.</p> <p>ES: (Comments): No. We believe it is easier to proceed as foreseen in the current draft.</p> <p>IE:</p>

(Comments):

No. Each MS should satisfy itself of proof of registration

AT:

(Comments):

**Yes**, it can be supplemented by an obligation to inspect a national register or BORIS.

EL:

(Comments):

We do not agree. At the current stage and before having an impact assessment of the exchange of information via BORIS, the proof of registration can not be considered as unnecessary.

NL:

(Comments):

As we understand it accessing BORIS would also mean that an extract is retrieved from the local register. So, in both cases the effect seems to be the same: that the OE has received a certificate of proof of registration of the BOs.

SE:

(Comments):

Yes.

SI:

(Comments):

SI:

When BORIS will be fully operational and functioning, we agree that this rule is unnecessary.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes. The excerpt of the register is sufficient.

EE:

(Comments):

Yes, BORIS must become an accessible, user friendly and timely tool to obtain BO data.

FI:

(Comments):

Yes.

IT:

(Comments):

No, if we understand correctly, in the absence of enforcement powers granted to the registering authority, the obligation for OEs to acquire proof of registration is the only safeguard against the possible lack of disclosure of BO information by non-EU entities. Therefore, we see added value in keeping such obligation in place. In any case, article 18 (4) already mentions the possibility that OEs collect an excerpt of the register, as an alternative to acquiring proof of registration.

LT:

(Comments):

	<p>Yes.</p> <p>LV: (Comments): Yes, it would be unnecessary administrative burden for non-EU entities to submit BO information to all Member States in which its conducts business.</p> <p>RO: (Comments): Without this provision, all registries in the states where they operate would be obliged to register the information, even if it is already available in BORIS.</p>
<p>Q.16.A. Do Member States consider that the AMLR should specify the sanctions in more detail so as to avoid important differences between Member States?</p>	<p>PL: (Comments): We are in favour of specifying the sanctions more precisely.</p> <p>ES: (Comments): Strongly support.</p> <p>IE: (Comments): It is unclear what is being proposed. We would support the listing of what constitutes a breach in the Regulations, but not the penalty that would subsequently arise as this could result in a huge amount of additional cases being sent to the FIU for investigation rather than using</p>

administrative sanction options. We think this is an area that requires further discussion.

AT:

(Comments):

**No**, sanctions should be proportionate and fit to the legal system of specific member states.

EL:

(Comments):

Yes. Further harmonization seems appropriate.

NL:

(Comments):

No. Given the heterogeneity between MS we believe it makes more sense to determine effective sanctions on the MS-level, given certain requirements, such as that they need to be effective, proportionate and dissuasive.

SE:

(Comments):

We think this should be left to MS to decide.

SI:

(Comments):

SI:

We generally support a more harmonised and more detailed approach. However, we are of the view that the level of ability to pay that companies in different MSs have, varies greatly. Therefore, we suggest that sanctions should be set in a range.

SK:

(Comments):

Yes.

DE:

(Comments):

No. Maintaining the current level of guidance on sanctions promotes the possibility that each member state can take action consistent with its sanctions regime.

EE:

(Comments):

We do not see the need for that. In general the sanctioning should not be regulated in detail.

FI:

(Comments):

Yes we support harmonisation with still some room to move for Member States, taking into consideration different penal systems.

IT:

(Comments):

In this respect, we favour further harmonization

LT:

(Comments):

It could be specified ensuring higher level of harmonisation.

LV:

(Comments):

Yes.

RO:

	<p>(Comments): No</p>
<p>Q.16.B. Should the AMLR specify, according to the Member States, against whom sanctions should be imposed (e.g. in addition to legal persons, also against the beneficial owner or other persons in the ownership or control structure)?</p>	<p>PL: (Comments): Taking into account the differences between legal systems of MS we are not certain if one solution in this regard could be proposed.</p> <p>ES: (Comments): Yes. We are in favour of extending the scope to, at least, the BO</p> <p>IE: (Comments): See our response to 16.A. If a competent authority is looking at a breach, they should have discretion to decide whether to pursue the legal or natural person. Specifying this in the Reg could result in specific structures being created to hide who the BO is to avoid penalties. If a BO is a person in control, then yes but otherwise no. How would a sanction be imposed against a non-EU BO? This requires further discussion.</p> <p>AT: (Comments): <b>Yes</b>, that might be an option.</p> <p>NL: (Comments): It should not be mandatory to sanction certain</p>

parties, such as the BOs, as the registration obligation lies with the obliged entity. It could however make sense to clarify against which parties sanctions could be imposed.

SE:

(Comments):

No.

SI:

(Comments):

SI:

We are of the view that it will be difficult to enforce sanctions against natural and legal persons outside of the MSs jurisdiction, and this should be taken into account when deciding on an extension in the specification.

SK:

(Comments):

Yes.

DE:

(Comments):

No. Maintaining the current level of guidance on sanctions promotes the possibility that each member state can take action consistent with its sanctions regime.

EE:

(Comments):

We do not see the need for it. It is already stated that the sanctions must be effective proportionate and dissuasive. To achieve that the

	<p>sanctions must be applied to the right subjects.</p> <p>FI: (Comments): We agree this would make it clearer. We wonder, if it would it even be possible to sanction BO's. because this would mean that there would be an obligation to know also other changes in ownership than those that are caused by actions of the BO?</p> <p>IT: (Comments): See 16.A</p> <p>LT: (Comments): Yes, we are open to this proposal.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): No, the obligation is of the legal entity, not the beneficial owner. Therefore, the sanction should also be applied to the legal person, and it can be directed, if appropriate, to its own employees in fault.</p>
<p>Q.16.C. What sanctions do Member States consider effective and proportionate? Fines, criminal liability, dissolution of legal entity,</p>	<p>PL: (Comments): We consider administration sanctions, mainly</p>

<p>private law sanctions (the prohibition of payment of profit shares and the impossibility to exercise voting rights)?</p>	<p>pecuniary sanctions as a more dissuasive.</p> <p>ES: (Comments): Fines - of varying amounts - may be enough</p> <p>IE: (Comments): A wide variety of sanctions that can be levied at the discretion of the registrar or the prosecutor in the Member State would be beneficial as it would allow targeting of sanctions to the level of violation and enable a ‘softer’ compliance approach where non-compliance was not malicious.</p> <p>AT: (Comments): We think that coercive penalties, which can be set semi-automatic for non-reporting are most effective in order to achieve a high reporting rate. In cases of wrong or incomplete reports to the register, it should be up to the Member States to decide with kind of sanction fits best into the national system. We consider criminal sanction as inadequate, for the following reason:</p> <ul style="list-style-type: none"> <li>• Courts will not have any knowledge about beneficial ownership</li> <li>• Criminal proceedings are very time consuming and inefficient</li> <li>• Criminal liability might be inadequate in cases, were reports are wrong, but there was no real intend to hide the beneficial</li> </ul>
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owner

Therefore, we consider administrative fines as most appropriate:

- Specialized Anti-Fraud units may handle a much higher number of cases than courts

In many jurisdictions abbreviated proceedings exist where the case is not complex

EL:

(Comments):

Fines. In our case, we have also introduced the sanction of the suspension of the issuance of tax clearance certificate of the obliged legal person /entity for as long as the legal entity violates the BO obligations.

SE:

(Comments):

This should be left to MS to decide.

SI:

(Comments):

SI:

We consider fines to be sufficient.

SK:

(Comments):

Yes. All of them.

DE:

(Comments):

Fundamentally, fines appear to be an effective

and proportionate response in this context.

EE:

(Comments):

Estonia uses fines. In some cases if the duration of the violation is long or if the violation is grave then strike-off from the business register can be used, that effectively ends the activities of the legal person.

FI:

(Comments):

No strong views on this, proportionality is important to take into consideration.

IT:

(Comments):

See 16.A

LT:

(Comments):

Fines, warnings, dissolution of legal entity.

LV:

(Comments):

In practise dissolution of legal entity works very well and legal entities are motivated to submit BO information to the central register. Fines doesn't work as well as a dissolution of legal entity from central register.

RO:

(Comments):

Either

<p>Q.17. Do Member States agree that it should be clarified that the provision does not constitute an exhaustive list of documents, or that the rule should be generalised?</p>	<p>PL: (Comments): We can agree on that.</p> <p>ES: (Comments): Yes. The point here is that whenever there is a doubt or certainty that the information held in the Register is not up to date or correct, the representative of the legal entity/arrangement will have to provide a new statement and demonstrate the reasons of such discrepancy. How this is to be proved may vary depending on the case.</p> <p>IE: (Comments): Both RBO and CRBOT but state that those documents can only be provided to the registrar or FIU for the purposes of verification or investigation and should never be publicly accessible</p> <p>AT: (Comments): We assume that this question refers to Art. 10 para 2 AMLD. <b>Yes</b>, the list of documents should only be demonstrative and should cover more documents. The documents we regularly use to verify reports are not listed, namely proofs of existence and ownership. In addition, documents are listed, where we do not think that they are really needed: board of directors and minutes of</p>
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their meetings are needed.

NL:

(Comments):

Yes, we could agree with both options.

SE:

(Comments):

We agree that the list should be illustrative or generalised.

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

It should be narrowed. Minutes of board meetings are confidential; resolutions are sufficient to clear doubts originating from the sphere of the board

EE:

(Comments):

If the question is about the article 10 section 2, then it is sufficiently clear that no exhaustive list has been presented in the text.

FI:

(Comments):

	<p>Yes we agree that it should not be an exhaustive list.</p> <p>IT: (Comments): To us it seems already clear that the proposed list of documents is non-exhaustive but, if helpful, we could support further clarification.</p> <p>LT: (Comments): Yes, it could be clarified.</p> <p>LV: (Comments): Provision shouldn't list documents. Instead, provision should mention documentary justification of the exercised control.</p> <p>RO: (Comments): The list is not exhaustive but illustrative, as it uses the term "including".</p>
<p>Q.18.A. Do Member States support the proposed provision?</p>	<p>PL: (Comments): We can support the proposed provision.</p> <p>ES: (Comments): We would advocate deleting this provision. The format for the submission of beneficial ownership information to the national central registers by the obliged entities must be established by the national regulations.</p>

National registers are subject to very specific laws and regulations which is different among MMSS

IE:

(Comments):

Yes as long as it is based on the minimum set of data set out in the Reg/Dir

AT:

(Comments):

We assume that this question refers to Art. 10 para 2 AMLD.

**In general, we support this provision.**

**However**, the actual text is unclear and not sufficient and will seriously reduce the powers of the Austrian beneficial owner authority. For that reason, we suggest the following amendments:

- It should be a task of the entity in charge of the central registers
- Information and documents should be submitted on request
- Addressee of the provision should be corporate and legal entities and trustees of any express trust and persons holding an equivalent position in a similar legal arrangement as well as their legal and beneficial owners

We suggest the following wording:

2. Where there are reasons to doubt the accuracy of the beneficial ownership information held by the central registers, Member States shall ensure **that the entity in charge of the central registers is empowered**

**to requests cooperate and legal entities and trustees of any express trust and persons holding an equivalent position in a similar legal arrangement as well as their legal and beneficial owners** ~~are required~~ to provide ~~additional~~ information and documents **necessary to identify and verify their beneficial owners on a risk-sensitive basis, including proofs of existence and ownership, resolutions of the board of directors and minutes of their meetings, partnership agreements, trust deeds, power of attorney or other contractual agreements and documentation.**

NL:

(Comments):

No.

SE:

(Comments):

We agree with the PCY's arguments and think that any such provision would have to be carefully drafted in order to avoid conflicts with the national BOR:s.

SI:

(Comments):

SI:

We would be supportive of a provision that would enable a more efficient interconnection of the national BORs without laying any substantial additional administrative, technical or financial burden on MSs.

SK:

(Comments):

No.

DE:

(Comments):

Article 10(4) states that the Commission will be empowered to adopt implementing acts to specify the format for submitting notifications to the respective registers. As this implementing act potentially has considerable impact on the functioning and the administrative burden for national registers, approval by the Member States should be required.

EE:

(Comments):

It is not clear which provisions are referred in the question.

FI:

(Comments):

We think that it is important that all MS submit the information in identical format and believe that this is the purpose of the proposal. Therefore we support it.

IT:

(Comments):

Yes, we believe that further harmonisation in this field could be useful with respect to both the technical format and the details of the recording procedure.

LT:

	<p>(Comments): We have some doubts whether the technical details should be harmonised when the registers already work.</p> <p>LV: (Comments): No, Member States have already created their BO registers and information submission form.</p> <p>RO: (Comments): -</p>
<p>Q.18.B. Do Member States consider that the meaning of the provision should be clarified?</p>	<p>PL: (Comments): We do not feel that it should be clarified.</p> <p>ES: (Comments): No. it should be removed</p> <p>IE: (Comments): Yes it should be stated that the purpose is to harmonise the gathering of information across MS.</p> <p>AT: (Comments): We assume that this question refers to Art. 10 para 2 AMLD. Please see above.</p>

NL:

(Comments):

We believe it should be removed, as it could complicate technical systems already in place.

SE:

(Comments):

Yes.

SI:

(Comments):

SI:

Yes.

SK:

(Comments):

Yes.

DE:

(Comments):

See answer Q.18.B.

EE:

(Comments):

It is not clear which provisions are referred in the question.

FI:

(Comments):

We do not object clarifying if needed, we are unsure what is meant by “format”.

IT:

(Comments):

	<p>Yes.</p> <p>LT: (Comments): Yes, it should be clarified.</p> <p>LV: (Comments): As mentioned, we don't support such a provision, because Member States have already created their BO registers and information submission form. There is no point on creating unified BO information submission form for all Member States.</p> <p>RO: (Comments): -</p>
<p>Q.19.A. Do Member States consider that the rules for resolving discrepancies should be more detailed in the Directive?</p>	<p>PL: (Comments): We are in favour of detailing those rules in the AMLD.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments):</p>

**The level of detail is fine for a Directive.**

However, it should be stated that Member States should implement mechanism as foreseen in Art. 30 paragraph 4 of 5. AMLD. The 6. AMLD should not decrease the standards laid down by the 5. AMLD.

**Drafting suggestion:**

5. Member States shall require that the beneficial ownership information held in the central registers is adequate, accurate and up-to-date **and shall put in place mechanisms to this effect.** For that purpose, Member State shall apply at least the following requirements:

EL:

(Comments):

The description of a procedure for resolving discrepancies would be useful.

NL:

(Comments):

Yes. Related to this it is also important to clarify which information should be included in the discrepancy report. Which is alle BO-information the OE has, including supporting documentation, that is relevant to resolve the discrepancy.

SE:

(Comments):

Yes, but should give leeway to MS considering the difficulties of harmonisation in this area,

SI:

(Comments):

SI:

We are of the view that generally more details

ensure a higher level of harmonisation, which we support. However, it should be taken into account that MSs need to have enough flexibility to implement these provisions without having to interfere too much with their existing national legal and institutional framework.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

Yes, the rules for resolving discrepancies should be more detailed. For example there should be a notification to the reporting OE, if the discrepancy has been resolved. In addition there should be more clarity what documents and data could be used in the process, how should the register store it etc.

FI:

(Comments):

Yes, it should also include information on what is the right information according to the reporter.

IT:

(Comments):

We believe it should be clarified whether obliged entities are required to report a

	<p>discrepancy also in case they conclude that, despite of the presence of a statement under article 45(3), a beneficial owner can be identified.</p> <p>LT: (Comments): Yes, we agree.</p> <p>LV: (Comments): No, Member States have already under AMLD V directive updated their own regulation on how to resolve discrepancies found between BO information registered in the central registers and the BO information available to competent authorities.</p> <p>RO: (Comments): No</p>
<p>Q.19.B. Do Member States consider that more room should be left for clarification of discrepancies by the obliged person before mandatory reporting?</p>	<p>PL: (Comments): Definitely, it should be mandatory for OE to make efforts to explain the reasons for those discrepancies and not merely report them. Polish AML/CTF Act requires the OEs to take actions to explain the reasons for those discrepancies and report only those which were confirmed with a justification and documents relating to the discrepancies noted.</p>

ES:

(Comments):

Yes

IE:

(Comments):

RBO response

AT:

(Comments):

**Yes, that would be extremely important.**

Reporting of discrepancies should be limited to those cases, where the customer does not swiftly correct the beneficial owner data stored in the central registers. Otherwise the entity in charge of the central registers will have to face a high number of discrepancy reports and will have to allocate resources to tasks according to Article 10 para 7, which could be more efficiently treated by the system of reporting discrepancies itself.

Unlike suspicious transaction reporting the customer will be informed of any reported discrepancy, because the entity in charge of the beneficial owner register might not have any documentation for verifying the beneficial owners without contacting the entity concerned. This would in fact seriously disrupt the customer relationship and will significantly increase the manpower requirements of the entities in charge of the central registers, which have then to request documentation in order to correct the beneficial owner data.

**Drafting suggestion:**

6. Member States shall require that the

reporting of discrepancies referred to in paragraph 5 takes place within 14 calendar days after detecting the discrepancy. **Member States shall not require the reporting of discrepancies where the obliged entity informs its customer about the discrepancy and the customer corrects the beneficial owner information stored in the central registers within 28 days.**

~~In cases of lower risk to which measures under Section 3 of Chapter III of Regulation [please insert reference – proposal for Anti Money Laundering Regulation] apply, Member States may allow obliged entities to request the customer to rectify discrepancies of a technical nature that do not hinder the identification of the beneficial owner(s) directly with the entity in charge of the central registers.~~

EL:

(Comments):

The reporting of discrepancies by the obliged persons could be accompanied by any clarifications needed.

NL:

(Comments):

Yes. This could help prevent unnecessary discrepancy reports as the information the OE has might be incorrect. For example, there could be cases where the person that registered the BO-information is different from the one contacting the OE. Especially in case of non-professional organisations this could lead to different information being given and thus a possibly unnecessary discrepancy report. That said, such an incident should be a trigger for an OE to look more

closely at the situation.

SE:

(Comments):

Yes.

SI:

(Comments):

SI:

We fully support this suggestion.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

14 calendar days is enough time for the OE during which the OE can communicate with the legal entity.

FI:

(Comments):

Yes, this could lessen the administrative burden. At the moment in Finland it is possible to have one week of clarifying the discrepancy, but the information must be followed up.

IT:

(Comments):

Yes, we believe that the discrepancy reporting

	<p>obligation should be triggered only after the OEs have attempted to clarify the discrepancy with the customer. Although the current wording does not in principle prevent this, the time limit of 14 days might be too tight to actually allow such interaction.</p> <p>LT: (Comments): Yes.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): The text as drafted does not prohibit clarifications between the obliged entity and the customer before the obliged entity considers that there is a discrepancy; in these cases we do not consider that the prohibition to warn the customer is applicable, although there may be confusion by using the same term of "reporting".</p>
<p>Q.19.C. Do Member States consider it necessary to report all discrepancies?</p>	<p>PL: (Comments): See the answer above.</p> <p>ES: (Comments): No</p>

IE:

(Comments):

CBI response but in cases of clarification, only after the timeframe under 19.B

AT:

(Comments):

**No.** Reporting of discrepancies should be limited to those cases, where the customer does not swiftly correct the beneficial owner data stored in the central registers. Please see our drafting suggestion above.

EL:

(Comments):

At the current stage, without an impact assessment of the verification mechanism, we do not consider necessary to make exemptions in discrepancy reporting.

NL:

(Comments):

No. Non-material discrepancies, such as minor spelling errors (punctuation) should not be reported.

SE:

(Comments):

No.

SI:

(Comments):

SI:

We are of the view that if discrepancies are not resolved in an appropriate time frame, all should

be reported. Otherwise, there would remain a part of discrepancies unattended.

SK:

(Comments):

No.

DE:

(Comments):

Yes.

EE:

(Comments):

Yes.

FI:

(Comments):

No strong views on this, major discrepancies should be reported but we are open to discuss if this is necessary for minor issues. The rules must be sufficiently clear though, on how to determine what is major and minor.

Also lack of any data should already be something that is noticed by the register keeper and this is not something that should be notified.

IT:

(Comments):

No, we believe discrepancy reporting should be limited to the most significant and evident discrepancies. We are of the opinion that imposing a too rigid discrepancy reporting obligation upon the OEs might disincentive

	<p>them from autonomously identifying the BO, i.e. without exclusively relying on the information included in the register.</p> <p>LT: (Comments): No, just significant discrepancies should be reported?</p> <p>LV: (Comments): Yes, even discrepancies of a technical nature and overwriting errors.</p> <p>RO: (Comments): Yes, but with more explicit clarification of the term discrepancy.</p>
<p>Q.19.D. Would Member States consider it desirable to define the term "discrepancy" in the Directive?</p>	<p>PL: (Comments): We do not feel that it is necessary.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes and should be categorised as to what is eligible for clarification status and what should immediately be reported to the registrar</p> <p>AT:</p>

(Comments):

**No**, that is not necessary.

EL:

(Comments):

An indicative list for various discrepancy types would be useful for the investigative actions to be taken and the conditions to resolve the discrepancy.

NL:

(Comments):

Generally, we think it might be helpful to further clarify which discrepancies warrant a report and to include an adequate bar.

SE:

(Comments):

Yes.

SI:

(Comments):

SI:

Yes.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

	<p>(Comments): Yes. The materiality aspect needs to be clarified, as the discrepancies can be technical in nature.</p> <p>FI: (Comments): Maybe there could be an example, but we think that it would be difficult to define the term fully.</p> <p>IT: (Comments): Yes, for sake of legal certainty, we would welcome a definition of what amounts to an effective “discrepancy” triggering the reporting obligation.</p> <p>LT: (Comments): It could be further clarified.</p> <p>LV: (Comments): It’s not necessary.</p> <p>RO: (Comments): Yes, we would welcome any additional clarifications.</p>
<p>Q.19.E. Do Member States require clarification of what is meant by discrepancies of a technical nature (for example, by inserting the definition from recital 24 directly into the provision)?</p>	<p>PL: (Comments): We do not feel that it is necessary.</p> <p>ES:</p>

	<p>(Comments): Yes</p> <p>IE: (Comments): Yes, in line with our response to 19.D</p> <p>AT: (Comments): <b>No</b>, that is not necessary. As outlined above, the last sentence of paragraph 6 should be deleted.</p> <p>EL: (Comments): Yes, it would be useful.</p> <p>NL: (Comments): We believe recital 24 provides some clarity already. The wording 'or grammatical' or something similar could be added after 'technical' in the article.</p> <p>SE: (Comments): No opinion,</p> <p>SI: (Comments): SI: We agree.</p> <p>SK: (Comments): Yes.</p>
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DE:

(Comments):

It is not clear, what discrepancies of a technical nature are supposed to be. Also, it should be clearly stated, that in those cases a reporting of discrepancies is dispensable.

EE:

(Comments):

In general yes, but is it correct to link the technical nature of the discrepancy with a low risk? In our view the technical nature of the discrepancy does not depend on the risk level of the customer. The technicality of the discrepancy stems from the fact that it is not a material discrepancy – usually a grammatical mistake.

FI:

(Comments):

Please see answer above.

IT:

(Comments):

No, we consider the recital (24) sufficient, especially if a definition of “substantial discrepancy” should be introduced (see answer above).

LT:

(Comments):

Yes, it could be clarified.

LV:

(Comments):

	<p>It's not necessary.</p> <p>RO: (Comments): Yes, we would welcome such a clarification, but additionally we are of the opinion that the reference to SB/FT risk attributed to the client has no relevance to small technical (clerical) errors that can be corrected even in the case of high risk clients without having any implications on risk exposure.</p>
<p>Q.19.F. Would Member States support the possibility of not reporting discrepancies immediately also in other less serious cases? The question is also whether the proposed 14-day time limit is sufficient and takes into account specific and often complicated cases.</p>	<p>PL: (Comments): We are rather not in favour of introducing further exemptions in the reporting obligation. We consider the 14-day limit to be long enough.</p> <p>ES: (Comments): Not a strong position here</p> <p>Yes, it is sufficient</p> <p>IE: (Comments): See our answers to 19.B and 19.C and if 19.D is implemented.</p> <p>AT: (Comments): <b>Yes</b>, we would highly support this. We would support a 28-day time limit.</p>

EL:

(Comments):

Given the complexity of identifying the BO and the number of discrepancies, it seems appropriate to focus the capacities on the serious ones.

NL:

(Comments):

Yes, the time period in our view serves to prevent undue delay on the side of the OE. However, if the OE has sufficient reason to suspend the report beyond the 14-day time limit (for example because it is still examining the situation) this should be possible.

SE:

(Comments):

Yes.

SI:

(Comments):

SI:

We would support a longer time frame in order to allow for the discrepancies to be resolved (e.g., three months). We would not support that after such a longer period unresolved discrepancies remain unreported, even not in less serious cases.

SK:

(Comments):

No.

We would like to propose 30-day time limit for

all cases.

DE:

(Comments):

We support the use of a term like “undue delay” to cover specific situations.

EE:

(Comments):

Yes, it is sufficient as it should be timely. 14 days is an absolute maximum time. It could be considered to add criteria “without delay” as this would guide the OE not to delay if it is reasonably possible to act faster.

FI:

(Comments):

We are open to discuss this issue.

IT:

(Comments):

Yes, please see answer to Q.19C. We are also in favour of extending the 14-days time limit (see also answer to Q.19.B)

LT:

(Comments):

It is not clear what less serious cases are. We wouldn't like to create a lot of derogations.

LV:

	<p>(Comments):</p> <p>We think 14-day time limit might be too long. Republic of Latvia have implemented three working days' time limit and we haven't received any objection from competent authorities that three working days' period is too short.</p> <p>RO:</p> <p>(Comments):</p> <p>Only if these cases are explicitly mentioned. The 14-day period is sufficient.</p>
<p>Q.19.G. Do Member States support a 14-day time limit for reporting discrepancies, a longer time limit or a general time limit that allows to address specific situations?</p>	<p>PL:</p> <p>(Comments):</p> <p>We consider the 14-day limit to be appropriate.</p> <p>ES:</p> <p>(Comments):</p> <p>14-day limit</p> <p>IE:</p> <p>(Comments):</p> <p>If 19.B and 19.C can be implemented, then a 28 day limit would be more appropriate for minor cases as per our response to 19.D. Serious cases should be reported immediately.</p> <p>AT:</p> <p>(Comments):</p> <p><b>We do not support the 14-day time limit,</b> because that might be too short for complex cases. We would support a 28-day time limit.</p>

EL:

(Comments):

The flexibility given that specific situations could be complex seems appropriate.

NL:

(Comments):

We could support a longer period given reason to do so. See Q.19.F.

SE:

(Comments):

We support a general time limit.

SI:

(Comments):

SI:

We are not in favour of a general time limit, as we believe that the obligation for obliged entities should be as clear as possible, also in terms of time limits that apply to them. Regarding the duration of the limit, we would support an extension to up to three months.

SK:

(Comments):

We would like to propose 30-day time limit for all cases.

DE:

(Comments):

See answer Q.19.F.

EE:

(Comments):

It should be without delay but up to 14 days. OE should be able to explain why it took x amount of days from the discovery of discrepancy till the reporting of discrepancy. For example it could be that a lot of the time is spent waiting for the answer of the legal entity in question.

FI:

(Comments):

In Finland this is now a week, which we think is good since it leaves enough room but it is not an unnecessarily long period..

If the information is difficult to get, doesn't this indicate that there is risk that the information in the register is not true?

IT:

(Comments):

We support to require OEs to report discrepancies "promptly" and "in any case within 1 month".

LT:

(Comments):

14 day time limit could be sufficient for not complicated cases.

LV:

(Comments):

As mentioned before 14-day time limit might be too long.

	<p>RO: (Comments): Yes, 14 days.</p>
<p>Q.20.A. Do the Member States agree that there should be a redrafting of the text that would not limit the entrusting of the required powers only to the entity in charge of the central register?</p>	<p>PL: (Comments): We are not in favour of such redrafting.</p> <p>ES: (Comments): The only competence assigned to the registry with which we disagree is the one concerning the imposition of sanctions See following answer</p> <p>IE: (Comments): Yes as there are other entities that carry out these functions such as FIU, corporate enforcement agencies etc. However, if one of those entities exercises those powers then the Registrar should be informed. RBO: Yes, the RBO does not have such powers. These powers would be more appropriately conferred on the Central Bank or the Corporate Enforcement Authority.</p> <p>AT: (Comments): <b>No</b>, we do not see a need for a redrafting.</p> <p>EL: (Comments): Yes the text needs redrafting so as to give the chance for destruction of powers and not linking</p>

them necessarily to the entity in charge of the central register.

NL:

(Comments):

Yes.

SE:

(Comments):

Yes.

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

No; we prefer to entrust the required powers only to the entity in charge of the central register, in order to avoid of diversification of responsibilities and tasks among various entities.

DE:

(Comments):

Yes. We strongly support this.

EE:

(Comments):

Yes. The entity concerned should always be able to amend the data published. To protect the persons concerned and having one of the main aims of the BO registers – the publication of correct BO data – in mind, it is important that there would always be a possibility for the legal

	<p>person to amend the data. The sooner the data is corrected, the better. If there is a case of a violation where knowingly incorrect data was published, then the publication of correct data or any other amendment does not annul the previous violation and if needed the registrar or any other competent authority can sanction the person responsible for the violation. In this respect it is important to store historical data as well and to make it publicly available.</p> <p>FI: (Comments): Yes.</p> <p>IT: (Comments): Yes, we agree.</p> <p>LT: (Comments): Yes, it could be not so specified considering different situations in different member states.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): -</p>
<p>Q.20.B. Do Member States agree that they should be entitled to determine for themselves</p>	<p>PL: (Comments):</p>

<p>which national authority has the powers and duties under Art. 10(7-9) AMLD6?</p>	<p>We agree that MS should determine the competent national authority.</p> <p>ES: (Comments): Apart from the imposition of administrative sanctions, tasks should be performed by the entity in charge of the central register Regarding sanctions, its implementation should be granted by the member states without the obligation of empowering the entity in charge of the register, so we prefer to clarify at this stage that sanctioning in this matter will respect the national distribution of administrative sanctioning competences.</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>Yes</b>, we would highly support that. In particular, Member States should have the option to decide which authority is responsible for imposing sanctions. In many cases it might be more effective and efficient to impose sanctions by the tax authorities, which might have additional information on beneficial owners and enough resources and experience for fiscal criminal proceedings. In addition, larger Member States might find it more useful to give the power to decentralised agencies. Hearing witnesses might be difficult</p>
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and costly if this is done by an centralised authority.

EL:  
(Comments):  
Yes.

NL:  
(Comments):  
Yes.

SE:  
(Comments):  
Yes.

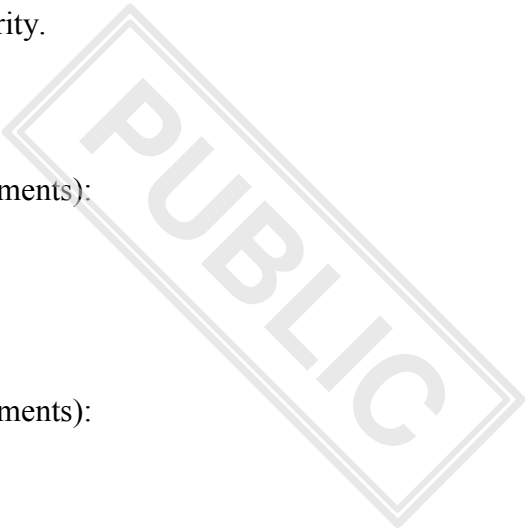
SI:  
(Comments):  
SI:  
We agree.

SK:  
(Comments):  
No.

DE:  
(Comments):  
Yes.

EE:  
(Comments):  
Yes, as there might not be one appropriate authority for all the activities named.

FI:  
(Comments):



	<p>Yes.</p> <p>IT: (Comments): Yes, we agree.</p> <p>LT: (Comments): Yes.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): -</p>
<p>Q.20.C. Do Member States consider it appropriate for Art. 10(8) AMLD6 (on-site investigations) to be formulated as an optional provision?</p>	<p>PL: (Comments): We can definitely agree with this suggestion.</p> <p>ES: (Comments): We are comfortable with the current draft</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): Yes, we would support that. The standard tool to</p>

verify beneficial owner information would be an off-site audit on the bases of the beneficial owner documentation requested from the corporate and other legal entity according to paragraph 2.

On-Site visits might be useful in case of bogus or letterbox companies. For standard cases they might be too time consuming and inefficient. Furthermore, documentation on beneficial owners is often not kept on the premises of the legal entity and could also be kept by a lawyer at its office.

EL:

(Comments):

Yes.

NL:

(Comments):

We believe an entity should be able to perform such on-site visits if necessary, however it should not necessarily be the entity in charge of the register.

SE:

(Comments):

Yes, we'd prefer this option.

SI:

(Comments):

SI:

We would prefer it remains as proposed by the Commission.

SK:

(Comments):

Yes.

DE:

(Comments):

We would like to ask for clarification as to what exactly the powers of an on-site investigation consist of. Are these comparable to on-site visits, as the supervisory authorities can carry them out, or are they more akin to coercive measures such as criminal procedural searches?

As it stands, this rule raises considerable concerns, including with regard to constitutional protections for residences and business premises.

We reserve further comments pending the clarification sought.

EE:

(Comments):

Yes, as this is not a very effective measure considering the total number of legal entities that have the obligation to publish BO data.

Analytical IT-tool in combination with the interconnections to other registers could be much more effectively used for control measures.

FI:

(Comments):

Yes, if by this is meant that arranging on-sites would be optional.

	<p>IT: (Comments): We would prefer to keep it mandatory but we are open for a compromise.</p> <p>LT: (Comments): Yes, it can be formulated as an optional provision.</p> <p>LV: (Comments): No.</p> <p>RO: (Comments): Yes</p>
<p>Q.20.D. Do Member States consider that Article 10(10) AMLD6 needs clarifications given that it is generally not possible to know the facts related to money laundering from the position of the register?</p>	<p>PL: (Comments): It could be redrafted. In our view this article does not add value not because the authorities responsible for the BOR could not obtain the information related to the money laundering (we think that such possibility could not be definitely excluded) but because every public authority should be obligated to inform FIU if obtains such information. Therefore we consider this article as a redundant duplication.</p> <p>ES: (Comments): We are comfortable with the current draft</p>

IE:

(Comments):

Yes

AT:

(Comments):

**We support this provision.** The Austrian BO-Registry Authority has already discovered cases, which relate to money laundering: falsified documents, unreported nominee arrangements, unclear source and destination of funds with regard to foundations. One SAR has already been sent to the FIU.

NL:

(Comments):

Yes.

SE:

(Comments):

Yes.

SI:

(Comments):

SI:

We agree that it is unlikely discover such facts in the course of checks under Art 10, however don't see any harm in preserving the obligation to inform the FIU, even if this would not result in a high number of cases.

SK:

	<p>(Comments): Yes.</p> <p>DE: (Comments): Yes. The register does not “see” transactions and therefore cannot report STRs.</p> <p>EE: (Comments): Yes, we would prefer suspicion as a threshold.</p> <p>FI: (Comments): Yes.</p> <p>IT: (Comments): Yes, clarification is needed.</p> <p>LT: (Comments): Yes, we support clarification.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): Yes</p>
Q.21.A. Do Member States agree that Art.	PL:

<p>10(12) AMLD6 should also take into account the cessation of the legal arrangement?</p>	<p>(Comments): We are wondering if its not taken into account indirectly as a reason to struck the entity off from the register.</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): Yes</p> <p>AT: (Comments): <b>Yes, in particular trusts should be covered.</b></p> <p>NL: (Comments): Yes, a similar obligation should exist for trusts and similar legal arrangements conform article 31(9) AMLD5 (for at least five years and no more than 10 years after the grounds for registering the beneficial ownership information have ceased to exist). We prefer a retention period of five years in this regard.</p> <p>SE: (Comments): Yes.</p> <p>SI: (Comments): SI: We agree.</p>
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SK:

(Comments):

Yes.

DE:

(Comments):

Yes.

EE:

(Comments):

As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.

FI:

(Comments):

Yes.

IT:

(Comments):

Yes, we agree provided that the Article clarifies the entity responsible to acquire/notify this information.

LT:

(Comments):

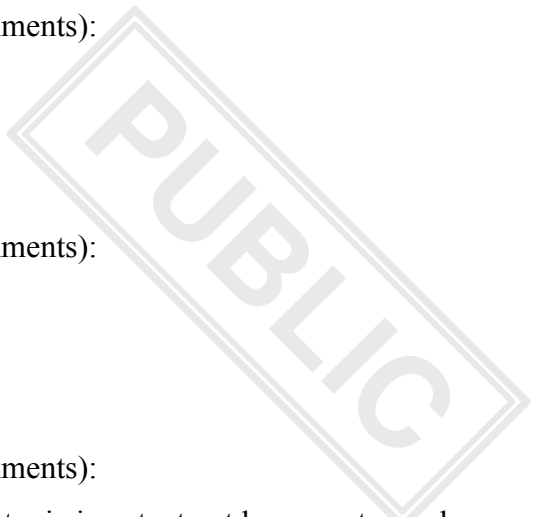
Yes, we agree.

LV:

(Comments):

Yes.

RO:



	<p>(Comments):</p> <p>Yes</p>
<p>Q.21.B. Do Member States agree that the retention period should be more precisely defined?</p>	<p>PL:</p> <p>(Comments):</p> <p>In our view it is defined precise enough.</p> <p>ES:</p> <p>(Comments):</p> <p>We would advocate for a single 10-year period</p> <p>IE:</p> <p>(Comments):</p> <p>Yes but any period must take account of GDPR</p> <p>AT:</p> <p>(Comments):</p> <p><b>Yes</b>, according to the rules of data protection, data should only be stored for the necessary period. In case of companies, which are not struck off from the register, the data should not be stored for an infinite timeframe. In addition, this rule would not be in line with Chapter VI of the regulation (Data protection and record-retention)</p> <p>Drafting suggestion:</p> <p>12. The information referred to in paragraph 1 shall be available through the national registers and through the system of interconnection of central beneficial ownership registers for at least five years and no more than 10 years after the <b>data has been recorded in the beneficial owner register.</b> <del>corporate or other legal entity</del></p>

has been struck off from the register.

EL:

(Comments):

Yes.

NL:

(Comments):

Yes, we could support further harmonisation in this regard.

SE:

(Comments):

Yes.

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

No.

EE:

(Comments):

We would prefer that there would be a concrete retention period, for example five years and criteria/process when it could/should be longer.

FI:

	<p>(Comments): We support the current proposal.</p> <p>IT: (Comments): No, we believe it should be left to MSs the indication of the retention period according to the minimum and maximum already provided.</p> <p>LT: (Comments): Yes.</p> <p>LV: (Comments): No.</p> <p>RO: (Comments): -</p>
<p>Q.22. Do Member States agree that the provision of the Directive represents the minimum requirement? Do Member States agree to formulated the list as illustrative?</p>	<p>PL: (Comments): We agree that the provision of the Directive represents the minimum requirement and we agree to formulate the list as an illustrative list. In Poland BOR is public and open for everyone and we strongly desire to maintain it as such.</p> <p>ES: (Comments): Access should only be granted to competent authorities with legal designated responsibilities for combating ML</p>

Spain could not extend this list to other types of authorities.

IE:

(Comments):

Our preference is to have a defined list, particularly when we have been discussing including additional data such as the documents in Q17

AT:

(Comments):

We assume that this question relates to Art. 11

AMLD:

**Yes**, in particular Member States should be able to extend the list of authorities with rights to access the register.

NL:

(Comments):

The list should be sufficiently clear on the types of authorities that can access the data. This is relevant from a data protection perspective, given the sensitivity of some of the data in the register and the BORIS interconnection. The list should not be broader than absolutely necessary.

SE:

(Comments):

Yes, we agree that it should be an illustrative list.

SI:

(Comments):

SI:

We agree.

SK:

(Comments):

Yes.

DE:

(Comments):

Yes. It should be decided by the MS to grant access on a national level to more authorities.

EE:

(Comments):

Yes.

FI:

(Comments):

Usually directives have minimum requirements, unless otherwise specified. We do however see from example GDPR perspective, that it is important to define the authorities that have powers to access other MS registers. Access to information should only be granted when it is necessary.

IT:

(Comments):

We believe that this provision reflects the AML/CFT purpose behind this type of access. We are open to further discussion bearing in mind that a harmonised approach is preferable in this regards and any amendment to this provision is to be grounded on the public purpose pursued.

	<p>LT: (Comments): Yes, the list could be not exhaustive, leaving the possibility for MS to extend the list of authorities.</p> <p>LV: (Comments): Provision should represent the minimum requirements.</p> <p>RO: (Comments): Yes, but if other entities are added it is necessary to clarify their level of access and what categories of data they can access.</p>
<p>Q.23.A. Do Member States agree that the Directive should establish as a default a public regime of information of beneficial owners of legal arrangements, while Member States would be given the possibility to require showing a legitimate interest to access this information?</p>	<p>PL: (Comments): PL agrees that the Directive should establish as a default a public regime of information of beneficial owners of legal arrangements.</p> <p>ES: (Comments): Not a strong position here</p> <p>IE: (Comments): Yes. We feel strongly that a legitimate interest test is retained as the default position and the outcome of the ECJ cases should be awaited.</p> <p>AT:</p>

(Comments):

**All information should be publicly available.  
We strictly object to a system of legitimate interest.**

EL:

(Comments):

Yes, but taking into consideration the pending cases before European Court of Justice, safeguards are needed to prove the legitimate interest for the access to the information.

NL:

(Comments):

We believe it should be optional to either provide for public access, or access to only those with a legitimate interest similar to the AMLD.

SE:

(Comments):

Yes, we think that the Directive should establish as a default a public regime of information or, at least, that MS should be able to keep the register open to the public. We are sceptical to the idea of showing a legitimate interest for accessing BO information.

SI:

(Comments):

SI:

We could be open to such an approach.

SK:

(Comments):

Yes.

	<p>DE: (Comments): Yes.</p> <p>EE: (Comments): As Estonia is not a trust law country and we have not identified trusts in Estonia, we would prefer to refrain commenting on questions relating to trusts.</p> <p>FI: (Comments): Yes.</p> <p>IT: (Comments): Yes, we endorse this provision.</p> <p>LT: (Comments): Yes, we support the proposal.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): No, it should be laid down in the Directive.</p>
Q.23.B. Do Member States consider that the	PL:

<p>concept of legitimate interest should be defined?</p>	<p>(Comments): It could be defined or at least explained in the preamble but due to the abovementioned reasons we do not consider this issue to be crucial</p> <p>ES: (Comments): Yes</p> <p>IE: (Comments): The status quo should be retained where MS are able to define legitimate interest.</p> <p>AT: (Comments): <b>We strictly object to a system of legitimate interest.</b></p> <p>EL: (Comments): Yes.</p> <p>NL: (Comments): We believe it would be best to have the same access rules for the BO-information regarding legal entities as for the BO-information regarding trusts and similar legal arrangements. The purpose of registering both types of BO-information is the same (AML/CFT).</p> <p>AMLD5 allows access to the general public as a Member State option. We see no reason to remove this in AMLD6. As we understand this might relate to privacy considerations, however, if this that is the case, it is unclear why there is divergence from the BO-register for legal entities which has similar impact (and has mandatory public access). Therefore, we would suggest adding to article</p>
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12(1)(b) AMLD6 the following sentence: *Member States may allow for wider access to the information held in the register in accordance with national law.*

SE:

(Comments):

See above.

SI:

(Comments):

SI:

Yes.

SK:

(Comments):

Yes.

DE:

(Comments):

See answer Q.23.A.

EE:

(Comments):

Yes.

FI:

(Comments):

This would bring more legal clarity, so yes.

IT:

(Comments):

No, the concept of legitimate interest is intertwined with the domestic legal systems and a single definition would not solve any issues,

	<p>said that the single MSs are given the possibility to limit the access to BO information.</p> <p>LT: (Comments): We are not in favour to define the concept more.</p> <p>LV: (Comments): Yes.</p> <p>RO: (Comments): Yes</p>
<p>Q.24. Do Member States consider that the Directive should allow Member States to require fees also for access for obliged entities (Art. 11(3) AMLD6) or competent authorities Art. 11(1) AMLD6?</p>	<p>PL: (Comments): Although access to the Polish BOR is free of charge we are if the opinion that such possibility should be envisaged.</p> <p>ES: (Comments): Neither for competent authorities nor for obliged entities requesting access for the purpose of fulfilling their obligations to identify the rightful beneficial owner.</p> <p>IE: (Comments): Definitely no for competent authorities, but in the case of obliged entities, applying a levy could discourage entities from carrying out full</p>

and thorough CDD and undermine the single market if 1 MS charges and another doesn't. It would be useful if a list was shared with MS on what is the current position in other MS.

AT:

(Comments):

**Yes**, it should be clarified that Member States may collect a fee for the access to the register with regard to obliged entities. Competent authorities should have a free access.

**Drafting suggestion:**

3. Member States shall ensure that, when taking customer due diligence measures in accordance with Chapter III of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]*, obliged entities have timely access to the information held in the interconnected central registers referred to in Article 10.

**Member States may choose for the purpose of the access to register with regard to this paragraph to require the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register.**

EL:

(Comments):

Yes for obliged entities but not for competent authorities.

NL:

(Comments):

Yes, given that they are not prohibitive.

SE:

(Comments):

This seems counterproductive.

SI:

(Comments):

SI:

The possibility for requiring fees should be mentioned.

SK:

(Comments):

No.

DE:

(Comments):

Yes.

EE:

(Comments):

No. In the light of open data directive and taking account that the accessibility to date is vital in the AML/CFT context, we would see it positive if the directive would not allow to collect fees.

FI:

(Comments):

Yes, for obliged entities. The fees should not concern competent authorities, which should have free access to the information.

IT:

	<p>(Comments): No, we do not agree. It may be left to MSs the possibility to provide for the payment of a fee. Italy provides for the payment of a fee for obliged entities and competent authorities.</p> <p>LT: (Comments): The text could allow the possibility for MS.</p> <p>LV: (Comments): To prevent money laundering, using legal entities and to ensure safe business environment, there should be minimum BO information accessible publicly without fee.</p> <p>RO: (Comments): No</p>
<p>Q.25.A. Do Member States consider that access should always be granted to credit and financial institutions, as is the case under the current AMLD?</p>	