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25 May 2022

**For the attention of:**

Mr. Eero Heinäluoma, Member of the European Parliament  
Mr. Damien Carême, Member of the European Parliament

**Cc:**

[Ms. Raluca Pruna, Head of Financial Crime Unit, DG FISMA]  
[Mr. Claude Bocqueraz, Deputy Head of Financial Crime Unit, DG FISMA]  
[Mr. Armel Castets, Head Savings and Financial Markets, French Treasury]  
[Ms. Delphine Dulhilleul, Adviser on Anti-Money Laundering and Corporate Law, Permanent Representation of France to the EU]

Dear MEPs Heinäluoma and Carême,

**The associations represented by the signatories to this letter represent the EUR 31tn European asset management industry and the European banking industry comprised of over 8000 banks.**

The European Commission's proposal to introduce a new harmonised Anti-Money Laundering Regulation will make strides enhancing the resilience of the European financial sector against attempts by financial criminals to use the EU to launder the proceeds of illicit activities.

We fully agree with the Parliament in its draft report that the concept of beneficial ownership is crucial to increasing transparency of complex corporate structures and ease compliance with AML/CFT rules. However, we **do not agree that reducing the percentage threshold that serves as an indication of ownership of a legal entity from 25% to 5% would reduce opportunities for transparency rules to be circumvented.** We have significant concerns that such an amendment would be of little benefit in identifying controlling interest holders and would instead place a disproportionate burden on obliged entities while not helping to achieve the desired result of preventing money laundering.

*Divergence with international standards*

Lowering the threshold for beneficial ownership below 25% would, importantly, result in a departure from established international standards and is not in line with the FATF requirements to adopt a risk-based approach.

The FATF, through its assessment procedure and in its 2012 Recommendations, has found 25% to be an acceptable threshold. While it does not mandate a set threshold for determining controlling participation, the recommendations state that it is necessary to record and verify 'the identity of natural persons ... who ultimately have a controlling ownership interest in a legal person'. A 'controlling ownership interest', according to footnote 35, 'depends on the ownership structure of the company. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25%).'



This divergence between EU and international standards would result in a situation according to which non-EU obliged entities will continue to apply the 25% threshold for beneficial ownership under the FATF recommendations. The increased operational burden for transacting with EU entities would place the EU at odds with other jurisdictions without a sound principled basis for departing from best practice established by the FATF. It would also demand more resources from obliged entities to significantly expand their due diligence checks and dilute their ability to dedicate the necessary resources and focus on areas of high risk, thereby rendering the requirements less effective. The divergence with international standards would thus lead to competitive disadvantages of internationally operating EU banks, asset managers and other financial institutions compared to financial institutions from third countries.

*Enhancing Transparency: transparency means "tracing through a chain of companies", not "identifying all shareholders".*

The goal of strengthening transparency is not to know who all the shareholders of an entity are but to identify criminals that might hide their identity behind a corporate structure. This goal is best achieved by enabling obliged entities to look through the increasingly sophisticated means employed by financial criminals to obscure their identities using complex legal structures. This is recognised by recital 13 of the fourth AML Directive which states that *"Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and obliged entities should look for the natural person(s) who ultimately exercises control through ownership or through other means of the legal entity that is the customer"*.

The ability to trace through complex ownership structures will best enable obliged entities to identify the true beneficial owners of their clients, i.e. the persons who exercise control over the decisions of the corporate entity and not the persons who have an ownership interest which does not permit them to intervene in the life of the corporation. In addition, improving information exchange for AML/CFT purposes in a way that respects personal data protection rules could support this objective by enabling obliged entities to obtain a more complete picture of their customers' behaviour. In contrast, this goal would not be achieved by simply altering the definition as to who qualifies as a beneficial owner to include individuals who may exercise no such control.

*Control vs ownership: the person controlling a corporate is the one who has authority over it*

Beneficial ownership is not synonymous with mere ownership. According to FATF, it refers to the natural persons who exert **effective control over the entity** regardless of whether they occupy a formal position within the establishment. The **5% threshold** proposed by the rapporteurs does not necessarily point to a natural person having control over a legal entity. Reducing the threshold for beneficial ownership to as low as 5% would fundamentally change the concept of beneficial ownership from being indicative of control to instead establishing a 'look-through' approach whereby those with a minimal ownership interest in the company are identified irrespective of their ability to exercise control over its affairs.

Individuals falling below the current 25% ownership interest, including those with 5% or even less, are **already captured** within the definition of beneficial owner by virtue of the second aspect of the beneficial ownership test – i.e. 'control via other means'. This will be the case where the individual exercises control by virtue of, for example, indirect ownership, a veto right or other arrangements (formal or informal). It is appropriate for individuals with a less than 25% ownership interest to be caught by the second aspect of the test and not the first. This is



because it is clear that a 5% ownership interest with no 'other means' of control will not, *de jure*, entitle an individual to exercise control over a company. Such an individual would need 'other means' in order to exercise such control in reality.

*Risk of 'white noise': operational constraint without benefit for the fight against money laundering*

Our industries are at the forefront of ensuring dirty money does not leak into the European financial system. What is needed to support this exercise is **meaningful information**. The draft AML Regulation already introduces a number of new obligations with respect to determining the ultimate beneficial owners of legal entities, including new data points (nationality, residential address, tax identification number) and standard verification of identity (instead of risk-based). A proposal to lower the threshold indicative of beneficial ownership from 25% to as low as 5% would risk overwhelming obliged entities with white noise which holds little meaning in determining those individuals who actually exercise control over customer entities.

We remain strongly committed to the goals of combatting money laundering and terrorist financing in the Union and continue to support the efforts of the co-legislators in this respect. We remain always at your disposal to engage further on this point.

Yours sincerely,

Wim Mijs  
CEO  
European  
Banking  
Federation

Peter Simon  
Managing  
Director  
European  
Savings and  
Retail Banking  
Group

Nina Schindler  
CEO  
European  
Association of  
Cooperative  
Banks

Marcel Roy  
Secretary-  
General  
European  
Association of  
Public Banks

Tanguy van de  
Werve  
Director  
General  
European  
Fund and  
Asset  
Management  
Association