

Annex 4

General requirement to collect data on the details of a fictitious beneficial owner (on the RTS pursuant to Art. 28 (1) of the AMLR, question 1)

We propose limiting the obligation to collect data on the fictitious beneficial owner to those persons in senior management who will act within the scope of the business relationship with the obliged entities.

These are usually the people from top management who are responsible for day-to-day operations and determine a company's strategy.

Justification:

The definition of "beneficial owner" is not conclusively regulated in the EU Anti-Money Laundering Regulation and is defined very briefly in Article 1 No. 28:

"beneficial owner means any natural person who ultimately owns or controls a legal entity, express trust or similar legal arrangement;"

The recitals contain very detailed explanations of the "beneficial owner" from point 104 to point 134. There is no conclusive and clear result as to which constructs within the EU are to be included in the scope of regulation.

Due to

1. Recitals 110 and 125 of the Money Laundering Regulation,
2. of Article 63(4)(1)(a) of the Money Laundering Order,
3. the definition of the term "management level" in Article 2(1)(40) of the Money Laundering Order and
4. the notification obligation of Member States until 10 October 2027 regarding national beneficial ownership structures in Article 56 of the Anti-Money Laundering Regulation

we see a need for further clarification by the European legislator. In our opinion, the currently published standards do not establish an unrestricted obligation to collect data on the personal details of all persons with the status of beneficial owner, particularly in the case of a fictitious beneficial owner.

The four points in detail:

- 1a. In recital 110, the legislator comes to a central point:

A common understanding of the concept of control and a more precise definition of the means of control are necessary to ensure a harmonised application of the rules throughout the internal market. Control should be understood as the effective ability to impose its will on the company's decision making on key issues. The usual means of control is a majority shareholding in the voting rights.

1b. In recital 125, the legislator summarises the obligation to register legal entities in the central register:

~~fLegal persons should take all necessary measures to identify their beneficial owners; However, there may be cases where it is not possible to identify a natural person who ultimately owns or controls an entity; In such exceptional cases, provided that all means of identification have been exhausted, it should be possible to identify directors instead of beneficial owners when providing beneficial ownership information to obliged entities in the customer due diligence process or when submitting the information to the central register; Although they are identified in these situations, the members of senior management are not the beneficial owners;f~~

2. Article 63(4), last subparagraph

~~fFor the purposes of this paragraph, ~~members of the management body~~ means natural persons who are executive members of the management body and natural persons who perform management functions within a legal entity, are responsible for the day-to-day management of the entity and are accountable to the management body;f~~

3. Article 2, paragraph 1 no. 40

~~fSenior management means the members of the management body in its executive function and officers and employees with sufficient knowledge of the risks posed to the institution in relation to money laundering and terrorist financing and a sufficiently senior position to make decisions affecting the risk situation;f~~

4. Article 56

~~By 76 October 2018, each Member State shall communicate to the Commission a list of the types of legal entities existing under its national law with the beneficial owners identified in accordance with Article 17 and Article 18(0); That notification shall also indicate the specific categories of companies and other legal entities and the characteristics and, where applicable, the legal basis under the national law of the Member States concerned; It shall also indicate whether the specific form and structures of those legal entities other than companies or firms give rise to the application of the mechanism set out in Article 29(0) and a detailed explanation as to why this is the case; The Commission shall communicate the notification referred to in paragraph 7 to the other Member States;f~~

Although the identification of all natural persons in the event of the non-existence of a beneficial owner or as a result of the absence of an investigation result follows the regulatory system of the EU Anti-Money Laundering Regulation in accordance with Article 22 (2), the strict implementation of the Regulation with regard to the number of persons to be recorded and the associated scope of data results in considerable additional work for the obliged entities, without

it being possible to expect a complete and up-to-date inventory of all beneficial owners in the data systems of the obliged entities. If the provision of Article 2 (1) No. 40 of the Money Laundering Ordinance were to remain in place, Bausparkassen, for example, would also have to identify their money laundering officers as beneficial owners, as Bausparkassen cannot identify beneficial owners via the system of ownership and control structures and therefore the construct of the fictitious beneficial owner would apply.

We therefore propose limiting the obligation to collect data on the fictitious beneficial owner to those persons in senior management who will act within the scope of the business relationship with the obliged entities. These are usually the persons from top management who are responsible for day-to-day operations and who determine the strategy of a company.

If our proposal is implemented, there would be no information deficit in the overall system of money laundering regulation regarding the circumstances of the beneficial owners, as the investigative work of the authorities would not be impaired in any case:

1. According to Article 63, all legal entities in the EU are obliged to identify their beneficial owners.
2. The obligation to report to the central register in accordance with Article 63 paragraph 2 ensures an up-to-date supply of data.

With the specified design, the information on all beneficial owners is available in the central register; the information on the relevant beneficial owners of a specific business relationship, on the other hand, is held by the relevant obliged entity. In our opinion, this also complies with the principle of data minimisation and data avoidance and the basic principle of data minimisation in accordance with Article 5(1)(c) GDPR.