European Association of Public Banks
– European Association of Public Banks and Funding Agencies AISBL –

30 November 2016

EAPB comments on the deliberations on the European Commission proposal for a directive amending the Fourth Anti-Money Laundering Directive (EU) 849/2015- Fifth Anti-Money Laundering Directive

Background and general comments

On 7 November 2016 the European Parliament rapporteurs published a draft report on the proposal of the European Commission published on 5 July 2016 for a directive amending the 4. Anti-Money Laundering Directive (Directive (EU) 2015/849, 4. AMLD) [referred to in the following as the "Fifth Anti-Money Laundering (AML) Directive" (5. AMLD) on account of the substantial changes in some cases to the anti-money laundering framework][1]. The proposal is accompanied by a Commission working document[2]. The Slovak Presidency of the Council of the EU has published two compromise texts, one on 28 October and one 14 November 2016.

EAPB would like to take the reopened debate on creation of an optimal anti-money laundering and counter-terrorist financing (AML/CFT) framework in the EU as an opportunity to provide its own experience and ideas and thereby to contribute to the further development, effectiveness and structural integrity of the aforementioned AML/CFT framework.

EAPB generally warns against the undermining of the Risk-Based Approach by introducing too many detailed measures expected from obliged entities, in particular concerning enhanced due diligence measures in high risk countries. EAPB would also like to express support for measures aiming at better cooperation between competent authorities. It is however essential that any information channelled on this occasion is subject to clear standardised and secure procedures.

Please find below our detailed comments as well as amendment proposals to the Commission proposal, the Council Compromise text and the EP Draft report.

[1] Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, COM/2016/0450 final – 2016 /0208 (COD)

[2] Commission Staff Working Document Impact Assessment accompanying the Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, SWD/2016/0223 final – 2016 /0208 (COD)

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I. Proposed amendments to Directive (EU) 2015/849

1. Deadline for transposition

The deadline for transposition of the 4. and 5. AMLD into Member State national law – 1 January 2017 – in the Commission proposal is way too tight and therefore unrealistic.

In most Member States, no bill has yet been presented for transposition of the 4. AMLD. Even once national legislation transposing the 4. and 5. AMLD has been adopted, technical implementation will take considerable time. Following adoption of the transposing legislation, implementing guidelines agreed with national supervisors will be additionally required to translate the legal provisions into feasible technical/organisational standards as well as IT-based processes and related operating procedures. Drafting and agreeing on these will take time.

Moreover, it should be emphasised that accompanying supervisory guidelines such as the EBA Risk Factor Guidelines cannot take national specificities and institution-specific technical conditions into account or, if so, only to a limited extent. Therefore in practice, they cannot replace the required implementing guidelines that are agreed upon with national supervisors. Furthermore, the statutory provisions often have to be further specified so that they can be implemented in the first place. Examples in this context are consideration of the customer's reputation in their risk assessment and the question of how, in addition to a risk assessment of the customer, a risk assessment of "*transactions*" should be carried out. Without a realistic transposition deadline, which should not be less than twelve months from adoption of the national transposing legislation, the aforementioned processes required for implementation will be neither conceivable nor manageable.

2. Beneficial ownership

Lowering the EU-wide minimum threshold of 25% to 10% for determining beneficial ownership of so called "*passive non-financial entities*" (passive NFEs) would lead to an unwarranted increase in customer due diligence (CDD) and documentation requirements. Where credit and financial institutions as obliged entities see customers as posing a higher money laundering or terrorist financing risk, they should be free to raise the due diligence standards accordingly. This may of course also apply in regard to passive NFEs not engaged in business themselves if these constitute a higher risk in individual cases. However, not every family trust behind an international corporation harbours a higher money laundering risk. Fully abandoning the risk based approach (RBA) would therefore not be appropriate. In addition, lowering the minimum threshold for beneficial ownership would lead to the identification of persons that have no actual controlling influence on a company. Influence in company law terms is only exercised from the present threshold of over 25%, as this represents at least a blocking minority. For these reasons, the 10% beneficial ownership

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threshold failed to prevail under the FATCA and CRS regimes. These apply the 25% threshold, which the FATF likewise considers appropriate.

If, despite the above-mentioned arguments, a threshold lowered to 10% for the legal entities in question is to be generally adopted, efficiency aspects would at any rate have to be taken into account. Particularly existing customers have little understanding for inquiries about corporate ownership structures. The result is often the triggering of lengthy tracking processes by the obliged entities with doubtful outcomes as most of the beneficial ownership data at the 10% or 25% threshold will not be readily available in public registers. With this in mind, implementation by credit institutions, particularly for existing customers, should only be mandatory for the period after establishment of the central registers of beneficial owners pursuant to Article 30 (3) of the 4. AMLD. This is especially true in view of the fact that register-based updating of existing accounts is likely to generate much more reliable results than updating based on the duty of customers to cooperate or on public information that is currently only available to a limited extent.

In this case, the 5. AMLD should, in our view, supplement Article 30 (1) of the 4. AMLD by stipulating that the registers of beneficial owners expressly include all beneficial owners under the EU-wide minimum threshold (currently 25%). If the minimum threshold for passive NFEs is lowered to 10%, the registers should also list these and their beneficial owners with shareholdings of more than 10%.

Where a Member State has stipulated under Article 3 (6a) (i) of the 4. AMLD a lower shareholding percentage as an "*indication of ownership or control*", the respective national register should also display the beneficial owners based on this percentage. As different thresholds for cross-border shareholdings would lead to gaps in the register, EAPB recommends harmonising the thresholds in the 5. AMLD and deleting the right of the Member States to set lower thresholds at national level under Article 3 (6a) (i) of the 4. AMLD. Only a clear, EU-wide harmonised and definite regulation of the threshold percentage in interconnected national registers allows full recording of all the data needed to prevent money laundering and terrorist financing.

Also the 5. AMLD should, in our view, stipulate that each national beneficial ownership register may be fully relied on to include complete and accurate data. Any person obliged to provide a national register with data, will – once becoming a customer – lack any understanding for an obliged entity asking again for a full set of corporate and other documents to satisfy beneficial owner identification as well as verification purposes."

3. Updating requirement

The new Article 14 (5) proposed by the Commission stipulates that when an institution has a duty "*in the course of the relevant calendar year*" to contact the customer for the purpose of

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reviewing any information related to the beneficial owner(s), it is required to apply due diligence measures to the customer again. Reference is made in particular to the duty to contact customers to meet the requirement under Directive 2011/16/EU to update information on the beneficial owner. As banks in the EU have already implemented graded CDD procedures that (i) are geared to the risk profiles of the customers and (ii) have proved their usefulness and robustness over time EAPB strongly advises against introducing the proposed amendment. It could lead to unwarranted full abandonment of the RBA. In addition, the proposed wording does not make sufficiently clear whether the amendment, possibly via Directive 2011/16/EU, is intended to actually set a rigid one-year period for renewed compliance with the CDD requirements in regard to all existing customers; this amendment proposal would have to be outrightly rejected as the cycles for periodic reviews of customers are – as previously explained – geared to the risk profiles of the customers within a RBA framework which are fully in line with the FATF 40.[3] Where reviewing the information on the beneficial owner pursuant to Directive 2011/16/EU reveals that the relevant circumstances of the customer have changed, Article 14 (5) of the 4. AMLD ensures that the due diligence requirements under the 4. AMLD already have to be complied with on a risk-sensitive basis. This is, in our view, more than sufficient and reflects in particular the RBA. Generally expanding an obligation under Directive 2011/16/EU to review information on the beneficial owner to cover all due diligence requirements under the 4. AMLD is plainly and diametrically opposed to the RBA.

4. Tightening the conditions for acceptance of payment cards from third countries

In the Commission draft the insertion of the following paragraph 3 in Article 12 of the 4. AMLD is proposed: "*3. Member States shall ensure that* ***Union credit institutions and financial institutions*** *acting as acquirers only accept payments carried out with prepaid cards issued in third countries where such cards meet requirements equivalent to those set out in points (a), (b), (c) of the first subparagraph of Article 13 (1) and Article 14, or can be considered to meet the requirements in paragraphs 1 and 2 of this Article.*" [bold print is ours]

EAPB agrees with the overall objective of the amendments to article 12 (3) on non KYC compliant cards but is concerned by the technical difficulties associated with these amendments. European acquirers cannot identify non-KYC compliant cards in their terminals. The identification can only happen at the level of the issuer, in the country where that card has been issued and only then would European acquirers need to reformat their terminals to recognise these cards. The proposed amendments put a legal burden on European financial institutions they cannot be complied with. This paragraph should therefore be deleted. Should the Commission insist on the provision, the Commission should at least establish a central list of those cited "*third countries*" that can be assumed to meet "*equivalent requirements*".

3 See Interpretative note to Recommendation 10 lit H.

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5. Inclusion of eIDAS in Article 13 (1) (a) of the 5. AMLD

As explained in more detail in section II.1, EAPB welcomes the proposed inclusion of eDIAS[4] in Article 13 (1) (a) of the 5. AMLD. To allow identification of customers using notified electronic means of identification pursuant to eIDAS throughout Europe as of 29 September 2018,

- either the words "*electronic*" and "*electronically*" in Article 6 (1) of the eIDAS Regulation should be deleted
- or it should be made clear in the 5. AMLD that identification and "*authentication*" using an *electronic means of identification* from another Member State pursuant to eIDAS must be allowed by Member States whenever identification and "*authentication*" are required for AML purposes under the national law of the Member State, without electronic identification and "*authentication*" being simultaneously required under the national law of the Member State.

Otherwise Member States would be free to circumvent the aim of mandatory recognition of notified electronic means of identification for AML purposes as of 29 September 2018 by revising their national law accordingly. If, namely, national AML legislation were to merely call for identification and authentication and to merely allow electronic identification, notified electronic means of identification from other Member States would have to be refused recognition, also after 29 September 2018.

6. List of due diligence requirements for dealing with customers from high-risk third countries/RFI standards for correspondent banking relationships

When it comes to setting common requests for information (RFI) standards for correspondent banking relationships (see also section II.2) and setting the due diligence requirements in regard to customers from high-risk third countries, the 5. AMLD should not provide any scope for Member States to set additional due diligence requirements.

The due diligence requirements to be applied to customers from high-risk third countries under Article 18a (a)-(g) of the Fifth AML Directive are in line with the seven FATF recommendations. They should be set as a definitive standard and – if necessary – further specified by EBA guidelines agreed with the FATF and by implementing guidelines issued by Member State supervisors. Common definitive standards agreed with the FATF should also be set for RFI within the framework of correspondent banking relationships.

As a minimum, only common EEA-wide lists of CDD requirements for dealing with customers from high-risk third countries and RFI standards for correspondent banking relationships

4 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73); supplemented by Implementing Regulations (EU) 2015/1501 and 2015/1502, Implementing Decisions (EU) 2015/296 and 2015/1984; in addition, the eIDAS Regulation is supplemented in regard to trust services by Implementing Regulation (EU) 2015/806 and Implementing Decisions (EU) 2015/1505 and 2015/1506

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allow harmonised implementation in the short term. These can also help to preserve the unity of the internal market and strengthen legal uniformity and legal certainty in the internal market.

The initially envisaged full harmonisation of the due diligence requirements that are to be applied (see Commission Staff Working Document5, p. 73, no.8) should be adopted. For the reasons mentioned above, such full harmonisation is also proportionate in EAPB's view. That goes particularly if fully harmonised, definitive RFI standards for correspondent banking relationships are established at the same time (see section II.2 for more details).

7. Broader Financial Intelligence Unit (FIU) powers

EAPB recommends, in addition, that FIUs should also be required to share information obtained on suspicious transactions with the reporting credit institutions. This would make it easier for credit institutions to adjust their risk based processes in a timely manner. Practice has shown that intensified communication between the investigating/prosecuting authorities and the entities required to report suspicious transactions –on a sound legal basis – is needed to significantly improve the results of suspicious transaction reporting. Even if this objective cannot be achieved in the current legislative initiative, it should be pursued further within the FATF. In EAPB's view, the present framework displays considerable shortcomings in this respect.

8. National account information registers

EAPB welcomes that the proposed amendments in Articles 30 and 31 of the 5. AMLD also include the issue of national registers in Member States. This approach is commendable as only national registers allow processing and recording of all relevant information. A register at European level would fail to take due account of the wide differences in the legal status of companies across Member States. Moreover, realisation of such a project is – given the political pressure – unlikely to be feasible in the near future.

9. Exchange of information between credit institutions not belonging to the same group

The European Commission is proposing to replace paragraph 3 of Article 39 (4. AMLD) by the following:

"3. *The prohibition laid down in paragraph 1 shall not prevent disclosure between the credit institutions and financial institutions from the Member States* provided that they belong to the same group, *or between these entities and their branches and majority owned subsidiaries established in third countries, provided that these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures, including procedures*

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*for sharing information within the group, in accordance with Article 42 and that the group-wide policies and procedures comply with the requirements set out in this Directiv*e.";

The Commission thus makes it more difficult to have orderly exchanges of information between credit institutions which are not part of a group. Moreover, it prevents the emergence of cooperation mechanisms that allow for an exchange of information – under certain safeguards– between credit institutions which is indispensable for an efficient fight against financial crime. Several examples of such mechanisms have been discussed at the FATF, for example between banks in the UK or between US and Mexican banks. The EU should not prevent the emergence of such best practice models by taking an overly restrictive approach that would not leave any room for Member States to allow a certain degree of cooperation. EAPB therefore opposes this amendment to the 4. AMLD.

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II. Additional ideas to improve the AML/CFT framework

Ever since the creation of the AML/CFT framework the European public banking industry has always participated constructively and with sincere commitment in developing both, an effective as well as an efficient regulatory framework. In the discussion on a number of amendments to FATF recommendations, EU Directives and national legislative initiatives, the industry has gained insight into strengths and weaknesses of the regulatory framework. This is complemented by the experience it has made in regard to the application of the law at national and global level. Based on and prompted by this insight and experience, EAPB therefore wish to add to its comments on the current draft Directive by presenting some ideas that would be helpful for timely and efficient implementation of the objectives pursed by the Directive. We should like to address the following points in particular:

1. Modern, forward-looking identification without having to switch media

EAPB shares the European Commission's view that secure remote identification can be performed electronically. EAPB likewise believes that recognition of secure electronic copies of original documents as well as electronic assertions, attestations or credentials as valid means of identity is important (recital 17 of the 5. AMLD). EAPB therefore welcomes the proposed inclusion of Regulation (EU) No 910/2014 (eIDAS) in the Fifth AML Directive. However, in EAPB's view, it has proved to be the case that confining the regulatory framework to certain means of identification generally fails to take due account of the diverse "know your customer" (KYC) requirements in practice. If secure means of identification are to be widely used, these have to be accepted by the great majority of bank customers. Their success depends, on the one hand, on striking a proper balance between security and convenience and, on the other hand, on avoiding any confinement to certain identification procedures.

Having said this, the video identification that has been successfully introduced in several Member States since the adoption of eIDAS should, for instance, be included in Article 13 (1) (a) of the 5. AMLD as an example of a permissible procedure. Video identification is identification based on personal presence and thus not remote identification in the classical sense. However, like remote identification, video identification allows identification outside bank branches, also across borders. It has proved to be reliable and secure in practice. It has been a success when it comes to opening accounts across borders and enjoys a high level of customer acceptance (especially among younger age groups), thus strengthening the unity of the internal market. Irrespective of the aforementioned concrete procedures, consideration should be given to the notion of having the Directive set the guiding principles for customer identification but allowing Member States to flesh out its implementation on the basis of the means of identification available nationally in each case. The main provision

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should merely stipulate that a principal national means of identification (such as an ID document or passport in many Member States) allows the collection of the relevant customer data. Thus the 5. AMLD should not only include identification means under eIDAS but also any other remote identification processes recognized and approved by the competent authorities.

Depending on the "strength" of this principal medium, other media should be eligible for use as well, if necessary. Where an entity required to perform identification receives only a simple, i.e. non-certified, copy/scan of an ID document from a customer electronically, it would have to use further means of identification (e. g. funds transfer from a customer's reference account or an inquiry with a credit agency). This regulatory approach would, on the one hand, take due account of individual national specificities and, on the other hand, leave room for the dynamic progress in digital identification procedures without confining itself to any specific means of identification. This is important also in view of the fact that national ID documents still differ widely. In the present phase of technological progress, this approach appears best suited, in our view, to achieving optimal results. Regarding the possible use of biometrics for purposes of identification, we would like to stress in this context that this would entail high costs so that the use of such technologies should not be generalised.

2. Reducing the regulatory overload when establishing and maintaining correspondent banking relationships

One of the European Commission's motives behind the 5. AMLD is a harmonised treatment of third country risk (recital 9 of the 5. AMLD). Consequently, the 5. AMLD should also set common maximum RFI standards for the secure establishment and maintenance of correspondent banking relationships. The requirements for establishing and maintaining correspondent banking relationships have been tightened in recent years to an unacceptable and, in some cases, clearly excessive extent. This has led in practice to de-risking, i. e. a significant reduction in the number of correspondent banking relationships and thus to a negative impact on the global economy (see the Bank for International Settlements (BIS) report on correspondent banking relationships of July 2016, p.1 ff., 11[5]). We are well aware that, besides continuously tightened regulatory and supervisory requirements, higher internal compliance standards by banks for correspondent banking relationships ('race to the top') have also contributed to this situation. The fundamental problem of de-risking lies in the fact that Recommendation (Rec.) 13 of the revised FATF-40 implicitly requires banks to assign correspondent banking to the high risk category irrespective of the fact whether the bank is based in a FATF-compliant jurisdiction or not. By doing so, the maneuvering space for banks to apply a genuine RBA to correspondent banking and to determine the

[5] Available at www.bis.org/cpmi/publ/d147.pdf, as at 26 August 2016, 3.15 pm

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actual risk level of a correspondent financial institution (as its business partner) on a discretionary basis by applying standard and internationally recognized CDD procedures has been significantly reduced, if not completely eliminated.

In view of the aforementioned banks in general do not have any other alternative than to de-risk by severing their links with correspondent financial institutions in third country jurisdictions where the legal framework is not perceived to be in line with the standards of the FATF 40. As the regulatory burden of maintaining correspondent banking relationships with banks in FATF-compliant jurisdictions is already very high, banks do not feel the necessity to enter into or retain correspondent banking relationships with financial institutions in non-compliant or high risk jurisdictions that entail additional CDD and documentation requirements on top of the already existing enhanced CDD requirements for correspondent institutions based in FATF-compliant jurisdictions.

Against this backdrop, we wonder how this unsatisfactory development can be reversed to an appropriate level. EAPB believes it should be recognised at EU level that correspondent banking relationships between banks within the EEA are low-risk by listing such relationships in Annex II. As a consequence, the KYC standards for correspondent banking relationships within the EEA should require only a limited amount of information on correspondent banks. The same goes for correspondent banking relationships in countries that have AML/CFT standards equivalent to those in the EEA. This would free up resources for the more complicated handling of correspondent banking relationships with credit institutions in higher-risk countries and could perhaps counter the current trend towards more de-risking in correspondent banking business. It would, at the same time, help to maintain a globally functioning correspondent banking system.

3. Politically Exposed Persons- Registers

EAPB would like to stress that the submission of all domestic PEPs to enhanced due diligence pursuant to the 4. AMLD is bringing about substantial amount of compliance costs, especially for smaller locally/regionally active financial institutions, as they have to adapt procedures, IT, training schemes and personnel. For example requesting approval of senior management for business relationships with all domestic PEPs and their family members will be highly burdensome in practice.

EAPB therefore calls the EU to use the opportunity of the amending of the 4. AMLD to introduce registers with information on domestic politically exposed persons (PEPs) and to assign the Commission the task of drawing a list of domestic PEPs, in cooperation with Member States and international organisations. In addition, EAPB encourages the EU institutions to commit themselves to provide a central list of their own directors and employees who are PEPs by virtue of their employment with the EU as a "supranational

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organisation" under the 4. AMLD. The Directive should at least contain a list of political functions for determining the PEP status of a customer in each Member State.

At the same time, it is important that the EU helps financial institutions gain access to information about foreign PEPs. The possibility to use commercial registers should be maintained as long as such information is not public at international level. These are helpful tools in identifying foreign PEPs who will not be covered by the new EU public PEP registers to be established. Despite the usefulness of the commercial registers, there also remains a need for forms of PEP verification which are suitably robust but which do not require small firms to sign up to such expensive commercial register providers.

4. List of equivalent Third countries

Under the 3. AMLD financial institutions could rely on a 'white list' of countries outside of the EU where, according to the regulators, the AML regimes were considered equivalent to those within the EU. This provided financial institutions with certain freedom to operate in such jurisdictions without considering each individual country's AML risk. The Fourth AML Directive repealed the 'white list'. Under the new regime, financial institutions must conduct country-specific risk assessments for every jurisdiction outside of the EU where they operate. As mentioned under the point on correspondent relationships, EAPB would welcome the re-introduction of the third country equivalence list in the 5. AMLD.

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Annex: EAPB amendment proposals and comments on Commission proposal, Council Compromise and EP draft report

	COM proposal	*COUNCIL compromise , 14 Nov*	*EP draft report*	*EAPB proposal (additions in red*	*Comments*
Art. 1	*Article 1*	*Article 1*	*Article 1*	*Article 1*	
	Paragraph 1	Paragraph 1	Paragraph 1	Paragraph 1	
	Point 2	Point 2	Point 2	Point 2	
	(ii) if, *after having exhausted all possible means and provided there are no grounds for suspicion, no person under* point (i) *is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s),*		*(aa) in point (6)(a), point (ii) is replaced by the following:* *'(ii) if the entity fails to provide the identity of any natural person who meets the criteria set out in point (i), the obliged entities shall record that no beneficial owner exists and keep records of the actions taken in order to identify the beneficial owner.* *Where there is any doubt that the person(s)*	*(aa) in point (6)(a), point (ii) is replaced by the following:* *'(ii) if the entity fails to provide the identity of any natural person who meets the criteria set out in point (i), the obliged entities shall record that no beneficial owner exists and keep records of the actions taken in order to identify the beneficial owner.* *Where there is any doubt that the person(s)*	**Comment on EP draft report amendment 6: While EAPB welcomes the distinction between real beneficial owners and persons identified when it was not possible to identify a BO, we believe the requirements to record details of all legal owners would be disproportionate and not make the fight against financial crime more effective.**

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	the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;		***identified are the beneficial owner(s), a record of that doubt shall be made.*** ***In addition, obliged entities shall identify and verify the identity of the relevant natural person who holds the position of senior managing official, who shall be identified as the "senior manager" (and not as "beneficial owner"), and record details of all legal owners of the entity;'***	***identified are the beneficial owner(s), a record of that doubt shall be made.*** ***In addition, obliged entities shall identify and verify the identity of the relevant natural person who holds the position of senior managing official, who shall be identified as the "senior manager" (and not as "beneficial owner"), ~~and record details of all legal owners of the entity;'~~.***	
	Point 5	Point 5	Point 5	Point 5	
	1. Member States shall put in place automated centralised mechanisms, such as central registries or central		1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in	1. Member States shall put in place automated centralised mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in	**Comment on amendment 31 of EP draft report: Further time should be allowed to introduce safe deposits in the centralised mechanisms.**

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	electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts as defined in Directive 2007/64/EC and bank accounts held by a credit institution within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.		a timely manner, of any natural or legal persons holding or controlling payment accounts as defined in Directive 2007/64/EC, bank accounts **and safe deposit boxes** held by a credit institution within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.	a timely manner, of any natural or legal persons holding or controlling payment accounts as defined in Directive 2007/64/EC, bank accounts **and safe deposit boxes** held by a credit institution within their territory, **at the latest by 26 June 2018.** Member States shall notify the Commission of the characteristics of those national mechanisms.	
	Point 9	Point 9	Point 9	Point 9	
			(-a) **In paragraph 1, the following third subparagraph is added:** **'Member States shall ensure that owners of shares or voting rights or ownership interest in corporate and other legal entities,**	~~**In paragraph 1, the following third subparagraph is added:**~~ ~~**'Member States shall ensure that owners of shares or voting rights or ownership interest in corporate and other legal entities,**~~	**Comment on EP draft report amendment 19:** **The proposed paragraph appears to go well beyond general EU company law provisions (e.g. Transparency Directive) on**

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			including through bearer shareholdings, or through control via other means, disclose to those entities whether they are holding the interest in their own name and on their own account or on behalf of another person. Member States shall ensure that the natural person(s) who hold the position of senior managing official(s) in corporate and other legal entities, disclose to those entities whether they are holding the position in their own name or on behalf of another person.'	~~**including through bearer shareholdings, or through control via other means, disclose to those entities whether they are holding the interest in their own name and on their own account or on behalf of another person. Member States shall ensure that the natural person(s) who hold the position of senior managing official(s) in corporate and other legal entities, disclose to those entities whether they are holding the position in their own name or on behalf of another person.'**~~	**reporting obligations. For the sake of consistency and proportionality EAPB would recommend to keep these provisions out of the AMLD and delete the amendment proposal.**
	Point 12	Point 12	Point 12	Point 12	
	Paragraph 2	Paragraph 2	Paragraph 2	Paragraph 2	
	(a) in point (6)(a)(i), the following subparagraph is added: "For the purposes of Article 13(1)(b) and Article 30 of this Directive, the indication of ownership or control	~~(a) in point (6)(a)(i), the following subparagraph is added:~~ ~~"For the purposes of Article 13(1)(b) and Article 30 of this Directive, the indication of ownership~~		~~(a) in point (6)(a)(i), the following subparagraph is added:~~ ~~"For the purposes of Article 13(1)(b) and Article 30 of this Directive, the indication of ownership or control set out in the second paragraph is reduced to 10% whenever the~~	**EAPB supports the Council compromise amendment.**

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	set out in the second paragraph is reduced to 10% whenever the legal entity is a Passive Non-Financial Entity as defined in Directive 2011/16/EU ."; 	~~or control set out in the second paragraph is reduced to 10% whenever the legal entity is a Passive Non-Financial Entity as defined in Directive 2011/16/EU .";~~		~~legal entity is a Passive Non-Financial Entity as defined in Directive 2011/16/EU.";~~	
Art. 7	*Article 7*	*Article 7*	*Article 7*	*Article 7*	
	Paragraph 1	Paragraph 1	Paragraph 1	Paragraph 1	
	Point 2 b (new)	Point 2 b (new)	Point 2 b (new)	Point 2 b (new)	
			2b) In Article 7, the following paragraph 5a is added: *'5a. The ESAs, through the Joint Committee, and the Commission shall make the recommendations to Member States on the measures suitable for addressing the identified risks. In the*	*~~(2b) In Article 7, the following paragraph 5a is added:~~* *~~'5a. The ESAs, through the Joint Committee, and the Commission shall make the recommendations to Member States on the measures suitable for addressing the identified risks. In the~~*	**EAPB comment on EP draft report amendment 11** **This provision appears to be redundant with Article 6. Paragraph 4 of the 4. AMLD. It would also be inappropriate to insert the provision in an article that concerns Member State competences.**

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			event that Member States decide not to apply any of the recommendations in their national AML/CFT regimes, they shall notify the ESAs and the Commission thereof and provide a justification of such a decision.'	~~*event that Member States decide not to apply any of the recommendations in their national AML/CFT regimes, they shall notify the ESAs and the Commission thereof and provide a justification of such a decision.'*~~	
Art. 12	*Article 12*	*Article 12*	*Article 12*	*Article 12*	
	"2. Member States shall ensure that the derogation provided for in paragraph 1 is not applicable in the case either of online		*2. Member States shall ensure that the derogation provided for in paragraph 1 is not applicable in the case ~~either of online payment or~~ of redemption in cash or cash withdrawal of the monetary value of the electronic*		**EAPB Comment on Commission proposal /EP draft amendment 17:** **EAPB supports the EP draft report amendment.**

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	payment or of redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR 50.";		*money where the amount redeemed exceeds EUR 50.";*		
	"3. Member States shall ensure that Union credit institutions and financial institutions acting as acquirers only accept payments carried out with prepaid cards issued in third countries where such cards meet requirements equivalent to those set out in points (a), (b), (c) of the first subparagraph of Article 13 (1) and Article 14,			*~~"3. Member States shall ensure that Union credit institutions and financial institutions acting as acquirers only accept payments carried out with prepaid cards issued in third countries where such cards meet requirements equivalent to those set out in points (a), (b), (c) of the first subparagraph of Article 13 (1) and Article 14, or can be considered to meet the requirements in paragraphs 1 and 2 of this Article.~~"*	**EAPB Comment on Commission proposal:** **EAPB agrees with the overall objective of the amendments to article 12 (3) on non KYC compliant cards but is concerned by the technical difficulties associated with these amendments. European acquirers cannot identify non-KYC compliant cards in their terminals. The identification can only happen at the level of the issuer, in the country where that card has been issued and only then would**

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	or can be considered to meet the requirements in paragraphs 1 and 2 of this Article."				**European acquirers need to reformat their terminals to recognise these cards. The proposed amendments put a legal burden on European financial institutions they cannot comply with in any shape possible. This paragraph should therefore be deleted.**
Art. 13	*Article 13*	*Article 13*	*Article 13*	*Article 13*	
	Paragraph 1	Paragraph 1	Paragraph 1	Paragraph 1	
	(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source; including, where available, electronic identification means, as set out in Regulation (EU) No 910/2014.			(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source; including, where available, electronic identification means, as set out in Regulation (EU) No 910/2014 **or any other remote identification processes recognized and approved by the competent authority**"	**EAPB Comment on Commission proposal:** **While notified electronic identification systems under eIDAS can contain electronic identification means that could adequately be included in AML/CFT-identification processes a notification of electronic identification systems under eIDAS is up to the Member States. As eIDAS was**

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					construed for a different purpose, i.e. for identification processes between the State and its citizens there might be remote identification means that would be equally or - at least regarding usability aspects and acceptance by customers - better equipped to be used for AML/CFT-identification processes between banks and their customers that will not be notified under eIDAS. One example is the video-identification approach permitted by the competent German national supervisory authority as an identification means that will most likely not be notified to the Commission

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					by Germany. In Austria, the national Financial Market Authority (FMA) is going to accept the instrument of video-identification by January 2017
Art. 14	*Article 14*	*Article 14*	*Article 14*	*Article 14*	
	Paragraph 5	Paragraph 5	Paragraph 5	Paragraph 5	
	in Article 14, paragraph 5 is replaced by the following: "5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or	in Article 14, paragraph 5 is replaced by the following: "5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or	Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or when the obliged entity has a duty in the course of the relevant calendar year, to contact the customer for the purpose of reviewing any information related to the beneficial owner(s), in particular under Directive 2011/16/EU.	~~in Article 14, paragraph 5 is replaced by the following:~~ ~~"5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or when the obliged entity has a duty in the~~	**EAPB Comment on Commission proposal/council compromise:** **As banks in the EU have already implemented graded CDD procedures that (i) are geared to the risk profiles of the customers and (ii) have proved their usefulness and robustness over time EAPB strongly advises against introducing the proposed amendment. It could lead to unwarranted full**

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	when the obliged entity has a duty in the course of the relevant calendar year, to contact the customer for the purpose of reviewing any information related to the beneficial owner(s), in particular under Directive 2011/16/EU ."; 	when the obliged entity has a**ny legal** duty in the course of the relevant calendar year, to contact the customer for the purpose of reviewing any **relevant** information related to the beneficial owner(s), in particular under Directive 2011/16/EU ."; 	**Member States shall require that obliged entities contact the customer for the purpose of reviewing any information related to the beneficial owner(s) not later than ... [one year after the date of the entry into force of this amending Directive].**	~~course of the relevant calendar year, to contact the customer for the purpose of reviewing any information related to the beneficial owner(s), in particular under Directive 2011/16/EU.";~~ ~~Member States shall require that obliged entities contact the customer for the purpose of reviewing any information related to the beneficial owner(s) not later than ... [one year after the date of the entry into force of this amending Directive].~~	**abandonment of the RBA. In addition, the proposed wording does not make sufficiently clear whether the amendment, possibly via Directive 2011/16/EU, is intended to actually set a rigid one-year period for renewed compliance with the CDD requirements in regard to all existing customers; this amendment proposal would have to be outrightly rejected as the cycles for periodic reviews of customers are – as previously explained – geared to the risk profiles of the customers within a RBA framework which are fully in line with the FATF 40.** **Moreover we understand that company customers must**

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					deliver accurate information on their beneficial owners to the beneficial owner registers that are to be created in the Member States. Obliged entities in turn must receive and take note of the information in these registers. The suggested verification of this data involving direct contact between obliged entities and their company customers would create an unnecessary burden without benefit. The beneficial owner's register will already have delivered accurate data on the beneficial owners. **Comment on Amendment 18 of draft report: Reviewing all beneficial ownership information at the same time without any changes of circumstance s would not be in line with a risk sensitive approach and**

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					represent a huge administrative burden for obliged entities.
Art. 18 a)	*Article 18 a)*	*Article 18 a)*	*Article 18 a)*	*Article 18 a)*	
	The following Article 18a is inserted: "Article 18a 1. With respect to transactions involving high risk third countries, Member States shall require that, when dealing with natural persons or legal entities established in the third countries identified as high-risk third countries pursuant to Article 9 (2), obliged entities shall apply at least all the following enhanced customer due diligence measures: (a)obtaining additional information on the customer; (b)obtaining addition information on the intended nature of the business relationship; (c)obtaining	The following Article 18a is inserted: "*Article 18a* 1. With respect to **business relationships or** transactions involving high risk third countries **identified pursuant to Article 9 (2)**, Member States shall require ~~that, when dealing with natural persons or legal entities established in the third countries identified as high risk third countries pursuant to Article 9 (2)~~, obliged entities ~~shall~~ **to** apply ~~at least~~ all the following enhanced customer due diligence measures: (a) obtaining additional information on the customer **and on the beneficial owner**; (b) obtaining		The following Article 18a is inserted: "*Article 18a* 1. With respect to **business relationships or** transactions involving high risk third countries **identified pursuant to Article 9 (2)**, Member States shall require ~~that, when dealing with natural persons or legal entities established in the third countries identified as high-risk third countries pursuant to Article 9 (2)~~, obliged entities ~~shall~~ **to** apply ~~at least~~ all the following enhanced customer due diligence measures: (a) obtaining additional information on the customer ~~**and on the beneficial owner;**~~ (b) obtaining ~~addition~~ **additional** information on the intended nature of the business relationship; **(c) obtaining information on the source of funds or ~~and~~ source of wealth of the customer** and of the	**EAPB Comment on Council compromise proposal: Obtaining additional information on the beneficial owner and the source of funds and the source of wealth in all cases would not be manageable and therefore should not be a general obligation.** **Moreover the requirement of a first payment to be made "through an account in the customer's name with a bank subject to similar CDD standards." could pose considerable problems for legitimate businesses in jurisdictions that are classified as high risk even if at least certain banks in these jurisdictions actually apply similar CDD measures. The**

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	information on the source of funds or source of wealth of the customer; (d)obtaining information on the reasons for the intended or performed transactions; (e)obtaining the approval of senior management for establishing or continuing the business relationship; (f)conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination; (g)requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.	~~addition~~ **additional** information on the intended nature of the business relationship; **(c) obtaining information on the source of funds** ~~or~~ **and source of wealth of the customer** and of the beneficial owner**;** obtaining information on the reasons for the intended or performed transactions; (e) obtaining the approval of senior management for establishing or continuing the business relationship; ~~(f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;~~ ~~(g) requiring the first payment to be carried out through an account in the customer's~~		beneficial owner**;** obtaining information on the reasons for the intended or performed transactions; (e) obtaining the approval of senior management for establishing or continuing the business relationship; ~~(f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;~~ ~~(g) requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.~~ **Member States shall ensure that the obliged entities where applicable:** **(a) conduct monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;** **(b) require the first payment to be carried out through an account in the**	**criterion should thus be deleted. At the very least the wording should be changed to "requiring the first payment to be carried out through an account in the customer's name with a bank subject to that applies similar CDD standards." Additionally it would then have to be specified by the AMLD when a bank can be considered to "apply" similar CDD standards. In this context the Commission should be required to publish a white list" of countries considered having similar CDD standards. At least a robust and simple to apply methodology to assess whether a country could be considered to have similar CDD standards would have to be issued by the Commission.**

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		~~name with a bank subject to similar CDD standards.~~ **Member States shall ensure that the obliged entities where applicable: (a) conduct monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination; (b) require the first payment to be carried out through an account in the customer´s name with a credit institution subject to CDD standards that are not less robust than those laid down in this Directive.**		**customer´s name with a credit institution ~~subject~~ which applies ~~to~~** similar **CDD** standards ~~that are not less robust than those laid down in this Directive.~~	
Art. 30	*Article 30*	*Article 30*	*Article 30*	*Article 30*	
	Paragraph 6	Paragraph 6	Paragraph 6	Paragraph 6	
	(…) Competent authorities granted access to the central	(…) Competent authorities granted access to the central	(…) Competent authorities granted access to the central register referred	(…) Competent authorities granted access to the central register referred	**Comment on EP draft report amendment 21: Council**

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	register referred to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including tax authorities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets."; Art. 39	register referred to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, ~~including~~ **as well as** tax authorities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets."; *Article 39*	to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including tax authorities, **supervisors** and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets."; *Article 39*	to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, **as well as** tax authorities, ~~**supervisors**~~ and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets."; *Article 39*	**compromise wording is preferable in the view of EAPB**
	Paragraph 3	Paragraph 3	Paragraph 3	Paragraph 3	
	in Article 39, paragraph 3 is replaced by the following:			~~in Article 39, paragraph 3 is replaced by the following:~~ ~~"3. The~~	**New EAPB proposal:** **The Commission proposal makes it**

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	"3. The prohibition laid down in paragraph 1 shall not prevent disclosure between the credit institutions and financial institutions from the Member States provided that they belong to the same group, or between these entities and their branches and majority owned subsidiaries established in third countries, provided that these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the group, in accordance			~~prohibition laid down in paragraph 1 shall not prevent disclosure between the credit institutions and financial institutions from the Member States provided that they belong to the same group, or between these entities and their branches and majority owned subsidiaries established in third countries, provided that these branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the group, in accordance with Article 42 and that the group-wide policies and procedures comply with the requirements set out in this Directive.";~~	**more difficult to have orderly exchanges of information between credit institutions which are not part of a group. Moreover, it prevents the emergence of cooperation mechanisms that allow for an exchange of information – under certain safeguards- between credit institutions which is indispensable for an efficient fight against financial crime. EAPB therefore opposes this amendment to the 4. AMLD.**

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	with Article 42 and that the group-wide policies and procedures comply with the requirements set out in this Directive.'';				
Art. 46	Article 46	Article 46	Article 46	Article 46	Article 46
	Paragraph 3	Paragraph 3	Paragraph 3	Paragraph 3	Paragraph 3
	Current text			**A**rticle 46 paragraph 3 is replaced by: ''3.Member States shall ensure that, ~~where practicable~~, **detailed and** timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided to obliged entities.''	**New EAPB proposal:** **EAPB would like to stress that is of extreme importance that FIUs- as a binding obligation- provide high quality and timely feed back to reporting entities**
Annex II (2)	Annex II (2)	Annex II (2)	Annex II (2)	Annex II (2)	
				'The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in Article 14: ... (2) Product, service,	**Comment on EP draft amendment 3 and New EAPB proposal:** **To allow financial institutions to better manage the de-risking phenomenon it**

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				transaction or delivery channel risk factors: ... **(f) correspondent banking relationships between banks within the EEA and in third countries with equivalent standards**	**should be recognised that correspondent banking relationships between banks within the EEA are low-risk. As a consequence, the KYC standards for correspondent banking relationships within the EEA should require only a limited amount of information on correspondent banks. The same goes for correspondent banking relationships in countries that have AML/CFT standards equivalent to those in the EEA. This would free up resources for the more complicated handling of correspondent banking relationships with credit institutions in higher-risk countries and could perhaps counter the current trend towards more de-risking in correspondent banking business. It would, at the same time, help to maintain a**

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					globally functioning correspondent banking system. For this purpose EAPB would welcome the re-introduction of the white list of equivalent third countries in terms of AML/CFT frameworks.

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