

EUROPEAN FINTECH ASSOCIATION POSITION PAPER TO THE AMLD

** This document identifies the proposed texts presented by the European Parliament and the European Council to the AMLD which EFA supports. It provides brief justifications for why EFA finds these amendments important. Recommended text is highlighted **in green**.*

The provisions highlighted in this document mainly concern two issues: (1) requirements for obliged entities to maintain central contact points in certain circumstances and (2) the administration and accessibility of UBO registers.

The following details EFA's views as regards AMLD

a) Central Contact Point (Article 5)

When it comes to identifying a central contact point, EFA believes that protecting legal certainty and uniform application of the law between the Member States is crucial. It is therefore recommended that the appointment of a central contact point should remain limited, as it already is, to cases where an operator acts within the territory of a host Member State under the right of establishment, ensuring the proper distinction between the freedoms of establishment and freedom to provide services and, consequently, protecting legal certainty and uniform application of the law between the Member States.

b) UBO registers

Member States should maintain UBO registers which are as exhaustive, accurate, and up-to-date as possible, and which are tethered together through a central mechanism that allows obliged entities to simply and simultaneously search all Member States' registers for the information they need in order to comply with their customer due diligence (CDD) obligations under the AML Regulation (AMLR).

Efficacy. Few if any companies are likely to be as well-positioned to solicit, verify, and cross-check this information as a government entity could be. This is especially the case for newer and smaller companies. Greater government involvement in this pillar of the AML process could reduce volatility in the overall quality of AML efforts which might occur as a result of changes in the private sector (such as the emergence of new companies, corporate restructurings, etc.).

Efficiency. The cost of a single, central register in each Member State collecting UBO information will inevitably be far lower than the cost of multiple companies or other actors working to ascertain this information. If governments go to this effort obliged entities should be able to rely on the information in the registers for their compliance. In other words, if an obliged entity determines its customers' beneficial owners based on the information in a Member State's register, and that information turns out to be inaccurate or out-of-date, the obliged entity should not be considered non-compliant. Putting the responsibility for this information squarely in the hands of the Member States will increase transparency and accountability. In the aggregate, it will save obliged entities significant amounts of time and resources.

Competition. Part of the important work of promoting competition is ensuring that regulatory frameworks are designed in such a way that they do not allow big, established companies to lock in their positions. High CDD and other compliance costs can end up being more expensive for smaller and newer companies, making it harder for them to start doing business, and tilting the playing field in favour of their incumbent competitors.

ANNEX: Analysis of 3-Column Table

1. Central contact point

Commission Text	EP Text	Council Text
<p>Article 5</p> <p>Member States may require electronic money issuers as defined in Article 2(3) of Directive 2009/110/EC¹, payment service providers as defined in Article 4(11) of Directive (EU) 2015/2366 and crypto-assets service providers operating through agents located in the host Member State and operating under either the right of establishment or the freedom to provide services, and whose head office is situated in another Member State, to appoint a central contact point in their territory. That central contact point shall ensure, on behalf of the entity operating on a cross-border basis, compliance with AML/CFT rules and shall facilitate supervision by supervisors, including by providing supervisors with documents and information on request.</p>	<p>Article 5</p> <p>1. Member States may require electronic money issuers as defined in Article 2(3) of Directive 2009/110/EC¹, payment service providers as defined in Article 4(11) of Directive (EU) 2015/2366 and crypto-assets service providers operating through agentsan agent, a distributor or any other natural or legal person which acts on their behalf, located in the host Member State and operating under either the right of establishment or the freedom to provide services, and whose head office is situated in another Member State, to appoint a central contact point in their territory. That central contact point shall ensure, on behalf of the entity operating on a cross-border basis, compliance with AML/CFT rules and shall facilitate supervisors with documents and information on request.</p>	<p>Article 5</p> <p>1. Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing require electronic money issuers as defined in Article 2(3) of Directive 2009/110/EC²³, payment service providers as defined in Article 4(11) of Directive (EU) 2015/2366 and crypto-assets service providers operating through agents or distributors located in the host Member State and operating under either the right of establishment or the freedom to provide services, and whose head office is situated in another Member State, to appoint a central contact point in their territory. That central contact point shall ensure, on behalf of the entity operating on a cross-border basis, compliance with AML/CFT rules and shall facilitate supervision by supervisors, including by providing supervisors with documents and information on request.</p>
Justification		
<p>The text proposed by the Council concerns EFA, as it provides that Member States may require e-money institutions, payment institutions and crypto-assets service providers to appoint a central contact point even when operating in a host Member State under the freedom to provide services through any other natural or legal person which acts on their behalf.</p> <p>This provision appears to be excessively vague and therefore seems capable of paving the way for heterogeneous and discrepant applications of anti-money laundering rules between Member States, to the sole disadvantage of the operators to whom the rule applies and contrary to the level playing field principle.</p> <p>The sweeping reference to "<i>any other natural or legal person which acts on their behalf</i>" entails a concrete problem in the exercise of passporting, whereby, through the imposition of the appointment of a central contact point, each Member State could find itself, at its discretion, integrating new compliance obligations for operators. This is in clear conflict with the very rationale of passporting, which was designed to facilitate uniform market operation in the European Economic Area.</p> <p>Obligated entities have especially clear reason to be concerned that this wording might lead to these disharmonious and unfavourable outcomes because certain Member States' national supervisory authorities have a history of using the central contact point to impose additional and reinforced reporting obligations upon operators. As a result, the final version of Art. 5 of the Directive will also blur the distinction between the regime of freedom to provide services and the regime of the establishment.</p>		

We therefore recommend that the appointment of a central contact point should remain limited, as it already is, to cases where an operator acts within the territory of a host Member State under the right of establishment, ensuring the proper distinction between the freedoms of establishment and freedom to provide services and, consequently, protecting legal certainty and uniform application of the law between the Member States.

2. UBO Register

Commission Text	EP Text	Council Text
<p>Recital 18</p> <p>Central registers of beneficial ownership information are crucial in combating the misuse of legal entities. To ensure that the registers of beneficial ownership information are easily accessible and contain high-quality data, consistent rules on the collection and storing of this information should be introduced.</p>	<p>Recital 18</p> <p>Central registers of beneficial ownership information are crucial in combating the misuse of legal entities. <i>Therefore, Member States should ensure that the beneficial ownership information of legal entities and legal arrangements, information on nominee arrangements and information on foreign legal entities and foreign legal arrangements are held in a central register.</i> To ensure that the registers of beneficial ownership information are easily accessible and contain high-quality data, consistent rules on the collection and storing of this information should be introduced. <i>Central registers should be accessible in a readily usable and machine-readable format.</i></p>	<p>Recital 18</p> <p>Central registers of beneficial ownership information are crucial in combating the misuse of corporate and other legal entities. To ensure that the registers of beneficial ownership information are easily accessible and contain high-quality data, consistent rules on obtaining and holding beneficial ownership information and the registration hereof should be introduced.</p>
Justification		
EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.		

Commission Text	EP Text	Council Text
<p>Recital 19</p> <p>With a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law. Member States <i>can</i>, for that purpose, use a central database, which collects beneficial ownership information, or the business register, or another central register. Member States may decide that obliged entities are responsible for filling in the register. Member States</p>	<p>Recital 19</p> <p>With a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law. Member States <i>should</i>, for that purpose, use a central database, which collects beneficial ownership information, or the business register, or another central register. Member States may decide that obliged entities are responsible for filling in the register. Member States should make sure</p>	<p>Recital 19</p> <p>With a view to enhancing transparency in order to combat the misuse of corporate and other legal entities, Member States should ensure that beneficial ownership information is registered in a central register located outside the company, in full compliance with Union law. Member States can, for that purpose, use a central database, which collects beneficial ownership information, or the business register, or another central register. Member States may decide that obliged entities are responsible for providing certain information to the register. Member States should make sure that in all cases that information is made available to competent authorities and FIUs and</p>

should make sure that in all cases that information is made available to competent authorities and FIUs and is provided to obliged entities when they take customer due diligence measures.	that in all cases that information is made available to competent authorities and FIUs and is provided to obliged entities when they take customer due diligence measures.	is provided to obliged entities when they take customer due diligence measures.
Justification		
EFA supports the Parliament's text as it promotes stronger UBO registers.		

Commission Text	EP Text	Council Text
<p>Recital 20</p> <p>Beneficial ownership information of trusts and similar legal arrangements should be registered where the trustees and persons holding equivalent positions in similar legal arrangements are established or where they reside. In order to ensure the effective monitoring and registration of information on the beneficial ownership of trusts and similar legal arrangements, cooperation between Member States is also necessary. The interconnection of Member States' registries of beneficial owners of trusts and similar legal arrangements <i>would</i> make this information accessible, and <i>would</i> also ensure that the multiple registration of the same trusts and similar legal arrangements is avoided within the Union.</p>	<p>Recital 19</p> <p>Beneficial ownership information of trusts and similar legal arrangements should be registered where the trustees and persons holding equivalent positions in similar legal arrangements are established or where they reside. In order to ensure the effective monitoring and registration of information on the beneficial ownership of trusts and similar legal arrangements, cooperation between Member States is also necessary. The interconnection of Member States' registries of beneficial owners of trusts and similar legal arrangements <i>should</i> make this information accessible, and <i>should</i> also ensure that the multiple registration of the same trusts and similar legal arrangements is avoided within the Union.</p>	<p>Recital 20</p> <p>Beneficial ownership information of express trusts and similar legal arrangements should be registered where the trustees and persons holding equivalent positions in similar legal arrangements are established or where they reside. In order to ensure the effective monitoring and registration of information on the beneficial ownership of express trusts and similar legal arrangements, cooperation between Member States is also necessary. The interconnection of Member States' registries of beneficial owners of express trusts and similar legal arrangements would make this information accessible, subject to the parameters implemented under national law and in line with the Directive, and would also ensure that the multiple registration of the same express trusts and similar legal arrangements is avoided within the Union.</p>
Justification		
EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.		

Commission Text	EP Text	Council Text
<p>Recital 22</p> <p>The accuracy of data included in the beneficial ownership registers is fundamental for all of the relevant authorities and other persons allowed access</p>	<p>Recital 22</p> <p>The accuracy of data included in the beneficial ownership registers is fundamental for all of the relevant authorities and other persons allowed access to that data, and to make</p>	<p>Recital 22</p> <p>The accuracy of data included in the beneficial ownership registers is fundamental for all of the relevant authorities and other persons</p>

<p>to that data, and to make valid, lawful decisions based on that data. Therefore, where sufficient reasons arise, after careful analysis by the registrars, to doubt the accuracy of the beneficial ownership information held by the registers, legal entities and legal arrangements should be required to provide additional information on a risk-sensitive basis. In addition, it is important that Member States entrust the entity in charge of managing the registers with sufficient powers to verify beneficial ownership and the veracity of information provided to it, and to report any suspicion to their FIU. Such powers should extend to the conduct of inspections at the premises of the legal entities.</p>	<p>valid, lawful decisions based on that data. Therefore, <i>Member States should ensure that entities in charge of the central registers verify, at the time of submission of the beneficial ownership information and on a regular basis thereafter, that the information submitted is adequate, accurate and up to date. Member States should ensure that entities in charge of central registers have at their disposal state-of-the-art technology to carry out automated verifications in a manner that safeguards fundamental rights and avoids discriminatory outcomes. Furthermore,</i> where sufficient reasons arise, after careful analysis by the registrars, to doubt the accuracy of the beneficial ownership information held by the registers, legal entities and legal arrangements should be required to provide additional information on a risk-sensitive basis. In addition, it is important that Member States entrust the entity in charge of managing the registers with sufficient powers <i>and resources</i> to verify beneficial ownership and the veracity of information provided to it, and to report any suspicion to their FIU. Such powers should extend to the conduct of inspections at the premises of the legal entities <i>and, where applicable, to obliged entities, in accordance with national law. Similarly, such powers should extend to representatives of foreign legal persons and foreign legal arrangements in the Union, where there are such representatives.</i></p>	<p>allowed access to that data, and to make valid, lawful decisions based on that data. Therefore, for the purpose of proper identification and verification of the recorded information legal entities and legal arrangements should be required to provide all necessary information and documents regarding beneficial ownership, nominee agreements or situations where there is no beneficial owner or where the beneficial owner(s) could not be identified and verified. In addition, it is important that Member States entrust the entity in charge of managing the registers with sufficient powers to verify beneficial ownership and the veracity of information provided to it, and to report any suspicion to their FIU. Such powers should extend to the conduct of inspections at the premises of the legal entities.</p>
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Justification

EFA supports the Parliament’s text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>Recital 24 In view of ensuring that the mechanism of discrepancy reporting is proportionate and focused on the detection of instances of inaccurate beneficial ownership information, Member States may allow obliged entities to request the customer to rectify discrepancies of a technical nature directly with the entity in charge</p>	<p>Recital 24 In view of ensuring that the mechanism of discrepancy reporting is proportionate and focused on the detection of instances of inaccurate beneficial ownership information, Member States mayshould allow obliged entities to request the customer to rectify discrepancies of a technical nature directly with the entity in charge of the central registers.</p>	<p>Recital 24 In view of ensuring that the mechanism of discrepancy reporting is proportionate and focused on the detection of instances of inaccurate beneficial ownership information, Member States may allow obliged entities to request the customer to rectify discrepancies of a technical nature directly with the entity in charge of the central registers. Such option only applies to low risk customers and to those errors of a</p>

of the central registers. Such option only applies to low-risk customers and to those errors of a technical nature, such as minor cases of misspelt information, where it is evident that that those do not hinder the identification of the beneficial owner(s) and the accuracy of the information.	Such option only applies to low-risk customers and to those errors of a technical nature, such as minor cases of misspelt information, where it is evident that that those do not hinder the identification of the beneficial owner(s) and the accuracy of the information.	technical nature, such as minor cases of misspelt information, where it is evident that that those do not hinder the identification of the beneficial owner(s) and the accuracy of the information. Deleted
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Justification		
EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.		

Commission Text	EP Text	Council Text
<p>Recital 26</p> <p>To ensure a level playing field in the application of the concept of beneficial owner, it is of utmost importance that, across the Union, legal entities obtain benefit from uniform reporting channels and means. To that end, the format for the submission of beneficial ownership information to the relevant national registers should be uniform and offer guarantees of transparency and legal certainty.</p>	<p>Recital 26</p> <p>To ensure a level playing field in the application of the concept of beneficial owner, it is of utmost importance that, across the Union, legal entities obtain benefit from uniform reporting channels and means. To that end, the format for the submission of beneficial ownership information to the relevant national registers should be uniform and offer guarantees of transparency and legal certainty.</p>	<p>Recital 26</p> <p>In view of ensuring that the mechanism of discrepancy reporting is proportionate and focused on the detection of instances of inaccurate beneficial ownership information, Member States may allow obliged entities to request the customer to rectify discrepancies of a technical nature directly with the entity in charge of the central registers. Such option only applies to low risk customers and to those errors of a technical nature, such as minor cases of misspelt information, where it is evident that that those do not hinder the identification of the beneficial owner(s) and the accuracy of the information.Deleted</p>

Justification		
EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.		

Commission Text	EP Text	Council Text
<p>Recital 35</p> <p>Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to provide for exemptions to the disclosure of the personal information on the</p>	<p>Recital 35</p> <p>Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to should provide for exemptions to the disclosure of the personal information on the beneficial owner through the registers of beneficial ownership</p>	<p>Recital 35</p> <p>Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to provide for exemptions to the disclosure of the personal information on the beneficial owner through the registers of beneficial ownership information and to access to such information, in exceptional</p>

<p>beneficial owner through the registers of beneficial ownership information and to access to such information, in exceptional circumstances, where that information would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. It should also be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information in the register.</p>	<p>information and to access to such information, in exceptional circumstances, where that information would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. <i>Such exemptions should be granted by competent authorities on a case-by-case basis and upon a detailed analysis of the nature of the exceptional circumstances in each case.</i> It should also be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a <i>proportionate and adequate</i> fee for access to the information in the register, <i>which should not exceed the direct costs of requesting or making the information available. Where the access to the register is provided online through electronic means, Member States should not require the payment of any fees since it is assumed that there is no direct cost of making the information available.</i></p>	<p>circumstances, where that information would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. It should also be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information in the register.</p>
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Justification

EFA supports the Parliament’s text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>Recital 36</p> <p>Directive (EU) 2018/843 achieved the interconnection of Member States’ central registers holding beneficial ownership information through the European Central Platform established by Directive (EU) 2017/1132 of the European Parliament and of the Council¹. Continued involvement of Member States in the functioning of the whole system should be ensured by means of a regular dialogue between the Commission and the representatives of Member States on the issues concerning the operation of the system and on its future development.</p>	<p>Recital 36</p> <p>Directive (EU) 2018/843 achieved the interconnection of Member States’ central registers holding beneficial ownership information through the European Central Platform established by Directive (EU) 2017/1132 of the European Parliament and of the Council¹³⁰. <i>It is essential that the European Central Platform serve as a central search service, making available all information related to beneficial ownership to competent authorities, self-regulatory bodies, obliged entities and persons having a legitimate interest.</i> Continued involvement of Member States in the functioning of the whole system should be ensured by means of a regular dialogue between the Commission and</p>	<p>Recital 36</p> <p>Directive (EU) 2018/843 achieved the interconnection of Member States’ central registers holding beneficial ownership information through the European Central Platform established by Directive (EU) 2017/1132 of the European Parliament and of the Council¹. Continued involvement of Member States in the functioning of the whole system should be ensured by means of a regular dialogue between the Commission and the representatives of Member States on the issues concerning the operation of the system and on its future development.</p>

the representatives of Member States on the issues concerning the operation of the system and on its future development. *The European Parliament should be informed about the evolution of this dialogue.*

30 Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

Justification

EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>Article 6(6)(b)</p>	<p>Article 6(6)(b)</p> <p><i>By ... [two years after the date of transposition of this Directive], AMLA shall issue guidelines on the elements to be taken into account by supervisors when assessing whether:</i></p> <p><i>(a) the senior managers and the beneficial owners of obliged entities referred to in paragraph 1 and 2 act with honesty and integrity;</i></p> <p><i>(b) the senior management of obliged entities referred to in paragraph 1 and 2 are of good repute and possess proven knowledge and expertise necessary to carry out their functions.</i></p> <p><i>(c) there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or that the risk thereof could increase in connection with that obliged entity.</i></p> <p><i>When drawing up the guidelines referred to in the first subparagraph of this Paragraph, AMLA shall take into account the specificities of each sector in which the obliged entities operate and of previous guidelines issued jointly by the European Securities and Market Authority and the European Banking Authority on the assessment</i></p>	<p>Article 6(6)(b)</p>

of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU of the European Parliament and of the Council¹

Justification

EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>Article 10(1)</p> <p>The beneficial ownership information contained in the central registers may be collected in accordance with national systems</p>	<p>Article 10(1)</p> <p>The beneficial ownership information contained in the central registers may<i>shall be available in machine-readable format and</i> be collected in accordance with national systems<i>the implementing acts referred to in paragraph 4. Each Member State shall ensure that such beneficial ownership information is made available in the official language or languages of that Member State and in English.</i></p>	<p>Article 10(1)</p> <p><u>1b.</u> The beneficial ownership information contained in the central registers may be collected in accordance with national systems.</p>

Justification

EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>Article 10(2)</p> <p>Where there are reasons to doubt the accuracy of the beneficial ownership information held by the central registers, Member States shall ensure that legal entities and legal arrangements are required to provide additional information on a risk-sensitive basis, including resolutions of the board of directors and minutes of their meetings, partnership agreements,</p>	<p>Article 10(2)</p> <p>2. Where there are reasons to doubt the accuracy of the beneficial ownership information held by the central registers, Member States shall ensure that <i>the entities in charge of the central registers are empowered to request from corporate and legal entities, trustees of any express trust and persons holding an equivalent position in a similar and legal arrangements are required to provide additional arrangement, and their legal and beneficial</i></p>	<p>Article 10(2)</p> <p>2. Where there are reasons to doubt the accuracy of the beneficial ownership information held by the central registers, Member States shall ensure that legal entities and<i>Member States shall ensure that legal entities and trustees of express trusts and persons holding an equivalent position in a similar legal arrangements</i>arrangement are required to provide additional information on a risk-sensitive basis, including resolutions<i>to the entity or entities in charge of the board of directors and minutes of their meetings, partnership agreements, trust</i></p>

<p>trust deeds, power of attorney or other contractual agreements and documentation.</p>	<p><i>owners, any information on a risk sensitive basis and documents necessary to identify and verify their beneficial owners, 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.</i></p>	<p>deeds, power of attorney or other contractual agreements and documentation central registers all beneficial ownership information referred to in Article 44 of Regulation, the statement pursuant to Article 45(3) of Regulation and information on nominee arrangements pursuant to Article 47 of Regulation.</p> <p><i>2a. Member States shall ensure the entity or entities in charge of the central registers are empowered to request information and documents necessary to identify all beneficial owners and to support and verify information pursuant to the first paragraph, including resolutions of the board of directors and minutes of their meetings, partnership agreements, trust deeds, power of attorney or other contractual agreements and documentation.</i></p>
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Justification

EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>Article 10(4)</p> <p>The Commission is empowered to adopt, by means of implementing acts, the format for the submission of beneficial ownership information to the central register. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).</p>	<p>Article 10(4)</p> <p><i>By ... [one year after the date of entry into force of this Directive] the Commission shall The Commission is empowered to adopt, by means of implementing acts, the format for the submission of beneficial ownership information as referred to in article 44 of Regulation ... [please insert reference to the Anti-Money Laundering Regulation - 2021/0239(COD)] to the central register, including a checklist of minimum requirements for information to be examined by the registrant. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).</i></p>	<p>Article 10(4)</p> <p>The Commission is empowered to adopt, by means of implementing acts, the format for the submission of beneficial ownership information to the central register. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2). Deleted</p>

Justification

EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>Article 10(5)</p>	<p>Article 10(5)</p>	<p>Article 10(5)</p>

<p>Member States shall require that the beneficial ownership information held in the central registers is adequate, accurate and up-to-date. For that purpose, Member State shall apply at least the following requirements:</p>	<p>Member States shall requiretake the necessary measures to ensure that the beneficial ownership information held in the central registers is adequate, accurate and up-to-date, and shall put in place mechanisms to that effect. For that purpose, Member StateStates shall apply at least the following requirements:</p> <p><i>(-a) entities in charge of the central registers shall verify, at the time beneficial ownership information is submitted and on a regular basis thereafter, that such information is adequate, accurate and up to date.</i></p>	<p>Member States shall require that the beneficial ownership information held in the central registers is adequate, accurate and up-to-date. For that purpose, Member State shall apply at least the following requirementsprovide for rules for the effective resolution of discrepancies in the information held in the register.</p>
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Justification

EFA supports the Parliament’s text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>Article 10(5), point (b) competent authorities, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, shall report to the entity in charge of the central registers any discrepancies they find between beneficial ownership information available in the central registers and the beneficial ownership information available to them.</p>	<p>Article 10(5), point (b) competent authorities, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, shall report to the entity in charge of the central registers any discrepancies they find between beneficial ownership information available in the central registers and the beneficial ownership information available to them.</p> <p><i>(-a) entities in charge of the central registers shall verify, at the time beneficial ownership information is submitted and on a regular basis thereafter, that such information is adequate, accurate and up to date.</i></p> <p>(b) competent authorities, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, shall report to the entity in charge of the central registers any discrepancies they find between beneficial ownership information available in the central registers and the beneficial ownership information available to them</p>	<p>Article 10(5), point (b) Member State shall require competent authorities, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, shall report to the entity in charge of the central registers any discrepancies they find between beneficial ownership information available in the central registers and the beneficial ownership information available to them.</p>

(ba) Member States shall ensure that the entities in charge of the central registers verify whether beneficial ownership information held in the registers concerns persons or entities designated in relation to targeted financial sanctions. Such verification shall take place immediately upon the designation in relation to targeted financial sanctions and at regular intervals. The entities in charge of the beneficial ownership registers shall include specific mentions in the registers with regard to information on a corporate entity, legal entity or legal arrangement where:

(a) a corporate entity, legal entity or legal arrangement included in a register is subject to targeted financial sanctions;

(b) a corporate entity, legal entity or legal arrangement included in a register is controlled by a person subject to targeted financial sanctions;

(c) a beneficial owner of a corporate entity, legal entity or legal arrangement is subject to targeted financial sanctions;

The specific mention referred to in the first subparagraph of this paragraph shall remain available to any person or entity granted access under Articles 11 and 12 in the central register until the concerned targeted financial sanctions are removed.

(bb) By ... [four years after the date of entry into force of this Directive] AMLA shall issue guidelines on the methods and procedures to be employed by entities in charge of central registers to verify beneficial ownership information and by obliged entities and competent authorities to identify and report discrepancies regarding beneficial ownership information.

Justification

EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>Article 10(8)</p> <p>In the case of corporate and other legal entities, Member States shall ensure that the entity in charge of the central beneficial ownership register is empowered to carry out checks, including on-site investigations at the premises or registered office of the legal entity, in order to establish the current beneficial ownership of the entity and to verify that the information submitted to the central register is accurate, adequate and up-to-date. The right of the central register to verify such information shall not be restricted, obstructed or precluded in any manner.</p>	<p>Article 10(8)</p> <p>In the case of corporate and other legal entities, <i>and legal arrangements where the trustee is an obliged entity as listed in Article 3, point (3)(a), (b) or (c) of Regulation [please insert reference to - proposal for Anti-Money Laundering Regulation - 2021/0239(COD)]</i>, Member States shall ensure that the entity in charge of the central beneficial ownership register is empowered to carry out checks, including on-site investigations at the premises or registered office of the legal entity, <i>at the premises of relevant obliged entities as listed in Article 3, point (3)(a), (b) or (c), of Regulation ... [please insert reference to Anti-Money Laundering Regulation - 2021/0239(COD)] in accordance with national law and at the premises of the legal entities' representatives in the Union</i>, in order to establish the current beneficial ownership of the entity and to verify that the information submitted to the central register is accurate, adequate and up-to-date. The right of the central register to verify such information shall not be restricted, obstructed or precluded in any manner, <i>and the central register shall be empowered to request information from other registers, including in other Member States and third countries, in particular through the establishment of cooperation agreements.</i></p>	<p>Article 10(8)</p> <p>In the case of corporate and other legal entities, Member States shall ensure that the entity in charge of the central beneficial ownership register is <i>there is an entity or entities</i> empowered to carry out checks, including on-site investigations at the premises or registered office of the legal entity, <i>on information in central register</i> in order to establish the current beneficial ownership of the entity and to verify that the information submitted to the central register is accurate, adequate and up-to-date. <i>Member States may for this purpose empower the entity or entities carrying out the checks to carry out on-site investigations at the premises or registered office</i> The right of the central register <i>to verify such information and documents in the central register and, if applicable, to carry out on-site investigations</i> shall not be restricted, obstructed or precluded in any manner.</p>

Justification

EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
	<p>Article 10 (8a)</p> <p><i>Member States shall ensure that entities in charge of central registers have at their disposal necessary</i></p>	

automated technology to carry out verifications as referred to in paragraphs 5 and 5a. Those verifications shall include, in particular, cross-checking beneficial ownership information with other public and private databases to which they have access under national law for the prevention, detection or investigation of money laundering or terrorist financing, checking supporting documents referred to in paragraph 3, detecting errors and inconsistencies, identifying patterns associated with legal entities being used for illicit purposes and carrying out occasional sample testing using a risk based approach. Those verifications shall be carried out in a way that safeguards fundamental rights, includes human oversight and avoids discriminatory outcomes.

8b. Member States shall ensure that where a verification as referred to in paragraph 5 or 5a is carried out at the time of submission of beneficial ownership information, and it leads an entity in charge of a central register to conclude that there are inconsistencies or errors in the beneficial ownership information or that the beneficial ownership information otherwise does not fulfil the requirements laid down in paragraph 5, that entity in charge of a central register is able to withhold and suspend the certification of registration until the beneficial owner information provided is in order.

Justification

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Commission Text	EP Text	Council Text
<p>Article 10(9)</p> <p>Member States shall ensure that the entity in charge of the central register is empowered to impose effective, proportionate and dissuasive measures or sanctions for failures to provide the register with accurate, adequate and up-to-date information about their beneficial ownership.</p>	<p>Article 10(9)</p> <p>Member States shall ensure that the entity in charge of the central register is empowered to impose effective, proportionate and dissuasive measures or sanctions for failures to provide the register with accurate, adequate and up-to-date information about their beneficial ownership. <i>Sanctions shall include monetary penalties. Member</i></p>	<p>Article 10(9)</p> <p>Member States shall ensure that the entity in charge of the central register is <i>there is an entity or entities</i> empowered to impose effective, proportionate and dissuasive measures or sanctions for failures to provide the register with accurate, adequate and up-to-date information about their beneficial ownership.</p>

States shall ensure that in the event of repeated failure to provide up-to-date, accurate and adequate information, national authorities ensure that appropriate sanctions follow. In the event of repeated failures to provide up-to-date, accurate and adequate information, sanctions shall be increased to the level necessary to ensure compliance. In such event, the entity in charge of the central register shall notify the national authorities competent for imposing appropriate sanctions about the repeated failures.

9a.

By ... [two years after entry into force of this Directive], AMLA shall develop draft regulatory technical standards setting out indicators to classify the level of gravity of breaches and criteria for such repeated failures and submit them to the Commission for adoption. The Commission is empowered to supplement this Directive by adopting those regulatory standards in accordance with Articles 38 to 41 of Regulation ... [please insert reference to the AMLA Regulation - 2021/0240(COD)].

Justification

EFA believes that the penalties for companies failing to keep their UBO information accurate and up-to-date should be uniform and persuasive such that the registers are kept to a high standard. The decision of what these sanctions should be, and under which circumstances they should be applied, should be primarily technical, and should therefore be led by AMLA and the Commission.

Commission Text	EP Text	Council Text
	<p>Article 10(12a)</p> <p><i>AMLA shall periodically conduct peer reviews of some or all of the activities of entities in charge of central beneficial ownership registers for the purposes of assessing whether such entities have in place mechanisms to fulfil the requirements set out in this Article and whether such entities carry out checks effectively in order to establish that beneficial ownership information held in the registers is accurate, adequate and up to date</i></p>	

Justification

EFA supports the Parliament's text as it promotes stronger, and more usable UBO registers.

Commission Text	EP Text	Council Text
<p>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.</p>	<p>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 and agents or external service providers to which tasks are outsourced in accordance with Regulation ... [please refer to AML Regulation - 2021/0239(COD)] have timely, unrestricted and free access to the information held in the interconnected central registers referred to in Article 10.</p> <p><i>In accordance with Chapter IV of Regulation (EU) 2016/679, the obliged entity shall remain fully liable for any action of agents or external service providers to which activities are outsourced when those agents or external service providers access the information held in the interconnected central registers referred to in Article 10.</i></p> <p><i>The obliged entity shall obtain prior authorisation from the data protection supervisory authority in relation to access to a register by an agent or external service provider for the duration of the outsourcing contract between the obliged entities and the agents or external service providers. The data protection supervisory authority shall respond in a timely manner and no later than within two months. If no response is given within that time limit, access shall be deemed to have been granted.</i></p> <p><i>The entity in charge of the central register shall suspend access to the register to obliged entities or agents or external service providers to which tasks are outsourced, in the event of [a risk of a serious failure to comply with the purposes for which access was granted] and or to comply with their obligations under Regulation (EU) 2016/679]. Member States shall ensure that such a</i></p>	<p>3. Member States shall ensure that, when taking customer due diligence measures in accordance with Chapter III of Regulation <i>[please insert reference – proposal for Anti-Money Laundering Regulation]</i>[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. <i>Member States may choose to make access for obliged entities on the condition of the payment of a fee, which shall not exceed the administrative costs of making the information accessible, including costs of maintenance and developments of the register.</i></p>

suspension can be reviewed by the relevant administrative or judicial authorities."

2h. Member States may choose to make beneficial ownership information held in their central registers available on the condition of authentication using electronic identification means and relevant trust services as defined in Article 3, points (2) and (16), respectively, of Regulation (EU) 910/2014 and the payment of a fee which shall not exceed the direct costs of making the information available. Where the access to beneficial ownership information is provided online or in electronic form, Member States shall not require the payment of any fees.

Justification

EFA members believe that regulated and performed properly, outsourcing and sub-outsourcing allow for specialisation in the conduct of Customer Due Diligence as increase effectiveness and decrease cost. In order for outsourcing to work in practice, AML compliance entities should be able to access UBO information. It is important that this information be promptly and freely accessible.

Commission Text	EP Text	Council Text
	<p><i>Article 12a- Searches in Beneficial Ownership Register</i></p> <p><i>1. The European Central Platform shall serve as a central search service, making available all information related to beneficial ownership.</i></p> <p><i>2. Competent authorities, AMLA, self-regulatory bodies and obliged entities shall be able to make searches of beneficial ownership information as set out in Article 11 through the European Central Platform. Persons having legitimate interest pursuant to Article 12 shall be able to make searches of the beneficial ownership information as set out in Article 12 through the European Central Platform.</i></p> <p><i>3. The following harmonised search criteria shall be useable for searches referred to in paragraph 2:</i></p> <p><i>(a) with regard to companies or other legal entities, trusts or similar arrangements alternatively:</i></p> <p><i>(i) name of the legal entity, trust or similar arrangement;</i></p>	

(ii) national registration number.
(b) with regard to persons as beneficial owners alternatively:
(i) first name and surname of the beneficial owner;
(ii) month and year of birth of the beneficial owner;
(c) with regard to nominee shareholders and nominee directors first name and surname of the nominee shareholder and nominee director;
Member States may make available further search criteria in addition to the ones set out in the first subparagraph.
3. The European Central Platform shall allow the reporting of discrepancies as referred to in Article 10(5).

Justification

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