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Dear Ms. Foran

Comments on the Proposals of the European Commission amending Directive (EU) 2015/849 (the “Directive”)

We are in agreement with the overall aim of the Directive and the spirit of the subsequent proposals as set out by the European Commission.

In particular, the Directive provides for the concept of a central register (the “**Register**”) to store information on beneficial ownership regarding trusts when the trust generates tax consequences.

As outlined in Proposal (16), we agree with the Commission’s statement that *“in order to respect privacy and protect personal data, registries should store the minimum data necessary to the performance of AML investigations.”*

In line with Proposal (26), we are also of the opinion that *“a fair balance should be sought between the general public interest in corporate transparency and in the prevention of money laundering and the data subjects’ fundamental rights.”* Furthermore we also agree that *“the data made available to the public should be limited, clearly and exhaustively defined, and of a general nature, so as to minimize the potential prejudice to the beneficial owners.”*

However, we believe that in certain proposals the Commission has moved beyond those aims and the requirement for balance with respect to those entitled to access the Register.

Proposal 34

As currently drafted, Proposal (34) seems to suggest that a trust could be brought into rules of disclosure which apply to companies solely by virtue of the fact that a professional trustee is used.

We would submit that this is not the correct approach. We would submit that there should be a clear distinction between trusts which are used to circumvent the obligations on companies under the Directive and other trusts. Therefore, we believe proposal (34) should be re-drafted to distinguish between the activities of the trust, rather than the trustees. By way of example, it is not unusual for *persons carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business with a view to gain profit* i.e. a professional trustee, to be appointed as a trustee of a private family trust, such as a corporate trustee appointed to hold assets for the benefit of minors or incapacitated persons. Similarly professional trustees will almost invariably act as trustee of certain trusts such as charities, Revenue approved pension schemes and unit trusts which are tax exempt and do not generate tax consequences.

On the other hand, we would suggest that the obligations which are imposed in respect of maintaining the beneficial ownership of companies should not be circumvented by the use of a trust as the owner of the shares of that company. We would consider that the meaning of *"trusts that primarily conduct as a business investment activity or operation on behalf of other persons"* should be restricted to this kind of circumstance only.

We further note that at the time of writing, the French Constitutional Court (Conseil Constitutionnel Decision no 2016 – S91 QPC) have ruled the "public" aspect of trusts introduced by a register is a breach of the right to respect for private life.

We therefore would suggest the following wording for proposal (34).

34. It is essential to take into account the particularities of trusts and similar legal arrangements, as far as publicly available information on their beneficial owner is concerned. Irrespective of their qualification under national law, a distinction should be drawn between, on the one hand, trusts that primarily conduct as a business investment activity or operation on behalf of other persons and, on the other hand, any other trusts. Given the nature of the first category of trusts, information on their beneficial owners should be made publicly available through compulsory disclosure. Access should be given to the same limited set of data on the beneficial owner as in the case of companies.

Proposal 35

With respect to proposal (35), we submit that expanding persons who have a legitimate reason to access to the central register should be limited to competent authorities and obliged entities.

We would be concerned with any extension of the access to the register to persons who may have a perceived *"legitimate interest"* as this would impinge on the obligations under Article 8 of the European Convention of Human Rights, namely the right to privacy, particularly where *"legitimate interest"* is not defined under the Directive nor included in the Proposals.

There is a real risk that information about the beneficiaries of the trust could pass to third parties with no legitimate interest indirectly or inadvertently, such as in a case where journalists, who seek access under the *"legitimate interest"* principle, publish these findings without respect of the consequences for the beneficiaries of trust who are vulnerable. Ultimately, the legitimate interest of those individuals to view the central register already subject to scrutiny by competent authorities is outweighed by the legitimate public interest of protecting vulnerable individuals.

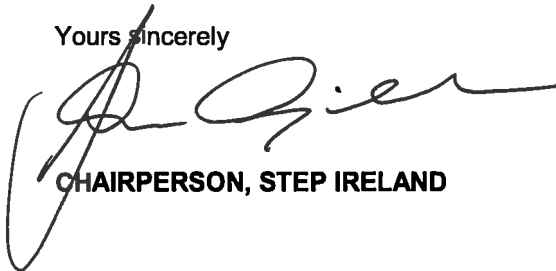
We therefore would suggest the following wording for proposal 35.

35. In order to ensure proportionality, the beneficial ownership information in respect of any other trusts than those which primarily conduct as a business investment activity or operation on behalf of other persons should only be available to competent authorities and obliged entities in the process of establishing a business relationship with the trust's parties.

Proposal 36

Furthermore in respect of proposal (36) we would suggest that where Member states share information, there should be uniformity between them with regard to the circumstances when third parties can access information. Otherwise the safeguards to protect the recognised privacy rights of individuals could be overcome when the Directive is transposed into national law of each member state.

Yours sincerely



CHAIRPERSON, STEP IRELAND