

Contribution to EC Consultation on Anti-money laundering – formats for the submission of beneficial ownership information to central registers – submitted by Philea on behalf of informal NPO coalition

1. As a loose coalition of European Non for Profit Organisations (NPOs) including associations and philanthropic organisations/public benefit foundations working on the impact of AML/CFT policies on the non-profit sector, we welcome the opportunity contribute to the European Commission`s public consultation on formats for the submission of beneficial ownership information to central registers.
2. As a premise, we would like to reiterate once again the comments on beneficial ownership included in our analysis of the new EU AML/CFT Package from the perspective of Non Profit Organisations (NPOs) such as Non Profit Associations, Cooperatives, Charity Lotteries, public benefit foundations (<https://philea.issuelab.org/resource/unpacking-the-eu-aml-cft-package-impacts-on-the-non-profit-sector.html>). We believe that the new AMLR does not sufficiently clarify the definition of beneficial owner with regards to the non-profit sector, In fact, although the new regulation clarifies that beneficial ownership is based on both ownership and control, it remains unclear who should be listed as the beneficial owner of an Non for profit Organisations and of a public benefit foundation. In particular, those public-benefit foundations and Non-Profit Organisations that are similar to express trusts and/or constituted as express trusts and similar legal arrangements may even have to list a series of individuals who do not own or control the organisation at all, including founders and grant recipients. This listing could create a heavy administrative burden and raise security and privacy concerns for grantees, especially when thousands of individual beneficiaries must be named. **Clarification is hence needed and should be spelled out in the implementing regulation that public-benefit foundations and other NPOs are generally not similar to express trusts.**
3. Although we consider that most public-benefit foundations or other NPOs are not similar to express trusts, we welcome the fact that the Commission Draft implementing regulation seems to also now **allow the choice of only one among the type of people listed as BOs in article 1.3 (b) and (c)**. As highlighted several times, and more recently in the above mentioned analysis by ECNL and Philea, the list of people/individuals mentioned as BOs in articles 57 and 58 of the AMLR are very often not owning or controlling in any way the NPOs. Or are in the case of

founders of foundations no longer alive. We hence interpret the suggested draft Implementing Regulation on page 4 as a constructive approach to reflect this reality and offer the possibility to only list those individuals as BO of an NPO/Foundation who exercises control over the organisation.

4. **Some NPOs would fall into the derogation laid out by Article 1. 6 (a)(ii): ` the legal entity has no legal owners by definition, and no one has a controlling interest, nor control by other means`.** We welcome that this derogation is considered since indeed some type of NPOs have no legal owners and no one with controlling interest of control by other means.
 5. Article 1 on the information to be collected from individual BOs only speaks of the residential address, while in the draft RTS which EBA issued the possibility is given to use office address for senior managers who are considered BOs. We would recommend to add this possibility to ensure alignment.
 6. We also welcome the **reference to cross-registers and use of the BO information already available in another register** made in Article 1.5 and Article 2.2 of the Commission Draft implementing regulation. This is very important to avoid multiple reportings, which are especially burdensome for entities with limited resources like some NPOs.
 7. **Finally, we would like to underline the importance of respecting privacy concerns.** Where BO information is made accessible to the general public, privacy rights and in some cases even security concerns arise from those individuals being listed as BO. This applies in particular if the level of detail of BO information includes name and residing address and is accessible to the general public, even if only granted upon request. In the case of NPOs, this has serious safety and security implications, apart from mere personal data protection concerns, and may result in a breach of the freedom of association and expression. NPOs working on human rights are increasingly facing threats, including attacks on individual staff members – putting their staff or board member details into the BO may put their safety at risk. Where a foundation is considered similar to an express trust and may be required to list beneficial owners, could also put grantees at risk.
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8. **Concern about not reducing due diligence of work of reporting entities** BO registers should ideally simplify the due diligence work of financial service providers and reporting entities avoiding undue burden on small and medium entities but the reality is unfortunately often the opposite. BO registers are often not linked with Company or Association and Foundation registers with the risk of creating discrepancies. Also, financial service providers tend to disregard information contained in BO register and ask the same information often with more details all over again, instead of using a risk based on proportionate approach (e.g. checking information or one Board member). This results in NPOs having to produce the same information multiple times during the year through different reporting formats and meeting additional requests. Also, it makes the BO register meaningless.

Philea who submitted these comments also on behalf of Civil Society Europe, ECNL, the European Fundraising Association (EFA) and Human Security Collective has the following European Transparency Register Number:
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