

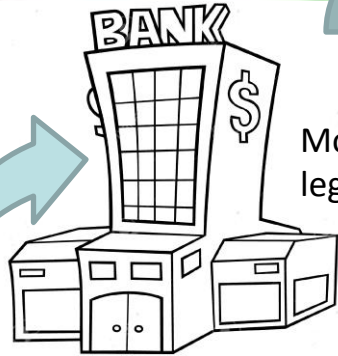
Prevention of the use of the financial system for the purposes of money laundering or terrorist financing

XXIV ELRA General Assembly
Brussels, 11th May 2017
Francisco Molina



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- A man in a dark suit and tie is running across a green field under a clear blue sky. He is carrying a black briefcase in his right hand. Numerous Euro banknotes of various denominations (100, 50, 20, 10, 5) are floating in the air around him, as if they are falling from the sky or he is throwing them. The scene suggests a sense of urgency and the pursuit of wealth.
- **BASIC OFFENSE:** obtention of economic benefit
 - **CONCEALMENT** of the criminal origin of the assets
 - Creation of a **SEMBLANCE OF LEGALITY**
 - Enjoyment of the benefit **WITHIN THE LEGAL SYSTEM**

PLACEMENT



Money gets into the legal financial system

- smurfing
- purchase of financial and payment instruments
- winning lottery tickets
- cover business
- virtual currencies

Black or dirty money



Laundered funds



LAYERING

Bank transfer to X Company

Electronic transfer to offshore bank



Payment of false invoice by Y Company to X Company

Loan to Y Company

INTEGRATION

- Financial or industrial investments
- Acquisition of luxury assets
- Casinos, foreign currency exchange, tourism sector...
- virtual currencies, lottery tickets...



MISUSE OF LEGAL PERSONS AND ARRANGEMENTS

- **FACILITATES MONEY LAUNDERING by disguising**

- the identity of known or suspected criminals;
- the true purpose of an account or property held by a corporate vehicle;
- the source or use of funds or property associated with a corporate vehicle;

- **INFORMATION CAN BE OBSCURED THROUGH THE USE OF:**

- shell companies with no activities nor own resources;
- complex ownership and control structures, involving many layers of shares registered in name of other legal persons;
- bearer shares and bearer share warrants;
- unrestricted use of legal persons as directors;
- formal nominee shareholders and directors, where the identity of the nominator is undisclosed;
- informal nominee shareholders and directors, such as close associates, relatives, etc;
- trust and other legal arrangements which enable a separation of legal ownership and beneficial ownership of assets;
- use of intermediaries in forming legal persons



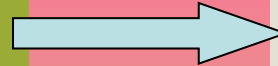
SETTLOR

- original holder of the assets
- establishes the trust
- instructs the trustee on the management and distribution of the assets



TRUSTEE

- ostensible ownership, rather than real ownership, but yet, legal owner
- preserves and manages the assets according to instructions of the settlor
- distributes assets among beneficiaries at any given time or when certain condition is fulfilled



BENEFICIARIES

- during the validity of the trust only have an expectation
- only hold a right since the time of distribution
- but indeed, beneficial owners

PROTECTING FAMILY INTEREST, MINORS OR INCAPABLES



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MAY:

- forbid distribution
- establish a discretionary trust
- give secret instructions by a letter of wishes
- appoint a protector or enforcer
- give power of attorney to a third party

PROTECTING FAMILY INTEREST, MINORS OR INCAPABLES BUT ALSO A FORM OF BUSINESS ORGANIZATION FOR COMMERCIAL PURPOSES

- trustee can choose when to distribute / if there's distribution
- trustee can choose final beneficiary among those appointed by the settlor

May be the settlor him/herself

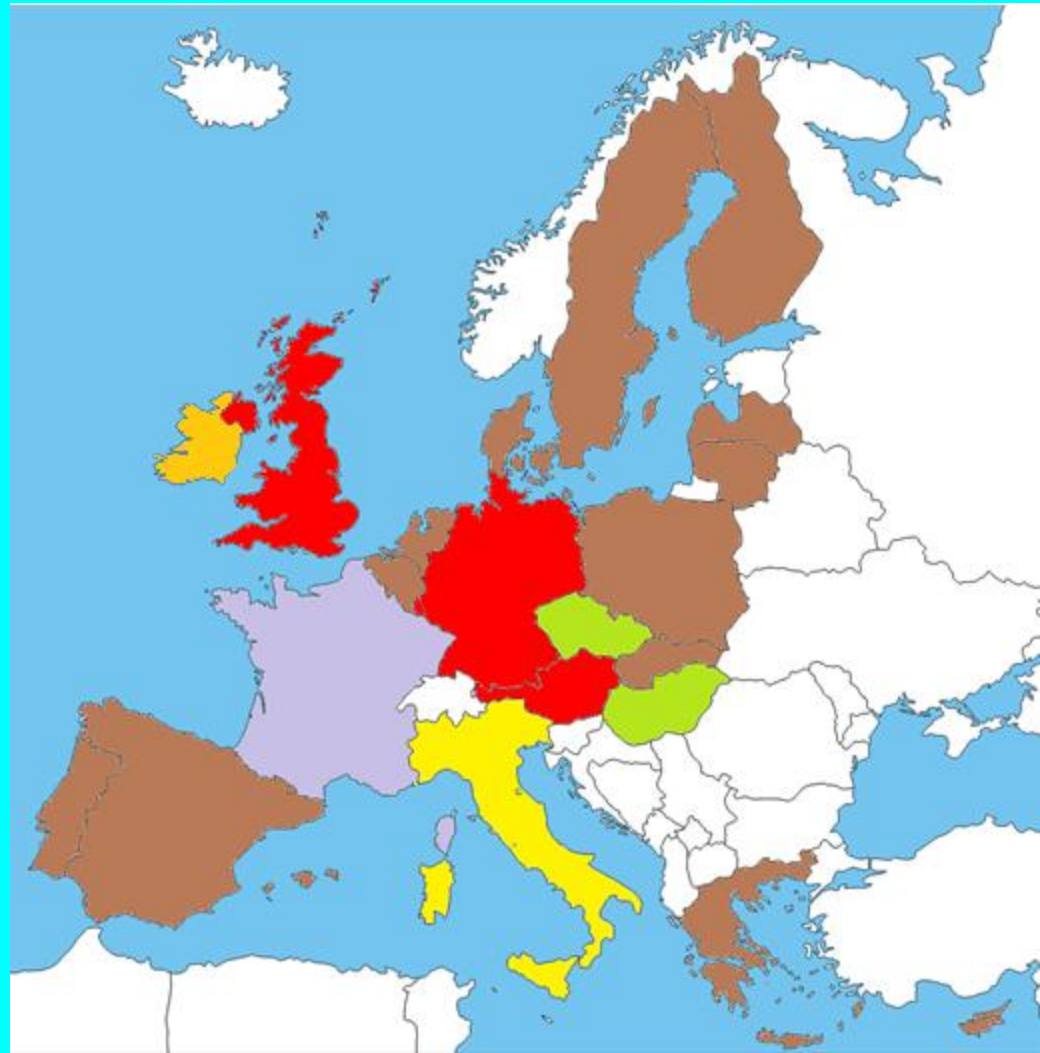
- May veto trustee's decisions
- May remove the trustee

In some jurisdictions

- settlor may also be trustee and/or beneficiary
- trustee may also be beneficiary
- the trust itself may own assets, or, in the other hand, assets assigned to the trust may appear with no real owner for legal purposes

Registration with ANY authority of ALL domestic law trusts and /or ALL foreign law trust with a resident trustee

-  All domestic law trusts and all foreign law trust domestically managed
-  All foreign law trust domestically managed, but domestic law trust cannot be created
-  Only domestically managed trust, both foreign and domestic law trust
-  Domestic law trusts cannot be created, and no registration of domestically managed foreign trusts
-  Domestic law trusts but no registration of domestically managed foreign law trusts
-  Neither domestic law trusts nor foreign law trust domestically managed have to register



Article 32b

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 a timely manner, of any **natural or legal person holding or controlling land and buildings** within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms.
2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is **directly accessible, at national level, to FIUs and competent authorities**. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 to any other FIUs in a timely manner in accordance with Article 53.
3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:
 - regarding real property owner and any person purporting to act on behalf of the owner: the name, complemented by the other identification data required under the national provisions transposing Article 13(1)(a) or a unique identification number;
 - regarding beneficial owner of the real property: the name, complemented by the other identification data required under the national provisions transposing Article 13(1)(b) or a unique identification number;
 - regarding real property: date and cause of ownership acquisition, mortgage and rights other than ownership;
 - regarding land: location, parcel number, land category (current state of land), parcel area (area of land);
 - regarding building: location, parcel number, building number, type, structure, floor area.
4. Member States shall cooperate among themselves and with the Commission in order to establish by **1 January 2018** a **European real property register** in accordance with paragraph 1 building on the European Land Information Service (EULIS)."



The background of the slide is a dynamic, out-of-focus image of numerous Euro banknotes falling from the top. The notes are in various colors, including green, yellow, and purple, and are oriented in different directions, creating a sense of motion and abundance. The text is centered over this background.

**THANK YOU VERY MUCH
FOR YOUR ATENTION**