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## *Further Improvements of Italian AML Legislation in the Pipeline*

By [Francesco Falco](#)

On 25 April 2017, Transparency International EU issued the report *"Under the shell—Ending money laundering in Europe,"*<sup>1</sup> assessing the anti-money laundering ("AML") legal framework in six European countries, including Italy. According to the report, Italy is one of the leading countries in the implementation of AML measures and ranked among those with a strong overall adequacy of national beneficial ownership transparency legislation.

On 9 May 2017, the Justice Committee and the Finance Committee of the Senate confirmed Italy's commitment to develop a strong and effective AML legal framework and provide a better environment for investors.

The two Committees, discussing the draft of a legislative decree ("AML Decree") for the implementation of EU Directive No. 2015/849 ("IV AML Directive") into the Italian legal system, issued a joint opinion on the draft of the AML Decree. They recommended several amendments, aimed to provide a stronger and more efficient implementation of the IV AML Directive.

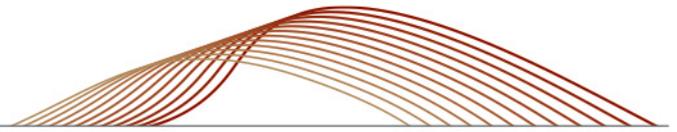
The suggested amendments refer, *inter alia*, to the provisions on the access to the beneficial owner register (one of the main issues of the Italian AML legislation, according to the mentioned Transparency International EU report), in order to meet the higher standards provided by Transparency International EU and to strengthen the Italian AML legal framework.

### **Transparency International EU Report on the Italian AML Legal Framework**

The Transparency International EU report focused, *inter alia*, on beneficial ownership transparency, a key aspect of the fight against money laundering.

According to the report, in Italy, *"beneficial ownership transparency principles are a legacy of the Italian authorities' long fight against money laundering by mafia and organized crime groups. In this respect, public authorities have quite a clear understanding of money laundering risks relating to the use of shell companies and trusts."*<sup>2</sup>

Furthermore, with specific reference to the beneficial owners register,<sup>3</sup> the report underlined that, under Italian law, *"the current business register already includes a wealth of information on the beneficial owners which is publicly accessible provided the payment of a fee. According to people interviewed, beneficial ownership coincides with legal ownership accessible via the company register for a majority of cases. This can be explained by a relative simple control chain of registered companies, due to the nature of the shareholding (mostly direct and/or unique) or of the entity (a lot of individual companies)."*



According to Transparency International EU report, Italy is strengthening its AML legal framework through AML Decree and the transposition of the IV AML Directive.

However, the report complains about the access to the beneficial ownership data regulation under Italian law.

According to the report, the current draft of the AML Decree adopts a very narrow delimitation of "legitimate interest" provided for under the IV AML Directive for accessing the beneficial ownership register: Italy *"will limit access to cases where there are already reasonable grounds to suspect money-laundering and terrorist financing activities. In reality, this is counter-productive as suspicion will usually arouse as a result of access to beneficial ownership information."* Moreover, the report refers to the fact that the access to such data is subject to the payment of fees, while it should be free.

In that regard, the draft of the AML Decree provides that the only private persons entitled to access the beneficial owner register are those carrying a relevant and prevailing interest in a pending proceeding, when the knowledge of the beneficial owner is necessary for defending their rights and they have specific reasons, confirmed by the documentation they provide, to be doubtful on the correspondence between the identity of the beneficial owner and the identity of the legal beneficiary. The abovementioned interest shall be direct, concrete and current; in the event of legal persons representing general interests, this interest shall not coincide with the interest of the particular persons belonging to the represented category. The access to the beneficial owner register may be restricted when the information concerns minors, legal incapable persons, or in the event the access will endanger the personal safety of the effective beneficiary.<sup>4</sup>

## **The Senate Committees Proposed Amendments**

The Senate Committees' recommendations on the draft of the AML Decree for the implementation of the IV AML Directive focuses, *inter alia*, on the access to the beneficial owner register.

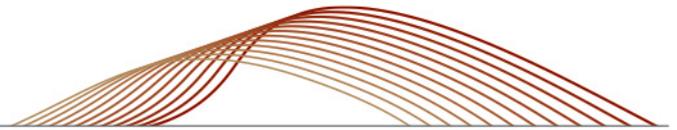
In their joint opinion, the Senate Committees suggested to amend the draft of the AML Decree in connection with the access to the beneficial owner register, broadening its scope, as per the Transparency International EU report.

Under the revised version of the considered provision, access to the beneficiary owner register shall be granted to all subjects, including people carrying relevant and prevailing interests. There will be no more reference to pending proceedings, documents to be provided, and a narrow definition of "interest" for accessing the register.

The Senate Committees confirmed the restriction to the access to the beneficial owner register when the information would concern minors, legal incapable persons, or would endanger the personal safety of the effective beneficiary.

Eventually, the Senate Committees suggested the Government consider the possibility of consulting the beneficial owner register free of charge (or with a standard fee, including an annual fixed rate), through the business company register.<sup>5</sup>

The broader scope of the draft of the AML decree, which would result in the approval of the recommendations provided by the Senate Committees, would allow access to the beneficiary data owner register to a larger number of subjects, in line with the high standards pointed out by Transparency International EU.



## Conclusion

The recognition by Transparency International EU that Italy is doing better in the fight against the illegal flow of money should reassure financial institutions that operate (or would like to operate) in Italy and enhance the Italian financial system.

The effectiveness of the Italian AML legal framework is confirmed by two recent high-profile cases, one involving the Vatican bank IOR, and the other, the Bank of China, and the continuous flow of criminal investigations related to organized crime and money laundering.

The Senate Committee's proposed amendments, welcoming the feedback provided by Transparency EU, confirm the country's commitment to create a safe and comfortable environment for financial institutions operating in Italy.

The ongoing drafting and discussions on the AML Decree should end in the next weeks, and are expected to produce significant improvements in the Italian AML legal framework.

*If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings Milan lawyer:*

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<sup>1</sup> Available at [http://transparency.eu/wp-content/uploads/2017/04/EBOT-REPORT-TIE-014-16\\_clean.pdf](http://transparency.eu/wp-content/uploads/2017/04/EBOT-REPORT-TIE-014-16_clean.pdf).

<sup>2</sup> Transparency International EU, *Under the shell—Ending money laundering in Europe*, page 18.

<sup>3</sup> Pursuant to the IV AML Directive, "Member States should therefore ensure that entities incorporated within their territory in accordance with national law obtain and hold adequate, accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership. 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 can use, for that purpose, 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." (cfr. whereas 14, AML Directive No. 2015/849).

<sup>4</sup> Article 21 para 2.e) of the draft of the Legislative Decree for the implementation of the AML Directive No. 2015/849.

<sup>5</sup> Senate Committees proposed amendments to the Decree scheme for the implementation of the IV AML Directive, Page 16.