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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

assessing whether Member States have duly identified and made subject to the obligations of Directive (EU) 2015/849 all trusts and similar legal arrangements governed under their laws

I. Introduction

Over the past decades, criminals have exploited the globalisation of the financial system and trade as well as technological innovation to hide and move their illicit funds around the world. Legal entities and arrangements are the main vehicle used to disguise money laundering as legitimate corporate trade, often through complex structures and networks, and may also be used to perpetrate predicate offences, including tax crimes.

In the aftermath of the Panama Papers and Lux Leaks, the European Union has taken steps to ensure the transparency of beneficial ownership of legal entities and arrangements, including legal arrangements governed under Member States' law or custom that have a structure or functions similar to trusts.

Article 31 of Directive (EU) 2015/849[1] (the Anti-Money Laundering Directive or "AMLD") requires trustees or persons holding an equivalent position in a similar legal arrangement to:

- Obtain and hold adequate, accurate and up-to-date information on the arrangement's beneficial ownership;
- Disclose their status and provide information on the arrangement's beneficial ownership to obliged entities in a timely manner;
- Submit information on the arrangement's beneficial ownership to the central beneficial ownership register set up in the country where the trustee is established or resides, or the country where the arrangement enters into a business relationship or acquires real estate when the trustee is established or resides outside the EU, and
- Provide proof of registration in the central beneficial ownership register or an excerpt of it when wishing to enter into a business relationship in another Member State.[2]

The AMLD also obliges Member States to establish effective, proportionate and dissuasive measures or sanctions for breaches of the above obligations.

In light of the variety of trusts and legal arrangements used within the EU, Article 31(10) of the AMLD provides that Member States must identify those legal arrangements that have a structure or functions similar to trusts, and notify to the Commission the categories, characteristics, names and, where applicable, legal basis of such arrangements. The Commission must publish these notifications in the Official Journal of the European Union,

Article 31(10) of the AMLD also requires the Commission to assess whether Member States have duly notified and made subject to the obligations of the Directive trusts and similar legal arrangements governed under their law. This report complies with this obligation, based on

[1] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance), OJ L 141, 5.6.2015, p. 73–117, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, OJ L156, 19.6.2018, p. 43-74.

[2] Similar provisions regarding transparency of beneficial ownership of legal entities can be found in Article 30 AMLD.

Member States' notifications, their oral and written input through the Expert Group on the Prevention of Money Laundering and Terrorist Financing, as well as analyses produced by the Financial Action Task Force (FATF) and the Organisation for Economic Development and Cooperation (OECD) and academic research.

II. Notifications by the Member States

A first list of Member States' notifications was published on 24 October 2019,[3] and was reviewed twice, with the most recent list published on the 27 April 2020.[4] This third list forms the basis of the analysis in this report.

Sixteen Member States[5] indicated that no trusts or similar legal arrangements are governed by their laws.[6]

The remaining other Member States notified trusts or similar legal arrangements governed by their laws, as follows:

- Three Member States[7] and the United Kingdom notified that trusts are governed under their legal systems, and three additional Member States[8] notified that trusts are recognised in their territory based on the provisions of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.[9]
- Seven Member States[10] notified similar arrangements governed under their national law.
- Two Member States[11] notified legal arrangements that are not expressly regulated in their national law, but are based on the general principle of the autonomy of the contracting parties and delimited by jurisprudence and doctrine. For the purpose of transposing Article 31 of the AMLD, Germany explicitly mentioned the above arrangements in its anti-money laundering law.

These notifications are analysed in the next chapter.

III. Overview of legal arrangements

AML/CFT rules do not define legal arrangements as such, but identify the common law trust as an example. Other arrangements become relevant according to the similarity of their

[3] OJ 2019/C 360/05, p. 28-29.
[4] OJ 2020/C 136/05, p. 5–6.
[5] Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Poland, Portugal, Spain, Slovakia, Slovenia and Sweden.
[6] While this is also the case for Portugal, a specific provision under Portuguese law recognises foreign trusts and allows them to perform business activities exclusively in the Madeira Free Trade Zone. (Decree-Law 352-A/88, amended by Decree-Law 264/90).
[7] Cyprus, Ireland, Malta.
[8] Italy, Luxembourg and the Netherlands notified that they have ratified the Hague Convention. N.B. Cyprus, Malta and the U.K. have also ratified the 1985 Hague Convention.
[9] https://www.hcch.net/en/instruments/conventions/status-table/?cid=59.
[10] Czechia, France, Hungary, Italy, Luxembourg, Romania and the Netherlands.
[11] Germany and Italy.

structure or function with that of a trust. Like trusts, these arrangements enable a separation or disconnection of legal and beneficial ownership of assets. This does not necessarily mean divisibility of ownership, a concept typical of common law but not recognised under civil law.[12] Rather, similar legal arrangements generally involve a mechanism where the property is entrusted to one person, who holds the title to it or manages it for the benefit of one or more other persons or for a specific purpose.[13]

This chapter reviews the main features of trusts and other main arrangements with either a similar structure or function to trusts. The list does not intend to be exhaustive.

III.1 Trusts

Trusts are legal arrangements that were developed in common law jurisdictions, in which a settlor transfers some assets to a trustee, who exerts control over them in the interests of one or more beneficiaries, determined by the settlor. The assets held in the trust constitute a separate patrimony from that of the trustee, while other parties, such as the settlor and protector, may also exert some level of control or influence over it. The complex structure of trusts makes the identification of the beneficial owners difficult, and requires further efforts to determine the true nature of the trust relationship.[14] Analyses of money laundering cases show that the risks of misusing trusts increase when several participants to the trust coincide with the same natural or legal person, or when trusts are set up in foreign jurisdictions.

The three Member States and the United Kingdom have notified that trusts are governed under their legal systems, based either wholly or partly on common law. They either identified specifically the *express trust*, as done by Ireland and the United Kingdom, or referred to trusts in general, as Cyprus[15] and Malta[16] did. Cyprus also notified a sub-category of trusts, namely the *international trusts*.[17]

All four of the above mentioned countries point to trusts that have been set up willingly by the parties, thus excluding those trusts that are imposed by operation of law or that result from the failure of an express trust, generally defined as statutory, constructive or resulting trusts. This reflects the provisions of the AMLD.

However, trusts might be recognised in other Member States as well. For example, despite the fact that Lithuania did not notify any trust or similar legal arrangement that would be recognised under its national law, literature points to the fact that the Lithuanian Civil Code (Book Four (Material Law), Part I (Things), Chapter VI (Right of Trust)) introduces the concept of trust under national law. In particular, Article 4.106 provides for extensive rights

[12] Sandor, I. (2015) "The legal institution of the trust in the economy and law of Eastern European countries", *European Scientific Journal* April 2015 SPECIAL edition 1857 – 7881, p. 139-149
[13] Sepp, K. (2017). "Legal Arrangements Similar to Trusts in Estonia under the EU's Anti-money-laundering Directive", *Juridica International*, 26 (56-65).
[14] FAFT and Egmont Group (July 2018), *Concealment of Beneficial Ownership*
[15] Trustee Law (CAP 193)
[16] Trusts and Trustees Act (Chapter 331 of the Laws of Malta)
[17] International Trusts Law (Law No 69(I)/92 as amended by Law No 20(I)/2012, and Law No 98(I)/2013)

over the assets for the trustee, essentially equal to the owner's rights. Under this arrangement, both the owner and the trustee have *in rem* rights over the assets, which makes this arrangement very close to the common law trust.[18]

Three additional Member States, namely Italy, Luxembourg and the Netherlands, notified that while trusts are not governed under their national law, they are recognised in their legal system based on the provisions of the 1985 Hague Convention, which they have ratified. While Belgium did not notify any legal arrangement recognised under its law, literature suggests that it is in a similar position to these three Member States, having integrated the concept of trust in its Civil Code of International Private Law (chapter XII). These provisions do not allow trusts to be set up under Belgian law, but to recognise trusts lawfully set up under foreign law.[19]

III.2 Legal arrangements similar to trusts identified by the AMLD and notified by Member States

While common law trusts can hardly be reproduced as such in civil law, other legal arrangements show significant similarities in terms of function or structure.[20] In these arrangements, the separation between legal and beneficial ownership is not necessarily as strong as it is in trusts, but they nonetheless create a fiduciary bond that can be assimilated to the one provided in a trust.

III.2.a Fiducie

Fiducies are among the legal arrangements specifically identified by the FATF and the AMLD as similar to trusts. These legal arrangements are generally based on a scheme involving three parties in which one or more transferors transfer assets to a fiduciary, for the benefit or one or more identified beneficiaries. Such scheme entails separation of the assets from the personal assets of the transferor. Under this arrangement, the fiduciary has an obligation to manage the assets according to the terms of the agreement with the transferor.

Fiducies are a quite common legal arrangement in Europe, especially in French-speaking and Latin countries. The specific features of a *fiducie* can vary and adapt based on the different Member States and the respective national legal systems. Three Member States notified arrangements of this type that are regulated directly by national law. This is the case of the French *fiducies* (article 2013 of the French Civil Code), Luxembourg's *contrats fiduciaires* (Law of 27 July 2003) and Romania's *fiducia* (Articles 773-791 of the Romanian Civil Code).

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[18] Sandor, I. (2016) "Different Types of Trust from an Ownership Aspect", *European Review of Private Law*, 6-2016, p. 1189–1216

[19] Wautelet, P. (2005) "Le nouveau droit international privé belge", *Euredia: Revue de Droit Bancaire et Financier*, p. 111-134.

[20] Schmidt, K. (2016) "Trust as a Legislative Challenge: Bipolar Relation vs Quasi-Corporate Status? – Basic Trust Models in Legal Practice, Theory, and Legislation", *European Review of Private Law* 6, p. 995–1010.

In other cases, a similar arrangement is based on the general principle of the autonomy of the contracting parties, and is delimited by court judgements and doctrine. This is the case, for instance, of the fiduciary mandate (*mandato fiduciario*), notified by Italy. Although there are no national provisions regulating this type of contract, it customarily takes the form of a scheme that corresponds to that of a *fiducie*, with the same effects as regards the separation and transfer of assets to a fiduciary for the benefit of one or more beneficiaries.

Like the Italian *mandato fiduciario*, the Spanish *fiducia* is also based on the autonomy of the contracting parties set out in Article 1255 of the Spanish Civil Code. Under this arrangement, the fiduciary holds a title to the assets, which does not transfer him the ownership but permits him to act as an owner regarding third parties, and to administer the property with full powers.[21] This arrangement has not been notified by Spain as it considers that this type of contract cannot be considered similar to a trust, in that the fiduciary's ownership is only formal and there is no transmission of property *stricto sensu*. However, this arrangement grants an effective, albeit limited, title to the property to the fiduciary, comparable to that of other trust-like arrangements analysed in this report. The lower degree of protection of the beneficiary's rights compared to a trust is also comparable to that of other trust-like arrangements analysed here. Moreover, the absence of a public form of notice of the existence of the fiduciary title will make the fiduciary appear as the sole owner of the assets in front of *bona fide* third parties.

All these similarities suggest that the Spanish *fiducia* presents a similar function to that of a trust, which would have justified its notification under Article 31(10) of the AMLD. It is important to note that this is not an isolated case. Another example where the literature considers that, unless prohibited by law, arrangements based on the Latin *fiducia* are similar to trusts is the Netherlands, which did not notify this arrangement either.[22]

The category at hand could be further extended to include other legal arrangements recognised under national law, which present similar features despite some differences, for instance, in the nature of the bond established between the parties. With regard to this group, the *bizalmi vagyonkezelő* notified by Hungary (Act V of 2013 on the Civil Code and Act XV of 2014 on trustees and the rules governing their activities) is a relevant example.[23] Under this arrangement, the trustee has the duty to manage the property transferred into his ownership by the settlor in his own name, for the benefit of the beneficiary, for which the settlor is obliged to pay a fee.

Another example is the *vincolo di destinazione*, notified by Italy (Article 2645-ter of the Italian Civil Code), which consists of a scheme where the owner of immovable property or assets registered in public registers establishes a bond over such property. By virtue of this bond, the assets can be managed and used only for serving a specific purpose identified by the owner.

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[21] Martin, S. (2007) "Trusts in American law and some of their substitutes in Spanish law: Part II", *Trusts & Trustees*, Vol. 13, No. 7, p. 242-251.
[22] van Veen, W. J.M. and Duin, H. M.C. (2016) "Dutch Trusts and Trust-Like Arrangements", *European Review of Private Law*, 6-2016, p. 973–994
[23] See Sandor (2016)

III.2.b Treuhand

Treuhand are among the legal arrangements explicitly identified as being similar to trusts in both FATF standards and the AMLD. The *Treuhand* is a legal arrangement without legal personality derived from the principle of the autonomy of the contracting parties, typical of the German and Austrian legal systems. According to this scheme, a person (*Treugeber*) transfers certain assets or ownership rights to another person (*Treuhänder*), who is authorised to manage such assets in accordance with the contract between the two parties. Such a contractual relationship can fulfil different functions. Most commonly, as also recognised by the OECD[24], it serves the purpose of an escrow agreement. This suggests that these types of *Treuhand* should not be considered similar to trusts.

However, due to its flexibility, the *Treuhand* can also be structured in such a way as to play a function similar to a trust. This can be the case, for example, of a *Treuhand* used to transfer and manage company shares[25]. The OECD[26] confirmed the AML/CFT relevance of this type of *Treuhand* and noted that it should be subject to transparency obligations as regards beneficial ownership.

The *Treuhand* was not notified by any Member State. Member States pointed to the lack of comparability between the *Treuhand* and a trust, especially given that the *Treuhänder* cannot keep the assets separate from its own patrimony and that the arrangements is most commonly used as an escrow relationship.

Literature indicates that the *Treuhand* presents features similar to trusts, even notwithstanding some structural differences intrinsic to the civil law origin of the *Treuhand*. The common use of *Treuhand* as escrow relationships is also acknowledged. Yet, as noted above, this does not appear the only function that a *Treuhand* can exercice, as it could also serve as for example a private wealth management mechanism.[27] The information above, alongside the fact that both Austria and Germany introduced the obligation for *Treuhand* holding company assets to disclose their beneficial ownership, suggests that *Treuhände* should be considered legal arrangements similar to trusts.

III.2.c Fideicomiso

The *fideicomiso* is among the legal arrangements explicitly identified as being similar to trusts in both FATF standards and the AMLD. This arrangement is most common in Latin America, where it is equivalent to the *inter vivos* common law trust. Given its geographic specificity, this arrangement is not relevant for the EU.

[24] OECD – Global Forum for Transparency and Exchange of Information for Tax Purposes – Peer Review Report on Exchange of Information on Request – Austria 2018

[25] In these cases, both Austria and Germany inserted provisions under their national laws to provide for the disclosure of the parties to the *Treuhand*. For example, the Austrian beneficial ownership register for legal entities provides information on the Treugeber and the Treuhänder when *Treuhand* own more than 25% of a legal entity.

[26] OECD – Global Forum for Transparency and Exchange of Information for Tax Purposes – Peer Review Report on Exchange of Information on Request – Austria and Germany 2018

[27] See Schmidt (2016).

Other legal arrangements in the EU share the same origin of the *fideicomiso* in the Latin *fideicommissum* (e.g. the *fideicommis*, *fedecommesso*, *familienfideikommis*). In most cases, these arrangements have either been abolished or only allow legal guardians to look after the assets of a minor or developmentally disabled person. Literature[28] recognises that these arrangements, where a testator identifies a guardian who will manage certain assets for the benefit of a beneficiary, present structural similarities with common law trusts. They should therefore fall under the scope of Article 31. However, none of these arrangements has been notified by Member States.

On the other hand, in the case of fideicommissary substitution or arrangements such as the residual fideicommissum, the asset recipient is the sole proprietor, and the assets (or the remainder) are passed on to a beneficiary only upon his/her death. In these cases, the person managing the assets can benefit from their property in full, without the limitations that usually characterise a fiduciary agreement. Thus, such an arrangement fails to replicate either the structure or the function of the trust of separating title to, or management of, certain assets from their beneficial ownership. The (possible) residual title to the assets of a further beneficiary has no impact on the arrangement, as it takes effect only upon the first beneficiary's death. Thus, as noted by several Member States, it appears that these arrangements should not be considered similar to trusts.

III.2.d Svěřenský fond

The *svěřenský fond* was notified by the Czech Republic (Section 1448 et seq. of the Czech Civil Code). It is a *sui-generis* legal arrangement that finds no similarities in other EU Member States. Under this legal arrangement, neither the settlor nor the trustee hold a title to the assets. These assets become property without owner, to be managed by the trustee for the benefit of the beneficiaries. Notwithstanding its specificities, this arrangement fulfils the same function of the common law trust of separating legal and beneficial ownership.[29]

III.2.e Funds

EU rules on investment funds are not prescriptive as regards the legal structure that such funds might take. As a result, investment funds might take the form of investment companies, trusts or similar legal arrangements. Investment funds share functional similarities with trusts in that, through these arrangements, the investors relinquish their right of decision over them to a specialised professional.[30] One Member State notified funds that fall under this typology, namely the Netherlands, which reported the *fonds voor gemene rekening* (Article 2 of the Corporate Tax Act of 1969), a specific type of close-ended fund.

Other Member States have opted for specific approaches for investment funds. For example, Luxembourg requires the *fonds communs de placement* and the *sociétés d'investissement à*

[28] Honoré T. (2008) "On Fitting Trusts into Civil Law Jurisdictions", *University of Oxford Legal Research Paper Series*, Paper No 27/2008
[29] See Sandor (2016)
[30] Kulms, R. (2016) "Trusts as Vehicles for Investment", *European Review of Private Law*, 6-2016 (1091–1118)

capital variable to disclose their beneficial ownership under Article 30 of the AMLD. The information available shows that there is no common approach to funds (including pension funds), and that questions remain on how to deal with those funds that take a contractual form.

III.2.f Foundations

Foundations are regarded as the civil law equivalent to a common law trust, as they may be used for similar purposes[31]. The AMLD reflects this equivalence and imposes on foundations the same beneficial ownership requirements as on trusts and similar legal arrangements. However, foundations have legal personality and, as such, they cannot fall under the category of similar legal arrangements to trusts. Only one notification of foundations with legal personality was made, which has since been withdrawn.

Germany notified the *nichtrechtsfähige Stiftungen*, a type of foundation without legal personality, provided that the purpose of such foundations is to serve the interests of the founder, and "*other legal structures which correspond to such foundations in their structure and function*". In the OECD's analysis, the *nichtrechtsfähige Stiftungen*, regardless of their purpose, may be treated as a *Treuhand*. This justifies the notification of this arrangement, although the information available is not sufficient to justify its restriction to cases where the foundation serves the interests of the founder only. The notification of "*other legal structures which correspond to such foundations in their structure and function*" seems too vague to achieve the objective of the AMLD,[32] which is to ensure legal certainty and a level playing field by clearly setting out which legal arrangements established across the Union should be considered similar to trusts.

III.3 Other legal arrangements

Literature identifies also legal arrangements that can be considered similar to trusts by virtue of their structure, such as the guardianship, the curatorship and the administratorship of deceased estates. However, these arrangements have not been notified by Member States.

On the other hand, as acknowledged by the FATF, a number of other arrangements can be used to conceal the relationship between the beneficial owner and the assets,[33] but cannot be considered similar to trusts as regards their structure and function. Examples of such arrangements are:

- *Life insurance contracts* can be regarded as fulfilling a similar function to that of a trust.[34] However, specific provisions concerning these products already exist in the

[31] FATF (October 2006), *The misuse of corporate vehicles, including trust and company service providers*
[32] Recital 29 of Directive (EU) 2018/843
[33] FAFT and Egmont Group (July 2018), *Concealment of Beneficial Ownership*
[34] Ibid

AMLD as well as in the Solvency II Directive,[35] and these contracts should therefore be treated separately.

- *Escrow agreements* are drawn up to determine the details of a transfer of assets procedure. The escrow agent acts as a guarantor for both parties in the transaction and is not, himself, party to it.
- *Nominees* acts on instructions regarding certain assets, on behalf of a beneficial owner. The transfer of assets requires a trust, a similar legal arrangement or civil contract to govern the nominee relationship.
- For other arrangements such as *silent partnerships*, the information available is not conclusive as to whether these should be considered similar to trusts or not.

IV. Submission of legal arrangements to the obligations of the AMLD

Article 31 of the AMLD provides that trustees or persons holding an equivalent position in a similar legal arrangement shall be made subject to a set of obligations concerning the holding and the submission of beneficial ownership information. Regarding the enforcement of such obligations, an overview of the Member States' notifications offers a fragmented picture, which reflects the complexity of identifying and classifying the legal arrangements at hand.

The summary below is based on information collected from Member States prior to the deadline for transposition of the 5th Anti-Money Laundering Directive[36], or shortly after it. These contributions did not always include applicable legal provisions and cannot fully reflect whether Member States have correctly transposed the provisions of Article 31 of the AMLD. Any failure to transpose them correctly by Member States will be dealt with using the appropriate procedures.

Member States which notified that trusts or similar legal arrangements are governed under their law have generally adopted legislation that obliges these arrangements to obtain and hold adequate information on beneficial ownership. In a few Member States, such legislation has not yet entered into force. Such obligations generally fall on the trustee, and, in some cases, it is specified that the information shall include the identity of the participants in the trust in line with Article 31 of the Directive. Most of the above Member States apply the same obligations also to other legal arrangements similar to trusts. In some cases, these arrangements are spelled out (e.g. *fiducies*).

As regards Member States that indicated they do not have any trusts or similar legal arrangement governed under their legal systems, most of them have passed legislation that requires foreign trusts and similar legal arrangements to obtain and report appropriate information on beneficial ownership. In general, the broadness and ambiguity of notifications suggests difficulties in addressing the different types of relevant legal arrangements. In some

[35] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (Text with EEA relevance), OJ L 335, 17.12.2009, p. 1–155.
[36] Directive (EU) 2018/843 (see footnote 1).

cases, information regarding the obligations imposed on foreign trusts is unclear, imprecise (e.g. reference to legal persons instead) or missing.

As regards reported sanctions and other dissuasive measures for failure to obtain and hold adequate information on beneficial ownership, the information shared by Member States shows a fragmented picture. Generally, Member States requiring trusts and similar legal arrangements to obtain beneficial ownership information lay down pecuniary sanctions of an administrative nature (e.g. lump sums, fines calculated per day). The amounts vary considerably (from a few thousand euro to up to one million or more) and can be set or incremented based on different parameters. A minority of Member States also reported sanctions at criminal level, including imprisonment, although it appears unclear whether the information provided actually refers to registration requirements for businesses in general rather than to the submission of beneficial ownership information. Similar considerations apply for measures such as prohibition to operate or removal from the company register. In a few cases, failure to comply with national rules on transparency and registration obligations will lead to the nullity of such arrangements.

Member States that introduced rules obliging trusts and similar legal arrangements to obtain and hold information on beneficial ownership also required them to disclose such information to obliged entities. However, Member States' approaches appear fragmented in this regard. Several Member States reported national legislation that reflects the provisions of Article 31 of the AMLD. In some cases, Member States only indicated that trusts obliged to submit beneficial ownership information are those entering into business activity in the State at hand, without pointing out the aspect of the residence of the trustee, which, thus, remains unclear. Finally, in other cases Member States provided general or inaccurate information that does not address the specific situation of trusts or similar arrangements.

The majority of Member States did not provide sufficient information to form a clear picture on the obligation for trusts resident in another Member State to submit proof of registration when doing business in their territory. In several cases, input on this point was either too general (e.g. it referred to the interconnection of national central beneficial ownership registers, due by March 2021), unclear, missing, or indicating that the relevant legislation has not yet entered into force.

V. Conclusions

There is no conclusive analysis in the international AML/CFT community of what constitutes a similar legal arrangement to a trust. This report provides a first attempt at EU level to analyse legal arrangements that could be considered similar to the common law trust under Member States' law and custom, based on the input by the Member States and analyses produced by the academic world.

The analysis reveals that a wide range of arrangements show similarities with the common law trust in line with the conditions of Article 31 of the AMLD. Legal arrangements such as *Treuhand* or *Fiducie*, on the one hand, can be considered similar to trusts by virtue of their

function, whereas other arrangements such as guardianship, curatorship and administratorship of deceased estates can be considered similar by virtue of their structure.

Member States' notifications under Article 31(10) of the AMLD did not include all the above arrangements, reflecting the lack of a common approach to what features define similarity with the common law trust. These notifications can therefore only provide a first attempt at identifying what similar arrangements to trusts are governed under Member States' law.

At the same time, such absence of a common approach to the identification of arrangements similar to trusts does not ensure legal certainty and a level playing field, and might leave loopholes that allow little known arrangements to be used in money laundering schemes, as has been the case with legal entities.[37] To tackle this problem, the Commission will consider the possibility of setting up an informal working group with academics, practitioners, Financial Intelligence Units and competent authorities in order to identify common objective and consistent criteria for the identification of the relevant legal arrangements governed under their law. Such an exercise could result in the issuance of a technical document.

In addition, a preliminary analysis of the obligations imposed on such legal arrangements by Member States shows that the aim of establishing a consistent monitoring and registration framework might not have been achieved yet.

At the same time, the review reveals that in the area of funds, transparency of beneficial ownership information might vary from one Member State to another based on their legal form. This creates an uneven level of transparency, which might merit being addressed with common specific rules for funds, similarly to what the AMLD already provides for foundations.

[37] https://www.globalwitness.org/en/blog/three-ways-uks-register-real-owners-companies-already-proving-its-worth/