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DON'T TAKE IT ON TRUST

The case for public access to trusts' beneficial ownership information in the EU Anti-Money Laundering Directive

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Trusts provide an unparalleled degree of secrecy, making them an ideal getaway vehicle for money launderers. The European Commission's proposed revision of the Anti-Money Laundering Directive is positive in extending the scope of ownership transparency for companies and some trusts. Yet to be effective these measures need to go further to make sure they do not allow easy escape routes for criminals.

The Panama Papers shone a light on the abuse of corporate secrecy and led to a public outcry for government action that catalysed reforms around the world, including the Commission's proposals. The revelations demonstrated how secrecy facilitates money laundering, tax evasion and the financing of terrorism, with Europol identifying that over 100 names in the papers were connected with "Islamist" terrorism.[1] It is vital that the political momentum from the Panama Papers is not lost and that reforms meet the scale of these challenges.

While the role of companies in facilitating financial secrecy is well documented, often as a result of action by law enforcement or other authorities, the secrecy trusts provide is a major hurdle to law enforcement. This means that the extent of their use is critically underreported.

> "Investigators and prosecutors tend not to bring charges against trusts, because of the difficulty in proving their role in the crime.... As a result, even if trusts holding illicit assets may well have been used in a given case, they may not actually be mentioned in formal charges and court documents, and consequently their misuse goes underreported."
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> **World Bank *Puppet Masters* report on the use of legal structures in corruption cases**[2]

Making beneficial ownership information publicly available should be the cornerstone of the response to these challenges. The creation of public registers of beneficial ownership is rapidly emerging as the new global standard to remove that veil of secrecy. The UK, Nigeria, Kenya, Ghana, Ukraine, the Netherlands, France and many other countries have already committed to or have introduced public company registers. Now the EU should do the same for companies and trusts.

This briefing examines three examples of how trusts are used in EU Member States which illustrate the need to strengthen the European Commission's proposals. This paper shows how:

- A Lichtenstein trust linked to Victor Yanukovych hid who benefitted from the controversial privatisation and secretive multi-million dollar renovation of Ukraine's presidential palace.
- A Brunei prince who stole billions from his country may have prevented an exclusive London property from being rightfully returned to Brunei using a Jersey trust to hide his ownership.
- European politicians have sought to use trusts to keep their business interests secret from their constituents and the public.

SUMMARY & RECOMMENDATIONS

Trusts should be included in registers where they have a connection to a Member State, not just when they are administered there, including where the settlor or beneficiary is resident in a Member State, or where the trust owns shares in a company or property in a Member State. This would remove a major loophole and significantly increase the scope of coverage.

Proposals for a 'legitimate interest' test for access to beneficial ownership information do not work and should not be included. They allow some Member States to deny access to parties that should have access such as journalists or NGOs, create an uneven regulatory playing field and undermine the proposal for the interconnection of registries.

Trusts' beneficial ownership information should be made public to support the work of law enforcement, to deter money laundering, to support non-EU countries in tackling corruption and to improve data quality. **Publishing trusts' beneficial ownership information is legitimate and proportional** to its impacts on citizens' right to privacy and to family life.

The identities of all parties to a trust should be disclosed as beneficial owners, including the settlor, trustee, protector and beneficiary or class of beneficiaries.

Beneficial ownership should be published as open data, in a machine-readable format without charge for accessing records, to allow systematic data analysis.

Exemptions for disclosing the identities of "minors or people otherwise incapable" should be removed, as these provide a loophole that could be exploited.

GLOSSARY

Trust – a legal arrangement where an individual, the *settlor*, divests assets to be managed by a *trustee*, for the benefit of another individual or individuals, the *beneficiaries*.

Settlor – also known as a grantor or trustor, establishes and transfers assets into a trust.

Trustee – administers and manages the assets of the trust for the benefit of the trusts' beneficiaries, as set out in the terms of any trust deed.

Protector – protects the interests or wishes of the settlor, providing influence and guidance to the trustee. Not all trusts have a protector.

Beneficiary – receives the benefits of the asset held in trust, including the use of assets held in trust, receiving an income from the trust assets, or receiving the assets at a specified date.

Beneficial owner - the individual(s) who ultimately own or control a trust and/or the individual on whose behalf a transaction is being conducted. It also includes individuals who exercise ultimate effective control over a trust.

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WHY TRUSTS MATTER

The current EU Anti-Money Laundering Directive recognises that flows of illicit money can damage the integrity, stability and reputation of the financial sector, threaten the internal market and international development.[3] These are very real concerns.

Money laundering enables corruption that deprives governments of money that could be spent on public services like healthcare and education. It undermines public trust in governments and institutions – a level of trust that is falling and can lead to the rise of populist movements and political instability. Corruption increases conflict and perpetuates poverty, enriching an elite class while leaving the rest of the population behind. This contributes to a situation where people in poorer countries are willing to take huge risks to flee to places such as the EU in search of a better life.

Corruption and money laundering are also key facilitators of refugee smuggling and people trafficking, two of the fastest growing and most lucrative international criminal activities.[4] The proceeds of these crimes can also be used to finance terrorism, with terrorist groups increasingly turning to these forms of organised crime to fund their activities.[5]

Financial secrecy is a huge enabler of large-scale corruption. In a World Bank study of over 200 large-scale corruption cases over 30 years, nearly 70% of them relied on opaque corporate structures, such as trusts and anonymously owned companies.[6] It is for this reason public registers of beneficial ownership for all EU companies must be introduced.[7]

Yet when individuals are trying to create financial secrecy to hide their ownership of assets, trusts are often used as the final step in a complex chain of shell companies – the ultimate entity that preserves their secrecy and protects their assets.

Trusts provide unparalleled secrecy, allowing individuals to disguise the ownership of assets while still benefitting from them. This creates huge legal barriers to creditors or anyone else seeking to make a claim against these assets. These features are significant additions to the simple anonymity that can be achieved by setting up an anonymous shell company. This secrecy is what makes them such effective tools for money launderers, the corrupt and terrorist financers.

> Trusts often constitute the final layer of anonymity for those seeking to conceal their identity."
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> **OECD - *Behind the Corporate Veil*[8]**

One rationale provided for the secrecy that trusts enjoy is that they exist to hold and distribute assets to third parties, such as children or vulnerable people. Yet as this paper demonstrates, all too often trusts can simply be elaborate structures for the benefit of the individuals establishing them.

HOW TRUSTS ARE USED TO HIDE IDENTITIES AND WEALTH

The degree of secrecy provided by trusts means that there are very few examples in the public domain that show how trusts are used to hide identities and wealth, despite it being widely recognised that trusts are frequently used to do this.

The following rare examples, drawn from the Panama Papers and documents revealed after the Ukrainian revolution, show how trusts connected to the EU are used and the problems they can create.

DISGUISING THE OWNER OF YANUKOVYCH'S PALACE

The Mezhyhirya mansion and estate, former President Victor Yanukovych's home for over a decade, has become a symbol of endemic corruption in Ukraine. By the time Yanukovych fled Ukraine after the 2014 revolution, the estate included a 5-story palace, two 3-story guest houses, a golf course, a yacht club, a helicopter pad and a racetrack with horse stables.[9]

Yanukovych is currently wanted in Ukraine to face accusations of having cost the country up to $100 billion, including allegedly taking $32 billion out of the country in truckloads of cash during his final days in power, allegations which he denies.[10] In comparison, at that time Ukraine's external debt was $131 billion.[11]

Mezhyhirya was privatised during Victor Yanukovych's second term as Prime Minister, four years after he first moved into the property.[12] In a non-competitive bidding process that has been called a 'murky chain of operations',[13] it was sold to a company called MedInvest Trade for an undisclosed sum.[14]

Mezhyhirya - Victor Yanukovych's personal residence whose ultimate owner was obscured by a Lichtenstein trust. Photo: Jeff Miccolis.

The property was then quickly sold on to another company - Tantalit - run by Yanukovych's family lawyer, Pavlo Lytovchenko.[15] Tantalit is in turn 99.97% owned by an Austrian company, Euro East Beteiligungs, which is owned by a UK company, Blythe Europe.[16] This UK company is wholly owned by P&A Corporate Services Trust, a trust administered in Liechtenstein.

Austrian national Reinhard Proksch serves both as trustee of the Lichtenstein trust and director of the UK company. Due to its secretive nature, no further details about the settlor or beneficiaries of the trust are disclosed.

After Yanukovych became President, the previous Soviet-era buildings on the property were destroyed, and new opulent construction work was undertaken.[17] In just 18 months nearly $9.5 million was spent on fittings for the building, including a $100,000 chandelier.[18]

Yanukovych has admitted to owning the main mansion property, but denied owning the vast grounds around the palace. [19] He claimed that someone else owned the surrounding lands who funded the mansion's development.

In September 2013, Blythe Europe sold Tantalit for a reported €13.32 million to Sergei Klyuyev, a member of Yanukovych's party with business ties to Yanukovych.[20] This sale came just two months before Yanukovych abandoned a proposed association agreement with the EU in favour of closer ties with Russia. This decision sparked the Euromaidan wave of protests that ultimately led to Yanukovych's downfall. It was only after Yanukovych fled the country that the details of the ownership chain were confirmed when Ukrainian NGOs and journalists recovered and analysed hundreds of folders of documents dumped in the lake behind the palace.

Despite these revelations, Yanukovych's role and connections to the trust, and the identities of the individuals that have benefited from the controversial privatisation and lavish renovations of the compound, remain shrouded in the secrecy provided by the Lichtenstein trust.

PROTECTING THE MAN WHO STOLE BILLIONS FROM BRUNEI

While Prince Jefri Bolkiah was the Finance Minister of Brunei and the chair of its sovereign wealth fund, the Brunei Investment Agency (BIA) he siphoned $14.8 billion out of the fund into his personal bank accounts.[21]

At the same time he undertook a massive international spending spree, buying more than 500 properties, thousands of cars, antique paintings, five boats and nine aircraft including a private Boeing 747.[22] After an extensive investigation, the BIA reached an out of court settlement with Prince Jefri in May 2000 in which he agreed to return over 70 of these properties including his London residence in Regents Park – which was the most expensive house in the UK when he bought it.[23]

Documents released through the Panama Papers revealed that while the BIA was attempting to trace and recover its lost funds from Prince Jefri, he set up an offshore company, held through a secretive Jersey based trust, to purchase commercial property in London's exclusive Mayfair.

St John's Lodge in Regent's Park, London. The most expensive house in the UK when bought by Prince Jefri, later returned to the Brunei Investment Agency.

Prince Jefri established the trust, PJ Settlement, with Coutts & Co Jersey acting as trustees. The beneficiaries were Prince Jefri, his wife Princess Norhayati and "the issue of Prince Jefri and the issue of the parents of Prince Jefri", Prince Jefri's descendants and parent's descendants.[24]

The assets of the trust consisted of a Swiss bank account with Coutts & Co,[25] a secretive Jersey company called Chine,[26] and Taurus Estates, a British Virgin Islands registered company. Taurus Estates was established in September 1999 and owns "a commercial property in London that is rented out, and 7 residential apartments in London".[27] Only one property can be identified in the UK Land Registry database, comprising six floors of a building at 5-7 Dover Street. This property, located a stone's throw from the Ritz Hotel, was purchased in November 1999.[28] It has not yet come to light when Prince Jefri set up the trust.

It appears that these arrangements were set up to hide his assets from the BIA in its efforts to return his ill-gotten wealth, given that the timing of the purchase coincided with the BIA's investigation and the secrecy of the trust structure used. If that was the case, it appears to have been successful.

Throughout Prince Jefri's court disputes related to the BIA, his ownership of the Dover Street property does not appear to have been disclosed and as of 2016 the Dover Street property is still listed as belonging to Taurus Estates.[29] It is not clear whether the property was included in the scope of the out of court settlement with the BIA.[30]

The structure of the trust itself is also self-serving, with Prince Jefri as both the settlor and a beneficiary of the trust's assets. Whereas the apparent purpose of a trust is to divest the ownership of assets for the benefit of a third party, this arrangement instead fails to create a meaningful separation between the settlor and the assets – a form of trust known as a 'self-settled' trust.[31] It is also notable that the beneficiaries include Jefri's elder brother, the Sultan, who could also have benefitted from the arrangement.

Prince Jefri's lawyer did not respond directly to the allegation that he deliberately concealed an asset in an offshore trust, but instead told The Guardian: "The proceedings between the Brunei Investment Agency and HRH Prince Jefri Bolkiah came to an end in 2014 when the Investment Agency acknowledged that he had complied with all the terms of the settlement agreement made in 2000."[32]

HIDING POLITICIANS' BUSINESS INTERESTS

Trusts can also be used by senior political figures to keep business interests secret. This can be seen in the cases of the trusts established by Maltese politicians Konrad Mizzi, formerly Minister of Energy and Health, now Minister without portfolio, and Keith Schembri, Chief of Staff in the Prime Minister's office.

Mizzi and Schembri both established New Zealand trusts in June 2015 with Orion Trust,

the New Zealand arm of Mossack Fonseca, serving as trustees.[33] Both trusts have features that are self-serving for the settlors, failing to meet the apparent purpose of trusts to hold assets for the benefit of a third party:

- Rotorua Trust, established by Mizzi, is a 'revocable' trust. This means that while Mizzi's wife and children are the beneficiaries, Mizzi can revoke the trust and take back the assets at any time.[34] This undermines a core principle of trusts, that the assets are fully divested by the settlor into the trust.[35]

- Haast Trust, established by Schembri, is a 'self-settled' trust.[36] This means that Schembri is both the settlor and beneficiary, undermining the intended separation between the settlor and beneficiaries of the trust.[37]

Mizzi declared his interest in the trust and a shell company it owned in February 2016 ahead of his election as Deputy Leader of the Maltese Labour Party. He said that the trust held no assets or bank accounts but that it "may be used in the future to hold my existing property [a property in London] and possibly investments".[38]

Mizzi did not expand on what the prospective future investments might have been. However, an email uncovered in the Panama Papers showed that Mizzi and Schembri's accountant told Mossack Fonseca that they intended to enter into a joint venture. The accountant added that companies owned by the trusts would act as a "vehicle of [sic] extracting the profits from this venture, since from [a] commercially sensitive perspective they cannot appear as direct shareholders, either personally or via holding entities."[39]

Why Mizzi and Schembri were so keen to ensure that they did not appear as shareholders is unclear. As their accountant made clear in his emails to Mossack Fonseca; "I want to stress the fact that, under our legislation, PEPs [politically exposed persons – referring to Mizzi and Schembri] are openly allowed to hold shareholdings in other businesses."[40] Given that they were openly allowed to hold these shareholdings, the use of trusts to disguise their ownership raises questions about what commercial activities they intended to undertake – and why they would need such secrecy.

Orion Trust, Mossack Fonseca's New Zealand arm, served as trustees to Mizzi and Schembri's New Zealand Trusts.

Schembri issued a statement in May 2016 after the Panama Papers revelations confirming his trust interest but denying that he entered a joint venture with Mizzi or that the company owned by the trust had ever traded.[41]

Mizzi said in the aftermath of the Panama Papers publicity that he would close down the shell company at the earliest opportunity, but defended his use of the trust on the basis that "...the structure was always intended as a family trust for assets and investments". Mizzi also voluntarily submitted to an international asset tax audit.

WHY ALL TRUSTS CONNECTED TO THE EU NEED TO BE INCLUDED

In its current form the European Commission's proposals falls short of addressing the contribution EU-linked trusts make to the problems of money laundering and corruption. The Commission's proposal to only include trusts "administered" in a Member State within national registers would help ensure that EU resident trustees are not engaged in laundering money. However the proposals would do little to prevent EU citizens establishing or benefiting from trusts used in money laundering or legal entities or property within the EU being held by trusts used in money laundering.

All of the examples given above have a connection to a Member State, but none would be included in the registries under the Commission's proposals as they are not administered in the EU:

- Prince Jefri Bolkiah's PJ Settlement Trust held property in a Member State, which could have been bought with corruptly acquired funds, potentially preventing its rightful return. The trust was administered in Jersey.

- Victor Yanukovych-linked P&A Corporate Services Trust used Member State incorporated companies as part of the ownership chain for potentially corruptly acquired assets, using the trust to disguise the true owners and beneficiaries. The trust was administered in Lichtenstein.

- Mizzi & Schembri's Rotorua and Haast Trusts were established by EU citizens, with the intention of holding EU assets (the London property) and for undertaking commercial activities, potentially within the EU. The trust was administered in New Zealand.

The Commission's proposed approach also risks creating a major loophole within the registries. It would be easy for anyone seeking to preserve their secrecy to relocate the administration of their trust outside of the EU. Some trusts also have 'flee clauses' built in, meaning that if efforts are made to disclose parties to the trust, it would automatically transfer the trust's administration to another jurisdiction. As a result, the registers could end up containing only details of those who have nothing to hide, while allowing an easy escape route for criminals or money launderers.

In order to be effective in tackling money laundering the scope of trusts to be included in the national registers should be significantly increased. The national registers should include trusts where:

- Any of the settlor(s), trustee(s), protector(s) (if any), beneficiaries or class of beneficiaries, or any other natural persons exercising effective control over that trust, reside in that Member State;

- The assets of the trust include real estate, property or land within that Member State;

- The trust holds shares, voting rights or an ownership interest in a legal entity incorporated in that Member State; or where

- The trust operates a bank account in that Member State.

Such an approach would be far more effective in achieving the aims of the Directive and far less easy to evade than the Commission's proposals. This could also make the proposed Directive more relevant and easier to implement for Member States

that do not recognise trusts in domestic law, and therefore do not have trusts administered there.

This approach could potentially lead to the same trust being registered in more than one Member State; for example where the settlor is resident in one Member State and the trustee in another. Any potential for duplicate reporting would be easily resolved through the proposed interconnection of registers through the European Central Platform. For example, this could allow a trustee to provide one report on a trust in one Member State which would then appear in each relevant Member State's register.

WHY TRUSTS' BENEFICIAL OWNERSHIP INFORMATION SHOULD BE MADE PUBLIC

PUBLIC ACCESS IS NECESSARY

To support law enforcement. Making information available to the public, including civil society and journalists, can have a significant benefit on the detection and prosecution of money laundering and financial crime. For example the Panama Papers disclosures, based on documents leaked to the media, have resulted in over 150 inquiries, audits or investigations in 79 countries, including investigations into more than 6,500 taxpayers and companies. These investigations have already recovered over $110 million in unpaid taxes or asset seizures.[42]

Additionally, research undertaken by Global Witness has also contributed to corruption investigations by regulators and law enforcement, including:

- Italian prosecutors requesting the trial of Shell, Eni, company executives and Nigerian officials for corruption offences over a $1.1 billion oil deal.[43] This followed Global Witness's 2012 report showing that the oil companies knew the money for the deal would go to a company owned by a former oil minister rather than the Nigerian government.[44]

- Investigations by US, Swiss, Guinea and Israeli authorities into bribery allegations over one of the world's largest iron more mines, located in Guinea. These investigations followed revelations by Global Witness over the granting of the mining rights, which BSGR - a Guernsey-based mining company - paid nothing for but sold half its rights two years later for $2.5 billion.[45]

- US hedge fund OchZiff being fined $413 million after pleading guilty to corruption charges related to a series of sales of oil and mining rights in the Democratic Republic of Congo, and an ongoing UK Serious Fraud Office inquiry into the involvement of UK-listed ENRC in the case. These investigations came in part after Global Witness exposed the corruption risk associated with the six mining and oil deals concerned that lost the country $1.5 billion.[46]

To act as a deterrent. The objectives of the Directive are not only to detect and investigate money laundering, but to prevent it from occurring. Publishing beneficial ownership information is a powerful deterrent to would-be money launderers, as recognised by organisations such as the Open Government Partnership and PwC.[47]

To support non-EU countries in tackling corruption. Making beneficial ownership information publicly available is the simplest, fastest and most effective way of allowing access to authorities and civil society groups in non-EU countries. In the examples provided, authorities and civil

society in Brunei and Ukraine have a clear interest in accessing beneficial ownership information from EU Member States. Putting in place administrative hurdles to request access to this data for often under-resourced authorities, particularly in poorer countries, would undermine international efforts to tackle money laundering and corruption.

To improve data quality. In order to be effective, registers of beneficial ownership must contain accurate data. Making the data publicly available can greatly enhance accuracy by allowing members of the public and civil society to review and report errors in the data. In the case of the UK public company registry, the UK's Companies House confirmed that within the first six months they were following up on multiple contacts from the public highlighting inaccuracies in the data.[48]

Publishing the data as open data allows civil society to systematically analyse the data, identifying potential non-compliance as well as cross-checking against other existing data sets. Open data is data that is free to access, in a machine readable format, that can be freely used, modified, and shared by anyone for any purpose.[49] An analysis of the UK registry led by Global Witness found that out of the 1.3 million companies that had filed beneficial ownership information:[50]

- Almost 3,000 companies listed their beneficial owner as a company with a tax haven address - something that is not allowed under the rules.

- 76 beneficial owners share the same name and birthday as someone on the U.S. sanctions list.

- Only 2% of companies reported struggling to identify a beneficial owner or collect the correct information.

Such analysis is only possible if the data is publicly available and provided in an open data format, without financial costs for accessing records.

Data scientists analysing the UK company registry at Global Witness's Data Dive. Photo: Briony Campbell.

PUBLIC ACCESS IS PROPORTIONATE

Respecting the right to privacy

Concerns have been raised that making trusts' beneficial ownership information could be detrimental to EU citizen's rights to private and family life and to protection of personal data. These are serious concerns that need to be considered carefully as part of any proposed register. Yet as Article 52 of the EU Charter of Fundamental Rights makes clear, these rights can be limited, as long as those limitations are proportionate and necessary to meet an objective of general interest.

As set out above, making trusts' beneficial ownership public is necessary to achieve the legitimate aims of the Directive.

The Commission's proposals also limit disclosure to information that is essential for the purposes of the Directive. The only information that would be made public would be the name, month and year of birth, nationality and country of residence.

Notably, this differs significantly from the French trust registry which was declared unconstitutional by the French constitutional court, which required the exact date and place of birth to be made public. The more limited information required by the Commission's proposals will have less impact on the rights to privacy and family life, while meeting the aims of the objectives.

In addition the Commission's proposal would allow discretionary trusts to report the class of beneficiaries in whose interest the trust operates, rather than the identities of each individual beneficiary, unlike the French system.[51] As the name suggests, discretionary trusts allow the trustee discretion over who receives income or assets from a trust within a pre-defined group or class of beneficiaries set out in the trust deed. Therefore discretionary trusts set up for the benefit of members of a family would only have to report that the beneficiaries were members of the family, rather than having to detail the identities of each beneficiary family member.

Safeguarding those at risk

The introduction of effective safeguards is also a vital part of the proposals to ensure protection of these rights. The Commission's proposals include provision for exemptions from disclosure, on a case-by-case basis, where that disclosure would expose the beneficial owner to the risk of "fraud, kidnapping, blackmail, violence or intimidation". While such safeguards are vital, the experience from the UK shows that the scope and need for such safeguards is limited. Of over one million companies that had provided beneficial ownership information, only 270 individuals applied to have their information withheld on the basis that it would put them at risk, and of these only 5 had been granted.[52]

The proposal to allow exemptions from disclosure where the beneficial owner is a "minor or otherwise incapable" should however be removed, as this allows an easy loophole for criminals and money launderers to exploit family members to hide their identities. Should minors or persons otherwise incapable be at risk from disclosure, they would still benefit from access to the safeguards mentioned above.

NO EXCEPTION FOR FAMILY TRUSTS

It is widely recognised that the proceeds and benefits of corruption and crime are often distributed amongst family members, whether for their ultimate long term benefit or to make assets harder to trace. Taking just a few high profile examples, it is clear that family members benefitting from corruption is very common:

- In Equatorial Guinea, President Teodoro Obiang's son is accused of spending more than $300 million stolen from his country on luxury goods, sports cars, houses and a $38 million private jet.[53]

- In Gabon, former President Omar Bongo's children have benefitted extensively, and fought publicly, over the hundreds of millions of dollars and extensive property holdings built up by their father at the expense of the country.[54]

- In Nigeria, the children and family members of dictator General Sani Abacha are accused of being central to and beneficiaries of the $4.3 billion he is alleged by the Nigerian government to have stolen during his five years in office.[55]

It is for this reason that the Financial Action Taskforce (FATF) money laundering guidance recommends enhanced scrutiny for family members of politically exposed persons (PEPs).[56] Therefore there should not be any exclusion for trusts that are defined as either being for the benefit of family members or for inheritance purposes. Doing so would ignore the long-established trend of criminals and the corrupt ensuring their own family members are the key beneficiaries of their ill-gotten gains.

'LEGITIMATE INTEREST' DOES NOT WORK

The test of requiring parties to have a 'legitimate interest' in order to access beneficial ownership information was first introduced in the Fourth Anti-Money Laundering Directive in relation to company registries. The Commission has proposed that this test be used for accessing the beneficial ownership information of trusts where the trustee is not paid for their role. However the experience of Member States in implementing the Fourth Directive demonstrates that it is unworkable and would lead to serious problems if adopted in the current revision.

Firstly, many Member States such as the UK, Netherlands and Denmark have already abandoned the 'legitimate interest' test and have introduced or committed to introduce public registers of companies' beneficial owners. However some other Member States' have introduced significantly more restrictive systems, such as:

- The Czech Republic, which has been criticised for potentially preventing access to data by relevant NGOs.[57]

- Latvia, which proposes only to allow access to "persons who have an obligation under the law to carry out State administration tasks", rather than all of those with a legitimate interest in tackling money laundering.[58]

- Italy, which would only allow access to parties that are engaged in an ongoing legal process to access the beneficial ownership information of that company.[59]

While these proposals not only fail to meet the requirements of the Fourth Directive, they also create a hugely uneven regulatory environment across Member States.

Such an uneven regulatory environment would also make the proposed interconnection of Member States' registers unworkable. It would not be feasible for all Member States to keep track of the different legitimate interest tests used across other Member States, if the interconnection is to allow "the public to access EU-wide the beneficial ownership information" as set out by the Directive.

To remove administrative hurdles, enable access to relevant NGOs and journalists, and to create a harmonised regulatory environment with effective interconnection of registers, all Member States should be required to make trusts' beneficial ownership information public.

ALL PARTIES IDENTITIES SHOULD BE MADE PUBLIC

Trusts function as holding vehicles for the flow of assets from one individual to another individual or group of individuals. It is this function of shifting of ownership of assets, combined with their secrecy and separation of legal ownership from the individuals concerned, that make them so attractive for corruption and money laundering.

Therefore, to be effective in preventing, detecting and investigating money

laundering the identities of all parties to the trust should be disclosed as beneficial owners, including:

- Settlor – to identify the origins of the trust's assets.
- Trustee – to identify who currently controls and manages the trust's assets, though often this person will be a nominee.
- Protector – or other exercising control, as above
- Beneficiary or class of beneficiaries – to identify who is or will ultimately benefit from the assets held by the trust.

Using the example of Prince Jefri's trust, the settlor details are needed to identify that the funds came from Prince Jefri and therefore could be connected back to the misappropriated funds from the Brunei sovereign wealth fund. The trustee details indicate who currently controls the trust; the nominees provided by Coutts & Co. The beneficiary details reveal that the trust operated for the benefit of Prince Jefri himself and exposed the connection to his brother, the Sultan, whose connection to the trust's assets would otherwise remain secret.

CONCLUSION

The secrecy trusts provide makes them hugely effective tools for money launderers, the corrupt and terrorist financers. To be effective in tackling these crimes the Anti-Money Laundering Directive must ensure they cannot be abused to these ends, which means ensuring that the identities of the beneficial owners of all trusts with a connection to EU Member States are made public.

The momentum generated by the Panama Papers and the subsequent public outcry must not be lost. This revision is a unique opportunity to tackle the corruption and money laundering that fuels instability, perpetuates poverty and facilitates refugee smuggling and terrorist financing. The European Union must not miss this opportunity to shine a light on trusts and prevent their abuse for the benefit of criminals and the corrupt.

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REFERENCES

This paper refers to express trusts – where trusts are intentionally created, usually in writing. The term trusts is used to refer to all legal arrangements with such trust-like features, such as fiducie, Treuhand or fideicomiso.

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[1] Riondet, S. (2016) *Panama Papers Committee 14 November 2016 – Speaking Notes*. Available at http://guengl-panamapapers.eu/background-panama-papers-committee-14-november-2016-hearing/

[2] van der Does de Willebois, E. et al. (2011) *The Puppet Masters - How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It.* World Bank. https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf p.46

[3] Official Journal of the European Union (2015) *Directive (EU) 2015/849* [Fourth Anti-Money Laundering Directive] p1 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_141_R_0003&from=ES

[4] OECD (2015) *Corruption and the smuggling of refugees.* https://www.oecd.org/corruption/Corruption-and-the-smuggling-of-refugees.pdf

[5] OECD (2015) *Corruption and the smuggling of refugees.*

[6] van der Does de Willebois, E. et al. (2011) *The Puppet Masters - How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It.* World Bank.

[7] For further information on the case for public registers of companies' beneficial owners see: Global Witness (2014) *Poverty, Corruption and Anonymous Companies* https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/poverty-corruption-and-anonymous-companies/

[8] OECD (2011) *Behind the Corporate Veil.* https://www.oecd.org/corporate/ca/43703185.pdf

[9] Anti-Corruption Action Centre (2013) *Yanukovych Assets.* http://yanukovich.info/victor-yanukovych-assets/

[10] Faulconbridge, G., Dabrowska, A. & Grey, S. (2014) *Toppled 'mafia' president cost Ukraine up to $100 billion, prosecutor*

says. Reuters. 30 April. http://www.reuters.com/article/us-ukraine-crisis-yanukovich-idUSBREA3T0K820140430

[11] World Bank (2017) World Data Bank – Ukraine: External debt stocks, total (DOD, current US$) 2014. World DataBank.

[12] Anti-Corruption Action Centre (2013) *Yanukovych Assets.*

[13] Senyk, H. (2013) *Why Yanukovych Could Never Sign an EU deal.* Kyiv Post. 5 December. https://www.kyivpost.com/article/opinion/op-ed/why-yanukovych-could-never-sign-an-eu-deal-333115.html

[14] Tuchynska, S. (2010) *Ukrayinska Pravda exposes president's Mezhygirya deal*. Kyiv Post. 6 May. https://www.kyivpost.com/article/content/ukraine-politics/ukrayinska-pravda-exposes-presidents-mezhygirya-de-66006.html

See also Sharpe, R. (2014) *Anonymous UK Company Owned Viktor Yanukovych's Presidential Palace Compound*. Global Witness. https://www.globalwitness.org/en/blog/anonymous-uk-company-owned-truncated/

[15] For example, Lytovcheko prepared Yanukovych's youngest son Viktor's parliamentary wealth declaration forms in 2011. See: Leshchenko, S. (2011) *Mezhyhirya Secrets: New Janukovych luxury.* Ukrayinska Pravda. 8 June. http://www.pravda.com.ua/articles/2011/06/8/6279818/

Anti-Corruption Action Centre (2013) *Dr. Reinhard Proksch.* http://yanukovich.info/dr-reinhard-proksch/

[16] Austrian company register records for EURO EAST Beteiligungs GmbH – 10/06/2011 & 15/12/2016.

Companies House (2013) *Blythe Europe – Annual Return.* 12/06/2013.

[17] Leshchenko, S. (2012) *Yanukovych, the luxury residence and the money trail that leads to London.* Open Democracy. 8 June. https://www.opendemocracy.net/od-russia/serhij-leschenko/yanukovych-luxury-residence-and-money-trail-that-leads-to-london

[18] Leshchenko, S. (2012) *Yanukovych, the luxury residence and the money trail that leads to London.* Open Democracy. 8 June.

[19] M.V. (2014) *Ukraine's stolen assets: A long, hard slog*. The Economist. 5 March. http://www.economist.com/blogs/easternapproaches/2014/03/ukraine-s-stolen-assets & Tuchynska, S. (2010) *Ukrayinska Pravda exposes president's Mezhygirya deal*. Kyiv Post. 6 May. https://www.kyivpost.com/article/content/ukraine-politics/ukrayinska-pravda-exposes-presidents-mezhygirya-de-66006.html

[20] Anti-Corruption Action Centre (2013) *Dr. Reinhard Proksch.*

[21] Privy Council (2007) Judgment Of The Lords Of The Judicial Committee Of The Privy Council - His Royal Highness Prince Jefri Bolkiah and Others v. The State of Brunei Darussalam & Brunei Investment Agency. *Privy Council Appeal No 69 Of 2006.* http://www.bailii.org/uk/cases/UKPC/2007/63.html

[22] Faull, L. (2016) *Revealed: Coutts managed tax haven firms for controversial clients.* The Guardian. 1 December. https://www.theguardian.com/world/2016/dec/01/revealed-coutts-bank-managed-tax-havens-high-risk-clients-jefri-bolkiah-brunei-panama-papers ,

Hosenball, M. (2010) *Special Report: A prince, a sultan, diamonds and a lawsuit.* Reuters. 4 November. http://www.reuters.com/article/us-brunei-usa-diamonds-idUSTRE6A33VQ20101104

[23] Privy Council (2007) Judgment Of The Lords Of The Judicial Committee Of The Privy Council - His Royal Highness Prince Jefri Bolkiah and Others v. The State of Brunei Darussalam & Brunei Investment Agency. *Privy Council Appeal No 69 Of 2006.* &
Spackman, A. (1994) *Sultan pays record £40m for park lodge*. Independent. 15 December. http://www.independent.co.uk/news/uk/sultan-pays-record-16340m-for-park-lodge-1389612.html

[24] Coutts & Co. *Disclosure to Mossack Fonseca re. Taurus Estatates.*

[25] Coutts & Co. *Disclosure to Mossack Fonseca re. Taurus Estatates.*

[26] Chine Limited, managed by nominees provided by Coutts & Co Jersey. Jersey Financial Services Commission (2014) *Chine Limited Annual Return 2014*. Accessed via JFSC Companies Registry. https://www.jerseyfsc.org/registry/documentSearch/NameDetail.aspx?Id=23473

[27] ICIJ (2016) *Taurus Estates.* Available at https://offshoreleaks.icij.org/nodes/10079528 . Accessed December 2016. & Coutts & Co. *Disclosure to Mossack Fonseca re. Taurus Estates.*

[28] UK Land Registry (2016) *5-7 Dover Street, TITLE NUMBER: NGL313238.* Accessed November 2016.

[29] UK Land Registry (2016) *5-7 Dover Street, TITLE NUMBER: NGL313238.* Accessed November 2016.

[30] See, for example, the 2007 judgment in which the Privy Council dismissed Prince Jefri's appeal with costs, ordering him to hand over billions of pounds of assets including homes and hotels to the BIA.

[31] Knobel, A. (2017) *Trusts: Weapons of Mass Injustice*. Tax Justice Network. http://www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf

[32] Faull, L. (2016) *Revealed: Coutts managed tax haven firms for controversial clients.* The Guardian. 1 December. https://www.theguardian.com/world/2016/dec/01/revealed-coutts-bank-managed-tax-havens-high-risk-clients-jefri-bolkiah-brunei-panama-papers

[33] Chenoweth, N. (2016) *The Panama Papers: Malta's leaders turned to Mossack Fonseca five days after election*. Australian Financial Review. 10 April: http://www.afr.com/news/policy/tax/the-panama-papers-maltas-leaders-turned-to-mossack-fonseca-five-days-after-election-20160410-go2ruw

[34] Due diligence questionnaire for Rotorua Trust. & Galizia, D.C. (2016)*Konrad Mizzi's wife and children used diplomatic passport numbers to set up secret trust.* daphnecaruanagalizia.com, published 23 May 2016**:** http://daphnecaruanagalizia.com/2016/05/82438/

[35] Knobel, A. (2017) *Trusts: Weapons of Mass Injustice*. Tax Justice Network.

[36] Galizia, D.C. (2016) *Konrad Mizzi and PM's chief of staff Keith Schembri have exactly the same asset-concealing structures in blacklisted Panama.* daphnecaruanagalizia.com, published 27 February:

http://daphnecaruanagalizia.com/2016/02/breaking-now-konrad-mizzi-keith-schembri-the-deal-in-baku-and-why-youre-paying-so-much-for-your-fuel/

[37] Knobel, A. (2017) *Trusts: Weapons of Mass Injustice*. Tax Justice Network.

[38] Vella, M. (2016) *Konrad Mizzi to declare New Zealand family trust*. Malta Today. published 24 February: http://www.maltatoday.com.mt/news/national/62554/konrad_mizzi_to_declare_new_zealand_family_trust

[39] Borg, J. (2016) *Konrad Mizzi had "personal revenue" of €6.4m before he became minister.* Times of Malta. 19 May: http://www.timesofmalta.com/articles/view/20160519/local/konrad-mizzi-had-personal-revenue-of-64m-before-he-became-minister-but.612538

[40] Borg, J. (2016) *Konrad Mizzi had "personal revenue" of €6.4m before he became minister.* Times of Malta. 19 May:

[41] Lindsay, D. & Orland, K.S. (2016) *$725,000 transferred into PM's Chief of Staff BVI company in 2014; Schembri denies*. Malta Independent. 15 May. http://www.independent.com.mt/articles/2016-05-15/local-news/Three-quarters-of-a-million-transferred-into-PM-s-Chief-of-Staff-BVI-company-in-2014-alone-6736157861

[42] Fitzgibbon, W. & Diaz-Struck, E. (2016) *Panama Papers Have Had Historic Global Effects — and the Impacts Keep Coming.* ICIJ. 1 December. https://panamapapers.icij.org/20161201-global-impact.html

[43] Global Witness (2017) *Italian Prosecutors Prove Nobody Above The Law As They Request Trial Of Shell, Eni, Senior Executives And Former Nigerian Official For International Corruption Over OPL 245 Deal.* https://www.globalwitness.org/en/press-releases/italian-prosecutors-prove-nobody-above-law-they-request-trial-shell-eni-senior-executives-and-former-nigerian-official-international-corruption-over-opl-245-deal/

[44] Global Witness (2017) *Nowhere To Hide: Prosecutors Turn Up The Heat On Oil Execs At Heart Of Corruption Scandal.* https://www.globalwitness.org/en/blog/nowhere-hide-prosecutors-turn-heat-oil-execs-heart-corruption-scandal/

[45] Global Witness (2016) *Israeli Police Arrest Beny Steinmetz Over Massive Guinea Bribery Case.* https://www.globalwitness.org/en/press-releases/israeli-police-arrest-beny-steinmetz-over-massive-guinea-bribery-case/

[46] Global Witness (2016) *Hedge Fund To Pay $413m For Bribery Case In Major Step Forward In Corruption Fight – Global Witness Response.* https://www.globalwitness.org/en/press-releases/fine-hedge-fund-bribery-major-step-forward-corruption-fight/ & Global Witness (2016) *'Blockbuster' funding for UK investigation is a step towards justice in Congo's secretive mining sales scandal.* https://www.globalwitness.org/en/blog/blockbuster-funding-uk-investigation-step-towards-justice-congos-secretive-mining-sales-scandal/

[47] Open Government Partnership, Natural Resource Governance Institute & World Resources Institute (2016) *Disclosing beneficial ownership information in the natural resource sector.* http://www.opengovpartnership.org/sites/default/files/FIN%20OGP%20Issue%20Brief%20BO%20Disc.pdf & PwC (2016) *Navigating a path to trust and transparency Can Ultimate Beneficial Ownership Registers help prevent financial crime?* https://www.pwc.co.uk/forensic-services/assets/navigating-a-path-to-trust-and-transparency.pdf p6

[48] Companies House – Email Correspondence – 9 February 2017.

[49] For more information and a more detailed definition of open data see http://opendefinition.org/

[50] Palmer, R. & Leon, S. (2016) *What Does The UK Beneficial Ownership Data Show Us?* Global Witness. 22 November. https://www.globalwitness.org/en/blog/what-does-uk-beneficial-ownership-data-show-us/

[51] Official Journal of the European Union (2015) *Directive (EU) 2015/849* [Fourth Anti-Money Laundering Directive] Article 3 (6) b) iv).

[52] Freedom of Information request - *304/12/16 Question about security exemption applications*

[53] US Department of Justice (2011) *Department of Justice Seeks to Recover More Than $70.8 Million in Proceeds of Corruption from Government Minister of Equatorial Guinea.* 25 October. http://www.justice.gov/opa/pr/2011/October/11-crm-1405.html & US Department of Justice (2014) *Second Vice President of Equatorial Guinea Agrees to Relinquish More Than $30 Million of Assets Purchased with Corruption Proceeds.* 10 October. https://www.justice.gov/opa/pr/second-vice-president-equatorial-guinea-agrees-relinquish-more-30-million-assets-purchased

[54] For example - Symons, Y. K. (2015) *A fight inside Gabon's kleptocratic dynasty exposes the complicity of French business.* QZ.com https://qz.com/395572/a-fight-inside-gabons-kleptocratic-dynasty-reveals-the-complicity-of-french-business/

[55] Pallister, D. (2000) *British banks set to freeze dictator's millions.* The Guardian. https://www.theguardian.com/uk/2000/jul/08/davidpallister?INTCMP=ILCNETTXT3487

[56] Financial Action Taskforce (2012) *The FATF Recommendations*. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (Recommendation 12)

[57] Eurodad (2016) *Survival of the Richest - Europe's role in supporting an unjust global tax system 2016.*. http://www.eurodad.org/files/pdf/1546667-survival-of-the-richest-europe-s-role-in-supporting-an-unjust-global-tax-system-2016-1481106817.pdf

[58] Eurodad (2016) *Survival of the Richest - Europe's role in supporting an unjust global tax system 2016.*

[59] Italian Ministry of Finance (2016) *Draft Decree to replace the Legislative Decree of 21 November 2007, n. 231, Art. 21.2.d* http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_it/regolamentazione_bancaria_finanziaria/consultazioni_pubbliche/schema_decreto_legislativo_recepimento_IV_AML.pdf