



THE PARADISE PAPERS: TRUST TRANSPARENCY IN THE EU

- **The EU has so far failed to respond to last year's major offshore scandal, the Panama Papers. Now the Paradise Papers expose once again the scale of abuse through hidden ownership. The EU must act now.**
- **The Paradise Papers reveal many new examples of suspicious transactions and the use of trusts linked to cases of tax evasion.**
- **Anonymous ownership allows companies and trusts to be used as getaway cars that enable money laundering, corruption, terrorism, tax evasion and human trafficking – with devastating impacts for people across and beyond Europe.**
- **The 5th Anti-Money Laundering Directive is a unique opportunity for the EU to clamp down on financial secrecy and make public the real beneficial owners behind anonymous companies and trusts.**

THE PROBLEM

Trusts and similar legal arrangements allow individuals to retain control over assets while disguising their origin or ownership. The European Commission¹ itself, along with the OECD² and World Bank³, all emphasise that this secrecy makes trusts highly effective tools for money launderers, terrorist financiers and other corrupt persons. EUROPOL representatives echoed these concerns when identifying trusts among “the main schemes used to launder money”.⁴

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 around trusts is so strong that law enforcement authorities admit to stopping investigations when they encounter trusts. This is because trusts prove too elusive to track down and prosecute, and means that the extent of their use is critically underreported.⁵

The recent offshore leaks, the Paradise Papers, provide many new examples of the scale of using trusts, including in cases connected to tax evasion.

CASE STUDIES

➤ Hidden trusts and tax evasion in Germany – the Engelhorn family

Curt Engelhorn was the former CEO and main shareholder of the pharmaceutical company Boehringer Mannheim, which was sold to Roche for 19 billion DM.⁶ His daughters, Carolin and Elisabeth Engelhorn, were suspected of evading €440 million in tax and were arrested in 2013 in Munich in one of Germany's biggest ever criminal tax cases.⁷

Investigators searched family records and confiscated hundreds of folders.⁸ They found 44 trusts, foundations and companies linked to Carolin and Elisabeth⁹ and calculated that the sisters owed the Bavarian state around €145 million in unpaid taxes.^{10 11} The sisters were fined just over €2 million.¹²

The Paradise Papers, however, reveal previously unidentified trusts and companies linked to the family, bringing the total number of known entities to 82,¹³ and raising the question of whether additional taxes were evaded through these additional entities. *Süddeutsche Zeitung* – the paper that obtained the document leak – tried several times to contact the sisters to give them the right to reply, but their requests went unanswered.¹⁴

This case shows how difficult it is for tax authorities in one of the most well-resourced countries in the world to be able to identify what trusts, foundations and companies are linked to people. It highlights the importance of a wide scope for registration of trust's beneficial ownership information (see our recommendation below) to ensure all relevant trusts are included in national registers.

➤ €1 million hidden from the French tax authorities for 20 years

Jean-Jacques Annaud is a French film director who directed *The Name of the Rose* and *Seven Years in Tibet*. Currently he is accused of hiding €1.2 million from the French tax authorities using trusts.^{15 16}

In 1997¹⁷, ten days before *Seven Years in Tibet* was released in the US, he set up a Guernsey trust called Los Condores, that owned a Guernsey shell company called Uspallata Ltd.¹⁸ The Royal Bank of Scotland Trust Company, based on Guernsey, acted as the trustee.¹⁹

The structure changed over time. In 2003, Uspallata was transferred to the British Virgin Islands and Los Condores was transferred to the Bahamas. In 2007, the trust was moved to the Cayman Islands, where Appleby, the firm at the centre of the Paradise Papers, took over as trustees.²⁰

In 2015, Los Condores was closed and later Uspallata was closed. \$1.33 million was transferred to a Hong Kong company called Rising Dragon (which later became Ginkgo Holdings) and the rest of the money was transferred to a California company called Calico Entertainment LLC owned by a Delaware company.^{21 22}

After being contacted in October about these revelations, Mr Annaud has asked his new tax lawyers to regularise his situation and has declared these assets to the French tax authorities.²³

Other examples of trusts exposed in the Paradise Papers include:

➤ **Queen Noor of Jordan:** is the beneficiary of two trusts registered in Jersey, according to a document dated October 2015. Leaked files show that one, the Valentine 1997 Trust, was valued at more than \$40 million in 2015 and owns property in southern England.²⁴ A spokesman for Queen Noor told ICIJ that “all the bequests made to her and to her children by [the late King Hussein] have always been administered according to the highest ethical, legal and regulatory standards.”²⁵

- **Lord Ashcroft, a major donor to the UK Conservative Party** has a trust in Bermuda sheltering a vast overseas wealth, with assets of \$450.4m (£341m) in 2006, as revealed in a leaked financial statement. Lord Ashcroft is both the settlor and a beneficiary of the trust. Several emails show concern from Appleby at the way the trust was run, where trustees – who are supposed to be independent - were effectively asked to rubber-stamp decisions it believed it should have been informed about in advance. In response to these allegations, Lord Ashcroft’s spokesperson said that the peer had never engaged in tax evasion, abusive tax avoidance or tax avoidance using artificial structures.²⁶
- **James Simons, a top US Democratic party donor** has spent decades building a hidden offshore fortune of more than \$8bn in a trust in the tax haven of Bermuda and went to great lengths to keep this a secret.²⁷ Simons said he did not use the trust to steer money away from tax authorities in his response to questions from ICIJ and its partners.²⁸
- **Sam Kutesa, Uganda’s foreign minister**, set up a discretionary trust in the Seychelles in 2012. Appleby identified Kutesa’s companies a “high risk,” given his political role and media reports of alleged corruption and bribery involving Kutesa, during a routine review in 2015.²⁹ In his response to ICIJ’s partner in Uganda, the Daily Monitor, Kutesa said “I don’t have anything to hide...”and that he established the companies, but “I have never done anything with it at all. I told Appleby to close it many years ago.”³⁰
- **Blackstone**, is a private equity firm founded by an associate of US President Trump, Stephen Schwarzman, which was able to minimise tax payments on large rental properties in the UK in part through the use of Jersey trusts. A confidential tax memo shows the UK properties, held by the Jersey trusts, were themselves owned by Blackstone subsidiaries in Luxembourg.³¹ A law firm for Blackstone responded to ICIJ saying, “Blackstone’s investments are wholly compliant with UK and international tax laws and regulations.”³²
- **Appleby**, the law firm at the centre of the Paradise Papers revelations – prestigious and one of the world’s largest – was found by the Bermudan Monetary Authority to have significant weaknesses in its anti-money laundering controls, including not knowing the jurisdiction of the settlors for one fifth of its files. The Guardian asked Appleby about this inspection, but the company declined to comment.³³ In its response to media allegations, Appleby has said it has “thoroughly and vigorously investigated the allegations and we are satisfied that there is no evidence of any wrongdoing”.³⁴

THE SOLUTIONS

The most effective way to tackle anonymous companies and trusts is by publicly revealing their true, beneficial owners. The advantages for setting up **public registers of beneficial ownership** include:

- **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. Numerous high profile criminal investigations have been launched as a result of investigations by journalists and civil society organisations.
- **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. Organisations such as the Open Government Partnership and PwC Publishing have recognized that publishing beneficial ownership information is a powerful deterrent.³⁵

- **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.
- **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.
- **To ensure public trust.** The only way to ensure that the public have confidence that beneficial ownership registers are comprehensive, complete and accurate is to make the data publicly available.

EU RECOMMENDATIONS

SCOPE OF REGISTRATION: All trusts with a connection to the EU should be included within the scope of the Directive's beneficial ownership requirements. This includes where the individual setting up the trust (the settlor) or the trustee resides in the EU, or where the trust forms a business relationship or undertakes an occasional transaction in the EU, including for example owning property or shares in a company.

Recommendation: The Directive should provide for tiered registration of trusts, ensuring registration of beneficial ownership information of trusts when:

1. The trustee resides in an EU Member States; if not,
2. Where the settlor resides in an EU Member State; if not,
3. Where the trust enters into a business relationship (e.g. purchasing real estate, opening a bank or payment account) in an EU Member State.

To avoid multiple registrations, a certificate of proof of registration of the beneficial ownership information in a register held by one Member State would be sufficient proof of registration.

ACCESS: Beneficial ownership information should be publicly available in a register for all types of trusts. There should not be a differential access regime for commercial and non-commercial trusts. This is necessary both in light of numerous examples of corruption cases benefitting family members and the FATF guidance recommending that family members of politically exposed persons (PEPs) should also be treated as high risk.³⁶ The need for a division between commercial and non-commercial trusts is also made redundant if all changes are to be made within the Anti-Money Laundering Directive, without needing to justify any changes to fit with the scope of the Company Law Directive.

The identities of all parties to a trust should be disclosed, including the settlor, protector, trustee, and beneficiaries. In order to protect the rights to privacy of beneficiaries, where a trustee has discretion over who the beneficiaries are – as is often the case in family trusts- the class of beneficiaries could be disclosed instead of the identities of each beneficiary.

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- ¹ European Commission, 27 February 2007, “Cost benefit analysis of transparency requirements in the company/corporate field and banking sector relevant for the fight against money laundering and other financial crime,” http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/CBAStudy_Final_Report_revised_version.pdf
- ² OECD, “Behind the corporate veil”, 2001, <http://www.oecd.org/corporate/ca/43703185.pdf>
- ³ World Bank, “The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It”, 2011, <http://star.worldbank.org/star/publication/puppet-masters>
- ⁴ PANA-Committee – public hearing, “Anti-money laundering and tax evasion: who assures compliance with the rules and enforces them?”, 14 November 2016, <http://www.europarl.europa.eu/committees/en/pana/events-hearings.html?id=20161026CHE00121>
- ⁵ World Bank, “The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It”, 2011, <http://star.worldbank.org/star/publication/puppet-masters>
- ⁶ <https://www.tagesschau.de/ausland/paradisepapers/paradisepapers-125.html> [in German]
- ⁷ <https://www.tagesschau.de/ausland/paradisepapers/paradisepapers-125.html> [in German]
- ⁸ <http://www.sueddeutsche.de/wirtschaft/paradise-papers-das-sind-die-deutschen-faelle-in-den-paradise-papers-1.3736420> [in German]
- ⁹ <https://projekte.sueddeutsche.de/paradisepapers/wirtschaft/und-die-familie-engelhorn-e979936/?reduced=true> [in German]
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- ¹² <https://www.tagesschau.de/ausland/paradisepapers/paradisepapers-125.html> [in German]
- ¹³ <https://projekte.sueddeutsche.de/paradisepapers/wirtschaft/und-die-familie-engelhorn-e979936/?reduced=true> [in German]
- ¹⁴ <https://projekte.sueddeutsche.de/paradisepapers/wirtschaft/und-die-familie-engelhorn-e979936/?reduced=true> [in German]
- ¹⁵ http://www.huffingtonpost.fr/2017/11/08/jean-jacques-annaud-epingle-a-son-tour-dans-les-paradisepapers_a_23270251/ [in French]
- ¹⁶ http://www.lemonde.fr/paradise-papers/article/2017/11/08/jean-jacques-annaud-et-le-systeme-des-trusts-les-nouvelles-revelations-des-paradise-papers_5211773_5209585.html [in French]
- ¹⁷ L’Obs, Paradise Papers : l’argent caché du cinéaste Jean-Jacques Annaud, 8 November 2017 [in French]
- ¹⁸ http://www.huffingtonpost.fr/2017/11/08/jean-jacques-annaud-epingle-a-son-tour-dans-les-paradisepapers_a_23270251/ [in French]
- ¹⁹ L’Obs, Paradise Papers : l’argent caché du cinéaste Jean-Jacques Annaud, 8 November 2017 [in French]
- ²⁰ http://www.huffingtonpost.fr/2017/11/08/jean-jacques-annaud-epingle-a-son-tour-dans-les-paradisepapers_a_23270251/ [in French]
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- ²² L’Obs, Paradise Papers : l’argent caché du cinéaste Jean-Jacques Annaud, 8 November 2017 [in French]
- ²³ http://www.lemonde.fr/paradise-papers/article/2017/11/08/jean-jacques-annaud-et-le-systeme-des-trusts-les-nouvelles-revelations-des-paradise-papers_5211773_5209585.html [in French]
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- ²⁵ <https://offshoreleaks.icij.org/stories/noor-al-hussein>
- ²⁶ Guardian, 5/11/17, <https://www.theguardian.com/news/2017/nov/05/lord-ashcroft-offshore-trust-wealth-tory-peer-paradise-papers>
- ²⁷ <https://www.theguardian.com/news/2017/nov/07/democratic-donor-james-simons-private-wealth-fund-tax-haven-paradise-papers>
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³⁵ 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

³⁶ For examples see Global Witness – Don't Take it on Trust - https://www.globalwitness.org/documents/18781/Dont_take_it_on_trust.pdf . Financial Action Taskforce (2012) *The FATF Recommendations*. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (Recommendation 12)