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# Under the Shell: Ending Money Laundering in Europe

Transparency International recently carried out an assessment of national anti-money laundering regimes across the EU focusing on beneficial ownership transparency, a key aspect of the fight against money laundering. Under current rules and international standards, it is still possible and relatively easy to obscure the origins of money and assets and conceal the identity of the person who ultimately owns or controls them as revealed by the Panama Papers in 2016. This can be done by setting up complex structures involving shell companies and trusts in offshore secrecy jurisdictions, the use of bearer shares, using nominee directors as frontmen and proxies, or indeed a combination of all these.

TI research shows areas of serious concern, as well as a number of significant weaknesses both in law and practice in the countries reviewed. Certain sectors are found to be particularly vulnerable to money laundering risks such as the real estate sector, the gambling sector, trust and company service providers and virtual currency service providers such as Bitcoin.

## Legislative gaps

**The legal definition of beneficial owner is flawed**

The current EU definition and its national interpretations set an ownership threshold at 25% of total shares or voting rights which is too high and easy to circumvent for people seeking to stay under the radar. Moreover, the legal definition offers a fall-back option in case no beneficial owner can be identified using the primary criteria of ownership and control. In such cases, it becomes possible to list a senior manager as a beneficial owner which would allow nominee directors to be listed as beneficial owners and the person who effectively owns and controls the company to remain anonymous.

**Access to beneficial ownership data is limited**

Firstly, access may be limited in scope. In most of the countries reviewed, the central beneficial ownership registers do not cover all companies and trusts connected in one way or the other to the country concerned. For example, proposed new European rules only require registration for trusts managed by trustees established in the EU. It would not include for example trusts set up by European citizens outside the EU, a scheme typically used for tax evasion. If these gaps are not addressed, there is a real risk of missing out foreign companies and trusts established outside the EU but doing business, investing, owning assets or holding bank accounts in the EU, scenarios that the Panama Papers and concrete cases have proved to be perfectly plausible.

Conditions of access to the data may also be restrictive. Full public access is not guaranteed in all the countries analysed. In a number of countries**,** access by third parties other than competent authorities and obliged entities may be limited to people demonstrating a legitimate interest. Restrictions may also be administrative or technical in nature when for example, there is a paywall or the data is displayed in a format that makes its processing cumbersome.

**High-risk financial instruments such as bearer shares and nominees are insufficiently regulated**

Bearer shares still exist in a number of countries analysed for certain types of companies and legal entities. In some countries, they are held with designated professionals which is a clear risk as the information on beneficial owners of bearer shares remains dispersed across the different private custodians holding the shares. A better solution followed by other countries is to have bearer shares converted into registered shares and subject them to the same standards of transparency as normal shares.

Most countries analysed also fall short of providing strong regulations on persons acting as nominee shareholders or directors. For example, nominees are not required in all countries to be licensed and to disclose the identity of their nominator to the company and any relevant registry (e.g. national registers of shareholders and beneficial owners). This increases the risks that nominees be misused as frontmen by corrupt individuals.

## Enforcement gaps

**Authorities and businesses do not adequately understand and mitigate their money-laundering risks**

The analysis generally points at a lack of clear understanding and awareness of money laundering risks among key stakeholders, in particular non-financial professions and businesses. As a consequence, public authorities and obliged entities do not always have appropriate mitigation measures in place.

**Professionals are not fulfilling their AML obligations adequately**

The study finds deficiencies and weaknesses in the anti-money laundering compliance systems of professionals subject to customer due diligence obligations. This also applies when looking more specifically at obligations related to beneficial ownership transparency such as identifying and verifying their customers' beneficial owners and reporting transactions where no beneficial owner can be identified. A number of factors can explain this such as a lack of clear understanding of the difference between legal and beneficial ownership, the lack of data on foreign companies and trusts based in offshore jurisdictions, and the use of automatic reporting systems for suspicious activities. In general, this can be the result of insufficient awareness of and commitment to anti-money laundering obligations among professionals combined with lax enforcement of controls and sanctions by public authorities.

**Regulators and supervisors are not adequately overseeing professionals subject to AML obligations**

This is particularly true for self-regulated professions such as lawyers, notaries, and accountants. The analysis generally points at inadequate financial, human and technical resources of regulatory bodies, insufficient guidance and training provided to professionals on

diverse AML compliance issues (e.g. money-laundering risk management, suspicious activity reporting, beneficial ownership identification), insufficient or inadequate feedback on suspicious activity reporting (SAR) to professionals under their supervision, lack of a credible and deterring response to non-compliance including proportionate and effective controls and sanctions.

**Publicly available annual statistics on AML enforcement efforts are partial or non-existent**

Most countries examined do not regularly publish a comprehensive set of statistics on AML enforcement efforts. This significantly hinders competent authorities' capacity to monitor and assess the effectiveness of the system in place. Data tends to be irregularly published or dispersed across different websites, reports and organisations. Moreover, data on anti-money laundering is defined and captured differently across jurisdictions, which makes international comparisons very difficult, if not impossible. For example, depending on the jurisdiction, a suspicious transaction report may refer to one transaction or to a case with multiple transactions.

# HEADLINE RECOMMENDATIONS

## Closing legislative gaps

Governments should strengthen their national legal AML framework, in particular:

- Extend the scope of national beneficial ownership registers to all **domestic and foreign companies and trusts operating within the territory**.
- Make those registers **publicly and freely accessible and in open data format**.
- Put in place **robust data verification and sanction mechanisms** in order to detect and prevent non-reporting or false reporting.
- Adopt a **comprehensive and robust legal definition of beneficial owner** lowering down the ownership threshold to ten per cent or lower and removing the possibility to list senior managers as beneficial owners.
- Prohibit or strengthen regulations governing the **use of high-risk instruments such as bearer shares and nominees**. Bearer shares should be outlawed and until they are phased out, they should be converted into registered shares and held in a central register hosted by a public authority. Governments should also prohibit the provision of nominee services or alternatively require nominees to be more strongly regulated, i.e. be licensed, disclose the identity of their nominator to the company and any other relevant registry and keep records of the person who appointed them.

## Closing enforcement gaps

Governments should promote more effective, proactive and transparent regulation and supervision of obliged entities, in particular:

- **Adequately resource regulatory bodies** including their capacity to survey and understand money laundering risks; effectively coordinate with the entities under their supervision, for example providing feedback on suspicious activity reports and providing secure channels for information sharing; implement and adequately staff an effective whistleblowing regime and provide for an effective and transparent control and sanction regime;
- Require that professionals such as real estate agents or trust and company service providers be **licensed and regulated preferably by a statutory regulator** with appropriate information and enforcement powers;
- Require **professional bodies with regulatory duties** to carry out their oversight activities in regular coordination with an independent public authority. They should take steps to ensure their advocacy and supervisory functions are operationally independent;
- Provide professionals with **adequate and targeted training and guidance** to raise awareness about money-laundering risks and help them implement the corresponding mitigation measures, for example properly carrying out their customer due diligence;
- Improve **suspicious activity reporting** by assessing the effectiveness of the current system and analysing the root causes for non- or under-reporting; by providing guidance to professionals on how to fulfil their reporting obligations; and by giving feedback on the reports submitted.
- ensure that **control and sanction mechanisms** for regulatory breaches and non-compliance with anti-money laundering obligations are proportionate in relation with the risks identified and effectively enforced;
- Publish a **comprehensive and harmonised set of annual statistics on AML efforts**, including data related to beneficial ownership transparency obligations (e.g. number of breaches, suspicious activity report (SAR) submissions and sanctions related to failure to identify or verify beneficial ownership). To the extent possible, national statistics should follow the list of indicators recommended by the Financial Action Task Force (FATF) in order to foster data harmonisation and comparability.