



6 June 2012

Dear Commissioner Barnier,

We are writing on behalf of the non-governmental organisations and coalitions listed below, following the publication of the Commission’s application report on the Third Anti-Money Laundering Directive. The report provides a very useful framework for revising the EU’s rules to combat financial crime.

The report rightly highlights the current difficulty of obtaining information on the ultimate person who controls a company or trust – the beneficial owner. This makes it difficult for financial institutions to identify their customers, as they are required to do under the Directive.

But it also has bigger implications. Civil society has seen repeatedly how obscure company ownership structures have facilitated corruption, money laundering, tax evasion, environmental damage, terrorism and other crimes.ⁱ These illicit financial flows also undermine the EC and other donors’ development cooperation efforts.

Identifying who is the ultimate owner of a company can be very difficult. Even law enforcement runs into problems finding this information, especially when companies are registered in other member states.ⁱⁱ **At present the majority of European countries are failing to meet the international standard on access to company information.ⁱⁱⁱ This leaves the European financial system open to abuse.**

Stronger measures to address money laundering would contribute significantly to the EU’s stated aim of policy coherence for development. In 2010 there was a US\$58 billion shortfall in the funds needed to achieve the Millennium Development Goals. Yet at the same time developing countries were estimated to have lost between US\$775 billion and US\$903 billion in 2009 to illicit financial flows; the opacity around the beneficial ownership of companies and other legal structures facilitates these flows on a vast scale. Strong AML measures will also help to fight tax evasion within the EU which costs Member States an amount equivalent to 2.5% of EU GDP annually.^{iv}

We believe that the Commission should use the opportunity of revising the Directive to require member states to **collect and publish beneficial ownership information** for companies, trusts and foundations in their jurisdiction. Nominee directors and shareholders should also be required to state on whose behalf they are working, as suggested by the Financial Action Task Force (FATF).^v This would also provide investors and other businesses with valuable information about companies they interact with, including their trading partners.

There is significant support for further transparency regarding beneficial ownership.

Financial industry groups, including the European Banking Federation, have pushed for greater transparency over beneficial ownership because more information on company ownership would help with the due diligence their members are required to do by law.^{vi}

It also fits with the EU's own Internal Security Strategy, which asked the Commission to investigate ways "to enhance the transparency of legal persons and legal arrangements",^{vii} as well as FATF's recommendation that countries should ensure that information is available on the ownership of companies.^{viii}

The European Parliament has also signalled its support for such a move, twice voting on the issue. The Parliament has said that it:

Considers that strengthening the regulation of, and transparency as regards, company registries and registers of trust is a prerequisite for dealing with tax avoidance.^{ix}

Calls on the Commission to make the fight against the abuse of anonymous shell companies in secrecy jurisdictions, enabling criminal financial flows, a key element of the upcoming reform of the Anti-Money Laundering (AML) Directive.^x

We hope that the Commission will show leadership on this issue by including measures to improve the transparency of company ownership as part of the revised anti-money laundering directive. This would set a strong precedent for other countries to take similar action and would fit well with the EU's work at the G20 level on increasing financial stability and tackling corruption, which will also enhance the EU's drive for policy coherence for development.

We look forward to continued engagement with the Commission on this issue. Please respond to: Robert Palmer, Global Witness, Buchanan House, 30 Holborn, London, EC1N 2HS, UK or rpalmer@globalwitness.org.

Regards,

The UN Convention Against Corruption civil society coalition (representing 350 members)
Publish What You Pay (representing 650 members)
The Task Force on Financial Integrity and Economic Development^{xi}
European Coalition for Corporate Justice (representing over 250 members)
Latindadd (representing 17 members)
Eurodad (representing 50 members)
Koordinierungsstelle der Österr. Bischofskonferenz (representing 18 members)

Anticor
Berne Declaration
Cafod
CCFD-Terre Solidaire
CNCD-11.11.11
Cordaid
InspirAction
Micah Challenge International
Milieudefensie, Friends of the Earth Netherlands
Mineral Policy Institute
Profundo
Tax Justice Network, Netherlands
Tearfund
WEED – World Economy, Ecology & Development

ⁱ http://www.globalwitness.org/sites/default/files/pdfs/international_thief_thief_final.pdf and <http://www.transparency.org.uk/publications/2009-publications/16-combating-money-laundering-and-recovering-looted-gains-raising-the-uks-game/download>

ⁱⁱ Preliminary results from the EU's Bownet project suggest that law enforcement often have difficulty in accessing beneficial ownership information. See

http://www.bownet.eu/materials/BOWNET_Transcrime%20presentation_Sito_May2012.pdf, p26.

The EU Internal Security Strategy states: "In practice, law enforcement and judicial authorities, administrative investigative bodies such as OLAF and private sector professionals have difficulty obtaining such information [on company ownership]".

ⁱⁱⁱ The Financial Action Task Force's recommendation 24 requires countries to ensure transparency of the ownership of companies. Four EU Member States are rated compliant, five are largely compliant, 15 are partially compliant and three are non-compliant.

^{iv} http://europa.eu/legislation_summaries/taxation/l31046_en.htm

^v Interpretative note to FATF recommendation 24.

^{vi} Financial Action Task Force, *Consultation on proposed changes to the FATF standards: compilation of responses from the financial sector*. August 2011.

^{vii} Commission Communication, 'The EU Internal Security Strategy in Action: Five steps towards a more secure Europe', COM (2010)673 final.

^{viii} FATF Recommendation 24.

^{ix} 'European Parliament resolution on the EU's efforts to combat corruption', 7 September 2011.

^x 'European Parliament resolution on the call for concrete ways to combat tax fraud and tax evasion', 17 April 2012.

^{xi} The Coordinating Committee is: Global Witness, Global Financial Integrity, Christian Aid, Transparency International, Eurodad, Tax Justice Network and Tax Research UK.