

The EU is planning to make it easier to own offshore sh...

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Just as the Panama papers reveal the mayhem that can be caused by secret shell companies, the European Union is set to relax ownership transparency requirements for shell companies in its forthcoming Fourth Anti-Money Laundering Directive.

The **Tax Justice Network** is calling for the European Parliament, the European Commission and the Heads of State of European Union Member States to address three serious shortcomings in the fourth European Anti-Money Laundering Directive ([2015/849](#)), a common European framework designed to establish an EU-wide approach to preventing the laundering of the proceeds of crime. It is scheduled to come into force by mid-2017 across the European Union.

Unless the proposed rules are tightened, shell company abuses will become easier in Europe.

The common thread in the Panama Papers is secrecy, enabling perpetrators to launder illicit proceeds of corruption, tax evasion, drugs money and much more. In order to escape law enforcement, they depend on secrecy — very often through using shell companies, trusts and foundations available in most countries worldwide. Intermediaries such as lawyers, notaries, family offices and banks help create and handle those structures.

In 2005 ([2005/60](#)), the rules for identifying the owners of offshore companies who seek to open accounts, hold shares or buy property in the European Union included rules to identify the real owner(s) of offshore companies — the so-called “beneficial” owner(s).

According to the existing rules from 2005, a beneficial owner in the European Union has to be the ‘natural person’ actually controlling the legal entity, no matter how many lawyers of nominees, shell companies or trusts are placed in between (see [Article 3.6, on page 8](#)). So a Panama or British Virgin Islands

company has to reveal its real beneficial owners to the relevant EU banks, lawyers and notaries involved. Failing to comply with those obligations (by, for example, recording a nominee director instead,) is sanctioned, and can be a criminal offence.

Now, the European Union in its 2016 amendments under the 4th Anti-Money Laundering Directive propose adding an exception to this requirement for all legal entities.

The incoming rules contain an ambiguity that will invite abuses, allowing an exception where the bank, notary or lawyer can record (instead of the true beneficial owner) the “natural person(s) who hold the position of senior managing official(s)” (see [Article 3.6.a.ii, on page 14](#)).

Of course these “senior managing officials” could be nominee directors — the bread and butter of secrecy: they are a shield between the companies (and the assets they hold); and the real beneficial owners. These nominees sometimes manage of thousands of shell companies each — and under the incoming rules they can be defined across the European Union as the beneficial owners.

Furthermore, the fourth Anti Money Laundering Directive contains some good news: it will create registries of beneficial owners of shell companies. However, in November 2014 Germany’s government (together with Malta and Cyprus) opposed a mandatory provision to publish this new registry’s data, even against the more progressive positions of the UK, French, Italian and Spanish governments. Publication is only permitted, not mandatory. The UK and Netherlands have agreed to a public registry, but many governments including Germany will preserve the veil of corporate secrecy in Europe — and across the World.

Last but not least, the current Directive suffers another major loophole: while foundations are covered by the new mandatory registration of ownership, trusts (the Anglo-Saxon cousins of foundations) have been excluded. As was revealed on 7 April 2016, British Prime Minister David Cameron intervened personally in 2013 to stop offshore trusts from being included in EU proposals for a crackdown on tax avoidance. These structures can be used to cause the same or even worse damage as shell companies.

John Christensen said:

“We have always said that any registry of beneficial ownership must include offshore companies, trusts and foundations. To fail to do that would simply result in a stampede towards any vehicles not included in public registry. It’s not rocket science.”

Alex Cobham, Director of Research at TJN, said:

“Politicians across the world who are welcoming the Panama Papers have to realize that they don’t need to rely on lucky leaks. They can simply close their markets — where all the real economic activity takes place — to any entity from a jurisdiction that does not freely publish registers of beneficial ownership. Pretty soon, you’d find those jurisdictions turn themselves around.”

Andres Knobel, a consultant at TJN, said:

“The current EU plans are a huge missed opportunity and would exacerbate the impact of offshore secrecy across Europe. We have to remind our political leaders that the people want public transparency, not more of the same institutional corruption.”

Nicholas Shaxson said:

“Why should we allow masked offshore investors to undermine the integrity of our economies? If you are going to set up legal entities in Europe, then it should be clear who owns them so that crime-fighters can do their jobs.”

Liz Nelson, a director of TJN, said:

“After Panama Papers, we have to let go the naïve notion that anonymous private companies serve any legitimate purposes. These shell companies are like weapons, and if we cannot control their producers, we must ensure tight regulation of their owners”.

Markus Meinzer said:

“The EU has already planned to reopen the Directive in the 2nd Quarter of 2016 in order to beef up anti-terror financing provisions after the disastrous recent attacks. Surely the scale and system of abuse revealed through Panama Papers warrants to add crucial public transparency to this proposal”.

Notes to editors:

About the Tax Justice Network

We are an independent international network focused on tax justice: the role of tax in society, and the role of tax havens in undermining democracy, boosting inequality and corrupting the global economy. We seek to create understanding and debate, and to promote reform, especially in poorer countries. We are not aligned to any political party.