



## Session Report

*Please know you may design the structure of this report to better suit the session. It's important to capture the key outcomes and solutions proposed for the future.*

**Session Title:** Regrouping after EU Court of Justice Ruling: The Case for Radical Transparency in Asset Ownership

**Date & Time:** Thursday, 08.12.2022, 3.30 pm – 5:00 pm GMT -5

**Report prepared by:** Vincent Freigang, Research and Policy Associate, Transparency International Secretariat (TI-S)

**Moderated by:** Eka Rostomashvili, Campaigns Lead, Transparency International Secretariat (TI-S)

### Panellists:

- Maira Martini - Research and Policy Expert, Transparency International Secretariat (TI-S)
- Annette Alstadsæter - Professor at School of Economics and Business, Norwegian University of Life Sciences
- Eiliv Frich Flydal - Investigative journalist
- Andres Knobel - Beneficial Ownership Lead Researcher, Tax Justice Network

### Share the thematic focus of the session, it's purpose and corruption risks?

The thematic focus of the session was the value of beneficial ownership transparency in tackling the abuse of secrecy to facilitate corruption and allow the corrupt to hide their ill-gotten wealth. The purpose of the session was to review the status of beneficial ownership disclosure after the ruling of the European Court of Justice as well as outline the case for why transparency of asset ownership is needed to achieve accountability and justice. The session also discussed a global asset register (GAR) as a tool to help investigate suspicious wealth and help recoup funds lost to corruption.

The session came in the context of the civil society and other groups interested in transparency regrouping after the European Court of Justice ruled that public access to beneficial ownership registers in Europe was invalid due to a disproportionate infringement on privacy rights.

## Summary of panellists' contributions & discussion points (please be as detailed as possible)

### **Maira Martini (MM) - Research and Policy Expert, Transparency International**

- Highlighted case study of the former deputy PM of Russia, who, through a 2018 leak of data from private real estate broker was shown to own a US\$ 8 mn owned by UK company, which in turn was owned via two BVI companies. After consulting the UK BO register, the former deputy PM was identified. After the publication of the story, the UK company was dissolved, making ownership of the real estate asset unclear again.
- “It is not simple to link an asset to an individual, because information on asset ownership is not easily available” – this is the issue in a nutshell.
- Highlighted another case study where Hungarian journalists followed a yacht that was frequented by politicians and other influential people. The yacht was owned by a Maltese company set up by a corporate service provider. In 2022, when the Malta register became available, the journalists were able to identify the owner of the yacht – a (fairly obscure) businessman in Hungary who had become one of the country’s richest in part due to winning a lot of lucrative public contracts.
- **Update on the ECJ decision:** the ECJ invalidated a provision for granting public access to registers via the 5AMLD. Journalists and civil society groups (JCSOs) were deemed to have a legitimate interest in accessing the information but will now need to prove this again.
- Since the ruling, 8 registers have already been taken down.
- This will have significant impact on journalists and civil society access as well as foreign competent authorities that have relied on public access to getting access to the data. They will now need to rely on complex and time intensive international cooperation mechanisms.
- Further, other government agencies (public procurement, courts, audit institutions, etc.) have all relied on public access to obtain this information and will now be shut out again.

### **Andres Knobel (AK) - Beneficial Ownership Lead Researcher, Tax Justice Network**

- Objective is to work towards a global asset register (GAR). This is a deliberately ambitious goal but many things that Tax Justice Network has called for in the past (country-by-country reporting, automatic exchange of information) was also considered unthinkable for a long time. Need to have a long-term perspective.
- Regarding the ECJ decision – the court states that having access to BO information can give an indication for the person’s wealth, which can then expose them to risk of serious harm. But the BO register does not provide any insight into wealth of a person. It only states that a person owns a company.

Nothing is said about the assets held by the company nor their value.

- We can significantly improve BO registers by including legal ownership data, including foreign companies.
- In general, we need to start at the national level and then build up.
- We can make use of existing structures to move towards asset registers. For example, the UK's HMRC already has a form for the declaration of assets for the purposes of inheritance. We could use this to start collecting asset ownership data while we wait for a GAR.
- Registers should not work using thresholds as value of assets can be manipulated, thereby easily circumventing thresholds. The registers should build on asset classes.

**Annette Alstadsæter (AA) - Professor at School of Economics and Business, Norwegian University of Life Sciences**

- Presentation of research on who evades taxes. Research from Scandinavia shows that wealth corresponding to 10% of GDP is held by the richest households in tax havens (based on data from 2006).
- This has significant implications for public policy. For example, inequality indices are calculated using tax data. If wealth is hidden from tax authorities, the problem of inequality is likely underestimated.
- Same goes for sanctions implementation. 60% of richest Russians have assets held abroad in tax havens.
- In Dubai, one offshore tax haven, 27% percent of anonymously owned assets are foreign owned.
- While most countries have a land register, this should be digitalised everywhere and there should be proper real estate registers at country level so information can be exchanged for the purposes of information exchange.
- Norway has a public legal ownership register but no BO regime. Also, there is no sanctioning regime for non-compliance with disclosure requirements.
- Generally, the trend is towards more assets being hidden in tax havens and increased foreign, anonymous ownership of assets (e.g. real estate in Norway).

**Eiliv Flydal (EF) - Investigative journalist**

- EF presented his investigations done together with C4ADS to analyse a leak of real estate data from Dubai. They looked at 800,000 properties, including beneficial ownership data. The analysis showed that known criminals and the wealthy were hiding their wealth in Dubai real estate.
- Dubai provides a good environment for those seeking to hide their assets due to zero tax, few and weak extradition agreements, ability to buy property with cash and a visa system that allows for easy prolonged stays.

**Examples of assets found:**

1. Ruslan Baisarov – a wealthy Russian businessman who is close to the Kremlin and Chechen leader Kadyrov. Baisarov is alleged to be financing Kadyrov's larger projects.
2. Rolf Gunnar and Terje – two individuals who owned real estate for about 2 million. They had been found to have committed 2 million tax fraud in NOR. They

later admitted to owning the property during a bail hearing.

- Analysis showed that of 260 NOR owners of property in their name in Dubai, 214 are NOR tax payers. 85% of them did not list their Dubai property or rent income in their tax declarations.
- The initial analysis identified 20 people charged in serious crimes owning real estate in their names in Dubai.
- The next step of the analysis will be to pursue the businesses owning real estate in Dubai.
- EF demonstrates radical tax transparency in Norway, showing that you can look up tax information about all citizens. There is a code of ethics in the use of the data but this can provide an example of how a GAR could be organised.
- Norway also has public information on stock ownership, which helped media identify bureaucrats that were owning stocks in companies they were regulating. Public access to this information resulted in these conflicts of interest being addressed.

## Main outcomes of session (include quotes/highlights and interesting questions from the floor)

### Main outcomes:

- The long-term goal remains to establish transparent reporting on asset ownership. In the immediate term, we need to defend access to beneficial ownership registers or risk losing progress made in recent years.
- Current negotiations regarding 6AMLD are an opportunity to address some of the remaining issues with information on asset ownership and BO information. It is also the best opportunity to safeguard access to JCSOs in a centralised and non-case-by-case basis.
- On next steps regarding public access to BO information in Europe – the immediate priority will be to enshrine access for JCSOs that does not go back to the previous approach of a case-by-case review of legitimate interest. The European Parliament is currently developing its negotiating position, which will act as a basis for a later compromise with the Council position.
- Access to registers is but the first step. There is still much work to be done on strengthening the quality of data on the registers (e.g. currently no information is collected on dissolved companies).
- There is a need for a shift in power dynamics to address structural inequalities. Providing access to information on asset ownership levels the playing field.
- The ultimate priority of access to asset ownership should be accountability and fairness. Ultimately, money that is stolen and/or syphoned off due to corruption needs to be recuperated and repatriated to those it has been stolen from.

### Quotes:

- *“We cannot go back to case-by-case basis [for checking legitimate interest]. [...] We can’t repeat a mistake that we know is a mistake.” - Maira Martini (MM) - Research and Policy Expert, Transparency International*
- *“It is no longer a hypothesis that Dubai is a haven for dubious funds. We now have proof that wanted fraudsters and other criminals have hidden their wealth.” -*

**Eiliv Flydal (EF) - Investigative journalist**

- *“Having access to information [about asset ownership] cleans things up.” - Eiliv Flydal (EF) - Investigative journalist*

## Key recommendations for the future and concrete follow-up actions

- We need centralised & digitalised proper real estate registers at country level.
- There should be immediate steps taken to start registering centrally the ownership of assets (e.g. ownership of art is currently not regulated at EU level). This ownership information should be linked to BO information held in registers.
- There is a need to push for European lawmakers to include more asset transparency in the draft texts. We need to ensure that information on asset ownership is at least collected and stored somewhere, with access given to as many stakeholders as possible. If asset classes need to be prioritised it should be real estate and companies, including foreign companies that come in contact with an EU regulated entity.
- We need to use concrete examples of how registers and public access to information has helped uncover wrongdoing. These concrete examples can move the debate and result in political will (example of the Norwegian ambulance plane that was sold to anonymous buyers).
- CSOs need to develop alternative arguments and legal bases for public access to BO registers. Anti-financial crime logic as defined in the AMLDs is only one aspect of BOT and other use cases need to be brought to the forefront of the debate (e.g. political integrity, business integrity etc.).

## What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?

- AA: There is potential to build momentum. If the USA and the EU move together on disclosure, this can move the standard globally. They need to show a willingness to close the existing loopholes.

## Is there a specific call to action to key stakeholders, such as governments, businesses, funders, civil society, young people, journalists or any other stakeholder that should be noted? Please specify if relevant.

- CSOs need to win the argument on transparency more broadly. Measures that were put in place to protect the most vulnerable (human rights) are being abused to protect a few wealthy and powerful. Transparency is about shifting the power dynamics.
- European lawmakers need to establish robust measures to ensure JCSOs retain full access to BO registers without going back to a case-by-case review of legitimate interest.
- European countries (e.g. France) need to close a loophole that allows for foreign companies to purchase French real estate without having to declare their BOs. This is a major loophole in the current regulations in many countries.

- The European Council needs to drop the current wording in its negotiating position regarding allowing Member States to disclose to individuals who has been looking up their information on BO registers.

## **Rapporteur's name and date submitted**

**Vincent Freigang, 22.12.2022**