

9 February 2017

Subject: Kariņš and Sargentini report – prevent new Panama Papers type scandals by ending secrecy of shell companies and trusts

Dear Member of European Parliament,

We are writing to you concerning the European Commission's legislative proposal from July 2016 to amend the fourth Anti-Money Laundering Directive, due to be voted on soon in first reading in the ECON and LIBE Committees.

The European Commission has introduced a number of changes in this Directive to enhance the transparency of the EU financial system by introducing new beneficial ownership (BO) requirements on certain types of companies and trusts.

While these changes are a positive step forward, we believe that further changes are needed in order to increase transparency about who really owns companies and trusts and put an end to the abusive practices revealed by the Panama Papers. We urge you to take into consideration the following recommendations during the vote in the ECON and LIBE committees:

- **Company beneficial ownership information should be available to the public, including for foreign companies with formal business ties to the EU**

We welcome the European Commission's proposal to require public access to BO information on companies. Public BO information increases scrutiny over criminal activity. It also helps businesses to understand who they are doing business with. A survey by professional services firm EY shows that 91% of business leaders believe that it is important to know the ultimate beneficial owners of the entities that they do business with. This requirement should also be extended to those non-EU companies with formal business ties to the European Union, such as owning real estate in the EU or holding an account in an EU bank.

- **Beneficial ownership information should be available on all trusts, not just commercial trusts**

Under the Commission's proposal, the public would only have access to BO information on so-called commercial trusts. The distinction between commercial and non-commercial trusts will be difficult to make in practice, and this ambiguity could be exploited by those seeking to create structures to hide their wealth. BO transparency should be extended to all trusts, including inheritance trusts which are frequently abused for tax evasion purposes. In exceptional circumstances, where there are real privacy concerns, the information could be partly redacted from the public domain on a case-by-case basis.

- **Scope of trusts required to register is very narrow, and can easily be circumvented**

Under the Commission's proposal, trusts will only be required to register their BO information when a trustee is established within an EU Member State. This is a serious loophole that would exclude the vast majority of offshore trusts revealed by the Panama Papers, which were mostly managed by trustees based in non-EU countries. The registration requirement can also be easily circumvented by simply appointing a foreign trustee from a country that does not require public registration of BO information. The scope of registration requirements should be widened to cover any trust with a connection point to an EU country, such as having a resident settlor, protector, trustee, beneficiary or assets within the territory of the EU.

- **Lower the beneficial ownership threshold and ensure that senior managers cannot be identified as BOs by default**

The Commission has maintained a 25% ownership threshold in order to be identified as a BO. For certain high-risk companies, the Commission has proposed to lower this requirement to 10%. The 25% threshold is a high threshold that can be too easily exploited by people looking to stay under the radar, and should be lowered to at least 10% for all companies.

Under the current text of the Directive, senior managers are allowed to be listed as BOs in the event that no BO can be identified. This is a loophole which would allow the use of ‘nominee directors’ to hide companies’ true owners. Senior managers should never be identified as a BO, unless they meet the criteria of a real beneficial owner. In the case where a senior manager acts on behalf of someone else, they should disclose to the register the identity of the person on behalf of whom they are acting.

- **Increasing the reliability and quality of the data accessible in BO registers**

Inaccurate information limits the usefulness of BO registers, and mechanisms should be put in place to enhance the accuracy of the information reported to central registers. Obligated entities should be required to report inconsistencies between the information they have collected through their customer due diligence process, and the information that is held in the central register. Member States should also put in place mechanisms to ensure that information in the register is verified on a regular basis. Having the register in open data format would also facilitate implementation of such mechanisms while at the same time allowing different actors to cross-check the data with other datasets at their disposal.

Please find enclosed a more detailed analysis of the legislative proposal (Q&A document).

We remain at your disposal if you would like to receive more information or would like to meet in person to discuss this issue further.

Yours sincerely,

