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## TI EU Office - Assessment Paper

### EU Action against Stolen Assets in the wake of the Libyan Crisis

The sudden fall of long-standing regimes in Libya, Egypt and Tunisia has finally drawn attention to systematic corruption and the alleged stolen assets held abroad by these and other regimes. Why did the EU only move to freeze these assets when the pressure to act became too great to ignore, and why are assets deposited in EU banks and other financial centres not adequately scrutinised in the first place? Finally, how can the EU assist in the repatriation of stolen assets?

**ACTION: The EU must take action for the immediate freezing, thorough investigation and swift repatriation of all illicitly acquired assets.**

**PREVENTION: The EU must ensure that banks in the EU exercise scrutiny and due diligence procedures with regard to 'politically exposed persons', as required by the UNCAC and the Third EU Directive.**

#### The Problem of Stolen Assets

Global illicit financial flows represent a massive transfer of wealth out of poorer nations and as such fundamentally undermine poverty alleviation and sustainable development efforts in these countries. According to a recent [report](#) from Global Financial Integrity, illicit outflows increased from \$1.06 trillion in 2006 to approximately \$1.26 trillion in 2008, with developing countries losing on average between US\$725 billion to US\$810 billion per year over the period 2000- 2008.

The identification of stolen assets is often problematic as they are, by nature, secretive and difficult to track. The situation is also time critical since the longer it takes to identify and freeze stolen assets, the greater the chance that assets will be moved beyond the reach of investigators and the smaller the chance that public funds will be recovered. Success in repatriation has so far been scarce and requires increased international cooperation and political will to address the problem.

#### I. EU Commitments & International Standards on Asset Recovery

During the [EU-Africa summit](#) of 2000 in Cairo and again at the 2007 [Joint Africa-EU Strategy](#) in Lisbon, the EU 27 committed to **take necessary measures to ensure that illegally acquired assets, including funds, are investigated and returned to their countries of origin.**

Under the Third EU Directive ([Directive 2005/60/EC](#)) of October 26, 2005 **on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing**, EU member states must ensure that institutions and individuals covered by the directive :

- exercise enhanced customer due diligence procedures dependent on the type of customer, business relationship, product or transaction;
- have appropriate risk-based procedures to determine whether the customer is a 'politically-exposed-person', the official definition of a potential risky high-profile client;
- have senior management approval for establishing business relationships with such customers;
- take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;
- Conduct enhanced ongoing monitoring of the business relationship.

The Directive also calls for each EU member state to set up financial intelligence units (FIU), which analyse all suspicious transactions and disseminate information concerning potential money laundering or terrorist financing to the competent authorities.

The EU has undertaken several actions with regard to asset recovery especially in the fight against organised crime. Through the establishment of **national Asset Recovery Offices**, it has worked to improve information flows between member states to allow for the tracing and seizure of proceeds from crime and other property belonging to criminals. These offices now exist in 20 member states, with plans to have effective offices across the EU by 2014. Nevertheless, the European Commission has recognised that more needs to be done and will propose new legislation to strengthen an **EU-wide asset recovery mechanism**, expected in autumn this year. This will allow for an EU-wide system to enforce asset seizures across borders and aims to make mutual recognition of national confiscation orders less cumbersome and time-consuming. Asset recovery remains an important issue for the EU both within and outside its borders; however it is unclear how national Asset Recovery Offices can be applied to assets belonging to non-European citizens or institutions.

The **United Nations Convention against Corruption**, (**UNCAC**), which came into force in December 2005, obliges those EU member states that are State Parties to the UNCAC to return stolen assets. Chapter V of UNCAC requires them to afford each other the widest measure of cooperation and assistance in this regard. Most EU member states are signatories and have ratified the UNCAC, with the exceptions of Germany, Ireland and the Czech Republic. Last November, the G20 announced its **G20 Anti-Corruption Action Plan** towards a well-regulated and accountable financial system, and also committed its members to using the UNCAC framework to fight corruption, thereby also including the return of stolen assets.

## II. Recommendations

- ⇒ **Unified EU Approach:** The EU must take a unified approach by which the EU and member states act swiftly and coherently, and respect their commitments to international standards above national concerns. This will ensure that stolen assets are recovered and repatriated to their country of origin.
- ⇒ **Prevention and Due Diligence:** It is essential to prevent EU banks and other financial institutions from accepting illicitly acquired assets in the first place. EU member states should vigorously implement appropriate measures, such as enhanced due diligence for 'Politically Exposed Persons' (PEPs), in full accordance with obligations under UNCAC and the Third EU Money Laundering Directive.
- ⇒ **Restitution of Stolen Assets:** EU member states should facilitate and actively support the restitution of stolen assets in line with UNCAC Chapter V, and the EU Third Directive. To do so, the EU should<sup>1</sup>:
  - **Enact and implement new laws or regulations** that require identification of suspicious assets and make it easier to freeze those funds.
  - **Support all legal actions aimed at recovering stolen assets**, including assets transferred to trusts and assets owned or used by political leaders still in office, in line with the World Bank/UNODC **Stolen Asset Recovery** (StAR) Initiative.
  - Ensure the **swift transfer of all frozen assets to specially created escrow accounts** managed by an independent third party such as the World Bank and/or Regional Development Banks.
  - **Create a fund to assist developing countries** in their asset recovery efforts. This would be financially beneficial as illicit financial flows far exceed overseas development assistance, whereas the repatriation of stolen public funds can be put to better use (e.g. post-conflict reconstruction and economic development).

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<sup>1</sup> As stipulated in the Transparency International [letter](#) to G20 Heads of State (24/02/2011).

### III. The Case of Libya: EU Asset Freezing

Recent events in natural resource-rich Libya provide a solid case study on EU action for the recovery of stolen assets. The EU was roundly criticised for being slow to react to the uprisings in North Africa, but has since taken steps to coordinate its response and publicly condemn the use of force against protestors. Some EU governments have been cautious about moving quickly on sanctions against Libya in fear of economic repercussions and an expected mass influx of refugees to European shores.

With regard to **stolen assets**, the EU Council of Ministers adopted a decision on 28 February for the EU27 to implement UN Security Council Resolution 1970 and **impose sanctions** on the Libyan regime. These sanctions include the freezing of assets of Muammar Gaddafi and five family members, and went further by freezing the assets of 10 additional individuals close to Gaddafi, not mentioned in the UN sanctions. The asset freeze measures came into force on 3 March, after the decision was published in the Official Journal of the EU. France and UK especially have pushed for follow-up action against Libya, including further asset freezes. EU heads of state will meet once more for an **extraordinary European Council** in Brussels on 11 March to discuss the ongoing situation in the Middle East and North Africa.

The EU has now moved to freeze assets of the **Libyan Investment authority** (LIA), estimated at having \$60-80bn in assets worldwide, and a host of other Libyan financial entities, including the Central Bank. Much of the LIA funds are believed to be controlled by Gaddafi and his family, and they have significant stakes in several European companies, such as publisher Person PLC (which in turn owns the Financial Times), Italian bank Unicredit SpA, Italian defence company Finmeccanica and Italian football club Juventus, among others. The new list of sanctions targets still needs formal approval, but sanctions are expected to enter into force on 11 March.

However, Libya's case begs the question if not more should be done by the EU to **promote revenue transparency** which would drastically reduce the scope for corruption in resource rich countries. Transparency International's 2011 Report on Revenue Transparency of Oil and Gas Companies shows that none of the 8 EU oil and gas companies that were reviewed in the report reveal their royalty payments to governments in Algeria, Egypt and Libya. **Detailed publication of financial data by extractive industries on a country-by-country basis** makes it easier to track government revenues, allows citizens to hold their governments to account and helps prevent misappropriation of these funds. The European Commission failed to make reporting obligatory in its 2004 Transparency Directive, and **should immediately introduce binding legislation**.

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Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.