

MARQ WIJNGAARDEN
FLIP SCHÜLLER
PROF. LIESBETH ZEGVELD
MARIEKE VAN EIK
WIL EIKELBOOM
DR CHANNA SAMKALDEN
TAMARA BURUMA
MICHIEL PESTMAN
PROF. GÖRAN SLUITER
BRECHTJE VOSSENBERG
DR HANA VAN OOIJEN
JO-ANNE NIJLAND
LISA-MARIE KOMP
BARBARA VAN STRAATEN
TOM DE BOER
FREDERIEKE DÖLLE
ELLES TEN VERGERT

ADVISORS

PROF. HANS ULRICH JESSURUN D'OLIVEIRA
PROF. TIES PRAKKEN
PROF. BRITTA BÖHLER

Concerning: Avaaz | Filing of a report against the Khrapunov fraud

Dear Ms Van Dis-Setz,

I hereby file a report on criminal offences committed in the Netherlands on behalf of my client, a civic movement that goes under the name of Avaaz¹.

This report is targeted at a number of legal and natural entities who are suspected of being guilty of laundering substantial amounts of money that was embezzled in Kazakhstan. This report is mainly, but expressly not exclusively targeted at Bayrock B.V. and KazBay B.V., both of whom are legal entities established in the Netherlands, Helvetic Capital S.A., a legal entity registered in Switzerland, as well as the owners, directors and ultimately the stakeholders of these legal entities, including Bayrock Group LLC, Tefvik Arif and Leila Khrapunov, among other entities. The Bayrock Group LLC is a legal entity registered in the United States.

Avaaz suspects that the abovementioned legal and natural entities have committed said criminal offences, whether or not in organised form, and these offences will be discussed in detail below. Avaaz believes this organisation also included legal and natural entities which have facilitated the money laundering, including Bracewell & Giuliani LLP, a law firm operating from the United States.

There are indications that the abovementioned legal and natural entities have laundered at least USD 1,480,000 in the Netherlands, whether or not in organised form, via said KazBay B.V., a Dutch link in an international money laundering network. As stated, this money originated from crimes committed in Kazakhstan. An amount of up to USD 6 billion is purportedly involved in this fraud case. The suspected aim of the acts committed in the Netherlands, among other countries, was the

¹ Avaaz is established in the United States, but for this case Avaaz chooses domicile at my office; see further.

REGISTERED MAIL

Netherlands Public Prosecution Service
Ms J.J.M. van Dis-Setz LLM
Ijdok 163
1013 MM Amsterdam

Also via e-mail: j.j.m.van.dis-setz@om.nl

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Direct tel. no: 020-3446248

Direct fax no: 020-3446201

concealment of the criminal nature or origin of the revenues of these crimes. As explained in detail below, investigations in this case have uncovered a large number of money laundering indicators, such as the concealment of the ultimate stakeholders, an abundance of jurisdictions and shell companies involved, involvement of politically prominent individuals (including the aforementioned Leila Khrapunov) and involvement of former criminals. This fraud case has prompted criminal investigations in various countries.

Given the major social significance of effective and adequate investigation and prosecution of money laundering offences, the client requests you to also launch a criminal investigation in the Netherlands. The client believes that this very case may serve as an example of the facilitating role played by the Netherlands in the international money laundering network. I will explain the reasons in more detail below.

1. AVAAZ

Avaaz is an international civic movement founded in 2007, with over 48 million members in 194 countries.² Avaaz has approximately 290,000 members in the Netherlands. The movement conducts worldwide campaigns on important subjects of general interest. The members of the movement personally determine the subjects on which they want to conduct campaigns, and they are assisted by a team of over a hundred staff members, which operates in 16 languages and is spread across 23 countries.

The aim of Avaaz is to amplify the voice of citizens everywhere in the world in worldwide decision-making processes, and it hopes to bridge the gap between the world that exists and the world that people everywhere wish for. The campaigns by Avaaz do not originate from any particular ideology, nor are they targeted at specific subjects or regions. Avaaz organises meetings and media campaigns in order to spread information on subjects, is involved in fund-raising, helps members to establish contacts with policymakers, exerts direct political influence on decision-makers, and takes legal action where necessary in order to achieve its objectives. These objectives vary from the environment to human rights, and from countering misinformation to addressing corruption.

The fight against corruption is one of the key objectives of the members of Avaaz. For example, members of Avaaz have conducted a campaign in Brazil for the so-called law of 'Ficha Limpa', the clean record act, which makes politicians with a conviction for fraud ineligible to compete for public office. And together with Gordon Brown, the former Prime Minister of the United Kingdom, Avaaz is committed to the worldwide abolition of tax havens, including for members of the Group of 20. The campaigns against corruption and money laundering are among the most successful priorities of Avaaz.

It is in this context that this report should be read, where Avaaz wishes to emphasise that money laundering, as you know, is not a crime without victims. This also applies to the facts on which this report is based.

² <https://avaaz.org/page/nl/about/>.

2. HOW THIS REPORT CAME ABOUT

This report came about on the basis of a wide range of sources. Various journalistic inquiry groups have carried out investigations for many years into the criminal organisation and the worldwide money laundering network. In addition, this report builds on information from court documents from various jurisdictions. Anonymous sources were not used in the preparation of this report, but there were conversations with journalists who, in some cases, have had to use such sources in their investigations.

In 2017, the television programme Zembla produced two documentaries that are closely related to the criminal offences described in this report. The report is partially based on the work of Zembla.³ Zembla has published the results of the investigation on the website of the programme under the title '*File 1 KazBay B.V.*'.

This report only covers part of a far more extensive money laundering network. Avaaz is still investigating this network, in close cooperation with said media and inquiry groups. In the long term, this investigation could lead to a supplement to this report because there is a well-founded suspicion that even more funds originating from Kazakhstan have been laundered in the Netherlands.

3. BACKGROUND

This report is related to a complex global network of illegal money flows that are linked to what is considered to be one of the biggest fraud cases ever. It will be explained in more detail below how some of these money flows ultimately ended up in the Netherlands, and how Dutch service providers helped to cover up the money laundering acts.

In a nutshell, the money laundering network started in Kazakhstan, where a figure of up to USD 10 billion was purportedly embezzled. This money was subsequently circulated by two Kazakh oligarch families via a worldwide network of shell companies. A number of these companies were established in the Netherlands. The money was subsequently invested in real estate projects in the United States and Europe, after which it was paid out as 'profits' via – once again – a network of shell companies.⁴ Once again, Dutch companies were used here. As will be explained in more detail below, at least two Dutch companies – KazBay B.V. and Bayrock B.V. – played a key role here.

In the meantime, the fraud has resulted in a number of lawsuits in Kazakhstan⁵, London ("**High Court Case**", **Appendices 1a, 1b and 1c**), Paris⁶, Los Angeles ("**California Complaint**", **Appendix 2**) and New

³ See the website of Zembla: 'The Dubious Friends of Donald Trump: The Russians', File1 KazBay B.V. and File 3: The Billion Dollar Fraud: <https://zembla.bnnvara.nl/nieuws/the-dubious-friends-of-donald-trump-the-russians>; <https://zembla.bnnvara.nl/nieuws/the-controversial-friends-of-donald-trump-part-iii-the-billion-dollar-fraud>; and also: <https://zembla.bnnvara.nl/nieuws/trump-business-partner-accused-of-involvement-in-dutch-based-money-laundering-scheme> (hereinafter to be referred to as "**Zembla Documentaries**") Incidentally, one of the suspects in the fraud case, Iliyas Khrapunov has attempted – in vain – to have the Zembla broadcast banned: ECLI:NL:RBMNE:2017:5135

⁴ See, for example, the aforementioned Zembla documentaries. See also: The Diplomat 18 July 2018, 'The Case of the Khrapunovs', <https://thediplomat.com/2018/07/the-case-of-the-khrapunovs/>; or Financial Times 19 October 2016, 'Dirty Money: Trump and the Kazakh connection', <https://www.ft.com/content/33285dfa-9231-11e6-8df8-d3778b55a923>

⁵ <https://www.rferl.org/a/former-almaty-mayor-wife-convicted-and-sentenced-in-absentia/29531776.html>

⁶ <https://apnews.com/7aac8255fda84d09990a6e3bae7b1825>

York (“SDNY Case”, Appendices 3a and 3b). Some of these cases are still running. The client hopes to extend the investigation to the Netherlands with this report.

4. THE CRIMINAL ORIGIN OF THE FUNDS: FRAUD IN KAZAKHSTAN

This report is related to two major fraud cases that occurred in Kazakhstan approximately a decade ago.

In 2009, accountancy firm PricewaterhouseCoopers discovered a gap of approximately USD 10 billion during an audit of BTA Bank (the largest bank in Kazakhstan). This makes it the largest fraud case in the history of the country. Around about the same time, another fraud case came to light in Almaty, the largest town of Kazakhstan, where approximately USD 300 million purportedly disappeared. Suspicions in respect of these fraud cases soon pointed in the direction of two prominent residents of Kazakhstan: Viktor Khrapunov and Mukhtar Ablyazov. Both fraud cases may have come about independently from each other. However, there are strong indications that the revenues of these crimes were probably mixed via a complex money laundering network, and there was a great deal of mutual overlap in terms of the companies and natural entities involved. Khrapunov and Ablyazov appear to have engaged in an intensive collaboration in the laundering of their criminal assets.⁷

Not only did Ablyazov and Khrapunov have substantial business contacts, but they also had a close personal bond: Khrapunov’s son, Ilyas Khrapunov, is married to Ablyazov’s daughter.⁸

Viktor Khrapunov

Khrapunov was the mayor of Almaty from 1997 until 2004. There is a strong suspicion that he embezzled said USD 300 million during his term as a mayor, together with his wife Leila Khrapunov and his son Ilyas Khrapunov. This money therefore did not belong to Khrapunov but to the town. Khrapunov is purported to have ingeniously used the wave of privatisation in the country in order to seize control of former public works and companies. Thus, many of these businesses came into the possession of Khrapunov or his wife. Following acquisition, the businesses were sold on the private market, for a multiple of the price at which he or his wife had acquired them.⁹ It is estimated that Khrapunov and his family members managed to secure at least eighty items of immovable property in this way, with the help of at least as many empty legal entities.

In 2007, Khrapunov fled to Switzerland, with his family, with a large number of lawsuits following in his wake.

For example, Almaty is trying to reclaim part of the embezzled funds through the court, via court proceedings in the United States, among other means.¹⁰ In October of this year, Khrapunov and his

⁷ See, for example, the Zembla Documentaries (footnote 3) or *The Diplomat* 18 July 2018, ‘The Case of the Khrapunovs’, <https://thediplomat.com/2018/07/the-case-of-the-khrapunovs/>

⁸ See, for example, ‘Declaration of Nicolas Bourg in City of Almaty and BTA Bank v Mukhtar Ablyazov, Viktor Khrapunov, Ilyas Khrapunov and Triadou SPV S.A.’, District Court of Southern District of New York, 15 Civ. 5345 (AJN) (SN), available via: <https://www.scribd.com/document/354277312/Bourg-Declaration-5-2-16-Almaty-Case>

⁹ Appendix 2, California Complaint, par. 25-26. See also *The Diplomat* 18 July 2018, ‘The Case of the Khrapunovs’, <https://thediplomat.com/2018/07/the-case-of-the-khrapunovs/>

¹⁰ Appendix 2, California Complaint.

wife were convicted of corruption by a court in Kazakhstan, by default¹¹. At the request of Kazakhstan, the Swiss authorities seized the properties of the Khrapunovs in Switzerland, and the Swiss launched an independent criminal investigation in parallel.¹²

Mukhtar Ablyazov

Between 2005 and 2009, Ablyazov was president of the BTA Bank, which is established in Almaty. During this period, he is purported to have embezzled astronomical sums of money. According to estimates, an amount of at least USD six billion is involved. This embezzlement occurred via a system of loans to shell companies, of which Ablyazov proved to be the ultimate stakeholder. The loans were subsequently never repaid.¹³

The fraud cases described above have resulted in more lawsuits, not only in Kazakhstan and the United States, but also in England and France. A number of these lawsuits are still running.

In 2012, a British High Court issued a worldwide freezing order against Ablyazov in connection with this fraud for a total of USD 4.9 billion. This is one of the proceedings that are still running.¹⁴ In the related proceedings, the High Court recently decided that Ablyazov and Iliyas Khrapunov had conspired to prevent the assets from actually being frozen (**Appendix 4**).¹⁵

5. THE MONEY LAUNDERING NETWORK: KAZBAY B.V.

Ablyazov and Khrapunov have jointly laundered both embezzlements and the revenues resulting from them via a worldwide money laundering network. The various shell companies, money laundering investments and money flows are purported to have been intermingled and continually exchanged.¹⁶

An essential element of the money laundering process was the choice of the ultimate destination of the monies, where the revenues of the embezzlement could be invested in order to generate apparently legitimate revenues. Ablyazov and Khrapunov initially invested a large proportion of the embezzled money in Switzerland. However, when the Swiss authorities threatened to launch a criminal investigation around 2010, the two men relocated their investments, to the United States in particular. This step was probably inspired by the consideration that Kazakhstan did not have an extradition and mutual legal assistance treaty with the United States at the time.¹⁷

¹¹ Both suspects have now been convicted in absentia of these frauds in Kazakhstan, Ablyazov was sentenced to 20 years in prison in June 2017, while Khrapunov was sentenced to 17 years in prison on 8 October 2018; <https://www.rferl.org/a/former-almaty-mayor-wife-convicted-and-sentenced-in-absentia/29531776.html>

¹² <https://astanatimes.com/2018/03/switzerland-conducts-investigation-against-former-almaty-mayor-and-family/>

¹³ Appendix 2, California Complaint, par. 30

¹⁴ Appendix 1a, *JCS BTA Bank v Mukhtar Ablyazov and Iliyas Khrapunov*, High Court of Justice, Queen's Bench Division, Commercial Court, Amended Particulars of Claim 25 September 2017. See also *JCS BTA Bank v Ablyazov* [2015] UKSC 64, par 2, via <https://www.supremecourt.uk/cases/docs/uksc-2013-0203-judgment.pdf>. BTA Bank has published a list of companies in which Ablyazov had a (direct or indirect) interest. In total, more than 800 companies are involved. The list can be found via <http://bta.kz/files/AssetslistnewBTASite.pdf>

¹⁵ *JCS BTA Bank (Respondent) v Khrapunov (Appellant)*, UK Supreme Court 21 March 2018, [2018] UKSC 19, Judgment

¹⁶ Appendix 4. *JCS BTA Bank (Respondent) v Khrapunov (Appellant)*, UK Supreme Court 21 March 2018, [2018] UKSC 19, Judgment, par. 4.

¹⁷ Appendix 2, California Complaint, par 3.

Abylazov and Khrapunov invested large sums in real estate, including several projects in the United States.¹⁸

The Netherlands played a crucial role in this network. Not as a final destination, such as in the United States, but as an intermediate station. The origin of the money that was embezzled in Kazakhstan was concealed via Dutch companies, as a result of which it could be invested 'laundered' elsewhere in the world or returned to Kazakhstan.¹⁹

One of these Dutch intermediate stations was KazBay B.V. (**Appendix 5**)²⁰ KazBay B.V. was the subsidiary from a relationship between two other legal entities: the Dutch private company Bayrock B.V. (**Appendix 6**)²¹ and the Swiss company Helvetic Capital S.A.²² This Dutch legal entity also features prominently in one of the Zembla documentaries.²³ The diagram in **Appendix 7** provides an overview of the Dutch branch of the money laundering network and the related Abylazov/Khrapunov companies.

The Dutch company Bayrock B.V. is part of the Bayrock Group LLC²⁴, which is established in the United States. Bayrock Group LLC is frequently linked to the Khrapunovs in the media, who have purportedly invested money in the company.²⁵ In addition, a former director of the Bayrock Group LLC (Jodi Kriss) has accused the company of fraud and participation in a criminal organisation (**Appendix 9**) in a court case in the United States.²⁶ According to Kriss, the ultimate stakeholders behind the Bayrock Group LLC – and therefore behind the companies controlled by the Bayrock Group including Bayrock B.V. – are business partners Tevfik Arif²⁷, Felix Sater and Julius Schwartz.²⁸

¹⁸ Appendix 2, California Complaint, par. 4; and Appendix 3b, SDNY Case, p. 22 and further ("*The Abluazov-Khrapunov Group Conspires to Transfer and Hide Illicit Funds in the United States*").

¹⁹ See, for example, the Zembla documentaries

²⁰ Extract of the Chamber of Commerce, deed of incorporation and trade history.

²¹ Extract of the Chamber of Commerce; the Dutch Bayrock B.V. forms part of the Bayrock Group LLC, which is established in the United States.

²² Appendix 5, deed of incorporation of KazBay B.V.

²³ See: <https://zembla.bnnvara.nl/nieuws/de-omstreden-vrienden-van-donald-trump-de-russen>

²⁴ Bayrock Group LLC is a US real estate company that invests in luxury projects all over the world. See, for example <https://assets.documentcloud.org/documents/3117892/Bayrock-Presentation.pdf>. See **Appendix 8** for an overview diagram of part of the Bayrock Group.

²⁵ See, for example, OCCRP, 'Steppe to Soho: How Millions Linked to Kazakhstan Mega-Fraud Case Ended up in Trump Property', available via: <https://www.occrp.org/en/investigations/8248-steppe-to-soho-how-millions-linked-to-kazakhstan-mega-fraud-case-ended-up-in-trump-property> Tom Burgis in the Financial Times, 19 October 2016, "Dirty money: Trump and the Kazakh connection. FT probe finds evidence a Trump venture has links to alleged laundering network", <https://www.ft.com/content/33285dfa-9231-11e6-8df8-d3778b55a923>; Khrapunov and Bayrock Group LLC purportedly jointly invested in a luxurious apartment project with a view of Lake Geneva, to which end the Swiss company Swiss Capital IB SA is purported to have been set up in 2008.

²⁶ Appendix 9, Verified Complaint, Jody Kriss and Michael Ejekan, United States District Court Southern District of NY, Case 1:10-cv-03959-LGS-FM, available via: <https://zembla.bnnvara.nl/data/files/3081555708.pdf>

²⁷ See Appendix 10, for example, for more background information on Arif; see, for example, *Bloomberg* 21 June 2017, 'Trump, Russia and a Shady Business Partnership', Timothy L. O'Brien, <https://www.bloomberg.com/view/articles/2017-06-21/trump-russia-and-those-shadowy-sater-deals-at-bayrock>

²⁸ Appendix 9, Verified Complaint Jody Kriss and Michael Ejekan, United States District Court Southern District of NY, Case 1:10-cv-03959-LGS-FM, par. 3.

Leila Khrapunov, Khrapunov's wife, was the ultimate stakeholder of Helvetic Capital S.A. This fact was not evident from the official documents but came to light via an investigation by journalists involved in the case (**Appendix 10**).²⁹

Upon incorporation, the Dutch office ATC Trust B.V. provided two managing directors for KazBay B.V.: Hendrik Justus Wirix and Ronald Arendsen.³⁰ The US law firm Bracewell & Giuliani LLP was also involved in the incorporation, acting for Helvetic Capital S.A. at the time of the incorporation of KazBay B.V.³¹

Bayrock B.V. and Helvetic Capital S.A. entered into an agreement in early September 2007. In this so-called 'Capital Contribution Agreement', they agreed to jointly invest almost USD 1.5 million in KazBay B.V. (**Appendix 11**). Shortly afterwards, on 24 September 2007, Bayrock Group LLC paid half of the amount (USD 740,000) to Bayrock B.V., which subsequently transferred the amount to KazBay B.V. on 25 September 2007 (**Appendix 12**). Bank statements show that the companies used the Dutch branch of Deutsche Bank here.³² Helvetic Capital S.A. also transferred the money to KazBay B.V. (**Appendix 13**).³³

What is furthermore striking about the Dutch KazBay transaction is the timing. Indeed, it was during the period of the incorporation of KazBay B.V. that Mukhtar Ablyazov, as president of BTA Bank, arranged a loan transaction, where BTA Bank took out USD 6.8 billion worth of loans with the Dutch subsidiary TuranAlem Finance B.V. (**Appendices 14a, 14b and 14c**).³⁴ At the same time, bonds were issued by BTA Bank and TuranAlem Finance B.V. The background and timing of this transaction is also unclear.³⁵ Given the substantial overlap in companies and individuals involved in the Ablyazov and Khrapunov fraud, and considering the timing of both transactions, it is justified to wonder whether both transactions were linked to each other.

²⁹ Appendix 10, e-mail on ultimate stakeholder of Helvetic Capital S.A. and Bayrock Group LLC, originating from the Zembla Documentaries (<https://zembla.bnnvara.nl/data/files/2033471528.pdf>). See also: <http://www.moneyhouse.ch/en/p/leila-khrapunova>; see for other registrations: <https://www.easymonitoring.ch/handelsregister/devol-sa-952481>

³⁰ See appendix 5, company profile of KazBay B.V.

³¹ Appendix 10, e-mail on ultimate stakeholder of Helvetic Capital S.A.

³² This is striking because Deutsche Bank was previously fined for participation in money laundering by Russian oligarchs: <https://www.volkskrant.nl/economie/deutsche-bank-weer-beboet-nu-om-witwassen~b3269b95/>; and <https://www.rtlnieuws.nl/algemeen/economie/artikel/1143226/deutsche-bank-onderzoekt-witwassen-rusland>; Deutsche Bank still does not seem to have its affairs in order: <https://www.nu.nl/geldzaken/5477912/deutsche-bank-moet-van-toezichthouder-meer-doen-witwassen.html>.

³³ See appendix 13, due diligence investigation into KayBaz B.V. by FL Group.

³⁴ Annual report TuranAlem Finance B.V. 2007. It becomes evident from court documents that BTA Bank had at least two Dutch subsidiaries, in which it had an interest of at least 50%: TuranAlem Finance B.V. and Temir Capital B.V. (both registered at Schouwburgplein 30-34, 3012 CL, PO box 21153, 3001 AD in Rotterdam). See, for example, 'Verified petition for recognition of foreign main proceeding and request for related relief', United States Bankruptcy Court Southern District of New York, footnote 1, available via: <http://southbaylawfirm.com/wp-content/uploads/2010/02/jsc-bta-bank.pdf>; and an overview of the investments of BTA Bank as of 1 June 2018, via: <http://bta.kz/en/investor/fininfo/aquisition/>. For the raising of capital by Temir Capital B.V. see https://www.moody.com/research/Moodys-assigns-B1-rating-to-Temir-Capital-BV-senior-notes--PR_122320

³⁵ Moreover, interest payments on these bonds were soon ceased, resulting in a restructuring, <http://old.kase.kz/en/bonds/show/BTASe6> and <http://cbonds.com/organisations/emitent/527>

6. UNCLEAR DESTINATION OF THE FUNDS: MINING ACTIVITIES IN KAZAKHSTAN?

It is not clear what happened to the deposited funds. According to KazBay, the money was invested in mining activities in Kazakhstan, but evidence for this is lacking and those involved with BayRock were unable to produce it, not even after repeated requests by one of the investors in the group.³⁶

The suspicion that KazBay B.V. was founded for money laundering is confirmed by the fact that those involved apparently considered it to be important to conceal the identity of the ultimate stakeholders behind the companies involved. For example, annual reports and extracts only specify the names of directors of trust offices – not the names of shareholders or persons who actually work for the companies, nor overviews of real economic activities.³⁷

Nor does it become evident from the official documents that Viktor Khrapunov's wife, Leila Khrapunov, was the ultimate stakeholder of one of the two 'parent companies' of KazBay B.V., as noted above, but this follows from e-mail correspondence between those involved that came to light. The names of prominent stakeholders in the Bayrock Group LLC also appear to have been systematically omitted from the documents.³⁸

7. CRIMINAL OFFENCES: MONEY LAUNDERING

Avaaz believes the suspicion of money laundering is twofold and affects both aforementioned parent companies of KazBay B.V.

First of all, there is serious suspicion with regard to participation by Helvetic Capital S.A. in KazBay B.V. because there are good reasons to suspect that Leila Khrapunov was the *ultimate stakeholder* of the Swiss legal entity. It should be noted here that said Leila Khrapunov was frequently linked to the fraud committed by her husband in the past, mainly through her role as managing director in countless shell companies which were purportedly used by her husband in the fraudulent privatisations in Almaty.

It can be concluded from the documents presented in the US lawsuit filed by the town of Almaty that Leila was involved in the set-up and directing of legal entities who, in the same ways as KazBay B.V., seem to have been used mainly as a money laundering vehicle.³⁹ It can be concluded from criminal

³⁶ Appendix 13: when a business partner of Bayrock, FL Group, requests evidence of these investments in Kazakhstan, it appears that Bayrock is unable to account for the investment; see Appendices XX, e-mails to FL Group. In preparation of its broadcast, Zembla asked the Bayrock Group to provide a response. Bayrock said that the investment was unsuccessful and that the structure was dissolved.

³⁷ The trade register records of Bayrock B.V. Staff show that staff members of a Dutch trust office acted as directors for a certain period of time: Hendrikus Justus Wirix and Ronald Arendsen. They were staff members of the trust office ATC Trust B.V; Appendix 6, trade register records.

³⁸ Appendix 9: Verified Complaint Jody Kriss and Michael Ejekan, United States District Court Southern District of NY, Case 1:10-cv-03959-LGS-FM, par. 493. It becomes evident from the Chamber of Commerce documents from Appendix 7 that Julius Schwartz is also mentioned in the Dutch Bayrock B.V., while names such as Felix Sater or Tevfik Arif are not mentioned (while they are directors of the Bayrock Group, just like Julius Schwartz).

³⁹ Appendix 2, Complaint California, par. 25, 29, 31 and further.

investigations in other jurisdictions that Leila Khrapunov was personally involved in the widespread fraudulent activities of her husband.⁴⁰

All this creates reasonable suspicion that Helvetic Capital S.A. belonged to one of the empty shells used by the Khrapunov family to try to conceal the revenues from the Kazakh fraud. The investment of USD 740,000 in KazBay B.V. by Helvetic Capital S.A therefore originates from crime, which makes this transfer an act of money laundering.

In addition, the suspicion of money laundering equally applies to the other 'parent company' of KazBay B.V.: Bayrock B.V.

The Bayrock Group LLC has a dubious reputation, as noted above, and there are indications that the company is involved in suspect business transactions⁴¹. It invests in real estate, where it seems to frequently and sometimes conspicuously use a complex company structure that appears to be geared towards tax evasion. Moreover, the Bayrock Group LLC conceals the identity of parties or stakeholders involved, of whom at least one has a criminal record.⁴² It will not come as a surprise that the company is linked to large-scale fraud.⁴³

However, apart from the above, the Dutch company Bayrock B.V. has a criminal law problem in this case.

There are at least two agreements from which it can be concluded that Bayrock B.V. entered into a business relationship with Helvetic Capital S.A.⁴⁴ It becomes evident from e-mails that Ronald Arendsen, one of the directors of Bayrock B.V., was informed by a lawyer of Bracewell & Giuliani LLP that Leila Khrapunov was the ultimate stakeholder of Helvetic Capital S.A. ⁴⁵ Nevertheless, Bayrock B.V. decided to go into business with Helvetic Capital S.A. and to jointly found KazBay B.V. Thus, Bayrock B.V. actively participated in the set-up of a structure that was purportedly used to launder the revenues from the Khrapunov fraud. This makes Bayrock B.V. a potential abettor to money laundering.

8. KAZBAY B.V.: MONEY LAUNDERING FEATURES

A conviction for money laundering does not require the predicate offence to be proved. The indictment does not have to specify by whom, when and where the predicate offence was

⁴⁰ In November 2012, the Swiss judicial authorities seized the assets and possessions of the Khrapunov family, including assets with the Swiss banks Sarasin & Co. Ltd., Credit Suisse and Schroeder & Co; see Appendix 2, California Complaint, par. 38.

⁴¹ *Financial Times* 19 October 2016, 'Dirty Money: Trump and the Kazakh connection', <https://www.ft.com/content/33285dfa-9231-11e6-8df8-d3778b55a923>; *Bloomberg* 21 June 2017, 'Trump, Russia and a Shady Business Partnership', Timothy L. O'Brien, <https://www.bloomberg.com/view/articles/2017-06-21/trump-russia-and-those-shadowy-sater-deals-at-bayrock>

⁴² It concerns Bayrock director Felix Sater: <https://zembra.bnnvara.nl/nieuws/nederlandse-brievenbusfirmas-spelen-sleutelrol-in-transacties-miljardenfraudeur>; and <https://zembra.bnnvara.nl/nieuws/de-onderste-steen-boven-zembra-werkt-in-dossier-trump-samen-met-buitenlandse-media>

⁴³ Appendix 9, Verified Complaint Jody Kriss and Michael Ejekan, United States District Court Southern District of NY, Case 1:10-cv-03959-LGS-FM

⁴⁴ Appendix 12, The Capital Contribution Agreement and a Fee Sharing Agreement; **Appendix 15**. See also **Appendix 16**, e-mail correspondence between Marc Gillieron (director of Helvetic) and Bracewell & Giuliani LLP

⁴⁵ Appendix 10, E-mail from Bracewell & Giuliani LLP to Ron Anderson.

committed. It only has to determine that the object originates from a certain crime. It is even assumed in case law that it is sufficient if it is not clear what crime was committed, but if it can be determined that it 'cannot be anything other than that' the object originates from a crime. In the event of such a suspicion of money laundering, the suspect may be requested to provide a statement on the origin of the money. The facts and/or circumstances demand an explanation, as is also the case here.⁴⁶ The statement on the origin of the object should be specific, more or less verifiable and must not be highly unlikely in advance.⁴⁷

There are clear indications that KazBay B.V. acted as a shell company that was founded with the sole aim of facilitating the money laundering process and concealing the actual origin of the Kazakh fraud cases. There are various indicators that demand an explanation and require further investigation to uncover the fraud. In summary:

- KazBay B.V. was founded by means of two substantial investments occurring over a short period of time, and it seems nothing was done with them in the ensuing period;
- Those involved concealed the identity of the ultimate beneficiaries behind the companies;
- The directors Wirix and Arendsen are employed by trust offices;
- The companies involved (including Bayrock B.V. and Helvetic S.A.) refused or were unable to provide third parties with an insight into the destination of the funds invested in KazBay B.V.;
- Politically prominent persons were involved in the transactions, including Khrapunov's wife, whose involvement was concealed;
- In addition, the involvement of persons with a criminal record was deliberately concealed for the outside world⁴⁸;
- Some of the companies involved were established in countries that are known to be tax havens, such as Switzerland and the British Virgin Islands;
- Distinct economic activities seem to have been non-existent in the companies involved;
- Any investments by the companies involved were typical money laundering destinations such as real estate;
- Moreover, almost all of the companies that seem to have served as a money laundering vehicle had a limited lifespan.

The recent ING affair shows once again that, if the indicators specified above occur systematically, without these indicators being reported on, this could result in a widespread money laundering network and facilitators who turn a blind eye.⁴⁹

9. CRIMINAL OFFENCES: THE CRIMINAL ORGANISATION

The abovementioned overlap between companies, directors and shareholders raises many questions. The agreements that underlie KazBay B.V. show that there was a close cooperation between KazBay B.V., Bayrock B.V. and Helvetic Capital S.A. This cooperation seems to have been coordinated and geared towards a specific objective to the extent where it is justified to speak of a criminal organisation in criminal law terms.

⁴⁶ EHRM 8 February 1996 (Murray).

⁴⁷ The Court of Justice in The Hague, 12 March 2008, LJN BC6500 and HR 13 July 2010, NJ 2010, 456 and HR 19 December 2014, ECLI:NL:HR:2014:3687.

⁴⁸ Including Felix Sater.

⁴⁹ Press release by the Netherlands Public Prosecution Service on the occasion of a settlement with ING Bank N.V.: <https://www.om.nl/@103953/ing-betaalt-775/>

As noted in the introduction, this organisation should be understood to also include legal and natural entities who facilitated the laundering, including Bracewell & Giuliani LLP, the US law firm. The role of the Dutch trust office ATC Corporate Services (Netherlands) B.V. raises questions as well. After all, the trust office had the obligation to conduct a thorough investigation into the companies for whom and on behalf of whom it acted. This does not seem to have happened here. The question therefore arises as to what is the reason for this lax attitude and how it should be explained.

The suspected aim of this organisation was to launder the revenues of the Kazakh fraud cases. Insofar as the Dutch part is concerned, this mainly concerned the concealment of the origin of the monies. At any rate, the criminal organisation consists of the abovementioned legal entities. However, Avaaz cannot rid itself of the impression that even larger links have existed, from Kazakhstan to the United States, which in themselves form criminal organisations in which KazBay B.V., Bayrock B.V. and Helvetic Capital S.A. have participated on an individual basis.

10. THE POSSIBLE SUSPECTS

The possible suspects in this case are, as noted above, in any event, Bayrock B.V, KazBay B.V. and Helvetic Capital S.A., as well as the directors and ultimate stakeholders of these legal entities, including Bayrock Group LLC, Tefvik Arif and Leila Khrapunova, among other entities. The companies KazBay B.V. and Bayrock B.V. no longer exist. The report therefore expressly covers the ultimate stakeholders behind these companies.

The role of Bracewell & Giuliani LLP merits further attention here. Although the office is established in the United States (New York), it looks as though the office made the incorporation of KazBay B.V. possible, and has thereby facilitated the laundering of funds from Kazakhstan to the Netherlands.

Incidentally, the involvement of Bracewell & Giuliani in this case seems to extend beyond just the incorporation of KazBay B.V. The office has been active in Kazakhstan since 1997; there have been contacts between Bracewell & Giuliani and Khrapunov and Ablyzov over a prolonged period of time.

In this context, it is important to note that, as of 1 June 2003, regulations for the prevention of money laundering and the financing of terrorism also apply to lawyers that provide services in the Netherlands.⁵⁰ This means that Bracewell & Giuliani LLP, involved as a law firm in the incorporation of Dutch companies, had the legal duty to identify the client and to report any unusual performed or intended transactions within the framework of its service provision. On the basis of the Economic Offences Act, non-compliance with identification and notification obligations also comes down to an economic offence under act for the prevention of money laundering and financing of terrorism.

11. MENS REA

It logically follows from this that the possible suspects mentioned above were aware of the true nature of and underlying interests in the money laundering construction described in this report.

⁵⁰ As of 1 June 2003, the Identification (Financial Services) Act and the Unusual Transactions Notification Act apply to the legal profession. On 1 August 2008, these acts were replaced with the act for the prevention of money laundering and financing of terrorism (Dutch abbreviation: Wwft).

Even it is not possible to speak of the unconditional intention of money laundering, the suspicion seems justified that the natural and legal entities involved have consciously accepted the reasonable chance, or should have had the reasonable suspicion that KazBay B.V. was no more than a construction to launder criminal money. Natural entities may be expected to carry out proper research into the companies with which they do business and the agreements they enter into to this end, certainly if it concerns companies which have as many money laundering features or indicators as KazBay B.V.

Furthermore, with regard to criminality in accordance with article 140 of the Dutch Criminal Code, those involved do not necessarily have to have had any form of intent in terms of the specific crimes envisioned by the organisation, nor do they necessarily have to have had knowledge of any specific crime.

In short, this case revolves around the issue that everything points to the fact that the above-mentioned possible suspects knew, at some point, or should have known, that the organisation to which they belonged had the intention of or was involved in money laundering.⁵¹ Incidentally, the committing of crimes does not necessarily have to have been the final objective of the organisation to which the suspects in this case belonged.

From the attached documents, including e-mail correspondence between the parties involved, it becomes evident that KazBay B.V., Bayrock B.V as well as Helvetic Capital S.A. had knowledge or should have had knowledge of the crimes that were purportedly committed by the criminal organisation, and that these entities nonetheless continued to contribute to the achievement of the objectives of this organisation.

12. THE SPECIAL ROLE OF THE 'PROFESSIONAL FACILITATORS'

The so-called 'professional facilitators' merit special attention here, also in terms of criminal prosecution. In any event, this includes Bracewell & Giuliani LLP, but the other service providers involved in the incorporation and money laundering acts of KazBay B.V. should be recognised as well.

Money laundering structures, such as those described above, are simply not possible without the help of professional parties: lawyers, trust offices and bankers, who do not comply with their legal obligations to prevent money laundering and the financing of terrorism, by failing to carry out a thorough client investigation and omitting to report unusual transactions. It is striking here that the name of one Dutch trust office surfaced with some regularity in the investigation conducted: ATC Corporate Services (Netherlands) B.V.⁵², to which the Dutch managing directors of Bayrock B.V, Henk Wirix and Ronald Arendsen, were affiliated.

13. NECESSITY FOR CRIMINAL PROSECUTION

Avaaz insists on criminal prosecution considering the major social importance of this case.

This Kazakh fraud case illustrates like no other that the Netherlands still plays a major role as a transit country for revenues that are embezzled in emerging economies or which are simply stolen, after

⁵¹ HR 18 November 1997, NJ1998/225.

⁵² According to Bloomberg, ATC Corporate Services is (currently) part of Intertrust Group Holding S.A.: <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=8125718>

which they are laundered in the West. The Netherlands very often acts as an intermediate station and transfer country in these cases, as is shown by this case, and therefore plays an essential role within the global money laundering system. Criminal prosecution is the only way to remove the Netherlands as a link in the criminal chain. Laundering criminal money is a form of subversive criminality that poses a threat to the integrity of financial and economic traffic.⁵³ Moreover, the government states that countering money laundering is a priority because it is of great importance for effectively opposing all manner of other forms of serious crime. The concealment of the criminal origins of the proceeds of crime enables the perpetrators of these crimes to stay outside the reach of the investigation authorities and to enjoy their accumulated assets without being disturbed.⁵⁴

The recent social commotion following the announcement of the money laundering scandal at ING confirms once again the public call for official and judicial accountability of any party involved in money laundering. Not only does this apply to banks and financial service providers, such as ING, but also to other professional 'enablers', such as trust offices, which facilitate money laundering with their actions. Without businesses such as ATC Corporate Services, the Netherlands would soon lose its appeal for money launderers.

Moreover, prosecution in the Netherlands is in line with attempts made elsewhere in the world to call to account those responsible for the Kazakh fraud cases specified in this report. Detection in the Netherlands could support these international initiatives and, conversely, the Netherlands could benefit from the results of legal proceedings abroad, for example in New York, California, the United Kingdom and Switzerland.

14. CONCLUSION

Based on the requests above, and on behalf of Avaaz, we request you to initiate a criminal investigation into the facts specified in this report as well as into the persons who appear to be responsible for this. Avaaz is more than willing to explain this report in more detail.

With kind regards,



Barbara van Straaten

⁵³ Guideline of the Netherlands Public Prosecution Service for the criminal procedure in the case of money laundering (2015R052), Dutch Government Gazette 2015, 5392.

⁵⁴ Press release by the Netherlands Public Prosecution Service on the occasion of a settlement with ING Bank N.V.: <https://www.om.nl/@103953/ing-betaalt-775/>