

ACCESS DENIED?

**Availability and accessibility of beneficial
ownership data in the European Union**

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Availability and accessibility of beneficial ownership data in the European Union

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BENEFICIAL OWNERSHIP TRANSPARENCY IN THE EU

That anonymous companies are the vehicle of choice for the corrupt and criminals is no longer a secret.

Almost on a weekly basis, journalists uncover – often thanks to whistleblowers – new cases of kleptocratic abuse of anonymous companies. And because they cannot identify the real individuals behind the companies that are used and abused to commit financial crime, law enforcement agencies and other competent authorities around the world have been facing significant challenges¹ in investigating and countering cross-border corruption, money laundering, environmental crimes and even human trafficking.

The European Union (EU) was among the first to take serious steps aimed at improving transparency in company ownership. Most notably, in 2015, the 4th EU Anti-Money Laundering Directive (AMLD) required countries to establish beneficial ownership registers. In 2018, in response to scandals such as the Panama Papers and Paradise Papers, the EU approved the 5th EU AMLD, which contained further measures for enhancing the ability of competent authorities – both inside and outside the EU – to detect and investigate money laundering and financial crime.

The 5th EU AMLD, however, does more than that. Recognising that transparency can be a powerful

deterrent, it also sets measures for preventing money laundering and financial crimes. What is more, by recognising the importance of public scrutiny of company and beneficial ownership data to preserving trust in the integrity of business transactions and of the financial system, it requires countries to open up their beneficial ownership registers to all members of the public.

Three years after its adoption and more than a year after the deadline for transposing key measures at the national level, Transparency International is taking stock of whether countries across the EU have implemented measures to improve transparency in company ownership. We have assessed, in particular, whether the spirit of the law has been respected. Above all, we analysed the accessibility of public beneficial ownership registers across Member States.

The level of compliance of BO identification obligations by companies; the quality, adequacy and accuracy of the data; as well as the accessibility by competent authorities and the extent to which they have immediate and unfiltered access to the register will be subject of next analyses.

EU's anti-money laundering framework

Member States are currently required to ensure that corporate and other legal entities incorporated within their territories obtain and hold adequate, accurate and current information on beneficial owners of these entities. Countries are expected to establish central, public registers of beneficial owners of corporate and other legal entities. These registers should be available to, at a minimum:

- + competent authorities (tax agency and authorities tasked to investigate money laundering) and Financial Intelligence Units (FIUs), without any restriction
- + obliged entities, including financial institutions and other professionals such as lawyers, accountants, and real estate agents
- + any member of the general public

Member States are expected to collect a set of information on the beneficial owner but, in order to strike a balance between privacy rights and public interest, they need to make only a subset of that information available to the public. At a minimum, the public should have access to the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.

The Directive leaves at the discretion of each Member State to determine whether online registration and the payment of a fee will be required for the public and obliged entities to access the information.

ARE PUBLIC REGISTERS IN PLACE?

By January 2020, all EU members should have established public beneficial ownership registers. Our analysis, however, shows that this is not the case. More than a year after the transposition deadline, nine countries still do not have public beneficial ownership registers.

The great majority of countries across the Union (24 out of 27) have at least a private central beneficial ownership information register in place. This was a requirement under the 4th EU AMLD, which Member States should have complied with by 26 June 2017.

The only three countries that have not yet established any type of beneficial ownership registers are Hungary², Italy and Lithuania³.

Non-compliance with EU rules becomes much greater, however, if we look at whether EU countries have established public beneficial ownership registers. Six countries – Cyprus, Czech Republic, Finland, Greece, Romania and Spain – have failed to comply with the January 2020 deadline and have not yet opened up their registers to the public. In most of them, access to the data can still be granted to the media or civil society if they proved they have a legitimate interest.

- + The government of Cyprus has announced that their public register will not be in place until the end of 2021.⁴
- + In Czech Republic, the government announced the register will be made available to the public in June 2021.
- + In Finland, the company register includes a mention on whether information on beneficial owners has been recorded by a given company, but the public cannot access any details, not even the name of the beneficial owner.

- + In Greece, the register should have been operational as of March 2020, but the country has successively postponed its implementation due to the COVID-19 pandemic.
- + In Spain, delays to transpose the EU directive through the legislative process led to the enactment of a royal decree in the end of April 2021. Among other things, the decree establishes a public beneficial ownership register, but its implementation will take at least another six months as further regulation is pending.⁵

More than a year after the EU AMLD transposition deadline, nine EU countries still do not have public beneficial ownership registers in place.

In Germany, there is no comprehensive central beneficial ownership register. The Transparency Register (Transparenzregister) contains beneficial ownership records for companies only if such information is not already included in other company registers. If those registers do not contain beneficial ownership information, an entry in the Transparency Register is mandatory. In practice, however, the fact that these registers are not fully integrated makes it almost impossible to verify

whether companies that should be disclosing their beneficial owners to the Transparency Register. The government has proposed a reform, which is

pending parliamentary approval and would require all companies to register their beneficial owners with the Transparency Register.⁶

BENEFICIAL OWNERSHIP REGISTERS ACROSS THE EUROPEAN UNION



DOES PUBLIC ACCESS REALLY MEAN PUBLIC ACCESS?

Despite EU provisions that stress the importance of granting access to beneficial ownership information to both domestic and foreign competent authorities, as well as members of the public, what we find is that access may be restricted – even in countries that have public central registers in place.

Countries have set up complex registration systems that often require a digital identification document – from that country or another EU country on its list of countries with an approved electronic identification system, limiting the ability of foreign authorities as well as the public to seek and receive information on real company ownership.

Online registration to consult the register is a requirement in eight of the 18 countries that have public beneficial ownership registers. Out of those, in four (Belgium, Croatia, Portugal and Sweden) access is restricted to nationals and to citizens from a handful of other EU countries, meaning members of the general public outside these jurisdictions cannot access the information.

This not only goes against the text and spirit of the EU Directive, but it also against national law, in some cases. In Croatia, for example, the 2019 amendment of the Anti-Money Laundering and Terrorist Financial Law, which mandated the creation of the register in the country, grants access to data to both domestic and foreign natural and legal persons. In reality, however, access to the register requires e-identification from users, which is only available for Croatians and citizens of eight other EU countries.

In Belgium, access to the register is limited only to Belgian citizens or foreign citizens who possess a Belgian tax identification number.⁷

In some of the other ten countries where registration is not required to look up companies'

beneficial owners in the register, users may still be asked to register and pay a fee to download documents, obtain extracts or get more detailed information, like historical ownership data.

How easy is to find a company's beneficial owner?

Access to the information is also restricted by the functionalities of the register and how information can be searched.

Only in Denmark and Latvia the information in the register is available as structured data and in a machine-readable format, allowing the public to download the whole dataset.

In all other countries, users need to search by company name or by the name of the beneficial owner.

In the Danish register, which has by far the most advanced functionalities, it is possible to search by company (exact or parts of the name) and by beneficial owner. The register also allows users to easily check all companies controlled by the same beneficial owner as well as all companies registered at a given address.

However, we found several other hurdles when it comes to functionalities.

Only in five countries it is possible to search by both company name and the name of a beneficial owner.

TABLE 1. ACCESSIBILITY CHARACTERISTICS OF EU BENEFICIAL OWNERSHIP REGISTERS

Country	Central BO register	Public BO register	Online registration or e-identification	Access restricted to nationals/EU citizens	Fees	Search by legal entity or beneficial owner	Further requirements to users	Register
Austria	✓	✓	Yes	No	Yes €3.00	Legal entity	Exact spelling of the name of legal entities	WiEReG
Belgium	✓	✓	Yes	Yes	Yes €1.50	Legal entity	Legal entity's number or name. Only Belgian citizens or foreign citizens that possess a Belgian tax identification number can log in to the register	UBO Register
Bulgaria	✓	✓	No	No	No	Both	Search only available in Cyrilic. Access to documents is only possible with an e-identification	Commercial Register and Register of non-profit legal entities
Croatia	✓	✓	Yes	Yes	No	Legal entity	None	Registra stvarnih vlasnika
Cyprus	✓	✗						
Czech Republic	✓	✗						
Denmark	✓	✓	No	No	No <i>Available as open data</i>	Both	None	CVR on Virk
Estonia	✓	✓	No	No	Yes €1.00	Legal entity	None	e-äriregister
Finland	✓	✗						
France	✓	✓	No	No	No	Both	None	inpi
Germany	✓	✓	Yes	No	Yes €1.96	Legal entity	The user needs to request the information and approval is not always immediate	Transparenzregister
Greece	✓	✗						
Hungary	✗							
Ireland	✓	✓	Yes	No	Yes €2.50	Legal entity	None	RBO
Italy	✗							

Latvia	✓	✓	No	No	No Available as open data	Legal entity	Access to historical ownership data requires registration	Latvijas Republikas Uzņēmumu reģistrs
Lithuania	✗							
Luxem- bourg	✓	✓	No login as anonymous user possible	No	No	Legal entity	None	RBE
Malta	✓	✓	No	No	Yes €5.00	Both	When searching by person, the ID number, name and surname of the BO are necessary	MBR
Nether- lands	✓	✓	Yes	No	Yes €2.50	Legal entity	None	KVK
Poland	✓	✓	No	No	No	Both	Either the company's tax identification number, or the beneficiary's personal identification number	Centralny Rejestr Bene- ficientów Rzeczy- wistych
Portugal	✓	✓	Yes	Yes	No	Legal entity	Companies' tax identification number and the 'motivation' of every data request	Registo Central do Beneficiário Efetivo
Romania	✓	✗						
Slovakia	✓	✓	No login as anonymous user possible	No	No	Legal entity	None	RPO
Slovenia	✓	✓	No login as anonymous user possible	No	No	Legal entity	None	eRDI
Spain	✓	✗						
Sweden	✓	✓	Yes	Yes No	No Yes €27.00	Both	Information is available for free for users with an approved e-identification (only a few countries accepted). In this case the exact spelling of the name of the company or the company's registration number is required. Upon the payment of a fee, the information can be accessed without the e-identification. When searching for BO, a personal identification number is required.	Bolagsverket

But restrictions would include, for example, requiring the exact spelling of the name of the company as entered in the register (rather than parts of the name or the companies' fantasy/trade names) like in Sweden, the company's tax identification number in Poland or the beneficial owner's personal identification number like in Malta, Poland and also in Sweden.⁸ In Bulgaria, it is possible to search by company and beneficial owner by only in Cyrilic.

In most countries search is only possible by company name. Other obstacles that apply, in addition to knowing the exact company name as entered in the register (Austria) and the company tax or registration number, include the requirement to provide "motivation" for each request (Portugal).

What type of information is available?

In most countries that have already set up public registers, the core set of information as required by the EU AMLD is usually available to the public, including:

- + name of the beneficial owner
- + month and year of birth
- + country of residence
- + nationality of the beneficial owner
- + nature of interest held by the beneficial owner
- + extent of the interest held by the beneficial owner

In the case of nature and extent, there is usually an explanation if interests are held directly or indirectly, exercised through the ownership of shares, voting power, right to profits or distribution of assets, or other forms of indirect control. In some cases, when control is exercised through another legal entity, information about the legal entity is also available (Bulgaria and Malta).

But not all countries currently make available the core set of information required by the EU AMLD. In Slovakia⁹, the nature and extent of the interest held by the beneficial owner is not available. In Estonia, for example, there is only information if the interest is held directly or indirectly, but no details about the extent. In Slovenia, the extent of interest is only available in ranges (e.g., more than 25 per cent and less than 50 per cent), and the date of birth and citizenship of beneficial owners are not public. A 2020 amendment to the anti-money laundering requires the publication of the date of birth and nationality of the beneficial owner, among other

information¹⁰, but changes do not seem to have been implemented yet.

Some countries have opted for making additional information available to the public. These usually include the date on which each natural person was entered into the register as a beneficial owner, address and birthplace.

How expensive is to access information?

In seven of the 18 countries that currently have public beneficial ownership registers, accessing this information is only possible upon the payment of a fee (Austria, Belgium, Estonia, Germany, Ireland, Malta, the Netherlands¹¹). The costs vary from €1,00 to €5,00 Euros per file. In some countries it is possible to retrieve information for free, but accessing some types of data or documents and obtaining an extract would require the payment of a fee that can be higher, like in the case of Sweden, where getting a beneficial ownership certificate costs €27.

While charging a fee does not go against provisions of the EU AMLD, in practice it significantly restricts the ability of civil society and the media to analyse the data – either to spot inaccuracies, to identify conflicts of interest and wrongdoing and do further research that can be used to identify gaps and inaccuracies and provide recommendations to strengthen the register.

RECOMMENDATIONS

The utility of a beneficial ownership transparency framework in preventing, detecting and prosecuting crimes depends on the quality of registers and on their usability by domestic and foreign competent authorities, businesses, obliged entities and the public, particularly civil society organisations and the media.

The first step to ensure the quality of the register is to collect and make available all key information to identify a beneficial owner and understand their relationship with the legal entity. This information should then be easily accessible. The easier it is for users to search for, analyse connections and cross-check the data with other information, the more likely it is that authorities and independent actors can identify red flags and potential wrongdoing.

We call on governments of Cyprus, the Czech Republic, Finland, Greece, Hungary, Italy, Lithuania, Romania and Spain to fully implement the 5th EU AMLD and establish public beneficial ownership registers with a matter of urgency.

We call on all EU Member States to:

- + Disclose, at the very least, all the required data necessary to identify a company's beneficial owner, including, full name, month and year of birth, country of residency, nationality as well as the nature and extent of interests held.
 - + Provide a full description of both the nature and extent of interests held, including information on the ownership and control chain, and on all companies through which control is indirectly held.
 - + Provide the exact percentage of shares or other interests held.
 - + Ensure that all members of the public can easily access the register, without restrictions due to nationality or country of residency.
 - + Provide for adequate search functions, allowing searches using parts of the name of a legal entity and beneficial owner.
- + Improve functionalities of the register, for example, by showing connections between companies, beneficial owners and addresses.
 - + Publish the information in open data format.

We call on the European Commission to:

- + Review implementation of the 4th and 5th EU AMLD by Member States and sanction non-compliance.
- + Ensure that existing beneficial ownership registers are aligned with the minimum requirements set in the 5th EU AMLD.
- + Propose, as part of the forthcoming anti-money laundering rulebook, a set of guidelines to improve the availability of beneficial ownership data as well as to facilitate the interconnectivity of registers across the EU, including:
 1. require the disclosure of a legal entity full ownership chain and the exact extent of control exercised by the beneficial owner;
 2. clarify registration requirements to remove restrictions and ensure all members of the public have access to beneficial ownership registers;
 3. require improved functionalities, including free access to the data as well as better search functions;
 4. require beneficial ownership to be published as structured data in machine readable format, for example, in line with Open Ownership's Beneficial Ownership Data Standard (BODS).¹²

ENDNOTES

¹ Martini, M., *Who is Behind the Wheel: Fixing the global standards on beneficial ownership transparency*, Transparency International, October 2019. Retrieved from: transparency.org/en/publications/who-is-behind-the-wheel-fixing-the-global-standards-on-company-ownership

² A draft law transposing the 5th EU AMLD was submitted to the Parliament in April 2021. See: parlament.hu/irom41/15996/15996.pdf

³ The 5th AMLD has already been transposed into national law, but a central beneficial ownership register has not yet been established.

⁴ Kambas, M., "Cyprus to lift veil of secrecy with register of company owners", Reuters, 3 March 2021. Retrieved from: reuters.com/world/middle-east-africa/cyprus-lift-veil-secrecy-with-register-company-owners-2021-03-03/

⁵ The Royal Decree of 27 April 2021 determines that the Ministry of Justice should establish a central beneficial ownership register. Pending further regulation by the ministry within the next six months, the register should be made available to the public upon registration and the payment of a fee. See: www.boe.es/eli/es/rdl/2021/04/27/7

⁶ Transparency Register and Financial Information Act. See: bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_VII/19_Legislaturperiode/2021-02-10-TraFinG/0-Gesetz.html

⁷ Taymans, A.; Guillaume, S., 2021. *Looking Back, and the Road Ahead: A prospective analysis of the Belgian UBO register*. Federal Public Services Finance. finances.belgium.be/sites/default/files/thesaurie/20210208_LookingBackAndTheRoadAhead_Final.pdf

⁸ There are two ways of accessing information on beneficial owners in Sweden. The first is to buy online certificates offered by the Swedish Companies Registration Office (Bolagsverket). The second way is to access a platform offered as well by the Bolagsverket, where BO information is offered free of charge. However, access to this platform is not granted to all citizens – but rather to those who have an e-identification from selected countries. In this platform, the search function requires the exact name of a company, its registration number or the BO's personal identification number. This is not the case for those opting to buy a certificate – they can use approximate terms in their research.

⁹ Slovakia has another register of beneficial owners of public sector partners that was established in 2017. It includes approximately 20,000 companies that have been awarded public contracts or licences. The register contains more details than the central beneficial ownership register, including the full ownership chain of companies, nature and extent of control. It also has better search functionalities. The register is available at: rpvs.gov.sk/rpvs

¹⁰ "Information on personal name, month and year of birth, country of permanent and temporary residence, citizenship, amount of ownership share or form of control of beneficial owners, date of entry and deletion of beneficial owner from the register and mark on automatic entry of beneficial owner and established non-compliance beneficial owner information is public and available free of charge on the registry operator's website. The purpose of data publicity is to ensure a higher level of legal security in concluding business relations, security of legal transactions, integrity of the business environment and transparency of business relations of individuals with business entities operating in the business environment and legal transactions." Law on amendments to the law on prevention of money laundering and terrorism financing (ZPPDFT-1B), Art 20 uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-1558/#3.%C2%A0%C4%8Dlen

¹¹ While the public BO register is now in place in the Netherlands, legal entities have until March 2022 to provide information on their beneficial owners.

¹² Open Ownership, *Beneficial Ownership Data Standard (v0.2)*. standard.openownership.org/en/0.2.0/