

# **ENSURING EFFECTIVE IMPLEMENTATION OF THE NEW GLOBAL STANDARD**

**Response to FATF's guidance on the revised  
Recommendation 24**

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# ABOUT THIS DOCUMENT

In November 2022, the Financial Action Task Force (FATF) opened up a public consultation, welcoming comments concerning its updated *Guidance on Beneficial Ownership (Recommendation 24)*.

The FATF sought insights on the following issues:

- a. Whether the Guidance is clear or whether there any issues which need further clarification.
- b. Are there case examples of registries and alternative mechanisms for holding of accurate, adequate and up-to-date beneficial ownership information?
- c. Are there case examples of mechanisms to verify beneficial ownership information in low-risk scenarios?
- d. Are there case examples of the use of information held by stock exchanges for listed companies to meet beneficial ownership information obligations?

This document provides Transparency International's response to this public consultation. It is organised into four core thematic sections, plus a compilation of final remarks. Answers to items (a) to (c) are provided throughout the text.

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# THE REGISTRY APPROACH

It is commendable that the guidance highlights, right at the beginning of section 10 (paragraph 78), the advantages of the registry approach with respect to its ability to provide for effective access. However, there are other key advantages of this approach that could be added to this paragraph to provide countries with a more comprehensive overview of the potential of registers. These include the potential interconnection of registers with other public databases and/or beneficial ownership registers of other countries,<sup>1</sup> which has proven positive implications for the ability of countries to verify data, understand risk, and run (proactive) investigations, among other advantages.

Registers also bear the advantage of facilitating access of foreign competent authorities to beneficial ownership information. Rather than requesting data and waiting for a response, which can take a considerable amount of time,<sup>2</sup> the latter can simply consult the information or build systems that automatically do so. If data still needs to be requested, domestic competent authorities can more rapidly find this information and respond to requests.

Some of these advantages are mentioned in a dispersed manner throughout section 10, but we believe summarising these right at the beginning of the section would increase clarity concerning the inherent potential of the registry approach.

Most importantly, the guidance document should seek to clarify the features of the register to be established and maintained by countries under the registry approach. That is, the guidance document should set out the minimum characteristics of the register, as well as the types of information that should be collected.

When it comes to the information to be collected by registry authorities, paragraph 79 rightly instructs countries to ensure a sufficiently wide scope for data collection regardless of the chosen registry approach. This final section could perhaps be split into a different paragraph to make it clear that a sufficiently wide scope matters not only for the distinctions outlined in paragraph 79 (centralised vs decentralised, single registry vs multiple registry per type of legal entity), but to all implementation possibilities described in the subsequent paragraphs. All registers – regardless of how they are implemented or which authority or private actor

hosts the data – should cover a sufficiently wide scope of legal entities.

The language in this paragraph could also be made more clear. The Interpretive Note to Recommendation 24 states that “[c]ompetent authorities should be able to obtain (...) information on the beneficial ownership and control of **companies and other legal persons (...) that are created in the country, as well as those that present ML/TF risks and have sufficient links with their country (if they are not created in the country).**” The wording of the guidance, on the other hand, gives the impression that only relevant legal entities that have been incorporated in the country should be covered by the registry, and not all of them. Sticking to the language of the Interpretive Note would improve both the clarity of this paragraph and its consistency with the Interpretive Note.

As for the minimum implementation standards, paragraphs 80, 84 and 85 already discuss the importance of equipping registry authorities with appropriate powers and resources, but do not explicitly state that countries ought to ensure that this is the case. Perhaps these paragraphs could be merged (as the same theme is currently dispersed across three paragraphs) and sentences could be amended so as to state countries’ responsibilities with more clarity. This is especially important as paragraph 87 may give the impression that it is merely advisory to equip registry authorities with the necessary mandate and resources (paragraph 87 lists examples of considerations for countries seeking to establish a register). The guidance should explicitly spell out the attributes that are indispensable for ensuring that at least competent authorities have unrestricted access to adequate, up-to-date and accurate beneficial ownership information. These should be separated from other (optional) features and considerations that are contingent on the approach that countries choose for their registers.

It should also be made clear in the guidance that if an approach fails to ensure that all required information (accurate, adequate and up-to-date beneficial ownership information of all legal entities incorporated in the country as well as relevant foreign entities) is available in an efficient (rapid, unrestricted) and effective manner, then the register

will not be sufficient to comply with the FATF standards.

In this sense, some of the examples highlighted are confusing as they could be potentially understood as an “alternative mechanism” (e.g., paragraph 5 on registers maintained by notaries) or as a supplementary measure (e.g., paragraph 7 on private databases by professional associations).

The guidance also provides interesting examples of how the registry approach has been implemented in practice. It could however also describe the potential strengths and weaknesses of these different approaches (see examples below).

The guidance rightly provides details on centralised and decentralised approaches to holding beneficial ownership information. It could however use examples to demonstrate the benefits of each approach and not just the issues that should be considered when a decentralised approach is used (e.g., the risks if the types and quality of information vary from state to state and are not harmonised across the country, etc.). There are several examples of how fragmentation could lead to regulatory arbitrage. For instance, the latest FATF mutual evaluation review on the United Arab Emirates (UAE) underscored that the fragmented system of registers in the country, where 39 corporate registers exist, has given “rise to different levels of understanding, implementation and application of measures to prevent the misuse of legal persons, creating regulatory arbitrage.” The review concludes that implementing a national register in the UAE would be a positive step.

Overall, the guidance rightly notes the importance of considering the resources, expertise, powers and mandates of a public authority or body maintaining the register, if that is the model chosen. We agree that the effectiveness of any register with beneficial ownership information depends to a great extent on the ability of responsible authorities to ensure that the information is reliable. However, this is true for any register containing beneficial ownership information or any approach used as a source of beneficial ownership information for competent authorities. These challenges are not exclusive to registers. The guidance emphasises the issue of quality and reliability of registers maintained by public bodies, but it should also stress that the effectiveness of any register or approach – whether maintained by notaries, by obliged entities or any other body – will depend on the ability of those collecting and maintaining the data to conduct the necessary checks and hold the necessary powers to

request information and sanction wrongdoing. The guidance should in fact further consider the challenges with respect to accuracy and reliability of the data when registers are held by or use information coming from the private sector, which may have less incentive and resources to independently verify the information of their own clients.

When it comes to the concrete implementation of the registry approach, we are of the view that beneficial ownership disclosure should not duplicate existing systems, but rather complement them. This avoids placing an unnecessary burden both on legal entities, which are then not required to submit information multiple times, and on competent authorities, which would be able to optimise processes and data on companies with a single system.

## COLLECTING BENEFICIAL OWNERSHIP INFORMATION IN BUSINESS REGISTERS

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It is currently common practice that legal entities are required to register legal ownership information in a company register. In this context, a cost-effective way of collecting and managing beneficial ownership information and granting timely access to competent authorities would therefore be to simply require existing company registers to obtain and hold current and accurate information on beneficial ownership.

All countries have some form of register that collects at least some information on companies incorporated in their borders. The structure of these registers (online, physical, centralised or decentralised) and the type of information they collect and disclose varies greatly. Still, there is a common understanding that authorities should collect and hold company information.

This implies that beneficial ownership registers can be tacked onto an existing corporate or another registry, therefore leveraging the infrastructure already in place in a given country. More explicitly, when collecting data from legal entities to be incorporated, countries might well add a short subset of questions on beneficial ownership and make this information available to authorities.

As an example, in order to incorporate a limited liability company in Slovakia, it is necessary to register at Slovakia's [commerce registry](#) by filling out an online form. The form includes a series of

questions on legal ownership as well as the identity of the beneficial owners of the company.

Countries do not need to start from scratch, but can rather use their existing infrastructure for company incorporation and extend it to cover the identification of beneficial owners.

In fact, examples abound of countries that have opted for this solution. In the European Union, where Member States are mandated to have public and central registers for beneficial ownership information, the majority of these are hosted by or linked to company registers and the like. To name a few, Luxembourg's beneficial ownership register is hosted by [Luxembourg Business Registers \(LBR\)](#); Latvia, Estonia and Sweden's beneficial ownership registers are also hosted by these countries' business registers, [Latvijas Republikas Uzņēmumu reģistrs](#), [e-āriregister](#), and [Bolagsverket](#), respectively; and Malta's is hosted by the [Malta Business Registry \(MBR\)](#).

## COLLECTING BENEFICIAL OWNERSHIP INFORMATION AS PART OF TAX REGISTERS

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In many countries, legal entities are also required to register with tax authorities in addition to a company register. An alternative would be to require beneficial ownership information to be collected as part of this process instead.

Brazil is among the countries that have chosen this approach. While company incorporation takes place at the sub-national level and is under the responsibility of state trade boards, all legal entities operating in the country must register with the federal tax agency for a tax number. This includes all foreign companies wishing to invest in the country (e.g., to purchase real estate). Among other things, companies need to [provide information](#) on their legal and beneficial owners.

When opting to have beneficial ownership information hosted by tax authorities as part of the "registry approach", countries should ensure that all legal entities in the country are covered (i.e., that there are no loopholes) and that the confidentiality rules which often apply to tax information will not affect the ability of competent authorities to access the beneficial ownership information directly.

## MAKING SURE BENEFICIAL OWNERSHIP INFORMATION IS USEFUL

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The first step to ensure an effective beneficial ownership transparency framework is to have the relevant information collected and stored by a public authority – and this can be done by adding a subset of questions related to beneficial ownership to an existing system and making this information available to competent authorities. This initial step does not have to cost much for the public coffers.

Of course, the more advanced the existing tax registration infrastructure and/or company incorporation systems are, the less of a financial burden it will be to include additional reporting requirements on beneficial ownership. The context and the pre-existing state of company and similar records management in a country, as well as the level of expertise in reporting entities and in its government, will surely affect the costs of implementing a useful beneficial ownership register.

Additional measures should be put in place to ensure the quality of the information. This would certainly require investment from the implementing countries. However, costs could also be mitigated by ensuring that systems and verification mechanisms put in place consider the level of risks posed by legal entities operating within their borders.

Finally, when assessing the financial implications of implementing a beneficial ownership register, countries should consider the costs of not having beneficial ownership information easily available to authorities. These would include the direct financial and human resources that are needed if competent authorities and the justice system in different countries need to be mobilised to identify the beneficial owner of companies involved in complex cross-border schemes. Findings from the FATF's mutual evaluation reviews and from Transparency International's research show that law enforcement authorities may not pursue complex investigations due to challenges in identifying the beneficial owners of companies, or they may have to employ a lot of additional resources simply to identify the beneficial owner of suspicious companies. Reports also show that the lack of beneficial ownership information is a burden to states receiving requests, which in theory need to use their own resources and investigative capacity to respond to requests from foreign counterparts. Moreover, there is also the social and environmental cost of inadequate

and insufficient prevention, detection, investigation and sanction of money laundering.

Paragraph 88 gives a helpful list of features a mechanism that provides for a public authority or body holding beneficial ownership information could include. Below are some suggested edits (**in blue**) for three of these items:

*ix) BO information held by a public authority or body is recorded digitally and is searchable. The search function supports searches by multiple fields, **without requiring exact spelling**.*

*x) Competent authorities have rapid and efficient access to **all** the BO information held by a public authority or body online, including full search capability.*

*xviii) Data protection and privacy safeguards are in place, including restrictions on **the information available to the different** users of the register and other BO information sources to prevent the improper disclosure of this information.*

The way this last provision is currently worded contradicts item xii) of the same paragraph.

# ALTERNATIVE MECHANISMS AND SUPPLEMENTARY MEASURES

Any alternative mechanism used should provide for rapid, direct and unfiltered access to beneficial ownership information. The information should be adequate, accurate and up-to-date. As is the case with registers under the registry approach, countries should ensure that the body or professions holding the information or used as a data source have the necessary powers, resources and capacities to independently verify the information provided by companies and beneficial owners, follow up on discrepancies, and report potential wrongdoing.

Moreover, any alternative mechanism used should ensure that competent authorities have access to information on the beneficial owners of all legal entities incorporated in a country as well as all relevant foreign legal entities. If the alternative mechanism does not ensure comprehensive coverage, it could lead to loopholes that can be exploited by money launderers. For instance, in many countries, legal entities are not required to open bank accounts upon incorporation. This means that a reliance on bank account registers would provide an incomplete picture of the beneficial owners of legal entities in the country. It could serve as a useful supplementary measure, but it would not replace a register under the registry approach.

In this regard, although section 11 clearly outlines countries' duty to ensure that competent authorities are provided with efficient (i.e., rapid and reliable) access<sup>3</sup> to adequate, accurate and up-to-date information with respect to an alternative mechanism(s) as well, the need for a comprehensive data coverage is less explicit in the text. The same goes for the need to equip data holders with the mandate, resources, and capacities to collect, hold and independently verify beneficial ownership information. Both issues appear in the guidance under paragraph 91 as some of the considerations that countries should take into account when designing their alternative mechanisms.

Rather than a consideration, the guidance should explicitly state that the alternative mechanism ought to cover all companies and other legal

persons that are created in the country, as well as those that present ML/TF risks and have sufficient links with their country (if they are not created in the country), in line with the wording of the Interpretive Note.

In a similar fashion, the guidance should present as a clear instruction that countries ought to ensure the mandate, resources and capabilities of data holders under the alternative mechanism approach to identify, accurately report and verify beneficial owners of legal entities.

Furthermore, there should be a specific statement in the guidance instructing countries relying on information collected and/or maintained by obliged entities to ensure that potential conflicts of interest do not interfere with these bodies or professionals' ability to perform the necessary tasks to collect, hold and verify beneficial ownership information – particularly when the beneficial owners or legal entities are also customers/clients.

Paragraph 93 rightly acknowledges that the information obtained and held by financial institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs) alone is not sufficient to qualify as an alternative mechanism. It suggests that this information could, however, be used as the source for an alternative mechanism to be established (e.g., bank account registers). In making this decision, countries should also take into consideration the coverage (as previously discussed) as well as the adequacy, quality and up-to-datedness of the information obtained by FIs/DNFBPs that will serve as the source. On the accessibility of the alternative mechanism(s), the guidance should instruct countries not only to ensure that relevant stakeholders have *efficient* access to beneficial ownership information (in the sense that it is "rapid", "without undue delay" and "quick"), but that this access is also *effective*. Experience has demonstrated that gaining access upon request within 24 hours, for example, might be rapid enough when responding to specific queries by competent authorities and financial intelligence units (FIUs). However, it may not be sufficient to

ensure an effective use of the information. By providing direct access to authorities and allowing them to search in the register and ideally download and cross-check the data, countries would be significantly enhancing authorities' ability to detect, investigate and prosecute financial crime. Any alternative mechanism should provide the same features.

One very good example of how registers can improve the effectiveness of the work of competent authorities is Denmark. Denmark not only opted for the registry approach but it also decided to make beneficial ownership information available in bulk and for free via API connections tailor-made for each type of data user (competent authorities, obliged entities and the public). Through this API connection, the country's FIU was able to develop a project merging their suspicious transactions report (STR) database and the country's beneficial ownership registry. This system allowed FIU analysts to link actors from different STRs through complex company structures and, beyond specific probes, run macro-level data analyses to identify red flags.

It should also be clearly specified in the guidance that the alternative mechanism chosen should guarantee direct and unfiltered access to *all* relevant competent authorities. In the case of bank account registers, for example, law enforcement authorities in many countries are not able to directly access this information.

Similarly to the registry approach, there should be a provision in this section clarifying that if the data sources and systems chosen by countries to comprise their alternative mechanism fail to ensure that all required information (accurate, adequate and up-to-date beneficial ownership information of *all* legal entities incorporated in the country as well as relevant foreign entities) is available in an efficient (rapid, unrestricted) and effective manner, then the alternative mechanism will not be sufficient to comply with the FATF standards. Paragraph 92 currently says that "(...) these two elements (high-quality source information plus mechanism for efficient access) may constitute an alternative mechanism." The language could be amended in the opposite

direction, in the sense that without either of these two pillars, the approach will not qualify as an acceptable alternative mechanism as per the FATF standards.

Related to the previous point, the guidance should add detailed provisions under the alternative mechanisms section specifying the steps to be taken by the country to document the decision for a specific type of alternative mechanism instead of a register under the registry approach. An overview of the methodology used to analyse the risks, context and materiality should also be included in this documentation and made publicly available.

Supplementary measures, as suggested by their name, should supplement rather than replace the information already available to authorities – something that could be made more explicit in the beginning of section 12. In this sense, any available source of information can and should be used as long as competent authorities apply the necessary caution when it comes to potential differences (interpretations of the definition of a beneficial owner, coverage, etc.) or the quality of the information. Perhaps similarly to the structure employed for the previous sections, a set of considerations could be added to this section for countries to take into account when defining their supplementary sources of information.

In our view and as indicated above, rather than a component of an alternative mechanism, bank account registers with beneficial ownership registers could be a promising source of supplementary information, particularly if they are accessible to competent authorities without them having to request the information from financial institutions. This is a requirement under the 5th EU Anti-Money Laundering Directive, for example. Information collected by notaries could also be included in a register that can then be accessed directly by competent authorities, as is the case in Spain. If the coverage is broad enough, such a register could be considered an alternative mechanism. If not, it could be used as supplementary information to cross-check beneficial ownership data available from other sources.



# QUALITY AND VERIFICATION OF BENEFICIAL OWNERSHIP INFORMATION

Although the Interpretive Note to Recommendation 24 only provides examples of information aimed at identifying beneficial owners, the guidance should instruct countries to define in their legal frameworks the minimum types of information to be collected by beneficial ownership data-holders. By the same token, countries should be encouraged to define with precision the data collection requirements for the identification of the status of beneficial owners. We believe that the guidance should encourage countries to collect and store in the register or alternative mechanism all the types of information covered by paragraphs 51 and 52 for the proper ascertainment of the identity and status of beneficial owner – i.e., to ensure that beneficial ownership information is adequate.

The guidance also contains interesting provisions to be considered by countries when implementing Recommendation 24 when it comes to accuracy of the information, including the suggestion to require an upfront declaration. The latter would serve to change the burden of proof and could make enforcement of potential non-compliance easier.

We also agree with the approach of focusing on the verification of identity and verification of status. When it comes to the verification of identity, it would be important to emphasise that this should always be conducted regardless of risk. Only additional measures to verify the identity should be based on risk, but there should always be a requirement to check the identity of the beneficial owner against official identification documents and ideally a video call or any other mechanisms that ensure a beneficial owner knows that their name and document is being presented in connection with a legal entity.

The verification of status should ideally include measures based on the level of risk of a legal entity, as well as random checks that could ultimately also support a country's overall understanding of risks connected to certain legal entities. Apart from random checks, there are other measures that could contribute to the verification of status that

should be implemented regardless of risk level. These include, for example, automated processes to check addresses, directors and other features of the company that could raise red flags regarding the accuracy of the data. By using automated systems, the level of effort of authorities will be reduced. Only cases flagged by the system would undergo further review by authorities. Although automated cross-checks are covered by para. 55, they are currently conditioned on the level of risk, which makes little sense in the case of checks performed automatically. Once these are set up, it should not make an operational difference whether they are run for all or only for a subset of data entries.

The guidance should also discuss the measures that should be taken upon incorporation of a company and the measures to be taken throughout the life of the company. Verification of status, for example, does not necessarily need to happen upon incorporation, but can be part of a mechanism to audit the information in a register or maintained by obliged entities.

In this context, we believe the guidance should differentiate between the measures that are expected from the different stakeholders. The verification measures applied under the registry approach or alternative mechanism should be more comprehensive than the measures applied by obliged entities, for example, particularly when it comes to automated checks and verification of status.

We also believe that competent authorities should hold the primary responsibility for verifying the information in the register, being equipped not only with the mandate but also with the resources to do so. Section 7 does not yet clearly identify the stakeholder(s) primarily responsible for the verification of beneficial ownership information. Considerations regarding public authorities being duly-equipped with powers, resources and expertise so as to ensure the quality of beneficial ownership information are included in paragraphs 84, 85, 87(b-f) under section 10 on the registry approach.

However, irrespective of the approach taken – registry or alternative mechanism – data-holders should have the resources and capability of verifying beneficial ownership information. Such considerations would therefore be better placed under section 7.

Paragraphs 84 and 85 rightly discuss the importance of register authorities having both the resources and the appropriate mandate to independently verify information provided by legal entities. More detailed language could perhaps be used in these provisions, clarifying that these authorities should be able to check the information provided by legal entities, request documents, carry out inspections, and sanction non-compliance.

In addition to the verification of identity and verification of status, specific measures could be taken by registry authorities to improve the quality of the information, including:

- + Electronic forms that include as many pre-conditioned fields as possible, which can serve to validate and constrain responses to be entered (for example, nationality, address, postal code and date of birth). This is common practice in the majority of EU Member States (where beneficial ownership registers are mandated). In the Czech Republic, for instance, the percentage ownership field cannot exceed 100 per cent. In Ireland, the electronic form prevents users from entering a date of birth that is in the future. In response to FATF's third question, the electronic forms apply to all entities, irrespective of risk in these EU countries.
- + Cross-checking information against existing government databases and registers (such as tax registers, citizenship registers, and land and vehicle registers). In Austria, Belgium, the Czech Republic, and Denmark, for example, registers automatically cross-check the information on beneficial owners, shareholders and directors against other national databases, including the address registers and national identification registers. These checks are undertaken for all legal entities incorporated in the country, including those presenting low ML/TF risk (also in response to FATF's third question).
- + Vetting information against sanctions lists and adverse media.

On discrepancy reports, we agree with the current draft of the guidance on its statement that this system should complement but not replace other mechanisms to verify the information.

The guidance should encourage countries to establish a system to deal with discrepancies being reported, ensuring that obliged entities and others allowed or required to submit reports understand the process and what is expected from them. In this regard, paragraph 69 (b) already addresses the issue of the materiality of discrepancies and rightly instructs countries to clearly define the material threshold for discrepancies which should be reported. There is, however, no clear provision in the guidance instructing countries to establish and publicise a clear system for obliged entities covering all steps relevant to the reporting of discrepancies from the moment these are identified until they are rectified in the registry or alternative mechanism.

Moreover, the last sentence of paragraph 69(b)<sup>4</sup> is unclear, insofar as it may be interpreted as a description of how discrepancy reporting systems currently work in general or, alternatively, as a recommendation for countries to consider.

If the latter interpretation is correct, we believe that countries should be instructed to consider a *basic classification system* to be used by individuals reporting discrepancies rather than focusing on a single type of inaccuracy to be reported.<sup>5</sup> For example, typos or a different date of birth etc. are easier and faster to deal with. Other inconsistencies related to the actual identity of the beneficial owner might require more work to investigate the reason behind the inconsistency, requiring more time and resources. Particular attention should be paid to inconsistencies that point to a risk of money laundering. In this case, obliged entities should also submit a suspicious transactions report to the relevant competent authority.

Countries should also make sure that there is not just a mechanism for the reporting of inaccuracies in place, but that there is also a mechanism for flagging missing entries. The Irish beneficial ownership register, for instance, has created two separate webportals for this purpose: one for the reporting of discrepancies and another for non-compliance (missing entries). The first is set up for obliged entities and competent authorities and the second for anyone who is unable to find a company in the register.

Upcoming research led by Transparency International also shows that, in some countries, banking secrecy regulations prevent FIs and DNFBPs from disclosing beneficial ownership information stemming from customer due diligence (CDD) procedures with registry authorities. In Denmark, for instance, where such regulations exist, obliged

entities are only able to alert the registry authority that there is a discrepancy, without being able to identify which specific piece of information does not correspond to the one in the register.

The guidance should therefore instruct countries to establish clear legal provisions asserting that information on beneficial owners is to be provided to authorities without prejudice to banking secrecy legislation.

We agree with the suggestion that countries should implement a “red-flag system” to alert users that there is a discrepancy report under analysis until the inconsistency is resolved.

Finally, the guidance should instruct countries to consider establishing fully online systems for discrepancy reporting, as opposed to PDF-based reporting systems involving e-mails or physical correspondence.

At this stage, it is unclear how discrepancy reporting could be implemented outside of the registry approach.

When it comes to case examples of alternative mechanisms for the holding of accurate, adequate and up-to-date beneficial ownership information (question 2), there are none of which we are aware. Austria and Denmark have solid verification systems in place. Both, however, follow the registry approach.

To briefly summarise, the Austrian registry employs a multi-pronged approach to ensure that information is kept adequate, accurate and up-to-date, combined with the application of dissuasive sanctions for non-compliance. To increase the chances that legal entities report adequate beneficial ownership information, the registry

authority provides an explanatory decree with a clear definition of beneficial ownership, as well as guidance material. Additionally, it also allows professionals well acquainted with ML/TF legislation (e.g., lawyers, notaries, and tax advisors) to list beneficial owners on behalf of a legal entity. To ensure completeness, the registry is set up with self-completing reporting forms. Furthermore, the registry is connected with other government databases (such as Austria’s Central Register of Residents), promoting the accuracy of information stored. To keep information as up-to-date as possible, entities must conduct an annual review of their beneficial owners at the risk of getting fined. The register conducts a risk-based supervision of the reports as a means to verify the information stored. This approach is achieved through an automatic risk assessment of reports, which contributes to a monthly sample including higher risk and random reports, as well as some ad hoc cases (such as those reports reported by obliged entities for discrepancy). If discrepancies are found, an automatic communication is sent to the entity in question requesting that the information be corrected within six weeks.

In Denmark, apart from the cross-checks described above, the register also conducts manual checks to verify that the information is adequate, accurate and up-to-date. The registry authority has also been endowed with the power to dissolve companies and entities that do not provide the complete information to the register. Additionally, with respect to sanctions, Denmark has established that providing false information to the registry is a criminal offence, which discourages non-compliance.<sup>5</sup>

# ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Paragraphs 101 and 102 under Section 13 provide a good overview of what is expected when it comes to ensuring that competent authorities have access to beneficial ownership information. Apart from requesting that access is “rapid” (paragraph 102) or that information is provided “as quickly as possible” (paragraph 103), the guidance should instruct countries to clearly define in their legal frameworks the exact timeframes for access to the register as well as for the submission of information to competent authorities once this data has been solicited, and highlight the benefits of immediate access. Countries should also be encouraged to justify why an alternative solution to immediate access has been chosen when this is the case.

Moreover, as previously discussed, apart from being “rapid and efficient”, access to beneficial ownership information, regardless of the approach taken by countries, should be effective. In this sense, it should be designed in a way that enables rather than limits competent authorities’ (proactive) investigations and analysis.

The guidance could provide further examples of how access has been ensured in practice in different countries and the pros and cons of the various approaches. Upcoming research led by Transparency International, for instance, shows that in countries where authorities have access to beneficial ownership in open data (API) format, the effective use of the data is enhanced, as discussed previously in the case of Denmark. On the other hand, in some countries, authorities continue having to request information to the register (instead of being granted direct access), and this impacts their ability to effectively and proactively use the information in the detection and investigation of financial crime. In many instances, authorities have stated they rely on commercial providers, not just because the features (search, download, ability to cross-check data) are better than the ones offered by governments, but also because more information (e.g., ownership chains) is provided by these sources, particularly in the case of foreign entities.

It should also be clarified that all relevant competent authorities and in particular law enforcement and FIUs should have direct and unfiltered access to all

beneficial ownership information. In certain countries, law enforcement cannot directly access all relevant data and need to request the FIU to compile and pass on the information. This not only creates unnecessary delays but also creates an additional burden on FIUs, which are often already stretched and under-resourced to fulfil their mandate.

The guidance rightly instructs countries to ensure that not just FIUs and anti-money laundering (AML) authorities have timely access to beneficial ownership information, but also other authorities involved in public procurement. Ideally, authorities involved in public procurement processes should have direct access to the register containing beneficial ownership information. This data is a critical element in the evaluation of bids and therefore should be available and accessible during the evaluation process. Countries could also look at models to publicise information on the beneficial owners of companies that have a contract with the state, given the increased public interest in accessing this information. Slovakia presents a good example of how to operationalise this. As early as 2015, the country established a [publicly accessible register](#) containing detailed beneficial ownership information of legal entities engaging with public administration through procurement processes, concessions, and as recipients of subsidies, among other aspects.

Section 19 of the guidance expands on the importance of effective international cooperation, given the multi-jurisdictional nature of corporate networks set up to hide the origin of ill-gotten gains. In this context, the guidance should instruct countries to create mechanisms beyond international cooperation agreements to ensure that foreign competent authorities can access beneficial ownership information. This is of particular importance if countries opt for a non-public register or an alternative mechanism.

In the current draft, countries are instructed to make basic information on legal entities available to foreign competent authorities (paragraph 105). Paragraph 106 instructs countries to consider making beneficial ownership information available

to FIs/DNFBPs; foreign competent authorities could also be added here. In this regard, the same mechanisms available to obliged entities to access the information could be adopted for foreign entities.

In France, for example, obliged entities have to go through an accreditation process to be granted access to the French beneficial ownership register's API. A similar accreditation process could be implemented for foreign competent authorities.

When it comes to public access, apart from the benefits listed in paragraph 107, it could be noted that this type of access also makes it easier for competent authorities of foreign countries to access beneficial ownership information (as there is no need to request data).

When designing public access, paragraph 107 rightly instructs countries to take into account data protection rules and other privacy, security, and confidentiality concerns. The guidance could also make a more specific reference to measures to address security concerns, which should be treated differently from privacy concerns. Security concerns could be addressed by ensuring that exceptions are in place for cases that pose a significant risk of harm. Requests for exceptions should be verified by an independent body and the beneficial owner should be able to appeal a denied request.

If applying a tiered approach to information disclosure, countries should be encouraged, in line with the recent ruling of the European Court of Justice, to establish in law that civil society and the media hold a legitimate interest to access beneficial ownership information.<sup>6</sup> This is due to the key role of these actors not only in helping to verify beneficial ownership information, but also in identifying and helping to sanction wrongdoing, as properly described in the first half of paragraph 107.

On costs to access the register, we believe it is not justifiable to charge competent authorities to access the information in the register. Registers are established with the main goal of ensuring the effective access and use of beneficial ownership information by authorities. They should be seen by governments as a necessary investment that will enable authorities to undertake their tasks more effectively. Ideally, beneficial ownership registers should be available to all users free of charge. There are different models that can be used to finance the register while promoting its effective use.

# ADDITIONAL REMARKS

**Sufficient links (foreign legal persons).** Paragraph 16 contains an indicative list of what “sufficient links” could consist of. These include *significant* business activity (b), *significant* ongoing business relations with FIs or DNFBPs (c), or *significant* real estate or other investment in the country (d). “*Significant*” could be removed in these items, as any business or assets indicate presence in a given country (and potential risk, depending on, for example, the type of legal entity, ownership structure containing multiple high-risk jurisdictions, etc.). Countries should be encouraged to clearly define in their legal frameworks the criteria that trigger registration and the rationale for this choice. There is a similar issue with “significant” under risk-mitigation (section 2.4): para. 22(a).

**Setting thresholds.** Firstly, paragraphs 37 and 39 both discuss the considerations for determining an appropriate minimum threshold. For greater clarity, these could be merged. (Politically-exposed persons [PEPs] are for instance mentioned in 39 but not 37). Paragraphs 40 to 42 could also be added to this single list of considerations on thresholds rather than being stand-alone paragraphs. Secondly, 0 per cent thresholds should at least be mentioned in this list as a possible approach (at least) for higher-risk scenarios (e.g., ownership/control structures involving PEPs or high-risk jurisdictions). It is worth noting that the Interpretive Note establishes a maximum threshold of 25 per cent but does not exclude the possibility of there being no threshold for high-risk cases. To this effect, it has been widely documented how thresholds set at any level generate the risk that criminals will deliberately circumvent the legislation by limiting their ownership share to just below the threshold percentage.<sup>7</sup> Thirdly, paragraph 43 says that countries should “apply rules that are workable and enforceable for companies and other legal persons administered in a country.” While this is true, there is a missing element in the current wording – the effectiveness of AML efforts. If the applied rules are workable/enforceable yet ineffective, then these efforts will be wasted. The wording of this paragraph should add a nuance balancing operability and effectiveness.

## **Defining beneficial ownership in respect of different types of legal entities or specific sectors.**

Paragraph 44 rightly instructs countries to consider an overarching set of criteria to determine beneficial ownership at the national level. Beyond ownership of shares, countries are encouraged to consider a natural person’s voting rights and power to appoint senior management, among other aspects. This paragraph also rightly highlights the types of legal entities whose beneficial owners will not be captured by any given threshold of share ownership. Apart from partnerships, foundations, and companies without shares, the guidance should also make reference to *investment funds*. These include hedge, private equity, venture capital and other types of pooled funds, which can operate under different types of legal entities. In the case of these investment funds, all those who are end-investors should be identified as beneficial owners – i.e., all natural persons who benefit financially from the fund (such as by earning interest or dividends), irrespective of how many shares they hold. This is particularly important since one of the purposes of pooling an investor’s resources into an investment fund is to diversify assets and spread the risk, which means that most investors frequently hold smaller shares, falling below the 25 per cent threshold.

**Bearer shares.** The prohibition on the issuance of new bearer shares and bearer share warrants is an important step to reduce the obstacles to beneficial ownership transparency. If immobilisation remains an option, we believe that, in the spirit of the multi-pronged approach, existing bearer shares should be held with a public authority, where efficient access by other relevant competent authorities can be ensured. Moreover, examples from other countries that have recently introduced measures to regulate existing bearer shares show the need for strong measures in case holders of bearer shares fail to convert or immobilise them. The proposal to ensure that no rights can be exercised until registration or immobilisation happens is a step in the right direction. We suggest also including a mention of what should occur after the implementation deadline (e.g., cancellation of shares and no rights for compensation).

# ENDNOTES

<sup>1</sup> This is the case for the European Union's [Beneficial ownership registers interconnection system \(BORIS\)](#), which consists of a single access platform for users to search for beneficial ownership information of companies, trusts or legal arrangements from national registries of (currently) seven EU countries.

<sup>2</sup> See for instance the case of Hong Kong, in which a foreign jurisdiction made a request to access beneficial ownership information via a mutual legal assistance scheme and was granted this information more than a year later. Source: FATF, 2019. Anti-money laundering and counter-terrorist financing measures – Hong Kong, China, Fourth Round Mutual Evaluation Report, FATF, Paris [www.fatfgafi.org/publications/mutualevaluations/documents/mer-hong-kong-china2019.html](http://www.fatfgafi.org/publications/mutualevaluations/documents/mer-hong-kong-china2019.html) cited in Martini, M. (2019). *Who is behind the wheel? Fixing the global standards on company ownership*.

<sup>3</sup> “Unrestricted” could be added here.

<sup>4</sup> “(...) For instance, focus is usually put on factual errors, not typing mistakes or spelling errors”.

<sup>5</sup> For more information on how data is verified in Austria and Denmark respectively, see the following links: <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/Register-of-Beneficial-Owner.html>; <https://taxjustice.net/2020/10/08/how-denmark-is-verifying-beneficial-ownership-information/>

<sup>6</sup> Paragraph 74 “(...) it should be noted that both the media and civil society organisations relevant to the prevention and combating of money laundering and terrorist financing have a legitimate interest in accessing information on beneficial owners. (...)”. [author's translation]. Source: [https://curia.europa.eu/juris/document/document\\_print.jsf?jsessionid=79B8D2335025808564516E962C161CA8?mode=DOC&pageIndex=0&docid=268842&part=1&doclang=FR&text=&dir=&occ=first&cid=1015368](https://curia.europa.eu/juris/document/document_print.jsf?jsessionid=79B8D2335025808564516E962C161CA8?mode=DOC&pageIndex=0&docid=268842&part=1&doclang=FR&text=&dir=&occ=first&cid=1015368)

<sup>7</sup> See e.g., the Russian Laundromat case, in which criminals circumvented beneficial ownership disclosure requirements twice: first by using multiple entities and limiting their shares to 4.9% per entity when the Moldovan threshold was 5%, then limiting it to 0.9% when authorities reduced the threshold to 1%. Source: Low, Peter, and Tymon Kiepe. 2020. “Beneficial Ownership in Law: Definitions and Thresholds.” Policy Briefing. London (UK): OpenOwnership. <https://www.openownership.org/uploads/definitions-briefing.pdf>.

