

ACCESS & USE OF BENEFICIAL OWNERSHIP REGISTERS

Written submission to the 10th UNCAC CoSP

EXPECTATIONS FOR THE 10TH UNCAC COSP

Secrecy over who owns and controls companies and other legal vehicles has long been exploited by the corrupt to hide and launder their ill-gotten gains through the global financial system.

Recognising the critical role of corporate transparency in the fight against corruption, the UN Convention against Corruption (UNCAC) calls on States Parties to promote “transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.”¹

The global debate on beneficial ownership transparency has evolved greatly since the adoption of UNCAC 20 years ago. Today, we have significantly more evidence both on the abuse of anonymous companies and the solutions to the problem. It is clear that the Convention does not go far enough when it comes to specific obligations for ensuring effective beneficial ownership transparency frameworks. Furthermore, a new thematic report by UNODC on the implementation of UNCAC chapters II and V on preventive measures and asset recovery, respectively, shows that ineffective beneficial ownership transparency frameworks hinder the ability of States Parties to meet their other obligations under the Convention.²

In a welcome step, States Parties made further commitments to enhance beneficial ownership transparency in the political declaration of the UN General Assembly Special Session against Corruption, specifically referencing the utility of “appropriate registries”.³ More recently, the 9th session of the UNCAC Conference of States Parties (CoSP) adopted resolution 9/7 which calls on countries “to adopt a multipronged approach to beneficial ownership transparency through appropriate mechanisms such as registries”.⁴

The undeniable evidence that the registry approach is the only effective way to ensure transparency has also led the Financial Action Task Force to revise the global anti-money laundering standard on company ownership, which now requires countries to set up and maintain central beneficial ownership registers.⁵

The 10th UNCAC CoSP is an opportunity for countries to build on recent progress. Effective implementation of beneficial ownership reforms requires a critical mass of States Parties delivering on their UNCAC obligations in a meaningful way. Transparency International calls on States Parties to make new, ambitious commitments to unlock the potential of beneficial ownership data for anti-corruption and asset recovery.

¹ Article 12 of the UN Convention against Corruption (UNCAC)

² UNODC (9 October 2023). Implementation of provisions of a cross-cutting nature in chapter II (Preventive measures) and chapter V (Asset recovery) of the United Nations Convention against Corruption: Thematic report prepared by the Secretariat (CAC/COSP/2023/6). Available at: <https://www.unodc.org/unodc/en/corruption/COSP/session10.html>

³ UN General Assembly (17 May 2021). Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation. Available at: <https://undocs.org/A/S-32/2/ADD.1>

⁴ UNCAC CoSP 9 resolutions and decisions (December 2021). Resolution 9/7: Enhancing the use of beneficial ownership information to facilitate the identification, recovery and return of proceeds of crime. Available at: <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html#Res.9-7>

⁵ Financial Action Task Force (4 March 2022). Public Statement on revisions to R.24. Available at: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/R24-statement-march-2022.html>

EXTENDING ACCESS TO KEY STAKEHOLDERS

Beneficial ownership registers have usually been set up under anti-money laundering legislation. Consequently, government agencies tasked with fighting money laundering are often regarded as primary users of the data contained in the registers. This is confirmed by the results of UNODC's recent survey of 55 States Parties.⁶ Competent authorities who can access beneficial ownership information usually include only law enforcement agencies, tax authorities, financial intelligence units and anti-money laundering supervisory authorities.

But beneficial ownership information has numerous uses beyond anti-money laundering.⁷ It is pivotal to enhancing transparency in public procurement, uncovering conflicts of interest and scrutinising political finance. Anti-corruption agencies, public procurement bodies, election management bodies and audit institutions would perform their roles more effectively if they were granted access to this data.

Beneficial ownership information is also critical for investigating cross-border crimes and recovering stolen assets. However, in the same survey, States Parties reported that there are numerous barriers limiting their access to beneficial ownership information in other jurisdictions.⁸ These include lack of adequate information-sharing mechanisms, long response times or unresponsiveness, and increased costs. This makes it important to find new ways for ensuring that foreign authorities can access information efficiently and in a timely manner, so that they don't have to resort to complex international cooperation requests.

Finally, civil society actors, including non-governmental organisations and investigative

journalists, have proven to play an invaluable role in detecting misconduct and providing recommendations for improvements.⁹ While some countries recognise these actors' right to access the data, many obstacles remain in practice. To confront corruption more effectively, it is essential that all States Parties commit to facilitating these stakeholders' meaningful access to the registers.

MAKING REGISTERS FIT FOR PURPOSE

1. Access

According to the UNODC survey, in countries where beneficial ownership information is available only to competent authorities, the extent to which they can rapidly and effectively obtain the data depends on access modalities. A good practice has emerged in several countries, where authorities can access registers remotely, using an online application. A previous study from the Network of Experts on Beneficial Ownership Transparency (NEBOT) has also found that a secure portal and special credentials that provide competent authorities and other stakeholders with unrestricted access have a positive impact on the registers' usability.¹⁰ Conversely, when each request is subject to approval, this has a negative effect on the timeliness and comprehensiveness of access, and drastically reduces the impact of registers.

The most efficient way to provide access to the widest possible range of stakeholders is through setting up a public register. A thematic report by UNODC lists public registers as an example of good practice which is already in place in some States Parties.¹¹ To uphold the spirit of the Convention, at the very least, beneficial ownership information of companies receiving public funds – such as public

⁶ UNODC (13 October 2023). Good practices and challenges with respect to beneficial ownership transparency and how it can foster and enhance the effective recovery and return of proceeds of crime: Note by the Secretariat (CAC/COSP/2023/16). Available at: <https://www.unodc.org/unodc/en/corruption/COSP/session10.html>

⁷ Transparency International (25 March 2023). The uses and impact of beneficial ownership information. Available at: <https://knowledgehub.transparency.org/helpdesk/the-uses-and-impact-of-beneficial-ownership-information>

⁸ UNODC (13 October 2023)

⁹ Transparency International (10 September 2021). Out in the open: How public beneficial ownership registers advance anti-corruption. Available at: <https://transparency.org/en/news/how-public-beneficial-ownership-registers-advance-anti-corruption>

¹⁰ European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA). *Beneficial ownership registers in the EU: Progress so far and the way forward*: Network of Experts on Beneficial Ownership Transparency (NEBOT) Policy Paper 5, Publications Office of the European Union, 2023. Available at: <https://images.transparencycdn.org/images/NEBOT-Paper-5.pdf>

¹¹ UNODC (5 October 2023). Review of the implementation of the United Nations Convention against Corruption: Implementation of chapter II (Preventive measures) of the United Nations Convention against Corruption (CAC-COSP-2023-4). Available at: <https://www.unodc.org/unodc/en/corruption/COSP/session10.html>

contracts, concessions or subsidies – as well as those donating to political parties and candidates should be made publicly available in all countries.

2. Verification

One of the most challenging tasks is implementing adequate verification mechanisms to ensure the quality of the data within the register. Recognising this, CoSP resolution 9/7 encourages States Parties to set up “effective mechanisms to verify or check beneficial ownership information” and to “ensure that they have the necessary mandate or authorities for that purpose”.¹² However, in almost half of the States Parties surveyed by UNODC, the authorities responsible for obtaining and managing beneficial ownership information currently lack powers and resources to enforce rules. Even in early adopter countries that have relatively good usability, the lack of accurate verification has had a negative impact on the overall quality of the data, another study by the NEBOT has found.¹³

Currently, most countries rely on discrepancy reporting by obliged entities as the main source of verification. While private sector entities can play an important complementary role, the responsibility to verify data quality should lie with a governmental authority.

Additionally, as evidence from Europe shows, broader access to the registers significantly boosts data quality, as more actors participate in discrepancy reporting.¹⁴ The relationship between accessibility and data accuracy underscores the importance of making registers accessible to more stakeholders.

3. Interoperability

Another key feature of an effective register is an interconnection with various databases through Application Programming Interfaces (APIs).¹⁵ This broadens the register’s utility and enables stakeholders to conduct more insightful analyses. For example, in one European country, the financial

intelligence unit developed a software that utilised the registry’s API to seamlessly integrate suspicious transaction reports with beneficial ownership data.

UNODC has also identified a good practice example in a South American country, where beneficial ownership data is automatically cross-checked and exchanged against other registries, tax authorities and government bodies issuing licenses.

Such data-linking helps to uncover connections between companies, individuals and their assets.¹⁶ Datasets in foreign countries may hold additional clues that are critical for investigating cross-border schemes and for recovering of stolen assets. It is therefore imperative to ensure that beneficial ownership data can be easily cross-checked with all relevant domestic and foreign databases – including public procurement platforms, real estate registers, company registers and sanctions notices.

RECOMMENDATIONS

As more and more States Parties prepare to set up beneficial ownership registers or reform current frameworks, their effectiveness hinges critical issues of accessibility, verification and use of data by all actors who have a role to play in anti-corruption.

Transparency International urges the 10th UNCAC CoSP to adopt a resolution, making the following commitments:

1. Promote access to and use of beneficial ownership information by (1) domestic public authorities such as law enforcement agencies, financial intelligence units, tax administrations, but also anti-corruption agencies, election management bodies and public procurement agencies, (2) foreign authorities, and (3) civil society organisations, media and other relevant non-governmental stakeholders.
2. At a minimum, commit to public disclosure of beneficial ownership information for companies receiving public funds or donating to political

¹² UNCAC CoSP Resolution 9/7

¹³ European Commission, DG FISMA. *Verification and Quality of Beneficial Ownership Information in the EU*: NEBOT Policy Paper 2, Publications Office of the European Union, 2023. Available at: <https://images.transparencycdn.org/images/NEBOT-Paper-2.pdf>

¹⁴ NEBOT Policy Paper 2

¹⁵ European Commission, DG FISMA. *Beneficial ownership registers in the EU: Progress so far and the way forward*: NEBOT Policy Paper 5, Publications Office of the European Union, 2023. Available at: <https://images.transparencycdn.org/images/NEBOT-Paper-5.pdf>

¹⁶ European Commission, DG FISMA. *Linked Beneficial Ownership data? Challenges and opportunities*: NEBOT Policy Paper 6, Publications Office of the European Union, 2023. Available at: <https://images.transparencycdn.org/images/NEBOT-Paper-6.pdf>

parties and candidates. States Parties should also consider setting up public registers, recognising that these are the most efficient way to promote both access and use of beneficial ownership data.

3. Mandate register authorities to verify the information, including through automated checks, with discrepancy reporting used as a complementary source of verification. States Parties should commit to verifying beneficial owners' identities by cross-checking the information against other databases and conduct checks to ensure accuracy.
4. Make use of digital technologies to facilitate access and exchange of structured beneficial ownership information by authorities, and provide unrestricted and free access to the registers. States Parties should also commit to exploring innovative mechanisms that could improve exchange of information with foreign competent authorities.
5. Ensure the interoperability of beneficial ownership data with other domestic and foreign datasets such as those covering public procurement, sanctions and politically exposed persons.

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