



Corporate Registers Forum (CRF) 2017

Updates on Disclosure on Beneficial Ownership

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Hong Kong, China

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"We have to look at the accessibility of the beneficial ownership registers. We need to further increase transparency."

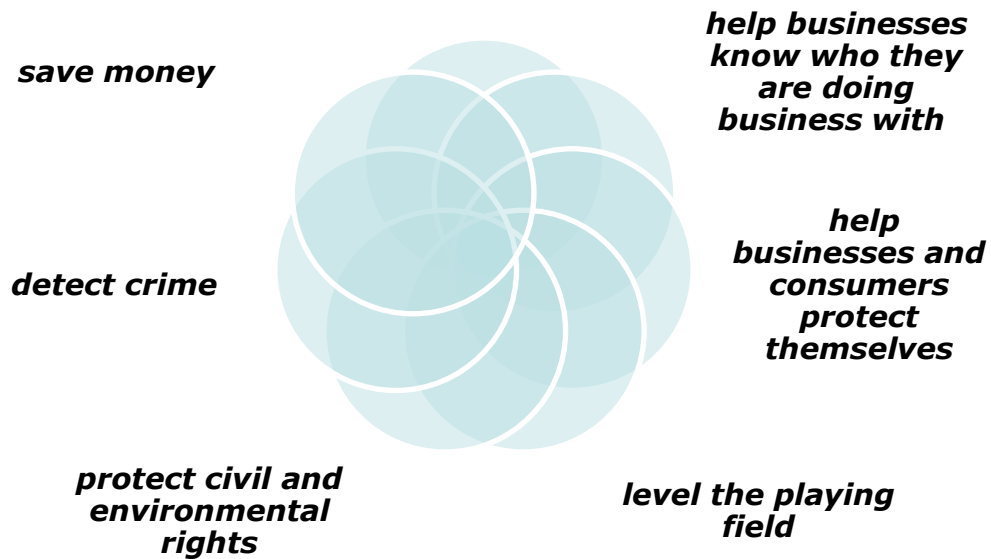
***1. RELEVANCE OF BENEFICIAL OWNERSHIP
INFORMATION***

2. INTERNATIONAL FRAMEWORK

3. CURRENT EU FRAMEWORK

4. NEXT STEPS EU

1. THE RELEVANCE OF BO TRANSPARENCY



2. Current international framework

“A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity”

- **G8 Action Plan Principles (2013)**
- **G20 high-level principles (2014)**
- **World Bank / UNODC StAR Initiative (*The Puppet Masters*, 2011)**
- **OECD taxation initiatives: Global Forum on Transparency and the Common Reporting Standard**
- **FATF 2014 Guidance on Transparency and Beneficial Ownership**

3. CURRENT EU FRAMEWORK

4th AML/CTF Directive

Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (4th AML Directive)

- *adopted on 20 May 2015;*
- *Transposition by EU – Member States on 26 June 2017.*



"Beneficial owner"

4th AML Directive

Article 3(6): "[...] any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted [...]:
(a) corporate entities and (b) trusts.

=> Customer due diligence (CDD) measures (Article 13(1)(a)(b)):

- **Identify the customer;**
- **Identify the beneficial owner;**

"Who is the beneficial owner (BO)?"

4th AML Directive

➤ **Corporate entities**

- ❖ at least 25% ownership threshold (indication);
- ❖ direct or indirect control;
- ❖ if no suspicion and no other person can be identified:
senior manager.

➤ **Trusts and similar legal entities**

"Transparency of BO information" 4th AML Directive

No EU Register

Storage in a central registry at national level for companies and trusts

- Information shall be adequate, accurate and current.
- Commercial register, companies register or public register.
- Only **Trusts** are registered which generate tax consequences

Transparency of BO information for companies

The registers must make the following information available:

- *the name, month and year of birth, nationality, country of residence, nature and extent of beneficial interest*

"Transparency of BO information for trusts"

For trust generating tax consequences the following information must be available:

- settlor / trustee(s) / protector (if any) / beneficiaries / other natural person(s) exercising control

"Transparency of BO information" 4th AML Directive

Access to these national central registers:

- Competent authorities and Financial intelligence units (FIUs) without any restriction.
- Obligated entities when they are applying customer due diligence (CDD) measures.
- Other persons that have a legitimate interest (not for trusts).
- Exception: "kidnapping clause"

Getting the data for the registers

- **Companies/trusts must take reasonable steps**
- **Criminal/Administrative offence for**
 - Failure to take reasonable steps to obtain information and keep it up to date.
 - Failure to respond to a company's notice to provide information, or knowing or reckless provision of false information.

4. FUTURE STEPS

Recent game changers: terrorist attacks and "Panama Papers"

- **EU Action Plan against Terrorism Financing**
- **Strengthening transparency and the fight against tax evasion ("Panama-papers")**

Commission Proposal for a Directive amending Directive 2015/849

adopted on 5 July 2016 and in negotiation with
EU – Member States and European Parliament

Possible changes on BO registers (I)

- **Lower 25% threshold to 10% for possible non-financial entities**
- **Replace access based on legitimate interest with free public access for profit making entities (not "family-trusts")**

Possible changes on BO registers (II)

- **Registration of all trusts and public access to BO info of business-like trusts**
 - where the trustee is established
 - Binding for EU Member States, including those who do not recognise trusts in their national law
- **Interconnection of national registers via the EU Business Registers Interconnection System (BRIS)**

Business Registers Interconnection System (BRIS)

BRIS = MS Business Registers, the Platform and the Portal



Thank you for your attention!

