



# Access to Information on Beneficial Ownership

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- What options do we have for ensuring better future provision of beneficial owner information?
- To what extent is it reasonable to leave the regulated sector to carry the burden of identifying beneficial owners, PEPs etc or should governments do more to work in partnership with and support the private sector efforts?

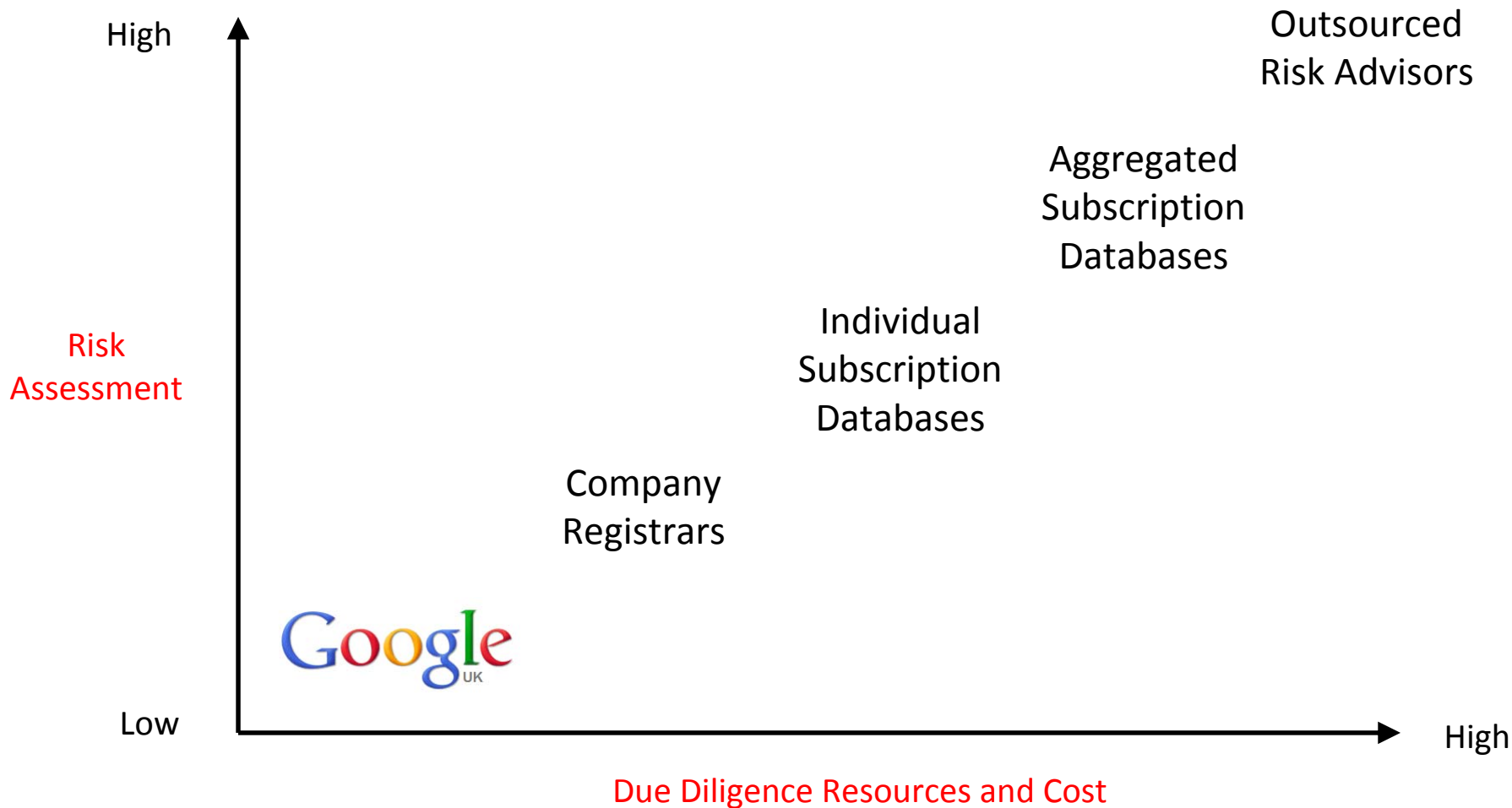
“Numerous issues were mentioned regarding the practical problems encountered by covered entities during the process of identification and verification of the identity of beneficial owners. A large number of stakeholders plead for initiatives in the area of availability of information on structures and in connection with this, additional transparency requirements”

*Final Study on the Application of the Anti-Money Laundering Directive (Deloitte January, 2011)*

“The absence of public information about the beneficial owner is seen by some stakeholders as hindering the practical implementation of the requirements. Obligated entities, with support from civil society organisations, have made a strong plea for public support initiatives in this area. The European Commission's Internal Security Strategy has also highlighted this issue”

*Report from the Commission to the European Parliament and the Council on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (European Commission April, 2012)*

How are companies trying to tackle verification today?





# European Supervisory Authorities

Report on the legal, regulatory and supervisory implementation across EU Member States in relation to the Beneficial Owners Customer Due Diligence requirements under the Third Money Laundering Directive [2005/60/EC]

*April 2012*

- Report focuses on the availability of ownership and control information across the European Union on ultimate beneficial owners of legal entities and legal arrangements
- Obtained from financial services supervisors who are members of the European Supervisory Authorities :
  - European Banking Authority
  - European Insurance and Occupational Pensions Authority
  - European Securities and Markets Authority
- National supervisors submitted replies to a questionnaire and discussed the issues in the Joint Committee of the European Supervisory Authorities Sub Committee on Anti Money Laundering

	Registration required?		Publication of control structure required?		Publication regarding beneficiaries required?	
	Yes	No	Yes	No	Yes	No
Foundations (known)	Austria Belgium Bulgaria Czech <sup>12</sup>  Estonia Finland France Germany <sup>13</sup> Greece Hungary  Italy Latvia  Lithuania Luxembourg Malta Netherlands Norway Poland Portugal Romania Slovenia Slovakia Spain	Denmark <sup>14</sup>   Ireland  Liechtenstein *     Sweden UK	Austria Belgium Bulgaria Czech  Estonia Finland France  Greece  Italy   Malta Netherlands Norway Poland Portugal Romania Slovenia  Spain	Denmark   Germany  Ireland  Latvia Liechtenstein Lithuania Luxembourg    Slovakia Sweden  UK	Belgium  Czech         Norway Poland   Spain	Austria Bulgaria  Denmark Estonia Finland France Germany Greece  Ireland Italy Latvia Liechtenstein Lithuania Luxembourg Malta Netherlands  Portugal  Slovenia Slovakia  Sweden UK
N/A (unknown)	Cyprus					





# European Supervisory Authorities Report

## Legal arrangements (trusts) which administer and distribute funds

	Registration required?		Publication of control structure required?		Publication regarding beneficiaries required?	
	Yes	No	Yes	No	Yes	No
Legal arrangements (trusts), which administer and distribute funds (known)	Czech <sup>19</sup> France Ireland Italy Liechtenstein <sup>20</sup>	Cyprus  Lithuania Malta  UK	Czech  France	Cyprus  Ireland Italy Liechtenstein  Malta  UK		Czech Cyprus France Ireland Italy Liechtenstein  Malta  UK
N/A (unknown)	Austria Belgium Bulgaria Denmark Estonia Finland Germany Greece Hungary Latvia Luxembourg Netherlands Norway Poland Portugal Romania Slovenia Slovakia Spain Sweden					

	Registration required?		Publication of control structure required?		Publication regarding beneficiaries required?	
	Yes	No	Yes	No	Yes	No
Other legal arrangements than trusts (known)	Czech <sup>21</sup> Estonia Finland <sup>22</sup> Ireland Latvia  Luxembourg Romania Slovenia Slovakia	  Lithuania    UK	Czech Estonia Finland   Romania Slovenia	 Ireland Latvia  Luxembourg   Slovakia  UK	   Slovenia	Czech Estonia Finland Ireland Latvia  Luxembourg   Slovakia  UK
N/A (unknown)	Austria Belgium Bulgaria Cyprus Denmark France Germany Greece Hungary Italy Liechtenstein Malta Netherlands Norway Poland Portugal Spain Sweden					

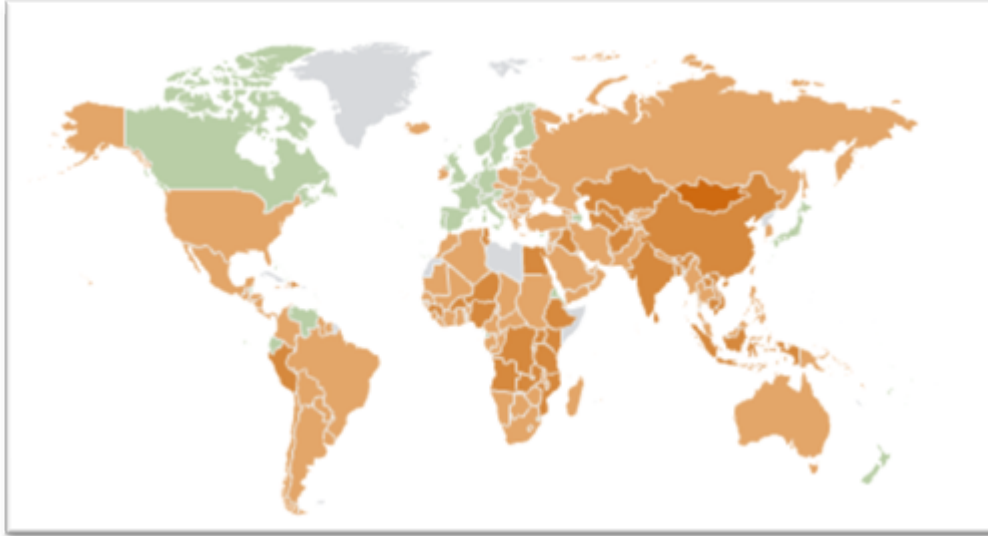
	Registration required		Publication of control structure required?		Publication regarding beneficiaries required?	
	Yes	No	Yes	No	Yes	No
Any other type/category (known)	Czech <sup>23</sup> Hungary Slovakia <sup>24</sup>	Finland <sup>25</sup> Latvia	Czech	Finland Slovakia		Czech Finland Slovakia
N/A (unknown)	Austria Belgium Bulgaria Cyprus Denmark Germany Greece Italy Liechtenstein Lithuania Luxembourg Malta Netherlands Norway Poland Portugal Romania Slovenia Spain Sweden UK					

European Supervisory Authorities Report April 2012

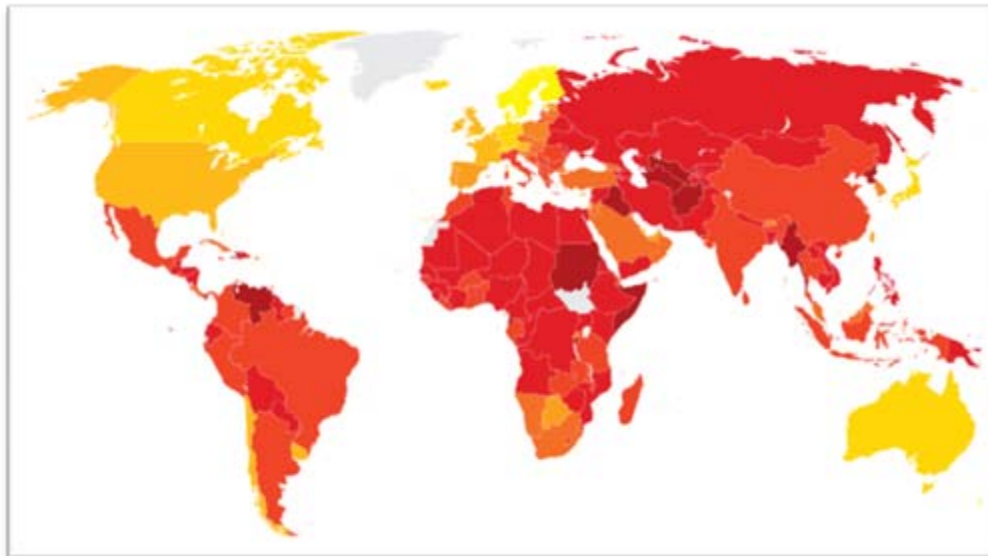
		Require from third Parties (such as intermediaries e.g. trusts and company service providers, notaries/lawyers, or public accountants etc) to report changes in Beneficial Owners to the relying party (i.e. institutions)	
		Yes	No
MS	CY Cyprus, FR France, IT Italy, LI Liechtenstein, LT Lithuania, MT Malta, PT Portugal, RO Romania, ES Spain		AT Austria, BE Belgium, BG Bulgaria, CZ Czech Republic, DK Denmark, EE Estonia, FI Finland, DE Germany, EL Greece, HU Hungary, IE Ireland, LV Latvia, LU Luxembourg, NL Netherlands, NO Norway, PL Poland, SK Slovakia, SI Slovenia, SE Sweden, UK United Kingdom

	Share information on beneficial owners (for AML/CFT purposes) among EU regulators		Share information on beneficial owners (for AML/CFT purposes) with 3 <sup>rd</sup> countries regulators		Share information with "other parties" (e.g. other authorities, institutions, group of institutions).	
	Yes	No	Yes <sup>26</sup>	No	Yes <sup>27</sup>	No
MS	BE Belgium, BG Bulgaria, CY Cyprus, CZ Czech Republic, DK Denmark, EE Estonia, ES Spain, FI Finland, FR France, DE Germany, EL Greece, IE Ireland, IT Italy, LV Latvia, LI Liechtenstein, LT Lithuania, LU Luxembourg, MT Malta, NO Norway, PT Portugal, RO Romania, SE Sweden, SK Slovakia	AT Austria, HU Hungary, NL Netherlands, PL Poland, SI Slovenia, UK United Kingdom	BE Belgium, BG Bulgaria, CY Cyprus, CZ Czech Republic, DK Denmark, EE Estonia, FI Finland, FR France, DE Germany, EL Greece, IT Italy, LV Latvia, LI Liechtenstein, LT Lithuania, LU Luxembourg, MT Malta, NO Norway, PT Portugal, RO Romania, SE Sweden, SK Slovakia	AT Austria, ES Spain, HU Hungary, IE Ireland, NL Netherlands, PL Poland, SI Slovenia, UK United Kingdom	BG Bulgaria, CZ Czech Republic, DK Denmark, EE Estonia, FI Finland, FR France, DE Germany, EL Greece, IE Ireland, IT Italy, LV Latvia, LI Liechtenstein, LT Lithuania, LU Luxembourg, MT Malta, NL Netherlands, NO Norway, PT Portugal, RO Romania, SE Sweden, SK Slovakia, SI Slovenia, ES Spain	AT Austria, BE Belgium, CY Cyprus, HU Hungary, PL Poland, UK United Kingdom

Even greater need for transparency of legal persons and arrangements



**Real GDP Growth**  
IMF Data Mapper  
(September 2011)



**Transparency International**  
Corruption Perceptions Index  
(November 2011)



# The OECD Options

Option	Benefits	Costs
Upfront disclosure	<ul style="list-style-type: none"> <li>• improved transparency</li> <li>• beneficial ownership and control information available at all times</li> <li>• strong deterrent effect</li> </ul>	<ul style="list-style-type: none"> <li>• imposes significant costs on business vehicles (especially smaller entrepreneurial businesses)</li> </ul>
The holding of information by intermediaries	<ul style="list-style-type: none"> <li>• implementation is cheap</li> </ul>	<ul style="list-style-type: none"> <li>• costly and time-consuming for companies (particularly when foreign parties are involved)</li> <li>• the client identification and verification rules, and related recordkeeping requirements, represent a potentially costly and cumbersome set of identification practices.</li> <li>• potential for delays in the provision of information ex post</li> </ul>
Investigative system	<ul style="list-style-type: none"> <li>• may avoid unnecessary costs and burdens on business vehicles, which may stifle legitimate business formations</li> <li>• maintain a reasonable balance between ensuring proper monitoring / regulation of business vehicles and protecting legitimate privacy interests</li> </ul>	<ul style="list-style-type: none"> <li>• potential for delays in the provision of information</li> </ul>

“Even the most effective anti-money laundering and anti-terrorist financing system – which includes a sophisticated cross-agency collaboration framework – will be of limited use to minority investors and other stakeholders in listed companies who have to rely on publicly available and instantly accessible information about the control and ownership of listed companies.”





# FATF Revised Recommendations

### **E. TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND ARRANGEMENTS**

#### **24. Transparency and beneficial ownership of legal persons**

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBCPs undertaking the requirements set out in Recommendations 10 and 22.

#### **25. Transparency and beneficial ownership of legal arrangements**

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBCPs undertaking the requirements set out in Recommendations 10 and 22.

Option	Benefits	Costs
Upfront disclosure	<ul style="list-style-type: none"> <li>• improved transparency</li> <li>• beneficial ownership and control information available at all times</li> <li>• strong deterrent effect</li> </ul>	<ul style="list-style-type: none"> <li>• imposes significant costs on business vehicles (especially smaller entrepreneurial businesses)</li> </ul>
The holding of information by intermediaries	<ul style="list-style-type: none"> <li>• implementation is cheap</li> </ul>	<ul style="list-style-type: none"> <li>• costly and time-consuming for companies (particularly when foreign parties are involved)</li> <li>• the client identification and verification rules, and related recordkeeping requirements, represent a potentially costly and cumbersome set of identification practices.</li> <li>• potential for delays in the provision of information ex post</li> </ul>
Investigative system	<ul style="list-style-type: none"> <li>• may avoid unnecessary costs and burdens on business vehicles, which may stifle legitimate business formations</li> <li>• maintain a reasonable balance between ensuring proper monitoring / regulation of business vehicles and protecting legitimate privacy interests</li> </ul>	<ul style="list-style-type: none"> <li>• potential for delays in the provision of information</li> </ul>

### **INTERPRETIVE NOTE TO RECOMMENDATION 24 (TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS)**

“Competent authorities should be able to obtain, or have access in a timely fashion to, adequate, accurate and current information on the beneficial ownership and control of companies and other legal persons (beneficial ownership information) that are created in the country.”

“As part of the process of ensuring that there is adequate transparency regarding legal persons, countries should have mechanisms that:

- (a) identify and describe the different types, forms and basic features of legal persons in the country.
- (b) identify and describe the processes for: (i) the creation of those legal persons; and (ii) the obtaining and recording of basic and beneficial ownership information;
- (c) make the above information publicly available; and
- (d) assess the money laundering and terrorist financing risks associated with different types of legal persons created in the country.”

### **B. BENEFICIAL OWNERSHIP INFORMATION**

7. Countries should ensure that either: (a) information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or (b) there are mechanisms in place so that the beneficial ownership of a company can be determined in a timely manner by a competent authority.

8. In order to meet the requirements in paragraph 7, countries should use one or more of the following mechanisms:

(a) Requiring companies or company registries to obtain and hold up-to-date information on the companies' beneficial ownership;

(b) Requiring companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership;

(c) Using existing information, including:

i. information obtained by financial institutions and/or DNFBPs, in accordance with Recommendations 10 and 22;

ii. Information held by other competent authorities on the legal and beneficial ownership of companies

(e.g. company registries, tax authorities or financial or other regulators)

iii. information held by the company as required above in Section A; and

iv. available information on companies listed on a stock exchange, where disclosure requirements (either by stock exchange rules or through law or enforceable means) impose requirements to ensure adequate transparency of beneficial ownership.



# Summary