

Submission by the UNCAC Coalition to the FATF Public Consultation concerning Revisions to FATF Recommendation 24 on Beneficial Ownership Transparency

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The UNCAC Coalition is a global network of over 350 civil society organizations committed to promoting the ratification, implementation and monitoring of the UN Convention against Corruption, including its provisions relevant to anti-money laundering and to beneficial ownership transparency. The UNCAC Coalition is a non-profit association and is registered in Vienna, Austria.

We welcome the FATF's consideration to undertake an urgently needed strengthening of Recommendation 24 addressing beneficial ownership transparency, and would like to thank you for opening up the consultation process on possible amendments to a wide range of stakeholders, including civil society organizations (CSOs).

The UNCAC Coalition comments on the possible revision of FATF Recommendation 24 as follows:

- **Multipronged approach to collection of Beneficial Ownership information**

Recommendation 24 should be updated to require **that information on corporations and other legal entities, including on officers, directors and beneficial owners, is made accessible to the public through free, searchable, public online platforms** in order to facilitate access for law enforcement agencies, financial institutions and obliged entities, as the private sector, civil society, the media, well as the general public.

As corruption is increasingly transnational in nature and as the vast majority of grand corruption cases involve the use of shell companies and other opaque corporate vehicles,¹ it is essential that all jurisdictions mandate the public disclosure of ultimate owners of all legal entities in order to avoid safe havens that can be misused for corruption. FATF's recommendations play an important role in advancing real beneficial ownership (BO) transparency globally.

¹ See: StAR: (2011) The Puppet Masters, <https://star.worldbank.org/publication/puppet-masters>.

Increasingly, the international community recognizes that beneficial ownership transparency is a crucial tool to tackle money laundering and corruption. Earlier this year, the United Nations High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel), in its final report, provided clear recommendations to advance BO transparency through central registries that are fully accessible to the public.

The FACTI Panel recommended that “International anti-money-laundering standards should require that all countries create a centralised registry for holding beneficial ownership information on all legal vehicles. The standards should encourage countries to make the information public.” Furthermore, the Panel recommended that States should “Designate an entity to collect and disseminate data on enforcement of money-laundering standards, including beneficial ownership information.”²

The Panel, in its final report, also highlighted:

“There is strong value in having an online registry of the beneficial ownership of all kinds of financial and business entities with a value above a certain global level, and many countries have already adopted such policies, based on the FATF and Global Forum standards. (...) To maximise the usefulness of this transparency tool, registries should be established in accordance with agreed international standards, which could include uniform definitions that accommodate different legal systems, clear information requirements, mechanisms for verification, and expansive scope of coverage covering all legal vehicles, including those ostensibly for non-profit purposes. This transparency tool can be made more effective by tying public contracts to compliance with the regulations, holding directors liable, and applying penalties such as deregistration for deliberate wrongdoing. **The turning point is transparency to outsiders, not just law enforcement agencies. When the public can access and understand the data, it helps incentivise ethical business conduct, rebuild public trust and strengthen the social contract.** (...) Lessons learned can be useful to efforts to create asset registries with wider coverage in the future. Member States should consider adopting full asset registers after they have implemented beneficial ownership registers and learned relevant lessons.”³

On June 2, the United Nations General Assembly in a Special Session against corruption adopted a Political Declaration, in which UN Member States have committed to enhancing beneficial ownership transparency, and to promoting beneficial ownership disclosures and transparency, including through appropriate registries:

² FACTI Panel (2021): Report of the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, accessed through <https://www.factipanel.org/>.

³ Ibid, p.20 (text in bold highlighted by the UNCAC Coalition).

“16. We commit to making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries, where consistent with the fundamental principles of domestic legal systems and using as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. To this end, we will develop and implement the measures necessary to collect and share such information on the beneficial ownership of companies, legal structures and other complex legal mechanisms, and we will enhance the ability of competent authorities in this regard.”⁴

According to Open Ownership, 110 countries have committed to BO transparency, of which 46 are fully committed to public access to BO information through central registries.⁵

If FATF revised and strengthened its guidelines on beneficial ownership, in particular by recommending central registries that are freely accessible to all stakeholders and the general public, it can ensure its principles align with international best practices.

Several jurisdictions currently mandate companies to hold records on their beneficial owners but do not require that this information be also reported to a central register. This approach does not result in adequate transparency of beneficial ownership because neither investigative nor oversight bodies have immediate access to this information, and beneficial owners are not disclosed to other key stakeholders (such as State entities, large parts of the private sector, journalists, civil society organizations and the general public).

Central registries of beneficial owners allow for easier and immediate access to BO information. They thus facilitate effective and faster national and international investigations, as law enforcement and financial intelligence units can quickly establish who controls a legal entity. Financial institutions, businesses in high-risk sectors and other entities that have to comply with anti-money laundering regulations can more easily and effectively establish who their customers are, while the media and civil society can monitor the use of public funds.

Crucially, **beneficial ownership registries need to be freely (i.e., without costs, fully searchable) accessible to the public.** This enables domestic and international investigative bodies to access and use the data without having to go through lengthy mutual legal assistance procedures. Furthermore, it also allows the media, civil society groups and the

⁴ UN General Assembly, A/S-32/2/Add.1, "Report of the Conference of the States Parties to the United Nations Convention against Corruption on its preparatory work for the special session of the General Assembly on challenges and measures to prevent and combat corruption and strengthen international cooperation", <https://undocs.org/A/S-32/2/ADD.1>

⁵ Open Ownership: Worldwide commitments and action, <https://www.openownership.org/map/>, accessed 18 August 2021.

general public to use the information to monitor the use of public funds, for example in public procurement and in the allocation of COVID-19 assistance. It is also of great benefit to all businesses: Nine out of ten senior private sector executives in a 2016 survey said that it is important to know the ultimate beneficial ownership of the entities they do business with (also to reduce associated due diligence costs).⁶ A central registry that is freely accessible online lowers transaction costs, provides fast access to the information and thus incentivizes its use, thus resulting in better detection and prevention of possible cases of money laundering and terrorist financing by various different stakeholders.

One example of civil society organizations using company ownership information is from Georgia. Georgia's company registry (it does not include BO information) is freely accessible and easily searchable online.⁷ The NGO Transparency International Georgia has set up a platform linking company ownership data with public procurement data and data on donations to political parties⁸ and also uses the data to monitor and verify officials' asset and interest declarations and identify possible conflicts of interest and indications of wrongdoing of local and national public officials. In numerous countries around the world, civil society organizations are monitoring public procurement spending, as more and more countries establish higher levels of transparency, including by releasing data under the Open Contracting data standard. Access to data on company ownership and beneficial owners is crucial for this work to have an impact and detect corruption red flags.

- **Access to information**

Beneficial ownership information should be accessible in an open data format and under an open license that would allow third actors such as CSOs to reuse the information and to link it to other relevant databases within the same jurisdiction or in other countries. **The beneficial ownership data should further be searchable by both company name and beneficial owner**, as well as other relevant data points.

The great value that is added by full public access to beneficial ownership data through central registries has also been highlighted by the decision of the European Commission to raise its standards and to open up the access to beneficial ownership registries in the 5th Anti-Money Laundering Directive.⁹

⁶ EY: Global Fraud Survey 2016, <https://www.ey.com/gl/en/services/assurance/fraud-investigation---dispute-services/ey-global-fraud-survey-2016>.

⁷ <https://enreg.reestri.gov.ge/>

⁸ Transparency International Georgia, <https://www.transparency.ge/politicaldonations/en>.

⁹ See: EU Commission: Anti-money laundering and countering the financing of terrorism, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-countering-financing-terrorism_en.

Good practice examples from countries that have set up central beneficial ownership registers show the benefits of this approach. In the United Kingdom, Companies House registers company information, including company filings and data on direct owners as well as the beneficial owners and makes it available to the public in a freely accessible, searchable online register.¹⁰ In 2018, the UK register was accessed more than 6 billion times, creating a total benefit of between £1 billion and £3 billion per year, according to government estimates.¹¹

Aside from financial institutions and domestic oversight and investigative bodies, key users include State bodies that want to verify who ultimately controls a company that is seeking to do business with the public sector; dedicated entities responsible for the verification of declared assets and interests of public officials within their own jurisdiction and abroad; civil society organizations monitoring government spending and public procurement; journalists reporting on the private sector and investigating possible cases of corruption and other forms of wrongdoing, including money laundering by PEPs and organized crime; law enforcement bodies tracing assets and investigating possible money laundering and corruption cases in other jurisdictions, where they would otherwise need to request access to BO information through lengthy MLA procedures from the respective jurisdiction.

Beyond access to BO data, full and free public access to information and open data from company registries would also be an important factor to advance transparency of the private sector and to give a wide range of stakeholders information needed to identify possible money laundering risks and corruption when following the money to a specific entity.

- **Adequate, accurate and up-to-date information**

To promote compliance with the beneficial ownership regime, States should put in place mechanisms to verify that beneficial ownership data is accurate and up-to-date. **Legal entities should be legally required to register and submit any subsequent changes in beneficial ownership in a timely manner, with information updated within a short and defined time period after changes occur. The data should be confirmed as correct on at least an annual basis.**

Full and free public access to structured BO data from beneficial ownership registries is essential to detect inaccurate or missing information and to improve the quality of beneficial ownership information over time. Thus, the data from registries should be fully and freely searchable, be available for bulk download and accessible through an application programming interface (API), so that access, re-use and scrutiny of the data by third parties

¹⁰ <https://beta.companieshouse.gov.uk/>.

¹¹ <https://www.gov.uk/government/news/new-report-estimates-value-of-companies-house-data-at-up-to-3-billion-per-year>.

(including civil society organizations and media outlets) are facilitated and encouraged. Such access should also facilitate the linking of beneficial ownership data with other relevant data sets from the same and from other jurisdictions (procurement data, company registries data, party financing data, land registry data, data from asset declarations of PEPs and other public officials, etc.). Data should include unique identifiers (such as company registration numbers) and other relevant data that facilitates the unique identification of legal and natural persons.

Where beneficial ownership is held indirectly through multiple legal entities or legal arrangements, or ownership or control are exerted formally or informally through another natural person, sufficient information should be collected and published to understand full ownership chains and how individuals exert control.

In cases of non-compliance with the beneficial ownership register, **the revised Recommendation should mandate that effective, proportionate and dissuasive measures or sanction are put in place and also imposed in practice**, while also ensuring an efficient and effective framework that minimizes the administrative burden and costs with the public and private sectors.

The competent bodies should be required or at least encouraged to regularly and actively publish information on measures they have taken to improve data quality, to correct errors and incorrect data, and on the number and types of cases of non-compliance they have identified and the sanctions they have imposed.

To ensure their continuing usefulness, it is advisable that States should be advised to **periodically review the effectiveness of beneficial ownership registries and their measures to ensure the accuracy and completeness of data**, in consultation with the various stakeholders involved in beneficial ownership transparency, including CSOs.

Moreover, **the threshold for beneficial ownership information to be included on a public register should be sufficiently low** to ensure that persons with relevant ownership or control do not remain hidden. In this regard, **governments should consider adopting a risk-based approach, by using lower thresholds for industries, companies, or beneficial owners considered to be high-risk.**

In regards to best practice approaches for the verification of beneficial ownership information and on technical details of the structure of beneficial ownership information, including its release under an agreed open data standard, we refer to the work and guidance of leading civil society organizations in this field, namely Open Ownership¹² and Transparency International.

¹² See: Open Ownership: Guide to implementing beneficial ownership transparency, <https://www.openownership.org/guide/>; Principles for Effective Beneficial Ownership Disclosure, <https://www.openownership.org/principles/>.

- **Risk-based approach for foreign legal persons**

In this regard, we would like to highlight the good practice we have identified in Slovakia, where entities who are a “partner of the private sector” – meaning they receive a license or permit, are awarded government contracts (above certain thresholds), grants or subsidies, participate in a privatization or uncertain activities in the health care sector – have to publicly disclose their beneficial owners. This information is made public through a dedicated registry.¹³ Importantly, this approach also covers foreign legal persons who otherwise do not have to disclose their beneficial owners through the domestic registry.

FATF should consider reflecting such a good practice approach in its recommendations. As participation in public procurement and in the award of other public contracts (particularly related to the exploitation and use of natural resources), participation in public-private partnerships and in processes to receive certain licenses and permits from State bodies, privatization, as well as the receipt of state aid are high risk areas, FATF should recommend that foreign legal persons participating in such processes (as well as domestic ones) are required to disclose BO information to the competent authorities, and that this information is also made public through a BO registry.¹⁴

- **Bearer Shares and Nominee arrangements**

Bearer shares and nominee arrangements undermine transparency and are widely used in corruption cases and by organized crime to conceal ownership and control over legal entities. In particular, these mechanisms are often used by public officials (who in many jurisdictions have to annually disclose their assets and financial interests) to conceal corruption and illicit enrichment. Thus, FATF should require nominee directors and shareholders to proactively declare their status and their nominator to a registry (and to financial institutions). It is crucial that this information is also made public through the registry, so this information can serve as red flags for possible illicit enrichment and money laundering. In order to address the extensive and well-documented risks of abuse, physical bearer shares without any traceability should be prohibited.

¹³ See: <https://rpvs.gov.sk/rpvs>.

¹⁴ See: Experience of Slovakia, presented at an UNCAC Coalition side event at the UNCAC COSP8, <https://uncaccoalition.org/cosp8-special-event-making-transparency-work-technology-driven-approaches-to-facilitate-public-access-to-information/>.

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