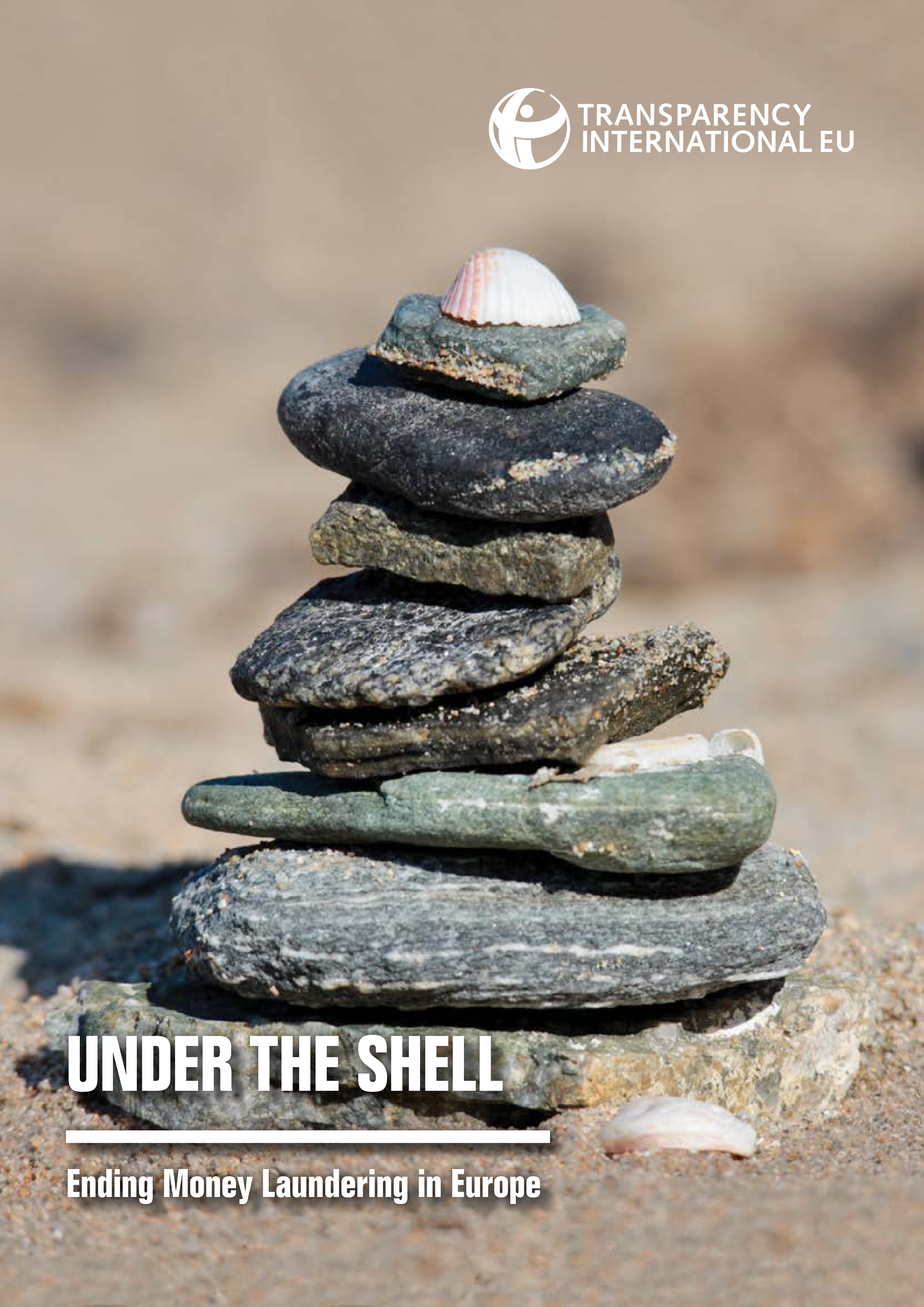

UNDER THE SHELL

Ending Money Laundering in Europe

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UNDER THE SHELL

Ending Money Laundering in Europe

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ABBREVIATIONS

AMLD III	3rd Anti-Money Laundering Directive
AMLD IV	4th Anti-Money Laundering Directive
AML/CFT	Anti-Money Laundering and Counter Financing of Terrorism
BO	Beneficial Ownership or Beneficial Owner
BOT	Beneficial Ownership Transparency
CDD	Customer Due Diligence
DNFBPs	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FI	Financial Institution
FIU	Financial Intelligence Unit
ML/FT	Money Laundering and Financing of Terrorism
NRA	National Risk Assessment
PEP	Political Exposed Person
SAR or STR	Suspicious Activity or Transaction Report
TCSP	Trust and Company Service Providers

GLOSSARY

Beneficial owner
The natural person who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. The beneficial owner does not necessarily coincides with legal owner which can be another company, a lawyer, a nominee or an associate.

Bearer share
A stock certificate which is the property of whoever happens to be in possession of it at any given time.

DNFBPs
Designated Non-Financial Businesses and Professions designating non-financial professionals subject to customer due diligence obligations as per FATF terminology.

Legal arrangement
An express trust or other similar arrangement, including fiducie, treuhand and fideicomiso.

Legal person or entity
Any entity, other than a natural person, that can establish a permanent customer relationship with a financial institution or otherwise owns property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities that have legal personality. This can include non-profit organisations (NPOs) that can take a variety of forms which vary between jurisdictions, such as foundations, associations or cooperative societies.

Nominee
An individual or entity who has been appointed to act as a director or a shareholder on behalf of another person. Nominees are usually bound by contract or other instruments such as the power of attorney granting authorisation to represent or act on behalf of their nominator. There are two broad categories of nominees: professionals, such as lawyers or corporate service providers offering nominee services; and informal nominees, such as family members, friends or associates who play the role of frontmen for the beneficial owner.

Obliged entity
A professional subject to customer due diligence obligations when entering in business with a customer or carrying out a transaction, i.e. making the necessary verifications on the identity of their customer and the origins of the funds. Those include financial institutions (FIs) and non-financial professionals known as Designated Non-Financial Businesses and Professions (DNFBPs) as per FATF terminology. Obliged entities as defined by the European 4th Anti-Money Laundering Directive[1] include auditors, external accountants, tax advisors, notaries, lawyers when acting as financial intermediaries, real estate agents, trust and company service providers, providers of gambling services, luxury goods dealers, etc.

Trust
A relationship whereby the assets of one individual (the settlor) are conferred on one individual or entity (a trustee) to manage on behalf of others (the beneficiaries). The terms of the arrangement are set out in a trust instrument, which is typically drafted by a lawyer or notary.

The term *express trust* is used to designate trusts clearly created by the settlor, usually in the form of a document (such as a written deed of trust). They are to be contrasted with trusts which come into being through the operation of the law and do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (such as a constructive trust).

KEY STATISTICS

Out of the 6 countries covered by the analysis:

Access to company beneficial ownership information

2 countries will establish public registers of beneficial owners for companies (Slovenia and the Netherlands)[2]

2 countries will restrict access to companies´ beneficial ownership to people with legitimate interest (Czech Republic and Italy)[3]

2 countries have not announced their plans yet (Luxembourg and Portugal)

At least **3** countries will introduce paywalls for obliged entities and the public to access the data (Czech Republic, Italy and the Netherlands)

up to EUR **75,000** – the price to pay to access the full company register database in the Netherlands[4]

0 country will display the data in open data format

Access to trust beneficial ownership information

1 country will set up a public central register of beneficial owners for all trusts doing business or tax liable in the country (Slovenia)

1 country will create a central register for domestic and foreign trusts with access restricted to people with legitimate interest (Czech Republic)

1 country will create a central register for foreign trusts with no public access at all (Italy)

1 country has not included any provision for a central register of beneficial owners for trusts in its draft bill (the Netherlands)

2 countries have not yet announced their plans with regard to trust transparency requirements (Luxembourg and Portugal)

Verification and sanction mechanisms

2 countries foresee mechanisms in their new legislation to ensure that the information in beneficial ownership registers is verified (Italy and the Netherlands)

1 country out of the 4 with new or draft bills does not provide for any sanction applicable to the company and/or the beneficial owner for failure to report accurate beneficial ownership information to the central registers (Czech Republic)

Use of bearer shares and nominees

0 country has yet outlawed bearer shares

0 country has robust regulations on nominee services in place

AML enforcement efforts

2 countries never conducted a national risk assessment (Netherlands and Luxembourg)

Less than **2%** of total suspicious activity reports submitted to Italian authorities were reported by accountants and lawyers respectively in 2015

Less than **1%** of total suspicious activity reports submitted to Slovene authorities were reported by lawyers in 2015, which represented in absolute terms **3** suspicious transactions

0 suspicious transaction were reported by Luxembourgish notaries in 2015

4 sanctions or other remedial actions were imposed on financial institutions by the Luxembourgish financial regulator for failure to comply with AML obligations in 2015

FOREWORD

April 2016 – the Panama Papers, a trove of 11.5 million files leaked from the Panama-based law firm Mossack Fonseca revealed how the global financial industry sells financial secrecy to politicians, football players, celebrities as well as fraudsters and money launderers. The leak provided details of more than 214,000 offshore companies and trusts connected to people in more than 200 countries and territories. 12 current and former world leaders and 140 politicians and public officials from around the world were found to detain secret offshore holdings. One year later, the Global Laundromat case[5] exposed how billions of dollars have been moved out of Russia and laundered through European banks and a network of anonymously owned companies based in the UK, Cyprus and New Zealand.

The common thread to these two stories is the way the current rules of the global financial system allow the identity of the person who ultimately owns or controls the money to be obscured. The trick is to disconnect this person known as the beneficial owner from any formal ownership or control by setting up complex schemes involving shell companies and trusts, the use of nominees and bearer shares and multi-layering through offshore secret jurisdictions.

These recurring scandals call for greater transparency over beneficial ownership. The global impact of the Panama Papers can serve alone to demonstrate the benefits of public disclosure of beneficial ownership information: eight months after the scandal, at least 150 inquiries, audits or investigations had been announced in 79 countries around the world and governments were investigating more than 6,500 taxpayers and companies, and had recouped at least $110 million so far in unpaid taxes or asset seizures.[6] There is also a business case for greater beneficial ownership transparency. A survey by the accountancy firm Ernst & Young found that 91% of senior executives believe it is important to know the ultimate beneficial ownership of the entities with which they do business.[7]

General definition of beneficial owner

The Financial Action Taskforce (FATF) and the European 4th Anti-Money Laundering Directive (AMLD IV) define the beneficial owner as "the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement."

Source: FATF, *Guidance – Transparency and Beneficial Ownership*, October 2014 http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

The Panama Papers have created political momentum in favour of greater beneficial ownership transparency at global, European and national levels. At the London Anti-Corruption Summit in May 2016, six countries[8] committed to public registers of beneficial ownership and six others[9] stated they would consider doing so. At the European level, the European Commission has announced further improvement to beneficial ownership transparency provisions of the 4th Anti-Money Laundering Directive[10] (AMLD IV) adopted in 2015. A few national champions are also leading the way: the UK and Ukraine already have public registers in place and Denmark is expected to set one up during summer 2017. Slovenia recently introduced legislation for a public register and plans for introducing similar legislation in the Netherlands are underway. Following the first phase of the EITI pilot project on beneficial ownership transparency in the extractive sector, 20 countries have committed to making beneficial ownership data available through a public register.[11]

Public beneficial ownership registers of companies and trusts are one essential pillar of a robust and effective anti-money laundering framework but not the only one. Beneficial ownership transparency involves other critical aspects including having in place:

- a robust legal definition of beneficial ownership;
- an inclusive and open risk assessment process relating to legal entities such as companies and arrangements such as trusts;
- a robust framework defining the roles and responsibilities of financial institutions and non-financial businesses and professions (known as Designated Non-Financial Businesses and Professions – DNFBPs) in identifying and verifying beneficial ownership information as part of their customer due diligence;
- a robust framework governing the domestic and international exchange of beneficial ownership information; and
- strong regulations governing the use of bearer shares and nominees.

The purpose of this report is to examine how European countries perform on those different fronts and identify gaps and good practices in legislation (Section 1) and enforcement (Section 2) based on the experience of selected European countries, namely Czech Republic, Italy, Luxembourg, the Netherlands, Portugal and Slovenia. The report also identifies areas identified as high risk in the countries covered by the study and possible corresponding mitigation measures (Section 3).


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THE PANAMA PAPERS
Discussion with the Investigative Journalists behind the Revelations

EXECUTIVE SUMMARY

This report assesses the national anti-money laundering framework in six European countries: Czech Republic, Italy, Luxembourg, the Netherlands, Portugal and Slovenia. It focuses on beneficial ownership transparency, a key aspect of the fight against money laundering and corporate secrecy. Under current rules and international standards, it is still possible and relatively easy to obscure the origins of money and assets and conceal the identity of the person who ultimately owns or controls them as revealed by the Panama Papers in 2016. This can be done by setting up complex structures involving shell companies and trusts in offshore secrecy jurisdictions, the use of bearer shares, using nominee directors as frontmen and proxies, or indeed a combination of all these.

The report finds areas of serious concern, as well as a number of significant weaknesses both in law and practice in the countries reviewed. Certain sectors are found to be particularly vulnerable to money laundering risks such as the real estate sector as illustrated by the Portuguese Golden Resident Permit Programme (page 50), the gambling sector, trust and company service providers as highlighted in the Dutch IMFC Trust and Fund Services case (page 53) and virtual currency service providers such as Bitcoin, with three new cases appearing before court this year in the Netherlands (page 54).

KEY FINDINGS

Country performance

Although all six countries are expected to significantly improve their anti-money laundering (AML) legislation in the near future with the transposition of the 4th European Anti-Money Laundering Directive, significant disparities will remain across countries due to variations in the legal interpretation and enforcement of European rules. While no country reviewed in this study fully meets highest standards of transparency, Slovenia clearly stands out as the best performer having recently agreed to implement a full public beneficial ownership register with extensive scope covering any company or trust doing business or tax liable in the country. The Netherlands will also go public for companies but still remains blind to the issue of trusts. Italy and Czech Republic have opted for a narrow interpretation of current European rules limiting access to beneficial ownership information to people with "legitimate interest" in cases where there are already reasonable grounds to suspect money laundering and terrorist financing activities. Portugal and Luxembourg have not yet announced their transposition plans, in particular with regard to conditions of access to beneficial ownership information.

More specifically, the analysis points at the following gaps and deficiencies:

Legislative gaps

The legal definition of beneficial owner is flawed

The current EU definition and its national interpretations set an ownership threshold at 25% of total shares or voting rights which is too high and easy to circumvent for people seeking to stay under the radar. Moreover, the legal definition offers a fall-back option in case no beneficial owner can be identified using the primary criteria of ownership and control. In such cases, it becomes possible to list a senior manager as a beneficial owner which would allow nominee directors to be listed as beneficial owners and the person who effectively owns and controls the company to remain anonymous.

Access to beneficial ownership data is limited

Firstly, access may be limited in scope. In most of the countries reviewed, except for Slovenia, the central beneficial ownership registers do not cover all companies and trusts connected in one way or the other to the country concerned. For example, proposed new European rules only require registration for trusts managed by trustees established in the EU. It would not include for example trusts set up by European citizens outside the EU, such as in Panama, Bahamas or Belize, a scheme typically used for tax evasion. Similar loopholes can be found in the regulation of Madeira-based trusts (page 28). If these gaps are not addressed, there is a real risk of missing out foreign companies and trusts established outside the EU but doing business, investing, owning assets or holding bank accounts in the EU, scenarios that the Panama Papers and concrete cases like the Italian IMI-SIR case (page 23) have proved to be perfectly plausible.

Conditions of access to the data may also be restrictive. Full public access is not guaranteed in all the countries analysed. In a number of countries, access by third parties other than competent authorities and obliged entities may be limited to people demonstrating a legitimate interest. Restrictions may also be administrative or technical in nature when for example, there is a paywall or the data is displayed in a format that makes its processing cumbersome.

High-risk financial instruments such as bearer shares and nominees are insufficiently regulated

Bearer shares still exist in all six countries analysed for certain types of companies and legal entities. In some countries, they are held with designated professionals which is a clear risk as the information on beneficial owners of bearer shares remains dispersed across the different private custodians holding the shares. A better solution followed by other countries is to have bearer shares converted into registered shares and subject them to the same standards of transparency as normal shares.

Most countries analysed also fall short of providing strong regulations on persons acting as nominee shareholders or directors. For example, nominees are not required in all countries to be licensed and to disclose the identity of their nominator to the company and any relevant registry (e.g. national registers of shareholders and beneficial owners). This increases the risks that nominees be misused as frontmen by corrupt individuals.

Enforcement gaps

Authorities and businesses do not adequately understand and mitigate their money-laundering risks

The analysis generally points at a lack of clear understanding and awareness of money laundering risks among key stakeholders, in particular non-financial professions and businesses. As a consequence, public authorities and obliged entities do not always have appropriate mitigation measures in place.

Professionals are not fulfilling their AML obligations adequately

The study finds deficiencies and weaknesses in the anti-money laundering compliance systems of professionals subject to customer due diligence obligations. This also applies when looking more specifically at obligations related to beneficial ownership transparency such as identifying and verifying their customers' beneficial owners and reporting transactions where no beneficial owner can be identified. A number of factors can explain this such as a lack of clear understanding of the difference between legal and beneficial ownership, the lack of data on foreign companies and trusts based in offshore jurisdictions, and the use of automatic reporting systems for suspicious activities. In general, this can be the result of insufficient awareness of and commitment to anti-money laundering obligations among professionals combined with lax enforcement of controls and sanctions by public authorities.

Regulators and supervisors are not adequately overseeing professionals subject to AML obligations

This is particularly true for self-regulated or partly self-regulated professions such as lawyers, notaries, and accountants. The analysis generally points at inadequate financial, human and technical resources of regulatory bodies, insufficient guidance and training provided to professionals on diverse AML compliance issues (e.g. money-laundering risk management, suspicious activity reporting, beneficial ownership identification), insufficient or inadequate feedback on suspicious activity reporting (SAR) to professionals under their supervision, lack of a credible and deterring response to non-compliance including proportionate and effective controls and sanctions.

Publicly available annual statistics on AML enforcement efforts are partial or non-existent

Most countries examined do not regularly publish a comprehensive set of statistics on AML enforcement efforts. This significantly hinders competent authorities' capacity to monitor and assess the effectiveness of the system in place. Data tends to be irregularly published or dispersed across different websites, reports and organisations. Moreover, data on anti-money laundering is defined and captured differently across jurisdictions, which makes international comparisons very difficult, if not impossible. For example, depending on the jurisdiction, a suspicious transaction report may refer to one transaction or to a case with multiple transactions.

HEADLINE RECOMMENDATIONS

Closing legislative gaps

Governments in Europe should strengthen their national legal AML framework, in particular:

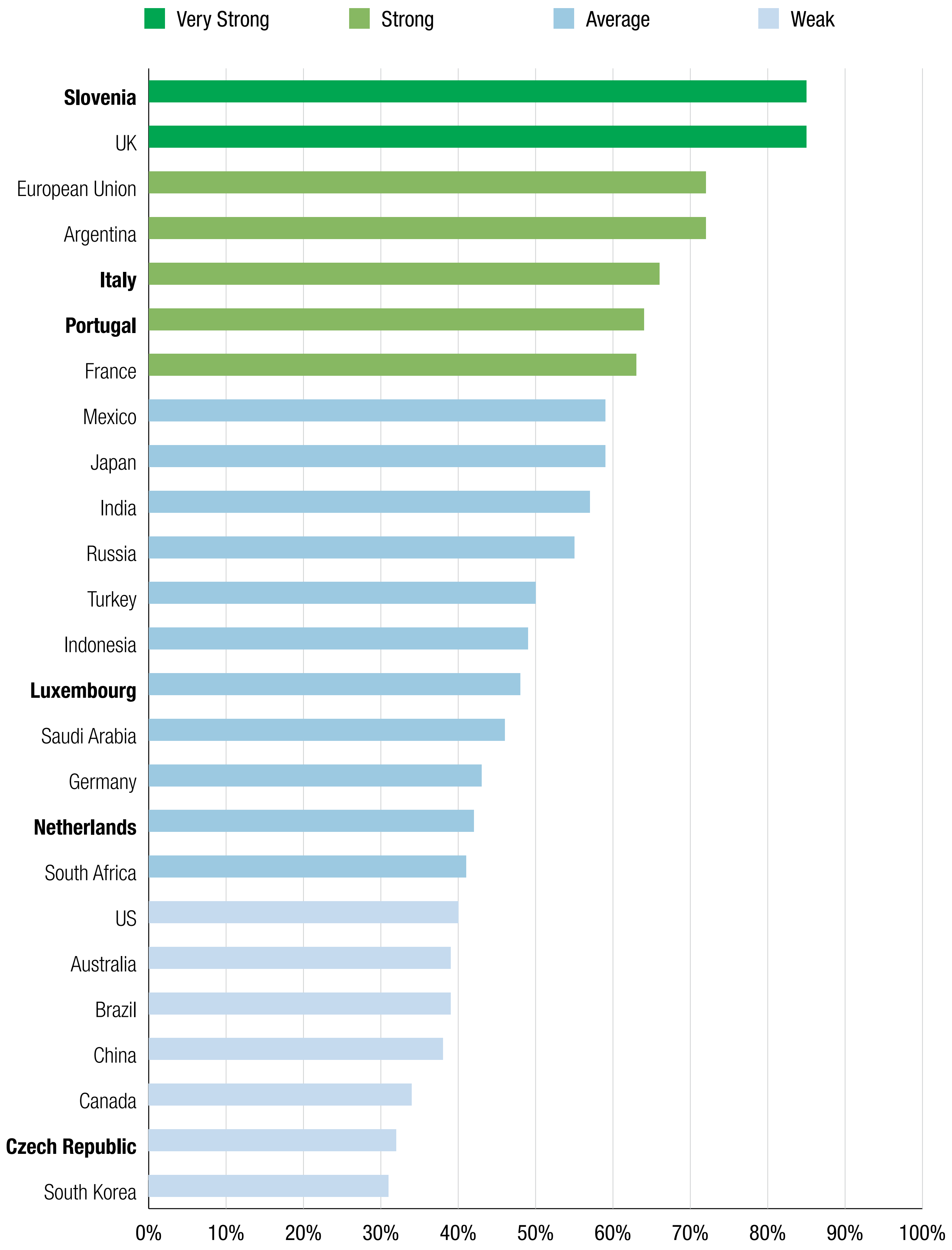
- Extend the scope of national beneficial ownership registers to all **domestic and foreign companies and trusts operating within the territory**;
- Make those registers **publicly and freely accessible and in open data format**;
- Put in place **robust data verification and sanction mechanisms** in order to detect and prevent non-reporting or false reporting to beneficial ownership registers by companies and trusts;
- Adopt a **comprehensive and robust legal definition of beneficial owner** lowering down the ownership threshold to ten per cent or lower and removing the possibility to list senior managers as beneficial owners;
- Prohibit or strengthen regulations governing the **use of high-risk instruments such as bearer shares and nominees**. Bearer shares should be outlawed and until they are phased out, they should be converted into registered shares and held in a central register hosted by a public authority. Governments should also prohibit the provision of nominee services or alternatively require nominees to be more strongly regulated, i.e. be licensed, disclose the identity of their nominator to the company and any other relevant registry and keep records of the person who appointed them.

Closing enforcement gaps

Governments in Europe should promote more effective, proactive and transparent regulation and supervision of obliged entities, in particular:

- **Adequately resource regulatory bodies** including their capacity to survey and understand money laundering risks; effectively coordinate with the entities under their supervision, for example providing feedback on suspicious activity reports and providing secure channels for information sharing; provide for an effective and transparent control and sanction regime;
- Require that professionals such as real estate agents or trust and company service providers be **licensed and regulated preferably by a statutory regulator** with appropriate information and enforcement powers;
- Require **professional bodies with regulatory duties** to carry out their oversight activities in regular coordination with an independent public authority. They should take steps to ensure their advocacy and supervisory functions are operationally independent;
- Provide professionals with **adequate and targeted training and guidance** to raise awareness about money-laundering risks and help them implement the corresponding mitigation measures, for example properly carrying out their customer due diligence;
- Improve **suspicious activity reporting** by assessing the effectiveness of the current system and analysing the root causes for non- or under-reporting; by providing guidance to professionals on how to fulfil their reporting obligations; and by giving feedback on the reports submitted;
- Ensure that **control and sanction mechanisms** for regulatory breaches and non-compliance with anti-money laundering obligations are proportionate in relation with the risks identified and effectively enforced;
- Publish a **comprehensive and harmonised set of annual statistics on AML efforts**, including data related to beneficial ownership transparency obligations (e.g. number of breaches, suspicious activity report (SAR) submissions and sanctions related to failure to identify or verify beneficial ownership). To the extent possible, national statistics should follow the list of indicators recommended by the Financial Action Task Force (FATF – an intergovernmental standard-setter) in order to foster data harmonisation and comparability.

Figure 1. Overall adequacy of national beneficial ownership transparency legislation
Comparison with G20 countries (%)



1. LAW

This section assesses the adequacy and robustness of current and future national beneficial ownership transparency (BOT) frameworks in Czech Republic, Italy, Luxembourg, the Netherlands, Portugal and Slovenia. It identifies best practices, gaps and loopholes in national legislations based on these six country experiences.

Methodological approach for assessing adequacy of national BOT legal framework

Country performance on beneficial ownership transparency (BOT) was benchmarked against existing global and European standards including the G20 High Level Principles on Beneficial Ownership Transparency[12], the Financial Action Taskforce (FATF) 2012 Recommendations[13] and the European 4th Anti-Money Laundering Directive (AMLD IV) adopted in 2015[14]. The assessment also drew from country and sectoral good practices such as the UK, the first country to implement a public central register of beneficial ownership information for companies as well as the Extractive Industries Transparency Initiative's (EITI) pilot project on beneficial ownership[15]. The methodology was also built so as to reflect on the changing policy environment, in particular changes foreseen as part of the transposition of the EU 4th Anti-Money Laundering Directive to be completed by June 2017 and the revision process of this same Directive undertaken in reaction to the Panama Papers and still ongoing at the time of writing[16].

The methodology is based on a questionnaire initially developed by Transparency International to assess the legal framework of G20 countries[17]. Questions were designed in order to capture the above-mentioned critical aspects of a legal framework responding to highest standards of beneficial ownership transparency.

The full comparative analysis, methodology, questionnaire and scoring criteria are available in the Technical Evaluation Report. A short summary of the methodology can be found in Annex.

Table 1. Country compliance with global Beneficial Ownership Transparency standards

G20 High Level Principles

1. Beneficial ownership definition
2. Risk assessment relating to legal entities and arrangements
3. Beneficial ownership information of legal entities
4. Access to beneficial ownership information of legal entities
5. Beneficial ownership information of trusts and legal arrangements

Current TI rating: Overall performance	1	2	3	4	5	6	7	8	9	10
Very strong 80-100%: SI 82%		SI 100% IT 93% PT 93%		SI 81%		SI 95%	SI 94%	SI 100% IT 86%	SI 100%	SI 75%
Strong 60-80%: IT 62%	CZ 63% IT 63% LU 63% NL 63% PT 63% SI 63%		SI 60%		PT 75% IT 50% SI 50%	IT 60% LU 60%	IT 74% PT 69% LU 68% NL 65%	LU 75% NL 61%	LU 75% IT 67%	
Average 40-60%: PT 58%, LU 47%				IT 56%		PT 55%	CZ 55%	PT 57% CZ 54%	PT 58% CZ 50% NL 42%	
Weak 20-40%: NL 39%, CZ 27%		LU 29% NL 29%	IT 30% PT 30% NL 20%	PT 38% LU 31% NL 28%	LU 38% NL 25%	CZ 20% NL 20%				NL 38% PT 38% IT 38% CZ 25% LU 25%
Very weak 0-20%		CZ 0%	LU 10% CZ 0%	CZ 0%	CZ 0%					

6. Access to beneficial ownership information of trusts and legal arrangements
7. Duties of financial institutions and businesses and professions
8. Domestic and international cooperation
9. Beneficial ownership information and tax evasion
10. Use of bearer shares and nominees

Future TI rating

Rating	Overall performance	1	2	3	4	5	6	7	8	9	10
Very strong 80-100%	IT 84% SI 82%		SI 100% CZ 93% IT 93% PT 93%	IT 90% LU 85%	SI 81%	CZ 100% IT 100%	SI 95% CZ 85%	PT 95% SI 94% CZ 90% LU 85% IT 87%	IT 100% SI 100%	CZ 100% IT 100% LU 100% SI 100% NL 83% PT 83%	
Strong 60-80%	CZ 73% PT 73% LU 64% NL 62%	CZ 63% IT 63% LU 63% NL 63% PT 63% SI 63%	NL 79%	NL 75% SI 60%	PT 78% CZ 72% NL 69% IT 66%	PT 75%	IT 80% PT 70% LU 60%	NL 74%	LU 75% NL 71% PT 64% CZ 61%		SI 75% NL 63% PT 63% IT 63%
Average 40-60%			LU 57%	PT 45% CZ 40%	LU 53%	SI 50%					
Weak 20-40%						LU 38% NL 25%	NL 20%				CZ 25% LU 25%
Very weak 0-20%											

Although the transposition of AMLD IV will contribute to significantly improving beneficial ownership transparency standards in all countries covered, the analysis shows clear disparities in national interpretation and implementation of EU rules across countries.

1.1 COUNTRIES LEADING THE WAY…

While no country reviewed in this study fully meets highest standards of transparency**, Slovenia** clearly stands out as best performing across most indicators and in particular on Indicators 4 & 6 (see Table 1) testing conditions of access to company and trust beneficial ownership information for competent authorities, financial institutions and DNFBPs, and the public. Slovenia recently passed a bill establishing a publicly and freely accessible central register of beneficial ownership for both companies and trusts although data search and use shall be limited and the information not displayed in open data format. The Slovene approach is quite innovative in that the register will not be limited to entities incorporated in Slovenia but shall also cover all companies and trusts preliminarily registered in the business register or in the tax register, i.e. doing business or tax liable in Slovenia. In this respect, it goes beyond any existing standard or practice. It is also good to note that the beneficial ownership register shall be integrated within the existing Slovene corporate data ecosystem through the use of common registration numbers which shall facilitate the administration, processing and cross-referencing of the data.[18]

The **Dutch draft law** foresees the establishment of a public beneficial ownership register for companies that shall be administered by the chamber of commerce, which also manages the existing company register, and made accessible upon registration and payment of a fee. However, the draft law remains blind to the issue of registering foreign trusts operating within the Dutch jurisdiction.

Italy also shows strong performance across indicators even though future provisions on conditions of access to beneficial ownership are not in line with highest standards of transparency. Beneficial ownership transparency principles are a legacy of the Italian authorities' long fight against money laundering by mafia and organised crime groups. In this respect, public authorities have quite a clear understanding of money laundering risks relating to the use of shell companies and trusts. Moreover, the current business register already includes a wealth of information on the beneficial owners which is publicly accessible provided the payment of a fee. According to people interviewed, beneficial ownership coincides with legal ownership accessible via the company register for a majority of cases. This can be explained by a relative simple control chain of registered companies, due to the nature of the shareholding (mostly direct and/or unique) or of the entity (a lot of individual companies).[19] The Italian National Risk Assessment further highlights that "the problem of access to beneficial ownership information is applicable to about 1% of the 6 million registered enterprises"[20]. Slightly clouding the picture though is the current Italian transposition plan of AMLD IV which adopts a very narrow delimitation of "legitimate interest". Access to beneficial ownership data for companies will be granted only to parties in legal proceedings and only on entities involved in the case being investigated while access to beneficial ownership information for trusts shall not be public at all.

As per current European rules, other stakeholders, such as non-governmental organisations and investigative journalists, may request access to the registry if they can demonstrate a "legitimate interest". Questions have been raised about leaving the interpretation of the notion of legitimate interest at the discretion of Member States. At the time of writing, discussions are ongoing at European level to decide whether this "legitimate interest" test should be removed.

1.2 COUNTRIES DRAGGING THEIR FEET…

Czech Republic currently shows weakest performance among the six countries reviewed against international standards and practices. And although its overall scoring should significantly improve with the recent adoption of new legislation transposing AMLD IV, some important loopholes will remain. The new legislation introduces a central beneficial ownership register for both companies and trusts. The register shall cover both domestic trusts introduced in the new 2014 civil code and foreign trusts doing business in Czech Republic. However, public access to the register will be restricted to those demonstrating a legitimate interest defined in quite a restrictive way. Eligibility for access will be assessed based on the demonstrated need for beneficial ownership information to confirm or disprove suspicions of money laundering or terrorist financing. The bill does not specify whether journalists and NGOs will automatically fall under this category.

Portugal and Luxembourg have not yet announced their transposition plans, it is therefore difficult to assess how the new legal framework will comply with existing best standards and practices. Countries have not yet clarified whether the company beneficial ownership register will be accessible to the public or only to those demonstrating a legitimate interest and if so, how legitimate interest will be interpreted under national law. Moreover, access to beneficial ownership information on trusts is currently partial and restricted not only for the public but also for competent authorities and obliged entities as illustrated by the situation in Portugal where access by competent authorities to information on Madeira-based trusts is only granted through judicial order.

1.3 LEGISLATIVE GAPS AND LOOPHOLES

This section identifies legislative gaps and loopholes that are undermining the effectiveness of beneficial ownership transparency rules and, as such, the integrity of the global financial system. The European Union and national governments should ensure that these are addressed in order to strengthen their firepower against money laundering and corruption.

A flawed legal definition of beneficial owner

The current EU definition[21] and its national versions are flawed in two ways:

First, it sets an **ownership or control threshold at 25% of total shares or voting rights which is too high** and easy to circumvent for people looking to stay under the radar. It would only take an unscrupulous person to find four other relatives or friends to act as owners of shares or voting rights in order to avoid the obligation of reporting any beneficial owner. The European Commission even states in its own impact assessment that the "25% threshold is fairly easy to circumvent, leading to [the] obscuring of […] beneficial ownership [information]."[23] A data dive into the new UK's open data register on beneficial owners of companies by Global Witness, revealed that nearly 1 in 10 companies "claimed to have no beneficial owner" at all which is made possible by the high ownership threshold level set at 25%.[24]

One of the main arguments against lowering the threshold is that companies would find it very difficult to identify their beneficial owners, but the data dive showed that this has not been a problem for the majority of companies appearing in the UK register: "in only 2% of cases did companies say they were struggling to identify a beneficial owner or collect the right information."[25]

Second, the EU legal definition offers **a second-best option in case no beneficial owner can be identified** using the primary criteria of ownership and control. In such case, the Directive provides for the possibility to list a senior manager as a beneficial owner. This fall-back option would leave open the possibility to list nominee directors as beneficial owners. This is misleading and will prevent public authorities and others from detecting anomalies and raising red flags. Nominee directors are individuals often nominated by offshore law firms or corporate service providers who have no real control over the company and can therefore by no means be considered as beneficial owners.

Why a 25% threshold proves too high to serve detection purposes

In Azerbaijan, a gold mine was awarded to a UK company which allegedly involved the daughters and wife of Azeri President Ilham Aliyev.[22] They ultimately owned 11% of the company which means that even if the law had already been enforced at the time, the 25% threshold would not have allowed to detect the case anyway.

Insufficient coverage of beneficial ownership registers

Another common legal loophole has to do with the scope of companies and trusts subject to beneficial ownership transparency requirements as illustrated by Tables 2 and 3 (see pages 24-25). This is of particular concern in the case of trusts that some countries such as the Netherlands do not see the need to register. However, all countries should be concerned, even those with no domestic trust law since their citizens might be using trusts incorporated under foreign jurisdictions to hide illicit or tax liable assets. Illegal schemes quite commonly involve foreign trusts based in offshore jurisdictions like Panama, British Virgin Islands or Belize.

What is a trust?

A trust is a relationship whereby the assets of one individual (the settlor) are conferred on one individual or entity (a trustee) to manage on behalf of others (the beneficiaries). The terms of the arrangement are set out in a trust instrument, which is typically drafted by a lawyer or notary.

2 countries out of 6 have domestic trusts or equivalent structures. In Czech Republic, trusts were introduced in 2014. In Luxembourg, those known as fiduciaries were introduced in 1983 and are regulated by the Trust and Fiduciary Contracts Act 2003[26].

The solution currently proposed by the European Commission[27], if finally adopted, would not fully address the issue either. Covering only cases where the trustee is established in the EU, it would overlook the loopholes exposed by the Panama Papers as illustrated in Figures 2a and 2b. Indeed lessons for Europe from the Panama Papers is that European citizens can create shell companies and trusts in offshore financial centres outside the European Union such as Panama or British Virgin Islands. Ideally, all domestic and foreign trusts doing business or subject to tax liabilities in the country concerned should be subject to transparency requirements. This is further illustrated by the IMI-SIR case below involving an intricate web of trusts.

Figure 2. Coverage of national beneficial ownership registers

a) Scenarios covered by proposed new EU rules*: trusts managed by an EU-based trustee

b) Scenarios not covered by proposed new EU rules**: trusts connected to the EU but managed by a trustee based outside the EU

* As foreseen by the Commission´s proposed revision of the 4th Anti-Money Laundering Directive published on 5 July 2016, http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

** Idem

Offshore trusts: an essential piece of the puzzle in the IMI-SIR bribery and money laudnering case

The IMI-SIR case sheds light on the difficulties to investigate crimes involving complex webs of trusts and offshore companies. The case concerns bribery allegations against a judge in the context of a dispute between an Italian chemical firm, the Società Italiana Resine (SIR) owned at the time by the Rovelli-Battistella family and the then publicly-owned IMI Credit Institute. In 1993, the judge Metta had ordered IMI to pay a compensation of over 980 billion lire (equivalent to EUR 510 million) to the owners of SIR for failing to support the company which had led to its collapse. It was confirmed by a court judgment in 2006 that the judge Metta had received one billion lire (equivalent to EUR 520,000) to ensure a judgment favourable to SIR. The corruption case became known as "the biggest corruption case in the Italian history", according to the judges at the time. Only the judge Metta and the intermediaries were condemned while the Rovelli son was acquitted due to statute of limitations related to the alleged offences and the widow of the head of the Rovelli family was not found guilty.[28]

However the case did not end there as neither the compensation money nor the proceeds of the bribery could be found. The compensation considered as proceeds of illegal activity by the verdict had been immediately transferred by the Rovelli family to foreign bank accounts and laundered through foreign shell companies and trusts. It is only following the unveiling of the complex network of companies in 2009 that the Rovelli family would finally be convicted for money laundering and the proceeds of the crime recovered by the state.

Trusts constituted an essential piece of the intricate scheme set up to conceal the proceeds of the crime, as reported by prosecutor Mapelli. The scheme initially involved the setting up of a Liechtenstein-based trust called Pitara trust. The beneficiary was an Italian resident, the widow of the head of the Rovelli family, and the solicitor Rubino Mensch, an Italian lawyer[29]. The money then moved to Swiss bank accounts linked to Italian intermediaries that had also played a role in the bribery of the judge Metta. Among them, Cesare Previti, former Member of the Parliament and Defence Minister under Berlusconi government was sentenced for corruption to 6-year imprisonment.[30]

In the following years, a myriad of trusts, about 20 were subsequently created outside the EU in order to conceal the remaining proceeds of the crime. Anecdotally, they all had names starting with the initial letters of the Rovelli heirs (Oscar, Felice, Angela, Rita): in the Bahamas four trusts were created using city names (Oslo, Frankfurt, Antwerp and Rio), in the Cook islands, four others with names of famous mountains (Andes, Fuji, Olympus and Rainer) and in another offshore country, four others with names of animals (Antelope, Fox, Ram and Otter). In most cases, the widow Rovelli was the settlor and the beneficiary of the trust while the accountant Munari would play the role of protector and solicitor, keeping control over the trustees established in offshore jurisdictions outside of the EU. The latter did not act independently and were asked to sign "blank" suspension letters so as to allow their removal at any point in time. To add another layer of secrecy, each trust would own in turn investments funds or companies in other offshore countries, sometimes through nominee shares.

This case highlights how offshore trust structures can be abused to shield away the proceeds of illegal activities, obscure the money trail and break the path between the beneficial owner and the assets. If applicable at the time, current and proposed new European rules would not have been of any help to identify the beneficial owners of the trusts involved in the case since they were all based outside the EU and managed by non-EU resident trustees and although the true beneficial owners were resident in the EU.

Such case serves to illustrate the worrying diagnostic made by Italy in its National Risk Assessment about the growing misuse of trusts "for illegal purposes, in particular for tax crimes, money laundering, bankruptcy, market abuse and concealment of illegal assets of organised crime".[31]

Table 2. Conditions of access to company BO information

The company BO register will	Will cover		Be accessible to		
	Domestic companies (i.e. incorporated under national law)	**Foreign companies operating in the country** (i.e. holding bank account, purchasing real estate, carrying out commercial transaction, etc.)	**Competent authorities**	**Obliged entities** (FIs and DNFBPs)	**The public***
Czech Republic	Yes	Yes partially	Yes including tax authorities (free)	Yes (not free)	only those with legitimate interest (not free)
Italy	Yes	Yes partially	Yes including tax authorities (*conditions of access not specified*)	Yes (not free and upon accreditation)	only those with legitimate interest (not free)
Luxembourg	*information not available*	*information not available*	Yes (*conditions of access not specified*)	Yes (*conditions of access not specified)*	*information not available*
Netherlands	Yes	No	Yes including tax authorities (not free, amount of the fee known as "input funding" to be determined)	Yes (not free)	Yes (not free, limited searching functions, not open data)
Portugal	*information not available*	*information not available*	Yes including tax authorities (free)	Yes (free)	*Information not available*
Slovenia	Yes	Yes	Yes including tax authorities (free)	Yes (not clear yet if access will be free)	Yes (free, limited searching functions, not open data) but access to BO birth date and nationality limited to those with legitimate interest

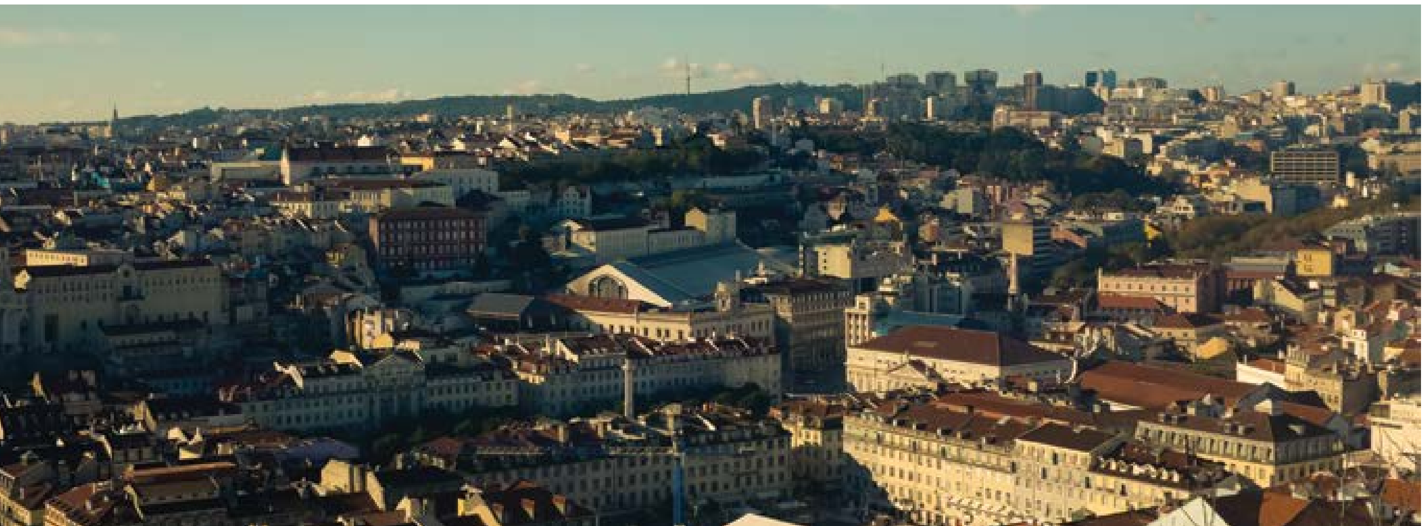
* The public shall be granted access to a limited set of beneficial ownership information: name, month and date of birth, nationality, country of residence, nature and extent of the beneficial interest held.

Table 3. Conditions of access to trust BO information

	Is / will there be a central BO register for trusts?	Covering		Accessible to		
		Domestic trusts*	Foreign trusts administered or operated in the country**	Competent authorities	Obliged entities	The public
Czech Republic	Yes	Yes	Yes (trusts doing business in Czech Republic)	Yes including tax authorities (free)	Yes (not free)	Only those with legitimate interest (not free)
Italy	Yes	*Not applicable*	Yes (trusts subject to tax liabilities)	Yes including tax authorities (*conditions of access not specified*)	Yes (not free and upon accreditation)	No
Luxembourg	No *(information on future plans not available)*	*Information not available*	*Information not available*	*Information not available*	*Information not available*	*Information not available*
Netherlands	No *(not foreseen as part of future plans)*	*Not applicable*	No	No	No	No
Portugal	Yes registration in the Commercial Registry of Madeira Free Trade Zone *(information on future plans not available)*	*Not applicable*	Partially only trusts set up by foreigners and managed by Madeira-based trustees	Only to criminal authorities through judicial order (with additional permission required from the Ministry of Finance in certain cases)	Partially (i.e. only to identity of the trustee(-s)) and not in the form of a register	Partially (i.e. only to identity of the trustee(-s)) and not in the form of a register
Slovenia	Yes	*Not applicable*	Yes (trusts doing business and tax liable in Slovenia)	Yes including tax authorities (free)	Yes (not clear yet if access will be free)	Yes (free, not open data) but access to BO birth date and nationality limited to those with legitimate interest

* A domestic trust is created according to or governed by the country's law or has its ultimate court of appeal in the Member State's jurisdiction

** A foreign trust administered or operated in a country is a trust connected to the country by: i) having one or more of the beneficial owners resident in that country; ii) holding real estate in that Member State; iii) holding shares or voting rights or ownership interest in a legal entity incorporated in that country or iv) holding a bank or payment account in a credit institution situated in that country.



Restricted conditions of access to beneficial ownership information

The cross-country comparative analysis points at a number of restrictions and limitations in access to beneficial ownership registers by competent authorities, obliged entities and the public. The latter can be administrative or technical in nature.

Under current European rules, access to beneficial ownership data is limited to competent authorities, obliged entities and any person that can demonstrate a legitimate interest. The interpretation of the notion of "legitimate interest" is left at the discretion of Member States making it impossible to ensure consistent and harmonised practices across the EU. Moreover, such limitation would make the process of accessing the data cumbersome, costly and impractical both for the administrator and the users. This was the conclusion reached by the Netherlands which finally decided to solve the issue by granting everyone access to a minimum set of beneficial ownership information. And there are already worrying signs of countries opting for quite restrictive definition of legitimate interest. At least two countries from the sample, Czech Republic and Italy, will limit access to cases where there are already reasonable grounds to suspect money laundering and terrorist financing activities. In reality, this is counter-productive as suspicion will usually arouse as a result of access to beneficial ownership information.

Is public access to beneficial ownership compatible with the respect of privacy rights?

The idea of putting a set of personal data even if limited in the public space is raising a number of legitimate questions about the compatibility with privacy rights and data protection laws. Fundamental rights of data and data protection legislation in the European Union allow making information available to the public when this is **legitimate, necessary and proportionate.** Provided that the necessary safeguards are in place, making public the beneficial ownership information of companies and trusts is in conformity with data protection legislation and privacy rights.

- **Legitimacy:** recent scandals, spearheaded by the Panama Papers, have shown that opacity makes the current financial system vulnerable to systematic wrongdoing. Individuals who create legal structures are actively choosing to gain benefits from them, such as limited liability. Rights also come with duties and obligations. In return for this it is therefore legitimate to expect transparency about the ultimate beneficiaries of these corporate structures and arrangements. It is also a question of business transparency, for creditors or business partners who are taking unnecessary risks when lending money, investing in, operating or partnering with anonymous owners and of ensuring stability of the global financial system.

- **Necessity:** public access is necessary for money laundering prevention and detection. It would enable public scrutiny of behaviour and act as a disincentive to plan or facilitate the planning of complex and secretive transactions. Public access is also a necessity due to the transnational nature of the issues it strives to address. Public access ensures that foreign law enforcement and tax authorities can have quick and guaranteed access to beneficial ownership information during cross border investigations without the need to request information and/or demonstrate that they have a legitimate interest. Public access can also improve the efficiency of cross-checks across different databases.

- **Proportionality:** the set of information on beneficial owners made publicly available is the minimum necessary in relation to the objective of combatting money laundering and terrorist financing (name, month and date of birth, nationality, country of residence, nature and extent of the benificial interest held). It is clearly defined and general in nature. Furthermore, legislation in countries with public registers provides for robust safeguards for cases where public access to beneficial ownership could put individuals at risk, allowing the information to be redacted from the public domain on a case-by-case basis. This strikes the right balance between the public's interest for transparency and the individuals´ interest for privacy.

- **Precedents paving the way:** providing public access to detailed information on board members and managing officials is a long standing practice in a number of European Members States. Moreover, Denmark has an online register for shareholders, where you can freely access shareholders full names and service addresses as well as full dates of birth for a small fee. The Dutch cadastral register on property data includes the full name, date of birth and address of the property owner, as well as data on the building and the buying price. In Norway and Sweden, all tax records are public to prevent illicit use of funds and maintain citizens´ trust in institutions.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At national level, the analysis shows further legal restrictions in access even for competent authorities. For example, in Portugal access to information on Madeira-based trusts can only be granted to competent authorities through judicial order or upon approval by the Ministry of Finance as illustrated in the box on page 28.

Trust transparency regulations in Portugal and the Madeira exception

While the legal concept of trust does not exist under the Portuguese national law, Madeira enjoys a special status where trusts incorporated under foreign jurisdictions created by non-Portuguese citizens and managed by a Madeira-based trustee can be recognised and authorised to perform business activities in the Madeira Free Trade Zone.[32] Trust regulations in Portugal therefore do not cover all foreign trusts, excluding in particular those foreign trusts set up by Portuguese citizens and / or owning assets or doing business in the rest of Portugal.

Limitations do not only regard the coverage of trust regulations but also the conditions of access to beneficial ownership information on trusts. Trusts authorised to operate in Madeira must be registered in the Commercial Registry in the Free Trade Zone. However, the register is not publicly accessible. In fact, access to the information is limited even for competent authorities which can only get access through judicial order. In certain cases, an additional permission by the Ministry of Finance may be required. Further limiting information accessibility by key stakeholders, registration is only compulsory if the trust has a duration period of over a year.

More generally, the Madeira Free Trade Zone enjoys a special status which makes it an attractive place for money launderers looking for a safe place to hide their money. Madeira ranks 78th in the 2015 Financial Secrecy Index which measures countries´ level of secrecy and scale of offshore financial activities.[33] In 2015, the Portuguese National Risk Assessment highlighted that Madeira develops its activity in accordance with EU rules, the OECD and WTO, which, paradoxically, contribute to making it an attractive destination for moneylaunderers and criminal organisations seeking to minimise risks.[34] In Madeira, it is also common practice for intermediaries to open bank accounts on behalf of their clients, which the NRA also identifies as a money laundering technique.[35]

Figures taken from the Panama Papers are quite compelling in this regard: a total of 31 companies registered in Madeira appeared in the Panama Papers, 17 of which listed in the same mailbox: room 605. The names of the President and Vice-president of Madeira's Parliament were also mentioned in the records of the law firm Mossack Fonseca and linked to offshore companies based in other jurisdictions.[36]

The above-described vulnerabilities and risks may be partly rooted in the island´s persisting political and governance shortfalls. The Madeira Free Trade Zone (MFTZ) is indeed considered by some experts as a public-private partnership, since 75% of the company managing it is owned by private capital.[37] In addition, the island's tax authorities are not accountable to the central tax administration, but to the regional government. It is also worth mentioning that Madeira is a small island which has been ruled by the same political party for over thirty years. This has resulted in the flourishing of an extensive patronage network. In 2013, the MFTZ granted around EUR 168 million in tax benefits to companies based there.[38] Despite the evidence, politicians both at central and regional levels are not willing to let go of the Madeira lucrative offshore business. The official discourse opposes any change in Madeira´s status based on the argument that one single country cannot end tax havens on its own.

Limits on access can also be related to the technical specifications of the registers. For example, all countries in the sample fail to reach the golden standard of displaying the data in open data format, i.e. using an open data license so that the information in the register is free, downloadable in bulk, machine-readable and re-usable. The benefits of such technological solution are well demonstrated by the UK model of open data BO register. The value of benefits estimated by the UK Treasury in terms of costs saved to conduct financial investigation activities represents indeed twice the annual running cost of an open register.[39] The European Commission gets to similar conclusions in a cost-benefit analysis of beneficial ownership transparency published in 2007: the direct costs for law enforcement authorities to access beneficial ownership data in the course of their investigation would be three times lower with an online public disclosure system compared to an intermediary-based system relying on obliged entities to provide them with the relevant information.[40]

Moreover, research shows that searches on current business registers often considered as natural candidates for hosting beneficial ownership information are often plagued by inadequate searching functions. For example, some registers such as the Dutch company register only allow searches by name of the company and not by the name of the owner of the company which implies that you need to know upfront what you are looking for.

At least 3 countries of out of 6 (Czech Republic, Italy and the Netherlands) consider introducing a paywall for access by obliged entities, people with legitimate interest or the public.

Finally, most countries are considering introducing paywalls for access by obliged entities and the public. Tracking down money laundering or organised crime usually requires being able to collect a network of information and cross-reference databases which can quickly become financially burdensome if you need to pay for every company record you are requesting access to. For example, in Italy, the company house seems reluctant to give up its right to charge a fee (EUR 3.50 EUR per record[41]) to access companies´ information which again would limit data accessibility if the same type of system is applied to beneficial ownership information. In the Netherlands, it can take up to EUR 75,000 to access the full company register database.[42]

Lack of data verification and sanction mechanisms

Though European rules require that the data on beneficial ownership reported by companies and trusts to national registers is accurate, national legislation often fails to provide for a robust data verification mechanism. It is all the more problematic that the system will rely on self-declaration since the information will be provided by the legal entities and arrangements themselves. For example, in Czech Republic in the absence of supporting legal documents to prove the identity of the beneficial owner, the legal entity will be allowed to proceed by affidavit for the identification of the beneficial owner and settle for a simple statutory declaration. Obliged entities are also concerned about this and insist that the information can only be useful and help them perform their customer due diligence duties provided mechanisms are in place to ensure that the information is regularly checked and verified.[43]

Moreover, some countries such as Czech Republic do not foresee any criminal or civil sanction for failure to file accurate and timely information in the beneficial ownership registers.

Insufficient regulations of bearer shares

While many countries have outlawed bearer shares because they are vulnerable to loss, theft and misuse, those instruments still exist in all six countries analysed for certain types of companies and legal entities (see Table 4). In the Netherlands and Portugal, their phasing out is underway. In the other countries, bearer shares have been dematerialised, i.e. converted into registered shares or share warrants and/or immobilised, i.e. held with a public agency or private custodian. In Czech Republic, Italy and Luxembourg, bearer shares are held with designated professionals such as financial institutions, private bankers, notaries, lawyers. This is no ideal scenario as the information on beneficial owners of bearer shares remains dispersed across the different private custodians holding the shares. Much more adequate is the solution adopted by Slovenia where bearer shares are held in a central register hosted by a partially-state-owned company.

What is a bearer share?

A bearer share is a company share that exists in a certificate form and is owned by whoever is in its physical possession.

Table 4 – Regulations of bearer shares in the six countries covered

	Bearer shares allowed?	If allowed, are bearer shares:			Is there a phasing out plan?
		Immobilised, i.e. held with a public agency or private custodian?	Dematerialised i.e. converted into registered shares?	Held in a central register?	
Czech Republic	Yes	Yes	Yes	No	No
Italy	Yes	Yes	Yes	No	No
Luxembourg	Yes	Yes	Yes	No	No
Netherlands	Yes	No	No	No	Yes
Portugal	Yes	No	No	No	Yes
Slovenia	Yes	No	Yes	Yes	No

Insufficient regulations of nominees

Most countries are performing rather poorly on nomineeship standards. In none of the countries, is the provision of nominee services explicitly prohibited nor is it fully regulated (see Table 5). How much of a concerns nomineeship is in a country partly depends on the relative size of the corporate service providers sector in the national economy. In the Netherlands for example, so-called trust service providers (*trustkantoren*)[44] offer a wide range of services to companies, including that of acting as a nominee director and providing a company address for a Dutch subsidiary of a foreign company. There are around 150 trust service providers in the Netherlands, which together administer and service around 24,000 companies.[45] In Luxembourg, the share of the corporate service providers sector in the national economy is also quite significant. In 2013, their number was estimated at 340.[46] And although the sector is subject to AML/CFT obligations, Luxembourg has no dedicated nomineeship regime as such.

What is a nominee?

Nominees are individuals (or in some cases entities) who have been appointed to act as a director or hold shares on behalf of another person. They are usually bound by contract or other instruments such as the power of attorney granting authorisation to represent or act on behalf of their nominator. There are two broad categories of nominees: professionals, such as lawyers or corporate service providers offering nominee services; and informal nominees, such as family members, friends or associates who play the role of frontmen for the beneficial owner. While some solutions exist to regulate the former category, regulating informal nominees is obviously challenging.

Table 5 – Regulations of nominees in the six countries covered

	Nominees prohibited?	If not prohibited, are nominee directors or shareholders required to:		
		be licensed?	disclose their status to the company and keep their own record of the nominator	disclose their nominator to any relevant registry?
Czech Republic	No	No	No	No
Italy	No	Yes	Yes	No
Luxembourg	No	No	No	No
Netherlands	No	Yes	Yes	No
Portugal	No	No	Yes	No
Slovenia	No	No	No	No

1.4 KEY RECOMMENDATIONS

Adopt a comprehensive definition of beneficial owner

To be eligible for the beneficial ownership label, the candidate should pass a series of ownership and control tests:

- **Natural person test**: The beneficial owner is always a natural person, i.e. an individual human being, as opposed to a legal person which may be fictitious such as a company, a trust, a foundation and any other type of legal entities or arrangements;

- **Ownership test**: The beneficial owner is any individual holding, directly or indirectly, at least 1 share in the entity or alternatively, holding shares or interests above a certain threshold (i.e. 1% or 5% or 10%);

- **Voting test**: The beneficial owner is any individual, with the direct or indirect right to at least one vote, or alternatively, any individual holding directly or indirectly voting rights above a certain threshold (i.e. 1% or 5% or 10%);

- **Directors' appointment or removal test**: The beneficial owner is any individual with the direct or indirect right to appoint or remove at least one director or manager;

- **Residual test**: Any individual with direct or indirect control over the entity (e.g. decision or veto rights on business operations, right to profit, contractual associations, joint ownership arrangements).

The beneficial owner can also be:

- **Default criteria**: In the situations (if applicable) where no individual passes any of the above beneficial ownership tests, at least the top 5 or 10 owners (e.g. members, shareholders, etc.) are identified as beneficial owners.

The beneficial owner is never:

- a legal person or entity
- a physical person who is an agent, nominal owner or intermediary.
- a senior manager unless he passes the residual test described above. If no beneficial owner is identified as per the criteria set above, the senior manager is registered as such, not as a beneficial owner. This should raise a red flag.

How to set appropriate national ownership thresholds

Setting an appropriate threshold at national level requires a good understanding of the ownership structure of companies in the country. It may be seen as an iterative process whereby the government can assess after a certain period whether the threshold level is deemed appropriate or not. For example, if the percentage of companies not reporting any beneficial owner is high, then it may mean that the threshold level has been set too high whereas if the number of these companies is relatively limited then it allows to focus only on those companies and check whether there is a legitimate reason for not reporting any beneficial owner. This is also why senior managers should never be listed as beneficial owners if no candidate meets the threshold criterion otherwise no red flag can be raised and those cases would remain undetected.

Governments may consider adopting a more granular and differentiated approach, for instance by setting sector-specific thresholds or subjecting Politically Exposed Persons (PEPs) to different threshold policies. For example, Liberia has set the threshold at 5% for hydrocarbon projects and mining development projects and at 10% for other regular mining permits. In Tajikistan, if a PEP has a stake in an extractive project, his share is subject to compulsory disclosure irrespective of the level of shareholding.[47]

Extend coverage of beneficial ownership transparency requirements

The European Union and national governments should extend beneficial ownership transparency requirements to all companies and trusts doing business or tax liable in the EU and the country concerned respectively as already envisioned by Slovenia. For trusts in particular, the scope of beneficial ownership transparency requirements should include any trust with a connection point in the country: i) domestic trusts, i.e. trusts incorporated under the national law; and ii) foreign trusts with a resident beneficial owner (e.g. settlor, trustee, beneficiary, etc.) or holding assets in the country.

Scope of the French trust central register

With a view to tackling tax evasion by French citizens using foreign trusts, France passed a law[48] in 2013 establishing a central register of beneficial ownership for foreign trusts. Registration requirements apply in cases where one or more of the following criteria are met:

- the trust is settled by a French resident; or
- the trust has any French resident beneficiaries; or
- the trust has any French situs assets (i.e. shares or interests in French companies, real estate, bank accounts or deposits)

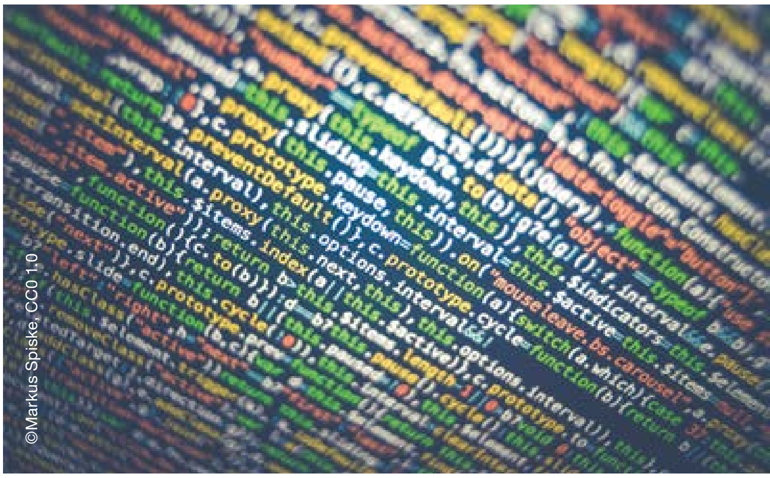
Grant public, free and open access to beneficial ownership registers

The European Union and national governments should:

- ✓ grant public access to a minimum set of information on beneficial ownership, consisting of the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.
- ✓ make the national registers freely accessible to competent authorities, obliged entities and the public. It is all the more critical for small and medium-sized companies subject to customer due diligence obligations which do not always have the financial means to afford expensive databases.
- ✓ design the national registers in open data format so as to allow data downloads in bulk and cross-referencing with other national, foreign or global databases. The technical specifications of national registers should be decided upfront and guidance provided by the European Union if the European national registers are to be interconnected through a European platform as currently foreseen by European rules.

Golden rules for open data on beneficial ownership

Getting the technical details and settings of the national registers right from the beginning can help save a wealth of time and make the database really relevant and useful. Good practices here include the use of scroll-down menu, taxonomies for types of ownership and control, unique identifiers for organisations and individuals to compare and cross-check data, frameworks for recording changes over time, capturing whether ownership is direct or via intermediate parties, capturing the provenance of the information.[49]



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Put in place robust data verification and sanction mechanisms

- ✓ The European Union and national governments should implement robust verification and sanction mechanisms to ensure that the data provided is accurate and that failure to report accurate information by companies and trusts to national registers and obliged entities is duly sanctioned.

According to the new Slovenian bill, failure to report accurate and timely information to the central register shall lead to a penalty ranging between EUR 6,000 and 60,000 for the entity and EUR 400 and 2,000 for the responsible person. The UK legislation states that “failure to provide accurate information on the [beneficial ownership] register and failure to comply with notices requiring someone to provide information are criminal offences, and may result in a fine and or a prison sentence of up to two years.”[50]

- A number of country experiences can be a source of inspiration for legislators in search for ideas on data verification. For example, the Netherlands is considering the establishment of a mechanism whereby obliged entities and competent authorities would be required to report any discrepancy between the information in the register and the results of their own customer due diligence process, supervisory activities and investigations.[51] Though laudable this solution is not the panacea as it tends to dilute the responsibilities across multiple actors. Moreover, it does not ensure that the register is checked on a systematic basis since obliged entities do not have the obligation to use the central BO register for their customer due diligence. In Italy, the information filled in by companies in the business register including also information on beneficial owners must be certified by a notary beforehand. Similarly, governments may consider requiring the signing off by a senior executive of the company or an auditor.

- Another solution based on triangulation of information consists of systematically cross-checking beneficial ownership information with other existing systems or databases such as suspicious activity report systems, records and registries of tax authorities, central bank, financial intelligence unit, immigration, or credit card records, banking records, etc. In the longer term, other opportunities to facilitate data verification may emerge such as the interconnection of national beneficial ownership databases foreseen at European level. It is therefore important to conceive the new beneficial ownership registers as one piece of a larger puzzle and think upfront about how those will legally and technically fit into the ecosystem of existing national and foreign databases. For example, governments may consider using unique identifiers for organisations and individuals such as legal entities identifiers (LEI) or tax identification number (TIN) to ensure the information is comparable, matchable and automatically checkable across different databases.

- The registers should also be built so as to allow iterative changes and improvements over time. This can be done through data quality crowdsourcing. The UK model is making baby steps in this direction by engaging with developers through its discussion and support forum[52].

Strengthen regulations governing the use of bearer shares

- Bearer shares should be prohibited and until they are phased out they should be converted into registered shares ("dematerialised") held by the company and subject to the same standards of shareholding and beneficial ownership transparency as normal shares, i.e. registration in relevant national registers. Any unregistered bearer share should become void and invalid after due date. The scenario where bearer shares are held with designated professionals is not fully compliant with highest standards of transparency because it makes the information on the owners of bearer shares only available in a scattered and fragmented way.

Strengthen regulations governing the use of nominees

- Nominee shareholders and directors should be licensed and required to disclose the identity of the person who appointed them to the company and to any relevant register including central beneficial ownership registers. Nominees should be explicitly prohibited from registering as the beneficial owner in national central beneficial ownership registers.

2. PRACTICE

The present section assesses how effective and how effectively enforced beneficial ownership transparency rules are. The analysis draws from consultations and interviews with key stakeholders as well as annual reports published by public authorities, and FATF and MONEYVAL evaluation reports whenever available.

It proved sometimes to be a bit early to assess the effectiveness of beneficial ownership transparency rules which in most countries assessed are in the process of being upgraded and/or implemented. Therefore, the present section goes beyond merely assessing the effectiveness of those rules to identify gaps and weaknesses in the overall AML system when those are likely to also affect the way beneficial ownership related rules are applied. For example if the general suspicious activity reporting (SAR) framework is not working properly, it is likely that it will not function either when it comes to specifically reporting cases where no beneficial owner can be identified. Similarly, if sanctions are generally insufficiently enforced, one can anticipate that this will also be the case for sanctions that apply in case of failure to register or identify the beneficial owner.

2.1 ENFORCEMENT GAPS AND LOOPHOLES

Gaps in enforcement of customer due diligence obligations

Feedback from country experiences points at a number of deficiencies and gaps in customer due diligence (CDD) procedures related to the identification and verification of the customer's beneficial owner(-s). In Italy, though declining in absolute terms, deficiencies related to beneficial ownership identification still average 25% of the total over the period 2012-2014.[53] In its 2015 annual report, the Luxembourgish financial regulator points at insufficient documentation and/or difficulties in obtaining information relating to the origin of the funds and the nature and purpose of the business relationship, the identity of the legal persons and beneficial owners, as well as at the lack of explicit declaration from customers whether they act for their own account or for the account of third parties.[54] It further adds that the controls aimed at detecting politically exposed persons when entering into or renewing a business relationship do not cover all the parties to the transaction including the beneficial owners.

Reasons for non-compliance may first be found in a lack of clear understanding by obliged entities of the difference between legal and beneficial owners. In Portugal for instance, know your customer procedures still commonly lead to the identification of a company or trust instead of the natural person hiding behind.[55]

Second, non-compliance may be the result of inherent challenges related to lack of data. Indeed, obliged entities tend to face serious difficulties in identifying and verifying beneficial ownership particularly for foreign legal persons and arrangements incorporated in offshore jurisdictions where secrecy prevails. Depending on the specific jurisdiction and client concerned, public sources can be either non-existent, inaccessible or untrustworthy, and obliged entities can solely rely on information provided by the client itself without being able to cross-check and verify the information. Cooperation with foreign authorities and company registers can also be problematic and tedious. This significantly undermines obliged entities' capacity to ensure timeliness and accuracy of the data provided.

The question arises more acutely for foreign trusts. Practitioners report that beneficial ownership identification and verification is difficult due to the very nature of a trust generally conceived to offer minimum guarantees of privacy. In many cases, parties to a trust will strive to remain anonymous. The trust deed usually constitutes the unique source of beneficial ownership information. However, it is not always possible to solely rely on the trust deed for the full identification and verification of the beneficial owners. Parties to the trust may also have made arrangements outside the trust deed that will generally not be accessible to obliged entities in the course of their CDD process.

Cases of non-compliance are also more frequently observed among DNFBPs. DNFBPs tend to show less proactivity in the identification of their clients' beneficial ownership. In Portugal for instance, they tend to be more concerned about detecting suspicious behaviours or transactions than to primarily identifying their client's beneficial ownership. As a result, the submission of suspicious activity reports (SARs) is rarely based on concerns about the identity of the client.[56] Moreover, contrary to financial institutions, there is no evidence that DNFBPs refuse to proceed with business transactions in case of doubt over the identity of the client. Such behavioural differences between financial institutions and DNFBPs may be explained by the tighter supervision and heavier penalties imposed on the former in case of breach of duties, while the latter will usually barely face any consequence.

Non-compliance with beneficial ownership identification requirements may also be done wittingly by obliged entities actively engaged in helping their unscrupulous clients keep their identity secret. Both quantitative and anecdotal evidence suggests that this is not a marginal phenomenon. An extensive study covering nearly 4,000 service providers in over 180 countries[57] was carried out in 2014 to discover how easy it is to form an untraceable company. The researchers resorted to the mystery shopping technique to approach the service providers and request quotations for activities bearing clear signs of money laundering and terrorist financing. In nearly half of all replies, the service providers did not ask for proper identification and in 22 percent, they did not ask for any photo identity documents at all to form a shell company.[58] Figures available for Slovenia show a similar ratio though too small of a sample to draw clear conclusions: ten requests were sent to service providers, researchers received four replies half of which were non-compliant. Further anecdotal evidence is provided by a number of concluded or ongoing investigation cases as illustrated below by the VimpelCom case allegedly involving Dutch financial institutions and corporate service providers. The case sheds light on possible deficiencies in obliged entities' AML compliance systems and the alleged failure to play their role as gatekeepers.

The VimpelCom case pointing at deficiencies in CDD compliance systems of Dutch obliged entities

In February 2016, VimpelCom, a Norwegian-Russian telecom giant headquartered in Amsterdam, the world's sixth-largest telecommunications company, admitted to a conspiracy involving $114.5 million in bribery payments to an Uzbek government official between 2006 and 2012. [59] The bribery scheme was meant to secure entry and operations in the Uzbek telecommunications market. Investigations revealed that VimpelCom was aware that the bribes were eventually paid to a foreign PEP, namely the daughter of the former President of Uzbekistan and a UN diplomat at the time, Gulnara Karimova.[60] Several Dutch financial institutions allegedly facilitated the transfer of funds to an offshore company based in Gibraltar called Takilant. Investigative authorities found out that Gulnara Karimova was the ultimate beneficial ownership behind this offshore company.[61] The scheme was set up in such a way that Gayane Avakyan, linked to Karimova by a declaration of trust, was the sole shareholder and director of the offshore company.[62]

Next to direct payments made to the offshore company, transactions in shares also served to pay the bribes. These unusual transactions in shares were performed with the involvement of the Dutch notary office Houthoff Buruma. Payments by VimpelCom flowed from one of its subsidiary companies to the offshore company in Gibraltar. These payments were conducted through the trust desk of ING Bank in Amsterdam. Moreover, VimpelCom was audited by Ernst & Young during the years when the payments were made. At the time of writing, it is still unclear whether any of these service providers reported the unusual transactions to the FIU. The question is whether and to what extent these service providers neglected their gatekeeping duties by either not following their CDD measures or not having sufficient procedures in place.

It was only for the Swiss bank Lombard Odier that irregular activities around accounts connected to Karimova could be detected and reported to relevant authorities in June 2012. Did the large amounts of money involved or the involvement of an offshore letterbox company contribute to raising enhance customer due diligence? Did the obliged entities actually identify and verify the ultimate beneficial owner? If so, did they realize that the eventual recipient of the large amounts of funds was a PEP? Dutch authorities have initiated an investigation into the roles of Dutch financial service providers in this case with a view to identifying whether the latter failed to diligently apply their internal procedures of client verification or whether the procedures in place were insufficient. In March 2017, the Dutch Prosecutor's Office confirmed that ING Bank was the object of criminal investigation regarding this matter.[63]

Inadequate management of money laundering risks

The six country reports identify a number of gaps along the process of identifying, understanding and mitigating anti-money laundering risks. These include in particular i) the lack of a comprehensive and inclusive consultation process of key stakeholders, ii) the lack of in-depth understanding and awareness of risks by certain professions and iii) insufficient or inadequate risk mitigation measures in place.

Not all countries have yet completed their first national risk assessment and when they have, the process has not always been open and inclusive enough. First, all key stakeholders engaged in the fight against money laundering and terrorist financing were not always systematically involved, in particular DNFBPs and civil society. Second, the results of the risk assessment were not always made publicly available (i.e. at least in the form of an executive summary) and actively disseminated among key stakeholders.

2 countries (Luxembourg and the Netherlands) had never carried out and/or published a national risk assessment at the time of writing.

In the countries analysed such as Italy, Portugal[64], the Netherlands[65] and Slovenia[66], people interviewed reported insufficient awareness of AML risks related to the identification of beneficial owners among certain categories of key stakeholders. This is particularly true among self-regulated sectors and within sectors among small and medium-sized companies. Conversely, the banking sector is usually well informed about money laundering risks though as mentioned, awareness tends to be lower among small-sized banks compared to bigger ones. Insufficient awareness specifically regarding beneficial ownership related risks from policy makers and relevant administrations was also reported in countries like Portugal or the Netherlands.

Finally, the cross-country analysis points at the inadequacy of the strategy developed to mitigate the risks identified. In Italy for instance, the FATF[67] highlights that, notwithstanding a good understanding of money laundering risks, tools and actions are not fully adapted to those risks. In the Netherlands, professional practitioners interviewed point at the lack of practical and targeted guidance provided by public authorities and their overreliance on the risk-based approach professionals are required to adopt for their customer due diligence.[68] If professionals are expected to undertake an enterprise-wide money laundering risk assessment and to risk-rate their customer, this should constitute only one pillar of a broader and full-fledged national risk mitigation strategy designed by public authorities and implemented by both public and private stakeholders at corporate, sectoral and national levels. In Luxembourg, the financial regulator highlights the lack of formal risk analyses on money laundering activities and risk-based categorisation of customers or investors by professionals.[69]

These findings also apply to risks related to anonymous legal entities and arrangements. Supervisors usually fail to provide professionals with specific training and guidance on risks related to the identification of the beneficial owner and on corresponding mitigation measures. For example, in Slovenia, no emphasis has been put in the last couple of years on the question of beneficial ownership identification in the curriculum of training courses.

Low level or quality of suspicious activity reporting (SAR)

The performance of the suspicious activity reporting system may provide another indication on how effective beneficial ownership transparency rules are. Indeed, adequate legislations shall require obliged entities to systematically submit a suspicious activity report when the beneficial owners of a customer cannot be identified.

Research shows that in most countries analysed, the level of suspicious activity reporting tends to be low (see Table 5). This is particularly striking in the case of DNFBPs even though in an ideal scenario DNFBPs would still be expected to report

Table 5. Number of suspicious activity reports submitted by sector in 2015

	# suspicious activity reports submitted by						
	Financial sector	Accountants and auditors	Lawyers	Notaries	Real estate agents	Corporate service providers	Gambling sector
Czech Republic[i]	2,311		13		*Not available*	*Not available*	1
Italy[ii]	74,579	1,497	1,203	3,227	*Not available*	*Not available*	1,466
Luxembourg[iii]	10,830	139	32	0	11	*Not applicable*[iv]	8
Netherlands[v vi]	297,500[vii]	956	9	322	81	148	2,364
Portugal[viii]				3,865			
Slovenia[ix]	442	0	3	0	0	2	3

i Czech 2016 National Risk Assessment, January 2017 www.financnianalytickyurad.cz/download/FileUploadComponent-1830718990/1489152816_cs_zpravaverejna.pdf

ii FIU and the Bank of Italy, Annual Report of the Financial Intelligence Unit, May 2016, page 29 https://uif.bancaditalia.it/pubblicazioni/rapporto-annuale/2016/Relazione_UIF_anno_2015.pdf

iii Cellule de renseignement financier (CRF – Luxembourgish FIU), Annual report 2015, October 2016, page 9 http://www.justice.public.lu/fr/publications/rapport-activites-crf/rapport-crf-2015.pdf

iv Corporate Service providers in Luxembourg are either accountants & auditors, lawyers or financial professionals: refer to corresponding columns for the data.

v The Netherlands distinguishes between ´unusual´and ´suspicious´activities. The figures for the Netherlands in this table correspond to unusual activities reported by obliged entities in the terminology of the Dutch FIU.

vi Dutch Financial Intelligence Unit, An*nual Report FIU-Netherlands 2015 (Jaaroverzicht FIU-Nederland 2015), May 2016, page 37,* www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/fiu_jaaroverzicht_2015_eng.pdf

vii A majority of SARs submitted by the Dutch financial sector comes from money transfer offices (275,338)

viii Ministério Público, Corrupção *e Criminalidade Conexa - Relatório Síntese 2014-2016, page 22* http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/relatorio_corrupcao_2014-2016.pdf

ix Office for Money Laundering Prevention, *Posodobljeno poročilo o izvedbi nacionalne ocene tveganja Republike Slovenije za pranje denarja in financiranje terorizma s podatki za leti 2014 in 2015, 2016, page 32* www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/NOT_posodobitev_2014_2015.pdf less than financial institutions due to the different nature of thier work. For example, the Italian FIU notes their reporting "from chartered accountants, accountants, employment consultants, associated firms, inter-company lawyers and partnerships between lawyers, have increased in absolute terms but continue to be marginal and not proportional to the potential in terms of active cooperation"[70]. Suspicious transaction reports from non-financial professionals were 7.3% of total reports in 2015, and in particular 3.9% from notaries, 1.8% from accountants and 1.5% from lawyers and law firms[71]. Similarly, in Slovenia, it appears that lawyers and notaries have made the least progress in terms of raising awareness over the importance of reporting suspicious transactions. From 2009 to 2015, notaries and lawyers have reported no more than four transactions annually, which represents less than one percent of all reports.[72] In Portugal, the obligation to report suspicious activity imposed on lawyers created a dramatic controversy over confidentiality rules and, so far, reporting from those professionals has been negligible.[73] In Luxembourg, non-financial professions reported 193 SARs in 2015 compared to 10,830 SARs originating from the financial sector.[74] Moreover, out of the 567 cases finally transmitted to the public prosecutor, only 23 originated from non-financial professions. Anecdotal evidence from the Panama Papers and concluded or ongoing investigation cases also regularly points at deficiencies in the reporting system by non-financial professionals as illustrated by the above-mentioned VimpelCom bribery scheme.

Though the number of reports submitted by the financial sector tend to be higher in most countries analysed, the sector also suffers from a number of deficiencies. It is quite common for the banking sector to use mass reporting techniques, which consists of submitting automatic and unfiltered SARs according to pre-determined criteria. This tends to lower the quality of the submissions by

Table 6. Number of SARs submitted by obliged entities vs. number of SARs leading to opening of investigation in 2015

	# SARs submitted by obliged entities		# SARs leading to opening of investigation		Ratio #SARs leading to opening of investigation / # SARs submitted	
	Financial sector	DNFBPs	Financial sector	DNFBPs	Financial sector	DNFBPs
Czech Republic[i]	2,963		514		17.3%	
Italy[ii]	84,627[iii]		28,694		33,9%	
Luxembourg[iv]	10,830	193	480	23	4.4%	12.0%
Netherlands[v]	297,500	8,721	39,314	1,279	13.2%	14.7%
Portugal[vi]	3,865		63		16.3%	
Slovenia[vii viii]	442	*Not available*				

i Czech 2016 National Risk Assessment, January 2017 www.financnianalytickyurad.cz/download/FileUploadComponent-1830718990/1489152816_cs_zpravaverejna.pdf

ii FIU and the Bank of Italy, Annual Report of the *Financial Intelligence Unit, May 2016, page 41* https://uif.bancaditalia.it/pubblicazioni/rapporto-annuale/2016/Relazione_UIF_anno_2015.pdf

iii This figure also includes SARs submitted by other entities than obliged entities (e.g. public authorities). The number of SARs submitted by obliged entities is slightly lower amounting to 82,428.

iv Cellule de renseignement financier (CRF – Luxembourgish FIU), Annual report 2015, October 2016, page 9 http://www.justice.public.lu/fr/publications/rapport-activites-crf/rapport-crf-2015.pdf

v Dutch Financial Intelligence Unit, An*nual Report FIU-Netherlands 2015 (Jaaroverzicht FIU-Nederland 2015), May 2016, page 37,* www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/fiu_jaaroverzicht_2015_eng.pdf

vi Ministério Público, Corrupção *e Criminalidade Conexa - Relatório Síntese 2014-2016, page 22* http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/relatorio_corrupcao_2014-2016.pdf

vii Available statistics for Slovenia are not based on the same typology as the one used for this table. They are disaggregated by number of investigations opened based on SARs which is higher than the number of SARs leading to opening of investigation and may even be higher than the number of SARs originally submitted by obliged entities.

viii Office for Money Laundering Prevention, *Posodobljeno poročilo o izvedbi nacionalne ocene tveganja Republike Slovenije za pranje denarja in financiranje terorizma s podatki za leti 2014 in 2015, 2016, page 32* www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/NOT_posodobitev_2014_2015.pdf

the banking sector and can be counterproductive due to the risk of overwhelming the system.
In Luxembourg, the FATF also reports that the motivations or criteria for reporting are not always the right one with "statistics [showing] that many SARs are motivated not by suspicion but by the fact that the customer has been investigated or convicted"[75]. It further points at uneven distribution of SARs among a small number of reporters. Moreover, reporting is not always timely. For example in Italy, only 40% of suspicion reports from the banks reaches the FIU within 15 days.[76]

Not only the quantity but also the quality of reporting by obliged entities tends to be low. Indications about the quality of SARs submitted may be provided in Table 6 looking at the ratio of the number of SARs submitted by obliged entities vs. the number of SARs leading to further investigation. In Italy, reporting by non-financial professionals is considered to be "poor, especially among lawyers and accountants"[77]. It further acknowledges an "over-reliance on the part of some sectors (e.g. insurance companies, asset managers, and payment institutions) on due diligence carried out by the banks."[78]

Professionals are not the only ones to blame, regulators and supervisors also share the responsibility for deficiencies in SAR systems. Feedback from the FIU and sector regulators is often inexistent or limited. In Luxembourg, the FATF highlights the lack of feedback provided to obliged entities beyond the publication of the annual report and acknowledgment of receipt of SARs.[79]

Weak oversight of self-regulated professions

Evidence from the countries analysed indicates serious weaknesses in the oversight of key business sectors, in particular self-regulated professions. Independent professionals such as lawyers, real estate agents, accountants, auditors or notaries are usually subject to self-regulation by a professional body. In those sectors, the oversight tends to be weaker as reported by MONEYVAL in its 2013 assessment of Slovenia.[80] Limited oversight by self-regulatory bodies results in lower awareness of AML risks and lower compliance with CDD and suspicious transaction reporting obligations.

In Portugal, it is reported that public supervisory bodies tend to be more proactive at reaching out to their constituencies about money laundering risks than those based on a self-regulation model. In Italy, the FATF notes that "real estate agents, [a self-regulated profession], generally have a low awareness of ML issues, despite the high-risk nature of the real estate sector."[81] Similar deficiencies and gaps can be observed in the legal sector where fewer than 40% of firms have routine AML/CFT training programs for their staff according to a recent survey carried out by one of the Italian lawyers' professional associations.[82]

Moreover, supervisory responsibilities often appear to be fragmented across too many institutions which complicates the monitoring and oversight as well as the potential availability of advice and training for regulated entities. For example, Spain has 83 separate Bar Associations throughout the country. In the Netherlands, the Ministry of Security and Justice indicated the need for more centralised guidance on risk awareness raising and mitigation to complement the current decentralised approach. In the UK, recent research by Transparency International has identified 22 supervisors across different sectors, most of them being private institutions. 20 of these supervisors failed to meet official standards of enforcement transparency, while 15 of the 22 were found to have serious conflicts of interest between their lobbying roles as private sector representatives and their enforcement responsibilities.[83]

Lack of adequate resources of competent authorities

Country reports also highlight gaps in resourcing of public authorities engaged in the fight against money laundering. This appears recurrently in the conclusions of the FATF or MONEYVAL. For Italy for example, the FATF notes that "although [Law Enforcement Agencies] cooperate and coordinate amongst each other, the sheer number of them, coupled with overlapping responsibilities, requires a significant investment in operational coordination in which there have been some lapses."[84] Similarly, the Luxembourgish FIU and supervisory authorities are deemed short-staffed to perform their regulatory activities including on-site inspections.[85] In Slovenia, the recent reform is granting new inspection and investigative powers to the FIU in addition to its current competencies in terms of intelligence gathering and administrative oversight.[86] However, the reform does not foresee a significant increase in resources to match the staff needs that these new statutory powers would generate.

Ineffective control mechanisms and sanctions

Regulatory bodies have the power to visit and inspect obliged entities, identify and record failings in their systems, and impose sanctions where necessary. The lack of publicly available and harmonised AML related statistics as illustrated by Table 7 thwarts the systematic assessment of how effective controls and sanctions in place are.

However, figures available and anecdotal evidence show relatively limited enforcement of controls and sanctions in relation to the risks identified and amounts actually laundered. In Luxembourg for example, the financial regulator carried out only 27 on-site inspections in 2015 leading to the identification of 12 regulatory breaches and the imposition of an administrative fine in 3 cases and a reprimand in 1 case.[87] These figures seem unreasonably low in relation to the size and vulnerability of the Luxembourgish financial sector which was draining about EUR 767 billion in assets in 2015[88]. In Italy, the new legislation strengthens penalties against obliged entities - both the company and senior management – for failing to fulfil their obligations to identify the beneficial owners of up to three-year imprisonment and/or EUR 30,000 fine.[89] Their customers face similar penalties for providing false information. However, the FATF evaluation suggests that in the past, sanctions were not implemented in a particularly dissuasive and proportionate manner.[90] To act as a true deterrent, this new sanction system will need to be effectively enforced and competent authorities adequately resourced to carry out regular off-site and on-site monitoring and control.

Regarding DNFBPs in particular, the FATF reports for Luxembourg and the Netherlands a lack of sufficient oversight and sanctioning of non-financial professions such as accountants, auditors, lawyers, services providers and notaries while at the same time acknowledging strengthened efforts by public authorities to address these deficiencies.[91]

The UK example is also quite illustrative of the deficiencies of supervisory bodies´ control and sanctioning systems. In the UK, of the 7 sectors regulated by HMRC (Her Majesty´s Revenue and Customs), which includes estate agents, the total fines in 2014/15 amounted to just about EUR 885,000 which seems preposterously low in relation with the well-known ML risks in the real estate sector only. Moreover, 21 of 22 supervisors have either a low or unreported level of enforcement against those who break anti-money laundering rules.[92]

Table 7. Statistics on control and sanction mechanisms

	Year	# off-site monitoring or analysis (i.e. desk-based)	# on-site monitoring and analysis	# regulatory breaches identified	Total # sanctions and other remedial actions applied	Value of financial penalties on average (EUR)
Czech Republic	2015[i]	*Not available*	51	17	*Not available*	90,000,000
Italy	2016[ii]	▸ 359 police controls ▸ 21,512 SAR analysed ▸ 1,037 ML investigations	105	2,269	*Not available*	*Not available*
Luxembourg	2015[iii]	*Not available*	27 (only for financial sector)	12 (only for financial sector)	4 (only for financial sector)	*Not available*
Netherlands	2010[iv]	*Not available*	25 (only for financial sector)	*Not available*	*Not available*	*Not available*
Portugal		*Not available*	*Not available*	*Not available*	*Not available*	*Not available*
Slovenia	2015[v]	3	56	28	10	*Not available*

i Czech 2016 National Risk Assessment, January 2017, page 51 www.financnianalytickyurad.cz/download/FileUploadComponent-1830718990/1489152816_cs_zpravaverejna.pdf

ii Guardia di Finanza *Annual Report 2016*, 2017, page 25, http://www.gdf.gov.it/ente-editoriale-per-la-guardia-di-finanza/pubblicazioni/il-rapporto-annuale/anno-2016/rapporto-annuale-2016/rapporto-annuale-2016.pdf

iii Commission de surveillance du secteur financier (CSSF – Luxembourgish financial regulator), Annual Report 2015, pages 256-7 www.cssf.lu/fileadmin/files/Publications/Rapports_annuels/Rapport_2015/RA_2015_EN_full_version.pdf

iv FATF, *Mutual Evaluation Report of the Netherlands*, February 2011, page 211 http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Netherlands%20full.pdf

v Urad za preprečevanje pranja denarja, *Poročilo od delu Urada Republike Slovenije za preprečevanje pranja denarja za leto 2015*, 2016, pages 37-40 www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/deloUrada/letno_porocilo_2014.pdf

Lack of statistics on AML enforcement efforts

As already suggested above, the lack of statistics on AML enforcement efforts limits competent authorities' capacity to assess the effectiveness of the system in place. Making this information public could also have powerful direct effects. For example, banking sector professionals in the U.S. often find information about penalties imposed on their peers more useful for understanding AML regulatory expectations than the actual guidance by financial supervisors[93].

The FATF has identified a set of key AML indicators which include[94]:

- Number of on-site visits by authorities to financial institutions and non-financial sectors
- Number of regulatory breaches identified
- Number of sanctions and other remedial actions applied[95]
- Value of financial penalties
- Number of suspicious activity reports (SAR) received (disaggregated by type of reporting entity)
- Number of criminal investigations for ML activity
- Number of prosecutions for ML activity
- Number of ML convictions
- Number of ML-related mutual legal assistance and extradition requests made, received, processed, refused and granted

Recent research by Transparency International[96] shows that across 12 countries assessed including Italy, Luxembourg, the Netherlands and Portugal, 1 in 3 anti-money laundering indicators is fully disclosed to the public and up-to-date.

Data tends to be dispersed across different websites and sections of websites, including in pdf formats which make it difficult to extract or search information. Most common sources of publicly available anti-money laundering data include FIU's annual reports and FATF or MONEYVAL mutual evaluation reports. Yet, the former tend to be incomplete while the latter are irregularly published and not available on an annual basis.

Moreover, data on anti-money laundering is defined and captured differently across jurisdictions, which makes international comparisons very difficult, if not impossible. For example, depending on the jurisdiction, a suspicious transaction report may refer to one transaction or to a case with multiple transactions.[97]

Gaps in statistics are particularly blatant for data about beneficial ownership although the establishment of central registers of beneficial owners required by AMLD IV shall contribute to significantly improving the situation. For example, in Italy, "no statistics were provided on the number of instances in which the Italian authorities requested information from their foreign counterparts with a view to obtaining information on foreign natural persons [owning] Italian legal persons or legal persons and arrangements established abroad."[98]

2.2 KEY RECOMMENDATIONS

Strengthen enforcement of customer due diligence obligations

Governments should strengthen the enforcement of customer due diligence obligations by obliged entities through:

- ✔ the provision of specific guidance and training on beneficial ownership identification and verification;
- ✔ the more frequent on-site controls and inspections, in particular of DNFBPs;
- ✔ the effective enforcement of administrative and criminal sanctions in cases of failure to identify and verify the beneficial owners and / or complicity in concealing beneficial ownership.

Identify and mitigate risks

Governments should ensure that critical elements of an appropriate risk assessment and mitigation strategy are in place including:

- ✔ the assessment of money laundering risks at national level on an ongoing basis involving the consultation of relevant authorities and stakeholders (e.g. law enforcement authorities, supervisors and regulators, financial institutions, DNFBPs, civil society organisations);
- ✔ the regular publication of a formal assessment, for example every three years;
- ✔ awareness raising programmes targeted at the various groups of stakeholders, including the publication of specific guidance and provision of regular training;
- ✔ the implementation of appropriate and targeted mitigation measures and tools by the various stakeholders including enhanced levels of supervision of high-risk sectors, allocation of law enforcement resources to the most significant threats, development of specific typology/ methodology study and guidance to the regulated sectors in high risk areas;
- ✔ the establishment of inter-agency coordination mechanisms for the monitoring, evaluation and update of the risk mitigation strategy.

In Italy, Portugal and Slovenia, the governments have established or are considering establishing a permanent inter-institutional body to supervise the regular conduct of the national risk assessments and coordinate the implementation and monitoring of mitigation measures. In Portugal, the Coordination Commission is hosted by the Ministry of Finance, headed by the Secretary of State for Fiscal Affairs and composed of all the bodies that contributed to the risk assessment exercise.

Strengthen regulation and oversight of self-regulated sectors

Governments should strengthen oversight over self-regulated sectors by:

- requiring self-regulatory bodies to have sufficient safeguards in place to ensure potential conflicts of interest do not undermine their supervisory responsibilities and that their advocacy and supervisory functions are operationally independent;
- requiring self-regulatory bodies to have an appointed person to engage with law enforcement and other supervisors on AML issues; [99]
- requiring self-regulatory bodies to provide regular training and update to their members on AML/CFT obligations;
- ensuring that self-regulatory bodies carry out their oversight activities in regular coordination with an independent public authority;

The UK has recently decided to introduce a new Office for Professional Body AML Supervision hosted by the Financial Conduct Authority to work with professional bodies to help, and ensure, compliance with the regulations. The Office´s mandate and powers still need to be further defined but shall include[100]:

providing guidance on how professional bodies should fulfil their obligations under the regulations;

monitoring professional bodies' activities, including requiring their staff to provide information or attend interviews on request, and participating in on-site visits;

working with professional bodies to ensure they meet their obligations under the regulations;

liaising with other supervisors across sectors to discuss and share best practice to help ensure consistent high standards across supervisors, especially where statutory and professional body AML supervisors monitor the same sectors, and to strengthen collaboration between professional body AML supervisors, statutory supervisors, and law enforcement.

- requiring all supervisors across sectors to submit accountability reports which are fully compliant with standards of enforcement transparency. AML supervisory performance shall be scrutinised and assessed by an independent public body.[101] Regular "fit and proper" tests should be applied across all regulated sectors including self-regulated sectors;[102]
- requiring supervisors, including in self-regulated sectors, to share information with other supervisors where it would help strengthen the regime, and hold details of obliged entities under their supervision, including supervisory records, to facilitate engagement with law enforcement.[103]

Provide adequate resources to responsible oversight bodies

Governments should provide sufficient and adequate human, financial and technical resources to responsible supervisory bodies to effectively carry out their duties, and have adequate mechanisms of coordination. This should include at least the capacity to[104]:

- ✔ survey and understand money laundering risks;
- ✔ effectively communicate with the entities under their supervision, for example providing feedback on suspicious activity reports and providing secure channels for information sharing;
- ✔ implement and adequately staff an effective whistleblowing regime;
- ✔ provide for an effective and transparent control and sanction regime.

Strengthen suspicious activity reporting systems

Governments shall seek to strengthen their suspicious activity reporting systems by:

- ✔ assessing the effectiveness of the current system including the detection and reporting of suspicious activities, the processing of SARs, coordination with obliged entities and sanctioning in cases of failure to report suspicious activities or anomalies, (including cases where the beneficial owners are not identified);
- ✔ publishing disaggregated statistics on the number of suspicious transaction reports submitted by sector and the value of transactions in SARs received by sector and assessing if those numbers are reasonable in light of the sector´s size and economic activity;
- ✔ requiring supervisors to work with law enforcement authorities to assess cases of failure to report or under-reporting and provide greater detail about what constitutes a high-quality SAR;
- ✔ requiring supervisors to communicate and disseminate good practices amongst obliged entities and provide them with practical guidance and training on how to fulfil SAR obligations;
- ✔ requiring supervisors to provide whenever relevant more specific and tailored feedback to obliged entities on their submissions.

Properly enforce controls and sanctions

- ✔ Governments should establish a credible deterrent across all sectors for money laundering failings. They should ensure that available regulatory tools such as on-site visits and sanctions are proportionate and adequate in relation with the risks identified and effectively used in practice. Data on controls and sanctions should be made publicly available so as to facilitate monitoring and assessment: This would also act as a deterrent by showing that penalties are effectively enforced and provide an incentive for obliged entities to improve their internal customer due diligence procedures.
- ✔ As per new european rules, sanctions in case of regulatory breaches shall not only apply to legal persons but also to members of the management body who under the law are responsible for the breaches. Senior managers who are allocated responsibility for AML checks should indeed be subject to a 'presumption of responsibility'. If a firm breaches the supervisor's rules, the relevant senior manager should face a range of sanctions, including losing professional or 'fit and proper' accreditation and personal fines, unless they can demonstrate that they took reasonable steps to avoid the breach.[105]

Systematically collect and publish AML enforcement statistics

- ✔ Governments shall collect and publish statistics on anti-money laundering enforcement statistics on a yearly basis. This shall be systematically done in the future as required by new European rules. These shall include data related to beneficial ownership transparency obligations (e.g. number of breaches, SAR submission and sanctions related to failure to identify or verify beneficial ownership). To the extent possible, national statistics should follow the list of indicators recommended by the FATF in order to foster data harmonisation and comparability.

3. HOT SPOTS

The cross-country analysis led to the identification of a number of high-risk areas with regard to money laundering and the abuse of legal persons and arrangements. The underlying data has been drawn from published materials such as supervisors' reports or guidance, evaluations of the AML/CFT regime, national or sector risk assessments as well as interviews and media articles.

The list includes a number of DFNBPs defined under the FATF Recommendations such as trust and company service providers (TCSPs), real estate agents, and providers of gambling services. It also includes emerging sectors such as bitcoins and digital currency service providers. This list is not intended to be comprehensive but rather to provide insights and examples based on country experiences.

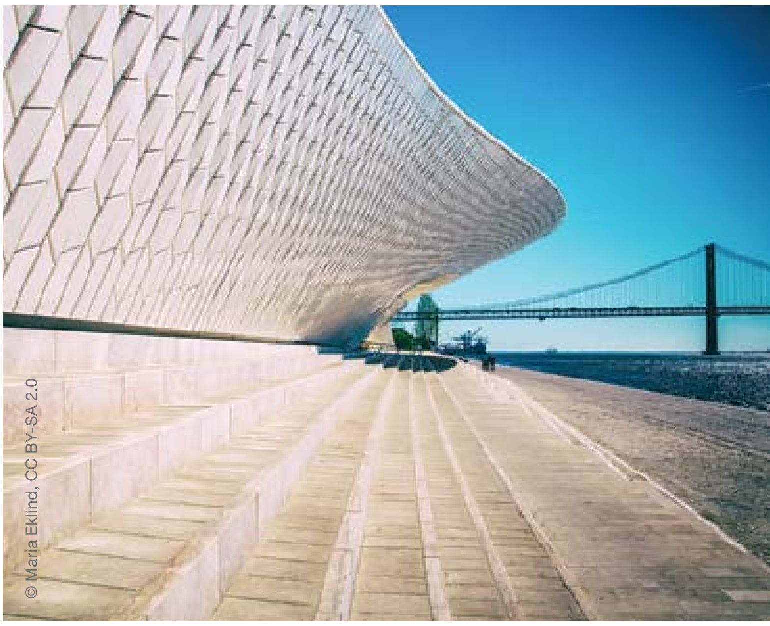
3.1 REAL ESTATE SECTOR

The analysis identified the real estate as high risk in relation with the concealment of beneficial ownership in a number of countries including Czech Republic, Italy, Portugal and Slovenia. For example in Slovenia, the tax authority also warns that the Slovene real estate market is being targeted by foreign anonymous companies.[106]

Real estate is attractive for money launderers because it represents a prestigious and reasonably safe investment and offers good financial returns and additional ways to place money in clean circuits (e.g. rentals).[107] The luxury segment tends to be more vulnerable to risks as it enables the integration of large amounts of money in one single purchase. Properties may be kept for investment or sold again to justify large gains. In Portugal, the luxury segment has actually been thriving since 2010 despite the severe financial and economic crisis which had dramatic consequences for the traditional real estate sector. Just in 2015, the high-end property market saw an increase in transaction volumes by 28%.[108] Moreover, 51% of investors in this segment are foreign, compared with 20% in lower segments.[109]

Other sectoral features may also account for the vulnerability of the sector. Its fragmentation across multiple small businesses makes it more difficult to regulate and control and as a result more prone to abuse. In a country like Portugal for example, the real estate sector is characterised by a highly dispersed and fragmented market composed to a large extent of small agencies and family businesses often linked to the buyer or his family and associates.

Finally, the sector increasingly benefits from favourable investment and tax regimes put in place by governments to attract foreign investors and wealthy individuals wishing to reduce their tax bill as illustrated below. But this contributes at the same time to increasing the sector's attractiveness for unscrupulous money launderers in search of a safe haven for their dirty money.



Portugal's Golden Residence Permit Programme and Non-Habitual Resident Tax Regime, a two-way track to attract foreign investors...and money launderers?

Portugal offers a number of advantages to foreign investors wishing to invest in the country, including a Golden Residence Permit Programme for foreign investors and a beneficial tax regime for so called "non-habitual" residents.

On the one hand, the Golden Residence Permit Programme (or Autorização de Residência para Actividade de Investimento - ARI) grants residence permits with access to the Schengen space to non-EU investors. The initial purpose of programme was to foster employment in Portugal and in this respect, one of the criteria to be eligible for a golden visa is the creation of at least ten jobs. However, the overwhelming majority of visas under this programme have been granted to individuals buying high value property, i.e. of a value equal or superior to half a million euros. After 4 years and a half in existence, the programme resulted in 4578 visas granted for investment through property purchase, while only 257 through capital transfer and 7 for job creation. The top five nationalities being granted Golden Visas are Chinese (3207), Brazilian (319), Russian (167), South African (156) and Lebanese (88).[110] Considering that international cooperation on money laundering matters is deemed difficult with some of these countries such as China[111], one can easily imagine the challenges faced by Portuguese authorities when investigating the background of a Golden Visa candidate or the origins of his money. Moreover, the Global Financial Integrity ranks China and Russia top in terms of estimated average illicit outflows, around $140 and 105 billion, respectively.[112]

On the other hand, the Non Habitual Resident regime was introduced in Portugal in 2009. One of the main objectives of this regime is to attract individuals and their families to Portugal by providing tax exemptions on qualifying income such as pension, dividend, royalty or interest income. The sole requirement to benefit from this preferential treatment is to become a Portuguese tax resident, not having been a tax resident in Portugal in the previous five years. This status is granted for 10 years. One only needs to type 'Non-Habitual Resident' in google search to understand how this programme has contributed to the flourishing of a new business ecosystem of real estate agencies and lawyers facilitating investments in high value property.

Although, increased foreign investment in such a key sector of the Portuguese economy may seem very welcome, it has also contributed to heightened sector vulnerability to money laundering risks by providing a legitimate cover for money launderers wishing to introduce vast amounts of illicit money in the market. Moreover, the social impact of these programmes should be highlighted. In Lisbon, the price per square meter in some areas rose more than 20% in 2015. Lisbon and Porto already show signs of changing demographic trends. Increasing foreign investment in luxury apartments located in central areas is indeed putting pressure on prices, leading to the progressive desertion of city centres by middle-class families and young people replaced by rich foreign investors or part-time residents.

3.2 GAMBLING SECTOR

The gambling sector covers lots of different industries such as casinos (real and online), betting, bingo, slot machines, etc. Under current European rules, only high-risk activities are subject to AML obligations. With the exception of casinos, exemptions may be granted to gambling service providers based on an appropriate risk assessment.

One of the characteristics of the gambling sector is the intense use of cash which makes it particularly exposed to ML risks. Indeed, cash intense economies or sectors are by nature more prone to money laundering. Contrary to bank transfers, it is untraceable which makes it one of the easiest ways to ensure anonymity of the person behind the transaction.

Moreover, the business of casinos tends to be subject to less stringent regulatory measures than the banking sector although they share similar features such as the involvement of diverse, frequent and large financial transactions (e.g. money exchange and transfers, foreign currency exchange, stored value services, debit card cashing facilities, check cashing).[113] The recent blossoming of online games and sport-related bets has further increased money laundering opportunities by facilitating the concealment of the beneficial owner's identity. Despite strengthened regulations and control over the online sector in recent years, it remains easy to circumvent the rules using a frontman and his or her credentials to open and access an account on a gambling website.

The gambling sector is identified as high risk in a number of countries covered by the study including Czech Republic and Portugal. Three methods are commonly used to launder money in casinos.[114] The first one consists in buying chips in large numbers and in cash, gambling just a tiny share of them and redeeming back all the initially bought and

gained chips in exchange for a casino check or bank transfer, claiming that all those chips were the result of gambling gains. A second way to make money traceability more complex is to exchange similar-looking chips from different casinos owned by the same company.[115] The third method consists in purchasing chips from other players for a higher price than the price set by the casino or to use chips as currency (for instance, as payment for drugs). Of course, the easiest way for criminal organisations to circumvent regulatory obligations or reduce detection risks remains to own and manage their own casinos or gambling sites.

In Portugal, despite efforts to improve regulation and supervision of the sector, actual progress on this front has been undermined by persisting loopholes and technical obstacles paired with a general lack of willingness and proactivity from regulated entities in adopting customer due diligence. Monitoring and supervision essentially rely on the automatic communications sent to the FIU for every transaction above EUR 2,000 known as "mass communications" which renders the suspicious transaction reporting system irrelevant for the purpose of detecting suspicious transactions and raising red flags.

3.3 TRUST AND COMPANY SERVICE PROVISION

Trust and company service providers (TCSPs) are actively engaged in the setting up and administration of legal persons and arrangements. They offer a wide range of services from providing a residence address to acting as a nominee director. The level of vulnerability will largely depend on the relative size of the sector within the domestic economy. Our analysis identifies TCSPs as vulnerable to money laundering risks in a number of countries covered by the study including the Netherlands and Slovenia.

The Dutch Central Bank recently criticised the TCSP sector for inadequately performing its gatekeeping role of the Dutch financial system.[116] IMFC case below illustrates possible failures and gaps in the enforcement of CDD obligations by the sector. Despite clear indicators of a high-risk transaction, the trust service provider IMFC allegedly failed to report the unusual transaction to the Dutch regulator. IMFC knew that its clients were PEPs operating in high-risk countries. The amount of the transactions should have prompted IMFC to at least carry out enhanced due diligence regarding the origins and destination of the funds, and possibly report it as an unusual transaction.

The Panama Papers also pointed at the central role played by TCSPs such as Mossack Fonseca in facilitating money laundering and tax evasion. They show that in many cases, those service providers did not refrain from performing suspicious transactions nor did they report blatantly suspicious activities. Whether this was done wittingly or unwittingly still has to be demonstrated but it clearly sheds light on the system's deficiencies and vulnerabilities.

In the Netherlands, the Dutch Central Bank reported a number of TCSPs to the Public Prosecutor following an investigation into their role in the Panama Papers.[117] At the time of writing, it is unknown which TCSPs are being investigated and what the nature of the suspicions is. Regulatory reform of the sector is also foreseen for 2018 which shall introduce the obligation for TCSPs to adopt the same norms as financial institutions for integrity checks on their managers and the ability for supervisory authorities to prohibit the provision of trust services to certain types of high risk structures.[118] The Dutch Central Bank called for additional measures including (i) the prohibition for TCSPs to act as nominee directors for clients (ii) the ability for supervisors to publish non-compliance fines and administrative penalties, (iii) the prohibition to service legal structures or arrangements facilitating anonymity of the beneficial owners, and (iv) the obligation for all licensed TCSPs to hire a compliance officer.[119]

IMFC Trust and Fund Services: a service hatch for bribery payments?

Former Dutch trust service provider IMFC Trust and Fund Services (IMFC) based in Amsterdam has appeared in Dutch and Spanish media as having allegedly facilitated bribery payments originating from Spain, transferred through the Dutch bank accounts of IMFC and paid out in cash to Algerian public officials as part of a public procurement project. The case is being investigated by a Spanish investigating judge.[120]

The suspicions form part of a larger scheme. Spanish authorities launched an investigation into 20 Spanish officials to determine whether they secured contracts from foreign governments for Spanish construction companies, in return for bribes. Among others, the investigation focuses on Pedro Gómez de la Serna and Gustavo de Arístegui, both high-level politicians of the ruling party Partido Popular. The latter is also a diplomat, resigning in late 2015 from his post as ambassador to India due to the allegations.[121] Both have extensive experience as lobbyists and secured two major construction contracts for the Spanish company Elecnor. Both individuals were clients of the Dutch trust service provider IMFC. In 2011 and 2012, IMFC invoiced an amount of almost EUR 1.65 million to Elecnor on behalf of the two politicians. According to the invoices, Elecnor was requested to transfer money to a Dutch bank account at ABN AMRO bank. The bank account holder was a company called Castelino BV that had been incorporated by IMFC with the IMFC managing director acting as nominee director. The money then allegedly moved through a letterbox company incorporated in the Dutch Antilles to reach their final destination in Algeria. It is alleged that the money was then paid out in cash to Algerian public officials. According to the Spanish investigative authorities, these Algerian officials helped the politicians-gone-lobbyists-gone-politicians Serna and Gustavo secure public procurement contracts in Algeria for their client Elecnor.

3.4 VIRTUAL CURRENCIES

Virtual currencies have emerged in recent years as an increasingly commonly used vehicle for money laundering. Virtual currencies are decentralised, not backed by any government or central bank, unlike traditional currencies. They offer a number of additional features that make them particularly attractive for criminal activities. They allow rapid, cheap and irreversible transfers. And in many respects, some payment mechanisms offer a level of anonymity similar to cash but in an online environment.[122]

As illustrated below, Bitcoin appears as the most commonly used technology by criminals and money launderers. Darknet markets for example, i.e. illicit sites trading in everything from firearms to drugs almost exclusively rely on Bitcoin, with the payment mechanism incorporated into the market structure.[123] Europol reports that Bitcoin accounts for over 40% of all identified illegal online transactions.[124]

Money launderers commonly resort to two mechanisms to anonymise and clean up dirty virtual money: intermediary bitcoincashing and bitcoin mixing.[125] Bitcoincashing consists in exchanging ill-gotten bitcoins into cash through legal bitcoin exchange platforms. Bitcoin mixing services pool and redistribute multiple bitcoin transactions to confuse transaction trails. This allows information on the origins of one particular piece of currency to be wiped out and to obscure the identity of the initial trader, i.e. the beneficial owner.[126]

The sector appears to be all the more vulnerable to ML/FT risks in that it currently does not fall under any AML/CFT regulation. Virtual currency service providers such as bitcoin exchange platforms are not subject to AML/CFT requirements nor monitored and supervised although regular exchange platforms are usually indirectly required to comply with AML rules by the financial institutions and banks that they work with. However, darknet merchants often choose to exchange their bitcoins at bitcoincashers that do not apply AML standards and guarantee anonymity of the transactions. This should change with the revision of European anti-money laundering rules which foresees the inclusion of virtual currency service providers in the list of obliged entities subject to CDD obligations.

In response to the growing number of cases and in the absence of regulations, Dutch authorities are trying to facilitate the prosecution of illegal bitcoin trading. The recognition of illegal bitcoin trading including the provision of mixing services as a type of money laundering offence is also under consideration. This would allow investigators to initiate an investigation without prior obligation to demonstrate reasonable suspicion of a crime.

Dutch authorities clamping down on bitcoin money laundering

At least three criminal cases pertaining to money laundering with bitcoin will come before Dutch courts in 2017.[127] The first case relates to two individuals suspected of laundering EUR 2.4 million proceeds from drug trafficking and participation in organised crime. The second case concerns four individuals suspected of running an illegal bitcoin exchange that guaranteed anonymity to its users. According to authorities, the suspects laundered millions of EUR with their business.[128] The third case is part of a larger international investigation known as 'Iceberg' against a criminal gang suspected of trading illegal goods on the dark web and operating as bitcoincashers.[129] This case is expected to appear before court in late 2017.

3.5 KEY RECOMMENDATIONS

Real estate sector

Mitigation measures specifically targeted at the real estate sector include:

- requiring foreign companies that wish to purchase property to provide beneficial ownership information. This information should be kept in a central beneficial ownership register and made available to competent authorities and the public in open data format.[130]
- requiring real estate agents to register with a designated public authority for anti-money laundering supervision in order to operate in the real estate sector, and be tested to show they know the rules. Anti-money laundering training should be made compulsory upon registration.[131]
- prohibiting lawyers, accountants and other professionals who are not registered with the relevant anti-money laundering supervisor from engaging in real estate transactions.[132]
- strengthening regulations over residence permits granted on the basis of investment (e.g. the Portuguese Golden Visas).
- providing guidance to help real estate agents identify suspicious activities in their sector.

Gambling sector

Mitigation measures specifically targeted at the gambling sector include:

- requiring that providers of gambling services are licensed and regulated preferably by a statutory regulator with appropriate information and enforcement powers;
- providing guidance to help gambling service providers identify suspicious activities in their sector;
- conducting appropriate risk assessment of gambling service providers and subjecting higher risk activity to AML obligations and controls;
- imposing thresholds on higher risk transactions;
- prohibiting the use of automatic communication systems when submitting suspicious activity reports;

Trust and company service providers

Mitigation measures specifically targeted at trust and company service providers (TCSPs) include:

- ensuring effective AML supervision of the sector requiring TCSPs to be licensed and regulated preferably by a statutory regulator with appropriate information and enforcement powers;
- requiring the regulator to subject the TCSP, its managers, partners, compliance officers and beneficial owners (also known as controllers) to a 'fit and proper' test at the time of licensing and over the period for which it holds a licence, applying similar standards of integrity as for financial institutions and making anti-money laundering training a condition for obtaining and keeping a license;
- requiring the regulator to provide guidance to help corporate and trust service providers identify suspicious activities in their sector;

- prohibiting corporate and trust service providers from servicing legal structures or arrangements facilitating anonymity of the beneficial owners;
- prohibiting corporate and trust service providers from servicing certain types of high-risk structures;
- prohibiting corporate and trust service providers from acting as nominee directors for clients, or alternatively, strengthening regulations of nominee services provision following recommendations developed in Section 1.

Virtual currency service providers

In addressing risks in the sector of virtual currency service providers, the European Union and national governments should ensure:

- the recognition of illegal virtual currency trading including the provision of mixing services as money laundering operations;
- the development of working relationships between law enforcement authorities and the financial sector including banks, money transfer agents, virtual currency scheme operators and exchangers in order to promote the lawful exchange of information and intelligence[133].

ANNEX

METHODOLOGICAL APPROACH

The methodology for the national risk assessments used techniques to assess both i) **technical compliance** and ii) **effectiveness of implementation** against existing international and European standards.

Technical evaluation

Current situation

The first stage of the methodology consisted of carrying out a technical assessment of the arrangements currently in place. In doing so, the methodology used existing standards as a basis, in particular the overlapping and complementary standards in the G20 Principles[134], the Financial Action Task Force (FATF) 2012 Recommendations[135] and the specific EU requirements contained in the 4th Anti-Money Laundering Directive (AMLD IV)[136], which was adopted in May 2015 and expected to be implemented by June 2017.

The technical assessment section drew upon a questionnaire designed for TI previous work[137] on reviewing G20 countries´ compliance with G20 Principles with a view to allowing for inserting the 6 covered countries into the existing ranking. The original questionnaire articulated around the G20 Principles was enriched to include the most recent state-of-play of the research, standards and practices in particular with regard to transparency requirements for trusts.[138] Questions were designed in order to capture the critical aspects of a legal framework responding to highest standards of beneficial ownership transparency. The number of questions per principle, and thus the total number of points available per principle, varies depending on the complexity and number of issues covered in the original principle.

Questionnaires were completed by Transparency International chapters or consultants for each of the six countries covered by this study. Governments were consulted between August 2016 and February 2017 either through bilateral exchanges, participation in experts meetings or invitation to review the completed questionnaires.

The scores were averaged across each Principle and converted to percentage scores to illustrate the strength of the system using a 5-band system:

Scores between 81% and 100%	Very strong
Scores between 61% and 80%	Strong
Scores between 41% and 60%	Average
Scores between 21% and 40%	Weak
Scores between 0% and 20%	Very weak

Future plans

The methodology was also built so as to reflect on the changing policy environment, in particular changes foreseen as part of the implementation of the EU AMLD IV to be completed by June 2017 and the revision process of this same Directive undertaken in reaction to the Panama Papers and still ongoing at the time of writing[139]. As a result, for each principle, country performance was not only assessed in terms of the adequacy of the current legal framework as of December 2016 but also in terms the adequacy of future plans. The data was captured by a parallel set of questions to the technical questionnaire whenever gaps or shortcomings against the highest standard were identified

If the plans identified above are implemented what would the score be post-implementation?

4 The country's legal framework will be fully in line with the principle/standard.

3 The country's legal framework will be generally in line with the principle/standard but with shortcomings.

2 There are some areas in which the country will be in line with the principle/standard, but significant shortcomings will remain.

1 The country's legal framework will not be in line with the principle/standard, apart from some minor areas.

0 The country's legal framework will not be at all in line with the principle/standard.

Effectiveness evaluation

The second phase of the methodology consisted of an effectiveness evaluation which looked at the outcomes expected to be achieved by the legislative and institutional framework relating to transparency of beneficial ownership. This exercise consisted of a country specific analysis of gaps and risks taking into account the characteristics of the national legal, political and institutional context. It drew upon interviews with key stakeholders, annual reports and other public documents, FATF or MONEYVAL mutual evaluation reports among other sources.

ENDNOTES

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18 *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Uradni list RS št. 68/16. http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132 (20.11.2016) Article 44: “data on business entities shall be automatically obtained on the basis of a registration number from the Slovenian Business Register, and the data on business entities not entered in the Slovenian Business register shall be obtained on the basis of a tax ID number from the Tax Register. The administrator shall obtain changes of data on business entities automatically from the Slovenian Business register or Tax Register.”

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