

# Privacy- Washing & Beneficial Ownership Transparency

Dismantling the  
weaponisation of  
privacy against  
beneficial  
ownership  
transparency

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## Executive Summary

Effective beneficial ownership transparency is an essential tool to tackle illicit financial flows, but also to foster equality, well-functioning markets, as well as to address global problems like fraud and climate change. For beneficial ownership information to be used effectively in a whole-of-government approach, all relevant stakeholders need access to information, including the general public.

Public access to beneficial ownership information was one of the latest and most relevant of the transparency advances made to guard against criminals or wrongdoers escaping the rule of law. Other transparency advances won as a result of the advocacy efforts of civil society organisations fighting against corruption, money laundering and tax abuse included automatic exchange of banking information and the implementation of country by country reporting.

Against every one of these advances, secrecy jurisdictions, enablers and other secrecy supporters unsuccessfully fought back. Despite their efforts, progress on transparency continued to move forward.

But a sizable stumbling block was successfully mounted two years ago at the European Court of Justice, where secrecy enablers won a ruling in their favour that maintained that transparency progress in the form of public access to beneficial ownership information undermined the right to privacy and data protection.

The court judgement invalidated public access to beneficial ownership information for cases where the only purpose for such access was the fight against anti-money laundering and the financing of terrorism. Despite the ruling's narrow focus on the anti-money laundering context, the ruling was interpreted by some secrecy defenders as an absolute, across-the-board prohibition of public access to beneficial ownership information. Many EU countries closed their public registries, while some kept them open.

Beyond ushering in a shuttering of beneficial ownership registers in the EU, the ruling has given credence to secrecy enablers' weaponisation of rights to privacy to dismantle transparency progress. Secrecy jurisdictions and enablers outside of the EU will no doubt be looking to replicate the success in their own local courts.

In response, this brief seeks to expose the falsehoods and weaknesses of arguments used to weaponise privacy rights against beneficial ownership transparency.

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# 1. The journey to public transparency on beneficial ownership

## 1.1 Secrecy

Secrecy is the main tool used by criminals and wealthy individuals who try to escape the rule of law and benefit from illicit financial flows. These flows refer to the billions of dollars related to tax evasion or avoidance, money laundering, corruption or the financing of terrorism that escape government treasuries all over the world. Thanks to sophisticated schemes developed by lawyers, accountants, service providers and other enablers, these funds are channelled through companies, trusts and other legal vehicles, into bank accounts, crypto-assets, real estate, businesses and many transactions that cover their tracks and evade investigators. These schemes enable those engaging in illicit financial flows to enjoy ill-gotten funds without worrying about law enforcement, taxes or public scrutiny.

Illicit financial flows thrive when there is secrecy. Secrecy is used to hide the origin of funds (eg drug smuggling or tax evasion); to hide the movement or the real purpose of transactions that channel funds between countries; and to hide the destination of the funds (eg a bank account or real estate). Different secrecy jurisdictions specialise in different forms of financial secrecy such banking secrecy, anonymous companies or unregistered assets like crypto-assets.

Over the last few decades, governments have become concerned over the sophistication as well as the economic consequences of transnational crime – notably around tax abuse, money laundering and corruption - and have started taking action against the financial secrecy that enables it.

In the simplest terms, improvements around banking secrecy meant that one could no longer show up at a bank with a suitcase full of money to open a bank account without any questions being asked. Banks were made to undertake due diligence procedures and identify both the customer and the origin of their money. Unfortunately, banks did not always apply due diligence rules appropriately. To supplement this process, countries then negotiated international treaties and conventions to allow their authorities to request information from each other, for instance about foreign bank account ownership. While useful, this also proved to be insufficient, as it was time consuming for authorities to substantiate the need to obtain information about a specific taxpayer. The new measures mostly aided in confirming suspicions they already had, rather than proactively detecting questionable transactions and accounts.

More ambitious transparency policies against banking secrecy were finally implemented after public scandals revealed how Swiss banks were helping customers evade taxes, as disclosed by whistle blowers (eg [Birkenfeld](https://www.theguardian.com/business/2008/jun/29/ubs.banking)<sup>1</sup>) and leaks (eg Swiss leaks by [Falciani](https://www.spiegel.de/international/business/interview-hsbc-swiss-bank-whistleblower-herve-falciani-on-tax-evasion-a-911279.html)<sup>2</sup>). Examples of new transparency measures aimed at those hiding their offshore wealth

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<sup>1</sup> <https://www.theguardian.com/business/2008/jun/29/ubs.banking>

<sup>2</sup> <https://www.spiegel.de/international/business/interview-hsbc-swiss-bank-whistleblower-herve-falciani-on-tax-evasion-a-911279.html>

included the implementation of automatic exchange of financial account information. And while this, too, was useful, even this proved insufficient on its own. By 2023 countries had agreed on a new framework to also automatically exchange information on crypto-assets.

However positive these developments may have been, banking secrecy and other opaque strategies to hide assets from authorities could never be fully addressed as long as a more sophisticated strategy remained: corporate secrecy.

## **1.2 The strongest of all secrecy strategies: corporate secrecy**

Corporate secrecy is a key component of hiding or disguising three crucial elements of illicit financial flows from the rule of law: the origin, the movement and the destination of funds.

Let's suppose a corrupt official wants to hide a bribe they received. They could bury it in their backyard, but what good is a bribe if they can't spend it. Instead, they decide to "hide" the bribe by disguising it as legitimate income. They can do this by making the bribe look like it came from a legitimate business. To pull this off, they could create a company that pretends to provide some kind of service to the payer of the bribe. This disguises the origin of the bribe money as a payment for a service. Next, to be extra safe and avoid the purview of local financial regulators or the local tax administration, the corrupt official could create a company in a secrecy jurisdiction abroad and have this foreign company similarly pretend to provide and charge for some kind of service to his local company. This would allow the bribe money to be transferred from the local shell company to the foreign shell company abroad. Finally, the corrupt official could spend the bribe money by having their foreign company investing in local real estate. Information on the identity of the corrupt official wouldn't appear in any real estate registry.

By the end of this process, corporate secrecy will have enabled the corrupt official to hide the origin of the bribe money, to hide the movement it made out of the country, and hide the final destination of the bribe money, which ends up as acquisition of local real estate. Importantly, it's not just the bribe that has been hidden in this process. The corrupt official's ownership of a local real estate property has also been hidden, enabling the official to hide their true wealth from any public disclosure process required of government officials, to evade wealth taxes on their assets and to shield the property from any investigators or creditors in the future. Secrecy enables more secrecy.

The basic solution to corporate secrecy lies in identifying the owners of companies. A good source of information for doing just this was actually already available. Most commercial registries in countries collect information on those who directly own (hold the title to) companies and other legal entities. Such owners are shareholders or partners, the so-called "legal owners". Commercial registers in most countries make this information publicly available.

The collection and publishing of legal ownership data was not originally meant for preventing or investigating illicit financial flows, but for the well-functioning of markets. Investors and businesspeople simply need to know who they are doing business with.

But having your name registered with authorities and in the public domain for each company you own makes it near impossible to use your companies to hide bribes or facilitate other illicit financial flows without getting caught. So those bent on escaping the rule of law found ways to keep their names off commercial registers. This involved hiding their ownership of companies on paper by misusing bearer shares, using nominees to

register in their place, and, far more sophisticatedly, using complex ownership structures consisting of several layers of companies and entities spread around the world.

As a result, commercial registries have become a two-tier system: transparency for the vast majority of company owners, secrecy for the rich and powerful and those seeking to escape the rule of law.

In response, and for the specific purpose of preventing illicit financial flows, especially money laundering and tax evasion, countries' laws and international standards on corporate transparency started prohibiting or regulating the use of bearer shares and nominees. International standards also upgraded ownership requirements, by requiring that competent authorities have access to information on the beneficial owners of companies and other legal vehicles, meaning the individuals who truly own and control companies and other legal vehicles.

By 2023, international standards, notably those developed by the Financial Action Task Force, agreed that the best way to ensure availability and access by authorities to beneficial ownership information was to have a central (governmental) registry of beneficial owners. Although countries started working towards this goal, even this was not enough to counter more sophisticated actors and criminals. The final piece of the puzzle needed was public access to beneficial ownership information.

### **1.3 Public access as the catalyst for real change**

Having beneficial ownership information available is necessary but insufficient on its own to prevent illicit financial flows if a) not all stakeholders have access to this information, eg foreign authorities investigating a transnational crime), or if b) the registered information is incorrect or inaccurate.

The Panama Papers leak of 2016 (as well as subsequent leaks, such as Paradise Papers, Pandora Papers, etc) showed that the best way to secure enforcement of laws against illicit financial flows was to have public access to information. Similar to the earlier leaks and whistleblower revelations on banking secrecy, the corporate ownership leaks disclosed how enablers (like corporate service providers) were failing to fulfil their obligations and were in fact not undertaking proper due diligence. They were instead helping individuals hide their beneficial ownership of companies to escape taxes and other financial regulation laws. Authorities were either unaware or unable to detect non-compliance.

By contrast, the UK's publicly accessible beneficial ownership registry showed how powerful such public access could be: it allowed civil society organisations like Global Witness to [analyse](#)<sup>3</sup> the registered data and raise the alarm on some very serious inaccuracies and errors in the registered data.

This public access, either through leaks or public beneficial ownership registries, led to real political consequences, such as the resignation of Iceland's prime minister, as well as

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<sup>3</sup> Global Witness, *The Companies We Keep. What the UK's Open Data Register Actually Tells Us about Company Ownership*, 2018 <<https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-0/section-0>> [accessed 30 November 2018].

the ousting of other politicians in Mongolia, Pakistan and Spain.<sup>4</sup> There was a feeling that, through public access, there was finally no place for criminals and wrongdoers to hide.

## 1.4 Attempts to push back against the tide of transparency

The attempts by secrecy jurisdictions and enablers to thwart progress towards transparency did not wait until public access to beneficial ownership information became a reality. They started much earlier. However, none of their attempts seemed to work in stopping the movement towards transparency that would subject everyone to the rule of law.

Back in the early 2000s, when the OECD required countries to sign international agreements to exchange information, secrecy jurisdictions signed the minimum number of agreements necessary to not be “blacklisted”, establishing relations mostly among themselves. When the EU started discussing automatic exchange of information, Switzerland tried to push for its own version, known as the [Rubik agreements](#)<sup>5</sup>, that involved withholding taxes rather than exchanging information (to maintain anonymity). When global automatic exchange of information became a reality in 2017, secrecy jurisdictions [cherrypicked](#)<sup>6</sup> who they would be exchanging information with. When all countries were forced to automatically exchange banking information with each other<sup>7</sup>, enablers started promoting circumvention schemes (eg transferring accounts to countries not yet participating, golden visas, etc). In response, the OECD proposed mandatory disclosure rules on schemes to circumvent automatic exchanges<sup>8</sup> and identified risky golden visa schemes.<sup>9</sup>

On the corporate transparency front, secrecy jurisdictions kept resisting progress. In the EU (before Brexit), the UK pushed for trusts to be subject to fewer beneficial ownership requirements and disclosure than companies and legal persons were.<sup>10</sup> For instance, by 2015 under the EU 4<sup>th</sup> anti-money laundering Directive only trusts that generated tax consequences were required to register information. However, by 2018 the EU had amended its anti-money laundering directive and removed the “tax consequences” condition, and even required access to trust beneficial ownership information based on a legitimate interest.<sup>11</sup> For companies, the EU established public access to information. Many countries went even further, offering free online public access.

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<sup>4</sup> <https://www.icij.org/investigations/panama-papers/five-years-later-panama-papers-still-having-a-big-impact/>

<sup>5</sup> <https://taxjustice.net/2021/02/15/some-things-never-change-the-use-of-swiss-banks-by-crooks/>

<sup>6</sup> <https://taxjustice.net/2016/10/25/oecd-information-exchange-dating-game/>

<sup>7</sup> <https://taxjustice.net/2018/12/05/tax-justice-pushes-forward-at-oecd-global-forum/>

<sup>8</sup> <https://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.htm>

<sup>9</sup> <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>

<sup>10</sup> <https://time.com/4284625/u-k-uk-trusts-excluded-european-transparency-rules/>

<sup>11</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L0843>

## 1.5 A strategy that finally stuck: weaponising privacy for secrecy

After many attempts, enablers and secrecy jurisdictions finally succeeded in clawing back capacity for financial secrecy that had been lost. Instead of their past approaches of invoking technical issues or requesting specific exemptions and loopholes to benefit a few (eg less transparency for trusts; withholding taxes instead of exchanging information on foreign bank accounts), their strategy went for the heart. They claimed to be protecting the “privacy” of the masses against government. Their first major success culminated in the reversing of public access to beneficial ownership information in much of the EU after a ruling of the European Court of Justice of November 2022<sup>12</sup>. This success had a knock-on success in the British overseas territories, where the long past-due introduction of public access to beneficial ownership registers was further delayed.<sup>13</sup> Attempts to replicate this success are now also underway to curtail the automatic exchange of information between tax authorities by similarly weaponising privacy rights.<sup>14</sup> For the first time in a long time, a serious threat has emerged to undo years of hard won progress on transparency – the only aim of which has been to ensure that all individuals equal before the rule of law.

## 2. Dismantling the weaponisation of privacy

Privacy and secrecy may seem to have a lot in common, but it’s how they differ that really matters. They both entail “others” not knowing personal information about an individual, but their purposes are quite distinct. Secrecy is the act of concealing information from others. Privacy is the state of being not observed by others. Secrecy involves to intentionally keep things from others, things which may be very important to or even inherent to others. Privacy is a right to keep that which is inherently separate from others that way.

Privacy is a fundamental human right. It is related to the self-determination of individuals, allowing them to have autonomy over their own decisions and activities, preventing intrusions from governments, companies or other individuals. It covers their physical space, communications and especially personal information relating to issues around their health, sexual orientation, religion etc. A cornerstone of this right to privacy is the right to protection of personal data, to give individuals control over the collection, processing, use and sharing or disclosure of their personal information.

Privacy has become especially pertinent in modern times with smartphone apps, where different scandals have revealed how users’ personal data - including their location, online

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<https://curia.europa.eu/juris/document/document.jsf?jsessionId=DF78F16D186F432C0A7103BB1F9B7545?text=&docid=268059&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4203165>

<sup>13</sup> <https://caymanfinance.ky/2023/11/27/cayman-islands-enhances-and-consolidates-beneficial-ownership-legislation/>

<sup>14</sup> [https://taxpolicy.org.uk/2024/03/08/secret\\_campaign/](https://taxpolicy.org.uk/2024/03/08/secret_campaign/)



activity, connections and purchases - are sold for marketing purposes, or even for more nefarious purposes like influencing elections. Privacy also relates to dignity and honour, especially when personal photos of users are disclosed and shared, or their sexual orientation is made public without consent. Finally, privacy may be directly related to freedom, personal integrity and the right to life, as individuals may fear for their own safety if their personal information falls into the wrong hands.

All individuals should rightly care about their privacy and the protection of their personal data. Crucially, beneficial ownership transparency does not necessarily affect these privacies, despite attempts by secrecy enablers to frame beneficial ownership transparency as directly opposed to privacy.

Many citizens, privacy advocates and experts are fearful about any attempts by the state or third parties that could affect their right to privacy. These are legitimate and understandable concerns. The problem is that these legitimate concerns are being weaponised by secrecy enablers to promote their own interests in maintaining a system of financial secrecy that makes it possible for the rich and powerful to remain above the law. Perhaps most telling, the overwhelming reaction from advocates and NGOs to the European Court of Justice's ruling on beneficial ownership was not praise but outrage.<sup>15</sup>

This chapter explores various arguments that seek to weaponise privacy to make a case against beneficial ownership transparency. These arguments fall into three categories: 1) people's rights to privacy and data protection, (2), rights that are put at risk for lack of public access, and finally (3) increased risk of harm and crime.

## **2.1 Arguments about people's rights to privacy and data protection**

### **2.1.1 Rights to privacy and personal data protection**

#### **The argument around intrusion of privacy is grossly exaggerated**

Claiming that public access to beneficial ownership violates privacy is a bold statement meant to elicit an emotive response. In reality, the issue is much more nuanced, considering what "private" information is actually disclosed under beneficial ownership laws, and the small number of beneficial owners who actually seem to be concerned about this disclosure in practice.

Only information about "property" is affected, not potentially more sensitive aspects meant to be protected by the right to privacy.

When claiming that beneficial ownership transparency affects privacy (in general), one could think of the most personal and intimate things about an individual being affected: their health records, religion, sexual orientation, political affiliation, etc. These aspects are so intricately tied to equality, self-determination and dignity, that they should rightly be protected by privacy considerations. In fact, most countries also have laws to prohibit discrimination based on these factors. However, none of this type of sensitive information

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<sup>15</sup> <https://www.transparency.org/en/press/global-civil-society-organisations-concerned-about-cjeu-ruling-on-beneficial-ownership-transparency>

about beneficial owners is included in beneficial ownership registries (not confidentially even for authorities).

Instead, beneficial ownership transparency involves only information relating to a person's interests in legal entities like companies and trusts, without any disclosure of unduly personal information.

One way to put into perspective the exaggeration of privacy concerns is data on how beneficial owners have actually responded to the transparency measures in practice. Many countries allow for information on beneficial ownership registers to be excluded from public access, where individuals are allowed to show on a case-by-case basis that public disclosure of their information would put them at risk. In practice, very few individuals have asked for their beneficial ownership information to be not disclosed: of the more than one million companies incorporated in the UK, only 270 beneficial owners have ever requested this exception<sup>16</sup>, suggesting that the majority were not concerned about the public disclosure of their information.

### **Beneficial ownership information comes from the public sphere, not the private sphere**

Few people would consider incorporating, running and owning a business to be something a person does in their private time. In fact, people often use the phrase “private time” to refer to leisurely time away from work. Doing business by design involves providing a good or service to another person, and places where business and work takes place are typically seen as public places or bear legal duties that are not required from private residences. In some countries, employers are still legally responsible for making sure employees working remotely from home are working in a safe environment.

Perhaps even fewer people would feel comfortable signing business deals with a person they've never met or spoken to, or with a person who actively hides their identity. Being able to know the identity of the owner of a company is so important for business and the well-functioning of markets that most countries' commercial registries give public access to information about companies' legal owners by default. This is intended to allow potential customers, investors and business partners to check the reputation and the solvency of the individuals owning and running those companies. In most cases this works, since the vast majority of business owners do not engage in financial secrecy.

Nonetheless, secrecy enablers have successfully argued that beneficial owners have a right to keep information about the companies they set up, run and own private.

The right to privacy is often thought about as a right to be not observed or to be free from public attention. This tends to go hand in hand with what is often called the “private sphere” and “public sphere”, and generally the thinking goes that a person is afforded different privacy rights in these spheres, with these rights typically curtailed the more a matter relates to the public sphere. For example, an individual's home is typically considered part of the “private sphere” and so a person has the freedom to do near anything they wish to within the confines of their four walls. A public train is considered part of the “public sphere” and many of the things that would be perfectly acceptable within one's home would land a person in serious trouble with the law if they were done on a train.

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<sup>16</sup> *Don't Take It on Trusts. The Case for Public Access to Trusts' Beneficial Ownership Information in the EU Anti-Money Laundering Directive* (23 February 2017)  
<[https://www.globalwitness.org/documents/18781/Dont\\_take\\_it\\_on\\_trust.pdf](https://www.globalwitness.org/documents/18781/Dont_take_it_on_trust.pdf)>.

In practice, this private-public distinction is not always so clear cut. Some rights to certain privacies always apply, whether one is at home or on a train. Certain activities like working remotely from home blur the distinction between the two. Importantly, the rule of law always applies in both spheres. The privacy and sanctity of the family home may be considered sacred to many people, but the state could, for example, intervene to safeguard children.

When it comes to beneficial ownership transparency, however, the private-public distinction is actually clear-cut. By design, companies and other legal entities exist as external entities separate from the individuals who incorporate them. Unlike a sole trader, a company is its own separate legal person and so exists separately from its beneficial owners and outside the private sphere of its beneficial owners. A company can only come into being by invoking the laws of a country or jurisdiction, and can only continue to exist by virtue of those laws, which are separate from the privacy of any one individual (which are inherent to being born).

Through the simple act of incorporating a company or creating a trust, individuals enjoy the benefits of [limitation of liability](#)<sup>17</sup> or even [immunity from liability](#)<sup>18</sup>, respectively. This means if the company owes debts it cannot pay, its owners' private assets, like their home, are shielded from liability. This legal protection is one of the reasons why entrepreneurs choose to incorporate their businesses instead of running their businesses under their own name as an individual, in which case, the owner's private assets can be claimed by their business creditors.

Going back to a common definition of privacy as the state of not being observed by others, or the state of being free from public attention, when a person incorporates or chooses to own a company or trust, they invoke a legal protection to have any rights they have over the company or trust be legally and publicly *observed* by others as separate from their private assets and life. This legal right to both ownership and liability can only exist when it is observed in the public sphere.

In other words, beneficial ownership of companies and trust is not a private matter but rather an inherently public one. It therefore follows that beneficial ownership information is not information that derives from the private realm of a person's life but from the "public sphere" the person chooses to engage with and invoke legal rights under. And so, keeping beneficial ownership information from the public is not a matter a privacy – it is not a matter of keeping that which is inherently private free from observation by others – but a matter of secrecy. It is the act of keeping from public observation that which can only come into existence by being in the public sphere.

### **Public access to beneficial ownership information helps hold public officials to account, preventing them from engaging in illegal activities through nominees**

Secrecy promoters sometimes argue that only public figures like members of parliament or public officers should be required to disclose information relating to their assets and holdings.

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<sup>17</sup> Knobel, Andres, *Rethinking Limited Liability. Beneficial Ownership Transparency to Reform the Liability System* (November 2021) <[https://taxjustice.net/wp-content/uploads/2021/11/Limited-liability-and-BOT\\_Final.pdf](https://taxjustice.net/wp-content/uploads/2021/11/Limited-liability-and-BOT_Final.pdf)> [accessed 28 April 2023].

<sup>18</sup> Andres Knobel, *Trusts: Weapons of Mass Injustice?* (2017) <[www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf](http://www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf)> [accessed 2 May 2022].

There are two problems with this approach. First, as described by the 2022 World Bank report “[Signatures for sale: How nominee services for shell companies are abused to conceal beneficial owners](#)”<sup>19</sup> there is widespread (ab)use of nominees, either professional or de facto (eg based on family relationships or coercion). A public officer could hold all their entities through nominees, who themselves would avoid public scrutiny because they are not public figures.

The second issue lies in enforcement. If an individual fails to declare that they are a public figure (similar to a person failing to declare that they are a politically exposed person when opening a bank account), there would be no way to determine that they are breaching the law and enjoying undue secrecy. This risk is especially prevalent given the few resources spent on verification, or where the beneficial owner refers to a foreign public official who is not known to local authorities.

### **Beneficial ownerships laws can balance needs and risks just like personal data protections laws do**

Data protection laws recognise the needs and risks of processing personal data. Rather than impose a complete prohibition on the processing of data, they usually specify what data can be collected, when it can be collected and what it can be used for. The aim is to protect against risks while making sure legitimate needs for personal data are met.

For instance, article 8 of the EU Charter of Fundamental Rights states that personal data must be “processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law”.

Given that corporate law in many countries requires ownership information to be disclosed in a public commercial register when a legal entity is set up, it could be easily argued that a person who sets up an entity or acquires ownership or control over it, is giving their tacit consent to publicly disclose the information about their interest in such company. To make it more consistent with the practice on data protection rights, consent could explicitly be required in the future as a pre-condition for setting up a company, or at least to obtain the benefit of limited liability. The consent would cover the public disclosure of the minimum information that is needed to identify and pinpoint the beneficial owner, such as a full name, month and year of birth, and an address (not necessarily where the beneficial owner lives, but that of their lawyer or business) and any other identity information that is already publicly available in the jurisdiction (eg the tax identification number or national ID number, in those countries where this is public information, like in Argentina).

Alternatively, beneficial ownership law could be elaborated to broaden the purposes of collecting and disclosing beneficial ownership information, including all [relevant uses and purposes](#)<sup>20</sup> (eg the fight against money laundering and other illicit financial flows, as well as the well-functioning of democracy, the business environment, etc). The law should specify how beneficial ownership information could legally be used and should sanction misuses (eg commercial use or fraud).

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<sup>19</sup> Daniel Nielson and Jason Sharman, *Signatures for Sale: How Nominee Services for Shell Companies Are Abused to Conceal Beneficial Owners* (2022) <<https://star.worldbank.org/publications/signatures-sale-how-nominee-services-shell-companies-are-abused-conceal-beneficial>>.

<sup>20</sup> Andres Knobel, *Uses and Purposes of Beneficial Ownership Data* (2023) <<https://taxjustice.net/wp-content/uploads/2023/11/Uses-and-purposes-of-BO-Data-briefing-14-Oct-2.pdf>> [accessed 22 December 2023].

## 2.1.2 Proportionality of public access to beneficial ownership information in relation to privacy

One way to analyse the applicability of public access vis-à-vis the right to privacy is to consider the test of its legality, necessity and proportionality. In addition, it is relevant to ensure that the policy or law is not in itself arbitrary.

### The test of legality, necessity and proportionality

The Engine Room, Open Ownership and The B Team published a report in 2019 entitled [Data protection and privacy in beneficial ownership disclosure](#)<sup>21</sup>. It analysed public access in relation to privacy, considering the three-way test of (a) the legality of the measure (if a law authorises it), (b) the necessity (if the measure is needed to achieve a legitimate goal) and (c) the proportionality (if there are safeguards, limitations and exceptions). A [blog post](#)<sup>22</sup> by the report's authors summarised the findings and concluded that in the case of public access to beneficial ownership, all three tests can be met:

- **Legality:** “The GDPR sets out mandatory requirements for lawful processing... and clarifies that processing of data is lawful if one or more of three conditions applies:(1) the subject of the data has consented; (2) the processing is necessary for the performance of a contract to which the subject is a party; or (3) the processing is necessary for compliance with a legal obligation. The relevant condition in the case of public beneficial ownership registries is the third one. By definition, if a country adopts a law requiring legal entities, as a condition of incorporation or registration, to provide beneficial ownership information, then this third condition is satisfied (emphasis added).
- **Necessity:** “There are sufficiently compelling arguments that public registries have substantial advantages to satisfy this prong of the inquiry. A public register allows for greater oversight by civil society and the public, leveraging local knowledge and more sets of eyes to identify errors and red flags. Public registers also make it easier for companies to conduct due diligence on their commercial counterparts. Furthermore, public registers may have advantages for government enforcement authorities beyond those that would be achieved by registries to which government authorities alone had access”.
- **Proportionality:** “Proportionality can be achieved by ensuring the use of various safeguards, limitations, and exceptions. All reasonable public register regimes must limit the information collected and disclosed to that which is necessary to identify the true beneficial owners, rather than additional information (such as residential addresses) which potentially identifies family members or threatens security. Public registers may also ensure proportionality by... mechanisms for individuals with legitimate concerns regarding safety to petition for anonymity (a mechanism that already exists in the UK register).”

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<sup>21</sup> Adriana Edmeades-Jones, Tom Parker and Tom Walker, *Data Protection and Privacy in Beneficial Ownership Disclosure* (2019) <[https://openownershiporgprod-1b54.kxcdn.com/media/documents/oo-data-protection-and-privacy\\_Print.pdf](https://openownershiporgprod-1b54.kxcdn.com/media/documents/oo-data-protection-and-privacy_Print.pdf)> [accessed 13 July 2023].

<sup>22</sup> <https://www.openownership.org/en/blog/guest-post-evaluating-the-personal-privacy-objections-to-public-beneficial-ownership-registries/>

## Beneficial ownership laws are not “arbitrary”

The [Universal Declaration of Human Rights](#)<sup>23</sup> (1948) states in article 12 that “no one shall be subjected to *arbitrary* interference with his privacy” (emphasis added). There are at least two possible meanings of “arbitrary”: (i) unrestrained and autocratic in the use of authority, for instance because it is discriminatory, or (ii) as lacking a relationship between means and ends, suggesting that it is without any reason or justification.

As for the first meaning, it would be hard to argue the “arbitrariness” of a provision that applies equally to all, given that beneficial ownership requires the disclosure of the identity of all individuals who beneficially own any of the millions of companies or trusts, regardless of their age, gender, nationality or occupation.

With regard to the “reasonableness” requirement, access to beneficial ownership is a necessary means to achieve the end of fighting money laundering and other financial crimes, among many other uses. For instance, a recent [statement by the FBI](#)<sup>24</sup> neatly summarises many of the examples where beneficial ownership information was crucial in revealing wrongdoings: kleptocracy (eg 1MDB’s billions of dollars stolen from the Malaysian sovereign wealth fund), sanctions evasion (eg for Iran’s ballistic program), child prostitution and human trafficking, health care fraud (where Medicare was defrauded of more than US\$ 1 billion), investment fraud, as well as drug trafficking and money laundering by the Los Zetas Mexican cartel.

Requiring transparency of information on beneficial ownership is not arbitrary – it is a critical tool in curbing abusive tax practices and illicit financial flows.

### 2.1.3 Finding the right balance between rights, power and crime prevention

#### Beneficial ownership laws are not “disproportionate”

The fact that beneficial ownership transparency applies to “all” beneficial owners, rather than the “few bad apples” engaging in wrongdoing doesn’t make it disproportionate.

As described in the paper [why beneficial ownership registries aren’t working](#)<sup>25</sup>: most administrative processes involve an “all” approach for preventive purposes. In many countries, all individuals must obtain a national ID, which may include providing their date of birth, address, signature and fingerprints. This does not mean that all individuals are regarded as potential criminals. This is simply information that the state needs to fulfil its obligations, including ensuring economic fairness, planning and budgeting for social services, identifying missing persons, the prevention of crime etc.

In many jurisdictions, all taxpayers must file tax returns, because it is how tax authorities ensure and verify compliance. In addition, having information on all taxpayers, both honest and not, allows authorities to compare them, and to find patterns or red flags to ensure a level playing field where everyone pays their fair share. All customers must provide a financial institution with information for the know-your-customer due diligence

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<sup>23</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>24</sup> <https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies>

<sup>25</sup> Andres Knobel, *Why Beneficial Ownership Frameworks Aren’t Working - and What to Do about It* (December 2023) <<https://taxjustice.net/wp-content/uploads/2023/12/Why-beneficial-ownership-registries-arent-working-Tax-Justice-Network-Dec-2023.pdf>> [accessed 21 February 2024].

procedures, not because they are would-be money launderers but in order to apply proper checks.

Public access to beneficial ownership information affects the most sophisticated and powerful individuals, not vulnerable ones - the latter may actually benefit to the extent that beneficial ownership transparency ensures that everyone will be subject to the rule of law.

Many human rights organisations worry about the potentially coercive and abusive exercise of power by states against minorities, migrants or political opponents. In fact, many vulnerable groups would not be negatively affected by beneficial ownership transparency, but would rather benefit from it. The most vulnerable individuals are typically less likely to own and control companies and trusts, and so would have nothing to disclose under beneficial ownership laws. At the same time, most individuals who own companies use very simple structures, either because they have nothing to hide or because they cannot afford enablers to set up offshore structures. In such case, their information is likely already publicly available in the commercial registry.

The only ones affected by beneficial ownership transparency are those powerful and sophisticated individuals who use enablers to set up complex offshore structures, and who could potentially abuse secrecy to escape the law if there is no public access to beneficial ownership information. "Affecting" the secrecy of these powerful individuals may be a reasonable measure to benefit the less powerful ones by ensuring that everyone is subject to the rule of law.

### **Beneficial ownership laws are simple crime prevention measures that do not violate the principle of good faith or the presumption of innocence**

Secrecy promoters refer to the presumption of innocence, arguing that the mere incorporation of a company cannot be construed as the potential criminal activity of an individual or an interpretation that they are going to act in bad faith, both of which could justify providing broad public access.

We disagree that the presumption of innocence and good faith is negatively affected by public access to information. Crime prevention is just as important as its prosecution.<sup>26</sup> There is no need to wait until a criminal act or wrongdoing happens in order to act. Crime prevention does not affect the presumption of innocence. Most legal frameworks put a lot of emphasis on prevention, not because they consider all individuals to be future criminals or victimisers but to prevent the few who might be so inclined from becoming such.

All drivers need to obtain a licence to prove they know how to drive, where their sight and hearing is also tested. Seatbelts are compulsory. Drinking alcohol and the use of cell phones while driving is prohibited. Cars have licence plates so that they can be identified. These requirements do not infringe on the presumption of innocence, even though all of this information would be considered relevant in case of a car accident. By the same token, public access to information on beneficial owners to check that there aren't any red flags (similar to checking a driver's sight and hearing) isn't an infringement of the presumption of their innocence, and the mere existence of this kind of public access to information doesn't unduly impugn anybody's good faith or honesty.

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<sup>26</sup> This argument reiterates the argument presented in the paper "[Why beneficial ownership registries aren't working](#)" because it also applies in this context.

## No right is absolute

Even if some aspects of the right to privacy were affected by public access to beneficial ownership information (as claimed by secrecy supporters), it is a well-respected principle that no right is absolute. Focusing exclusively on privacy would disregard other human rights that are protected by public access to information (eg right to information) as the next section will show.

## 2.2 Rights that are put at risk by a lack of public transparency

### 2.2.1 Right to information

Closing down access to beneficial ownership registries directly affects the human right to information, which is enshrined in article 19 of the Universal Declaration of Human Rights. It is considered an integral part of the right to freedom of expression, which allows for a free and open society.

The right to information suggests that public access to beneficial ownership information should prevail over privacy rights. For instance, the 2016 [Principles on Right to Information Legislation](#)<sup>27</sup> – endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression - notes the following:

*“All individual requests for information from public bodies should be met unless the public body can show that the information falls within the scope of the limited regime of exceptions. A refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test.”*

The three-part test to exempt information from being publicly disclosed requires proving that the information must relate to a legitimate aim as provided for in international law, that disclosure would threaten to cause substantial harm to that aim; and the harm must be greater than the public interest in having the information.

While privacy is a legitimate aim in international law (test 1), the harm is unlikely to ever be a “substantial” (test 2) because most beneficial ownership registries offer an exemptions process that would allow it to refrain from disclosure if a real risk of harm can be proved. Finally, harm to privacy (that can be reduced by particular exemptions to public disclosure) would likely not be greater than the public interest in having the information (test 3). The notion of “public interest” includes most of the goals of public beneficial ownership information: anti-corruption, improving accountability for the running of public affairs in general and the use of public funds in particular; exposing serious wrongdoings, including human rights violations, other criminal offences, abuse of public office and deliberate concealment of serious wrongdoing; and benefiting public health or safety. It is difficult to see how a single individual’s spurious reliance on privacy provisions can override the interests of broader society in knowing that illicit financial flows and abusive tax practices are being detected and addressed.

In conclusion, the right to privacy does not pass the three-way test used to allow exemptions from the right to information. In other words, beneficial ownership

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<sup>27</sup> *The Public’s Right to Know: Principles on Right to Information Legislation* (2016)  
<[https://www.article19.org/data/files/RTI\\_Principles\\_Updated\\_EN.pdf](https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf)> [accessed 10 October 2023].



information held by government authorities cannot be exempted from the right to access to information.

### 2.2.2 Economic human rights (eg health, housing, education)

Public access to beneficial ownership information hasn't always existed, nor was it the default option. It was implemented in response to several scandals relating to illicit financial flows, including major money laundering and tax abuse schemes. By closing down public access to beneficial ownership registries, secrecy-touted-as-privacy is reinforced, but in practice most other human rights are endangered even more.

Closing down access to beneficial ownership registries prevents relevant stakeholders from gaining timely and effective access to information, enabling corporate secrecy and thus illicit financial flows. This directly affects government revenues – which are needed to fund other human rights.

Corruption, and tax abuse cost countries US\$169 billion a year in taxes evaded by wealthy individuals, and US\$311 billion a year in direct tax revenues lost through corporate tax abuse, according to the Tax Justice Network's 2023 [State of Tax Justice report](#)<sup>28</sup>. This rip-off of state revenues prevents delivery of many basic human rights. Corporate secrecy and the abusive tax practices it fosters indirectly affects the rights to human dignity, life, education, health care, [environmental protection](#) and consumer protection, because it results in the lack of funds to finance them.

### 2.2.3 Right to equality before the law

Corporate secrecy and the related lack of public access to beneficial ownership data, breach the human right of equality before the law, and rights against non-discrimination.

Most companies have very simple structures. In the UK, for instance, 80 per cent of companies are either owned directly by natural person shareholders or by one other UK company whose shareholder are natural persons<sup>29</sup>.

For companies with simple structures that are directly owned by natural persons, in principle the shareholder is both the legal owner *and* the beneficial owner, because they ultimately own and control the company. Consequently, for entities with simple structures (ie the vast majority of entities), beneficial ownership information has been publicly available for a long time in the commercial registry.<sup>30</sup>

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<sup>28</sup> Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2023* (23 August 2023) < <https://taxjustice.net/wp-content/uploads/SOTJ/SOTJ23/English/State%20of%20Tax%20Justice%202023%20-%20Tax%20Justice%20Network%20-%20English.pdf> > [accessed 7 May 2022].

<sup>29</sup> The Global Forum 2018 peer review report on the UK informed that “an analysis from the current PSC Register [beneficial ownership register] shows that approximately 80 per cent of companies are directly owned by natural persons or by companies whose immediate shareholders are natural persons and are managed by the same persons.” (page 45, available at: [https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-united-kingdom-2018-second-round\\_9789264306189-en](https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-united-kingdom-2018-second-round_9789264306189-en)).

<sup>30</sup> Although the passing of time doesn't necessarily make it a valid policy, we are not aware of any attempt to restrict access to shareholder information based on privacy concerns, especially given the business purpose of shareholder information (eg to know that someone selling shares in a company is the actual owner of those shares).

Where public access is restricted, the only entities enjoying secrecy are those that engage in [complex ownership structures](#)<sup>31</sup>, where the beneficial owner can hide behind offshore shell companies incorporated in secrecy jurisdictions, and whose shareholder information is not publicly available.

Closing down public access to beneficial ownership registries (and in the process making it very difficult, or impossible, for local and foreign authorities to access the data) has no effect on most local companies, but creates secrecy for those individuals who deliberately create complexity and hide behind offshore entities. It tilts the level playing field toward unfair competition, and undermines the right to equality before the law.

## **2.3 Arguments about increased risks of harm and crime**

### **There is no evidence of beneficial ownership transparency enabling kidnappings**

Public online free access to beneficial ownership information has been available in several countries including Ecuador, Denmark, the UK and Ukraine for more than seven years. There is no evidence of crime or kidnappings related to information that was available in public beneficial ownership registries.

The fear that public beneficial ownership registries would lead to kidnappings suggests that it would reveal how wealthy an individual is and where they live. However, the data on beneficial ownership registries does not necessarily reveal this information, as explained below. In addition, as expressed above, where a beneficial owner can prove that they would be at risk, their information would be removed from public access under standard exemption clauses.

### **Beneficial ownership registries say nothing about a person's wealth**

Beneficial ownership information of companies and trusts do not necessarily disclose the wealth or net worth of an individual. Being the owner of a company gives no presumption or indication of wealth - the entities owned by the beneficial owner may be shell companies without any assets. Even if the entity does hold luxury assets, there is no way of knowing this, because beneficial ownership registries do not disclose details about an entity's assets.

The wealth of individuals can far more readily be determined through many other publicly available sources. Many individuals themselves (including the plaintiff behind the contentious ruling by the EU Court of Justice) willingly and freely disclose a trove of personal data and indications of their wealth on social media (eg their business dealings, vacations, clothes, jewellery, cars, etc). Publications such as Forbes regularly publish and update list on the world's wealthiest billionaires. A simple Google search will immediately reveal far more information about a wealthy individual's net worth, often based on sources already in the public domain, than any beneficial ownership register can come close to.

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<sup>31</sup> Andres Knobel, *Complex Ownership Structures: Addressing the Risks for Beneficial Ownership Transparency*, February 2022 <<https://taxjustice.net/wp-content/uploads/2022/02/Complex-ownership-chains-Reduced-Andres-Knobel-MB-AK.pdf>> [accessed 9 November 2022].

## **Beneficial ownership transparency does not necessarily disclose where individuals live**

While some beneficial ownership legal frameworks require a residential address to be registered, this information is not necessarily disclosed if the beneficial owner also reports a service address (where they work, or their lawyer's address where they receive official notifications).

## **There is no evidence of beneficial ownership transparency enabling identify theft – by design, it actually protects against it**

Stolen identities are a common problem, as are individuals who rent out their details or open bank accounts for others<sup>32</sup>. Personal data is already available online, disclosed when someone downloads apps, or obtained through hacking, and then illegally sold on the darknet. It is precisely the option of having public access to beneficial ownership registries that allows an individual to easily check whether their details have illegally been used to set up a company.

While governments should undertake many more checks before companies are allowed to be created, even for a well-resourced country like the UK this is still not the case, despite details around the errors and inaccuracies of data submitted to the UK's beneficial ownership register having been known since at least 2016. Public access is precisely what allows citizens to counterbalance the lack of state action.

## **Beneficial ownership transparency reduces risk of harm to journalists**

An online public beneficial ownership register which doesn't require user registration and doesn't track what each user is searching for, is the best way to protect journalists and activists investigating dangerous criminals.

By contrast, registries which depend on users having to prove a "legitimate interest", especially if they need to reveal their own personal data (eg full name, residential address, official identity number) run the risk of criminals being tipped off about the identity of the person searching for their information. The risk to journalists disincentivises them from requesting access to beneficial ownership information. There have been tragic and appalling cases in the EU and beyond where journalists were killed as a result of their investigations, including in [Malta](#)<sup>33</sup>, [Mexico](#)<sup>34</sup> and [Slovakia](#)<sup>35</sup>. By restricting public access, journalists are likely to be making fewer requests to access information to better safeguard their safety or likely to be more at risk of harm and even murder, in the process undermining the rule of law, democracy and the fight against financial crimes.

## **Beneficial ownership transparency enables the media and civil society to report crime and support crime fighting agencies**

Secrecy promoters suggest that public access does not meet the "necessity" test because only authorities are tasked with fighting crimes, while regular citizens have no obligation or ability to do so.

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<sup>32</sup> <https://www.fbi.gov/how-we-can-help-you/safety-resources/scams-and-safety/common-scams-and-crimes/money-mules>

<sup>33</sup> <https://www.bbc.com/news/world-europe-63261744>

<sup>34</sup> <https://articulo19.org/periodistasasesinados/#:~:text=De%202000%20a%20la%20fecha, posible%20relaci%C3%B3n%20con%20su%20labor.>

<sup>35</sup> <https://www.occrp.org/en/a-journalists-undying-legacy/four-years-after-journalists-murder-slovakia-has-changed>

While in principle authorities are the main actor responsible for fighting crime and enforcing laws, in most countries authorities are at best under-resourced or – worse – lack independence.<sup>36</sup> In more extreme cases, authorities may be deliberately negligent or complicit in protecting certain criminals<sup>37</sup>. For instance, statistics published by the EU Commission showed that some EU countries had not so much as opened the data on their citizens' foreign income<sup>38</sup> that had been sent to them by other foreign EU competent authorities (pursuant to the first EU Directive on Administrative Cooperation, aka DAC 1.)

Many of the leaks, eg Swiss Leaks, Panama Papers, Paradise Papers, etc showed that authorities hadn't taken any action, either as a result of political bias or a lack of information, until the leaks gave public access to information and created public pressure.<sup>39</sup> In other cases, it was precisely exposure and pressure from the media and civil society organisations that resulted in countries enforcing sanctions, for example against Russian oligarchs in relation to the war in Ukraine.<sup>40</sup>

### **Beneficial ownership transparency helps hold governments and authorities accountable**

Although authorities should be the ones enforcing laws, public access to information allows the general public to confirm whether or not this is actually happening.

Thanks to public access in the UK, the civil society organisation [Global Witness](#) was able to confirm the inaccuracy of registered information in 2016. For instance, that:

*“...more than 335,000 companies declare they have no beneficial owner... More than 9,000 companies are controlled by beneficial owners who control over 100 companies; 328 companies are part of circular ownership structures, where they appear to control*

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<sup>36</sup> For instance, the EU Report on the inquiry into money laundering, tax avoidance and tax evasion (2017/2013(INI)) found among others: “the differing structures across the EU and the fact that they are not sufficiently equipped with personnel to cope with their tasks, including examining the increasing number of STRs driven by new legislation, and that they can only deal with a fraction of the problem; concludes that Member State institutions in charge of implementing and enforcing rules as regards tax fraud and money laundering need to be entirely independent from political influence; concludes that it is necessary to ensure that investigations carried out by FIUs are followed up through criminal investigations by the police if the situation so warrants, and stresses that otherwise inaction by the police has to be considered maladministration; regrets that in many cases FIUs are politically biased” (<https://www.europarl.europa.eu/cmsdata/131460/2017-11-08%20PANA%20Final%20Report.pdf>).

<sup>37</sup> See for instance a report by [Transparency International](#): “In countries like Honduras (23), Guatemala (24), Mexico (31) and Peru (36), law enforcement and corrupt officials collaborate with criminal gangs or accept bribes in exchange for turning a blind eye on their activities. Journalists have also documented the influence that organised criminals wield over candidates and politicians, financing electoral campaigns or even running for public office themselves.” (available at: <https://www.transparency.org/en/news/cpi-2022-corruption-fundamental-threat-peace-security>); or the article by The Guardian “[Organized crime and corrupt officials responsible for Mexico’s disappearances, UN says](#)”: “In Mexico’s most notorious case of enforced disappearances in recent years, independent investigators recently found the armed forces knew that 43 trainee teachers who disappeared in Guerrero in 2014 were being kidnapped by criminals, then hid evidence that could have helped locate them. No one has yet been convicted, and investigators have been blocked from even interviewing the military” (available at: <https://www.theguardian.com/world/2022/apr/12/organized-crime-corrupt-officials-mexico-enforced-disappearances-un>).

<sup>38</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0844&from=EN> (described here: <https://taxjustice.net/2018/12/20/how-to-assess-the-effectiveness-of-automatic-exchange-of-banking-information/>)

<sup>39</sup> For instance, the EU Report on the inquiry into money laundering, tax avoidance and tax evasion (2017/2013(INI)) found among others: “for most of the Member States that the Committee visited with a fact-finding mission, inquiries were started after the Panama Papers revelations;... Notes that over 20 competent EU banking supervisory authorities took supervisory action directly as a result of the publication of the Panama Papers” (<https://www.europarl.europa.eu/cmsdata/131460/2017-11-08%20PANA%20Final%20Report.pdf>).

<sup>40</sup> <https://www.occrp.org/en/rotenberg-files/leaked-emails-reveal-how-putins-friends-dodged-sanctions-with-help-of-western-enablers>

themselves; ... 345 companies have a beneficial owner who is a disqualified director; 7,848 companies share a beneficial owner, officer or registered postcode with a company suspected of having been involved in money laundering; more than 208,000 companies are registered at a company factory”.<sup>41</sup>

The same public access to the UK beneficial ownership register has allowed expert [Graham Barrow](#) to confirm more than six years later that many of these errors and frauds continued to exist. For instance, as described by a September 2023 [BBC article](#):

*“At least 80 bogus companies have been registered to properties on the street - 14 of them in the past week. Each business purports to be involved in selling clothes and has a single company officer invariably described as an “entrepreneur” who lives in either Italy, Georgia, Germany, France or Morocco. The addresses given for these “entrepreneurs” are sometimes real, sometimes just a general street name or unlikely dwellings, such as an empty building lot in Morocco or a religious meeting hall in rural France.”*<sup>42</sup>

Transparency International was also able to confirm, thanks to public access to information, that most EU countries were failing to comply with the EU anti-money laundering directive, eg in respect of capturing the month and year of birth, and that two thirds of German companies had failed to submit any beneficial ownership data at all.<sup>43</sup>

Public access to beneficial ownership data democratises power.

Information is power, especially if that information remains secret. Public access to beneficial ownership information is about rebalancing power. It is about obtaining information on surveillance companies that can hack into a person’s mobile phone (used against political opponents and journalists), on companies infiltrated by syndicates, on entities anonymously donating money to political parties, on tax evaders, etc. It is part of how the public re-establishes accountability of the political decision-making process and recovers trust in public institutions.

## 3. Arguments about who should access beneficial ownership information

### 3.1.1 Who needs access to beneficial ownership information?

As described in the paper on [uses and purposes of beneficial ownership](#), a multiplicity of stakeholders need and use beneficial ownership data for multiple different purposes. These include the fight against corruption (eg to identify conflicts of interest, the payment of bribes, insider trading); the fight against money laundering (to identify schemes, to perform customer due diligence and to recover assets); to tackle tax abuse (including personal income tax, capital gains tax, inheritance tax, wealth tax, round-tripping, dividend tax); to ensure a good business environment (eg to know who one is doing business with and investing in, to prevent insolvency and reputational risk); to protect democracy (eg

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<sup>41</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/>

<sup>42</sup> <https://www.bbc.com/news/uk-england-essex-66773673>

<sup>43</sup> Fraiha Granjo, Maritini and Sipos, *Beneficial Ownership Registers in the EU: Progress so Far and the Way Forward*, 20–24.

financing of political parties, identifying bots and fake news); to measure inequality; as well as to protect against someone nefariously hiding assets (eg in divorce cases).

Data from the UK register at Companies House - which contains beneficial ownership information - was accessed over 12 billion times between 2021 and 2022<sup>44</sup>, suggesting that access to information is not only used by tax authorities and financial intelligence units.

Importantly, while local access to local data is important, living in a globalised world with transnational crime, it is not enough to be able to access beneficial ownership information on local registers alone - foreign stakeholders may well have the same legitimate needs.

Consequently, stakeholders who need access to beneficial ownership information include:

- Authorities: tax authorities, financial intelligence units, anti-corruption agencies, law enforcement, prosecutors, financial market regulators, anti-trust agencies, procurement agencies, election supervisors, etc.
- Financial institutions and professionals subject to rules around anti-money laundering and combatting the financing of terrorism: banks, insurance companies, investment entities, casinos, brokers, notaries, lawyers, corporate service providers, accountants, and data companies to whom customer due diligence procedures are outsourced.
- Businesspeople and firms: partner companies, data service providers, institutional and individual investors, shareholders, directors.
- The media: particularly investigative journalists.
- Civil society organisations: particularly those dealing with anti-money laundering, anti-corruption, anti-tax abuse, democracy and freedom of expression, charities, climate change, consumer protection, etc.
- Academia: those researching kleptocracy, illicit financial flows, inequality, etc.
- The general public: citizens, spouses, voters, victims of fraud, consumers, property tenants, etc.

### **3.1.2 Limiting access to those with a “legitimate interest” makes beneficial ownership transparency ineffective**

Adding the requirement for “legitimate interest” access creates obstacles to timely and effective access to beneficial ownership information.

Establishing a legitimate interest access requirement creates several hurdles to effectively accessing information, and may be overly dependent on the discretion of the authority to grant access or not, or focus too much on a narrow definition of who is considered as having legitimate interest (eg only shareholders of the company). For instance, in the UK where access to beneficial ownership information on trusts is based on a legitimate interest, no request to access information based on a legitimate interest was accepted by

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1116401/Companies\\_House\\_annual\\_report\\_and\\_accounts\\_2021\\_to\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1116401/Companies_House_annual_report_and_accounts_2021_to_2022.pdf)

the UK trust register held by HMRC.<sup>45</sup> Likewise, in Argentina shareholder information at the commercial registry of Buenos Aires (called the *Inspección General de Justicia*) had always been public. However, in the context of corruption investigations against the vice-president, in 2013 the commercial registry decided to close public access and limit it to those with a “legitimate interest” – effectively resulting in the closure of the registry in practice.<sup>46</sup> Attempts to obtain a court order to obtain shareholder information failed, ultimately requiring the Supreme Court to intervene.<sup>47</sup>

## A broad range of actors needing access

Based on the EU’s experience there is evidence that special types of access create undue obstacles to accessing information. As a result, even those who in theory had special access opted to use the direct public access instead, even though the public databases contain more limited details. The 2023 report by the Civil Society Advancing Beneficial Ownership Transparency (CSABOT) on “[Beneficial ownership registers in the EU: Progress so far and the way forward](#)”<sup>48</sup> described how many EU financial institutions, journalists and civil society organisations have had trouble accessing beneficial ownership information in the EU (even when the desired information was supposed to be publicly accessible). In some cases, there are examples of authorities lacking access, both in their own jurisdiction and to foreign EU countries’ registries. In other cases, authorities preferred to use the public platform (when available) given the burdensome process to access information through authorised, confidential channels.

The report described the challenges and explained the preference for using the public platform with the following examples:

- **Competent authorities**
  - “In countries where a minimum set of beneficial ownership data (such as name, date of birth, nationality) is publicly available free of charge without online registration requirements (eg in Bulgaria, Latvia, Luxembourg, and Slovakia), *competent authorities reported using their special access only when retrieving supplementary information on beneficial owners*” (page 12, emphasis added).
  - “In some of the countries that responded to the survey, however, direct access does not appear to be available to all types of competent authorities. *Law enforcement agencies in Austria and the Netherlands reported that they would retrieve data from their registers’ public websites rather than being granted any kind of special access to the data that these hold*” (page 13, emphasis added).
  - “*Competent authorities also flagged their frequent inability to access the beneficial ownership registers of other EU countries. In most cases, competent authorities in EU Member States have to rely on the public access interface to access information held in the beneficial ownership register of another Member State.* In some

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<sup>45</sup> <https://questions-statements.parliament.uk/written-questions/detail/2023-09-11/HL10013/>

<sup>46</sup> [https://www.clarin.com/politica/caso-hotesur-margarita-stolbizer-inspeccion-general-justicia-igi-cristina-kirchner-cepo-informativo-caso-ciccione\\_0\\_HJyl9v4FDXg.html](https://www.clarin.com/politica/caso-hotesur-margarita-stolbizer-inspeccion-general-justicia-igi-cristina-kirchner-cepo-informativo-caso-ciccione_0_HJyl9v4FDXg.html)

<sup>47</sup> <https://www.fopea.org/la-corte-suprema-respaldo-en-dos-fallos-al-derecho-de-acceso-a-la-informacion-en-poder-del-estado/>

<sup>48</sup> Fraiha Granjo, Maritini and Sipos, *Beneficial Ownership Registers in the EU: Progress so Far and the Way Forward*.

countries, however, authorities are unable to use the publicly accessible interface due to complex registration requirements (...) and have to resort to the usual international cooperation requests” (pages 13-14, emphasis added).

- **Obligated entities**

- *“Foreign obliged entities are naturally excluded from this “accreditation” process. Lacking institutional access, they have to resort to the access that is available to the general public, which is in the case of Belgium limited to EU citizens in possession of e-identification means (among other requirements). Hence, in practice, a number of obliged entities, including those in other EU Member States, cannot access the Belgian beneficial ownership register.”* (page 14, emphasis added)
- *“Some of these “accreditation” processes can also be excessively time-consuming and hinder the proper use of the register. In Finland, for instance, where the register is not yet public, there are two ways for obliged entities to retrieve beneficial ownership data: through an annual subscription, or by ordering single extracts on beneficial owners. Entities making single inquiries have their access rights verified before each individual order is processed, an operation that normally takes several days.”* (pages 14-15, emphasis added).

- **Media and civil society organisations**

- *“The editor of the Organised Crime and Corruption Reporting Project (OCCRP), an investigative journalist group, says that the only way to get information on companies in Spain and Italy is to look in company registrars or in private business intelligence databases. But it is costly (at least 9 euros per search in Spain) to access ownership information in this way, and often the information is missing and not guaranteed to reflect the true beneficial owner.”* (page 16, emphasis added)
- *“Cyprus instructs users on its website to fill in and submit beneficial ownership extract orders in person (i.e. in Cyprus) or by post. The authors [civil society organisations] were nevertheless able to request the information by e-mail and pay for the extracts via a bank transfer. In the exercise carried out for this report, it took over two weeks for the register to provide the information to the authors. Getting data from the German beneficial ownership register took the authors over a week.”* (page 17, emphasis added)
- *“Both Romania and Lithuania allow access only after extensive registration, requiring pdf forms to be filled out in Romanian or Lithuanian respectively, electronically signed (with a qualified eIDAS signature) and be sent to authorities for approval.”* (page 18, emphasis added).

### **3.1.3 Adding the requirement for “legitimate interest” requires more resources from already understaffed and under-resourced registries**



Beneficial ownership registries, law enforcement, tax authorities and financial intelligence units are under-resourced<sup>49</sup> and unable to perform their basic functions (eg confirming that beneficial ownership information has been filed to begin with, or finding money launderers and tax evaders).

A legitimate interest approach would absorb additional scarce resources to manage and approve requests or respond to appeals. This would add more pressure on to beneficial ownership registries that are already struggling to enforce provisions, and even raises doubt about whether access requests would be processed in a timely or consistent fashion. This all translates into poorer enforcement of the rule of law, and consequently more extreme inequality and the undermining of people's rights.

### **3.1.4 Stakeholders without direct and timely (public) access will spend most of their time obtaining information, rather than using information**

Legitimate interest access (or worse, a complete lack of access), prevents timely access to information. It reduces the time and resources available to “use” the information, which are instead spent on “accessing” it.

As described by the UK [2014 impact assessment on enhanced transparency of company beneficial ownership](#)<sup>50</sup>, investigators described that “in cases where hidden beneficial ownership is an issue, 30–50 per cent of an investigation can be spent in identifying the beneficial owners through a chain of ownership ‘layers’” (page 9).

A 2019 [statement](#) by the FBI Acting Deputy Assistant Director before the US Senate Banking, Housing, and Urban Affairs Committee confirms the hurdles of obtaining beneficial ownership information even for a well-resourced agency like the FBI:

*“There are numerous challenges for federal law enforcement when the true beneficiaries of illicit proceeds are concealed through the use of shell or front companies... It is important to note that while the FBI and other federal law enforcement agencies may have the resources required to undertake long and costly investigations and thus mitigate to a small degree some of the challenges, the same is often not true for state, local, and tribal law enforcement.*

*The process for the production of records can be lengthy, anywhere from a few weeks to many years, and this process can be extended drastically when it is necessary to obtain information from other countries...If the beneficial ownership information being sought pertains to an entity which is registered in a jurisdiction with which the United States has no bilateral MLAT, obtaining records may be impossible.*

*Finally, if an investigator obtains the ownership records, either from a domestic or foreign entity, the investigator may discover that the owner of the identified corporate*

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<sup>49</sup> For instance, even for a major financial centre like the US, its tax administration (IRS) and financial intelligence unit (FinCen) are under-resourced: “For decades, the IRS has been severely underfunded. Since 2010, the agency’s budget has declined by 18 percent in real terms. This has had a severe impact on the size of the IRS workforce.” (<https://home.treasury.gov/news/press-releases/jy0952>); as for FinCen: “the media reports on Sunday painted a picture of a system that is both under-resourced and overwhelmed, allowing vast amounts of illicit funds to move through the banking system” (<https://jp.reuters.com/article/global-banking-fincen/fincen-documents-reportedly-show-banks-moved-illicit-funds-buzzfeed-icij-idINKCN26C04Z>)

<sup>50</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434546/bis-15-320-enhanced-transparency-of-company-beneficial-ownership-enactment-impact-assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434546/bis-15-320-enhanced-transparency-of-company-beneficial-ownership-enactment-impact-assessment.pdf)

*entity is an additional corporate entity, necessitating the same process for the newly discovered corporate entity.”<sup>51</sup>*

With beneficial ownership information being so relevant for so many stakeholders, it makes little sense to restrict access to it or to expect a cumbersome or lengthy process to allow access.

### **3.1.5 Proposals to respect privacy by disclosing only the beneficial owner’s name (but not other data) are insufficient**

An option meant to serve as a compromise has been proposed by some privacy activists: making public only the name of the beneficial owner, but not other personal details like their address or their birth month and year. The problem with this approach is that a name without any other identification detail (eg official tax or national identifier) is insufficient to determine who a person is.

There could be hundreds of thousands of individuals with the same first and last name on a register. Suppose a country’s beneficial ownership register says company A is owned by “John Smith,” while a “John Smith” also appears on the country’s sanctions list. It would be impossible to know whether company A is owned by the sanctioned individual or by another John Smith. In addition, some names can be transliterated in multiple different ways: an [article](#)<sup>52</sup> in the UK described that there were 14 different ways to write the Arabic name “Muhammed,” creating the same problem of false positives or even false negatives.

### **3.1.6 Relying on “obliged entities” to verify beneficial ownership transparency is not enough**

Secrecy promoters claim that there is no need for public access because obliged entities and corporate service providers can ensure that beneficial ownership is verified (and is accessible by authorities). We disagree with this view based on obliged entities’ past performances and the incentive structure of obliged entities.

Negative incentive structures prevent obliged entities from consistently performing their role in crime prevention.

The notion that obliged entities such as banks, lawyers or corporate service providers will act to the detriment of their clients to benefit authorities or society at large, suggests a naïve understanding of economic incentives.

Several transparency initiatives (eg automatic exchange of information, mandatory disclosure rules, country by country reporting, etc) were the result of the negative incentives driving the behaviours of obliged entities and enablers.

For instance, the automatic exchange of bank account information system came to exist because the US had been trusting banks to help identify the residence of account holders

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<sup>51</sup> <https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies>

<sup>52</sup> <https://www.bbc.com/news/uk-england-45638806>

under the “qualified intermediary” program. [Instead, some banks helped Americans hide their accounts to evade taxes.](#)<sup>53</sup>

Another case described in a [paper on trusts](#)<sup>54</sup> questions efficacy of the much-touted “effective” system of verification by corporate service providers used in Jersey. Evidence in a divorce case revealed how a man had appointed his wife as the beneficial owner of a company, even though evidence suggested that he was the true owner of the funds and the one making the decisions. Despite the facts, the court ruled in favour of determining the wife as the beneficial owner – perhaps not because she was in fact the beneficial owner, but arguably to avoid eroding trust in Jersey’s system.<sup>55</sup>

One of the most infamous examples of the negative incentives driving the behaviours of lawyers and corporate service providers are the Panama Papers, which resulted in the EU establishing public access to beneficial ownership information.

In a thread in an anti-corruption blog<sup>56</sup>, one corporate service provider argued against public access to beneficial ownership information and in favour of closed-held registries by obliged entities because – he argued – being a confidential database, the beneficial owner would have less incentive to lie. However, as responded to him in another blog, it seems disingenuous to suggest that a criminal would tell the truth when authorities have access to a register, but not when the public has access to it. Instead, his fear may rather be that it is public access (rather than authorities) that has allowed civil society actors such as [Global Witness](#)<sup>57</sup> to identify many entities that were being less than honest in the filing of their beneficial ownership information.

In any event, the additional checks that are referenced by the service provider are not excluded with a public register. Both can co-exist. Slovakia is an example of the success of such interaction: information that had been verified by a service provider and which was available in the public online free beneficial ownership register of “partners of the State” was used by a civil society organisation to uncover that the [Czech Prime Minister had failed to declare his interests](#)<sup>58</sup> in a company receiving EU subsidies.

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<sup>53</sup> <https://taxjustice.net/2021/04/06/buffet-of-tax-evading-secrecy-revealed-by-us-settlement-with-swiss-bank-rahnbodmer/>

<sup>54</sup> Andres Knobel, “*Trusts: Weapons of Mass Injustice?*” *A Response to the Critics* (25 September 2017)

<<https://www.taxjustice.net/wp-content/uploads/2017/09/Trusts-criticism-response-1.pdf>> [accessed 14 July 2023].

<sup>55</sup> As described in the paper: “In the “Essam” case, for instance, a man (Essam), told Jersey corporate service providers that his wife (Rouzin) was the beneficial owner of companies, even though evidence suggested the opposite: he “provided finance to the Companies both directly and by his negotiation of loans to the Companies from banks, which he personally guaranteed. He was also granted a power of attorney to act on Rouzin’s behalf in relation to (among other things) the Companies”[45]. On divorce, however, Essam claimed that he was the real beneficial owner after all, and his wife was merely a nominee.[46] The Court, ruling that his wife was the beneficial owner, said: “There is a public interest – a very strong public interest – in the Island being able to demonstrate that it has the ability to identify the beneficial owners of companies, or the beneficiaries under trusts.”

<sup>56</sup> To follow the entire thread in more detail, start with this original [article](#)<sup>56</sup> by the service provider; the initial [criticism](#) by a senior contributor to the anti-corruption blog, [Chief Editor](#) Matthew Stephenson; the service provider’s [response](#); and the final rebuttal by [Stephenson](#).

<sup>57</sup> Global Witness, *The Companies We Keep. What the UK’s Open Data Register Actually Tells Us about Company Ownership*.

<sup>58</sup> <https://www.transparency.org/en/press/andrej-babish-is-our-controlling-person-czech-republic>



## 4. The need to counter the privacy-washing campaign

Arguments to frame public access to beneficial ownership to appear as privacy and data protection issues easily fall apart under the slightest scrutiny, as this document has shown.

Public access to beneficial ownership information has always been meant as a measure to stop illicit financial flows – flows that diminish government revenues, and as a result affect governments' abilities to fulfil their human rights obligations, particularly towards the most vulnerable members of society. At its core, beneficial ownership is about making sure nobody is above the rule of law. It was one of the few topics on which many state agencies, international organisations<sup>59</sup>, the private sector<sup>60</sup> (especially the financial sector), journalists and transparency civil society organisations<sup>61</sup> agree.

At the global level, several international organisations have for years been directly supporting or highlighting the benefits of public access to beneficial ownership information. This includes the Financial Action Task Force's [Guidance on Recommendation 24 regarding beneficial ownership transparency of legal persons](#)<sup>62</sup>, the OECD's Global Forum toolkit [Building effective beneficial ownership frameworks](#)<sup>63</sup>, the IMF's [Unmasking control: a guide to beneficial ownership transparency](#)<sup>64</sup>, the World Bank's [Key instruments](#)

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<sup>59</sup> Several international organisations have endorsed or described the benefits of public beneficial ownership registries, including the Financial Action Task Force Guidance on Recommendation 24, the Global Forum, the UN, the Extractive Industry Transparency Initiative and the World Bank (see Section 3 on Secrecy U-turn for more details).

<sup>60</sup> See for instance the B20 2021 report calling to “develop digital public national registers – Increasing transparency around beneficial ownership information, improving third-party risk management while ensuring the data stored in digital national public registers is accurate and up to date is essential. It is important to implement measures by the government to facilitate public access to this type of information” (page 46) available at:

[https://www.b20italy2021.org/wp-content/uploads/2021/10/B20\\_IntegrityCompliance.pdf](https://www.b20italy2021.org/wp-content/uploads/2021/10/B20_IntegrityCompliance.pdf)

<sup>61</sup> <https://www.transparency.org/en/news/how-public-beneficial-ownership-registers-advance-anti-corruption>

<sup>62</sup> “Countries may consider facilitating public access to basic and beneficial ownership information. Public access to this information can enable civil society, other organisations and individuals to cross check the information, which may in turn help to; ensure that information is accurate, adequate, and up-to-date and to identify potential misuse of legal persons (e.g., in tax evasion, fraud, or corruption schemes).” (para. 109) available at: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html#:~:text=10%20March%202023%20%2D%20In%20March,the%20true%20owners%20of%20companies.>

<sup>63</sup> “There is a trend in favour of opening more broadly the access.\* For instance, in some jurisdictions, the general public can have access on request to beneficial ownership information if they demonstrate a legitimate interest (e.g. establishing a business relationship, a contract). In other jurisdictions, the general public can have direct access to limited beneficial ownership information or even to all the information maintained. \* Access may be relevant for the private sector also for economic reasons. For instance, to allow more effective due diligence in legitimate business transactions (e.g. mergers and acquisitions).” (page 53, available at: [https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit\\_en.pdf](https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit_en.pdf))

<sup>64</sup> “Public registries of beneficial ownership information, which already exist in some countries, have some important benefits compared with closed registries. It allows other competent authorities, the private sector, and interested parties (for example, civil society) to check legal and beneficial ownership information, which can reduce costs and burdens on other parts of the system. Public registers also simplify both domestic and cross border information exchange and cooperation. For instance, if foreign competent authorities can directly access information in a public database, it can reduce the need for formal information exchange requests. Similarly, if a domestic competent authority has direct access to a central register, then there is no need to engage in information exchange upon request, which will save time and resources.” (page 48), available at: <https://www.elibrary.imf.org/display/book/9798400208041/9798400208041.xml>

[for fighting corruption - Chapter 9. Beneficial ownership transparency](#)<sup>65</sup>, the UN [Policy Brief on Reforms to the International Financial Architecture](#)<sup>66</sup>, the Extractive Industry Transparency Initiative (EITI) under Art. 2.5 of its [standard](#)<sup>67</sup>, and the Open Government Partnership (OGP) [recommendations on beneficial ownership](#)<sup>68</sup>.

Several organisations and governments have analysed and discussed public access to beneficial ownership information – both before and after public beneficial ownership registries became a reality.

In 2014 the UK opened a public consultation in anticipation of setting up a public register of beneficial owners. In response to the consultation, the UK described that only “a significant minority in industry were opposed to a public register” while “some businesses and business representative bodies were similarly supportive of public access, particularly those representing specific industry sectors”<sup>69</sup>. The UK considered that the concerns relating to fraud and data privacy could be addressed by excluding a person’s residential address and full date of birth from public disclosure.<sup>70</sup>

Instead, the legal battle for the “human right of privacy” against public access to beneficial ownership information was not started or fought by human rights organisations or vulnerable populations, but largely by the enablers of financial secrecy.

The strategy of weaponising privacy succeeded in obtaining a favourable ruling from the European Court of Justice, with its effects being felt beyond the EU. In the wake of the ruling, countries (or [rather secrecy jurisdictions](#)<sup>71</sup>) – initially starting with Luxembourg and then followed by the Netherlands, Austria, Belgium, Cyprus, Finland, Germany, Greece, Ireland and Malta – decided to close down public access to their beneficial ownership registries. British Overseas Territories – on whom the EU ruling was not even binding –

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<sup>65</sup> “There is a growing momentum towards providing public access to beneficial ownership information... A wide variety of stakeholders now recognizes that the world cannot rely on mega-leaks to expose the scale and impacts of the abuse of corporate structures and arrangements. Stakeholders also acknowledge that these practices need to be prevented as a matter of policy, including through public access to information, thereby leveraging the ‘disinfecting effect of sunlight.’” (pages 252-253), available at: <https://thedocs.worldbank.org/en/doc/734641611672284678-0090022021/original/BeneficialOwnershipTransparency.pdf>.

<sup>66</sup> “Action 17: create global tax transparency and information-sharing frameworks that benefit all countries... Publish beneficial ownership information for all legal vehicles... Countries should strengthen beneficial ownership transparency systems with broad coverage, automated verification, and publication of information. Such registries would be game changers in efforts to properly tax high-net-worth individuals and multinational enterprise” (page 30, available at: <https://www.un.org/sites/un2.un.org/files/our-common-agenda-policy-brief-international-finance-architecture-en.pdf>)

<sup>67</sup> “Art. 2.5.a) Implementing countries are encouraged maintain a publicly available register of the beneficial owners of the corporate entity(ies) that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract, including the identity(ies) of their beneficial owner(s); the level of ownership; and details about how ownership or control is exerted... c) Implementing countries are required to request, and companies are required to publicly disclose, beneficial ownership information.” (available at: <https://eiti.org/sites/default/files/2023-06/2023%20EITI%20Standard.pdf>)

<sup>68</sup> *Anti-Corruption Initiatives: Beneficial Ownership. Open Government Partnership Global Report* (2019) <[https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report\\_Beneficial-Ownership.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf)> [accessed 5 February 2024].

<sup>69</sup> “Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business, Government Response”, Department for Business Innovation and Skills, Pages 33-34, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf)

<sup>70</sup> Ibid.

<sup>71</sup> <https://taxjustice.net/2023/07/13/split-among-eu-countries-over-beneficial-ownership-ruling-mirrors-rankings-on-financial-secrecy-index/>

took advantage of the turmoil to further [postpone](#)<sup>72</sup> their already-postponed public access to beneficial ownership information.

It is still too early to know whether the strategy by secrecy promoters to suggest that beneficial ownership transparency affects the privacy of the masses will prevail in reversing or blocking other transparency measures against corporate secrecy and banking secrecy.

According to research by the Tax Justice Network a few months after the ruling, more than a third of EU countries have kept their registries open despite the ruling<sup>73</sup>. The main reason why many EU countries and others outside the EU may have “disregarded” the ruling is because the court analysed public access only in relation to the fight against money laundering and financing of terrorism, while many countries (including some in the EU) have set up public beneficial ownership registries for many other purposes, such as transparency, the proper functioning of markets, the protection of democracy and to counter tax abuse.

Even the UK, despite no longer being bound by the ruling, has declared that its public access doesn’t contradict the ruling. In a 2023 [public statement](#), the UK considered that despite the ruling, its public beneficial ownership registry was consistent with privacy rights and data protection because “the intrusions were limited and necessary in a democratic society for the prevention and detection of crime and for the economic well-being of the country”<sup>74</sup>.

Latvia, an EU member, deliberately decided to keep its beneficial ownership registry public - despite the ruling. In a [statement](#)<sup>75</sup> they explained that public access was established before the 5th EU anti-money laundering directive, to enable anti-money laundering and the enforcement of sanctions, which required access by all citizens: “openness of information promotes a legal business and non-governmental sector environment, reduces the risks of corruption, ensures the implementation of sanctions, thereby strengthening the stability and security of our country.”

Other countries are also evolving towards public access, even after the European Court of Justice ruling, including Argentina<sup>76</sup> and Canada<sup>77</sup>.

In early 2024, the EU reached an agreement for a 6th amendment to the anti-money laundering regulation that would expand access to civil society organisations and investigative journalists, strengthening access based on a legitimate interest.<sup>78</sup> It is still

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<sup>72</sup> <https://www.gov.im/news/2022/dec/22/joint-statement-crown-dependencies-on-access-to-registers-of-beneficial-ownership-of-companies/>

<sup>73</sup> Lorenzo, ‘Split among EU Countries over Beneficial Ownership Ruling Mirrors Rankings on Financial Secrecy Index’, *Tax Justice Network*, 2023 <<https://taxjustice.net/2023/07/13/split-among-eu-countries-over-beneficial-ownership-ruling-mirrors-rankings-on-financial-secrecy-index/>> [accessed 14 August 2023].

<sup>74</sup> <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-echr-memoranda/supplementary-echr-memorandum-amendments-made-to-parts-1-3-economic-crime-and-corporate-transparency-bill-beis-measures>

<sup>75</sup> <https://www.tm.gov.lv/lv/jaunums/latvija-ari-turpmak-informacija-par-patiesajiem-labuma-guvejiem-bus-publiski-pieejama>

<sup>76</sup> On 15 March 2024, Argentina approved Law 27.739 which requires the establishment of a public beneficial ownership register (Arts. 28 and 31, last paragraph): <https://www.boletinoficial.gob.ar/detalleAviso/primera/304764/20240315>

<sup>77</sup> <https://www.canada.ca/en/innovation-science-economic-development/news/2023/03/government-of-canada-tables-new-legislation-to-create-a-beneficial-ownership-registry.html>

<sup>78</sup> <https://www.consilium.europa.eu/en/press/press-releases/2024/01/18/anti-money-laundering-council-and-parliament-strike-deal-on-strict-rules/>




too early to know how this will work, and whether it will affect the global trend towards public access to information.



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