



tBrief Edition #3

FISHING IN THE DARK: Transparency of beneficial ownership



Key messages:

Beneficial ownership – that is, the natural person who ultimately owns or controls a business or transaction – is a topic that is grabbing global attention. The negative consequences of a lack of transparency regarding beneficial ownership are all too evident, with special implications for the fisheries sector.

- 1** The combination of a myriad of corporate structures and welcoming jurisdictions that protect the identity of owners create an environment that is conducive to beneficial ownership secrecy.
- 2** The demand for beneficial ownership transparency in the fisheries sector is linked to a range of policy concerns, perhaps most notably in terms of the fight against illegal fishing and corruption, but also exposing the extent of economic concentration and foreign ownership in the sector.
- 3** Addressing problems of opacity of beneficial ownership requires a clear commitment from countries to collect and make available adequate, accurate and timely information. However, information alone is not sufficient, as it needs to be verified and shared with national and international authorities.



Fisheries
Transparency
Initiative

Edition #3

Introduction

Today's interconnected world has made borders for business and commercial transactions virtually non-existent. Business operations use elaborate schemes involving multiple jurisdictions, sophisticated ownership and management structures, as well as complex legal and financial arrangements to conduct global transactions and gain competitive advantage. While this has not only generated the largest economic surplus in human history, it also supports a system that can be misused for illegal activities and enable culprits to hide their illicit gains.

Scandals uncovered by investigative journalists in the notorious Panama Papers, Swiss Leaks and LuxLeaks have exposed the magnitude of transnational financial crime facilitated by the lack of transparency. That transnational crime is estimated to be worth between US\$1.4 trillion and US\$3.5 trillion annually.¹

The complexity of the fisheries sector – characterised by often long supply chains, different jurisdictions and the possibility of registering vessels according to the convenience of the owner – makes it particularly vulnerable as a sector to the negative impacts of beneficial ownership secrecy. While international campaigns for improvements in transnational finance are gaining pace, progress in the fisheries sector is slow.



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1 ACCA and EY (2020), 'Economic crime in a digital age'

Beneficial ownership: What does it mean?

Beneficial ownership is a general term to refer to a *person* who controls or benefits from a transaction, a legal person or a legal arrangement (i.e. a trust).

The Financial Action Task Force (FATF), the inter-governmental body that sets international standards to prevent illicit activities in the financial sector, defines 'beneficial owner' as:

2 See report here: <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>

The natural person who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.²



This definition highlights two important aspects. First, the **distinction between a natural person (i.e. an individual) and a legal person**. A beneficial owner must always be a natural person, who ultimately controls or benefits from an asset or transaction. Legal personalities, which could be a corporation, are increasingly relevant in the business sphere. However, legal persons are created, managed and controlled by natural persons ultimately; it is a natural person who controls its assets and benefits from its surpluses.

Second, a **beneficial owner does not always correspond to a legal owner**. This differentiation is important because the beneficial owner is the person who has control and/or enjoyment over the generated benefits, directly or indirectly, while the legal owner does not. For example, this is the case where property is legally in the possession of a legal person or in a trust. Therefore, the natural person who is the ultimate beneficiary, above legal ownership, needs to be identified.



Consequently, a beneficial owner should not by default be considered as someone who is acting illegally. It is when the true identity of the beneficiary is kept hidden that opportunities arise to pursue and disguise illicit activities.



Why is this matter so important?

Our second tBrief ‘Transparency of Fisheries Tenure: Incomplete, unreliable and misleading?’ touched briefly on the issues related to ownership transparency, in particular when fishing vessels operate through charter arrangements or joint ventures, or where fishing licences are sold, swapped or leased through individual quotas (or catch shares). Indeed, the lack of transparency on beneficial ownership must be seen as a key enabler for almost all crimes that take place along the fisheries value chain, including illegal fishing, embezzlement, drugs and weapons smuggling, and human trafficking.

» **Disguising the abuse of entrusted power:** The use of secrecy around the beneficial owner can be used to provide a facade of legitimacy to an otherwise improper transaction. For example, a Minister of Fisheries may award valuable fishing authorisations and quota allocations to a company in which the minister is the true beneficiary but is the hidden owner. Such cases of self-dealing are no exceptions in the fisheries sector. For example, it is suspected that companies with the same beneficial owner use a front company to trade fish.³

» **Shielding from detection, prosecution and liabilities:** It is commonly understood that certain countries are either unable or unwilling to adequately exercise their monitoring and enforcement obligations along the fisheries value chain. This already offers a huge loophole to conduct crimes with impunity. But even in cases where crimes are detected, law enforcement agencies often struggle to identify the true beneficiary behind these crimes. This can then often lead to a ‘scapegoat’ being punished (such as the registered owners or captains of fishing vessels), instead of meaningful sanctions being applied to those who benefit. A particular aspect here is the *laundering of proceeds of crimes*. People who commit (fisheries) crimes need to disguise the origin of their criminal money so that they can protect it from seizure and use it more easily. Through a typical three-step process of placement, layering and integration, the illegal proceeds are presented as being derived from legitimate activities. The long value chains in the fisheries sector provide several opportunities for money laundering at different stages – for instance, during the acquisition of considerably expensive assets (such as fishing vessels or fishing gear), during the stage of selling products, in the payment of wages to crews.

³ Nordic Council of Ministers (2018), ‘Chasing Red Herring: Flags of Convenience, Secrecy and the Impact on Fisheries Crime Law Enforcement’



»» **Evading taxes:** Lack of information on the beneficial owner, difficulties in tracing financial flows, involvement of numerous actors in more than one jurisdiction, and the existence of tax havens makes the fisheries sector particularly vulnerable to tax crime. A study published in 2018 revealed that while only 4 per cent of all registered fishing vessels fly a tax haven flag, 70 per cent of all vessels involved in Illegal, Unreported and Unregulated (IUU) fishing are or have been flagged in a tax haven jurisdiction.⁴ A study by the OECD describes the fisheries sector as vulnerable to a number of tax crimes, including frauds on taxes on profit or earnings (e.g. through under-reporting of catch data or scammed transfer pricing), customs duties, value added taxes and social security.⁵

But beneficial ownership transparency is not just about countering crime. An often overlooked aspect is that beneficial ownership transparency is also needed to ensure coherence with fisheries policies. This is particularly important in the context of restricted access in fisheries and where benefits of fisheries are designed to help with broader government policies, such as supporting domestic fisheries and local/national economic development.

»» **Hiding excessive foreign ownership:** As outlined in tBrief no.2, fishing vessels are not always owned by those companies or individuals who obtain an authorisation to fish from national authorities. For example, fishing vessels can operate through charter arrangements or joint ventures. These arrangements may be encouraged, particularly in developing countries, to ensure that national stakeholders benefit from commercial fishing (often dominated by foreign capital and vessels), and to increase the opportunity to transfer fishing capacity and technology. However, information on these arrangements is often not made public, such as the names of national shareholders in joint ventures, or those responsible for chartering foreign vessels. This may lead to a substantial ownership concentration in a sector that is otherwise perceived as diversified.

»» **Disguising economic concentration:** Related to the previous point, hiding the true beneficiary behind economic transactions, such as fishing authorisations, may lead to a few individuals/organisations increasing their market powers. In markets where such concentration is disguised and no true competition exists, a small number of companies are able to influence major economic parameters, such as dictating pricing mechanisms, creating barriers for others to enter 'their' markets and, notoriously, underinvesting in the sector.

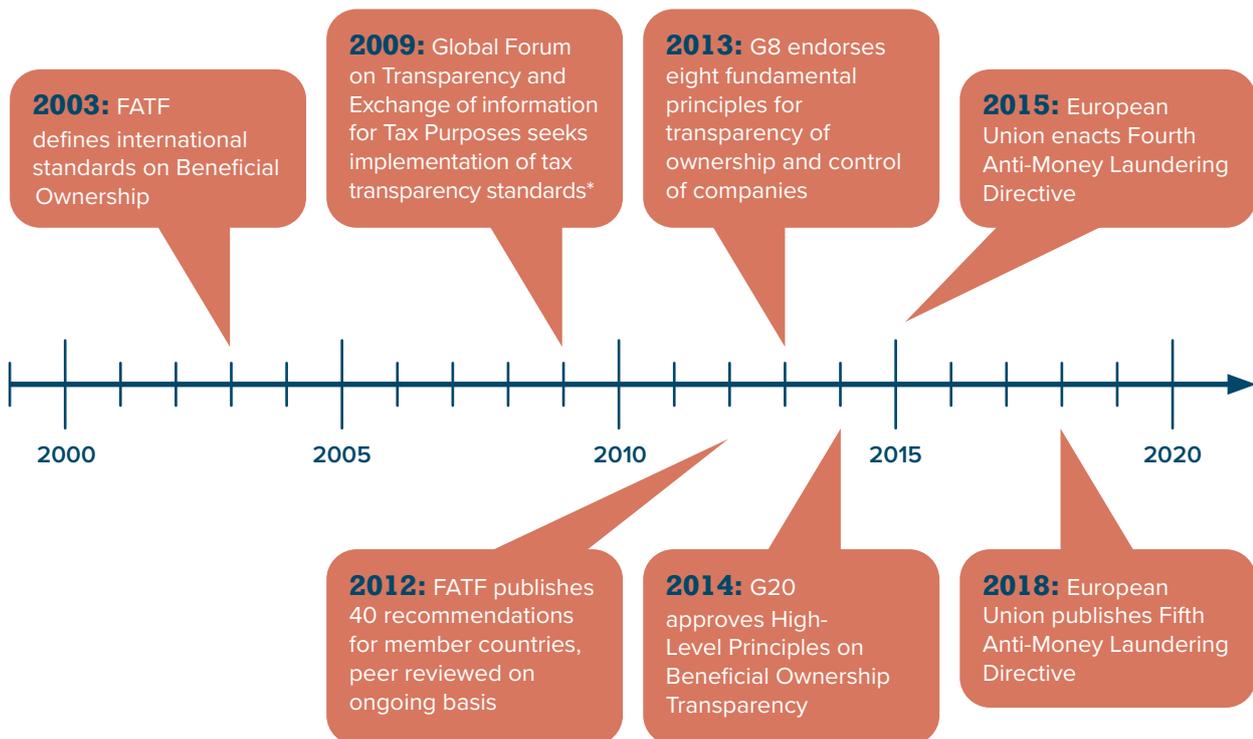


4 Galaz, V., Crona, B., Dauriach, A. et al. (2018), 'Tax havens and global environmental degradation', *Nat Ecol Evol* 2, 1352–1357, <https://doi.org/10.1038/s41559-018-0497-3>

5 OECD (2013), 'Evading the Net: Tax Crime in the Fisheries Sector'.

An issue for global attention – but what about the fisheries sector?

Considering all the aspects mentioned so far, it is evident that transparency on beneficial ownership is key to preventing, detecting and prosecuting illicit activities. Not surprisingly, this matter has therefore attracted increasing attention over the past 20 years. There is now a global coalition of key actors and institutions, such as the FATF, OECD, UN Office on Drugs and Crime, World Bank, European Union, G7/8, G20 and many others. Documenting the evolution of the global beneficial ownership movement would go beyond the scope of this tBrief, but it is useful to understand the various important steps taken over the past two decades – as summarised below (with no claim of being complete):



*Founded in 2000, restructured in 2009

Each activity in itself was a major step forward and worth reviewing in more detail (we will revisit some of these activities in the section on obligations to enhance beneficial ownership transparency). In summary, it is clear that this topic is evolving significantly. For example, the European Union's Fifth Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing determines that since January 2020, the information on beneficial ownership must be accessible to *any member of the general public*.⁶ Such information consists of the name, month and year of birth, country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held. Several states in Europe have already taken action. For example, in Germany, France, Ireland, the Netherlands, Belgium and the United Kingdom, non-compliance with the provision of information on the beneficial owner or providing false information may lead to fines or even criminal penalties.⁷ This global movement for beneficial ownership transparency has also prompted concrete actions by multi-stakeholder initiatives. For example, the Open Government Partnership, which works with governments over commitments for a more open and transparent governance, has transparency of beneficial ownership as one of its priority areas. As of July 2019, 20 countries committed to increasing the transparency of beneficial ownership.⁸

In the capital-intensive extractive sector of non-renewable resources, such as gas, oil and minerals, the Extractive Industries Transparency Initiative (EITI) is taking direct action against anonymity of beneficial owners. Forty-five countries have already published roadmaps describing how to implement the publication of data on this subject.⁹

So, what about the fisheries sector? As emphasised in our first tBrief, fisheries have already been slow to catch on to the overall transparency wave, and beneficial ownership in fisheries is no exception.

6 With the exception of trusts.

7 IFAC (2020), 'Approaches to Beneficial Ownership Transparency: The Global Framework and Views from the Accountancy Profession'.

8 See: <https://www.opengovpartnership.org/policy-area/beneficial-ownership/>

9 See: <https://eiti.org/beneficial-ownership>

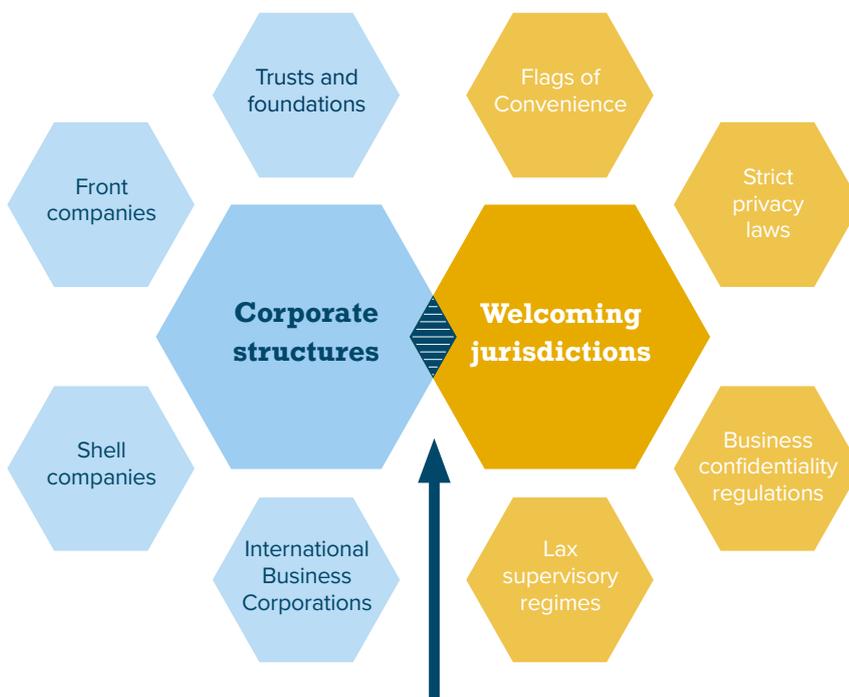


A hospitable environment for beneficial ownership secrecy in fisheries

Similar to other sectors, the uniqueness and complexities of the fisheries sector provide a number of mechanisms that allow beneficial owners to stay in the shadows. An extensive investigation tasked by the Nordic Council of Ministers¹⁰ identified that secrecy in the fisheries sector rests on two areas:

a. Myriad corporate structures: It is a common practice to use layers of companies, such as associations, trusts or foundations, to secure secrecy. The longer and more complex the chain of corporate structures, the more difficult to identify the beneficial owner.

b. Welcoming jurisdictions: The fisheries sector comprises a number of jurisdictions that protect the identity of beneficial owners, corporate structures and their business transactions.



„Sweet spot“ for beneficial ownership secrecy in the fisheries sector

When these two areas converge, they create a 'sweet spot' for beneficial ownership. The first stage of the fisheries value chain – the preparation for fishing, particularly the vessel registration process – exemplifies this sweet spot. According to the UNODC, the preparation stage is often where corruption risks and corruption scandals arise. For instance, bribes can be paid to register vessels using forged documents, or to turn a blind eye to unregistered vessels.¹¹

10 Nordic Council of Ministers (2018), 'Chasing Red Herrings: Flags of Convenience, Secrecy and the Impact on Fisheries Crime Law Enforcement'.

11 United Nations Office on Drugs and Crime (2019), 'Rotten Fish – A Guide on Addressing Corruption in the Fisheries Sector'.



States have the right to register vessels, which includes granting the right to fly the country's flag. Such States are called Flag States. Although international principles¹² clearly establish that there must be a genuine link between the state and the vessel, the international registry has been opened up over the years to such an extent that there seems to be no restrictions on individuals or companies who want to register vessels in a jurisdiction other than their own. 'Private flags', where the management of a vessel registry is outsourced to foreign private companies,¹³ can worsen this problem. These types of registries are commonly known as Flags of Convenience (FoC). Vessel-owners that seek to remain hidden may actively seek such States to enjoy the opacity they offer, which is often combined with lax regulations and enforcement on other aspects, such as compliance with labour and safety standards.

The International Transport Workers Federation¹⁴ identifies 35 FoC countries including among others Belize, Barbados, Georgia, Panama and Togo. Even Bolivia, a landlocked country, is included on that list. According to Tryggmat Tracking and Interpol data, Bolivia has a record for registering vessels used for illegal fishing.

Flags of Convenience do not in themselves facilitate the concealment of the beneficial owner identity. In fact, States are obliged to maintain records of fishing vessels entitled to fly their flag, including name, street address, mailing address and nationality of natural or legal persons with beneficial ownership of the vessel.¹⁵ **But the possibility for vessel-owners to pick and choose jurisdictions that have more favourable secrecy laws than their own, and to use corporate structures to hide their true identity, makes this combination so problematic.** Such structures are legal vehicles and play an essential role in our economic system, but under some circumstances, they can be misused for illicit purposes. One example is the use of so-called front companies, a widespread practice in the fisheries sector. For example, Ghana's law does not allow foreign companies to engage in industrial fishing through joint ventures. However, by using Ghanaian front companies, a recent investigation showed that 90 to 95 per cent of Ghana's trawl fleet has some sort of Chinese involvement.¹⁶ Opacity about the real owners means that they cannot be held responsible for unsustainable fishing practices, and this has implications for the livelihoods, food and nutritional security of Ghanaians.

To make matters even worse (and more complicated), beneficial owners often do not simply create a single corporate structure to hide their identity. Instead, these structures are often used together to maximise anonymity and frustrate authorities, generating a complex network of shares with other companies, located in different countries, further complicated by engaging additional nominees,¹⁷ utilising bearer shares and so on. All this makes the identification of beneficial owners very difficult. The portfolio of such vehicles and the creativity of beneficial owners and their supporting service providers seems unfortunately unlimited.¹⁸

12 Including the United Nations Convention on the Law of the Sea, the FAO Code of Conduct for Responsible Fisheries, the International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing, the Model Scheme on Port State Measures to combat IUU Fishing, and the Voluntary Guidelines for Flag States Performance.

13 Nordic Council of Ministers (2018), 'Chasing Red Herring: Flags of Convenience, Secrecy and the Impact on Fisheries Crime Law Enforcement'.

14 ITF (n.d.) 'Flags of Convenience', <https://www.itfglobal.org/en/sector/seafarers/flags-of-convenience>

15 UNCLOS, Art. 91.1; FAO Code of Conduct Art. 8.2.1; Int. Plan of Action - IUU Fishing, 18; 42; Voluntary Guidelines for Flag State Performance, 14.

16 Environmental Justice Foundation (2018), 'China's hidden fleet in West Africa: A spotlight on illegal practices within Ghana's industrial trawl sector'.

17 Persons who hold assets, a position or shares on behalf of another person.

18 In order to understand the different corporate structures offered by certain jurisdictions, such as trusts, front companies, shell and shelf companies, please refer to, inter alia, the Organisation for Economic Co-Operation and Development (2001), 'Behind the Corporate Veil – Using corporate entities for illicit purposes'; or van der Does de Willebois, E., Halter, E., Harrison, R., Park, J.I., and Sharman, J. (2011), 'The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It', Stolen Asset Recovery Initiative.



A recurring tension: Privacy vs transparency

A major obstacle for beneficial ownership transparency concerns the principle of privacy and personal data protection. The disclosure of ownership information relates to data about natural persons, whose protection is in many cases a constitutional prerogative in national law, and internationally a principle encompassed in conventions for the protection of human rights. Certainly, while the official line of countries is that of respecting commercial confidentiality, another key reason for personal data protection and privacy is often to attract businesses and investments that are searching for secrecy.

Thus arises the tension between transparency and the right to privacy and protection of commercially sensitive information. There is increasing recognition that the public interest derived from beneficial ownership transparency is greater than the private interest of beneficial owners. Beneficial ownership opacity can clearly be linked to a variety of crimes and unsustainable practices, directly affecting society and the public interest. As pointed out in the Court of Justice of the European Union in the Volker und Markus Schecke judgment, “the right to the protection of personal data is not, however, an absolute right, but must be considered in relation to its function in society”.¹⁹

Furthermore, a recent study on data protection and privacy in beneficial ownership disclosure²⁰ showed through a number of global cases that a balance between privacy and transparency is possible. In countries where companies are legally obliged to share beneficial ownership information, these companies would be exempted from liability under data protection laws. For countries where there is no such disclosure requirement, companies would be allowed to share beneficial ownership data under specific conditions.

Transparency demands also need to be made with the safety of individuals in mind. The name of the beneficial owner alone is not sufficient, and national and international regulations have therefore expanded their data requirements. A good example is found in the EU Directive which requires information on beneficial ownership to include the name, month and year of birth, country of residence and nationality, as well as the nature and extent of the beneficial interest held. However, the regulation provides also the possibility of exemption on a case-by-case basis in exceptional circumstances, where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable.²¹

19 Judgment of the Court (Grand Chamber) of 9 November 2010, ‘Volker und Markus Schecke GbR (C-92/09) and Hartmut Eifert (C-93/09) v Land Hessen’, European Court Reports 2010 I-11063

20 Open Ownership, B-Team, The Engine Room (2019), ‘Data Protection and Privacy in Beneficial Ownership Disclosure’.

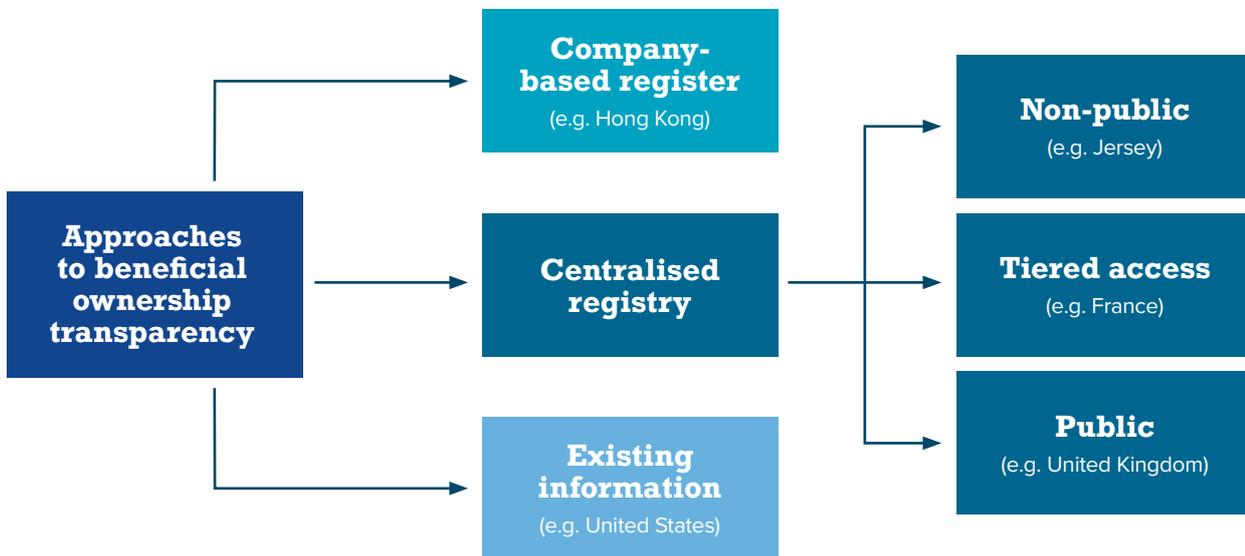
21 DIRECTIVE (EU) 2015/849, Art. 30: 9



Obligations to enhance beneficial ownership transparency

At the global level, recommendations 24 and 25 of the FATF clearly outline the expectations towards governments for publishing information: to take measures to prevent the misuse of legal persons and ensure that there is **adequate, accurate and timely information on the beneficial ownership** that can be obtained or accessed in a timely fashion by competent authorities. More specifically, the interpretive notes to these recommendations provide three practical steps for beneficial ownership transparency:²²

22 Taken from International Federation of Accountants and Chartered Professional Accountants of Canada (CPA Canada) (2020), 'Approaches to Beneficial Ownership Transparency: The Global Framework and Views from the Accountancy Profession'.



As the diagram shows, a first fundamental consideration for policy-makers is whether beneficial ownership information can be maintained solely by companies (whereby those companies are required to take reasonable efforts to identify significant control persons) or whether the information is reported to a centralised registry (in addition to being kept by the company). If the latter, the next decision is whether to make the information only available to a limited number of parties, e.g. law enforcement agencies; whether to apply a tiered access, where different stakeholders have varying levels of access; or whether everybody in the general public has the same level of access.

A key consideration for centralised beneficial ownership registry is the responsibility of the agency in charge of the registry to verify whether the submitted information is valid. Allowing the general public to access this information enables stakeholder participation and scrutiny, through which the problems of opacity, ambiguity and secrecy can be further addressed.

As well as a company-based and a central registry, countries may also opt for using existing information, including information obtained by financial institutions or professional service providers and information held by other authorities (e.g. company registries, tax authorities or financial or other regulators). The United States is an example of where this approach is used. Although the FATF Recommendations suggest that this may be a viable way to make beneficial ownership information available, the United States was rated non-compliant in the fourth-round mutual evaluation of December 2016.

In either case, verifying information on the beneficial ownership of a company or fishing vessel is extremely difficult without further considerable research and investigations. Dishonesty in disclosing such information to public authorities remains a serious problem. Proactive disclosure on beneficial ownership of businesses is therefore a positive step, but it may not always produce reliable information for the public.



The Fisheries Transparency Initiative (FiTI) is addressing the importance of beneficial ownership in its Standard, which defines

for the first time what information on a country's fisheries sector should be published online by national authorities. The FiTI requires implementing countries to publish information on, *inter alia*, the country's legal definition of beneficial ownership, the availability of a public register, the rules and procedures for incorporating beneficial ownership in filings by companies to corporate regulators, stock exchanges or agencies regulating the access to fisheries, and the current status and discussions around beneficial ownership transparency. As the first country, Seychelles will address the matter of beneficial ownership in their report to the FiTI by end of 2020.



Finally, given the transnational nature of beneficial ownership secrecy, international cooperation is another key obligation for countries. Lack of information at the global level has become a shield for criminals who take advantage of the anonymity provided by certain jurisdictions and corporate mechanisms. The use of IT is therefore essential to enhance mechanisms for collaboration between countries, especially through the exchange of information contained in their registries.

To summarise, beneficial ownership – the natural person who ultimately owns or controls a business or transaction – is an area that is attracting increased global attention, including the fisheries sector. Despite many countries supporting beneficial ownership transparency in the fisheries sector, progress is slow. However, while international campaigns for improvements are gaining pace, it is imperative that the full range of problems caused by a lack of beneficial ownership transparency in the fisheries sector are recognised, and that the arguments used for avoiding transparency are understood and confronted. At the same time, as already emphasised in previous tBriefs, it is important to recognise the limitations of public disclosure for solving underlying problems and that transparency can only be a first step.



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Outlook for next tBrief

Fisheries subsidies has become one of the most controversial subjects in international debates on fisheries reforms. Perhaps more than any other single factor, subsidies are seen as the source of a range of problems, from overfishing, illegal fishing and unfair benefit-sharing. The lack of transparency surrounding subsidies has long been signalled as a major source of problems. The adoption of the Sustainable Development Goals in 2015 has provided the most definitive demand, including the target that governments must prohibit forms of fisheries subsidies that contribute to overcapacity, overfishing and IUU fishing by 2020. Our fourth edition of the tBrief series will, therefore, look at the matter of transparency in fisheries subsidies.

