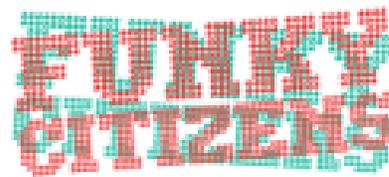




Company Ownership Transparency:
essential datasets to help fight corruption in procurement



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Introduction

The concept of transparency within procurement, company registers and beneficial ownership data is nothing new, rather civil society have been campaigning on this for years. Indeed, increasing transparency in these areas has also been at the forefront of the EU agenda:

- Procurement transparency - the 2014 EU Public Procurement Directives mandated more transparency in procumbent processes, through mandatory reporting and publications of above the threshold tenders;
- Beneficial ownership transparency - the Anti-Money Laundering Directive called for all Member States to establish publically available, centralised beneficial ownership registers for companies by January 2020, and;
- Company registers transparency – the 2019 Open Data Directive defined company registers and ownership high value datasets, “documents the re-use of which is associated with important benefits for the society and economy”.

Yet, while the initiative is being taken at the EU level, implementation at the member state level is lagging behind. The arrival of the Covid-19 pandemic, and the subsequent corruption scandals within procurement that followed made evidently clear just how important transparency is in public procurement data in general, but also specifically in company ownership data (both company registers and beneficial ownership).

The response to the pandemic has also highlighted that the efforts to ensure transparency in both procurement and company ownership data are not only moving too slowly, but are not being combined effectively in order to fight corruption.¹ Integrating open data on company ownership into our procurement systems would significantly reduce this risk of corruption, even in times of crisis. It is imperative that governments open these datasets in order to fight corruption, ensure the proper allocation of public money, and, ultimately, save lives.

This document addresses the current state of openness in procurement and company ownership data in the EU, and explains how the lack of transparency created an environment that allowed corruption to thrive during the pandemic. It then makes recommendation on implementation of transparency obligations, under the Anti-Money Laundering Directive and the Open Data Directive, and on how to combine those transparency obligations effectively with procurement systems to allow for proper due diligence of suppliers to fight corruption.

¹ <https://www.facebook.com/imf/videos/794967308011390>

Recommendations

- 1. Member States should comply with their obligations under the Anti-Money Laundering Directive and establish centralised, publicly accessible beneficial ownership registers for companies as soon as possible.**
- 2. Member States should guarantee full publication of companies and company ownership information as a high-value dataset in implementing the Open Data Directive, under a genuinely open licence without additional restrictions.**
- 3. Procurement processes should be structured to actively engage with company ownership information, allowing for internal and external scrutiny of economic operators. To facilitate proper due diligence, national procurement portals should be interoperable with company registers and beneficial ownership registers.**
- 4. Registers should be made publically available in open data, allowing other sectors of society to monitor and verify the accuracy of company ownership data.**

The Current Lack of Transparency in Procurement and Company Ownership Data

Civil society has been pushing for more transparency in procurement and company ownership data for years. Yet progress in improving transparency in these areas has been slow:

- **Lack of procurement transparency:** The Open Contracting Partnership and Spend Network estimate that globally governments spend \$13 trillion a year on public contracts for goods, services and works. But less than 3% (\$363 billion) is published openly.²
- **Lack of company registers:** OpenCorporates found that the EU as a whole preforms badly when it comes to access to official company register data, scoring just 40 out of 100, with two Member States, most notably Spain and Austria, scoring 0 out of 100, and Italy scoring just 10 out of 100. In addition to this, despite increased interest in the importance of this dataset, there has been no improvement in access to official company data in the past three years.³
- **Lack of beneficial ownership transparency:** Global Witness found that while EU Member States were supposed to transpose the Anti-Money laundering Directive and to establish a centralised, publicly accessible registers for companies by January 2020, the majority of Member States have failed to do so. Only five have completed this process within the prescribed timeline: Bulgaria, Slovenia, Denmark, Latvia and Luxembourg. Of the 27 Member States, 17 do not yet have a public centralised register. Global Witness also found that public access to the register in many countries may be hindered by paywalls, strict registration requirements or restrictive search functions.⁴

Transparency in the procurement process and in company ownership has long been seen as essential to fight corruption – making available information on all stages of the procurement processes, and on the economic operators applying for contracts, allows for proper oversight and holds those making decisions accountable. It is essential that not only to push for open company ownership data, but to create a procurement system that integrates this data and uses it to carry out proper due diligence on suppliers.

² <https://www.open-contracting.org/what-is-open-contracting/global-procurement-spend/>

³ <https://opencorporates.files.wordpress.com/2020/06/eu-company-data-state-of-the-union.pdf>

⁴ Global Witness. 2020. [Patchy Progress in Setting Up Public Beneficial Ownership Registers in the EU](#)

Lack of Transparency During a Pandemic: The Perfect Storm for Corruption

Even under normal circumstances, procurement is a high-risk area and is prone to corruption. The arrival of the Covid-19 pandemic required governments to procure products and services from the private sector with unprecedented urgency. To facilitate quick decisions, the rules, controls, and safeguards governing procurement procedures and transparency requirements were relaxed, and contracts were awarded away from public oversight. This urgency and lack of oversight, mixed with the current lack of transparency in procurement data and company ownership across the EU, created the perfect storm for corruption.

- Corruption by economic operators:** As governments around the world scrambled to secure the same emergency supplies as quickly as they could, stock levels in their usual suppliers dwindled, and prices rose. This meant that governments quickly turned to other suppliers. New economic operators began to emerge claiming to sell emergency supplies, despite having no prior experience. The urgency and the need to secure supplies quickly, meant poor sourcing and due diligence of unqualified suppliers. This, coupled with the fact that company ownership transparency is lacking, meant that governments were often trading blindly – not knowing exactly who they were buying from. This created a procurement system that was weak in oversight and facilitated the awarding of direct awards to fraudulent companies: offering large contracts to companies without experience in [health-care](#) in Slovenia, or middle men profiting over the sale of [ineffective PPE](#) Romania.
- Corruption by contracting authorities:** Companies can often be structured in a clever and complicated ways. Without open and transparent company ownership data (both company registers and beneficial ownership) we cannot see these individual structures and the ultimate beneficial owner behind them all. Without this data, a contracting authority deciding to grant an emergency contract to a particular supplier may seem fair, yet if we had open company ownership on that supplier that led us to find out that the ultimate beneficial owner of that supplier was the head of the evaluation committee – that is a different story.

Subsequently, we have seen squandering of public money, failure to properly allocate much-needed resources, and as a consequence those on the front line ran short of vital equipment needed to save lives. The fact that this corruption took place so easily, shows that the structure of our procurement systems are failing the public.

Not only is procurement and company ownership data lacking, but the data that is there is not being effectively combined. For instance, whilst procurement processes may ask for certain information on companies, declaring the beneficial owner or disclosing full company register information is not a common practice in procurement.

Recommendations

1. Member States should comply with their obligations under the Anti-Money Laundering Directive and establish centralised, publicly accessible beneficial ownership registers for companies as soon as possible.

The *Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing* (the Anti-Money Laundering Directive) entered into force on July 9, 2018. EU Member States were required to transpose it into national law by January 10, 2020.

This Directive mandates that Member States should have established publically available, centralised beneficial ownership registers for companies by 10 January 2020. All national registers within the EU are to be interconnected to facilitate the exchange of information, and have information verification mechanisms to improve the accuracy and reliability of information.⁵

All registers must list the ultimate beneficial owner and include the same basic information:

- name,
- month of birth,
- nationality,
- country of residence, and
- nature/size of the interest held.

While the Directive attempts to create unanimity across the EU with respect to beneficial ownership registers, substantial differences between Member States remain in the extent of public access and the reliability of information available.⁶ Overall, several countries have centralized registers, but only a handful—including the United Kingdom, Denmark, and Ukraine—have made their registers publicly available.⁷ In addition, most Member States are late in transposing the directive and have failed to comply with the January 2020 deadline.⁸

Significant progress has been made at the international level to address the problems caused by lack of transparency of beneficial ownership. Yet implementation on the national level is lagging behind. A recent report by Transparency International stated that the reasons for the slow and uneven uptake of beneficial ownership registers vary from powerful lobbying by concerned businesses to the lack of political will and the absence of technical capacity.⁹

2. Member States should guarantee full publication of companies and company ownership information as a high-value dataset in implementing the Open Data Directive, under a genuinely open licence without additional restrictions.

The Directive on open data and the re-use of public sector information, also known as the ‘Open Data Directive’ (Directive (EU) 2019/1024) entered into force on 16 July 2019, with the obligation for Member States to transpose by 16 July 2021. This Directive focuses on the economic aspects of the re-use of

⁵ <https://www.u4.no/publications/beneficial-ownership-registers-progress-to-date>

⁶ <https://www.u4.no/publications/beneficial-ownership-registers-progress-to-date>

⁷ https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf

⁸ Global Witness. 2020. [Patchy Progress in Setting Up Public Beneficial Ownership Registers in the EU](#)

⁹ <https://www.u4.no/publications/beneficial-ownership-registers-progress-to-date>

information, and it encourages the Member States to make as much information available for re-use as possible.

High Value Datasets: The Directive introduces the concept of high value datasets, defined as “documents the re-use of which is associated with important benefits for the society and economy”. They are subject to a separate set of rules ensuring their availability free of charge, in machine readable formats, provided via Application Programming Interfaces (APIs) and, where relevant, as bulk download.¹⁰

The Directive includes company registers and company ownership information as high-value datasets, meaning that they must be made available as open data.

Pushback: At the moment, decisions are being made on what levels of disclosure the Open Data Directive will require for company registers and ownership as high value datasets. Despite the obvious benefits that high levels of disclosure would bring to fighting corruption, there has been considerable pushback from a small number of Member States, arguing that there is an associated cost in doing so.

It is evident that the cost of publishing this essential information is minimal compared to the significant economic savings and invaluable societal benefits that accrue from avoiding fraud and corruption. Allowing these arguments to determine the application of the directive across the EU, would see it undermined by the addition of restrictive terms, delays and carve-outs.¹¹

Strengthening disclosure requirements: At an absolute minimum, the following company structure and ownership information should be made public under the Open Data Directive:

- Name of the company owner;
- Month and year of birth;
- Nationality;
- Owner identifier;
- Names of shareholders;
- Country of residence of shareholders/owners;
- Company insolvency status;
- All updates to the information submitted, including the date of the most recent update.

Anything less than full publication, would ultimately foster an environment where corruption is allowed to persist. This is the time for more transparency and accountability, not less.

3. Procurement processes should be structured to engage proactively with company ownership information, allowing for internal and external scrutiny of economic operators. To facilitate proper due diligence, national procurement portals should be interoperable with company registers and beneficial ownership registers.

Having an open procurement system that is linked with company ownership data would create a public procurement system that allows for strong due diligence of suppliers, helping public authorities verify

¹⁰ <https://ec.europa.eu/digital-single-market/en/european-legislation-reuse-public-sector-information>

¹¹ <https://opencorporates.files.wordpress.com/2020/06/eu-company-data-state-of-the-union.pdf>

who exactly they are entering into business with, avoiding fraudulent or false companies, and ultimately ensuring appropriate resource allocation in a timely manner.

Internal scrutiny: Evaluation Committees should oblige economic operators to disclose information on their company registers and beneficial ownership before being awarded a contract.

Whilst procurement processes may ask for certain information on companies, declaring the beneficial owner or disclosing company register information is not a common practice in procurement.¹² In order to be considered for a contract award, economic operators should have to disclose company ownership information to the Evaluation Committee.

Good practice example: In 2015, Slovakia created a beneficial ownership register for companies participating in public procurement processes, allowing for public scrutiny into the ownership structure of companies taking part in public procurement. Sanctions for non-compliance include barring companies from public contracts for up to three years and fines of up to €1 million if they take part in procurement without first registering.¹³

External scrutiny: company ownership information should be released with the contract information to allow for public scrutiny.

Due to the Anti-Money Laundering Directive mandating that Member States must publish beneficial ownership registers, and the Open Data Directive mandating that company registers and ownership should be published as a high-value dataset, Member States are obliged to make public more company ownership information. It is a question then, of integrating these registers with the national public procurement portal. To facilitate proper due diligence, national procurement portals should be interoperable with company registers and beneficial ownership registers.

4. Registers should be made publically available in open data, allowing other sectors of society to monitor and verify the accuracy of company ownership data

As these registers often rely on companies to self-declare information, the registers may not be completely accurate. The quality and accuracy of the information held in the company registers needs to be monitored and verified. The important thing is to make these datasets public, so that civil society and journalists can scrutinise and search for red flags in the information provided.

¹² <https://www.facebook.com/imf/videos/794967308011390>

¹³ https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf