EUROPEAN UNION
BENEFICIAL OWNERSHIP TRANSPARENCY

The European Union (EU) is fully compliant with three G20 Principles including those on the definition of beneficial ownership and on trusts, and scores well on other principles including accuracy of beneficial ownership information. Weaknesses remain concerning Principle 10 on Bearer shares, where measures to prevent their misuse are at the discretion of member states.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 100%

The EU is fully compliant with the G20 Principle 1.

The forthcoming Fourth EU Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereafter referred to as the "4AMLD") in Article 3, paragraph 6 states, "'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted."

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 0%

The European Union has not conducted an assessment of the money laundering risks related to legal persons and arrangements in the last three years.

An April 2012 impact assessment (which is different from a risk assessment) found that existing EU law regarding beneficial ownership "would not be effective as it would not allow for greater transparency on beneficial owner and legal persons and arrangements."

Looking forward, Article 6, paragraph 1 of the 4AMLD states that "The Commission shall conduct an assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities"…and will cover "the most widespread means used by criminals by which to launder illicit proceeds. (Article 6, paragraph 2(c))."

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 75%

Current EU laws require legal entities to maintain information on their beneficial ownership, including the details of the beneficial interests held. They also require shareholders to inform the company regarding changes in share ownership.

This information needs to be maintained within the country of incorporation regardless of whether the legal entity has a physical presence in the country.

However, shareholders are not required to declare to the company if they own shares on behalf of a third person.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 61%

Member states are required to ensure access to beneficial ownership information:

"(a) to competent authorities and FIUs [Financial Intelligence Units], without any restriction;

(b) to obliged entities, within the framework of customer due diligence in accordance with Chapter II;

(c) to any person or organisation that can demonstrate a legitimate interest."

Although the interpretation of "legitimate interest" by member states will vary and may fall short of full public access, the law does allow for access that is wider than the access provided for under the Directive.

The law also requires Member States to ensure that the information is held in a central register (Article 30, paragraph 3)

On the other hand, the Directive does not specify a timeframe within which competent authorities can gain access to beneficial ownership.

G20 PRINCIPLE 5: TRUSTS

Score: 100%

Under this principle, trustees should be required to collect information on beneficiaries and settlors of the trusts they administer. In countries where domestic trusts are not allowed but the administration of trusts is possible, trustees should be required to proactively disclose beneficial ownership information when forming business relationship with financial institutions and DNFBPs.

Article 31, paragraph 1 of the 4AMLD states: "Member States shall require that trustees of any express trust governed under their law obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

(a) the settlor;

(b) the trustee(s);

(c) the protector (if any);

(d) the beneficiaries or class of beneficiaries; and

(e) any other natural person exercising effective control over the trust."

Paragraph 4, meanwhile, states that, "Member States shall require that the beneficial ownership data pertaining to the trust is held in a central register when the trust generates tax consequences."

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 100%

The applicable EU legislation ensures timely and unrestricted access by competent authorities and FIUs, without alerting the parties to the trust concerned. (Paragraph 4).

Although it is not a requirement of the G20 principle 6, it is worth noting that the potential denial of access to obliged entities is of concern, as they may require this information to make credible risk assessments of their customers.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 89%

Financial Institutions

Score: 78%

The law requires that financial institutions have procedures for identifying the beneficial owner(s) when establishing a business relationship with a client.

Customer due diligence measures shall comprise "identifying the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts, companies, foundations and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer." (Article 13, paragraph 1(b))

The law also requires independent verification of identity information, and enhanced due diligence where the customer or beneficial owner is a Politically Exposed Person (PEP).

Where the beneficial owner has not been identified, financial institutions should refuse to open accounts or perform transactions, and consider making a Suspicious Transaction Report (STR).

Sanctions and measures can be applied to the members of the management body and to other natural persons who under national law are responsible for breaches.

DNFBPs

Score: 96%

Designated Non-Financial Businesses and Professions (DNFBPs) are considered obliged entities and are required to identify the beneficial owner of customers based on independent sources.

DNFBPs are not allowed to proceed with a business transaction where the beneficial owner has not been identified, and should consider filing a Suspicious Transaction Report (STR). There may be sanctions for the directors and senior management of DNFBPs for failure to apply these measures.

These obligations in particular cover trust and service providers, lawyers, accountants, real estate agents, dealers in precious stones and metals, dealers in

luxury goods, as well as auditors, notaries and tax advisors.

They also include enhanced due diligence for Politically Exposed Persons and their family members.

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Not applicable.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Not applicable

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 50%

Bearer shares

Score: 50%

With regards to bearer shares, the EU Directive is not prescriptive and simply states in Article 10, paragraph 2 that "Member States shall take measures to prevent misuse of bearer shares and bearer share warrants."

As a result, the approaches to bearer shares vary throughout the EU.

Nominee shareholders and directors

Score:50%

There is no specific reference in the 4AMLD regarding nominees.

Another directive – Directive 2012/30/EU – partially covers some aspects requiring the identification of natural persons in whose name a company is incorporated. However, these requirements should be more strongly phrased to prevent their misuse by individuals seeking to hide their identities.

There are no EU-specific provisions regarding the professional licensing and record-keeping of nominees.