IDENTIFYING BENEFICIAL OWNERS FOR FIGHTING AGAINST MONEY LAUNDERING: THE RESULTS OF EU PROJECT BOWNET

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Abstract

This paper presents the main results of Project BOWNET (www.bownet.eu), funded by the EU Commission, DG Home Affairs, and carried out by an international consortium coordinated by Transcrime/Università Cattolica Sacro Cuore (www.transcrime.it).

Focus of Project BOWNET is on the identification of the beneficial owners (BO) of those corporate entities (e.g. companies, trusts, and foundations) used by criminals for money laundering or other financial crime purposes.

In particular the project has analyzed the main problems of EU competent authorities and intermediaries in BO identification and suggested solutions for improving the related investigations.

The Project has produced a range of deliverables, all available on the project website (www. bownet.eu) including a Final Report (Riccardi and Savona 2013)[1] and a series of figures, charts and lists of business registers.

RESULTS

1. INTRODUCTION: THE IMPORTANCE OF IDENTIFYING BENEFICIAL OWNERS

Criminals and criminal organizations often make use of companies and other corporate entities (e.g. foundations, trusts, associations, 'Chinese boxes', etc) to hide their identity, conceal illicit flows of money, launder illicit proceeds, finance terrorist organizations, evade taxes, create and hide slash funds, commit bribery, corruption, accounting frauds and other financial crimes (WEF 2012; World Bank and UNODC 2011; Transcrime 2007; FATF 2006; OECD 2002).

For this reason, identification of the beneficial owners hiding behind suspicious corporate entities has become crucial in the fight against money laundering and terrorist financing. At EU level the Third EU AML (Anti-Money Laundering) Directive (Directive 2005/60/EC)

[1] Available at http://www.bownet.eu/materials/BOWNET_Final_report.pdf

requires intermediaries such as banks, auditors, accountants, lawyers and notaries to identify, as part of a Customer Due Diligence (CDD) activity, the beneficial owners of their clients and to take "*risk-based and adequate measures to understand the ownership and control structure of the customer*" (Directive 2005/60/EC, article 8, par. 1, letter b). The Fourth EU AML, whose preliminary draft has been issued in February 2013, confirms this approach and these provisions.

However, despite the wide attention paid to this issue, a number of questions remain unanswered:

• What are the practices adopted by EU competent authorities and intermediaries for identifying the BOs of suspicious corporate entities?

• What information do they use?

• Where is this information stored? Who provides it? What are the gaps in the dissemination of this information?

• How to address the existing gaps? How to improve the access to information and hence the identification of BOs?

Project BOWNET exactly addressed these issues. After a two-years study, the project has been able to identify the main criticalities in BO identification in Europe, and to suggest recommendations to EU policy makers to better tackle this issue.

2. WHAT ARE THE CURRENT PRACTICES FOR IDENTIFYING BENEFICIAL OWNERS? WHAT ARE THE PROBLEMS?

After a review of the main international and EU standards in terms of BO identification (Riccardi and Savona 2013, Chapter 1), the study analysed the findings of two surveys: on EU Law Enforcement Agencies (LEAs), Financial Intelligence Units (FIUs), Asset Recovery Offices (AROs) and on EU financial and non-financial intermediaries (DNFBPs). The surveys highlighted that **data on shareholders and directors** still represent the information most frequently used for BO identification purposes by both the categories, and that **business registers** (BRs) constitute the data source most frequently accessed.

However the analysis found that significant problems exist regarding **access** to business registers, especially **foreign ones**: it is difficult

not only to access and download information in different languages, but sometimes even to identify what register should in fact be accessed.

Additional concerns refer to the **timeliness** of the information provided by BRs (both in terms of updateness and access to historical records) and to their **accuracy and reliability**, since it is not easy to understand if data provided by registers and other data providers are verified, and by whom. According to both EU competent authorities and intermediaries, if new tools are to be helpful and effective, they should perform the **direct collection** of data from BRs and **collate them** so as to reconstruct the ownership structure especially of cross-border corporate schemes.

The project also evidenced that most of the software on the market has been designed to perform **KYC and CDD tasks** (e.g. check of watchlists, PEPs, blocked persons and companies, etc.) but not to cope with shareholders and ownership data.

3. WHAT IS THE LEVEL OF AVAILABILITY OF THE INFORMATION USED IN BENEFICIAL OWNERS INVESTIGATIONS?

Project BOWNET has carried also an analysis of EU business registers and of other public and commercial business information providers (Riccardi and Savona 2013, Chapter 3). The review highlighted that there is a **lack of interconnections** among EU registers: more than 80% of the 150 data providers analysed in fact cover only one country at a time, so that it is difficult to perform cross-border queries, which are the most effective in tackling transnational ML networks.

The analysis also showed that **data on beneficial owners** are provided by only four EU BRs out of 27. Much more widely available is **information on directors and shareholders**: whilst 92% of the BRs analysed make the names of directors available, only two-thirds of EU BRs provide the names of shareholders (Figure 1). Much less publicly available is additional information such as the dates of birth, addresses, ID/Passport numbers of directors and shareholders, which would be of great help in cases of homonymy. However, to be noted is that these data are often stored within BRs and, although not public, could be obtained by competent authorities upon request.

*Figure 1. Information on shareholders available on EU Business Registers*

N=26

■ Available on the public register   ■ Not public but within the registry   ■ Not public and not available
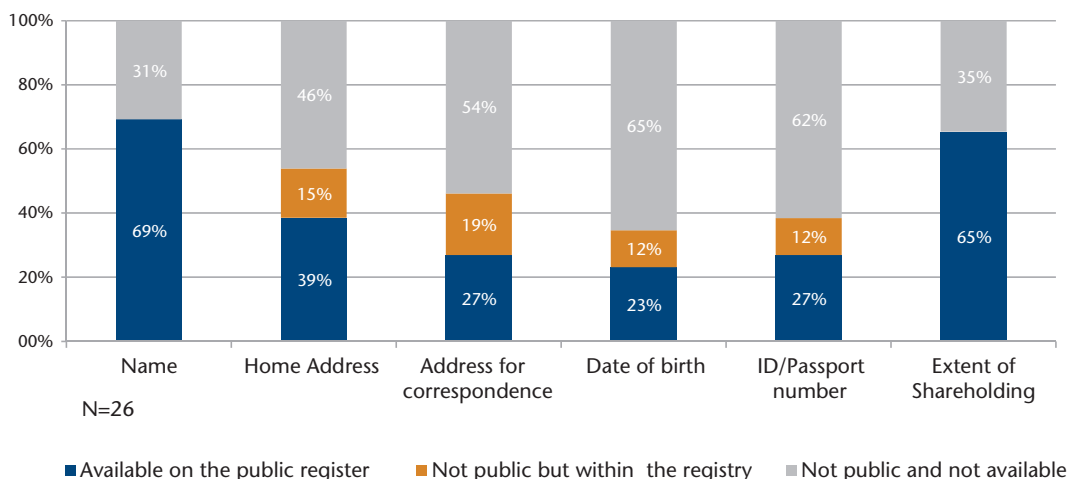
Source: Riccardi and Savona 2013 (www.bownet.eu)

The analysis of business information providers also highlighted a lack of **standardization in terms of data formats** (with PDF being the most common format, although not always OCR-readable) and a lack of **ownership and control information** as regards unlimited companies, associations and foundations (whilst limited companies are well covered).

To be pointed out in this regard is that **commercial data providers** often guarantee a wider geographical coverage, but they are often too expensive for EU competent authorities' needs.

Figure 2. Types of corporate entities covered by 150 EU business information providers (including EU Business Registers)

N=150
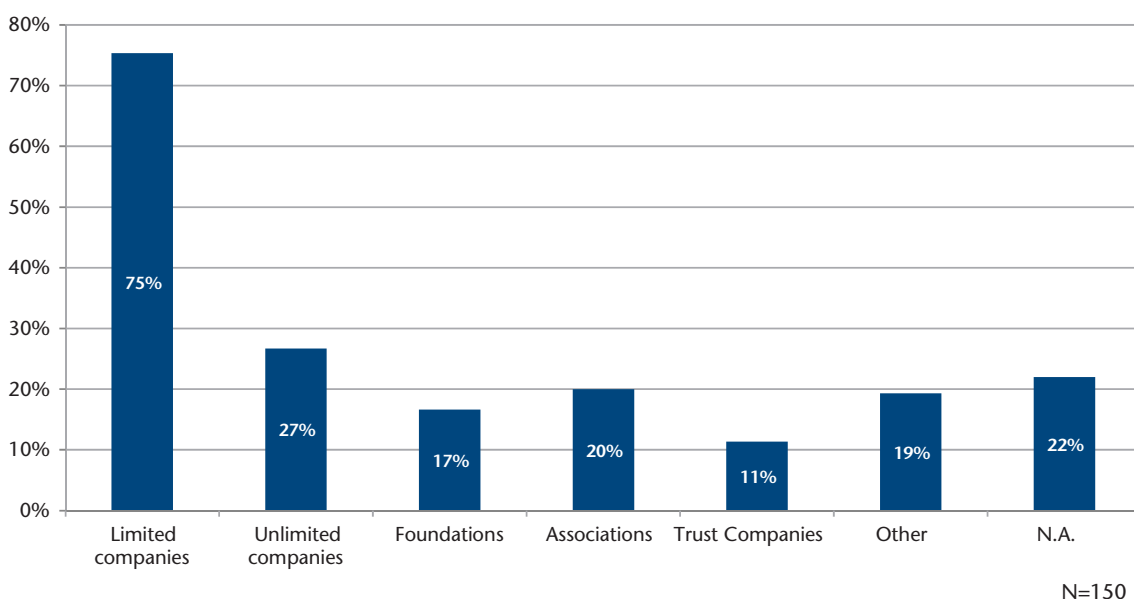
Source: Riccardi and Savona 2013 (www.bownet.eu)

4. HOW TO IMPROVE THE IDENTIFICATION OF BO BY EU COMPETENT AUTHORITIES AND INTERMEDIARIES?

The access and the dissemination of ownership and control information should be strengthened through **policy or regulatory initiatives to be taken at EU level** (Riccardi and Savona 2013, Chapter 4). It was suggested to identify a set of **minimum basic company information** to be held at BR premises (relative to companies' shareholders and directors) and to strengthen the **interconnection of EU BRs** by implementing in full Directive 2012/17/EU.

New support systems should also be developed to make a better and more effective use of the available information. In particular, a range of tools were suggested (Riccardi and Savona, Chapter 5). They should primarily **facilitate the access to BRs**, especially foreign ones, and retrieve data from registers based in different countries, so that investigators could **perform cross-border investigations** on the ownership and control of EU corporate entities.

CONCLUSIONS

While a proposal for a Fourth EU Anti Money Laundering Directive is being adopted by the EU Commission, lack of data on the ownership structure and on the beneficial owners of EU companies still represents a serious obstacle for the fight against the misuse of corporate entities by money launderers.

In order to address this problem, the Project BOWNET (www.bownet.eu), funded by EU Commission, DG Home Affairs, has shed light on what are the main problems in the identification of beneficial owners, what is the availability of these data and what could be done for improving their access by relevant agencies.

The final report of the project (Riccardi and Savona 2013) has left a range of data, charts, information, suggestions and recommendations to the European Commission that could improve the investigations of EU competent authorities in the field of anti-money laundering.

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