2017

# ENHANCING BENEFICIAL OWNERSHIP TRANSPARENCY ACROSS THE EUROPEAN UNION

LUXEMBOURG NATIONAL REPORT

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# TABLE OF CONTENTS

# ABBREVIATIONS

AMLD III – 3rd Anti-Money Laundering Directive

AMLD IV – 4th Anti-Money Laundering Directive

AML/CFT – Anti-Money Laundering and Counter Financing of Terrorism

BO – Beneficial Ownership or Beneficial Owner

BOT – Beneficial Ownership Transparency

CAA – Commissariat aux Assurances

CDD – Customer Due Diligence

CRF – Cellule de Renseignement Financier (the FIU of Luxembourg)

CSSF – Commission de Surveillance du Secteur Financier

DNFBPs – Designated Non-Financial Businesses and Professions

EBOT / EBOT Program – Enhancing Beneficial Ownership Transparency

FATF – Financial Action Task Force

FI – Financial Institution

FIU – Financial Intelligence Unit

IRE – Institut des Réviseurs d'Entreprises

ML/FT - Money Laundering and Financing of Terrorism

NRA – National Risk Assessment

OEC – Ordre des Experts Comptables

PEP – Political Exposed Person

SAR or STR – Suspicious Activity or Transaction Report

TCSP – Trust or Company Service Providers

# INTRODUCTION

Enhancing Beneficial Ownership Transparency (EBOT) is a European program funded by the DG Home.

The aim of the project is to support the transparency of financial flows and to support the fight against money laundering and terrorism financing and more generally to prevent illicit financing.

Together with five other National Chapters of Transparency International, namely TI Slovenia, TI Netherlands, TI Portugal, TI Italy and TI Czech Republic, Transparency International Luxembourg assessed, through a common methodology, the current Anti Money Laundering regulation in Luxembourg in order to compare it with other 5 national regulation in the light of increasing efficiency.

Transparency International EU Office lead the whole program and prepared a global report. Some parts of this global report (recommandations and best practise mainly) are included in this National report for the sake of consistency and homogeneity. Some parts are then not Luxembourg specific.

This National report is divided in two parts, the first is the synthesis of a Technical evaluation conducted from March 2016 until en March 2017 although the second part is more focusing on “Effectiveness” of the regulation.

For the sake of clarity, this report does not include elements related to the implementation of the IV Anti-Money Directive in Luxembourg as they were not available at the time of writing.

# 1. TECHNICAL EVALUATION

This section assesses the adequacy of the beneficial ownership transparency (BOT) policy framework in Luxembourg as of March 2017 although the IV AML Directive is to be implemented by end of June 2017.

The country' performance is benchmarked against existing global and European standards including the G20 High Level Principles on Beneficial Ownership Transparency[1], the Financial Action Taskforce[2] (FATF) 2012 Recommendations[3] and the Fourth European Anti-Money Laundering Directive (AMLD IV) adopted in 2015[4]. It also draws from country and sectoral good practices such as the UK, the first country to implement a public central register of beneficial ownership information for companies as well as the Extractive Industries Transparency Initiative's (EITI) pilot project on beneficial ownership[5].

The methodology is based on a questionnaire initially developed by Transparency International to assess the legal framework of G20 countries[6]. The original questionnaire articulated around the G20 Principles has been enriched to include the most recent state-of-play of the research, standards and practices in particular with regard to transparency requirements for trusts. Questions were designed in order to capture the critical aspects of a legal framework responding to highest standards of beneficial ownership transparency. The number of questions per principle, and thus the total number of points available per principle, varies depending on the complexity and number of issues covered in the original principle.

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[1] https://www.g20.org.tr/wp-content/uploads/2014/12/g20_high-level_principles_beneficial_ownership_transparency.pdf

[2] The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions with the objectve to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

[3] The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. First issued in 1990, the FATF Recommendations were revised in 1996, 2001, 2003 and most recently in 2012: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

[4] DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849

[5] The EITI Standard is the international standard for transparency and accountability around a country's oil, gas and mineral resources. In adopting the EITI Standard in May 2013, the EITI Board agreed to recommend disclosure of beneficial ownership information and that the EITI will in the future require disclosure of the beneficial owners of oil, gas and mining companies operating in implementing countries. To this effect, a pilot project was carried out between 2013 and 2015 and subject to subsequent evaluation from which very valuable lessons can be drawned. For more information, see EITI, *Beneficial Ownership Pilot Evaluation Report,* October, 2015 https://eiti.org/sites/default/files/documents/evaluation_report.pdf

[6] Transparency International, *Just for Show? Reviewing G20 Promises on Beneficial Ownership*, 2015 http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises

The methodology was also built so as to reflect on the changing policy environment, in particular changes foreseen as part of the implementation of the EU AMLD IV to be completed by June 2017 and the revision process of this same Directive undertaken in reaction to the Panama Papers and still ongoing at the time of writing[7]. As a result, for each principle, country performance was not only assessed in terms of the adequacy of the current legal framework as of December 2016 but also in terms the adequacy of future plans. **In that respect, the authors want to draw the attention of the readers to the fact that the scoring is based on future policies not yet into force at the time of writing although assessing the current situation. This may create confusion.** However, this assessment is still interesting as it shows the needs of updates of the Luxembourg current legislation.

For each principle, the scores were averaged across questions and then transformed into percentages. Countries were grouped into five bands (very weak: 0–20 per cent; weak: 21–40 per cent; average: 41–60 per cent; strong: 61–80 per cent; very strong: 81–100 per cent) according to their level of compliance with each of the principles.

Questionnaires were completed by Transparency International Luxembourg for the Luxembourg part and the Transparency International EU Office gathered all scoring for all 6 countries participating in the project. During the whole process, officials and the Luxembourg government have been consulted either through bilateral exchanges or invitation to review the completed questionnaires.

Each “principle section” shall end with a “best practices and recommandations” section. Transparency International Luxembourg would like to emphasize that this sub-section is not Luxembourg specific but is general to the program and to the subjet. Some “Best pracises” as described might already be implemented in the Luxembourg legislation but for the sake of consistency, the authors left them altogether.

# OVERALL ADEQUACY OF NATIONAL BOT LEGISLATIONS FOR NATIONAL PARTNERS

The EBOT program is a transnational European program run by 6 countries, namely Czech Republic, Italy, the Netherlands, Portugal, Slovenia and Luxembourg.

This subsection assesses the overall country performance against G20 10 Principles. The general score integrates all aspects related to beneficial ownership transparency ranging from the legal definition of beneficial owner to the identification of risks related to legal persons and arrangements, ease of access to beneficial ownership information by key stakeholders, customer due diligence duties by obliged entities[8], domestic and

[7] The European Commission issued a proposal for amendments on 5 July 2016 that are currently being reviewed by the Council and the Parliament. For more information see DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, 5 July 2016
http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

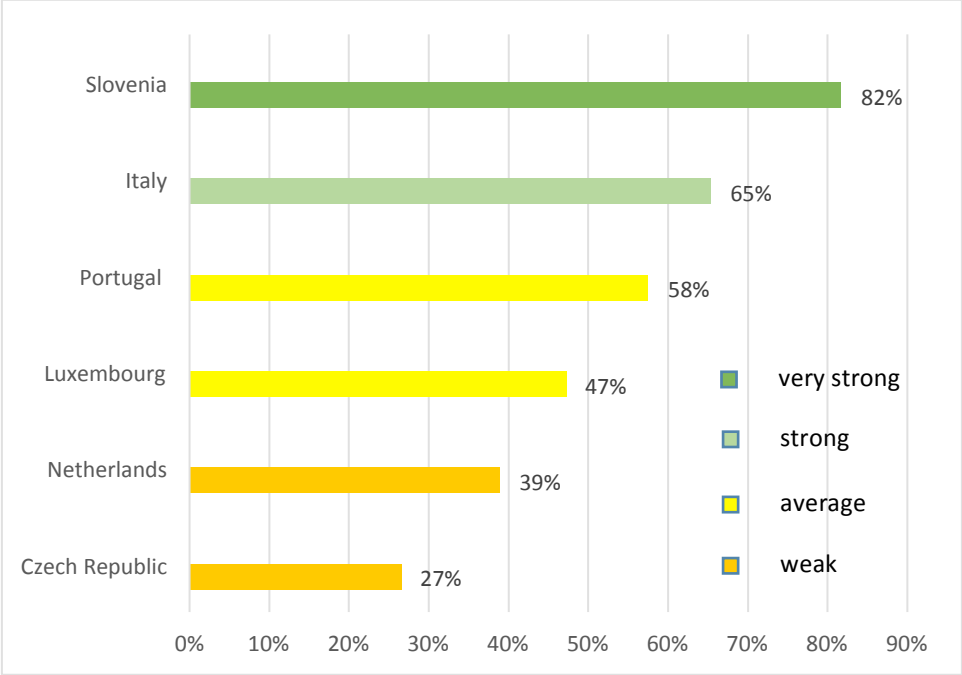
[8] Obliged entities are professionals subject to customer due diligence obligations when they enter in business with a customer or every time they carry out a transaction, i.e. making the necessary verifications on the identity of their customer and the origins of the funds. Those include financial institutions (FIs) and professions known as Designated Non-Financial Businesses and Professions

international cooperation or the use of bearer shares and nominees to obscure beneficial ownership.

Country performance is benchmarked against the score of the other countries in the sample as well as in time comparing current and future scores for each country. Country scores are also compared with G20 countries' scores as measured in previous work by Transparency International[9].

Please note that Slovenia shows very strong performance scoring at 82% for both the current and future situations as the current situation reflects recent changes in legislation with the adoption of a new bill transposing the 4th AML Directive in November 2016.

**Overall adequacy of current national BOT legislations (%) against G20 Principles and IV AML Directive implementation**




(DNFBPs) under FATF terminology, i.e. auditors, external accountants, tax advisors, notaries, lawyers when acting as financial intermediaries, real estate agents, trust and corporate service providers, providers of gambling services, luxury goods dealers, providers of virtual currencies services, etc.

[9] Transparency International, *Just for Show? Reviewing G20 Promises on Beneficial Ownership*, 2015 http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises

# PRINCIPLE 1:
# BENEFICIAL OWNERSHIP DEFINITION

An adequate and comprehensive legal definition of beneficial ownership is the first pillar of a robust policy framework on beneficial ownership transparency. It shall form the basis from which all legal responsibilities and obligations will be derived.

## Beneficial ownership definition for companies

*The FATF and AMLD IV define the beneficial owner as "the natural person(s) 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.*

*Source: FATF, Guidance – Transparency and Beneficial Ownership, October 2014 http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf*

Luxembourg has transposed the definition provided in the 3rd Anti-Money Laundering Directive (AMLD III)[10] or 4th Anti-Money Laundering Directive (AMLD IV) adopted in June 2015 and currently in the process of implementation. In particular, Luxembourg integrates the 25% ownership threshold provided as an indication in the AMLD IV definition. Indeed, the 25% threshold is only an indication and a presumption in Luxembourg as the definition is based on "direct or indirect control".

*AMLD IV definition of beneficial owners for companies and other legal entities[11]*

In the case of corporate entities, AMLD IV defines the beneficial owner as:

i) "the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, […]. A **shareholding of 25 % plus one share** or an **ownership interest of more than 25 %** in the customer held by a natural person shall be an indication of direct ownership. **A shareholding of 25 % plus one share** or **an ownership interest of more than 25 %** in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. […]

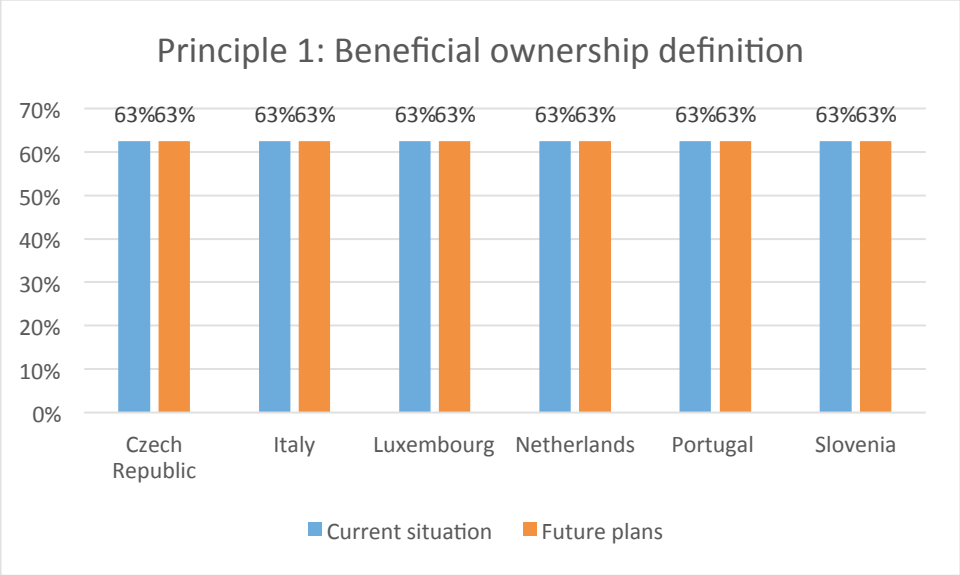
[10] Most countries are still in the process of implementing AMLD IV and therefore the AMLD III framework still applies. The previous EU definition as set in AMLD III does not differ significantly by spirit from the updated version in AMLD IV. It also follows the two-pronged approach with a fall back option of listing senior management.

[11] DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849

ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the **natural person(s) who hold the position of senior managing official(s),** […];"

In Luxembourg current legislation, 25% is indeed an indication and the regulator relies on the risk analysis of each professional to ascertain that despite this indication the BO identification is genuine. The main indicator is "*any natural person who ultimately owns or controls"*. Leaving the interpretation to the professionals does make sense, as they should be more likely to interpret the situation based on their risk analysis. The issue is more the quality of information they can collect. However, based on the G20 principles, the Luxembourg current approach does not reach the highest standards, mostly due to the high threshold in place although the process is adequate.

## COUNTRY PERFORMANCE




Indeed, article 23 of Regulation CSSF N°12/02[12] states:

> *The "beneficial owner of a legal person or a legal arrangement" within the meaning of Article 1(7) of the Law and Article 1(2) of the Grand-ducal regulation consists in one or several natural persons which in the end, directly or indirectly own or control in law or fact a legal person or a legal arrangement.* ***This may be the case even if the thresholds of the ownership or control as indicated in Article 1(7), points (a)(i) and (b)(ii) and (iii) of the Law are not met.***

[12] Circulaire CSSF 12/02 dated 14 December 2012, see article 23 :
http://www.cssf.lu/fileadmin/files/Lois_reglements/Legislation/RG_CSSF/RCSSF_No12-02.pdf

This means in practice that if no beneficial owner is found to have at least 25% of the property, the professional shall pursue its due diligence in order to identify the beneficial owners regardless of any threshold.

Th OEC (the Luxembourgish chartered accountants' professional organization) has the same approach as it recommends in its professional norms that beneficial ownership, as defined in the Luxembourgish law, is not limited to shareholding thresholds, but has to take into account real control and possession:

> *"[L'identification du bénéficiaire effectif] peut être dans certaines circonstances le cas même si les seuils de participation ou de contrôle tels qu'indiqués à l'article 1er (7) lettre a) i) et lettre b) i) et iii) de la loi modifiée du 12 novembre 2004 ne sont pas atteints »*[13]

The same applies to the CAA in the article 23 of Regulation Commissariat Aux Assurances N° 13/01 of 23 December 2013 also provides for the same clarification than Regulation CSSF 12/02[14].

### Beneficial ownership definition for trusts

The definition of beneficial ownership for trusts and other legal arrangements is covered under Principle 5.

## BEST PRACTICES

### What a beneficial owner is or can be

In order to be eligible for the beneficial ownership label, the candidate should pass a series of tests:

- ✓ **Natural person test**: The beneficial owner is always a natural person, i.e. an individual human being, as opposed to a legal person, which may be natural or fictitious such as a company, a trust, a foundation and any other type of legal entities or arrangements.
- ✓ **Ownership test**: The beneficial owner is any individual holding, directly or indirectly, at least 1 share in the entity or alternatively, holding shares or interests above a certain threshold (i.e. 1%, or 5% or 10%).
- ✓ **Voting test**: The beneficial owner is any individual, with the direct or indirect right to at least one vote, or alternatively, any individual holding directly or indirectly voting rights above a certain threshold (i.e. 1%, or 5% or 10%).
- ✓ **Directors' appointment or removal test**: The beneficial owner is any individual with the direct or indirect right to appoint or remove at least one Director or Manager.

[13] OEC, Norme professionnelle relative à la lutte contre le blanchiment et contre le financement du terrorisme, adoptée le 17 juin 2015, point 29.
http://www.oec.lu/myeteam/index.htm#PDF/28213, Last accessed on March 8th 2017.

[14] Règlement du Commissariat aux Assurances 13/01 dated 13 December 2013 on AML, last accessed on February 20th, 2017 :
http://www.commassu.lu/upload/files/382/reglcaa_13_01.pdf

- ✓ **Residual test**: Any individual with direct or indirect control over the entity (e.g. decision or veto rights on business operations, right to profit, contractual associations, joint ownership arrangements).

The beneficial owner can also be:

- ✓ **Default criteria**: In the situations (if applicable) where no individual passes any of the above beneficial ownership tests, at least the top 5 or 10 owners (e.g. members, shareholders, etc.) are identified as beneficial owners

## What a beneficial owner is not

The beneficial owner is never:

- ✓ a legal person or entity
- ✓ a physical person who is an agent, nominal owner or intermediary.
- ✓ a senior manager unless he passes the residual test described above. If no beneficial owner is identified as per the criteria set above, the senior manager is registered as such, not as a beneficial owner. This should raise a red flag.

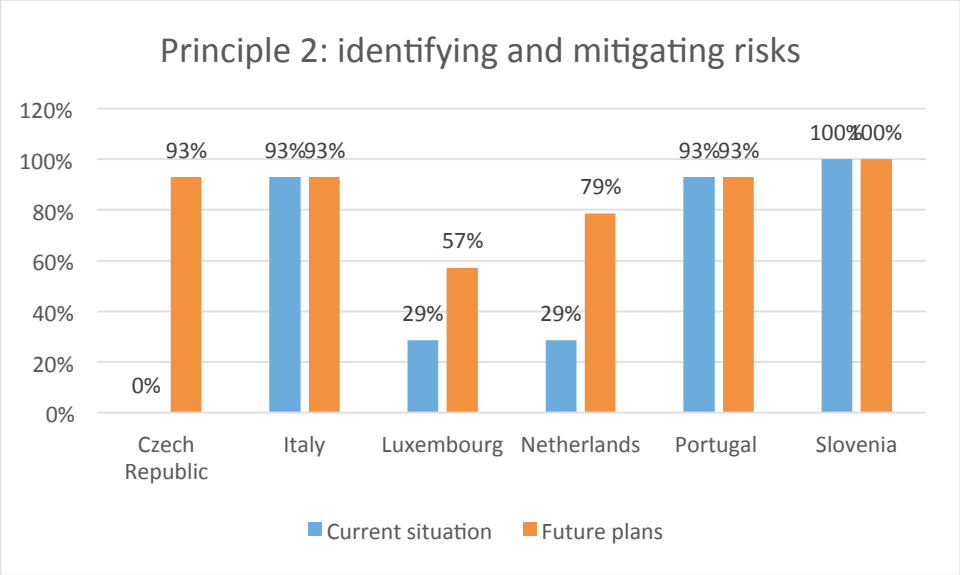
# PRINCIPLE 2: RISK MANAGEMENT RELATING TO LEGAL ENTITIES AND ARRANGEMENTS

An effective beneficial ownership transparency policy framework shall be grounded in a good understanding of existing and emerging money laundering risks associated with the misuse of domestic and foreign legal entities and arrangements from all key stakeholders including public competent authorities, financial institutions and Designated Non-Financial Professions and Businesses (DNFBPs). It also relies on the implementation of effective mitigation measures to reduce the risks identified and its monitoring.

The guidance for that principle valuation is clear : countries should conduct assessments of cases in which domestic and foreign corporate vehicles are being used for criminal purposes within their jurisdictions to determine typologies that indicate higher risks. Relevant authorities and external stakeholders, including financial institutions, DNFBPs, and non-governmental organisations, should be consulted during the risk assessments and the results published. The results of the assessment should also be used to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies.

Besides, countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks.

## COUNTRY PERFORMANCE




Luxembourg show a surprisingly poor performance under this principle scoring at a low 29% because it has never indeed ever undertaken a comprehensive national assessment of their money laundering and terrorism financing risks (as the Netherlands). However both countries have requirements for financial institutions and DNFBPs to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks. Although such an assessment has never been mandatory for Luxembourg, its absence has a great impact.

Luxembourg is expected to publish a national risk assessment as per new European obligations but there was no timeline had been specified at the time of writing, Luxembourg authorities indicate that the process is underway and that the new obligation is to come into force as of June 27th, 2017.

Despite comprehensive and adequate requirements for all professionals in that principle, Luxembourg cannot score high. The publication of the first ever National Risk Assessment (NRA) by the Luxembourg authorities shall for certain be closely monitored.

## BEST PRACTICES AND RECOMMENDATIONS

In summary, a robust risk management strategy shall involve the following:

- ✓ The regular conduct of national risk assessments, preferably every three years involving the consultation of relevant authorities and stakeholders and resulting in the identification of high risk areas;
- ✓ The requirement for financial institutions and DNFBPs to identify and assess their own money laundering and terrorist financing risks;
- ✓ The publication, active dissemination and awareness raising of the results of the national risk assessment among key stakeholders;
- ✓ The implementation of mitigation measures by key stakeholders including public authorities, financial institutions and DNFBPs;
- ✓ The close monitoring of the implementation and effectiveness of risk mitigation measures through for example the establishment of a permanent inter-institutional mechanism as in the case of Italy, Portugal or Slovenia.

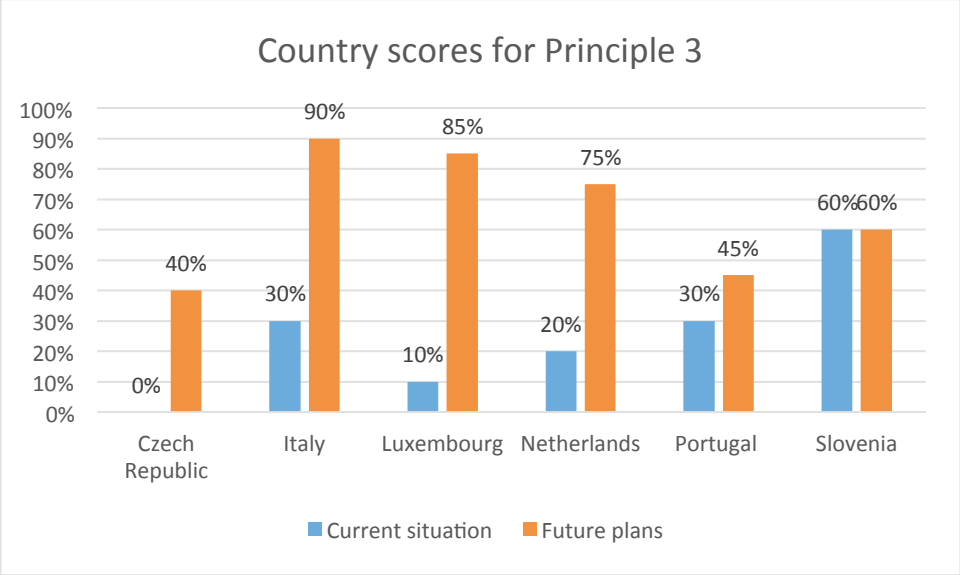
*Thinking long term*

In Italy and Portugal, the governments have established a permanent inter-institutional body to supervise the regular conduct of the national risk assessments and coordinate the implementation and monitoring of mitigation measures. In Portugal, the Coordination Commission is hosted by the Ministry of Finance, headed by the Secretary of State for Fiscal Affairs and composed of all the bodies that contributed to the risk assessment exercise.

# PRINCIPLE 3: BENEFICIAL OWNERSHIP TRANSPARENCY REGULATIONS FOR COMPANIES

A sound policy framework provides for the obligation that Legal entities should be required to maintain accurate, current, and adequate information on beneficial ownership within the jurisdiction in which they were incorporated. Companies should be able to request information from shareholders to ensure that the information held is accurate and up-to-date, and shareholders should be required to inform changes to beneficial ownership.

## COUNTRY PERFORMANCE




Luxembourg currently rates very weak under this principle. The poor performance can be explained by the fact that until recently national legislations were not distinguishing between legal and beneficial ownership. Luxembourg, as most countries has in place an obligation to maintain information on shareholding but shareholders could be legal persons and no further effort was required to look for the beneficial owner behind the legal entity. Although a legal person has an obligation to additionally identify a physical permanent representative who is registered as such in addition to the legal person in the Business Register (RCS), the named representative has no obligation to be the owner.

In general, companies and legal entities have no verification mechanism in place to ensure that the information is accurate and regularly updated. Only service providers as regulated professionals bear that general verification obligation in Luxembourg as of today.

The transposition of the AMLD IV shall contribute to improving the current legal framework by requiring legal entities to maintain information on their beneficial ownership, including the details of the beneficial interests held. This information shall be maintained within the country of incorporation, regardless of whether the legal entity is physically present there. The Directive also requires shareholders to inform the company regarding changes in share ownership.

However, one loophole will remain as shareholders will not be required to declare to the company if they own shares on behalf of a third person in all circumstances.

Under Luxembourg law, there are two ways to hold shares for a third person: nominee shareholding or proxy holding. Proxy holders have the obligation to disclose the name of the person they act on behalf of[15]. They act in the name of the real shareholder in total transparency and under the regulation of a "madate". On the other hand, nominee shareholders do not need to identify themselves as such. In practise, most nominees are regulated professionals and are subject to AML/CFT regulation. Besides, "nominee shareholding" seems to be limited in practice to Investment funds through regulated professionals, the mere absence of a dedicated regime (or prevention) of nominees in Luxembourg is to be seen as as loophole.

## BEST PRACTICES AND RECOMMENDATIONS

In summary, golden standards and best practices under this principle include:

- ✓ requiring legal entities to maintain information on all natural persons who ultimately exercise ownership or control of the legal entity;
- ✓ requiring that the information contain the full name of the beneficial owner, an identification number, their date of birth, nationality, country of residence and an explanation of how control is exercised;
- ✓ requiring that the information be maintained and available within the country of incorporation regardless of whether the legal entities have or do not have a physical presence in the country in order to facilitate access to information by supervisors and law enforcement authorities when necessary;
- ✓ requiring beneficial owners and shareholders to inform the company when there are changes in ownership, or control in a timely manner (e.g. 30 days);
- ✓ requiring shareholders to declare if control is exercised by a third person.

[15] Law of the 24th May 2011 (*concernant l'exercice de certains droits des actionnaires aux assemblées générales de sociétés cotées et portant transposition de la directive 2007/36/CE du Parlement européen et du Conseil du 11 juillet 2007 concernant l'exercice de certains droits des actionnaires de sociétés cotées)*, Articles 8 and 9: http://www.legilux.public.lu/leg/a/archives/2011/0109/a109.pdf#page=2

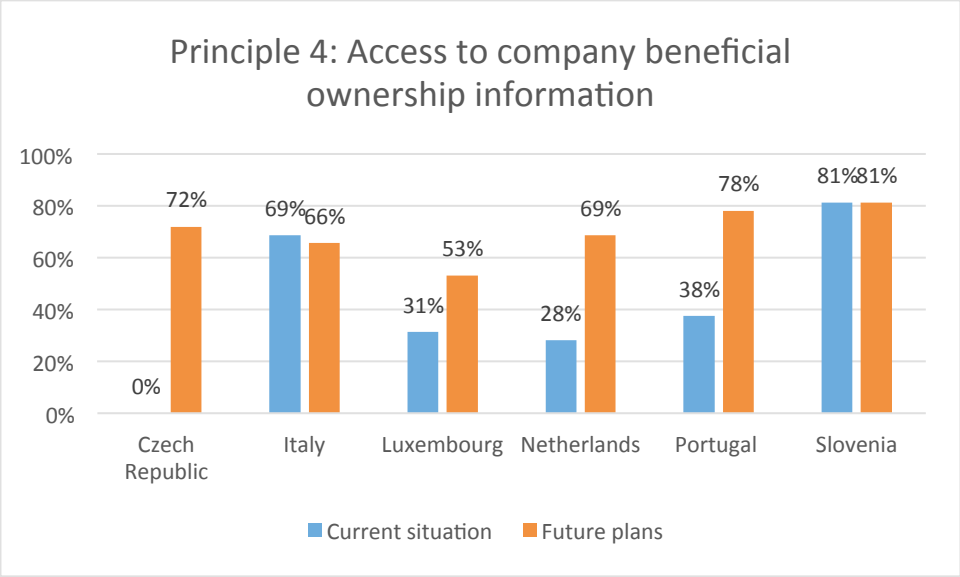
# PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION OF COMPANIES

This section assesses the conditions of access to beneficial ownership information by three categories of actors: i) competent authorities, ii) financial institutions and DNFBPs and iii) the public. All relevant competent authorities should have timely access to adequate, accurate, and current information on beneficial ownership. Financial institutions and DNFBPs shall also be granted timely access in order to perform their customer due diligence obligations.

Beneficial ownership registries should have the mandate and resources to collect, verify and maintain information on beneficial ownership. Information in the registry should be up-to-date and the registry should contain the name of the beneficial owner(s), date of birth, address, nationality and a description of how control is exercised.

This section focuses on access to beneficial ownership information of companies and other legal entities. However, the general principles shall also apply to trusts and equivalent structures. The specific aspects related to access to beneficial ownership information for trusts will be addressed under Principle 6.

## COUNTRY PERFORMANCE




Luxembourg is a current weak performer under that principle. Access to beneficial ownership information by competent authorities although comprehensive and effective is *ad hoc*. The information may be inferred from different sources including company registries, obliged entities or the companies themselves. The current situation is somehow efficient and allows all Luxembourg authorities to access the proper information but it is not in line with the principle, which requires a centralized register to score high.

The Luxembourg score is expected to significantly improve in the near future with the transposition of EU AMLD IV as of end of June 2017 which foresees the establishment of national central registries containing beneficial ownership for companies and other legal

entities accessible to competent authorities and obliged entities (i.e. financial institutions and DNFBPs). As per current European rules, other stakeholders, such as non-governmental organisations and investigative journalists, may request access to the registry if they can demonstrate a "legitimate interest". Questions have been raised about how to interpret the notion of legitimate interest which is left at the discretion of Member States. At the time of writing, discussions are ongoing at European level to decide whether this "legitimate interest" test should be removed.

Luxembourg has not made any announcement about its transposition plans at the time of writing but we can expect a full compliance in the transposition.

## BEST PRACTICES AND RECOMMENDATIONS

When assessing national legislations against this principle, the questions one needs to ask are the following: access to whom, to what, and how? The present section highlights best standards and practices for each question.

### To whom access should be granted?

The information on beneficial ownership shall be accessible to:

- ✓ **Competent authorities**, including all bodies responsible for combating money laundering or terrorism financing, including financial intelligence units, regulatory bodies, law enforcement authorities, tax authorities. The revision of European rules[16] foresees the inclusion of tax authorities in the definition of competent authorities which is not the case in the current Directive.[17]

- ✓ **Financial institutions and DNFBPs** when taking customer due diligence measures. They shall be granted free access to the register so as to guarantee cost-effective customer verification procedures. This is particularly crucial for small entities who do not always have the financial, technical and human resources to afford sophisticated and expensive databases.

- ✓ **The public.** Governments shall consider granting public access to a limited set of information on beneficial ownership (see section "What information shall be accessible" below). This approach has gained increasing momentum in the months following the Panama Papers. A few national champions are leading the way: the UK and Ukraine already have public registers in place and Denmark is expected to set one up during summer 2017. Slovenia recently introduced legislation for a public register and plans for introducing similar legislation in the Netherlands are underway. At the London Anti-Corruption Summit in May 2016, six countries[18]

[16] DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, 5 July 2016 http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

[17] DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849

[18] Afghanistan, France, Kenya, Netherlands, Nigeria, UK

committed to public registers of beneficial ownership and six others[19] stated they would consider doing so. Following the first phase of the EITI pilot project on beneficial ownership transparency in extractive, 20 countries have committed to making beneficial ownership data available through a public register.[20]
As for Luxembourg, the plan is not yet public but Transparency International Luxembourg is of the opinion that a public register is not the most efficient way to fight money laundering and terrorism.

*Is public access to beneficial ownership compatible with the respect of privacy rights?*

The idea of putting a set of personal data even if limited in the public space is raising a number of legitimate questions about the compatibility with privacy rights and data protection laws. Fundamental rights of data and data protection legislation in the European Union allow making information available to the public when this is **legitimate, necessary and proportionate.** Provided that the necessary safeguards are in place, making public the beneficial ownership information of companies and trusts (and all other similar legal entities and arrangements) can be in conformity with data protection legislation and privacy rights but the matter is still under discussions in some countries.

## What information should be accessible?

The future legislation shall specify the scope and nature of the information that should be made accessible. The information shall be adequate, accurate and current.

**Adequacy of information**

Adequate information means sufficient information. The present section clarifies scope of legal entities covered by beneficial ownership registration requirements (i.e. types of legal entities and their origins) as well as the scope of information to be disclosed for each beneficial owner:

- ✓ **Types of legal entities covered**:
  The information concerns the beneficial owners as defined under Principle 1 of legal entities.

- ✓ **Origins of legal entities covered**:
  The European legislation only applies to companies and legal entities incorporated under the EU Member States´ law. The question is therefore how to ensure that foreign companies operating in EU Member States are also covered. Slovenia has come up with an interesting model of beneficial ownership register in this respect. The obligation to disclose beneficial ownership information applies not only to companies and legal entities incorporated under Slovenian law but also to all economic agents[21] active in Slovenia, i.e. doing business or liable for tax in Slovenia. The United Kingdom is also aware of this issue.[22] Although the current Person with Significant Control (PSC) register only includes UK incorporated

[19] Australia, Georgia, Indonesia, Ireland, Jordan, New Zealand
[20] https://eiti.org/blog/how-eiti-countries-will-publish-real-owners-by-2020
[21] With the exception of free traders and persons engaged in self-employed activity, provided that they are not single-person limited liability companies or direct or indirect budget users.
[22] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512333/bis-16-161-beneficial-ownership-transparency.pdf

companies, the government is considering creating further reporting obligations for foreign companies owning property or bidding for public contracts in the UK. Luxembourg authorities have not made any official statement on the matter.

- ✓ **Set of data to be disclosed**:
  For each beneficial owner, the information accessible to competent authorities should ideally consist of the name, address, date of birth, nationality, country of residence, local and/or foreign tax identification number, the nature (e.g. shares, voting rights, etc.) and extent (%) of the beneficial interest held.

**Accuracy of information**

- ✓ Verification mechanisms should be in place to ensure that the data provided is accurate. The current EU legislation does not provide for any such mechanism. It is all the more critical that the system will rely on self-declaration since the information will be provided by the legal entities themselves.

**Regular updates of information**

- ✓ The legal entity should be required to update information on beneficial ownership within a certain numbers of days after the change.

# PRINCIPLE 5: BENEFICIAL OWNERSHIP TRANSPARENCY REGULATIONS FOR TRUSTS

Principles 5 & 6 look into the difficult question of regulating trusts and equivalent structures. Trusts may be used for legitimate purposes such as estate planning or managing charitable donations. However, the opacity governing their use renders the detection and investigation of suspicious activities involving trust structures particularly difficult and as such make them vulnerable to money laundering risks.

Trusts enable property or assets to be managed by one person on behalf of another and one challenge to identifying the beneficial owner is that control and ownership are explicitly separate. Multiple individuals with different statuses (e.g. settlor, beneficiary, trustee, protector) could qualify as beneficial owners, making it necessary for transparency requirements to capture all relationships in order to effectively follow money trails and track down money laundering.

Principle 5 assesses whether national legislations provide that trustees of express trusts[23] maintain adequate, accurate and current beneficial ownership information, including information on settlors, the protector (if any), trustees, beneficiaries and any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means. These measures should also apply to both domestic and foreign and other legal arrangements with a structure or function similar to express trusts.

It is important to note that there is no trust or trustee under Luxembourg legislation as there is no provision of the law which would allow the creation of a Luxembourg Trust. Luxembourg legislation defines a “fiducie” and acknowledges some foreign trusts. However, a “fiducie” is different than a trust and it is important to differentiate both forms.

Trustee and settlor information are only required concerning certain goods with national distinct registers (aircrafts, real estate goods, ships[24]). The law on trusts and fiduciary contracts[25] states in its tenth article that the fiduciary or trustee identity has to appear in any constitution, transfer, modification or extinguishing of ownership.

The 11th article states that in any national register where there is mention of the owner, in any occasion, trustees and fiduciaries have to demand that they are registered as such. This means that whenever the person is identified in one register as the owner, the trustees and fiduciaries are bound to appear as such as well.

Although in practice, in Luxembourg the trustee is generally a regulated professional under the scope of the AML legislation with an obligation to search and maintain information on beneficial ownership, the current absence of a dedicated regime for foreign trust can be seen as a deficiency.

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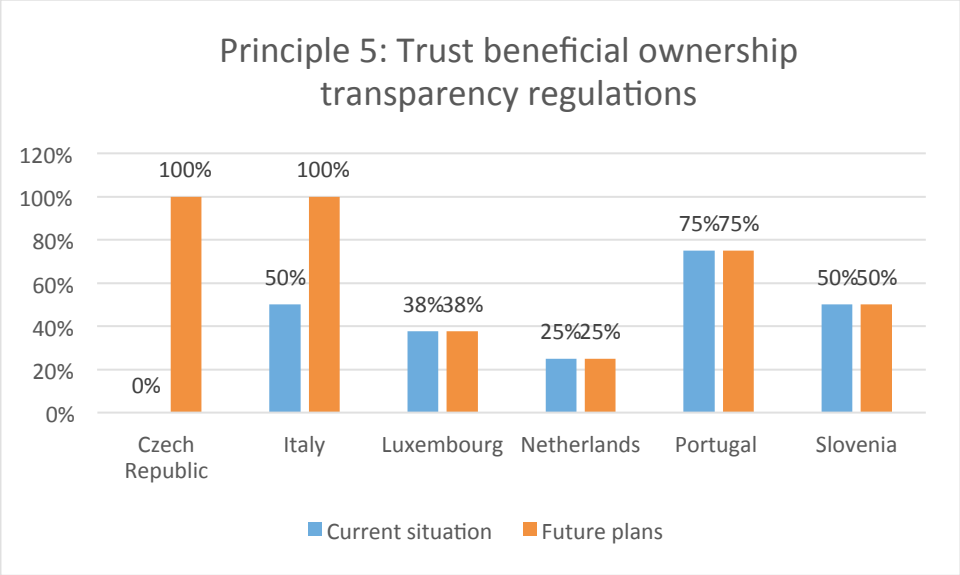
[23] express trusts are trusts created in express terms, and usually in writing, as distinguished from one inferred by the law from the conduct or dealings of the parties (Black's Law Dictionary, p. 1354 (5th ed. 1979)).

[24] Article 5 of the law of the 23 september 1997, http://www.legilux.public.lu/leg/a/archives/1997/0099/a099.pdf#page=2

[25] Loi du 27 juillet 2003, article 10, http://data.legilux.public.lu/file/eli-etat-leg-memorial-2003-124-fr-pdf.pdf

## COUNTRY PERFORMANCE




### Definition of beneficial owners of trusts

It is then no surprise to see that Luxembourg legislation fail to provide for an explicit and comprehensive definition of beneficial ownership in the case of trusts. That does explain the poor scoring of Luxembourg under this principle. The Luxembourg legislation only states that the Trustee is to be seen as the owner[26]. On the other hand, the AMLD IV defines beneficial owners in the case of trusts as:

*(i) the settlor;*
*(ii) the trustee(s);*
*(iii) the protector, if any;*
*(iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;*
*(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;*

### Scope and extent of transparency requirements

Another common legal loophole has to do with the scope of trusts being subject to beneficial ownership transparency requirements within a country where the regime does not exist. Luxembourg has a specific regime called “fiducie” which is often mistakenly seen as a Luxembourg trust. The fiduciaries agreements were formerly introduced in 1983 and are now regulated by a law dated dated 27 July 2003 (see note 25). They are only open for a limited list of professionals from the Financial sector. Indeed, there is no Luxembourg trust and the scope of the Luxembourg fiduciaries agreements is limited.

[26] See article 2 of the Law dated 27 juillet 2003 portant approbation de la Convention de La Haye du 1er juillet 1985 relative à la loi applicable au Trust et à sa reconnaissance : http://data.legilux.public.lu/file/eli-etat-leg-memorial-2003-124-fr-pdf.pdf

In Luxembourg, it is the other way round, the absence of a regime or a dedicated register is counterbalanced by the requirement for financial institutions and DNFBPs to maintain such information accurate and up to date as their CDD obligation.

The transparency requirements are then limited to the obligation by trust service providers to identify the beneficial owners of their customers and keep that information accurate and up to date as part of their CDD requirements. Only trusts owning certain types of assets like aircrafts, real estate properties, ships are subject to disclosure of partial beneficial ownership information, i.e. only on trustees and settlors through a national register.

Although efficient, the situation does not allow to feed any central register with the relevant information and to exchange such information quite automatically with European FIU. The European Union is considering the isue as the proposed amendments by the Commission[27] implies that trusts (foreign and domestic) with a EU resident trustee would be subject to transparency regulations. This proposition does not cover all situations but is a step forward.

## BEST PRACTICES AND RECOMMENDATIONS

The scope of beneficial ownership transparency requirements for those legal arrangements should include any trust with a connection point in the country:

- ✓ domestic trusts, i.e. trusts incorporated under the national law; and
- ✓ foreign trusts with a resident beneficial owner (e.g. settlor, trustee, beneficiary, etc.) or holding assets in the country

This would cover among other things scenarios where:

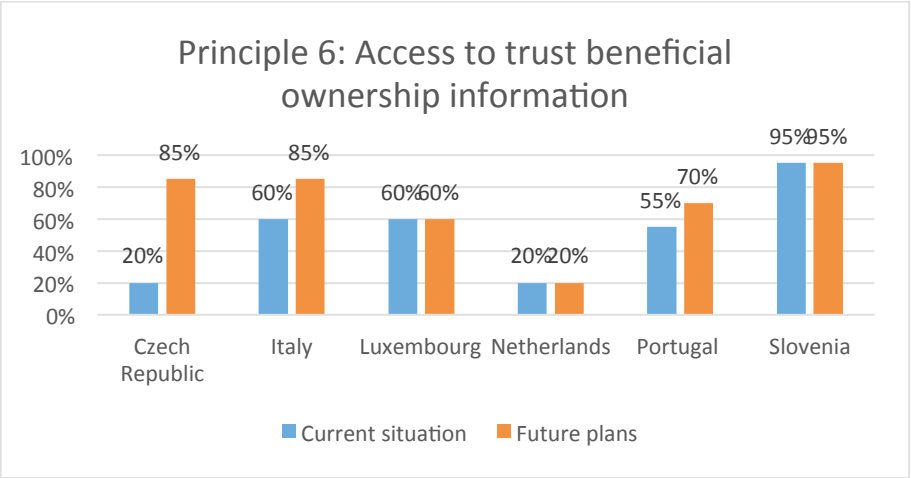
- ✓ Resident settlors try to hide illicit or tax liable assets by setting up a trust in a foreign jurisdiction with foreign trustees and beneficiaries.
- ✓ Foreign trusts buy land or property in the country.
- ✓ Foreign trusts hold shares or voting rights or ownership interest in a legal entity incorporated in the country.
- ✓ Foreign trusts hold a bank or payment account in a credit institution situated in the country.
- ✓ Resident beneficiaries enjoy assets of a foreign trust even after they have defaulted, meaning they are defrauding their creditors.

[27] DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, 5 July 2016, page 35 http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

# PRINCIPLE 6: ACCESS TO TRUST BENEFICIAL OWNERSHIP INFORMATION OF TRUSTS

Guidance for that principle assessment : Trustees should be required to share with legal authorities all information deemed relevant to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs.

## COUNTRY PERFORMANCE




Luxembourg country performance against this principle is strongly correlated with the scoring under the previous principle. The main difference in country approaches will be whether competent authorities get access to the information through financial institutions and DNFBPs as is currently the case for Luxembourg or directly through a central register as shall be soon the case for Czech Republic, Italy and Slovenia which all foresee the creation of a central register of trust beneficial ownership information.

All Luxembourg authorities have access to all relevant information from financial institutions and DNFPPs. The absence of a dedicated register does impact the scoring but the mechanism of access to information is globally in place.

## BEST PRACTICES AND RECOMMENDATIONS

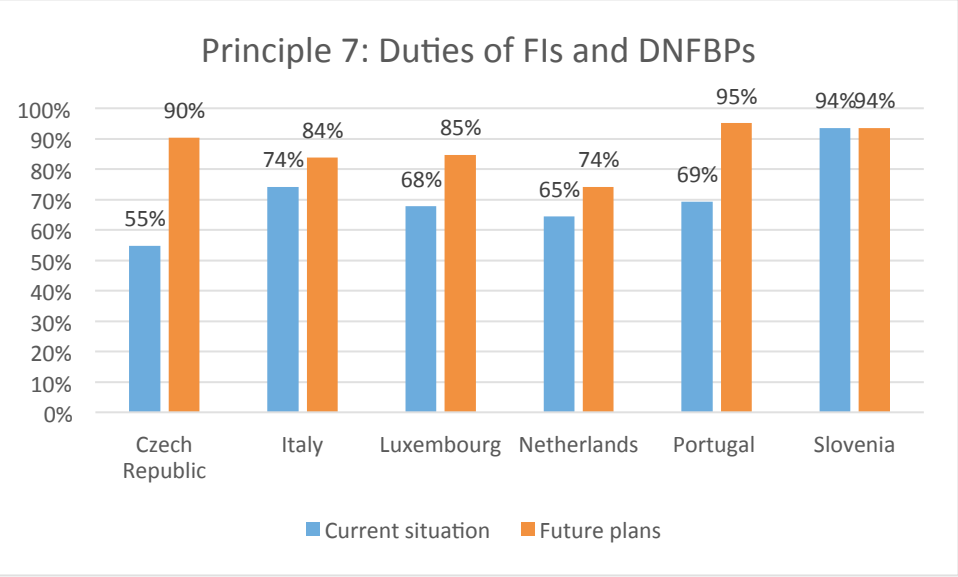
The most effective way to ensure access to beneficial ownership information for trusts is through a central register covering both domestic and foreign trusts as discussed in previous section and accessible to competent authorities, financial institutions and DNFBPs. Part of this information shall also be made accessible to the public as foreseen by the European Commission´s proposed AMLD IV revisions announced in July 2016.[28]

[28] DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, 5 July 2016, pages 39-40 http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

# PRINCIPLE 7: DUTIES OF OBLIGED ENTITIES

Principle 7 assesses the adequacy of obliged entities´ legal duties with regard to beneficial ownership identification and verification. Obliged entities, i.e. financial institutions and DNFBPs should be required by law to identify the beneficial owner of their customers as part of their due diligence procedures. DNFBPs that should be regulated include, at a minimum real estate agents, casinos, providers of gambling services, dealers in precious metals and stones, lawyers, accountants, tax advisors, notaries and other independent legal professions or trust or company service providers (TCSPs) when acting on behalf of or assisting their clients in planning and performing transactions. The list should be expanded to include other business and professions identified as high risk for money laundering in a national risk assessment including emerging risks such as virtual currency service providers.

## COUNTRY PERFORMANCE




All countries have the basic framework in place requiring financial institutions and DNFBPs to identify the beneficial owners as part of their customer due diligence procedures. Moreover, compliance shall further improve with the transposition of AMLD IV. For example, access to beneficial ownership information collected by the government shall be facilitated by the establishment of a central beneficial ownership register for companies and other legal entities as well as some trusts[29].

Remaining gaps for Luxembourg include that enhanced due diligence is to be carried out only for foreign (and not domestic) Politically Exposed Persons (PEPs), although the domestic PEP's may be included in an enhanced due diligence if there is a risk of Money

[29] Member States shall require that the information [on beneficial ownership] is held in a central register when the **trust generates tax consequences.** [...] It may also allow timely access by obliged entities, within the framework of customer due diligence [...]. Article 31, para 4 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849. The Commission acknowledged in its own impact assessment that this definition and scope raised issues of interpretation across Member States and were not unequivocally or consistently understood by Member States. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0223

Laundering. This will most certainly be corrected in the future legislation. Another gap lies in the threshold in the current AML legislation set at 15,000 euros in accordance with the FATF standard and the 3rd AML/CFT directive, although the future AML legislation based on the IV AML Directive indicates the threshold is to be set at 10,000 EUR. No doubt that the future legislation this will be updated.

On the good part, only the Czech and Luxembourgish legislations provide for the systematic (if not legally, at least in practice) submission of a suspicious transaction report when the beneficial owner cannot be identified. In the four other countries, it is currently required in case of suspicions of wrongdoing.

Sanctions are foreseen as part of national legislations for financial institutions and DNFBPs failing to perform their duty regarding beneficial ownership identification. Luxembourg makes no exception to that process. Loopholes and gaps with regard to sanctions rather lie in enforcement and will be analysed in the next section on "Effectiveness evaluation".

## BEST PRACTICES AND RECOMMENDATIONS

Financial institutions and DNFBPs should be required to systematically identify the beneficial owners of their customers in the course of their due diligence procedures. These requirements shall apply to any profession identified as high-risk during regular supranational (EU-level) and national risk assessments. This shall take into account emerging risks such as risks associated with the business of virtual currencies. In this regard, the revision of AMLD IV foresees the inclusion of i) providers engaged primarily and professionally in exchange services between virtual currencies and fiat currencies and ii) wallet providers offering custodial services of credentials necessary to access virtual currencies[30] in the list of obliged entities subject to customer due diligence duties.

Financial institutions and DNFBPs should be required to verify – that is, to conduct an independent evaluation of – the beneficial ownership information provided by the customer. Moreover, both domestic and foreign PEPs as well as close associates of PEPs shall be subject to enhanced due diligence, including ongoing monitoring of the business relationship and provenance of funds. Finally, the failure to identify the beneficial owner should inhibit the continuation of the business transaction and require the systematic submission of a suspicious transaction report to the oversight body. Moreover, administrative, civil and criminal sanctions for non-compliance should be applicable for financial institutions and DNFBPs, as well as for their senior management.

[30] DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, 5 July 2016, pages 29-30 http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

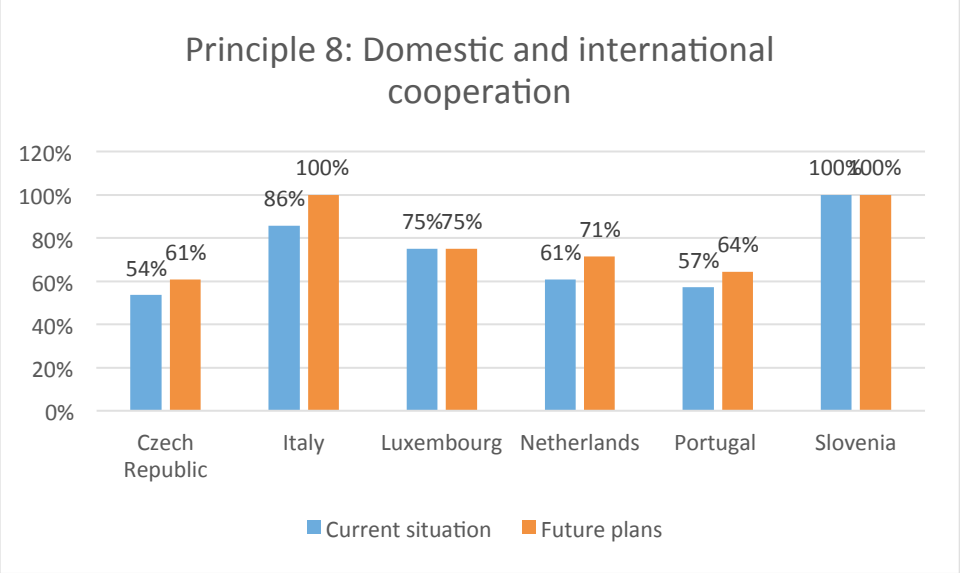
# PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

This principle looks into the legal gateways and obstacles to effective and timely information sharing of beneficial ownership information among national authorities as well as with foreign counterparts.

Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner, though, for instance, access to central beneficial ownership registries. Domestic authorities should also have the power to obtain beneficial ownership information from third parties on behalf of foreign authorities or to share information without the consent of affected parties in a timely manner.

Governments should publish guidelines explaining what type of information is available and how it can be accessed.

## COUNTRY PERFORMANCE




All countries rate average and above under this principle. In most cases, the country has a general legal framework in place governing the exchange of information and cooperation among national authorities as well as with foreign counterparts. Restrictions on information sharing are usually meant to ensure the respect of privacy rights and avoid obstructing ongoing investigations. For international cooperation, the legal instrument for information exchange will generally take the form of a bilateral or multilateral agreement and be based on the principle of reciprocity in particular regarding confidentiality of information with the exception of Luxembourg where the exchange of information for tax matter is no longer conditioned with the existence of confidentiality information since December 2014[31]. It

[31] Entry into force of the Law dated 25 November 2014
http://data.legilux.public.lu/file/eli-etat-leg-memorial-2014-214-fr-pdf.pdf

should be noted that requests for beneficial ownership information represents a significant share of the requests made and received by FIUs.

Luxembourg has no restriction in place as to information sharing between domestic authorities and there is no need to obtain the consent of the affected parties.

On the international cooperation part, some legal formal restrictions existed in the 8 August 2000 law[32] but the article 19 of the 23 December 2016 law[33] related to the Tax reform updated the regime. Luxembourg is now to be seen as a cooperative country.

It should be noted that domestic and international cooperation is not just about exchange of data on AML/CFT individual cases, it is also about sharing experience and best practices, and collectively assessing and raising awareness on AML/CFT emerging risks and trends. In terms of international cooperation, all six countries are members of the Egmont Group of Financial Intelligence Units, an informal network of 152 national FIUs to facilitate and improve cooperation in the fight against money laundering and financing of terrorism. The six national FIUs are also part of the EU FIU Platform[34], an informal group set up in 2006 by the Commission to bring together EU Members States´ FIUs and help them cooperate with each other. All 28 FIUs of the Member States are now connected to the network and together make an average of 1.000 FIU.NET requests per month. It also identifies best practices and provides guidance on key issues related to exchange of information (e.g. confidentiality and data protection in the activities of FIUs[35], improving quality and effectiveness of feedback on money laundering and terrorist financing cases[36]).

## BEST PRACTICES AND RECOMMENDATIONS

The introduction of central registers on beneficial ownership for legal entities and arrangements foreseen as part of AMLD IV shall facilitate cooperation among national authorities since access to these registers shall be granted to competent authorities including the financial intelligence unit, law enforcement authorities, agencies involved in asset recovery, etc. The Directive also provides for the interconnection of national registers at European level, which shall greatly contribute to further improving cooperation at European level. However, practitioners and experts at national level report particular difficulties to cooperate with foreign counterparts outside the European Union. An effective and cost-efficient way to address this issue would be to make the national registers of beneficial ownership information publicly available.

Additional avenues for improvement include:

*For domestic cooperation*

[32] Loi du 8 août 2000, last accessed on November 10th, 2016
http://www.legilux.public.lu/leg/a/archives/2011/0013/a013.pdf#page=2
[33] Loi du 23 décembre 2016, last accessed on February 8th, 2017
http://data.legilux.public.lu/file/eli-etat-leg-memorial-2016-274-fr-pdf.pdf see page 18 and 19
[34] http://ec.europa.eu/justice/civil/financial-crime/fiu-intelligence/index_en.htm
[35] http://ec.europa.eu/internal_market/company/docs/financial-crime/fiu-report-confidentiality_en.pdf
[36] http://ec.europa.eu/internal_market/company/docs/financial-crime/fiu_report_en.pdf

- The publication of clear guidelines and procedures explaining what type of information is available and how it can be accessed;
- The establishment of informal inter-institutional mechanisms to increase coordination and information sharing among national authorities.

*For international cooperation*

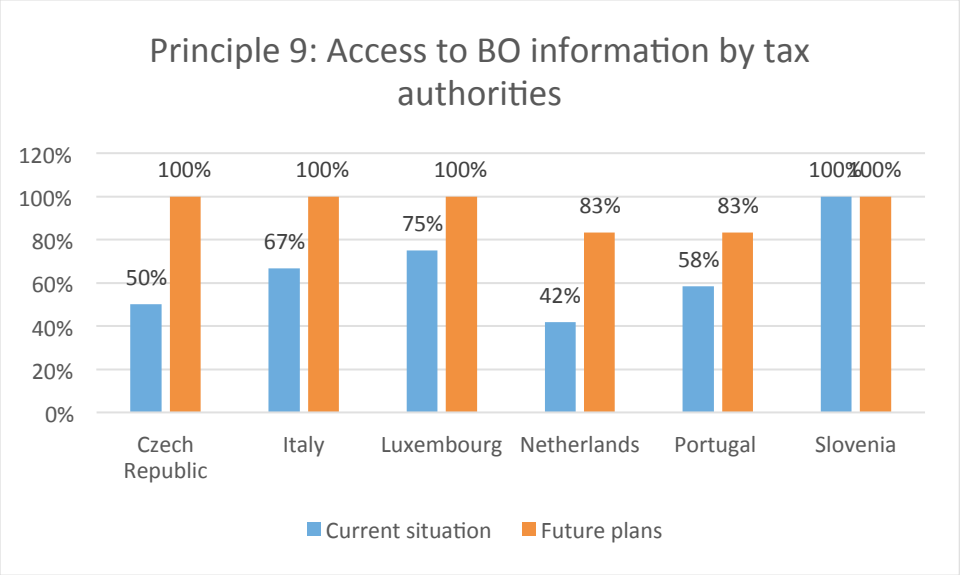
- The publication of detailed statistics on AML-related information sharing requests made and received by national authorities;
- Better prioritisation of information sharing requests received by national authorities;
- The ratification of bilateral and multilateral agreements facilitating the exchange of information.

# PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Principle 9 assesses conditions of access to beneficial ownership information by tax authorities both from domestic and international sources.

Tax authorities should have access to beneficial ownership registries or, at a minimum, have access to company registries and be empowered to request information from other government bodies, legal entities, financial institutions and DNFBPs. There should be mechanisms in place, such as memoranda of understanding or treaties, to ensure that information held by domestic tax authorities is exchanged with foreign counterparts.

## COUNTRY PERFORMANCE




Luxembourg rates strong for that principle. Reference is made to the the 23 December 2016 law[37] related to the Tax reform updated the regime already mentioned for Principle 8. Luxembourg is a fully cooperative country.

The main gap for lower-scoring countries is found at domestic level where tax authorities do not have systematic access to the beneficial ownership information collected by relevant authorities but rather have to submit express requests to be granted access. This should change with the establishment of central registers of beneficial ownership as part of AMLD IV transposition. Indeed even if this is not clearly specified in AMLD IV, the new Luxembourg legislation will expressly mention tax authorities in the list of competent authorities that will be granted access to the full set of information regarding beneficial owners.

All countries in the sample have bilateral or multilateral arrangements on tax cooperation based on models provided by the OECD and the United Nations. From early 2017, the

[37] Loi du 23 décembre 2016, http://data.legilux.public.lu/file/eli-etat-leg-memorial-2016-274-fr-pdf.pdf see page 18 and 19

countries shall have started exchanging beneficial ownership information on taxpayers bilaterally as part of the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters. The OECD Common Reporting Standard (CRS) endorsed by G20 Finance Ministers in 2014 provides the conceptual framework for the systematic and periodic transmission of taxpayers´ detailed account information including beneficial ownership by the source country to the residence country. At European level, the OECD standard is transposed in the Directive on Administrative Cooperation (DAC II).

All countries have also signed a bilateral agreement with the United States under the US FATCA umbrella (Foreign Account Tax Compliance Act) which involves the automatic exchange of beneficial ownership information on taxpayers with US authorities. FATCA sets a threshold for beneficial ownership at 10% of holding of shares, interests or voting rights above which information shall be collected and exchanged. This standard goes beyond the 25% norm required by European AML regulations.

Luxembourg also signed the CRS (Common Reporting Standard) or NCD (Norme Commune de Déclaration) which is a OECD-elaborated norm that has been incorporated in European legislation and has become a European standard for automatic exchange of tax information, that is in place since the 18th December 2015 law[38].

These two ratifications of automatic exchange of information treaties in modern history show the extent of the progress Luxembourg has made lately concerning tax transparency. Not surprisingly Luxembourg is raking 100% on that principle once the Central register of Beneficial owner is in place.

## BEST PRACTICES AND RECOMMENDATIONS

Main recommendations to allow timely and effective access to beneficial ownership information by tax authorities include:

- Adding tax authorities to the list of competent authorities granted full and automatic access to the national central registers of beneficial ownership;
- Ratifying bilateral agreements with other jurisdictions under the OECD CRS and/or EU DAC II umbrella.

[38] Loi du 18 décembre 2015, last accessed on November 10th, 2016
http://www.impotsdirects.public.lu/legislation/legi15/Memorial-A---N_-244-du-24-decembre-2015.pdf

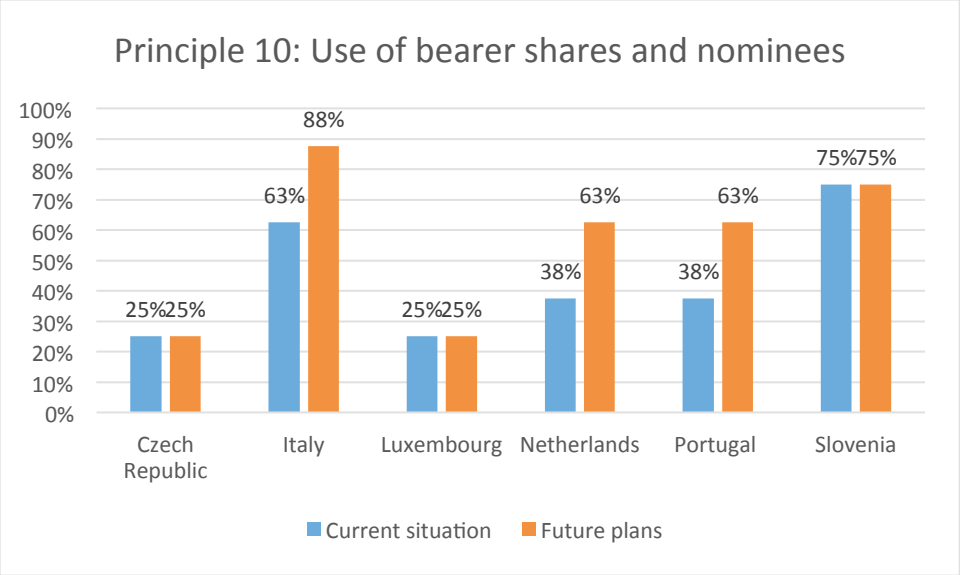
# PRINCIPLE 10: BEARER SHARES AND NOMINEES

Principle 10 assesses national legislations regarding the use of bearer shares and nominees. The use of shell companies and trusts is not the only trick for obscuring ownership. Bearer shares and nominees provide alternative means to conceal beneficial ownership. Countries should ensure they have a strong framework to prohibit, limit or regulate the use of such instruments.

Guidance: Bearer shares should be prohibited and until they are phased out they should be converted into registered shares or required to be held with a regulated financial institution or professional intermediary.

Nominee shareholders and directors should be required to disclose to company or beneficial ownership registries that they are nominees. Nominees must not be permitted to be registered as the beneficial owner in such registries. Professional nominees should be obliged to be licensed in order to operate and to keep records of the person(s) who nominated them.

## COUNTRY PERFORMANCE




Luxembourg scores weak under this principle despite the law dated 28 July 2014 on bearer shares[39].

The European Directive 2015/849 states in its 10th article, second paragraph that "Member States shall take measures to prevent misuse of bearer shares and bearer share warrants". By adopting the law of 28 July 2014, Luxembourg authorities declare that it has already implemented these requirements of the 4th AML/CFT directive as well as the relevant FATF standard (par. 14 of INR24). Also, this implementation was already recognized at international level. However this implementation is not enough to score high on that principle.

[39] Loi du 28 juillet 2014, last accessed on February 8th, 2017
http://data.legilux.public.lu/file/eli-etat-leg-memorial-2014-161-fr-pdf.pdf

## Bearer shares

While many countries have outlawed bearer shares because they are vulnerable to loss, theft and misuse, those instruments still exist in all six countries analysed for certain types of companies and legal entities and under some conditions.

In Luxembourg, bearer shares must be converted into registered shares or share warrants (dematerialisation) or bearer shares have to be held with a regulated financial institution or professional intermediary (immobilisation). Besides, bearer shares can only exist for Public Limited Company (SA or SE).

No information as future plan in Luxembourg as already compliant with article 10 of European Directive 2015/849.

## Nominees

What is a nominee?

Nominees are individuals (or in some cases entities) who have been appointed to act as a director or hold shares on behalf of a beneficial owner. They are usually bound by contract or other instruments such as the power of attorney granting authorisation to represent or act on behalf of the beneficial owner.

There are two broad categories of nominee: professionals, such as lawyers or corporate service providers offering nominee services; and informal nominees, such as family members, friends or associates who play the role of frontmen for the beneficial owner. While some solutions exist to regulate the former category, regulating informal nominees is obviously challenging.

Luxembourg has no dedicated regime for “nominees”. Nominees do not need a licence as such but are subject to AML regulation as stand alone. Most of the time the duty is performed by already regulated professionals (lawyer, chartered accountant, financial sector professional, ....) but the lack of a regime can be a concern.

Most countries are performing rather low under nomineeship standards. In none of the countries, is the provision of nominee services explicitly prohibited with the exception of Slovenia. How much of a concern nomineeship is in a country partly depends on the vividness of the corporate service providers sector. In the Netherlands for example, so-called trust service providers (*trustkantoren*)[40] offer a wide range of services to companies, including that of acting as a nominee director and providing a company address for a Dutch subsidiary of a foreign company. There are around 150 trust service providers in the Netherlands, which together administer and service around 24.000 companies.[41] In Luxembourg too, some companies or professionals are trust service providers but they can operate under various category of professional, all of them subject to AML/CFT regulation, not because they act as nominee but because they are regulated professionals.

[40] Dutch trust service offices are not the same as the common law trust, a legal concept that is not known in the Dutch law.
[41] Financieel Dagblad (Fd), *Toezichthouder uit harde kritiek op trustsector* (Fd, March 16), https://fd.nl/economie-politiek/1144722/dnb-luidt-noodklok-over-trustsector (accessed 9 February 2017).

There is no dedicated regime for nominees as such in Luxembourg and no data available as to the importance of the sector.

# BEST PRACTICES AND RECOMMENDATIONS

## Bearer shares

Bearer shares should be prohibited and until they are phased out they should be converted into registered shares ("dematerialised") and held in a central register hosted by a public authority. Any unregistered bearer share shall become void and invalid after due date. The scenario where bearer shares are held with designated professionals is not fully compliant with highest standards of transparency because it makes the information on the owners of bearer shares only available in a scattered and fragmented way.

## Nominees

Nominee shareholders and directors should be required to disclose the identity of the beneficial owner(-s) to the company and to central shareholders´ and beneficial owners´ registers that they are acting on behalf of someone else. Nominees shall be explicitly prohibited from registering as the beneficial owner in national central beneficial ownership registers. Professional nominees should be licensed as such in order to operate and keep records of the person(s) who nominated them.

Current European rules do not comply with these standards. The ongoing revision process of AMLD IV shall consider introducing the obligation for nominee directors and shareholders to disclose to the company and the central beneficial ownership register whether they are holding the position in their own name or on behalf of another person, and in the case of the latter to disclose the identity of the person on behalf of whom they are acting.

# 2. EFFECTIVENESS EVALUATION

The present section assesses how effective and how effectively enforced beneficial ownership transparency rules are. It draws upon the methodology of FATF mutual evaluation reports that assess both the technical compliance as well as the effectiveness of national anti-money laundering laws and regulations. The analysis in this section is based on consultations and interviews with key stakeholders as well as on the FATF and MONEYVAL evaluation reports whenever available and on annual reports published by public authorities. This section is not aiming at exhauxtivity or at in-depth evaluation. It is focusing on a few aspects only.

Besides, it proved to be a bit too early to assess the effectiveness of beneficial ownership transparency rules which are in the process of being upgraded and/or implemented as of end of June 2017, especially in Luxembourg where at the time of writing no concrete elements where publicly available. Therefore, the present section goes beyond merely assessing the effectiveness of those rules to identify areas of improvement in the overall AML system when those are likely to also affect the way beneficial ownership related rules are applied. For example if the general suspicious activity reporting (SAR) framework is not working properly, it is likely that it will not function either when it comes to specifically reporting cases where no beneficial owner can be identified. Similarly, if sanctions are generally insufficiently enforced, one can anticipate that this will also be the case for sanctions that apply in case of failure to register or identify the beneficial owner.

The “Statistics on AML enforcement efforts” and “Key Recommandations” sub-sections are commun to all National reports and are included for consistency purpose even though they might already be included in the Luxembourg legislation and are not Luxembourg specific.

## ENFORCEMENT OF CDD OBLIGATIONS

There are very few data available in Luxembourg evidencing gaps of enforcement of CDD obligation and explaining the monitoring of regulated professionals. Most regulating authorities are conducting on-site inspections and the only data available comes from the Banking Sector regulator (the CSSF). The OEC, the IRE[42] and the Barreau are not disclosing any element in that respect. That point should be improved, especially as that the OEC is performing a “controle confraternel”[43] among its members in respect of the AML/CFT regulation but is not communicating officially any data on the matter.

[42] Please note that since the Law dated 23 July 2016, the CSSF is now the supervision authority for the public activity of auditors and the profession will be, as such, included in the 2016 Annual Report not yet available. http://data.legilux.public.lu/file/eli-etat-leg-memorial-2016-141-fr-pdf.pdf

[43] http://www.oec.lu/myeteam/index.htm#PDF/28211

The CSSF is in charge of the supervision of the financial sector and the auditors, and has formed an expert committee on money laundering[44]. This committee meets with other national anti-money laundering committees regularly. It is composed of professionals from the financial sector, both from public bodies and private companies, as well as audit experts and solicitors.The CSSF also conducts on-site inspections to ascertain regulated entities fulfil their AML/CFT obligations. To avoid conflict of interest, the on-site inspections are conducted by CSSF agents only.

The CSSF 2015 report[45] indicates that the CSSF conducted 114 on-site inspections in 2015 (see page 8 of the report) in total, not all of them focusing on AML/CFT. Only 27 on-site inspections were carried out in respect of the AML/CFT regulation :

"AML/CFT" on-site inspections are carried out at all the different types of entities of the fi nancial centre in order to assess that the quality of the AML/CFT framework is in line with the legal and regulatory requirements. Inspections cover both private banking (portfolio management, domiciliation, etc.) and UCI activities.
In 2015, the CSSF carried out 27 "AML/CFT" on-site missions, broken down by type of entity as set out below.

**Breakdown of the "AML/CFT" control missions by type of entity**

| Type of inspected entity | AML/CFT on-site inspections |
|---|---|
| Banks | 9 |
| Investment fi rms | 2 |
| Specialised PFS | 12 |
| Management companies | 3 |
| Payment institutions | 1 |
| **Total** | **27** |

The dedicated section of the "supervision" part of the annual report 2015[46] (Chapter XIV) shows (pages 256/257) the following results :

« The following most significant flaws, in terms of frequency or seriousness, were identified during the"AML/CFT" on-site missions of 2015:
- insufficient documentation and/or difficulties in obtaining information relating to the origin of the funds and the nature and purpose of the business relationship, insufficient documentation on the identity of the legal persons and beneficial owners, no explicit declaration of customers that they act for their own account or, where appropriate, for the account of third parties;
- no drafting of risk analyses on the AML/CFT activities by the professionals pursuant to Article 3(3) of the law of 12 November 2004 on the fight against money laundering and terrorist fi nancing and Article 4 of CSSF Regulation N° 12-02 of 14 December 2012 on AML/CFT;
- insufficient formalisation of the refusals to enter into a business relationship;
- non-exhaustiveness of the customer database used for name matching controls against the offi cial lists and lists of politically exposed persons and for detecting business relationships linked to a specific country (with respect to the name of the parties or other information such as the country of residence of all the parties (holders, representatives and benefi cial owners));
- no categorisation of customers/investors according to their risk of money laundering or terrorist financing;
- the controls aimed at detecting the politically exposed persons when entering into a business relationship do not cover all the parties (holders, representatives and benefi cial owners) and no review whether a customer, beneficial owner or representative has become a politically exposed person during the business relationship;
- no implementation of enhanced due diligence measures to customers who have their place of residence in a country which does not apply or insuffi ciently applies AML/CFT measures;
- insufficient involvement of the person in charge of AML/CFT controls in the monitoring of transactions;
- insufficient resources for the AML/CFT internal control mechanisms;
- no drafting of the annual summary report by the person in charge of AML/CFT controls regarding his activities and functioning. »

[44] 2015 report, pages 14/17, available here :
https://www.cssf.lu/fileadmin/files/Publications/Rapports_annuels/Rapport_2015/CSSF_rapport_2015.pdf
[45] CSSF 2015 Annual Report :
http://www.cssf.lu/fileadmin/files/Publications/Rapports_annuels/Rapport_2015/RA_2015_EN_full_version.pdf
[46] CSSF 2015 Annual Report - Dedicated SUpervision / on site inspection section :
http://www.cssf.lu/fileadmin/files/Publications/Rapports_annuels/Rapport_2015/RA2015_EN_chapter14.pdf

Based on these figures, 23,68% of the on-site inspections were carried out in the AML/CFT field by the CSSF. This percentage is in line with the previous year as the CSSF stated in its 2014 report[47] that the fight against money laundering and terrorist financing accounted for 40 on-site inspections (out of 138 total on-site inspections and visits) (28,98%). There are no updated figures at the time. We cannot conclude anything due to the age of these figures but we would definitely be vigilant and check whether the on site inspection in the field of AML/CFT supervision is increasing.

We would have been eager to analyse the datas for other regulated professionals but only the CSSF is publicly disclosing information. This does not mean that there is no work done in the area but transparency of such policies is an importante element as it is usually in line with a visible accountability and thus a better efficiency of the practise.

# AML RISK MANAGEMENT STRATEGY

An AML Risk Management strategy usually includes the process of identifying, understanding and mitigating anti-money laundering risks. It generally includes in particular i) the need of a comprehensive and inclusive consultation process of key stakeholders, ii) the need of in-depth understanding and awareness of risks by certain professions and iii) the set up of risk mitigation measures.

As demonstrated in the technical questionnaire (Part 1), Luxembourg's regulation follows the European directives closely. National AML/CFT measures thus address risks as identified at a European level but are not Luxembourg specific. This can be perceived as a way of delegating all the responsibility for risk mitigation and analysis to the private sector which is indeed the philosophy of the IV AML Directive. However, the absence of a country specific guidance for professionals might be inadequate taking into account the highly developed financial sector and the strict business secrecy in Luxembourg.

The Luxembourg Government is said to be currently finalizing the National Risk Assessment (NRA) (to become compulsory with the IV AMLD implementation deadline) which is supposed to help professionals. Although this future national risk assessment will have to be seen as an additional element for the professionals' obligation to perform their own risk analysis, all stakeholders will definitely welcome an official additional element delivering a nationwide strategy.

# SUSPICIOUS ACTIVITY REPORTING

The performance of the suspicious activity reporting system may provide another indication on how effective beneficial ownership transparency rules are. Indeed, legislation compliant with global standards shall require obliged entities to systematically submit a suspicious activity report when the beneficial owners of a customer cannot be identified.

Research shows that in most countries analysed, the level and quality of suspicious activity reporting tend to be low. This is particularly striking in the case of DNFBPs. For Italy, the FATF adds that reporting by non-financial professionals is considered to be

[47] CSSF 2014 Annual Report, Chapter 14 : Supervision, see page 250 : http://www.cssf.lu/fileadmin/files/Publications/Rapports_annuels/Rapport_2014/RA2014_chap13.pdf

"poor, especially among lawyers and accountants"[48]. It further acknowledges an "over-reliance on the part of some sectors (e.g. insurance companies, asset managers, and payment institutions) on due diligence carried out by the banks."[49]

The same statistical trend can be seen in Luxembourg in the CRF 2015 report[50] where we can see that the Financial Sector (all professionals included) reported 10830 suspicious transactions when the other professions reported 193 transactions (page 8 of the report). However, these are numbers only and the number of transmissions to the Public Prosecutor office is another interesting element to be considered. There were 587 cases brought to the Public Prosecutor and only 480 originated in the Financial Sector when the 23 others originated from other professionals. The balance between quantity and quality is not that clear.

Though the number and quality of reports submitted by the banking sector in general tend to be higher in most countries analysed, the sector also suffers from a number of deficiencies. It is quite common for example that the banking sector uses mass reporting techniques, which consists of submitting automatic and unfiltered STRs according to pre-determined criteria. This tends to lower the quality of the submissions by the banking sector and can be counterproductive due to the risk of overwhelming the system. This is quite corroborated by the CRF[51] which reported that two agents (an electronic payment platform and an online payment platform) have mostly contributed to the exponential increase in STR due to automatic reporting. In that respect, the CRF had to update its internal process to be able to monitor this new flow.

Number of suspicious transactions reports submitted by sector in Luxembourg

| Year | # suspicious transaction reports submitted by | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Financial institutions | Money exchange offices | Accountants | Lawyers | Notaries | Real estate agents | Corporate service providers | Gambling sector |
| 2015 | 11,023 | 6206[52] (electronic payment platform | 139 Accountants + Auditors | 32 | 0 | 11 | N/A[53] | 8 |

# OVERSIGHT OF SELF-REGULATED PROFESSIONS

In Luxembourg, although the banking sector in general is quite transparent, there is no specific publicly available data for these self-regulated professions. Each of them has an

[48] FATF, *Italy´s Mutual Evaluation Report on Anti-Money Laundering and Counter-Terrorist Financing Measures*, February 2016, page 79 http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf

[49] FATF, *Italy´s Mutual Evaluation Report on Anti-Money Laundering and Counter-Terrorist Financing Measures*, February 2016, page 9 http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pd

[50] CRF 2015 Report : http://www.justice.public.lu/fr/publications/rapport-activites-crf/rapport-crf-2015.pdf

[51] CRF 2015 Report : Ibidem, see page 15

[52] The CRF indicates that this is mainly due to automatic transmation from one operator and thus might not be relevant

[53] Please note that "Corporate Services" in Luxembourg can be either : accountants / auditor or lawyers or dedicated Financial Sector professionals = data not matching the criteria

obligation to have an internal organisation able to support their CDD obligation and an obligation of regular training / update on AML/CFT obligation but no statistics is publicly available.

The OEC (Ordre des Expects Comptables – Chartered Accountant Order) has indeed set up a on-site control for its members in 2004[54], but here too, no publicly available data is to be found as we mentioned in the first section.

This is also the case for all the other self-regulated professions although under the scope of the same AML/CFT 2004 law as amended.

The absence of publicly available information does not mean that the duty is not performed but some open datas would clarify the accountability and certainly the efficiency of the practices.

# RESOURCES OF COMPETENT AUTHORITIES

Gaps in resourcing of public authorities engaged in the fight against money laundering appear recurrently in the conclusions of the FATF or MONEYVAL.

In Luxembourg, the two main competent authorities see their resources increase year after year. In its 2015 report, the CSSF details[55] its human resources with a total employment number of 628 people as of 31 December 2015. The number is continuously increasing as showed in the graph. As for for FIU, the CRF detailed in the 2014 report[56] (page 9) that despite the low figure of 13 people working for the authority, it could perform its duty but that resource would need to be increased in the future. There is no official update on that figure for the CRF.

More specifically as regards the "on-site inspection team", the CSSF reports an increase as the service accounted for 29,25 full time equivalent as of March 31, 2015 (see page 244 of the 2014 Annual Report) and accounted for 37 full time equivalent as of March 31, 2016 (see page 252 of the 2015 Annual Report). Efforts are made and should be recognized.

Both authorities acknowledge that the more checks they proceed to (for the CSSF) and the more suspicious filings they treat (for the CRF), the most efficient they are. This of course implies they have enough ressources to perform their tasks.

It has to be noted that the law dated the law dated 23 December 2016[57] on the tax reform extended the exchange of information between administration nationally, all authorities can have access to beneficial ownership information and internationally. There is no longer any major restrain in the exchange of information in Luxembourg and between Luxembourg and other countries. The time laps for the treatment of the answers from the Luxembourg authorities might be a good way to measure the adequacy of the resources in the future.

[54] http://www.oec.lu/myeteam/index.htm#PDF/28211

[55] CSSF 2015 report – Part 1 = Organisation (see page 17 and 18) http://www.cssf.lu/fileadmin/files/Publications/Rapports_annuels/Rapport_2015/RA2015_EN_chapter01.pdf

[56] http://www.justice.public.lu/fr/publications/rapport-activites-crf/rapport-crf-2014.pdf

[57] Loi du 23 décembre 2016 portant réforme fiscale – last accessed February 8th, 2017 http://data.legilux.public.lu/file/eli-etat-leg-memorial-2016-274-fr-pdf.pdf

# CONTROL MECHANISMS AND SANCTIONS

Regulatory bodies have the power to visit and inspect obliged entities, identify and record failings in their systems, and impose sanctions where necessary. The lack of publicly available and harmonised AML related statistics thwarts the systematic assessment of how effective controls and sanctions in place are.

However, figures available show relatively low enforcement of controls and sanctions in relation to the risks identified and amounts actually laundered.

The UK example is also quite illustrative of the deficiencies of supervisory bodies´ control and sanctioning systems. In the UK, of the 7 sectors regulated by HMRC (Her Majesty´s Revenue and Customs), which includes estate agents, the total fines in 2014/15 amounted to just £768,000 which seems quite low in relation with the ML risks in the real estate sector only. Moreover, 21 of 22 supervisors have either a low or unreported level of enforcement against those who break anti-money laundering rules.[58]

In Luxembourg, the Banking sector regulator details its on-site inspections and sanctions in the Chapter XIV of its Annual Report[59] where we can read :

"*In 2015, the CSSF decided in 12 cases to initiate an injunction procedure pursuant to Article 59 of the law of 5 April 1993 on the financial sector or a non-litigious administrative procedure in order to impose an administrative sanction pursuant to Article 63 of the above-mentioned law. This procedure led the CSSF to impose an administrative fine in three cases and to give a reprimand in one case.*

*In four cases, the CSSF transmitted a suspicious transaction report pursuant to Article 23(2) and (3) of the Code of Criminal Procedure or notified the Financial Intelligence Unit pursuant to Article 9-1 of the law of 12 November 2004 on the fight against money laundering and terrorist financing regarding the cooperation between competent authorities*."

We have not enough elements to comment on these figures but we can point out that out of 27 on-sites inspections, 10 cases (2 where from the previous year) lead to sanctions. One can only speculate on the results if more on-site inspections were performed …

We can only regret that the other sectors are not disclosing this kind of information publicly.

# STATISTICS ON AML ENFORCEMENT EFFORTS

**Please note that this section is general to the project and not Luxembourg specific.**

As already suggested above, the lack of statistics on AML enforcement efforts limits the capacity of competent authorities to assess the effectiveness of the system in place. Moreover, making this information public can have powerful direct effects. For example, banking sector professionals in the U.S. often find information about penalties imposed on

[58] Transparency International UK, *Don´t look, Won´t find – Weaknesses in the Supervision of the UK´s Anti-Money Laundering Rules*, 2015 http://www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/

[59] CSSF 2015 report – Chapter XIV : instruments of supervision http://www.cssf.lu/fileadmin/files/Publications/Rapports_annuels/Rapport_2015/RA2015_EN_chapter14.pdf

their peers more useful for understanding AML regulatory expectations than the actual guidance by financial supervisors[60].

The FATF has identified a set of key AML indicators which include[61]:

- ✓ Number of on-site visits by authorities to financial institutions and non-financial sectors
- ✓ Number of regulatory breaches identified
- ✓ Total number of sanctions and other remedial actions applied[62]
- ✓ Value of financial penalties
- ✓ Number of Suspicious Transactions Reports (STR) received (disaggregated by type of reporting entity)
- ✓ Number of criminal investigations for ML activity
- ✓ Number of prosecutions for ML activity
- ✓ Number of ML convictions
- ✓ Number of ML-related mutual legal assistance and extradition requests made, received, processed, refused and granted

Recent research by Transparency International[63] shows that across 12 countries assessed including Italy, Luxembourg, the Netherlands and Portugal, 1 in 3 anti-money laundering indicator is fully disclosed to the public and up-to-date.

Data tends to be dispersed across different websites and sections of websites, including in pdf formats which make it difficult to extract or search information. Most common sources of publicly available anti-money laundering data include FIU's annual reports and mutual evaluation reports by the FATF or MONEYVAL. Yet, the former tend to be incomplete while the latter are irregularly published and not available on an annual basis.

Moreover, data on anti-money laundering is defined and captured differently across jurisdictions, which makes international comparisons very difficult, if not impossible. For example, depending on the jurisdiction, a suspicious transaction report may refer to one transaction or to a case with multiple transactions.[64]

Gaps in statistics are particularly blatant for data about beneficial ownership although the establishment of central registers of beneficial owners required by AMLD IV shall

[60] FATF, *United States' Mutual Evaluation Report on Anti-Money Laundering and Counter-Terrorist Financing Measures*, 2016, para 302, p.124 www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-St ates-2016.pdf According to the assessment "…representatives of the banking sector noted that, despite regular engagement with and extensive guidance from their supervisors, they often tend to better understand regulatory expectations based on the contents of the formal enforcement action orders issued against other institutions, when published"

[61] FATF, AML/CFT related data and statistics, FATF Guidance, October 2015 http://www.fatf-gafi.org/media/fatf/documents/reports/AML-CFT-related-data-and-statistics.pdf

[62] From the FATF guidance: "Possible types of remedial actions: supervisory letters, action plans, follow-up examinations, other type of corrective actions, reprimands, public identification, fines/financial penalties, etc." and "sanctions related to breaches of compliance with the regulatory framework should be clearly distinguished from criminal investigations and prosecutions on criminal ML/TF offences"

[63] Transparency International, *Top secret countries keep financial crime fighting data to themselves,* 15 February 2017 https://www.transparency.org/whatwedo/publication/7664

[64] FATF, AML/CFT related data and statistics, FATF Guidance, October 2015, pp.12-13. www.fatf-gafi.org/media/fatf/documents/reports/AML-CFT-related-data-and-statistics.pdf

contribute to significantly improving the situation. For example, in Italy, "no statistics were provided on the number of instances in which the Italian authorities requested information from their foreign counterparts with a view to obtaining information on foreign natural persons [owning] Italian legal persons or legal persons and arrangements established abroad."[65]

# KEY RECOMMENDATIONS

**Please note that this section is general to the project and not Luxembourg specific.**

Moving forward, governments should:

- Design an appropriate risk identification and mitigation strategy including through:
  - ✓ a comprehensive and inclusive process of consultation of key stakeholders (e.g. law enforcement authorities, supervisors and regulators, financial institutions, DNFBPs, civil society organisations)
  - ✓ awareness raising programmes targeted at the various groups of stakeholders, including publishing the national risk assessment as well as specific guidance and regular training
  - ✓ the implementation of appropriate and targeted mitigation measures and tools by the various stakeholders
  - ✓ the establishment of inter-agency coordination mechanisms for the monitoring, evaluation and update of the risk mitigation strategy.

- Ensure that each sector with AML obligations is overseen by a designated independent oversight body in particular for independent professions such as lawyers, accountants, notaries and real estate agents. In cases where professions have the authority to self-regulate, this oversight should be carried out in regular coordination with a public body.

- Provide sufficient and adequate human, financial and technical resources to responsible oversight bodies to effectively carry out their duties, and have adequate mechanisms of coordination. This should include the capacity to effectively coordinate with obliged entities, for example providing feedback on suspicious activity reports and providing secure channels for information sharing.

- Strengthen suspicious transaction reporting systems by:
  - ✓ assessing the effectiveness of the current system including the detection and reporting of suspicious activities, the processing of STRs and coordination with obliged entities and the sanctioning in cases of failure to report suspicious activities or anomalies, including cases where the beneficial owners are not identified
  - ✓ publishing disaggregated statistics on the number of suspicious transaction reports submitted by sector and the value of transactions in STRs received by sector and assessing if those numbers are reasonable in light of the sector´s size and economic activity

[65] FATF, *Italy´s Mutual Evaluation Report on Anti-Money Laundering and Counter-Terrorist Financing Measures*, February 2016, para 342 page 115 http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf

- ✓ providing financial institutions and DNFBPs with practical guidance and training on how to fulfil STR obligations
- ✓ providing feedback to financial institutions and DNFBPs on their submissions

- Ensure that available regulatory tools such as on-site visits and sanctions are adequate and effectively used in practice. Data on controls and sanctions should be made publicly available so as to facilitate monitoring and assessment. This would also act as a deterrent by showing that penalties are effectively enforced and provide an incentive for obliged entities to improve their internal CDD procedures.

- Collect and publish statistics on anti-money laundering enforcement statistics on a yearly basis as already required by AMLD IV. These shall include data related to beneficial ownership transparency obligations (e.g. number of breaches, STR submission and sanctions related to failure to identify or verify beneficial ownership). In order to foster data harmonisation and comparability, national statistics should follow the list of indicators recommended by the FATF.