

Invisible Owners

Transparency of Beneficial Ownership

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1. Abstract

A beneficial owner is a person that ultimately owns, controls or manages a legal entity or in whose name a certain transaction is carried out. In short, beneficial owners are those who make the key decisions and enjoy benefits. Beneficial ownership can be concealed using a number of different mechanisms, such as shell and shelf companies, use of several entities and other measures. Research and scandals indicate that ownership secrecy is frequently used to conceal proceeds from crime, to evade taxes, finance terrorism and further other illegal activities. The consequences of such practices are felt by all citizens.

The transparency of beneficial ownership is important as it prevents detrimental consequences associated with hidden ownership, builds trust and has positive effects on the economy. The data on beneficial owners should be available in public registries that should adhere to the latest open-data standards.

This report used an international methodology to assess ten aspects of the legislative framework that determines the level of transparency of beneficial ownership. On a one to five scale,¹ the Slovenian legislation received an overall grade of 82%, i.e. the highest rating, meaning that the legislation was assessed as very strong.

Principle 1	Strong
Principle 2	Very Strong
Principle 3	Average
Principle 4	Very Strong
Principle 5	Average
Principle 6	Very Strong
Principle 7	Very Strong
Principle 8	Very Strong
Principle 9	Very Strong
Principle 10	Strong

Overall	82%
score	Very Strong

The rating was expected, as just before this report was published, Slovenia transposed the fourth Directive on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing. However, in spite of the high rating, decision makers should take a position on the recommendations herein, as there remain some regulatory gaps that should be addressed.

¹ Very weak, weak, average, strong, very strong.

Meanwhile, new changes are already proposed at the European level, and Slovenian decision makers should use the negotiations to advocate for higher standards of transparency of beneficial ownership.

The report also presents an assessment of implementation of measures, however, as the practice will, at least to a certain degree, have to be re-established due to the new legislation, the report focuses on the main stakeholders in the field. Their capacities are generally assessed as satisfactory, but it remains questionable whether it will be possible to establish effective supervision over the new legal obligations associated with the identification of beneficial owners.

2. Recommendations to decision makers

- The Government should modify the definition of the beneficial owner of a company in the Prevention of Money Laundering and Terrorist Financing Act in such a way that the direct indicator of beneficial ownership will be defined as a share of up to 10 percent.
- The Government should provide a legal basis for the public beneficial ownership registry in an open data format. The entity managing the register should ensure the data on beneficial owners is available in a machine-readable form.
- Representatives of the Government should actively advocate for the implementation of measures that would increase the transparency of beneficial ownership.
- The Office for Money Laundering Prevention should actively and effectively verify the accuracy of the data in the register of beneficial owners.
- The Office for Money Laundering Prevention should provide substantive support to stakeholders to ensure accessible and regular training to the obliged entities of the Prevention of Money Laundering and Terrorist Financing Act, particularly regarding provisions on the identification of beneficial owners.
- The Government should close the loopholes in other acts and regulations that allow for the concealment of ownership.
- The Government should abolish bearer shares.
- The Government should amend the legislation and other regulations in such a way that transparent beneficial ownership would be a precondition for receiving public funds (through public tenders and other means) and for any participations in the procedures of disposal of state property.
- The Government should improve the protection of whistleblowers to ensure their protection when reporting illegal or unethical activities.

3. Introduction

In the past few years, international scandals connected to *secrecy havens*² have clearly shed the light on the ways individuals use to exploit legal loopholes in order to hide their wealth. In many cases, the individuals concerned are criminals, tax evaders, debtors or terrorism financiers. Countries and international organizations have responded to these scandals with the implementation of legislative and other measures and by frequently calling for a comprehensive international approach to the problem. This response will determine whether rich individuals will be able to conceal their ownership with a few clicks or whether this will be a more difficult matter.

We are sure to see new methods of concealment of ownership to be developed in the future, adapting to the new measures. The situation will thus have to be continually monitored and responded to accordingly. This means that the prevention of such detrimental occurrences will have to become a strategic goal at the centre of future policies.³ It will also be important to accompany these measures with concrete justifications and expected positive outcomes, so that all stakeholders will be able to realize the value of enhanced transparency and not see it merely as an increase of the administrative burden.⁴

3.1. About the project

The Transparency of Beneficial Ownership or *Enhancing Beneficial Ownership Transparency* project is being carried out in six member states of the European Union (EU).⁵ Its implementation is connected to the incorporation of the fourth Directive on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing⁶ (hereinafter: the Directive), adopted in May 2015, into national legislation. Additionally, soon after the initiation of the project, the world was shaken by Panama Papers that shed even more light on the issue of concealed ownership and brought home the need for action against such non-transparent and potentially illegal and unethical practices. The European Commission responded to Panama Papers with a new proposed directive,⁷ while some

² This is the term used in the report penned by Nobel Prize winner Joseph E. Stiglitz and anti-corruption expert Mark Pieth for jurisdictions that do not adhere to the international transparency standards and trends or intentionally undermine them.

³ Stiglitz, Joseph E. and Mark Pieth. 2016. *Overcoming the Shadow Economy*. Available at: <https://assets.documentcloud.org/documents/3219549/Stiglitz-and-Pieth-Overcoming-the-Shadow-Economy.pdf> (November 20, 2016), p. 1.

⁴ Fenwick, Mark and Erik P.M. Vermeulen. 2016. *Disclosure of Beneficial Ownership after the Panama Papers*. Washington: International Finance Corporation. Available at: <http://www.ifc.org/wps/wcm/connect/62d48198-f722-48f0-80fc-172e68649bdd/Focus-14.pdf?MOD=AJPERES> (November 5, 2016).

⁵ Alongside Slovenia, the project also involves partners from the Czech Republic, Luxembourg, the Netherlands, Portugal and Italy. France is participating as an observer. The project will last from March 2016 to February 2017.

⁶ *Directive on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing*. Official Journal of the European Union, 2015/849. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=SL> (September 25, 2016).

⁷ European Commission. 2016. *Proposal for amending Directive (EU) 2015/849*. Available at: http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf (October 10, 2016).

countries pledged to uphold even higher standards of transparency.⁸ New measures have also been announced by expert international organizations.⁹

The aim of this one-year project is to assess the national legal context, its conformance to international standards and the transparency of beneficial ownership in practice,¹⁰ to identify risks and shortcomings and propose solutions thereto, and to use case studies to illustrate the problem of hidden ownership and its possible consequences. This report is the result of following these aims.

The methodology was twofold, consisting of a questionnaire that was primarily used to assess the legal context and the conformance to international standards (technical questionnaire). The second part is the effectiveness evaluation of the implementation of the legislation and measures used to identify beneficial owners in practice. As the new Prevention of Money Laundering and Terrorist Financing Act was adopted while the report was being written, the effectiveness evaluation focused mainly on key stakeholders and their role in the identification of beneficial owners.¹¹

4. Definition of a beneficial owner

According to the *Financial Action Task Force* (hereinafter: FATF),¹² a beneficial owner of a legal entity is defined as follows:

“Beneficial owner refers to 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.

* Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

** This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.”¹³

The briefer G20 definition mostly follows the above definition.¹⁴

The essential part of the definition of beneficial ownership is that it can only apply to a natural person. That is, it is impossible by definition for a legal entity to be a beneficial owner, as no legal entities exist

⁸ Elgot, Jessica. 2016. *World leaders pledge to tackle corruption at London summit – as it happened*. Available at: <https://www.theguardian.com/politics/live/2016/may/12/david-cameron-london-anti-corruption-summit-live> (August 30, 2016).

⁹ Financial Action Task Force. 2014. *FATF Guidance – Transparency and Beneficial Ownership*. Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> (September 16, 2016).

¹⁰ In the report, the term “legal entity” also applies to other types of entities that are not considered legal persons but are nevertheless included in international definitions, i.e. foundations, foreign legal entities, etc.

¹¹ The effectiveness evaluation in this report is not numerical as the methodology proposed.

¹² FATF is an intergovernmental working body that was established in 1989 by G7 members to effectively combat money laundering. FATF creates standards relevant to money laundering and terrorist financing and supervises their implementation.

¹³ Financial Action Task Force. 2014. *FATF Guidance – Transparency and Beneficial Ownership*. Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> (September 16, 2016), p. 8.

¹⁴ G20 is the international group of twenty biggest economies in the world.

that are not ultimately controlled by natural persons.¹⁵ All internationally used definitions agree on that.

In definition as well as in the identification of beneficial owners, it is imperative to take a substantive approach regarding the management, control and benefits: to determine who controls the operations of the given legal entity and who benefits (financially) from the company's operations or individual transactions.¹⁶ The type of legal entity must be taken into account as well, as management and benefits can differ from one type to the next. According to international standards, formal ownership or a formal position in the management (CEO, chairman of the board of directors or the supervisory board, etc.) are not the only or principal indications of beneficial ownership.¹⁷

In spite of all this, definitions in some national legislations remain based on the formal aspects of ownership and control, usually on a predetermined equity share, typically between 10 and 25%.¹⁸

4.1. Methods of concealing ownership

There are many possible reasons for the concealment of beneficial ownership, and it should be stressed that not all of them are tied to minor or criminal offences or bad intentions. Nevertheless, decades of experience with these issues indicate that concealed ownership is closely entwined with numerous detrimental social phenomena that can have long-term consequences for the quality of life of people all over the world. And as the era of information technology allows for easy creation of companies or other corporate vehicles,¹⁹ the issue can only get worse without any serious measures against it. Two million of new companies are created annually in the US alone.²⁰

There are many methods and mechanisms that allow for the concealment of beneficial ownership. The Organization for Economic Cooperation and Development (hereinafter: OECD) states that the most common of these methods are the use of bearer shares,²¹ nominee shareholders, nominee directors, chaining a large number of corporate vehicles into complex structures and use of intermediaries (company service providers, tax advisors, lawyers, etc.).²²

¹⁵ Van der Does De Willebois, Emile et al. 2011. *The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: EBRD and World Bank. Available at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (August 20, 2016), p. 19.

¹⁶ The World Bank lists a number of situations in which owners might not have a controlling influence, particularly when individual transactions are concerned – in such cases, controlling influence may be exerted by CEOs or other members of the management, while there are also certain decisions in certain cases where such control may rest with the company's creditors. *Ibid.*, p. 22.

¹⁷ *Ibid.*, pp. 3, 19.

¹⁸ *Ibid.*, pp. 24–5.

¹⁹ In many countries, researchers were able to create anonymous companies without any trouble and at low cost. *Ibid.*, pp. 42, 59, 86.

²⁰ Global Witness. 2016. *Chancing it – How secret company ownership is a risk to investors*. Available at: https://www.globalwitness.org/documents/18609/Chancing_It_FINAL.pdf (September 15, 2016), p. 4.

²¹ We differentiate between registered shares (which are held in the holder's name, are usually noted in a register and are not transferrable) and bearer shares (which are transferrable). The use of bearer shares in Slovenia is presented in detail in Chapter 5.4.

²² OECD. 2001. *Behind the Corporate Veil – using corporate entities for illicit purposes*. Available at: <https://www.oecd.org/corporate/ca/43703185.pdf> (September 16, 2016), pp. 29–33.

The World Bank, for its part, stresses the use of so-called shell companies.²³ Data on such companies are hidden from the public, mostly because these companies do not actually do business, have no websites and give out any other information.²⁴ To further conceal the beneficial owner of such companies, additional measures are used as well, such as registering the company in a different jurisdiction, contractual means of control (instead of through registered ownership or management positions), use of bearer shares and the use of multiple corporate vehicles. The problem is further compounded by so-called shelf companies – legal entities created by service providers used solely for the purpose of being sold on after years of being dormant. After a few years, such an inactive company may be bought by the service provider’s client. In such cases, ownership may prove even harder to determine, as these shelf companies give the impression of existing for a longer time than they have been active. Companies that are a couple of years old are available as well, and their price increases with their age and virtual activity that can be demonstrated using official documents. The World Bank’s typology further differentiates between surrogate owners and nominee owners, the latter being contracted owners and the former also having personal connections to the beneficial owner.²⁵

4.2. Why is hidden ownership problematic?

Data indicates that companies with hidden ownership are used for numerous undesirable purposes and represent a serious problem that must be addressed.²⁶ Companies with hidden ownership are used for money laundering, as they make it easier to conceal proceeds from crime. Such companies are also used to facilitate corruption and to hide personal wealth from creditors.²⁷ The World Bank’s 150 case studies of grand corruption show that a number of methods or legal entities are usually used to conceal beneficial ownership and hidden ownership was used over two thirds of all cases.²⁸

Use of anonymous companies is also common in tax avoidance and evasion.²⁹ Although states and their tax authorities share more and more data and implement new measures for the prevention of

²³ The World Bank defines a shell company as a company that does not do any business, i.e. one that is registered but has no operations, no employees and no significant assets. Van der Does De Willeboies, Emile et al. 2011. *The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: EBRD and World Bank. Available at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (August 20, 2016), p. 34.

²⁴ *Ibid.*, pp. 34–6.

²⁵ *Ibid.*, pp. 35–64.

²⁶ OECD. 2014. *Foreign bribery report – An analysis of the crime of bribery of foreign public officials*. Available at: http://www.keepeek.com/Digital-Asset-Management/oecd/governance/oecd-foreign-bribery-report_9789264226616-en (September 20, 2016), p. 8. Also OECD. 2001. *Behind the Corporate Veil – using corporate entities for illicit purposes*. Available at: <https://www.oecd.org/corporate/ca/43703185.pdf> (September 16, 2016), p. 35.

²⁷ *Ibid.*, p. 7.

²⁸ Van der Does De Willeboies, Emile et al. 2011. *The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: EBRD and World Bank. Available at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (August 20, 2016), pp. 58 and 65.

²⁹ In the context of (non-)payment of taxes, we have to differentiate between three terms: tax planning, tax avoidance and tax evasion. Tax planning is a legal and legitimate practice used by individuals or companies to optimize their operations to decrease their taxable base. Tax avoidance is legal as well, as in this case the taxpayer doesn’t break any laws either – they do, however, make use of loopholes and grey areas in legislation, lowering their taxable base without following the spirit of the law (e.g. move of head office to a region with tax relief for companies despite not actually doing nor intending to do business there). Lastly, tax evasion means infringement of tax law and is punished

tax avoidance and evasion, taxpayers use increasingly complex mechanisms to anonymize their assets – primarily anonymous companies in foreign tax jurisdictions (mainly in so-called tax havens) and shell companies as well as other means of concealment of beneficial ownership.³⁰ This allows them to avoid or evade taxes, resulting in lower government revenue and consequently in fewer public funds. This ultimately also affects the quality and accessibility of public services.

All the problems listed above, as well as many others, were revealed by the so-called Panama Papers leak in April 2016. The leaked documents of a law company Mossack-Fonseca gave us a glimpse into the world of anonymous companies and the extent of the problem. The 11.5 million leaked documents dated from 1977 to 2015 revealed the mechanisms used to hide assets in various countries. Anonymous companies had been used to launder money obtained through robbery, fraud, corruption or trafficking, to evade taxes, finance terrorist groups, bypass international sanctions, as well as for other purposes.³¹ Some companies with Slovenian beneficial owners were revealed as well.³²

Slovenian authorities are also uncovering cases in which anonymous ownership was the key element that made it possible for the owners to commit or conceal criminal or other offences. Regarding the types of money laundering in its published cases, the Office for Money Laundering Prevention³³ (hereinafter: the Office) points out the frequent use of shell corporations as well as offshore companies. Both methods make it difficult to identify the beneficial owners, representatives or persons connected to them³⁴ and were used multiple times in cases of suspected money laundering from 2008 to 2011.³⁵ In 2014, about 26% of the 160 cases submitted by the Office that were passed to the police or the prosecutor's office involved a shell corporation or an offshore company.³⁶

Concealed ownership has further negative social consequences. Due to the frequency of abuse, it has a negative effect on the business environments in which it occurs. Case studies by Global Witness show significant risks when doing business with anonymous companies. Companies that do business with such legal entities face the following risks:

accordingly. For more on this, see: Balco, Tomas and Xeniya Yeroshenko. 2015. *Taxation and Corporate Tax Burden*. Brno: Policy Research Center, p. 80.

³⁰ EURODAD. 2015. *Fifty Shades of Tax Dodging*. Available at: <http://www.eurodad.org/files/pdf/1546494-fifty-shades-of-tax-dodging-the-eu-s-role-in-supporting-an-unjust-global-tax-system.pdf> (September 17, 2016), p. 26.

³¹ Mednarodni konzorcij preiskovalnih novinarjev. 2016. *Milijoni dokumentov dajejo vpogled v svet globalnega kriminala in korupcije*. Delo, April 3, 2016. Available at: <http://www.delo.si/svet/globalno/veliko-razkritje-financnih-dokumentov-povezanih-z-davcnimi-oazami-omogoca-vpogled-v-svet-globalnega-kriminala-in-korupcije.html> (September 16, 2016).

³² More on this at: <http://www.delo.si/assets/info5/dosje/panamapapers/goto.html>.

³³ The Office for Money Laundering Prevention is the designated Financial Intelligence Unit in Slovenia.

³⁴ Office for Money Laundering Prevention. *Zaznane tipologije pranja denarja*. Available at: http://www.uppd.gov.si/si/delovna_podrocja/objavljeni_posamezni_vsebinski_sklopi/tipologije/zaznane_tipologije (September 16, 2016).

³⁵ Office for Money Laundering Prevention. *Posamezni obravnavani primeri sumov pranja denarja v letih 2008 in 2009*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/Tipologije_primeri_2008_2009.pdf (September 24, 2016).

Office for Money Laundering Prevention. *Posamezni obravnavani primeri sumov pranja denarja v letih 2010*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/Tipologije_primeri_2010.pdf (September 24, 2016).

Office for Money Laundering Prevention. *Posamezni obravnavani primeri sumov pranja denarja v letih 2011*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/Obravnavani_primeri_sumov_pranja_denarja_v_letu_2011.pdf (September 24, 2016).

³⁶ Office for Money Laundering Prevention. *Poročilo o delu Urada Republike Slovenije za preprečevanje pranja denarja*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/deloUrada/letno_porocilo_2014.pdf (October 11, 2016), pp. 23–4.

- risk of financial loss (due to fraud, bribery, etc.),
- risk of penalties in judicial proceedings,
- risk of increased litigation costs, and
- risk of deteriorating business and social reputation.

This can have long-term consequences for a company's income and result in the additional cost of establishing preventive mechanisms, which further affects the company's market value.³⁷

Research also indicates that abuse of anonymous companies has far-reaching consequences for people's everyday lives. In a study carried out in 2015, Transparency International UK found that over three quarters of real estate in the elite neighbourhoods of London were owned by companies registered in tax jurisdictions with low or non-existent transparency of ownership (e.g. British Virgin Islands or the American state of Delaware).³⁸ The key factor here, in addition to the high risk of money laundering, is that a high percentage of these buildings are not being used,³⁹ which has consequences for the state of these buildings as well as the real estate market in general – it prevents first buyers to enter the market and negatively effects social wellbeing of Londoners.⁴⁰ Stiglitz and Pieth even claim that anonymous companies contribute to global inequality.⁴¹

The Financial Administration of the Republic of Slovenia (hereinafter: FURS) notes that the Slovenian real estate market is also being targeted by foreign companies intending to conceal their beneficial owners.⁴²

4.3. Transparency is crucial

So why is it important that the beneficial ownership be a matter of public record, not just revealed to law enforcement authorities?

Global Witness lists eight reasons why beneficial ownership of companies should be transparent. Transparency of ownership and prevention of concealed ownership primarily serve to uphold an environment that supports consumer protection and market security for businesses. This is particularly important when it comes to bigger and riskier investments.⁴³ Article 46 of the Prevention of Money

³⁷ Global Witness. 2016. *Chancing it – How secret company ownership is a risk to investors*. Available at: https://www.globalwitness.org/documents/18609/Chancing_It_FINAL.pdf (September 15, 2016), pp. 6–12.

³⁸ Maxwell, Nick (ed.). 2015. *Don't look, won't find*. London: Transparency International UK, p. 12.

³⁹ *Ibid.*, p. 9.

⁴⁰ Booth, Rober, Helena Bengtsson and David Pegg. 2016. *Revealed: 9% rise in London properties owned by offshore firms*. The Guardian, May 26, 2016. Available at: <https://www.theguardian.com/money/2016/may/26/revealed-9-rise-in-london-properties-owned-by-offshore-firms> (October 22, 2016). Similar consequences for the real estate market are also being reported in the US. See: Swanson, Ana. 2016. *How secretive shell companies shape the U.S. real estate market*. The Washington Post, April 12, 2016. Available at: <https://www.washingtonpost.com/news/wonk/wp/2016/04/12/how-secretive-shell-companies-shape-the-u-s-real-estate-market> (October 15, 2016).

⁴¹ Stiglitz, Joseph E. and Mark Pieth. 2016. *Overcoming the Shadow Economy*. Available at: <https://assets.documentcloud.org/documents/3219549/Stiglitz-and-Pieth-Overcoming-the-Shadow-Economy.pdf> (November 20, 2016), p. 4.

⁴² Ferlič Žgajnar, Brigite. 2016. *Preseneča me, kako so nekateri pripravljeni zastaviti svoje dobro ime*. Delo, April 18, 2016. Available at: <http://www.delo.si/ozadja/preseneca-me-kako-so-nekateri-pripravljeni-zastaviti-svoje-dobro-ime.html> (October 20, 2016).

⁴³ Sharp, Rosie. 2016. *Eight reasons why everybody needs to be able to see company ownership information (not just the police)*. Available at: <https://www.globalwitness.org/en/blog/eight-reasons-why-we-all-need-be-able-see-beneficial-ownership-information-rather-just-police> (September 10, 2016).

Laundering and Terrorist Financing Act (hereinafter: ZPPDFT) also clearly states that the data should be available to the public in order to ensure “a higher level of legal security when entering business relationships”.⁴⁴ Such data being a matter of public record also results in a friendlier environment for smaller economic agents, whom a public registry allows to have access to more information and to subsequently be in a more equal position with larger companies.⁴⁵

At the same time, openness and accessibility of data on beneficial owners enables the civil society to easily discover irregularities, report them to the relevant authorities, which also makes things easier for law enforcement authorities. It is also crucial for detecting systemic loopholes that can be addressed.⁴⁶ In light of the number of existing companies and transactions, it cannot be expected that regulatory bodies have the capacities to discover them all, which means that the civil society could play a major role in this regard. This is, after all, evidenced by the major scandals of the past few years (Panama Papers, Luxleaks, Swissleaks, etc.) – irregularities are uncovered by the civil society, aided by individuals (mostly whistleblowers) with access to relevant data. By expanding the circle of those with access, we could thus increase the chance of discovering such irregularities and eventually limit their frequency. At the same time, ensuring such access would result in a higher quality of register data, as analyses carried out by the civil society could be a major contribution to the development of such registers in the first few years of their operation.⁴⁷

Transparency is needed by businesspeople as well – in a survey by Ernst&Young, 91% stated that they found it important to know who the beneficial owner of the company that they are doing business with is.⁴⁸ Some even believe that anonymous companies should not exist in modern economies, as they have a negative effect on their overall reputation.⁴⁹ The B Team states that increased transparency of beneficial ownership could have a positive effect on competitiveness while mitigating certain business risks, as companies would have another channel that they could use to check who it is that they are doing business with and could thus decrease their risk of becoming victims of fraud, which often involves anonymous companies. This would, in turn, result in lower financial exposure and

⁴⁴ Proposal – Ministry of Finance. 2016. *Predlog Zakona o preprečevanju pranja denarja in financiranja terorizma – predlog za obravnavo*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/VG_ZPPDFT_20160627.pdf (August 25, 2016), p. 61.

⁴⁵ Sharp, Rosie. 2016. *Eight reasons why everybody needs to be able to see company ownership information (not just the police)*. Available at: <https://www.globalwitness.org/en/blog/eight-reasons-why-we-all-need-be-able-see-beneficial-ownership-information-rather-just-police> (September 10, 2016).

⁴⁶ *Ibid.*

⁴⁷ For instance, Transparency International EU identified a number of errors upon the publication of the lobbyist register and reported their findings and suggestions to the European Commission. Transparency International EU. 2015. *More than half the entries on the Brussels lobby register are inaccurate, incomplete or meaningless*. Available at: <http://www.transparencyinternational.eu/2015/09/press-release-more-than-half-the-entries-on-the-brussels-lobby-register-are-inaccurate-incomplete-or-meaningless-2> (October 3, 2016).

⁴⁸ EY. 2016. *Global Fraud Survey 2016*. Available at: <http://www.ey.com/gl/en/services/assurance/fraud-investigation---dispute-services/ey-global-fraud-survey-2016-combating-corruption-as-a-global-priority> (October 10, 2016).

⁴⁹ Walker in The B Team. 2015. *Ending Anonymous Companies*. Available at: https://issuu.com/thebteam/docs/bteam_business_case_report_final.we?e=15214291/11025500 (October 2, 2016), p. 5.

increased economic stability. At the same time, The B Team stresses the importance of transparency of beneficial ownership for the effective prosecution of irregular or illegal practices.⁵⁰

Several studies prove that public registers of beneficial owners would be economically justified, as they would be cheaper than the data being inaccessible or difficult to access. One study thus notes that the cost of establishing a public register (in the UK) that would allow for browsing (or searching) and would be updated regularly, would cost about a half of the money it would save. Savings would primarily be connected to the time now used to determine ownership in various procedures of client and business partner vetting. Furthermore, accessibility of public registers would also allow for easier discovery of lost or misappropriated funds.⁵¹

The transparency of beneficial ownership should thus be ensured by publicly available, free registries that would contain up to date and credible data published in accordance with the current open data standards.

5. Evaluation of the legislative context in Slovenia

The legislative framework of the issues surrounding beneficial ownership is provided by the Prevention of Money Laundering and Terrorist Financing Act (hereinafter: ZPPDFT), which defines beneficial ownership and lays out relevant obligations to obliged entities. However, ZPPDFT is not the only act shaping the issue of beneficial ownership in Slovenia. The new ZPPDFT was adopted at the 23rd regular session of the National Assembly on October 20, 2016, which transposed the Directive into Slovenian legislation. A proposal for the new ZPPDFT was presented soon after the adoption of the Directive in 2015, and the process of the somewhat lengthy public discussion involved a number of stakeholders that submitted several suggestions and reservations regarding ZPPDFT.⁵²

In the context of this study, international methodology⁵³ was used to evaluate the new piece of legislation, in spite of the fact that the act was still under parliamentary discussion and had not yet come into force. The study was thus unable to cover the whole practical aspect, as this will certainly be redefined by the newly adopted Act and its potential future amendments, at least in some respects. Our evaluation of the practical aspect will thus mostly focus on the stakeholders, but will also include some predictions regarding the effects of new legislation, which will then have to be checked by a different future study.

⁵⁰ The B Team. 2015. *Ending Anonymous Companies*. Available at: https://issuu.com/the-bteam/docs/bteam_business_case_report_final.we?e=15214291/11025500 (October 2, 2016), pp. 8–9.

⁵¹ Global Witness. 2013. *Requiring beneficial ownership information to be put in the public domain is cheap*. Available at: <https://www.globalwitness.org/en/archive/howell> (September 16, 2016).

⁵² ZPPDFT: *Odgovori na bistvene pripombe, prejete v fazi javne obravnave*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/javna_obravnavna_tabela_odgovori.pdf (November 6, 2016).

⁵³ The technical questionnaire with all answers is available at: http://www.transparency.si/images/publikacije/BO/BO_methodology.pdf.

5.1. Definition of beneficial owner

The beneficial owner and their obligations are defined by Section 3.3.2.2 of ZPPDFT. Article 33 of the Prevention of Money Laundering and Terrorist Financing Act defines the beneficial owner as follows: "The beneficial owner is the natural person who is the ultimate owner or controller of the client or exerts ultimate influence on the client in a different manner, or the natural person in whose name a certain transaction is made."⁵⁴ The definition is thus consistent with the Directive and international standards on beneficial ownership, as the beneficial owner is defined as the natural person who is the formal owner or otherwise in control of a legal entity. The act previously in force included a similar definition.⁵⁵

Further articles determine the beneficial owner in terms of legal entity type: economic agents, foreign trusts and other foreign legal persons, entities without shareholdings and foundations, sole traders, one-person limited liability companies, and budget users. In this respect, the new act is more detailed than the previous one.

Identification of beneficial ownership will undoubtedly be primarily determined by the definition of the beneficial owner of an economic agent. Article 35 defines the beneficial owner of an economic agent as follows:

1. any natural person that:

- is directly or indirectly the holder of a sufficient business interest, amount of shares, voting rights or other rights that form the basis of their participation in the management of the economic agent, or
- has a sufficient direct or indirect interest in the equity capital of the economic agent, or
- has controlling influence on the management of the economic agent's assets;

2. any natural person that indirectly provides or keeps providing an economic agent with funds, which allows this natural person to control, direct or otherwise exert significant influence on the financial and business decisions of the economic agent's management.

ZPPDFT goes on to state that direct ownership is indicated by a business interest of over 25%, by the holding of over 25% of voting rights or of 25% of shares plus one share. In this respect, ZPPDFT adheres to the Directive, however, it should be noted that the European Commission has in the meantime proposed the threshold to be lowered to 10%, at least in the case of passive non-financial entities.⁵⁶ NGOs, however, stand on the position that the threshold should be lowered for all economic

⁵⁴ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016).

⁵⁵ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 16/14. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4684> (September 16, 2016), Article 3.

⁵⁶ *Directive on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing*. Official Journal of the European Union, 2015/849. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=SL> (September 25, 2016).

agents, as 25% is too high, making abuse relatively simple and thus allowing the beneficial owners to remain hidden.

5.2. Obligation to identify the beneficial owner

There are two further important new elements of the law with regard to beneficial ownership. Firstly, there is the newly established obligation of legal entities operating in Slovenia to identify their beneficial owners, and secondly, the provisions regarding identifying beneficial owners of clients of obliged entities⁵⁷ have been made more specific.⁵⁸ Slovenia has thus established a two-track approach to the determination of beneficial ownership, with both channels being independent (at least in principle),⁵⁹ which forms the basis for a comprehensive system of determination and transparency of beneficial ownership.

On the one hand, the law thus requires all economic agents to identify their beneficial owners, with criteria differing in accordance with the type of the economic agent in question. Economic agents must keep these data on file, and the data should include the beneficial owner's full name, address of permanent and temporary residence, date of birth, nationality and their equity share or identification of a different manner of control. For every beneficial owner, the economic agent must keep these data on file for at least five years after the cessation of their status as such.⁶⁰ Furthermore, the economic agent must keep these data up to date and provide them immediately upon request of obliged entities, law enforcement authorities, courts or other regulatory bodies listed in the law. Economic agents must also submit these data to the register of beneficial owners established by the new Act. Economic agents are solely accountable for the data in the register, there is no verification system in place. Fines for economic agents that fail to submit these data on time or submit erroneous data range from €6,000 to €60,000 for legal entities and from €400 to €2,000 for their responsible persons.⁶¹

On the other hand, obliged entities are required to determine the beneficial owner of their clients as part of their due diligence process determined by the law. Article 43 of ZPPDFT requires that those subject to it determine the full name, address of permanent and temporary residence, date of birth, citizenship and equity share or other type of control exerted over the client by the beneficial owner.

⁵⁷ According to ZPPDFT, obliged entities are: banks, savings institutions, disbursing institutions, post offices, brokerage firms, investment funds, mutual pension fund managers, the Slovenian Sovereign Holding, the Bank Asset Management Company, insurance companies, foreign exchange offices, auditing firms, casinos, accountancies, precious metals dealers etc. For a detailed list, see *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Article 4.

⁵⁸ *Ibid.*, Article 34.

⁵⁹ Van der Does De Willeboies, Emile et al. 2011. *The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: EBRD and World Bank. Available at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (August 20, 2016), p. 7.

⁶⁰ Keeping of data after the cessation of the economic agent's status as such (e.g. due to liquidation) must be ensured by the court or another body in charge of the cessation procedure.

⁶¹ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Articles 41, 42, 44, 137 and 167.

Obligated entities are also required to assess the data obtained to such a degree that they are certain of the shareholding and supervisory structures of the client and their beneficial owner. Later provisions of the same Article are particularly important, requiring obliged entities to obtain such data using certified or genuine documentation from business registers, the court register or another public register, with the documentation being no older than three months.⁶²

Obligated entities thus cannot rely on data from the beneficial owners register but must rather determine who the beneficial owner is by themselves.⁶³ The subject's process of identifying the beneficial owner is thus separated from the process of identifying the beneficial owner of the economic agent, resulting in mutual examination, which is necessary, as the law does not stipulate any verification of the data entered in the register of beneficial owners.

Obligated entities must terminate their business relationship with those clients for whom they are unable to implement all the prescribed measures of due diligence (which includes the identification of the beneficial owner) and consider whether data on the client should be submitted to the Office for Money Laundering Prevention.⁶⁴ This ensures, at least in theory, that data entered in the register of beneficial ownership is frequently and proactively reviewed. It will soon become clear whether this provision will be effective or not, as according to the experience of some,⁶⁵ false and erroneous entries are most frequent when a new register is established.

5.2.1 Entities governed by foreign law, trusts

Pursuant to Article 37, the obligation of determining the identity of the beneficial owner and submitting it to the register also applies to foreign trusts⁶⁶ institutions and similar legal entities governed by foreign law. The Act defines the beneficial owner of such an entity as the person "who receives, manages or distributes assets for a particular purpose".⁶⁷ This includes settlors, trustees, beneficiaries and protectors.⁶⁸ Article 37 thus aligns the Slovenian law with international recommendations.⁶⁹

Economic agents as defined by this provision must be entered in the register if their business results in tax liability in Slovenia.⁷⁰ While ZPPDFT provides no detailed definition of this term, Article 45

⁶² If this is not possible, the entity subject to the law may obtain data from original or certified documents submitted by the statutory or authorized representative of the client; if this is impossible as well, a written statement by the statutory or authorized representative regarding the beneficial owners can be used as well. With regard to the last provision, the entity subject to the law must also carry out one or more measures of due diligence, as stipulated by the law.

⁶³ Ibid., Article 43.

⁶⁴ Ibid., Articles 21 and 69.

⁶⁵ For more on this see Section 5.3.

⁶⁶ Trusts are a legal form not recognized by Slovene legislation, therefore all trusts mentioned in this report should be considered as foreign legal entities.

⁶⁷ Ibid., Article 37.

⁶⁸ Ibid., Article 37.

⁶⁹ FATF. 2012. *International standards on combating money laundering and financing of terrorism & proliferation*. Available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (September 22, 2016), p. 91.

⁷⁰ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Article 41.

requires economic agents to enter all data on their beneficial owners in the register of beneficial owners after they had been included in the Slovenian Business Register or the national tax register. Economic agents must be entered in the latter two registers before they can begin business operations.⁷¹

Another reason why such a manner of entry is important is that data on beneficial owners will also have to be submitted by foreign legal entities that would like to own a property, as any such legal entity must first be entered in the business register.⁷²

5.3. Registry

As already mentioned, a novelty in the ZPPDFT is the obligation of submitting data on beneficial owners in the beneficial owner registry. The obligation applies to all economic agents⁷³ that are active in Slovenia and are included in the Slovenian Business Register or the tax register. The register will be managed by the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES), which will also provide the technology for entry in the register. A given economic agent will have to provide the register with the following data on its beneficial owner: full name, address of permanent and temporary residence, date of birth, tax ID number, nationality and equity share or an indication of another type of control.⁷⁴

However, the key part of ZPPDFT that determines the level of transparency of beneficial ownership is Article 46. Its first paragraph provides that the full name, address of permanent and temporary residence, equity share or indication of another type of control and date of entry in the register be public and freely accessible. The Act provides the following justification for this: “This information is made public in order to improve the legal security of establishing business relationships and legal transactions and promote business integrity and transparency of business relations between individuals and economic agents active in the business environment and engaging in legal transactions.”⁷⁵

However, the second paragraph of the same Article clearly states that only obliged entities, law enforcement authorities and supervisory bodies shall be able to access the register in such a way as to “determine whether a given person is the beneficial owner of an economic agent and which economic

⁷¹ *Zakon o finančni upravi*. Official Gazette of the Republic of Slovenia, no. 25/14. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6792> (October 27, 2016), Article 53, and the Financial Administration of the Republic of Slovenia. 2016. Email correspondence with the author. Ljubljana, November 14, 2016.

⁷² *Zakon o zemljiški knjigi*. Official Gazette of the Republic of Slovenia, no. 14/15. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3603> (October 25, 2016), Article 25.

⁷³ 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.

⁷⁴ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Articles 45 and 46.

⁷⁵ *Ibid.*, Article 46.

agent the given person is the beneficial owner of".⁷⁶ It will be a while until we have a clear picture of the practical implications of this provision,⁷⁷ however, the paragraph is closely reminiscent of Article 199 of the Land Register Act.

In light of the experience with the land register, we can justifiably conclude that the publicness of the register will be significantly reduced, as users will be unable to browse the data by names of beneficial owners, the data will not be indexed by search engines and the register will not follow open data standards in any way,⁷⁸ which means that machine processing will not be enabled. Furthermore, the fifth paragraph of Article 46 states that the authority managing the register (AJPES) may charge obliged entities, which will have full access to the register, for each time they access the register, and that the price will be set by the managing authority and the minister of finance.⁷⁹ This also means reduced accessibility of the register, particularly for smaller obliged entities, which generally already lack necessary capacities for determining beneficial owners of their customers.

With these provisions, the register deviates from international standards and will not be able wholly to serve its purpose. For instance, the World Bank's recommendations state that data accessible in (business) registers are crucial for the determination of ownership and clearly indicate that states should try to establish freely accessible online registers that would not require unnecessary registration or payments. According to the World Bank, such a register should also be searchable and enable cross-referencing with other data sets.⁸⁰ The European Commission also offers clear guidelines for the reuse of databases and recommends that the data be published online in their original form as well as in a machine-readable format.⁸¹

Reservations regarding such accessibility derive from data and privacy protection. The right to privacy is one of the fundamental rights espoused by the Constitution of the Republic of Slovenia⁸² as well as by the Charter of Fundamental Rights of the European Union.⁸³ However, the Charter also clearly provides that liberties may be limited in law, provided that this is done in a proportional manner and that limitations are truly necessary and serve the public interest or are necessary to protect the

⁷⁶ *Ibid.*, Article 46.

⁷⁷ We will also have to wait for all technicalities to be ironed out, as Article 45 of ZPPDFT states that the technical requirements and method of transfer of public data to the World Wide Web will be determined by rules elaborated by the minister of economic affairs in collaboration with the minister of finance.

⁷⁸ Glojnaric, Branka – Office for Money Laundering Prevention. 2016. Interview with the author. Ljubljana, October 27, 2016.

⁷⁹ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Article 46.

⁸⁰ Van der Does De Willeboies, Emile et al. 2011. *The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: EBRD and World Bank. Available at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (August 20, 2016), p. 5.

⁸¹ European Commission. 2014. *Guidelines on recommended standard licences, datasets and charging for the reuse of documents*. Official Journal of the European Union, no. 2014/C240/01. Available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014XC0724\(01\)&from=EN#tr10-C_2014240SL01000101-E0010](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014XC0724(01)&from=EN#tr10-C_2014240SL01000101-E0010) (November 10, 2016).

⁸² *Ustava Republike Slovenije*. Official Gazette of the Republic of Slovenia, no. 47/13. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=USTA1> (October 17, 2016), Article 35.

⁸³ *Charter of fundamental rights of the European union*. Official Journal of the European Union, no. 2010/C83/02. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF> (October 18, 2016), Article 7.

liberties and rights of others.⁸⁴ The opinion of the Data Protection Working Party of the European Commission on open data and public sector information reuse uses the same justification.⁸⁵

Section 3.4 of this report establishes that companies with hidden beneficial ownership can seriously infringe on the rights and liberties of individuals – anonymous companies present a risk for legal transactions, are used to commit a range of criminal offences, and their use and abuse can have serious social consequences that impact the rights of other citizens. As indicated in the following section, wide availability of such data is crucial for the effective mitigation of these phenomena, and projections indicate that it would have a positive impact on society. Publication of such data would thus be in the public interest and have a preventive effect of limiting money laundering and terrorist financing. Many NGOs at the European level thus advocate for the position that public registers of beneficial owners in an open format would not represent a disproportional infringement of privacy rights of beneficial owners, as the risks mentioned above can only be minimized with publication at such a scale. This opinion is also shared by Nobel Prize winner Joseph Stiglitz and anti-corruption expert Mark Pieth who had been members of a panel that investigated the Panama Papers case.⁸⁶

Due to the beneficial effects of the public accessibility of beneficial ownership data, the UK opened up the national register to the public by using an open data format. In the UK, the register of beneficial owners is now freely available to everybody and does not require registration, while its data is also indexed by search engines. Most importantly, however, the whole⁸⁷ database can be downloaded,⁸⁸ which allows machine processing. The database is refreshed daily, which is also an important factor for long-term automated data processing.

While significant positive results will take time to develop, the UK register already shows that broad accessibility in an open data format benefits the quality of the results, as civil society is already performing analyses (which are possible due to the machine-readable format) and identifying certain trends and shortcomings of the register,⁸⁹ which will eventually lead to the register becoming more useful for all users.

After all, upon encouragement by TI Slovenia, the UK database was also used by the Slovenian civil society, which filtered the data to identify all individuals with Slovenian citizenship or permanent

⁸⁴ Ibid., Article 52.

⁸⁵ Article 29 Data Protection Working Party. 2013. *Opinion 06/2013 on open data and public sector information reuse*. Available at: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp207_en.pdf (October 29, 2016), p. 22.

⁸⁶ Stiglitz, Joseph E. and Mark Pieth. 2016. *Overcoming the Shadow Economy*. Available at: <https://assets.documentcloud.org/documents/3219549/Stiglitz-and-Pieth-Overcoming-the-Shadow-Economy.pdf> (November 20, 2016), p. 15.

⁸⁷ The only pieces of data that are removed are the day of birth (the month and year remain published) and the tax ID number of the beneficial owner. This is a sensible measure, as these two pieces of data are unnecessary, so it is reasonable to require legitimate interest to be demonstrated before they are disclosed.

⁸⁸ Companies House. 2016. *People with significant control (PSC) snapshot*. Available at: http://download.companieshouse.gov.uk/en_pscdata.html (November 15, 2016).

⁸⁹ Leon, Sam. 2016. *A first look at the UK beneficial ownership data*. Available at: <https://www.globalwitness.org/en/blog/first-look-uk-beneficial-ownership-data> (October 25, 2016).

residence in Slovenia. The findings and the procedure were published so that they could be reused.⁹⁰ This shows the potential offered by such databases and the range of possibilities they give to the civil society.

In this regard, it should also be noted that we must build up the civil society's capacity for the use of such databases, as open data is worthless without users.

Case study: Who bought Adria Airways?

On January 19, 2016, the Slovenian Sovereign Holding (SDH) reported that an agreement had been signed, selling a 91.58 percent share of the Adria Airways, an airline company. The procedure had been going on since July 2015 and had been, according to the SDH, conducted "in a professional and transparent manner, without discriminating against any of the investors in the procedure, and in accordance with relevant international practice".⁹¹ The SDH further notes that Adria Airways was bought by 4kInvest, a company registered in Luxembourg, with a German company acting as an intermediary.⁹²

However, an investigation carried out by Delo, a major Slovenian daily, revealed a complex chain of companies in the ownership structure of Adria Airways. The chain was followed from the German 4K KNDNS GmbH to Luxembourg-based companies (4K Invest Central S.a.r.l. and 4K Invest S. A.), then to a Malta-based company (Lanterne Holding Limited), and back to Luxembourg, to BluO Holding F2 (renamed PerformanZ Holding), a company in a liquidation procedure. From there, the chain led back to Germany.⁹³

However, the investigation gives no clear indication who the beneficial owner of Adria Airways could be. According to journalists of the Siol.net news portal, the chain of ownership ultimately led to Iranian businesspeople and businesspeople with Iranian roots, among others to Betty Yazdi and Ali Mahdavi. These two supposedly hid behind the formal German owners because they had been on the black list of the American Office of Foreign Assets Control (OFAC) until January 2016. They had supposedly been placed on the list due to alleged business ties with Al Quds, a unit of the Iranian Revolutionary Guards, which is considered to be a supporter of terrorism because of ties to the Hezbollah and other Shia militias.⁹⁴ Adria Airways denied the allegations stating that 4K Invest is wholly owned by European investors, mainly German citizens.⁹⁵ The SDH's response to the allegations was that they always check

⁹⁰ Kovačič, Matej. 2016. *Analiza podatkov o končnih lastnikih podjetij registriranih v Veliki Britaniji*. Available at: <https://pravokator.si/index.php/2016/08/30/analiza-podatkov-o-koncnih-lastnikih-podjetij-registriranih-v-veliki-britaniji> (September 20, 2016).

⁹¹ Slovenian Sovereign Holding. 2016. *Podpisana prodajna pogodba med SDH ter DUTB z investicijskim skladom 4K Invest o prodaji 91,58 % deleža v družbi Adria Airways, d. d.* Available at: <http://www.sdh.si/sl-si/Novica/1171> (October 16, 2016).

⁹² Ibid.

⁹³ Jakše, Luka and Anuška Delić. 2016. *O kupcu Adrie Airways: Ujemi 4K, če moreš*. Delo, January 21, 2016. Available at: <http://www.delo.si/gospodarstvo/infrastruktura/ujemi-4k-ce-mores.html> (September 16, 2016).

⁹⁴ Cirman, Primož, Suzana Rankov and Vesna Vuković. 2016. *Kdo je pravi kupec Adrie Airways? Sledi vodijo v Iran*. Available at: <http://siol.net/novice/gospodarstvo/kdo-je-pravi-kupec-adrie-airways-sledi-vodijo-v-iran-414617> (September 16, 2016).

⁹⁵ Adria Airways. 2016. *Lastniška struktura Adrie Airways*. Available at: <https://www.adria.si/sl/o-druzbi/novinarsko-sredisce/2016/lastniska-struktura-adrie-airways> (October 10, 2016).

the data on buyers and their beneficial owners and that they had done so in the case of Adria Airways as well.⁹⁶

Latest reports indicate that the financial situation of Adria Airways is dire.⁹⁷

The Adria Airways case shows the importance of transparency of beneficial ownership, particularly in high-risk cases such as the privatization of state property. Making SDH and DUTB (Bank Assets Management Company, i.e. bad bank) obliged entities of the Prevention of Money Laundering and Terrorist Financing Act might change the course of future privatization procedures, which is the subject of the final section of this report. The Adria Airways case will also serve as a litmus test for the new legislation, as the names entered by the company in the beneficial owners register will show whether the system functions as it should, especially in cases as complex as this one.

5.4. Other legislation

ZPPDFT is not the only piece of legislation with ramifications for transparency of beneficial ownership. The situation regarding beneficial owners is also affected by legislation that regulates the operation of companies, as well as by legislation governing other types of transactions.

The Companies Act (ZGD-1) allows for the issuance of bearer shares.⁹⁸ Shares can either be registered or bearer shares, with the major difference between the two types being that the share registers of registered shares are public while registers of bearer shares are not. The data on the latter's owners are only available to certain regulatory bodies.⁹⁹ The risk of abuse of such shares for money laundering is in Slovenia somewhat mitigated by so-called immobilisation,¹⁰⁰ which means that bearer securities can no longer be issued in physical form, as required by the minimal standards supported by international organizations.¹⁰¹ In any case, few Slovenian companies decide to issue bearer shares; currently, the number stands at 25.¹⁰² Decision makers should consider abolishing bearer shares altogether, as has already been done by some other countries, e.g. the United Kingdom¹⁰³ and

⁹⁶ Al. Ma. 2016. *Med novimi lastniki Adrie Airways tudi podporniki terorizma?* Available at: <https://www.rtvsllo.si/gospodarstvo/med-novimi-lastniki-adrie-airways-tudi-podporniki-terorizma/390357> (October 22, 2016).

TI Slovenia has made multiple requests to the SDH for an interview regarding their due diligence on clients carried out as part of their sales procedures and their inclusion among the entities bound by the Prevention of Money Laundering Act but had never received a reply.

⁹⁷ Cirman, Primož, Tomaž Modic, Vesna Vuković. 2016. *Izpuhteli državni milijoni za reševanje Adrie Airways pred stečajem. Kaj sledi?* Available at: <http://siol.net/novice/gospodarstvo/izpuhteli-drzavni-milijoni-za-resevanje-adrie-airways-pred-stecajem-kaj-sledi-429863> (October 22, 2016).

⁹⁸ *Zakon o gospodarskih družbah*. Official Gazette of the Republic of Slovenia, no. 55/15. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4291> (November 16, 2016), Article 175.

⁹⁹ KDD – centralna klirinško depotna družba d.d. 2016. Email correspondence with the author. Ljubljana, November 15, 2016.

¹⁰⁰ See: *Zakon o nematerializiranih vrednostnih papirjih*. Official Gazette of the Republic of Slovenia, no. 75/15. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6869> (October 17, 2016) and *Zakon o gospodarskih družbah*. Official Gazette of the Republic of Slovenia, no. 55/15. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4291> (November 16, 2016), Article 182.

¹⁰¹ See: Van der Does De Willeboies, Emile et al. 2011. *The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: EBRD and World Bank. Available at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (August 20, 2016), p. 8, and FATF, pp. 88–9. FATF. 2012. *International standards on combating money laundering and financing of terrorism & proliferation*. Available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (September 22, 2016).

¹⁰² KDD – centralna klirinško depotna družba d.d. 2016. Email correspondence with the author. Ljubljana, November 15, 2016.

¹⁰³ Company Law Club. 2016. *Abolition of bearer shares*. Available at: <http://www.companylawclub.co.uk/abolition-of-bearer-shares> (November 12, 2016).

Denmark.¹⁰⁴ ZPPDFT already prohibits business relationships with clients that demonstrate ownership of a legal entity using bearer shares that cannot be traced through the register managed by the Central Securities Clearing Corporation or another public register.¹⁰⁵

In this regard, the 2012 amendment to the Companies Act was a step forward for transparency of beneficial ownership, as the amendment abolished the institute of so-called anonymous companies (S.A.).¹⁰⁶

However, there are still ways that can be used to conceal company ownership. An individual can invest in a company by signing an obligation agreement with existing company shareholder and then, after a certain period, request to be paid out or become a registered holder of an equity share. Such agreements are further secured by a notarial record wherein the members acknowledge that the individual had acquired a certain share, which the individual may use at any time (e.g. in case of a breach of the obligation agreement) to become a registered holder. On the other hand, the individual can also remain hidden, if the members do not report the agreement to the company management, which would otherwise be obliged to report the ownership change to the public business register.¹⁰⁷ Such situations will also be a litmus test for ZPPDFT, as ZPPDFT should include such individuals among the beneficial owners – it will be interesting to see whether this is realized in practice.

Case study: Boško Šrot behind a shell owner

In April 2008, the Manager magazine published a list of the richest Slovenians, and the fourth spot on the list was taken by then 29 years old broker Danijela Rakovič, whose wealth was estimated at over €146 million. Mrs. Rakovič was a formal owner of Kolonel, d.o.o., a company with a majority holding in Center Naložbe, d. d., which in turn was the majority owner of Infond Holding, d. d. that controlled the Pivovarna Laško group¹⁰⁸. However, questions were soon raised whether the broker, a bank employee, was truly as wealthy as claimed, and claims appeared that she was probably merely a surrogate and not the beneficial owner.¹⁰⁹ This turned out to be true: the beneficial owner was Boško Šrot, then President of the Board of Pivovarna Laško, who revealed himself as such soon after Manager's publication of the list.

¹⁰⁴ Plesner. 2015. *The Danish Bill on abolition of bearer shares etc has been passed*. Available at: http://www.plesner.com/insights/articles/2015/05/lovforslaget%20om%20bla%20afskaffelse%20af%20ihndehaveraktier%20er%20blevet%20vedtaget?sc_lang=en (October 17, 2016).

¹⁰⁵ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Article 65.

¹⁰⁶ Mercina, Jure. 2012. *Ukinitev tihe družbe*. Available at: <http://mladipodjetnik.si/novice-in-dogodki/novice/ukinitev-tihe-druzbe> (November 2, 2016).

¹⁰⁷ Weiss, Monika. 2012. *Nasvet: Kako skriti premoženje pred ženo?* Available at: <http://www.finance.si/359960/Nasvet-Kako-skriti-premozenje-pred-zeno?metered=yes&sid=428896852&cookietime=1478431331> (November 6, 2016).

¹⁰⁸ Pivovarna Laško is the largest Slovene brewing company, that at the time owned the second largest brewing company and several soft drinks companies.

¹⁰⁹ Šeruga, Katja and Vera Ladič. 2008. *'Skromna' najbogatejša Slovenka*. Available at: <http://origin.24ur.com/novice/slovenija/24ur-skromna-najbogatejsa-slovenka.html> (November 1, 2016).

V.T. 2013. *Kdo je Boško Šrot?* Delo, July 19, 2013. Available at: <http://www.delo.si/gospodarstvo/podjetja/kdo-je-bosko-srot.html> (October 19, 2016).

Danijela Rakovič bought Kolonel on July 20, 2006. Eight days later, Kolonel already announced intent to acquire Center Naložbe, and five days later (on August 2, 2006), Mrs. Rakovič sold Kolonel to Atka-Prima, owned by Boško and Anica Šrot, for €16,700. However, the transfer of ownership remained hidden until May 2008. Mrs. Rakovič and Atka-Prima signed an equity share transfer agreement, which was drafted by lawyer Stojan Zdolšek and which defined the relationship between the seller and the buyer as one of fiduciary duty (it was trust-based). A notarial record was made of the sale,¹¹⁰ however, the contract remained with the notary and was not submitted to the court register for as long as two years, meaning that Mrs. Rakovič remained the formal owner of Kolonel until August 7, 2008, concealing the beneficial owners Boško and Anica Šrot.¹¹¹ During the time of hidden ownership, Center Naložbe increased their equity share in Infond Holding,¹¹² which in turn increased its share in Pivovarna Laško in April 2008.¹¹³

It is not wholly clear why Šrot concealed his beneficial ownership for two years, however, both the Competition Protection Office and the Securities Market Agency initiated proceedings against Šrot due to alleged irregularities connected to the concealed ownership.¹¹⁴ However, unfriendly political environment and the public's negative attitude to management buyouts that would have made it difficult for him to take over Pivovarna Laško probably played a part in Šrot's decision to keep his ownership a secret as well.¹¹⁵

In any case, Šrot was sentenced to four years and two months in prison for his abuse of authority in the financing of the Pivovarna Laško takeover in 2014.¹¹⁶ This occurred after Šrot's beneficial ownership of Kolonel had already been revealed. According to the court, Šrot influenced the signing of loan agreements between companies of the Pivovarna Laško group and Infond Holding and Center Naložbe that were worth over €109 million in total, despite knowing that the companies could not accept new loans due to over indebtedness. Only €450,000 was ever repaid.¹¹⁷

6. Key stakeholders

This section will present some of the obliged entities subject to ZPPDFT and some other stakeholders that critically shape the beneficial ownership landscape. The section will outline their capacities (options given to them by legislation, available funds and other capacities, and their practices), as well as their efficiency in utilizing these capacities.

Most of the stakeholders have already been included in the national risk assessment for money laundering and terrorist financing; the latest assessment had been made in 2015, and a new assessment was already underway when this report was being drafted. Section II of ZPPDFT also

¹¹⁰ Tekavec, Vanja. 2008. *Stojan Zdolšek: Zoper Šrota ni mogoče ukrepati*. Delo, August 15, 2008.

¹¹¹ V.T. 2013. *Kdo je Boško Šrot?* Delo, July 19, 2013. Available at: <http://www.delo.si/gospodarstvo/podjetja/kdo-je-bosko-srot.html>.

Tekavec, Vanja. 2008. *Stojan Zdolšek: Zoper Šrota ni mogoče ukrepati*. Delo, August 15, 2008.

¹¹² Magajna, Matevž. 2007. *Center Naložbe do 53 odstotkov Infond Holdinga*. Finance, December 13, 2007. Available at: <http://www.finance.si/199292/Center-Naložbe-do-53-odstotkov-Infond-Holdinga?cctest&>

¹¹³ *Judgment of Ljubljana District Court, ref. no. X K 6155/2013*. Pp. 47–8.

¹¹⁴ Ugovšek, Jure. 2008. *Žugelj ovadil Boška Šrota*. Finance, May 23, 2008. Available at: <http://www.finance.si/213803/Zugelj-ovadil-Boska-Srota?metered=yes&sid=478593884> (October 16, 2016).

¹¹⁵ Sovdat, Petra. 2016. Email correspondence with the author. Ljubljana, November 15, 2016.

¹¹⁶ Stojiljkovič, Gordana. 2014. *Boško Šrot še drugič kriv zlorabe položaja, sedel bo celo desetletje*. Available at: <http://siol.net/novice/crna-kronika/bosko-srot-se-drugic-kriv-zlorabe-položaja-sedel-bo-celo-desetletje-video-167240> (October 20, 2016).

¹¹⁷ *Ibid*. See also: *Judgment of the Ljubljana District Court, ref. no. X K 6155/2013*. Pp. 7 and 87.

provides that the assessment be carried out at least every four years and that this be facilitated by the Government establishing a permanent inter-ministerial working group whose operations are then directed by the Office, which notifies its report to the Government as well as European institutions.¹¹⁸ The Office published the national risk assessment on its website¹¹⁹ and informed all key stakeholders of the publication.

6.1. Office for Money Laundering Prevention

The Office is a body within the Ministry of Finance and consists of four units: the Section for Suspicious Transactions, the Information Technology Service, the Section for Prevention and Supervision, and the International Cooperation Service. The Office has existed since 1995 and is the Slovene Financial Intelligence Unit¹²⁰ and thus one of the key actors in the detection of abuse of anonymous companies for activities listed above.

In 2014, the Office received 489 reports of suspicious transactions and suspicious activity, a bit less than in the year before. 480 cases were opened on the basis of these reports.

Year	2010	2011	2012	2013	2014
Number of cases	233	327	559	600	480

Number of cases opened on the basis of reports of suspicious transactions and activity by year¹²¹

The MONEYVAL evaluation¹²² from 2010 states that the Office is effective and works well with other law enforcement authorities.¹²³

The Office also acts as a multiplier, providing training to both state authorities and the entities regulated by ZPPDFT and thus significantly improving their qualifications regarding identification of beneficial owners. In 2014, the Office implemented a number of courses, however, its representatives underline that further training should be provided to police officers, criminal investigators, prosecutors and judges.¹²⁴ It is true, however, that the last four annual reports do not indicate any of the courses to have focused at beneficial ownership and the identification of beneficial owners. Due to new legal

¹¹⁸ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Articles 8–11.

¹¹⁹ Most of the report was published, with only sensitive information having been removed. Glojnarich, Branka – Office for Money Laundering Prevention. 2016. Interview with the author. Ljubljana, October 27, 2016.

¹²⁰ Office for Money Laundering Prevention. 2014. *Poročilo od delu Urada Republike Slovenije za preprečevanje pranja denarja za leto 2014*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/deloUrada/letno_porocilo_2014.pdf (October 16, 2016), pp. 4–6.

¹²¹ Office for Money Laundering Prevention. 2014. *Poročilo od delu Urada Republike Slovenije za preprečevanje pranja denarja za leto 2014*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/deloUrada/letno_porocilo_2014.pdf (October 16, 2016), p. 13.

¹²² MONEYVAL is a committee of anti-money laundering experts and is a body of the Council of Europe. At the time of writing of this report, MONEYVAL was in the middle of an assessment visit in Slovenia.

¹²³ MONEYVAL. 2010. *Report on Fourth Assessment Visit – Executive Summary*. Available at: [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SLO4_Sum_MONEYVAL\(2010\)07_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SLO4_Sum_MONEYVAL(2010)07_en.pdf) (October 20, 2016), p. 5.

¹²⁴ Office for Money Laundering Prevention. 2014. *Poročilo od delu Urada Republike Slovenije za preprečevanje pranja denarja za leto 2014*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/deloUrada/letno_porocilo_2014.pdf (October 16, 2016), pp. 32 and 36–7.

provisions, it would be prudent to develop a course or other learning material focusing on beneficial ownership that would be widely available to all obliged entities and all other interested parties.¹²⁵ Such a course would have to involve the relevant stakeholders (supervisory bodies, chambers, associations), however, due to limited financial and human resources, it would make sense to consider using e-learning modules or other methods that would allow for quick and easy access to learning materials.

Regarding the Office, one new feature of the new legislation is particularly significant – inspection powers.¹²⁶ Until now, the Office only carried out indirect supervision (administrative oversight) over obliged entities; now, however, the Office may inspect business premises, documents and other materials, seize property and examine witnesses.¹²⁷ The Office thus becomes a hybrid body acting in the field of money laundering, complementing its administrative features with certain characteristics of law enforcement authorities. Each type of body has its strengths and its weaknesses, and practice will show whether the decision to extend the Office’s powers was a good one or not.¹²⁸

Another aspect needs to be mentioned in addition to new statutory powers. On December 31, 2014, the Office employed 19 people, the number steadily increasing for 20 years.¹²⁹ Nevertheless, in comparison with other similar bodies with inspection powers, the Office employs relatively few people. The Office is supposed to increase its staff,¹³⁰ the proposal for ZPPDFT only stipulated three new employees with inspection powers.¹³¹ It is questionable whether such human capacities will allow the Office to carry out effective and systematic supervision of the implementation of statutory provisions over thousands of obliged entities. It will be even more difficult to check the accuracy of the entries on beneficial owners in the register, although in this regard the Office intends to perform targeted reviews.¹³² With this in mind, we need to ask ourselves whether such a statutory solution is really the most suitable one or whether some obligations and powers of supervision should perhaps rather be left to the so-called primary supervisory bodies,¹³³ at least in areas where these already exist and have the capacities to perform such inspections. In this case, the Office would only use its inspection powers

¹²⁵ That is, Article 88 of ZPPDFT allows the Office to implement such courses as part of its activity and to set their prices at its own discretion.

¹²⁶ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Articles 142–150.

¹²⁷ Ministry of Finance. 2016. *Predlog Zakona o preprečevanju pranja denarja in financiranja terorizma – predlog za obravnavo*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/VG_ZPPDFT_20160627.pdf (August 25, 2016), p. 182.

¹²⁸ The International Monetary Fund differentiates between four types of bodies for the prevention of money laundering: administrative bodies, law enforcement authorities, judicial authorities, and hybrid bodies. All have their special characteristics, which are determined primarily by their organization and their powers, and each has strengths and weaknesses that have to be taken into account while pursuing anti-money laundering goals.

See more: International Monetary Fund. 2004. *Financial Intelligence Units: An Overview*. Washington: International Monetary Fund Publication Services. Available at: <https://www.imf.org/external/pubs/ft/FIU/fiu.pdf> (November 10, 2016), pp. 9–18.

¹²⁹ Office for Money Laundering Prevention. 2014. *Poročilo od delu Urada Republike Slovenije za preprečevanje pranja denarja za leto 2014*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/deloUrada/letno_porocilo_2014.pdf (October 16, 2016), p. 48.

¹³⁰ Glojnarich, Branka – Office for Money Laundering Prevention. 2016. Interview with the author. Ljubljana, October 27, 2016.

¹³¹ Proposal – Ministry of Finance. 2016. *Predlog Zakona o preprečevanju pranja denarja in financiranja terorizma – predlog za obravnavo*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/VG_ZPPDFT_20160627.pdf (August 25, 2016), p. 20.

¹³² Glojnarich, Branka – Office for Money Laundering Prevention. 2016. Interview with the author. Ljubljana, October 27, 2016.

¹³³ The Bank of Slovenia, the Financial Administration of the Republic of Slovenia, the Bar Association, etc.

when the primary supervisory body could not or would not perform a timely and appropriate inspection despite being requested to do so by the Office.

6.2. Obligated entities by ZPPDFT

The Act provides for a number of important responsibilities for its obliged entities, which are sure to affect the practice of beneficial owner identification. For example, each obliged entity must perform an internal risk assessment for money laundering and terrorist financing and carry out appropriate risk-management activities. They must also implement due diligence measures regarding their clients, which includes the identification of the beneficial owner, as described above. The Act further provides that obliged entities should provide regular training for their employees and create a list of indicators used for the identification of suspicious clients and transactions. These provisions must also be subject to regular internal reviews.¹³⁴

6.2.1. Banks

The national anti-money laundering risk assessment from 2015 estimates the vulnerability of the banking system as moderate, which places the banking system among the most vulnerable of all obliged entities. According to the assessment, banks operate in a moderate supervisory environment and have slightly better than moderate policies and measures for money laundering prevention. On the other hand, the assessment finds that their application in practice is often lacking.¹³⁵ That banks are among the entities with greatest exposure is also indicated by the fact that they are the entities that most often report suspicious transactions and persons, on the basis of which reports the Office then opens its cases. Between 2010 and 2014, over 70% of all reports came from banks.¹³⁶

On the other hand, the national risk assessment¹³⁷ indicates that banks have made good progress in terms of awareness of the importance of money laundering prevention.¹³⁸ In 2010, MONEYVAL also

¹³⁴ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016).

¹³⁵ Office for Money Laundering Prevention. 2015. *Povzetek poročila o izvedbi nacionalne ocene tveganja Republike Slovenije za pranje denarja in financiranje terorizma*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/NRA_objava.pdf (September 2, 2016), pp. 8–10.

¹³⁶ Office for Money Laundering Prevention. 2014. *Poročilo od delu Urada Republike Slovenije za preprečevanje pranja denarja za leto 2014*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/deloUrada/letno_porocilo_2014.pdf (October 16, 2016), p. 13.

¹³⁷ The national anti-money laundering and terrorist financing risk assessment is an analysis carried out to determine the greatest vulnerabilities and shortcomings of the system and field related to the prevention of money laundering and terrorist financing. The latest assessment was published in December 2015 and involved a number of stakeholders, which were divided into seven working groups.

¹³⁸ Office for Money Laundering Prevention. 2015. *Povzetek poročila o izvedbi nacionalne ocene tveganja Republike Slovenije za pranje denarja in financiranje terorizma*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/NRA_objava.pdf (September 2, 2016), pp. 8–9.

found that the banks' awareness of anti-money laundering standards was quite high.¹³⁹ These assessments can thus lead us to conclude that while the banking sector is exposed, it also possesses adequate capacities for the identification of the beneficial owners of the banks' clients; the banks will thus probably be a key stakeholder in the identification of errors in the register of beneficial owners as well.¹⁴⁰

6.2.2. Non-financial businesses and professions

The national risk assessment divides this category into six subcategories: notaries and lawyers, accountants (including financial consultants, auditors and tax consultants), casinos and other gambling providers, real estate dealers, precious metals and jewellery dealers, and non-profit organizations. The following section focuses on the first two groups, which are the most important in terms of transparency of beneficial ownership and thus often studied by other reports on beneficial ownership.

6.2.2.1. Accountants, financial and tax advisors, auditors and other providers of corporate services

The national risk assessment defines the exposure of this category as low.¹⁴¹ On the other hand, international studies point out that this category can potentially be problematic. The World Bank states that the identification of beneficial owners by the stakeholders included in this category is often lacking.¹⁴² Furthermore, the World Bank's research of corruption cases has revealed that schemes that involved nominee owners were often part of the range of services offered by specialized providers of corporate services.¹⁴³

Furthermore, the World Bank notes that service providers in cases of abuse of anonymous companies tend to be negligent, intentionally looking away or are actively complicit.¹⁴⁴ This is confirmed by one of the most extensive studies of this phenomenon, which had found that in almost half of all cases, service providers did not follow international standards for due diligence. The sample of the study, wherein requests for quotation bearing signs of money laundering or terrorist financing

¹³⁹ MONEYVAL. 2010. *Report on Fourth Assessment Visit – Executive Summary*. Available at: [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SLO4_Sum_MONEYVAL\(2010\)07_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SLO4_Sum_MONEYVAL(2010)07_en.pdf) (October 20, 2016), p. 11.

¹⁴⁰ This is also the expectation of the Office. Glojnarič, Branka – Office for Money Laundering Prevention. 2016. Interview with the author. Ljubljana, October 27, 2016.

¹⁴¹ Urad za preprečevanje pranja denarja. 2015. *Povzetek poročila o izvedbi nacionalne ocene tveganja Republike Slovenije za pranje denarja in financiranje terorizma*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/NRA_objava.pdf (2.9.2016), str. 106–7. Kljub temu da gre za zelo različna tveganja med naštetimi poklici, jih Nacionalna ocena tveganj obravnava skupaj.

¹⁴² Van der Does De Willeboies, Emile et al. 2011. *The Puppet Masters - How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: Mednarodna banka za obnovo in razvoj in Svetovna banka. Available at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (20.8.2016), str. 6.

¹⁴³ Ibid., str. 61.

¹⁴⁴ Ibid., str. 5–6.

were automatically sent to providers, included replies from over 3,700¹⁴⁵ providers of such services from 182 countries.

Ten requests were also sent to Slovenia. The researchers received four replies, two of which did not adhere to international standards.¹⁴⁶ While the sample is small and does not allow us to make conclusions as to the extent of the problem, there are other indicators that show that the national risk assessment may have underestimated the exposure of this category. In all the Slovenian cases from the Panama Papers scandal, the central role was played by a service provider, which, in some cases, withheld crucial data on his clients (involvement in trafficking, abuse of power etc.).¹⁴⁷ Furthermore, service providers can be found on the web, which offer shelf companies¹⁴⁸ in Slovenia that would make the identification of beneficial owners more difficult, as described in Section 3.3.

On the other hand, the MONEYVAL assessment of this category focuses primarily on the lack of supervision.¹⁴⁹ Since the assessment the Office has intensified its supervision of the non-banking sector,¹⁵⁰ and the expansion of the Office's powers also aims to address this lack. Another important factor is that the new law provides detailed provisions for due diligence process, which include the determination of beneficial ownership. Strict and precise provisions for due diligence are particularly welcome due to two factors. Firstly, they increase confidence in service providers, as their clients can know the providers' obligations. And secondly, the fact that international standards are now being enforced means that countries move closer together in this regard, reducing differences between them abolishing grey areas that can be abused for corrupt or other illegal purposes.¹⁵¹ Information obtained due to the new provisions can also serve law enforcement authorities in their procedures.¹⁵²

A lack of professional standards, rules and supervision is notable in the professions mentioned above; the professions are not regulated¹⁵³ and thus not bound by any special provisions or professional standards, except in the case of members of various chambers. However, chamber membership is voluntary and not all service providers decide to join. Such supervision would be a

¹⁴⁵ Over 7400 inquiries were sent. Findley, Mike, Daniel Nielson in Jason Sharman. 2014. *Global shell games*. Available at: <http://www.globalshellgames.com/the-book.html> (12.10.2016).

¹⁴⁶ Findley, Mike, Daniel Nielson in Jason Sharman. 2014. *Global shell games*. Available at: <http://www.globalshellgames.com/world-league-table.html> (12.10.2016)

¹⁴⁷ Delić, Anuška. 2016. *Dosje Kraner: Ko sodelovanje s prekupevalcem ni omembe vredno*. Delo, 6.4.2016. Available at: <http://www.delo.si/novice/slovenija/dosje-karner-ko-sodelovanje-s-prekuppevalcem-ni-omembe-vredno.html> (1.10.2016). See also Gole, Nejc. 2016. *Izčrpavanje SCT za Petroviča le lov na čarovnice*. Delo, 19.4.2016. Available at: <http://www.delo.si/novice/slovenija/izcrpavanje-sct-za-petrovica-le-lov-na-carovnice.html> (1.10.2016).

¹⁴⁸ *UPC Consulting group*. Available at: <http://en.upc-si.com/trust-office> (2.10.2016). See also: *Firmica.si*. Available at: <http://www.firmica.si/en/slovenian-company-register> (3.10.2016).

¹⁴⁹ MONEYVAL. 2010. *Report on Fourth Assessment Visit – Executive Summary*. Available at: [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SLO4_Sum_MONEYVAL\(2010\)07_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SLO4_Sum_MONEYVAL(2010)07_en.pdf) (20.10.2016), str. 112–3. MONEYVAL za Slovenijo zapiše tudi, da so predstavniki sektorja sami izpostavili pomanjkanje izobraževanj s področja preprečevanja pranja denarja.

¹⁵⁰ Glojnarč, Branka – Office for Money Laundering Prevention. 2016. Interview with the author. Ljubljana, October 27, 2016.

¹⁵¹ Van der Does De Willeboies, Emile et al. 2011. *The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: IBRD and World Bank. Available at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (August 20, 2016), p. 26.

¹⁵² *Ibid.*, pp. 5–6.

¹⁵³ Štravs, Simona. 2016. Interview with the author. Ljubljana, October 26, 2016. The Tax Consultant Chamber is calling for legislation that would regulate the activity of tax consultants.

welcome addition to the legal requirements and could play an important role within the system as a whole. For example, the Tax Consultant Chamber has a code of professional ethics,¹⁵⁴ a body that rules on infringements, as well as a licencing system.¹⁵⁵ 42 people currently hold a licence. The Chamber also provides courses on money laundering prevention.¹⁵⁶ It would be a good idea to consider whether to regulate at least certain aspects of these professions. In the UK, for instance, tax consultants must inform the regulatory body of the tax avoidance schemes they offer to their clients, and the highest possible penalty for failing to do so amounts to £1 million.¹⁵⁷

It should also be noted that unlike banks, the providers of such services usually possess significantly fewer capacities and resources that could be used to reliably identify beneficial owners. In many cases, these service providers are free traders or small companies that have would a hard time dealing with this issue in a satisfactory manner, meaning that the strengthening of such capacities through training will be particularly important to these providers.

6.2.2.2. Lawyers and notaries

The national risk assessment states that the vulnerability of lawyers is moderate and low for notaries respectively, but goes on to add that the extent of the deals that lawyers make in cash increases their exposure to money laundering.¹⁵⁸ The assessment also states that lawyers and notaries have made the least progress in raising awareness of the importance of reporting suspicious transactions. From 2009 to 2014, notaries and lawyers have reported no more than four transactions annually, which represents less than one percent of all reports.¹⁵⁹ MONEYVAL assessments from 2010 and from their repeat visit in 2013 state that the supervision of lawyers is lacking.¹⁶⁰

Due to their special social role lawyers are one of the most difficult categories of obliged entities to regulate and supervise in practice. Activities of lawyers working in the context of financial services or facilitating other types of business deals and their constitutionally protected work with parties to legal

¹⁵⁴ Slovenian Tax Consultant Chamber. 2010. *Kodeks poklicne etike davčnih svetovalcev*. Available at: http://www.davki.org/cms/controls/warehousehandler.ashx?path=/Kodeks_in_smernice/Kodeks.pdf (September 1, 2016).

¹⁵⁵ Slovenian Tax Consultant Chamber. 2009. *Pravilnik o pridobitvi in vzdrževanju licence za delo davčnega svetovalca Zbornice davčnih svetovalcev Slovenije*. Available at: http://www.davki.org/cms/controls/warehousehandler.ashx?path=Pravilniki/Pravilnik_certifikati.pdf (September 2, 2016).

¹⁵⁶ Štravs, Simona. 2016. Interview with the author. Ljubljana, October 26, 2016.

¹⁵⁷ Goodley, Simon. 2016. *Revealed: temp agencies' tax avoidance scheme costs 'hundreds of millions'*. The Guardian, November 15, 2016. Available at: <https://www.theguardian.com/uk-news/2016/nov/15/revealed-temp-agencies-avoidance-scheme-costs-taxpayers-hundreds-of-millions> (November 16, 2016).

¹⁵⁸ Office for Money Laundering Prevention. 2015. *Povzetek poročila o izvedbi nacionalne ocene tveganja Republike Slovenije za pranje denarja in financiranje terorizma*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/NRA_objava.pdf (September 2, 2016), pp. 105–6.

¹⁵⁹ Ibid., pp. 33–6. Office for Money Laundering Prevention. *Poročilo o delu Urada Republike Slovenije za preprečevanje pranja denarja*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/deloUrada/letno_porocilo_2014.pdf (October 11, 2016), p. 13.

¹⁶⁰ MONEYVAL. 2013. *2nd regular follow-up progress report*. Available at: [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/follow-up%20report%204round/MONEYVAL\(2013\)6_SLV_4Follow-upRep.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/follow-up%20report%204round/MONEYVAL(2013)6_SLV_4Follow-upRep.pdf), p. 33.

proceedings must be considered separately.¹⁶¹ In its study of corruption cases, the World Bank has determined that in addition to the activities indicated above, lawyers often offered services of ownership concealment or management.¹⁶² Such activities were also found to have been offered by Slovenian lawyers,¹⁶³ however, the number of providers of such services is difficult to estimate.

The Act provides that lawyers and notaries have the same obligations as other obliged entities, but only in cases where they provide their clients with services such as the acquisition of companies or real estate, asset management and performance of other transactions, while the provisions do not apply in cases where the lawyer or notary are trying to determine a client's legal standing or are representing their client in court or providing counsel in this respect.¹⁶⁴ Lawyers have the option of a representative of the Bar Association being present when they are under supervision.¹⁶⁵ At the discussion at the competent working body in the National Assembly, the Legislative and Legal Service warned that these provisions could be unconstitutional, however, the Office is certain that the provisions safeguard constitutional rights of lawyers and their clients to a sufficient degree¹⁶⁶ and does not expect any issues with the implementation of ZPPDFT.¹⁶⁷ However, the dilemma will only get a definitive answer through practical application of the law.

6.2.2.3. The Slovenian Sovereign Holding, the Bank Asset Management Company and other managers and users of public funds

The Slovenian Sovereign Holding (SDH) and the Bank Asset Management Company (DUTB) are two bodies that dispose with significant assets, which increases corruption risks. Furthermore, privatization and selling of assets and claims, which are the primary activities of these two entities, also entail the risk of dirty money returning to Slovenia¹⁶⁸ and of insolvents buying up claims against themselves through affiliated companies at discounted prices.¹⁶⁹ The case study of Adria Airways presented above clearly shows that the state had often sold its assets to so-called mailbox companies, i.e. companies with unclear ownership.¹⁷⁰ While both the SDH and the DUTB undoubtedly carry out due diligence on

¹⁶¹ Van der Does De Willebois, Emile et al. 2011. *The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: EBRD and World Bank. Available at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (August 20, 2016), p. 6.

¹⁶² Ibid., p. 61. The Global Witness organization had carried out a mystery shopping action for such services in the US and was only refused by a single lawyer. See: <https://www.youtube.com/watch?v=kC2DDNLvFg8&t=241s>.

¹⁶³ *LawyersSlovenia*. Available at: <http://www.lawyerslovenia.com/nominee-director-in-slovenia> (September 12, 2016).

¹⁶⁴ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Articles 83 and 84.

¹⁶⁵ Ibid., Article 146.

¹⁶⁶ National Assembly of the Republic of Slovenia. 2016. *Seje delovnih teles – izbrani zapis seje*. Available at: <http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VII&type=pmagdt&uid=E26A27ECD8666139C125803D003A9312> (October 16, 2016).

¹⁶⁷ Glojnarč, Branka – Office for Money Laundering Prevention. 2016. Interview with the author. Ljubljana, October 27, 2016.

¹⁶⁸ Viršek, Damjan. 2014. »Če bo postopek privatizacije predolg, bo spet potrebna sanacija«. Delo, January 19, 2014. Available at: <http://www.delo.si/gospodarstvo/posel/ce-bo-postopek-privatizacije-predolg-bo-spet-potrebna-sanacija.html> (November 1, 2016).

¹⁶⁹ Voh Boštich, Anže. 2016. *Kako je slaba banka terjatve do prezadolženih podjetij prodajala nepreverenim kupcem*. Available at: <https://podrto.si/kako-je-slaba-banka-terjatve-do-prezadolzenih-podjetij-prodajala-nepreverenim-kupcem> (October 15, 2016).

¹⁷⁰ Verbič, Jernej. 2016. *Celo država sama prodaja v davčne oaze*. Delo, April 23, 2016. Available at: <http://www.delo.si/novice/slovenija/celo-drzava-sama-prodaja-v-oaze.html> (October 12, 2016).

their clients, they do it in accordance with their internal rules. The new Act makes these two corporations subject to its provisions, which means, among other things, that they will have to identify the beneficial owners of their clients,¹⁷¹ as proposed in an amendment submitted by the relevant committee of the National Assembly.¹⁷² Time will tell whether this results in a greater transparency of the operations of both corporations and their clients, in the termination of business relationships wherein beneficial owners could not be identified, and in a reduced risk of doing business; the evaluation of the effects will thus also be very important for future privatization and asset management procedures. However, the public should have access to beneficial ownership data before procedures are concluded.

On the other hand, ZPPDFT does not apply to budget users, in spite of the fact that the use of public funds is accompanied with corruption risks as well. ZPPDFT thus refrains from limiting budget users from dealing with anonymous companies. From September 12, 2006, to August 24, 2016, public budget users transferred over €180 million¹⁷³ to countries blacklisted by several international organizations.¹⁷⁴ Most of these cases are not suspicious or otherwise questionable, as they include transfers to Slovenian embassies in these countries, as well as payment of membership fees for international organization and other legal transactions. However, the following case study shows that the lack of supervision and statutory regulation can result in a public authority to actively do business with a tax haven-based company with unclear ownership, showing steps must be taken to limit such transactions.¹⁷⁵

Case study: A public institution paying for services to a tax haven-based company

On the basis of the Public Information Access Act, TI Slovenia petitioned the Public Payments Administration for the data on the transactions from public authorities to entities based in countries that were at the time included on the online list maintained by the Office for Money Laundering Prevention and based on lists of international organizations. Following a review of the transactions, TI Slovenia petitioned seven public bodies for documents on which these transfers had been based, in order to clarify the purpose of these transactions.

On May 17, 2016, and June 21, 2016, the Museum & Galleries of Ljubljana public institute (hereinafter: MGML) transferred a total of €3,500 to Lada V.C. Limited, a company registered in Gibraltar.

¹⁷¹ *Zakon o preprečevanju pranja denarja in financiranja terorizma*. Official Gazette of the Republic of Slovenia, no. 68/16. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132> (November 20, 2016), Article 4.

¹⁷² National Assembly of the Republic of Slovenia. 2016. *Seje delovnih teles – izbrani zapis seje*. Available at: <http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VII&type=pmagdt&uid=E26A27ECD8666139C125803D003A9312> (October 16, 2016).

¹⁷³ Public Payments Administration of the Republic of Slovenia. 2016. Email correspondence with the author. Ljubljana, September 5, 2016.

¹⁷⁴ Lists of countries that do not adhere to anti-money laundering standards (FATF and MONEYVAL lists) and countries with deficient tax legislation (OECD list) and the International Monetary Fund list of so-called offshore jurisdictions. See more: *Seznami držav, pri katerih obstaja večja verjetnost za pojav pranja denarja ali financiranja terorizma*. Available at: http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/dokumenti/Seznam_drzav_indikat_september_2015.pdf (October 1, 2016).

¹⁷⁵ In addition to the lists mentioned above, it would make sense to apply the following one as well: Tax Justice Network. 2016. *Financial Secrecy Index*. Available at: <http://www.financialsecrecyindex.com/introduction/fsi-2015-results> (November 12, 2016).

Documents provided by MGML indicate that Lada was paid by MGML for the design, typesetting and pre-press services for the *Čipka, enim drobiž, drugim prestiž* booklet that accompanied the exhibition under the same name in June 2016.¹⁷⁶ However, a look at the impressum of the booklet reveals that design and typesetting are credited to a designer Matija Berčič.¹⁷⁷ Furthermore, in 2016, Lada V.C. Limited received a further €583,975 from GGL virtualne komunikacije, d. o. o., a Slovenian company, as revealed by a transaction database of the Office for Money Laundering Prevention.¹⁷⁸

The beneficial ownership of Lada is unclear; documents from the Gibraltar register list it as owned by a company service provider, which registered Lada in 2014,¹⁷⁹ indicating that Lada is a shelf company. We have sent multiple inquiries regarding the beneficial ownership of Lada to the owners of GGL. and to Matija Berčič, but they remained unanswered.¹⁸⁰ TI Slovenia referred the data regarding the companies and transactions to the competent authorities.

MGML answered TI Slovenia's questions by stating that two quotations for services were requested and received and that MGML then took the better offer. However, MGML added: "[I]t is true, however, that we were not paying attention to the bidders jurisdiction when acquiring and selecting bids."¹⁸¹ While there is no direct obligation to do so, competent authorities, whom TI Slovenia had informed of the case, will judge whether any other rules were broken indirectly when neglecting such information.

This case shows that it might be sensible to adopt a system wherein companies would have to reveal their beneficial owners if they wanted to receive any public funds. This would prevent anonymous tax haven-based companies from receiving public money. In 2015, the World Bank already pledged to follow such a course.¹⁸²

¹⁷⁶ Tatjana Doroslovac – MGML. 2016. Email correspondence with the author. Ljubljana, October 5, 2016.

¹⁷⁷ Ferle, Mojca et al. 2016. *Čipka: enim drobiž, drugim prestiž*. Ljubljana: Mestni muzej Ljubljana.

¹⁷⁸ Office for Money Laundering Prevention. *Analiza nakazil nad 5.000 eur*. Available at: <http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/NAKAZILA/nakazila.xls> (November 1, 2016).

¹⁷⁹ Dato Capital. 2016. *Complete Lada V.C. Limited report*.

¹⁸⁰ We also tried to find out about the nature of their business relationship with Lada, whether they owned the company themselves, where the design of the publication was taxed and whether there were any business or other relationships between them.

¹⁸¹ Urša Karer – MGML. 2016. Email correspondence with the author. Ljubljana, November 16, 2016.

¹⁸² Dawson, Stella. 2015. *World Bank wants to stop anonymous firms winning contracts*. Available at: <http://www.reuters.com/article/us-aid-worldbank-contracts-idUSKBN0002D520150608> (November 12, 2016).