

Beneficial owners in Interreg

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Who is a beneficial owner in Interreg context?

Beneficial owner in Interreg context means any natural person(s) who ultimately owns or controls the beneficiar(ies) or public procurement contractor(s) and/or the natural person(s) on whose behalf a transaction (eg. benefiting from the grant) or activity (eg. obligations resulting from a public procurement contract) is being conducted¹. Beneficial owners can be identified for corporate structures, trusts, and legal entities such as foundations, and legal arrangements similar to trusts. As such, beneficial owners are not present in public entities.

In case of corporate structures, the beneficial owner:

- owns more than 25% of the company shares directly or indirectly through another company.
- holds more than 25% of the voting rights in the company directly or indirectly through another company.
- exercises actual control over the company on other grounds. Other grounds may refer to a partnership agreement, shareholders' agreement, the exercise of dominant influence or the power to appoint senior management.

Beneficial owners are also called people with significant control, ultimate beneficiaries, or ultimate beneficiary owners (UBO).

A beneficial owner is always a natural person. A deceased person, a company, an association, or a public entity cannot be filed as a beneficial owner.

Why is it necessary to report beneficial owners?

The provisions of the 4th and 5th Anti Money Laundering Directives (AMLDs) require Member States to collect and check information on beneficial owners. All MS transposed the 4AMLD and 5AMLD² into national laws and are bound by their provisions. Members of the European Economic Area (EEA), Iceland, Liechtenstein and Norway also incorporated EU anti-money laundering directives into its national AML/CFT laws.

¹ Compare Article 3(6), 4th Anti Money Laundering Directive, [Directive \(EU\) 2015/849 of the European Parliament and of the Council of 20 May 2015](#) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)

² 5th Anti Money Laundering Directive, [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018](#) amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance)

In this way public authorities at EU, national, regional and local level are supposed to check the beneficial ownership registers before deciding to award a public procurement contract (directly or indirectly) or provide funding under EU, Euratom and Member State programmes so that no money laundering, terrorist activities is financed or persons and entities with imposed sanctions are financed.

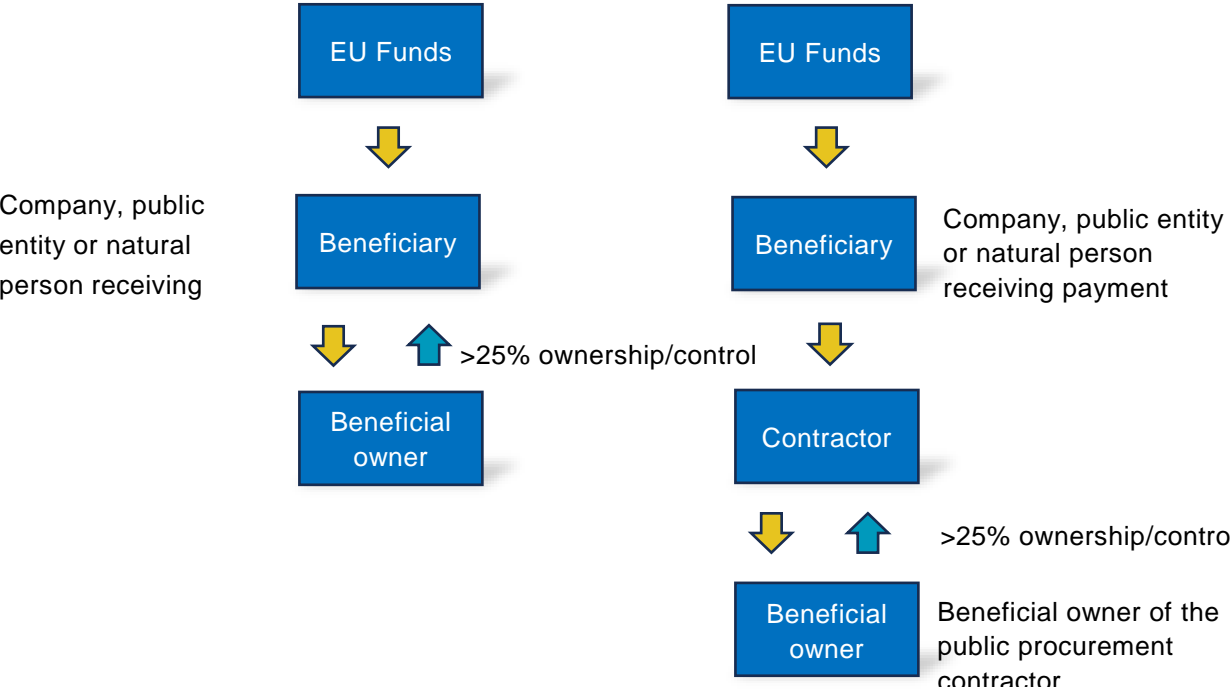
What is the legal basis, what types of beneficial owners are in the scope of our interests and what information should we collect?

Collecting and storing data on beneficial owners is a new requirement introduced in 2020-2027 legal framework.

Annex XVII of Common Provisions Regulation, named Data to be recorded and stored electronically on each operation, defines in which cases data on beneficial owners need to be stored and what type of data need to be stored:

1. In case of partners, information on all beneficial owners of the beneficiary, if any, as defined in Article 3(6) of Directive (EU) 2015/849, namely first name(s) and last names(s), dates(s) of birth and VAT registration number(s) or tax identification number(s) – field 3
2. In case of public procurements at partner level, beneficial owners of the contractor, as defined in Article 3(6) of Directive (EU) 2015/849, namely first name(s) and last names(s), dates(s) of birth and VAT registration number(s) or tax identification number(s) of these beneficial owners and- field 23.

Figure 1. Beneficial owners of the beneficiary and beneficial owners of the contractor



Under field 23, information on contractors, their beneficial owners and contracts only has to be recorded where the operation is implemented in accordance with Union public procurement rules (i.e., public procurement above the thresholds set out in Directive 2014/24/EU or Directive 2014/25/EU).

Additionally, under field 24 the information on whether the contractor, as referred to in the field 23, uses sub-contractors and if so, once the corresponding sub-contracts are signed, information on all sub-contractors listed in the procurement documents (of the contractor), namely name and VAT registration or tax identification number and information on sub-contracts (date of the contract, name, reference and contract amount). The information on sub-contractors under field 24 must be recorded at the first level of sub-contracting, only where information is recorded on a contractor under field 23, and only for sub-contracts above EUR 50 000 total value.³

Due to the nature of SCOs and the methods of their verification, for all the indirect costs covered by any type of SCOs, i.e., unit cost, lump sum, flat rate under the CPR managing authorities do not have to record and store electronically data on contractors, their beneficial owners, contracts and sub-contractors in fields 23 and 24 of Annex XVII CPR.

When a SCO covers both direct costs and indirect costs, the requirement to record and store data on contractors, their beneficial owners, contracts and sub-contractors applies only to the direct costs.

How to collect information on beneficial owners?

There are two ways to get the information on beneficial owners:

- Data can be submitted directly by beneficiaries / contractors or,
- Data can be collected from central registers (MAs, as competent authorities have presumption of legality to obtain access)^{4 5}

Whatever the way of collecting the data on beneficial owners programme authorities are not supposed to check the data veracity and correctness, they are only supposed to collect the data.

A good way to remind the partners beforehand that such data will be collected is to put a specific provision in the Subsidy Contract.

Legal basis for processing personal data of beneficial owners

The legal basis for processing personal data of beneficial owners is Article 6(1)(c) of the GDPR “processing is necessary for compliance with a legal obligation to which the controller is subject” as well as Article 6(1)(e) of GDPR if “processing is necessary for the performance of a task carried out in the public interest” as MAs are public authorities.

³ [QA00270 - Revised reply to question 1 of the QA00200 on SCOs - Annex XVII data fields 23 and 24](#)

⁴ The list of Member States' beneficial owners registers with descriptions how they function can be found [here](#).

⁵ On 22 November 2022, the Court of Justice of the European Union (CJEU) ruled (Judgment of the Court of Justice in Joined Cases C-37/20, C-601/20, Luxembourg Business Registers) that, for reasons of data protection, the public would no longer have unrestricted access to the identities of beneficial owners as provided for in AMLD5, resulting in the closure of publicly accessible beneficial ownership registers all across the EU. The forthcoming AMLD6 should reflect the CJEU's decision, while looking for ways to provide access to such data and tightening up loopholes. In its position at first reading on the AMLD6 proposal, the European Parliament states that the directive should define 'a minimum and non-exhaustive list of persons that have a legitimate interest in accessing information on beneficial owners', and that the definition of who has 'legitimate interest' in accessing such information should be interpreted broadly.

JEMS and beneficial owners

In JEMS the data on beneficial owners of partners can be added at the contracting stage under partner details section:

Contracting
Partner specific section (LP1 test lp)

Ultimate Beneficial Owner(s)

First name	Last name	Date of birth	VAT / Tax identification number	Delete
First name	Last name	Date of b...	* VAT / Tax identification number	

+ Add beneficial owner

Discard changes Save changes

The data on beneficial owners of the contractors as well as the data on subcontractors can be added at the reporting stage when a new public procurement contract is added.

Beneficial owner(s) of the contractor

First name	Last name	Date of birth	VAT / Tax identification number	Delete
First name	Last name	Date of birth (DD/MM/YYYY)	* VAT / Tax identification number	

+ Add beneficial owner

Discard changes Save changes

Subcontract(s)

Contract name	Reference number	Contract date	Contract Amount	Currency	Supplier Name	VAT / Tax identification number	Delete
Contract name	Reference number	Contract date (DD/MM/YYYY)	Contract Amount	0,00	* Currency EUR	Supplier Name	* VAT / Tax identification number

+ Add subcontractor

Discard changes Save changes

Audit activities related to beneficial owners

The Commission services will, as part of their supervision and control activities, require access to and will use data on beneficial owners registered in the electronic systems of the programme authorities.

Beneficial owners in the programmes under the new Multiannual Financial Framework

The information on the beneficial owners of the recipient in the programmes under post-2027 financial perspective will have to be collected and made available to the European Commission for the processing in a single data-mining and risk-scoring tool, provided by the Commission. This obligation has been already enshrined in the recast Financial Regulation⁶.

⁶ Article 36.6 (c) of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union.