

Short-term contract opportunity

Terms of reference (ToR) for researcher: data protection by design and default in beneficial ownership transparency

March 2023

About Open Ownership

Open Ownership (OO) drives greater corporate transparency across the world by making it easy to publish and access high-quality, linked data about who owns companies. We focus on beneficial ownership transparency and are supporting nearly 40 countries across the world, helping them implement or improve their beneficial ownership registries and data.

Our multidisciplinary team works closely with technical and policy implementers, advising them on all aspects of beneficial ownership implementation. To support our donor-funded technical assistance programmes, we have developed a broad range of implementation tools and products, including the [Beneficial Ownership Data Standard](#) (BODS) and the [Open Ownership Principles of effective beneficial ownership disclosure](#).

Background

On 22 November 2022, the Court of Justice of the European Union (CJEU) issued a [judgement](#) on two joined cases originating in the Luxembourg courts relating to the validity provisions in the European Union's 5th Anti Money Laundering Directive of 2018 ([AML5](#)) requiring member states to ensure information on beneficial ownership is "accessible in all cases" to "any member of the general public."

In short, the judgement ruled the provision is invalid, and that the privacy infringement as a result of AML5 is not strictly necessary nor proportional to the stated objective. As a result, some EU member states have (temporarily) suspended public access to beneficial ownership information. Notably, some member states that have legislated for beneficial ownership transparency for broader objectives than just combating money laundering have kept their registers publicly accessible. The judgement means the provision in [AML4](#) that AML5 replaced is again in effect, which requires access in all cases to "any person or organisation that can demonstrate a legitimate interest." In a [subsequent clarification](#), CJEU stated that CSOs and investigative journalists are among those that have a legitimate interest in accessing beneficial ownership information. The EU is currently in discussions around a broader AML package, which includes AML6, although it is unclear to what extent legitimate interest, or the criteria to determine legitimate interest will be included in this.

Since the EU had previously been an international leader on beneficial ownership transparency, countries outside the EU are looking at this judgement and considering its implications for their contexts, and for international standards.

Purpose of the contract

Open Ownership seeks an experienced, short-term contractor, either an organisation or independent consultant, to support research into core issues highlighted by the judgement, including how access based on establishing a legitimate interest can in practice be used to deliver both the access to all parties who have a role to play in using data (either for tackling money laundering and terrorist financing or for broader policy aims), as well as the type of access to ensure the data is most useful, while simultaneously balancing privacy with public interest.

The purpose of the contract is to look at current legal and policy approaches and to use that to inform recommendations for potential future best practice, both in the EU and beyond. Ideally, the output is a framework that covers the main policy levers available that affect proportionality and necessity with respect to the publication of personal information to achieve certain policy aims, applicable to beneficial ownership transparency.

The appointed candidate will work closely with the policy and research, and advocacy teams, with the contract being managed by Open Ownership's Head of Policy and Research. Although many of the issues are legal in nature, under this contract we are not seeking a legal opinion from a qualified lawyer, but rather a review of available evidence by an experienced researcher, who ideally will have a background in comparative legal research.

Scope of work

The project covers the following areas of work.

1. Review of existing legislation and evidence

Purposes, legal bases and use cases

- Look at how necessity and proportionality have been assessed with respect to the sharing of beneficial ownership data, or the publication of similar fields of personal data by governments.
- Looking at various (single vs. broader) purposes and objectives of publishing information and how this affects proportionality.
- Examine evidence about the minimum data fields of beneficial ownership information for key use cases/user group needs, and how this affects proportionality.
- Examine legislation and case law around the right to freedom of information, the free flow of information and access to information (in relation to the right to privacy and data protection), and using the right to freedom of information to

justify publishing beneficial ownership (or otherwise personally identifiable) information.

- For all the above, while a variety of methodologies may be used, the output should include multiple short case studies and examples of these approaches in operation.

Privacy enhancing measures

This area of work will look at different privacy enhancing measures that exist that do not greatly affect data usability.

- Protection regimes (how have these been implemented in the EU and beyond? How does the business process work? Which of these are the most effective in terms of mitigating privacy concerns, both in terms of scope and process?)
- Best practice in legitimate interest as a basis to access beneficial ownership information (beneficial ownership information for trusts in the EU is under legitimate interest so may be worthwhile examining) or, if relevant, its use in another policy area.
- Making available more or less fields of information to certain user groups (this is often referred to as layered access, but in many places to date has only included 2 layers: government vs. non-government users).
- For all the above, while a variety of methodologies may be used, the output should include multiple short case studies and examples of these approaches in operation in different country contexts.
- Other potential areas to look at: Pseudonymised data, privacy enhancing technologies.

2. Exploring options for publicly accessible registers incorporating data protection by design and default

This section will form the basis of the potential policy recommendations and be slightly speculative, and should include different modular options for access regimes.

- How can we incorporate “data protection by design and default” (see EU General Data Protection Regulation Article 25) in beneficial ownership registers, while maintaining the most amount of information publicly accessible (perhaps removing some or all personally identifiable information)?
- Further layering of access, e.g. in different categories, e.g. full access for specific professions, renewed on an annual basis (e.g. like Luxembourg giving digital tokens to journalists), broad access (e.g. specific entity, but also all related entities) tied to a specific purpose (e.g. due diligence), and limited access (e.g. single extract) ad-hoc (e.g. looking up the beneficial owner of the company that owns the building you live in, after presenting evidence such as a tenancy agreement)? How is this best managed (and by who?), especially for non-domestic professions? Different

types of access and subsets of data for different user groups (i.e. data minimised for particular groups/uses).

- A framework to assess proportionality and necessity of different permutations of access regimes.

Candidates are expected to both look at the EU and relevant non-EU countries. To inform recommendations, it may be necessary to look beyond beneficial ownership transparency and more broadly where any countries with privacy and data protection legislation may publish or share personally identifiable information and for that to be deemed legally proportional and necessary to achieve certain aims. It may also be necessary to look beyond the national level at the international and regional levels as there may be, for example, relevant cases from regional human rights courts.

These areas of work should be covered in the following deliverables.

Deliverables

1. Inception report: Brief plan including an outline, methodology and timelines, following initial conversations following award.
2. Workshop presenting initial findings and draft report to team
3. Final research report, incorporating feedback from the team

Ideally, the candidate will be able to cover both the review of existing legislation and evidence and the research on exploring options for publicly accessible registers incorporating data protection by design and default; these can be presented in either a single or two separate reports. However Open Ownership recognises that the scope of work is very broad, and therefore also welcomes applications focusing on one of the two areas of work, with the option of splitting the work over 2 contractors.

Contractor profile

The successful contractor will need to demonstrate experience in related assignments, demonstrated through a history of experience of undertaking similar projects.

We welcome applications from companies or individual contractors with the following attributes:

- Extensive experience conducting comparative legal and policy research, and producing policy-oriented outputs;
- Knowledge of privacy, data protection, and freedom of information information, including in the EU context;
- Effective and confident communications, understanding the needs of different stakeholders;
- Comfortable working with a geographically distributed team;
- Highly digitally literate, with experience of working collaboratively online.

We want to hear all voices, and particularly encourage individuals of diverse and marginalised communities to apply.

We will accept applications from individuals or organisations. We do not, however, accept applications from recruitment agencies; applications must be made by those who will be delivering the work.

Assignment details

At this stage, we anticipate this opportunity involving an estimated 30–50 days between **31 March 2023** and **23 June 2023** for which a maximum budget of **GBP25,000** is available.

Please note that the contracting party for this work will be Global Impact, the fiscal sponsor of Open Ownership. Global Impact is an American non-profit and the selected contractor will have to clear their due diligence process before the work can start.

Application process

Timeline

Stage	Deadline
Deadline for submissions of proposals	16 March 2023
Panel interviews	21–23 March 2023
Awarding of tender	24 March 2023
Due diligence	24–31 March 2023
Start of project	31 March 2023
Final deadline for completion of project	23 June 2023

Content of proposals

To apply, qualified contractors should send:

- A brief 1–2–page proposal on how you will successfully deliver on this contract, including a budget detailing your time and/or other anticipated costs.
- Please highlight your most relevant professional experience and skills for this contract, if possible linking to relevant available research assignments that you have conducted.

Please send the above to recruitment@openownership.org before **23:59 UTC on 16 March 2023**. You will hear back from us with confirmation that your application has been received. And you will be notified of how long it will take us to review applications and when to expect to know about the outcome of the process – this typically is within 10 working days whatever the outcome.

Please note that our vacancies are for direct applicants only; we will not be accepting applications from recruitment agencies or any third party agency.