



NINETIETH ORDINARY SESSION OF THE COUNCIL OF MINISTERS

Bissau, 6 - 7 July 2023

DIRECTIVE C/DIR.2/07/23 ON THE HARMONIZATION OF RULES ON BENEFICIAL OWNERSHIP OF LEGAL ENTITIES WITHIN ECOWAS MEMBER STATES

THE COUNCIL OF MINISTERS,

MINDFUL of Articles 10, 11 and 12 of the ECOWAS Revised Treaty as amended establishing the Council of Ministers and defining its composition and functions;

MINDFUL of Articles 3, 35, 37 and 40 of the Revised ECOWAS Treaty stating the areas in which the Community should focus its activities in order to achieve its aims and objectives, trade liberalization, Common External Tariff, import duties and domestic taxes;

MINDFUL of Directive C/DIR.1/12/13 adopting the ECOWAS Tax Transition Programme;

MINDFUL of the Supplementary Act A/SA.6/12/18 adopting community rules for the elimination of double taxation with respect to taxes on income, capital and inheritance and the prevention of tax evasion and avoidance within the ECOWAS;

CONSIDERING that it is necessary to identify all natural persons who own or control a legal entity;

CONVINCED that Member States should ensure that legal entities established in their territories in accordance with their national law, collect and maintain sufficient, accurate and up-to-date information on their beneficial owners;

CONVINCED ALSO that, in order to ensure a level playing field for different types of legal structures, trustees should also be required to collect and maintain information on beneficial owners;

DESIROUS of adopting a Directive on Beneficial Ownership to enable the identification and collection of accurate and up-to-date information on the beneficial owners of and legal arrangements and access to that information by supervisory authorities within ECOWAS Member States;

UPON THE RECOMMENDATION of the 2nd meeting of Directors General of Domestic Taxes of ECOWAS Member States held by Video Conference on 8th May 2023;

UPON THE RECOMMENDATION of the 8th meeting of the Ministers of Finance of ECOWAS Member States held by Video Conference on 9th May 2023;

UPON THE OPINION of the Parliament at its First Ordinary Session held in Abuja, Nigeria from 8th to 26th May 2023.

PRESCRIBES:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1: DEFINITIONS

1. For the purposes of this Directive, the following definitions shall apply:
 - a) **“Beneficial owner”** means any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or a legal arrangement. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person or a legal arrangement. Ultimate ownership or control includes situations in which ownership or control is exercised directly or indirectly, alone or together, including through a chain of legal persons or legal arrangements;
 - b) **“Beneficiary”** means the person or persons who are entitled to the benefit of any trust arrangement. A beneficiary can be a natural or legal person, or a legal arrangement. Beneficiaries are either persons named by the settlor to receive income or the entrusted assets at some point, or a defined class of unnamed persons;
 - c) **“legal arrangements”** include trusts or similar legal arrangements. Examples of other similar legal arrangements include fiducie, treuhand and fideicomiso;
 - d) **“Protector”** means a person other than the trustee or beneficiary who holds power over some aspect of a trust or a similar arrangement;
 - e) **“Settlers”** means natural or legal persons who transfer ownership of their assets to trustees by means of a trust deed or a similar arrangement;
 - f) **“Supervisory authorities”** means authorities of Member States or ECOWAS empowered by law or regulation to supervise legal persons incorporated in the territory of a Member State or incorporated abroad but having a branch or

permanent establishment in the territory of a Member State, as well as legal arrangements constituted in the territory of a Member State or constituted under a foreign law but managed within the territory of a Member State or holding any assets in the territory of a Member State;

- g) **“Trustee”** means a person who has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust or a similar arrangement.
2. As regards the application of this Directive at any time by a Member State, any term or any expression not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Member State, and any meaning under the applicable tax laws of that Member State shall prevail over a meaning given to that term or expression under other laws of that Member State.

ARTICLE 2: OBJECTIVE

This Directive **C/DIR.2/07/23** aims to enable the identification and collection of accurate and up-to-date information on the beneficial owners of and legal arrangements and access to that information by the supervisory authorities.

ARTICLE 3: SCOPE

This Directive shall apply to:

1. legal persons incorporated in the territory of a Member State or incorporated abroad but having a branch or permanent establishment in the territory of a Member State, other than a listed company whose shares are admitted to trading on at least one regulated market in a Member State or in a third country imposing disclosure requirements compatible with the legislation in force.
2. legal arrangements constituted:
 - a) in the territory of a Member State, or
 - b) under a foreign law but managed in the territory of a Member State or holding any assets in the territory of a Member State.

CHAPTER II

DETERMINATION OF THE BENEFICIAL OWNER

ARTICLE 4: BENEFICIAL OWNER

1. In the case of a legal person, the beneficial owners are:

- a) any natural persons who ultimately have a controlling ownership interest in a legal person if any. Member States may use an ownership threshold to determine beneficial ownership based on ownership interests which should not exceed 25%; and
 - b) any natural persons exercising ultimate effective control over the legal person through other means than ownership interests, if any.
 - c) the natural persons who hold the position of senior managing official where exceptionally, after having exhausted all possible means, no natural person is identified under subparagraph (a) or (b).
2. In the case of a legal arrangement, the beneficial owners are:
- a) the settlors;
 - b) the trustees;
 - c) the protectors, if any;
 - d) the beneficiaries or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the legal arrangement is set up or operates;
 - e) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;
 - f) Where any party to a trust is a legal person or a legal arrangement, the trustee shall identify the beneficial owner of such legal persons or legal arrangements.
3. In the case of other types of legal arrangements, any natural person holding equivalent or similar positions to those referred to in paragraph (2). Where any party to another type of legal arrangements is a legal person or a legal arrangement, the natural person holding equivalent or similar position to a trustee shall identify the beneficial owner of such legal persons or legal arrangements.

CHAPTER III BENEFICIAL OWNERSHIP INFORMATION

ARTICLE 5: PROVISION AND MAINTENANCE OF BENEFICIAL OWNERSHIP INFORMATION

1. Member States shall ensure that legal persons, whether incorporated within their territory or incorporated abroad but having a branch or permanent establishment within their territory, and legal arrangements, whether constituted within their territory or constituted under foreign law but managed within their territory or

holding any assets in their territory, shall be required to obtain and maintain adequate, accurate and up-to-date information on their beneficial owners.

2. The information on the beneficial owners shall include at least the first name(s), surname, date of birth, nationality, country of residence, and tax identifier of the beneficial owner, as well as the nature and extent of the control exercised.
3. This information and any supporting document shall be maintained for at least a period of five years following the termination of such legal person or legal arrangement, or the cessation of the management of the legal arrangement by its trustee or any natural person holding equivalent or similar position to a trustee.
4. Member States shall require that the legal owners and beneficial owners of legal persons or legal arrangements as well as any legal persons and legal arrangements in the chain of control of such legal persons or legal arrangements, provide those legal persons or legal arrangements with all the information necessary for them to meet the requirements referred to in paragraphs 1 and 2.
5. Member States shall require that the supervisory authorities have timely access to the information referred to in paragraphs 1 and 2.
6. Member States shall ensure that any infringement of any provision of this Article is subject to effective, proportionate and dissuasive measures or sanctions.

ARTICLE 6: REPORTING OBLIGATIONS OF BENEFICIAL OWNERS INFORMATION

1. Member States shall ensure that the information referred to in paragraphs 1 and 2 of Article 5 is reported to a public authority and kept in a register in each Member State.
2. Member States shall require that the information kept in the register referred to in paragraph 1 is adequate, accurate and up-to-date and shall put in place mechanisms to that effect.
3. Member States shall require that any change is reported within thirty (30) days as of the date of modification and in any case, legal persons and legal arrangements shall confirm the information referred to in paragraphs 1 and 2 of Article 5 on an annual basis.
4. These mechanisms shall include an obligation for supervisory authorities to report any discrepancies they encounter between the information on beneficial owners available in the register and the information on beneficial owners available to them.

5. Where discrepancies are reported, Member States shall ensure that appropriate measures are taken to resolve such discrepancies in a timely manner and, where necessary, that in the meantime a specific entry is made in the register.
6. Member States shall ensure that supervisory authorities have timely and unrestricted access to all information held in the register referred to in paragraph (1) without alerting the entity concerned.
7. Member States shall ensure that trustees or persons holding equivalent positions in other types of legal arrangements, disclose their status and provide the information referred to in paragraphs 1 and 2 of Article 5 to a public authority in a timely manner.
8. Member States shall ensure that any infringement of any provision of this Article is subject to effective, proportionate and dissuasive measures or sanctions.

CHAPTER IV FINAL PROVISIONS

ARTICLE 7: ADMINISTRATIVE PROVISIONS

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2027.
2. When Member States adopt the provisions referred to in the preceding paragraph, the provisions shall contain a reference to this Directive or shall be accompanied by such a reference at their official publication.
3. Member States shall communicate to the ECOWAS Commission the measures or arrangements they adopt to comply with this Directive.
4. Member States shall notify the difficulties encountered in implementing this Directive to the President of the Commission who shall report to the next session of the Council of Ministers

ARTICLE 8: PUBLICATION

1. This **DIRECTIVE C/DIR.2/07/23** shall be published in the official Journal of the community by the ECOWAS Commission within thirty (30) days of its signature by the Chairperson of the Council of Ministers.
2. It shall also be published within the same time frame by each State in its Official Journal after notification by the ECOWAS Commission.

ARTICLE 4: ENTRY INTO FORCE

This **DIRECTIVE C/DIR.2/07/23** shall enter into force upon its publication.

DONE IN BISSAU, ON 7TH JULY 2023



H.E. SUZI CARLA BARBOSA

FOR THE COUNCIL

THE CHAIRPERSON