

Access Info Europe

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Briefing note: European Commission's Impact Assessment Study on Openness of Company Data

1. Overview & Executive Summary

As part of the process of developing an implementing act for the EU's Open Data Directive (Directive 2019/1024), the European Commission hired consulting firm Deloitte to conduct a cost-benefit analysis of opening up certain data sets, including company registers.

In March 2021, Access Info obtained a copy of the previously unpublished report thanks to an access to documents request submitted to the European Commission.

The report is entitled an “*Impact Assessment study on the list of High Value Datasets to be made available by the Member States under the Open Data Directive*” (hereafter “Impact Assessment”), and is based on research conducted by Deloitte, along with the Open Data Institute (ODI), The Green Land, and the Lisbon Council, during the course of January to August 2020.

The Impact Assessment highlights the significant economic and societal benefits of opening up company registers across the EU, but nevertheless recommends lower levels of publication than opening all company data as fully open data.

The proposed option – what the Impact Assessment refers to as the “low-intensity option” – would mandate the publication of some basic information, and company documents and accounts, along with non-personal data related to company ownership.

Reaching the conclusion that the preferred option is the low-intensity publication is odd given that, in numerous places, the Impact Assessment stresses the vast number of benefits that full opening of company datasets would bring to society. Indeed, the Impact Assessment concludes that openness would deliver both economic value and additional benefits that supersede the economic costs of implementation: “*even when costs of implementing the Directive would be*

relatively high on data holders and especially for a few of them, the benefits for society would be greater."¹

Furthermore, for most countries across the EU, the costs of transiting to fully open company registers would not be particularly high, and hence are clearly outweighed by the benefits. The Impact Assessment finds that for only a few countries – notably Germany, Italy, and the Netherlands – would there be concerns about the loss of income and the impact of the fully open data approach on their current revenue model for the company registers.

The study essentially allows the concerns of loss of revenue of three relatively rich Member States to sway its final recommendation of low-intensity publication. Following this recommendation would allow the concerns of three Member States to deprive other Member States of the opportunity of generating potentially large economic values through the release of this data. The Impact Assessment also fails to assess how a transition to open data could be financed (by Member States or by the European Union acting collectively).

Even more surprising is that, despite recommending reduced publication, the Impact Assessment clearly concedes that a limited level of openness of company data would **greatly limit the benefits** and that it could be **out of line with the spirit of the Open Data Directive**. The Impact Assessment also regularly recognises that anything less than full publication makes the data harder to reuse and, from the reusers' perspective, full publication is necessary for the value of the data to be exploited.

Apart from the cost considerations, some concerns are raised about protection of personal data, but they are not examined in a comprehensive manner, rather they are expressed as somewhat vague fears that the data holders have of "misuse" of the data, with no specific case studies to illustrate or justify these fears. These concerns are conflated with the even less specific reporting of "political sensitivities" around the publication of this data. It is not clear whether these sensitivities are about personal data protection, or about something else. This uncertainty begs the question as to whether some of the reluctance of Member States to open up this data is a result of the lobbying pressure which they are known to have come under from the private sector in some countries. Be that as it may, the Impact Assessment clearly confirms that arguments about personal data protection are misguided, because anyone with money can purchase these data sets. The Impact Assessment further recommends that the opinion of the European Data Protection Supervisor be sought, something which has not yet been done.

Another striking feature of the Impact Assessment is that it fails to make a more nuanced analysis of the options, for example, by removing just some personal data from publication (ID numbers, and dates (days) of birth, for instance) and by giving Member States time, during a limited transitional period, to restructure the budget models of the company registration bodies. Such options would allow for a reasonable adjustment period while ensuring that information of immense societal and economic value enters the public domain.

¹ Impact Assessment page 143 (page 154 of PDF).

In this analysis, Access Info summarises and examines the arguments put forward in the Impact Assessment, and points to where conclusions are incongruous with the evidence.

Our conclusion is that, while the Impact Assessment is valuable in terms of providing data and framing an important debate, its conclusions must be critically examined and further debated. Indeed, the data provided could quite easily point to a different recommendation: that of full publication of company data as open data under the Open Data Directive.

2. The Impact Assessment Methodology

The Open Data Directive, requires that “high-value datasets” be “made available for re-use in machine-readable format, via suitable APIs and, where relevant, as a bulk download” (Article 5.8). The Directive defines high-value datasets as those:

“the re-use of which is associated with important benefits for society, the environment and the economy, in particular because of their suitability for the creation of value-added services, applications and new, high-quality and decent jobs, and of the number of potential beneficiaries of the value-added services and applications based on those datasets” (Article 2.10).

In its Annex I, the Directive identifies a series of six categories or thematic areas into which high-value datasets fall. These include the areas of geospatial data, earth observation and environmental data, meteorological data, statistics, companies and company ownership, and mobility data.

The Directive requires that the Commission identify the specific high-value datasets within each category as held by public bodies (Article 14.1) and adopt implementing acts (a regulation guiding what Member States must do). In defining these rules, the Commission is permitted to balance the cost to Member States of opening the data with the benefits of doing so (Article 14.1).

This balancing of the costs and benefits of opening up company registration data and company ownership information (among other datasets) is what the Impact Assessment by Deloitte, the ODI, The Green Land, and the Lisbon Council evaluates.

With respect to company registration data, the Impact Assessment identifies four specific datasets, based on the information which Member States must collect and make available under a series of EU Directives. The relevant directives are the Company Law Directive (2017/1132/EU), the Accounting Directive (2013/34/EU), the (Fifth) Anti-Money Laundering Directive (2018/843/EU), the Transparency Directive (2004/109/EC), and Regulation (EU) 2015/848 on insolvency proceedings. A useful table in page 17 of the Impact Assessment (PDF page 28) summarises which data should be published under these directives.

The data that is currently collected, is then grouped into four categories:

- i. Basic information on company

- ii. Company documents and accounts
- iii. Company ownership information
- iv. Company insolvency status

Whilst the logic for the division is not always clear, it is derived from an analysis of the current status quo in countries across the EU. Hence, for example, company insolvency status is currently available in separate registers in many countries, and while this information is open and free of charge, it is largely not structured as open data so transforming these registers into open data (and perhaps integrating them with the main company register database) would have cost implications.

When it comes to company ownership, there is also a somewhat fragmented picture, as many countries are currently in the process of creating beneficial ownership registers under the 5th Anti Money Laundering Directive 2018/843.² This directive does not, however, require that beneficial ownership registers be fully available as open data, free of charge, and permits costs to be recovered, which is resulting in charging by record in some Member States (for example €3 per record in Austria or €25 per record in Sweden).

Once the data has been divided into these four overarching datasets, the Impact Assessment examines which specific data they contain, maps the current availability of these and looks into the costs of transiting to fully open data. It also – as noted above and in more detail in Section 5 below – takes into account some “sensitivities” regarding the publication of the data contained therein (such as personal data). Using this approach, and trying to pick out patterns from the current rather fragmented picture from across the European Union, the Impact Assessment arrives at a proposed structure for publication, which is divided into “low-intensity” and “high-intensity” options, as summarised in Table A below.³

For the four datasets, the high-intensity publication would mean publishing the entire datasets, while the low-intensity publication would exclude the data highlighted in grey in Table A.

² The EU’s 5th Anti Money Laundering Directive 2018/843 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>

³ This Table is Table 29 in the Impact Assessment, page 150

TABLE A: The Four Datasets and Low vs. High Intensity Publication.

Basic information		Company documents and accounts	Company ownership		Company insolvency status
Non personal	Personal		Non personal	Personal	
<ul style="list-style-type: none"> - Name of the company (full version; in different languages when applicable) - Company status (active, resolved, in liquidation, reconstruction, merger ...) - Founding date - Cessation date (if applicable) - Historical names - Addresses (i.e. legal, visiting postal) - Legal form - Identifiers (registration number / company identifier / the valid VAT identification number / phone number / e-mail address) - Data from VIES - Member State where registered - NACE code (of the predominant and secondary activities and the code's source) - Number of employees - Turnover - Capital - Detailed information on branches (including the features presented elsewhere under "basic information") - All changes (to individual companies and list of companies dissolved), and date of the last update 	<ul style="list-style-type: none"> - (Name(s) of company legal representative(s); - Name of company's directors) - <i>The appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body are authorised to represent the company in dealings with third parties and in legal proceedings; it shall be apparent from the disclosure whether the persons authorised to represent the company may do so alone or are required to act jointly; take part in the administration, supervision or control of the company</i> - All changes (to individual companies and list of companies dissolved), and date of the last update 	<ul style="list-style-type: none"> - Legal entities - Accounting documents, which include: <ul style="list-style-type: none"> o Consolidated financial statements (incl. the list of resident and foreign affiliates and subsidiaries, their countries, and unique identifiers), o non-financial statements, o management reports, o transfer prices reports (e.g. as in the country-by-country reports of BEPS Directive (2016/1164)); and o other report (e.g. financial reports, audit reports, corporate governance reports); - Detailed data on branches (including the features presented elsewhere under "company documents and accounts") - Intra-group transactions - Date of the last update - Other companies documents which are provided to the authority (i.e. companies' meeting minutes) 	<ul style="list-style-type: none"> - Share (percentage) of ownership, and nature and extent of Beneficial Interest held (in shareholding and/or voting rights) as well as legal ownership - Capital links between companies - All changes, and date of the last update 	<ul style="list-style-type: none"> - Name of the owner - Month and Year of birth - Nationality - Owner identifier - Names of shareholders - Country of residence of the shareholders/owners 	<ul style="list-style-type: none"> - Type of insolvency proceeding - Time limit for lodging claims - Date of closing main insolvency proceedings - The court before which the decision opening insolvency proceedings is to be lodged - All changes (i.e. to individual companies and list of companies dissolved), and date of the last update

» Low-Intensity Publication

The low-intensity publication option would require publication of basic information, company documents and accounts, and non-personal data related to company ownership, excluding personal data and company insolvency status. The only personal data in the low-intensity option is the names of a company's legal representatives and of directors, but not of owners. With this option, a limited open dataset is provided to the public, while paying customers get access to the full datasets.

Regarding modalities for publication, the low-intensity option proposes the minimum measures to ensure the reusability of the datasets, but no more. Licences would have to be open, but could be national open licences – even while recognising that this could hamper cross-border reuse –

and it will be permitted to impose some terms of use. Furthermore, data would only be available in XML, and shared vocabularies and taxonomies would not be mandatory.

As to the updating of the available data, it would have to be as and when available, but this could be as infrequently as once per week.

» High-Intensity Publication

In the high-intensity option, all of the data in the four identified company ownership datasets would be made public. This would include data on company owners, along with employee numbers, turnover, and company insolvency status.

With this option, it would be mandatory to publish data as an open, CC-BY 4.0 licence, with no conditions on reuse and no imposition of database rights. In addition to XML formats, JSON formats would be required. Shared vocabularies and taxonomies would be mandatory, and there would be individual and company identifiers, and for the purposes of disambiguation there would be beneficial owner codes as well as company codes.

Under the high-intensity option, data would be provided in real time, with the one exception of insolvency data, which would have to be updated at least daily.

3. Quantifiable Economic Costs

In terms of quantifiable economic costs of opening up the four company registration datasets as fully open data, the Impact Assessment identifies four main cost drivers:

1. **Infrastructural costs** include the establishment of the API and bulk download, adaptation of the IT infrastructure to real time provision. According to the Impact Assessment, depending on the specific Member State, this would cost in between 10 000 and 2.5 million euro (for setting up the infrastructure, without counting maintenance and for each dataset, if provided by different data holders) per year/ or 50 000 euro on average;
2. **Data transformation costs** are costs related to data processing including data cleaning, preparation of metadata, aggregation, anonymisation, etc. This is estimated to require between 4 and 10 full time employees;
3. **Operational costs** are costs related to data updates, replies to user requests, corrections of errors in the datasets, etc. This is estimated to require between 4 and 10 full time employees;
4. **(Lost) income for the data supplier** is the revenue that a country would lose when making datasets open. This represents approximately between 30 000 euro and 60 million euro per year, depending on the Member State.

The Impact Assessment attempts to establish the magnitude of costs (on a scale from low costs to very high costs) for all EU countries for which it had sufficient information:

Low Cost	Medium Cost	High Cost	Very High Cost
Existing budgets sufficient	Some budget increase might be needed	Significant investments necessary	“Might not be able to afford costs on a short term”
Denmark Finland France Poland	Austria Belgium Bulgaria Estonia Greece Ireland Malta	Czech Republic Hungary Lithuania Luxembourg Slovenia Sweden	Germany Italy The Netherlands

We note that some countries were not included. A glaring omission is Slovakia, which has already opened its company register and has made it searchable for free in both Slovak and English.⁴

The cost calculation for infrastructure changes is assessed as being modest in some countries (Belgium, Denmark, Finland, France, Poland), and medium to high in those countries which would have to modify their infrastructure and/or develop APIs.

The countries in the high or very high cost categories have the additional challenge of the economic model of the relevant bodies, which currently generate a very high annual revenue from selling company registration data. The Impact Assessment states that *“a considerable part of the costs for implementation would be concentrated on around 1/3 of Member States, those for which the costs would be high or very high.”*⁵ This increased cost is a particular concern in Germany, Italy and the Netherlands:

- The German system would have to be changed completely to adapt to the recommended modes of provision and make available this list of datasets: with a loss of revenue of 20 million;
- The Italian system would have to be changed completely and new legislation should be established changing the role of the Chamber of Commerce as data provider: loss of revenue of 58-60 million;

⁴ Slovak Business Register https://www.orsr.sk/search_subjekt.asp?lan=en. This is certainly not a particularly sophisticated interface, but it is a start and something the Impact Assessment really should have looked at.

⁵ Impact Assessment page 133 (PDF page 144)

- The Netherlands’ main costs would be the loss of the revenue – up to 50 million per year – as well as some minor adaptation in terms of metadata and documentation.

It should be noted that the Impact Assessment does not provide any details as to how these costs were calculated, merely citing “interviews with stakeholders”.

To the extent that revenue is an issue, the low value publication has less impact as not all data would be provided free of charge, with the data holders still being able to charge for access to the remainder, and so to collect revenue. Yet, it is not at all clear from the Impact Assessment whether there would still be lost revenue in implementing the low-intensity publication option for the company registers that currently sell most data, and if so, how much this would be. This is an essential analysis, which should have been carried out, because for some countries even the low-impact publication would imply infrastructural and lost revenue costs. As a result, the difference between the two options may not be that significant. With that in mind, less weight should be given to revenue loss in the implementation of the high-intensity publication option.

The cost calculations also fail to examine the possibility, clearly set out in the Open Data Directive, of a transitional period in those countries where the shift to open data will impact on existing revenue models. Specifically, Article 14.5 of the directive states that:

Where making high-value datasets available free of charge by public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks would lead to a substantial impact on the budget of the bodies involved, Member States may exempt those bodies from the requirement to make those high-value datasets available free of charge for a period of no more than two years following the entry into force of the relevant implementing act... .

In other words, the recommendation could be to amortise the costs of opening up the data over a period of time. Whatever this cost, even if it reaches as high as €50 m for one or two countries, when looking across the EU as a whole it is not significant if one also takes into account the economic benefits of opening up this data. These benefits – summarised in the next section – run into many millions of euros in the creation of business opportunities, as well as harder-to-quantify but far higher amounts when considering the costs of corruption, money laundering, illicit financial flows, and tax evasion.

4. Quantifiable Economic Benefits

The Impact Assessment confirms that having open data on companies and company ownership brings value to **all six macro characteristics of potential value derived from open data** as described in the Open Data Directive: economic, environmental, innovation and artificial intelligence, reuse, public sector, and social. The Impact Assessment states that most of the “*value and benefits linked to the reuse of company and company ownership information are concentrated in the economic and reuse categories, although the social value is also very high and links to their potential for crime and fraud detection*”.

The Impact Assessment states that in terms of quantifiable economic value, opening up these four datasets as high-value datasets would:

- » **Generate several thousand millions of euros annually in business opportunities:** In the UK, a study was carried out on the valuing the user benefit of company ownership data available in Companies House.⁶ It is estimated that the use of the Companies House data to create new business opportunities generates around £700 million (€780 million) a year from the publication of these datasets for free and through an API. The Impact Assessment concludes that the value of company information provided for free and in an accessible way can therefore correspond to *“several thousand millions of euro for an individual country.”* Similarly, the report notes that the value of the Know Your Customer (KYC) market, at the heart of which is company data, is significant. Its value runs into tens or hundreds of millions, with the e-KYC market set to grow significantly (a good 20% in the next five years). In France, opening this data has *“favoured the emergence of many smaller players on the KYC market as reiterated by several stakeholders.”*⁷
- » **Dramatically increase savings on Ultimate Beneficial Owner initial checks:** Initial Ultimate Beneficial Owner checks are estimated to cost billions per year at the EU level. Specifically, these checks in Austria cost around 17.048.520 EUR per year (repeated checks would cost approximately the same). The Impact Assessment highlights that *“when extrapolating this figure at the EU level, UBO checks would require billions per year (according to the European Commission, there exist nearly 24 million SMEs in Europe)”*. It states that, according to the PSI Alliance,⁸ this cost could be dramatically decreased if information included in company registers and UBO registers were available as high-value datasets and in machine readable format. If so, the two databases could be combined in order to calculate “standard ultimate beneficial owner” from the company register and compare it to the UBO register. If both registers show the same name, pre-completed forms can be provided to SMEs, reducing dramatically time and costs *“to only a fraction of the initial figures”*.⁹
- » **Help discover and deter money laundering:** Money laundering accounts for up to 1.2 percent of the EU’s annual GDP, or around €197.2bn in 2018, according to Europol.¹⁰ The Impact Assessment concludes that making these four datasets available as high-value datasets would release more information to the public, and therefore allow a range of

⁶ Valuing the user benefits of Companies House data, Report 2: Direct Users, BEIS Research Paper Number 2019/015

⁷ Impact Assessment, page 28 / PDF page 38.

⁸ PSI Alliance and Compass Gruppe, Case Study regarding the release of Ultimate Beneficial Owner databases as HVDs.

⁹ PSI Alliance and Compass Gruppe, Case Study regarding the release of Ultimate Beneficial Owner databases as HVDs.

¹⁰ Sophie Perryer, ‘A costly affair: why Europe is losing the fight against money laundering’ (March 2019) <https://www.europeanceo.com/finance/a-costly-affair-why-europe-is-losing-the-fight-against-money-laundering/>

stakeholders to investigate possible corrupt/shell companies that are involved in money laundering. More eyes on these actors would not only help act as a deterrent to future money laundering activities, but also help to recover some of the funds lost.

- » **Help fight corruption in public procurement:** Procurement is one of the biggest corruption risks for governments. The Impact Assessment highlights that, in Europe, corruption in procurement and, more generally, opaque procurement procedures, cost around 5 billion euro per year. Transparency in the procurement process and in company ownership has long been seen as essential to fight corruption. Making available information on all stages of the procurement processes, and on the economic operators applying for contracts, allows for proper oversight and holds those making decisions accountable. It is essential not only to push for open company ownership data, but to create a procurement system that integrates this data and uses it to carry out proper due diligence on suppliers. Integrating open data on company ownership into procurement systems would significantly reduce this risk of corruption.

Impact Assessment: *"Integrating open data on company ownership into procurement systems would significantly reduce this risk of corruption."*

The Impact Assessment also lists other social benefits such as ensuring a sufficient level of transparency over business and procurement operations, aiding implementation of anti-corruption and financial crimes rules, improving public engagement and understanding, and ensuring government accountability. Although not quantifiable, it states that they are just as important as all other benefits and *"should not be underestimated in the current political context and considering the impact that the COVID19 crisis could have on business environment and public trust."*

The Impact Assessment notes the benefits that flow from reuse of company data in the business world as well as the social benefits that derive from civil society and journalists using this data, result in public goods such as *"crime fight [sic], public engagement and understanding, and government accountability."* It also states that *"beneficial ownership information in particular are pivotal for liberal economies to ensure a sufficient level of transparency over business operations and also to implement anti-corruption and financial crimes rules."*

4.1 Cost-Benefit Analysis Case Studies

From a pure cost-benefit perspective, the Impact Assessment states that all four datasets within the thematic area of company and company ownership should be considered as high-value

datasets under the Open Data Directive, as the benefits to society and reusers of making these datasets available greatly exceed the costs borne by the data holders.¹¹

Impact Assessment: *"all four datasets in scope of this analysis should be considered as high-value datasets ... the economic and societal benefits of such a policy choice would exceed the costs of implementation for the Member States and would bring great benefits to the data economy at the EU level."*

The argument that the benefits to society and reusers exceed the costs borne by the data holders is supported by two case studies in the Impact Assessment: one looking at Finland, where implementation costs would be low, and one looking at Slovenia, where implementation costs would be high.

The Impact Assessment examines the costs against a series of indicators for benefits, including consumer benefits, economic output, employment, environmental management, public sector innovation, public sector procurement, trust in the information, and public engagement and understanding, and accountability.

When comparing the benefits generated compared to the costs, the overall impact of providing these four company registration datasets as high-value datasets in Finland is positive (a cost-benefit ratio of +2.5 is given). Furthermore, even for Slovenia, where the costs implications of opening up these datasets would be higher, the overall impact would remain positive and there would be a positive cost-benefit ratio, although smaller (a cost-benefit ratio of +1.5).

The Impact Assessment states that ***"it is not surprising to conclude that, even when costs of implementing the Directive would be relatively high on data holders and especially for a few of them, the benefits for society would be greater."***

5. Personal Data and "Political Sensitivity"

5.1 Personal Data Protection

The Impact Assessment only briefly examines the personal data protection dimension of opening up company registration and ownership data.

¹¹ See Impact Assessment page 143 (PDF page 154)

The Impact Assessment does clearly recognise that, from the reusers' perspective, the provision of personal data related to company ownership is necessary as it complements the non-personal data, and increases the utility and value of the data overall.

On other hand, it also recognises that some Member States fear the legal and practical implications of providing this personal data for reuse, and that there are differing traditions across Europe when it comes to protection of personal data.

The main concerns about the use of personal data seem to have come from the data holders themselves: "*Data holders in some Member States (e.g. France, Italy, Malta, and the Netherlands) shared their concerns about sharing personal data for free, and fear a misuse of it.*"¹² This fear is countered by the fact, which the report clearly notes, that "*reusers also indicated the inconsistency of using this argument while selling the data to those stakeholders willing to pay a fee.*"¹³

The Impact Assessment does not contain any detailed examination of the fears of some of the data holders about the misuse of the information, nor does it look at what has happened in those countries which have opened up their company registers. Such a study would, no doubt, help to allay any fears, as well as demonstrating, once again, the immense importance of having the names of owners and beneficial owners available to all, not just to those who have the resources to pay for them.

The Impact Assessment also conspicuously omits to make reference to a key piece of jurisprudence from the Court of Justice of the European Union, which makes clear that, where insolvency registers are concerned, there is not a legitimate personal data protection concern that can result in an objection to names being published.¹⁴

The Impact Assessment furthermore fails to examine what kinds of measures could be put in place to protect against misuse of personal data. For example, when data is published as open data with fully open licences, it could be accompanied by informative material for users about the limits of the use of the data under other laws, such as rules relating to the processing of personal data for marketing purposes when consent has not been given. Advice and education accompanying the publication of data require further resources. These activities should be considered part of governments' obligation to educate the public on the legal framework relating to personal data protection, particularly in this 21st-century world of open data.

¹² Impact Assessment page 24 (PDF page 35)

¹³ Ibid

¹⁴ See the case of *Camera di Commercio, Industria, Artigianato e Agricoltura di Lecce v Salvatore Manni*, C-398/15, 9 March 2017, in which the Court of Justice of the European Union makes clear that not only is the publication of data on current companies something that it is legitimate to make public, but that data on historical insolvencies should be accessible because even after the dissolution of a company, the rights and legal relations relating to this company continue to exist, and hence third parties should have access.

Another concern seems to be precisely how companies and individuals are identified. The Impact Assessment notes that while company identifiers are almost always made available, each country has its own system of company and individual identifiers. The Impact Assessment notes that such individual identifiers are essential for disambiguation of beneficial owners – ensuring which John or Jane Smith one is talking about – but that there are challenges here when this identifier is, for example, a national ID number, as is the case in Estonia.

The Impact Assessment states that the fact that company registers hold ID numbers “*requires the data holders to be extra careful on sharing this information and allowing its reuse. In some countries such as Austria, Slovenia, The Netherlands, beneficial owner identifiers are not shared to reusers due to their sensitivity, and are only available for duly authorised public authorities (e.g. law enforcement).*” This is a legitimate problem, as one would not wish the opening of company registers to facilitate widespread identity theft across Europe. Access Info notes that the 5th Anti Money Laundering Directive does not require that ID numbers be disclosed, requiring only that names, month and year of birth, country of residence and nationality of beneficial owners be accessible, with Member States having the option of also providing the precise date (day) of birth and contact details. What the Impact Assessment fails to consider is that everything in the company registers could be made public as open data with the exception of ID numbers (if held) and dates (day of the month) of birth. This would address the security concerns, whilst ensuring that sufficient information is released for disambiguation. There would be some cost associated with such separation, but it should not in fact be too difficult to achieve, as this data would most likely be held in separate fields in the relevant databases.

With respect to the data protection concerns, the Impact Assessment calls for clear indication and guidance to be given on the provision of this type of data, requesting an opinion from the European Data Protection Supervisor (EDPS) and an agreement on the provision of this data at EU level. As far as Access Info is aware, no opinion has yet been sought from the EDPS.

5.2 Political Sensitivity

When weighing up the two policy options, between low-intensity and high-intensity publication, the Impact Assessment uses an assessment criteria of Effectiveness, Efficiency, Coherence, Proportionality and Feasibility. The study states that the low-intensity option gained more point in Efficiency, Proportionality and Feasibility, while the high-intensity option won in Effectiveness and Coherence.

Criteria	Performance range: -3 / + 3	Lower intervention (PO1)	Higher intervention (PO2)
Company and company ownership			
Effectiveness		1.50	2.50
Efficiency		2.50	1.50
Coherence		2.00	2.50
Proportionality		2.00	1.50
Feasibility		2.50	-1.00

Most notably, in the conclusion that the high-intensity option fell down on Feasibility, the study suggests this option would be somewhat less feasible due to rather nebulous “political sensitivities.”

It is not totally clear if these political sensitivities relate exclusively to the personal data concerns or not: *“Compared to the lower intensity option, the higher intensity option is considered as politically more sensitive. The scope of this option would be broader, and would include personal data, which is a sensitive issue as explained.”* Access Info was not able to find a clear explanation of these political sensitivities in the Impact Assessment. Hence, for the Impact Assessment to follow this assertion that high intensity publication is “politically more sensitive” by immediately stating that this means that the high-intensity option is only considered “to some extent” feasible is simply not justified. We could therefore say that the assessment criteria is methodologically arbitrary.

The Impact Assessment states that the inclusion of personal data in the high value datasets is of concern for some Member States, as they fear a misuse of it as there exist serious legal and practical implications of providing personal data for re-use in full compliance with GDPR.

Yet, the Impact Assessment also recognises that reusers point out the inconsistency of raising privacy concerns given that all the data is sold to those stakeholders willing to pay a fee. *“In their view, if personal data can be purchased, it should be available publicly for the sake of consistency.”*

Access Info notes that from the reusers’ perspective, the provision of personal data is necessary as it complements the non-personal data, and increases the utility and value of the data overall. The argument in support of low-intensity publication due to the fact that publication of personal data would be “politically sensitive”, is hypocritical and inconsistent with the fact that such data is still available to paying customers (as is the case currently for all those who pay to access company registers), making clear that personal data protection *per se* is not an objection here. It could further be argued that the “effectiveness” of the low-intensity publication option has been overestimated, as publishing company ownership data without personal data of company owners would essential be rendered ineffective in most instances in carrying out proper due diligence on companies.

6. The Impact Assessment's Surprise Recommendation

The Impact Assessment clearly finds that the four datasets containing company registration and ownership data are unanimously considered of high value by the literature and by reusers.

The Impact Assessment states that the benefits to society and reusers of making these datasets available greatly exceed the costs borne by the data holders “*even when costs of implementing the Directive would be relatively high on data holders and especially for a few of them.*”

Yet, inconsistent with this finding, the study focuses greatly on the fact that the costs of implementation would be particularly concentrated on a small number of countries “*which would then have a lower cost-benefit ratio than the others and would be more strongly affected from the changes.*”

Due to cost concerns of a minority of Member States, the Impact Assessment concludes by recommending a significantly reduced, “low-intensity” publication of the four key datasets in the thematic areas of company and company ownership data, namely the publication of a limited subset of the data.

Furthermore, again driven by cost concerns, the Impact Assessment recommends modalities of publication that would, in effect, limit the ease of reuse of these datasets.

Despite recommending low-intensity publication, the study contradicts itself by stating that this option would greatly limit benefits and be out of line with the spirit of the Open Data Directive concerning high value datasets as it would keep some data fields of high value inaccessible.

It is clear that an investment is needed to ensure that company data is ready for publication as fully open data. As the Impact Assessment notes, the current provision of companies and company ownership information across the EU is “suboptimal”. That is not a reason for not changing. Indeed, the very purpose of the Open Data Directive, and the PSI directive which preceded it, is to ensure that datasets that were previously not available, or were only available to a limited, moneyed few, are now accessible to all, becoming part of the *res publica* and serving the public interest.

Having reviewed the arguments in the Impact Assessment, Access Info cannot find that they are sufficiently compelling to justify the recommendation of low-intensity publication. Indeed, the tally of the benefits, both financial and social, clearly tip the balance in favour of publishing company register data as open data.

∞ ends ∞