

“IT’S NONE OF YOUR BUSINESS!”

*10 OBSTACLES TO ACCESSING
COMPANY REGISTER DATA
USING THE RIGHT TO INFORMATION*

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ABOUT ACCESS INFO EUROPE

Access Info Europe is a human rights organisation dedicated to promoting and protecting the right of access to information in Europe and globally. Access Info’s mission is to advance democracy by making the right to information work in practice as a tool for defending civil liberties, for facilitating public participation in decision-making, and for holding governments accountable.

ABOUT THIS REPORT

This research that underlies this report was carried out by members of the Access Info Europe team along with journalists working with the Organized Crime and Corruption Reporting Project (OCCRP).

The report was written and edited by Pamela Bartlett Quintanilla and Helen Darbishire of Access Info Europe. Thanks also to Access Info’s current and former team members for their contributions to the report and the interactive website: Victoria Anderica, Luisa Izuzquiza, and Elli Palaiologou.

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ABOUT THE ORGANIZED CRIME AND CORRUPTION REPORTING PROJECT

The Organized Crime and Corruption Reporting Project (OCCRP) is a not-for-profit, joint program of non-profit investigative centers and for profit independent media stretching from Eastern Europe to Central Asia. OCCRP’s goal is to help the people better understand how organized crime and corruption affect their lives.

OCCRP seeks to provide in-depth investigative stories as well as the latest news pertaining to organized crime and corruption activities.

OPEN DATA POLICY:

The information provided in this report and available on the [dedicated research page](#) is available as open data for journalists and civil society organisations to use in research and advocacy.

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Full data and copies of documents obtained can be downloaded from the Access Info Europe [website](#).

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There is a common misperception around Europe that company register databases are freely accessible to the public and that it is easy to find out who the owners and shareholders are.

Such information is essential for investigative journalists and civil society organisations investigating corruption, fraud, money-laundering, organised crime, human rights violations, and other illegal activity.

Indeed, the G8 and the World Bank have recognised that company registers are a “key dataset” that should be made accessible to the public as part of the drive towards open government.

Two years of research conducted by Access Info Europe in 32 European jurisdictions together with local journalists from the Organised Crime and Corruption Reporting Project has revealed, however, that in practice, the majority of company registers across Europe are not accessible to the public.

At the time of conducting the research, [Denmark](#) was the only country that provided a download of the entire company register database free of charge, including the names of company representatives and shareholders. However, to do this you must have a Danish electronic ID, which makes full and free access to the company register database impossible for non-residents.

In June 2015, the [United Kingdom](#) also published its company register in open format so it is free for all to download, thus making good on pledges made as part of its Open Government Partnership and G8 commitments.


With these two exceptions, the most serious of a series of ten obstacles to access that we identified is that access to company registers is contingent on payment of large sums of money. The cost for a full company register database ranges from € 75,000 in the [Netherlands](#) to € 286,000 in [Estonia](#) and € 380,355 in [Macedonia](#).

In 19 countries it is possible to access company registration data record-by-record, with fee ranging from € 0.03 in the Netherlands to € 767 in Russia. For anyone investigating a large number of countries, the cost soon mounts up.


Where some information is available for free, which is the case in six (6) countries, it is available through online searches, record-per-record, meaning that one needs to know the name of the company and/or its official ID number in order to obtain even basic information.

GAINING ACCESS USING THE RIGHT TO INFORMATION

The research in this project was conducted using access to information laws, with follow-ups, appeals, and legal advice from local experts. In some cases these appeals advanced the case for access to company registers. In Serbian and Switzerland the Information Commissioners made recommendations to the company register agencies on improving accessibility of the registers.



By limiting public access to company registers, European governments are blocking investigative journalists in their work uncovering criminal activities.

A vertical photograph of a wooden door with a 'PRIVATE PROPERTY' sign. The door is made of dark wood and has a metal handle. The sign is black with white text. The text 'PRIVATE' is on the top line and 'PROPERTY' is on the bottom line. The sign is slightly worn and has some white marks on it.

In Slovenia, the Information Commissioner ruled that we should have access to the company register database for free, although with limits on how that data can be used, in particular limiting the right to search the database by name. This decision to allow access is currently under appeal before the courts in a case taken by the company registry body.

In the [Czech Republic](#) we secured access to a copy of the database and in mid-2014, the database was uploaded to the company register website, so it can now be downloaded in bulk for free, but it is missing certain key data, in particular the names of the company shareholders. Litigation for full access is currently ongoing. In [Croatia](#), an appeal is also in process before the Information Commissioner.

ANALYSIS OF THE NEED TO PAY FOR INFORMATION

Access Info and OCCRP consider that company registration information should be freely accessible to the public because the information is gathered as part of a public function by a public body.

The purpose of company registers is to ensure legal certainty for those setting up businesses, investing in businesses, or conducting business with registered entities. The government mandates that companies should register and requires them, by law, to pay a registration fee.

In spite of a clear interest in members of the public having access to such information, very little or no data is available to the wider public without payment of a fee. This fee arises from an historical trend, dating from pre-electronic days, by which company registries charged for access to copies of the records they held. The income from these charges then became part of the economic model of the registries, who now anticipate the fees in their budgets.

Traditionally, those who had a particular business interest in having access to company data were ready to pay for access, whether record-by-record to check up on a particular company or for fuller access via purchasing or subscribing to access to the full dataset. This is still the case today, with mass users of the data such as large law firms paying for full access.

This has resulted in access now being limited to those with an ability to pay for it. This is the case even when delivery is by electronic means, which has minimal or zero cost associated with delivery of the information. European Union rules on access to public sector information mandate that fees shall be equal for all users but not that there shall be no fee. As a result, key actors in society, in particular investigative journalists and human rights organisations, find it hard to access the data as the costs are prohibitive.

Such a situation is inconsistent with the recognition of the importance of the right of access to information in a modern, democratic society. Indeed, because many of the world's access to information laws are younger than the company register laws, a situation has arisen where the specific company register laws are deemed to prevail even though this clash of laws has not, in most countries, been properly evaluated by the legislator, nor by information commissioners, nor the courts.

Rather remarkably, this situation prevails in spite of widespread recognition and many declarations – including by the G8, World Bank and others – that company registers are a key dataset that should be made available free of charge as part of open data commitments. Multiple studies have also emphasised the economic advantages of releasing datasets as part of an open government policy. Furthermore, publishing the company register database in an open data format would result in an updated version of the register being continuously available and thus reducing the administrative burden and hence costs for the registrars in processing multiple requests or in negotiating access contracts.

OWNERSHIP INFORMATION AND PERSONAL DATA PROTECTION

In addition to the cost considerations, a further obstacle is a widespread concern about the need to protect personal data when it comes of the names of those company owners contained in the company registers.

There is a certain hypocrisy to this concern given that those who are able to pay for the information are usually able to access the names linked to each company record as well. In spite of this, in five of the 32 jurisdictions - Czech Republic, Italy, Serbia, Spain, and Switzerland - we were specifically told in response to our access to information requests that we could not access the names of business owners for data protection reasons, even though those who pay can in fact access this information. When it comes to online searches (paid or free) only nine (9) countries permit searching by name and 23 do not permit this.

Given the clear public interest in ensuring that company registration information is available to members of the public, governments and legislators should take proactive measures to ensure that personal data protection is not an obstacle to accessing the names of company owners. To do this, government should ensure that the relevant legislative framework provides for the publication of such data.

The law or policy should also establish that, at the time of registration (or by notice to those already registered) company owners be informed that certain personal data (usually name, address, ID number, and other related information such as date of birth) will be made available to those accessing the information.

For those accessing the information, they should be provided with clear instructions about how the data may and/or may not be used in order to be consistent with data protection rules. For example, using the data to send spam emails is clearly problematic, whereas using it for legitimate journalistic investigations into corruption and organised crime is a valid way to process the data.

The study has found that the current legal framework across Europe is ill-prepared to balance the right of access to information with personal data protection when it comes to the owners of companies. This is a matter that should be redressed with urgency to bring the legal framework into line with era of open government data.




CONCLUSIONS AND RECOMMENDATIONS

This research found that the legal frameworks of the countries that we surveyed have failed to apply the fundamental right of access to information to the data contained in company registers. The potential conflict between the access to information laws and the specific company laws has not been worked out by legislators, information commissioners nor courts.

It is interesting to note that at the same time as making pledges in fora such as the G8 and G20 to open up company registers, many countries have not in fact addressed how this will be done at the national level, nor have they advanced in doing so.

Some specific recommendations are contained in this report, addressed at particular countries. The overarching recommendations by Access Info Europe and the OCCRP are:

- » It is imperative that all the countries in this survey review the current legal framework so as to ensure that the right of access to information applies in full to the bodies holding company registers and to the registers themselves.
- » All the countries in this survey should abolish record-by-record charges for accessing company registration records.
- » All company registries should improve the functionality of their search engines in order to permit easier access to the data that they publish online.
- » All countries should supplement free on line searches for company information record-by-record with the possibility of downloading the entire database.
- » It should be possible to download the full database in bulk and in a re-usable and searchable format so people can look through the data using their own search parameters.
- » All countries in this survey should provide bulk access to the full company registration database in an open, re-useable format at no charge.
- » There should be more clarity over where the balance between the right of access to information and the right to privacy lies. Access Info Europe and OCCRP recommend that a protocol be established by all company registries by which those registering companies are informed that their data will be made public as a condition for registration. The full register, including the names of relevant individuals, should then be publicly available.
- » Privacy policies should always be applied consistently and it should not be possible to override supposed privacy considerations by simply paying for the information.
- » Members of the Open Government Partnership should commit in their Action Plans to proactively publish the full company register as an open government dataset. Non-members should join and make the same commitment.



Anti-corruption activists can't trace fictitious companies because the data on beneficial ownership is simply not collected and even when it is, it's not easily accesible.

1. INTRODUCTION

This report summarises the obstacles faced by Access Info Europe and the journalists forming part of the Organised Crime and Corruption Reporting Project after a two-year monitoring project which sought to use the right of access to information to lever free access to full company register databases across Europe.

Access to information requests were submitted in 32 European jurisdictions seeking access to a full copy of the companies listed in the database, including the names of legal representatives, owners and shareholders.

A full copy of the requests and the responses received, along with a timeline and summary of the process for each country, can be found on the Access Info website here: <http://www.access-info.org/company-register-transparency>
The main obstacles faced by Access Info in accessing, through the use of freedom of information requests, full, free and complete information about company registers across Europe are set out in this report.

After attempting to use both access to information laws and other laws to access the company registers, Access Info Europe and OCCRP have mapped out a series of obstacles that fall into two main categories:

THE TEN OBSTACLES

OBSTACLES TO USING ACCESS TO INFORMATION OR FOI LAWS

1. No response to our request
2. No access to information law
3. Other, specific, laws apply

OBSTACLES TO ACCESS VIA OTHER, SPECIFIC, COMPANY REGISTER LAWS

4. Only nationals can access data freely
5. Free access is possible but only for record-by-record searches
6. Record-by-record access is possible but must be paid for
7. You have to know what you are looking for
8. Bulk access must be paid for
9. Personal privacy is an obstacle unless you can pay for the data
10. There are limits on reusing the data

THE REQUEST

Dear Companies House,

I am writing on behalf of Access Info Europe to request, under the Freedom of Information Act, access to a full copy of the database as held by Companies House in a reusable format.

I would prefer to have this information sent to me electronically.

If you have any questions or need to clarify this request, please do not hesitate to contact me.

2. OBSTACLES TO ACCESS UNDER FOI LAWS

In this section we set out the principle obstacles that we encountered when endeavouring to use the right of access to information (under national access to information or freedom of information laws) to obtain full access to the company registers of each of the 32 countries surveyed.

OBSTACLE 1: NO RESPONSE TO OUR REQUEST

The first obstacle we faced was even getting a response to our access to information requests. In five out of the 32 jurisdictions surveyed, we did not receive any response to our requests, despite multiple attempts following up and even phone calls to the public authority concerned.

Five countries did not respond: France, Germany, Kosovo, Norway and Greece.

Recommendations



- » France, Germany, Kosovo, Norway, and Greece should ensure that access to information requests from members of the public never go unanswered. Administrative silence violates the right of access to information because it means public institutions are failing in their obligation either to provide information or to justify their refusals.

OBSTACLE 2: NO ACCESS TO INFORMATION LAW

Two of the 32 jurisdictions surveyed do not have a freedom of information law, meaning that there was no legal framework for appealing refusals to provide information. These were **Cyprus** and **Gibraltar**.

In **Cyprus**, after multiple follow-up messages from Access Info and a phone call, we finally received a response, six weeks later, which simply stated: "Policy of our Office is to not give the information/data contained in the Companies Register". We note that the Republic of Cyprus is the one of only two EU countries with no access to information law (the other being Luxembourg).

In **Gibraltar**, after an email reminder and a call from Access Info Europe, Companies House responded that we had to pay for access to the company register information and that it was impossible to provide the data in a re-usable format. Access Info responded asking Companies House to provide a legal justification for its refusal. We received no response and had to follow up via email and a phone call. We were told, orally, that we could not have access to the full database. We note that the UK Freedom of Information Act does not apply in Gibraltar.

As neither of these jurisdictions have a freedom of information law, we had no legal basis on which to appeal their refusals, and so in practice, it was impossible to proceed with our efforts to access the full company register database using the right of access to information. We note that Gibraltar is the country with the second most expensive company register: each company file costs 20 GBP (roughly € 27.40)

Recommendations



- » Cyprus should adopt an access to information law that is in line with international standards as soon as possible. The current draft law is substandard, should be improved, and should be extended to cover the Company Register.
- » Gibraltar currently has an Freedom of Information Bill under consideration. It should be brought into line with international standards and adopted as rapidly as possible; the government should ensure that it provides access to the Company Register.

OBSTACLE 3: OTHER, SPECIFIC, LAWS APPLY

By far the most common and significant obstacle that we came across is that even if the access to information law might, prima facie, apply to the company register, there are other conflicting or overriding laws – usually specific company register acts – that regulate access to company registers.

The mechanism by which the access to information law as the general law (lex generalis) defers these specific laws (lex specialis) varied across the countries surveyed. These mechanisms included:

- That the access to information law has an exclusion for self-funded bodies or bodies with commercial interests;
- That the information is not covered by the access to information law as it is already available elsewhere and should be obtained by the specific laws governing access;
- That other specific laws specifically override the access to information law.

CASE STUDY

SPECIFIC EXCEPTIONS IN THE ATI LAW APPLY

In two countries, access to the company register was denied because the freedom of information laws contain specific articles which exclude some bodies from the right of public access based on the nature of their functioning.

In Romania, self-funded bodies are excluded from the scope of the law, and the Romanian company register responded to us stating that they were entirely funded through the fees paid by those that register and that it did not depend at all on the state budget, so it was not obliged to provide us with the information.

In Macedonia, there is a specific exception in the access to information law that allows a public body to refuse access to information if it's "commercial interests" could be "endangered", which is the exception that the Central Register of Macedonia applied in response to our request.

THE INFORMATION IS ALREADY AVAILABLE

In five countries – Malta, Montenegro, Serbia, Spain, and the United Kingdom - the company registers referred to exceptions in the access to information laws which state that, if information is already available in some other way, there is no need for the public institutions to fulfil requests for access to the same information.

In **Malta**, we were told in response to our request that the Freedom of Information Act specifically excludes information which is “accessible to the public under any other law”. We got a similar response from the Ministry of Justice in **Spain**.

In **Montenegro**, the Central registry of companies told us that citizens could easily access the company register by visiting their offices and inspecting the files personally. They also stated that the information was accessible online so they did not have to answer our request. The Commission for Securities responded in the same manner.

In **Serbia**, company register information is available online but it is only accessible record-per-record. We appealed to the Information Commissioner against the Serbian Business Register Agency’s refusal to provide us with the database, but the Information Commissioner ruled that they were right to reject our request on that basis, without examining any of the other arguments presented by either of the two parties.

OTHER LAWS OVERRIDE THE ACCESS TO INFORMATION LAW

Eleven out of the 32 jurisdictions we surveyed responded that there were more specific laws, such as company register acts, that were considered to override the more general provisions of the access to information laws: Armenia, Croatia, Czech Republic, Estonia, Hungary, Latvia, Liechtenstein, Lithuania, Russia, Switzerland and Ukraine.

Hence it was not possible to obtain the data using the access to information law and we could only access the company register information if we fulfilled the – usually more burdensome – conditions of the specific company register law.

In many cases, this was a simple case of being referred to another law.

In **Croatia** the Ministry of Justice rejected the request arguing that there were other provisions in the company register laws that needed to be considered besides the Law on the Right of Access to Information. As an additional argument, since the company register database is managed by the Commercial Court, the Ministry of Justice also rejected the request based on the exception “to protect the efficient, independent and unbiased court, administrative or other legally regulated proceedings.”

In **Armenia**, we were told that, where two laws are in conflict, the earlier one prevails over the later one, meaning that the Law on Registration of Legal Entities was considered superior to the more recent freedom of information law.

The problem with having other, specific laws that overrule the right of access to information is that these other laws place unacceptable limits on the public’s right to access, easily and free of charge, information created as part of public functions.

In the case of company registers, it is clear that the information is collected as part of a publicly mandated function and as such the information collected in these registers should fall under the scope of the right of access to information and hence under national access to information or freedom of information laws.

Recommendations

- » All the countries in this study should ensure that the right of access to information applies full to the bodies holding company registers and to the registers themselves.



3. OBSTACLES TO ACCESS UNDER COMPANY REGISTER LAWS

Having failed to obtain access under access to information laws, the Access Info Europe and OCCRP teams mapped out the conditions for access under the specific laws to which we were referred. In this section we set out the obstacles that members of the public, including journalists and CSO representatives, have when trying to secure full access to company registers.

We note that in this section we have supplemented information about accessing the company registers obtained in response to our requests, with information that we obtained through online research.

We identified five obstacles to company register access created by these more specific laws:

- » Only nationals can access the data freely
- » Free access is possible but only for record-by-record searches
- » Record-by-record access is possible but must be paid for
- » Bulk access must be paid for
- » Personal privacy is an obstacle ... unless you can pay for the data

A further obstacle is that in some countries, there are laws that impose strict conditions on how the data is later shared or made public.

OBSTACLE 4:

ONLY NATIONALS CAN ACCESS DATA FREELY

In Denmark, although the company register database can be freely downloaded and in open format, you need a Danish electronic ID number to download the database, which means that non-residents or foreigners cannot access it.

Recommendations



- » The process for accessing company register data should be revised in Denmark so that foreign citizens or people without a Danish electronic ID can still exercise the right of access to the information.

OBSTACLE 5:

FREE ACCESS IS POSSIBLE BUT ONLY FOR RECORD-BY-RECORD SEARCHES

A number of countries provide access to relatively complete company registration information on a record-by-record basis via an on line search and without having to pay a fee to access this information. These countries at the outset of the project included Croatia, Czech Republic, Hungary, Montenegro, Sweden, and Ukraine.

Whilst it is positive that such information is available online and that individual registration records can be searched for, this is not a substitute for being able to access the entire company register database. Furthermore, as noted in



Obstacle 7 below, for many countries the search function is limited so that it's not possible to search by the name of an individual but rather by company name or registration number.

Recommendations



- » All countries should supplement free on line searches for company information record-by-record with the possibility of downloading the entire database.

OBSTACLE 6

RECORD-BY-RECORD ACCESS IS POSSIBLE BUT MUST BE PAID FOR

In response to our requests and online research we identified nineteen (19) countries where we could only access the company register data record-by-record if we were willing to pay for it.

These countries are: Armenia, Cyprus, Estonia, Finland, France, Germany, Gibraltar, Italy, Latvia, Liechtenstein, Lithuania, Macedonia, Moldova, the Netherlands, Norway, Romania, Russia, Spain, and the United Kingdom.

In some cases, basic information is available by a free search but to access the full record, or at least, a somewhat more complete record, one has to pay for it. This was the situation in the UK at the time of doing the survey, and is the situation in Spain, for example. The rates per record are set out in the table below.

In the cases of the Lithuanian and Dutch company registries both insisted that charging for access to the company register was in line with the right of access to information because they were actually charging only cost-price. In the Netherlands this was € 0.03 per record and in Lithuania this was deemed to add up to € 2.24 per record. This is not entirely correct however as in these countries electronic access to a government document would be free of charge, with copying costs possibly being applied in the case of paper copies; Access Info has successfully obtained information from both countries in the past and has never been required to pay for it.

After further research by Access Info into the conditions for accessing each of the 32 company registers surveyed, we found that the cost of access to individual company records range from € 0.03 in the Netherlands to € 757.86 per record in Russia.

TABLE 1 - PRICES IN COUNTRIES THAT SELL DATA PER RECORD

COUNTRY	PRICE PER RECORD
NETHERLANDS	€0.03
SERBIA	€0.15
ESTONIA	€2.00
ROMANIA	€2.00
MOLDOVA	€2.06
LITHUANIA	€2.24
FRANCE	€2.33
SPAIN	€3.30
ITALY	€3.50
GERMANY	€4.50
NORWAY	€4.62
MACEDONIA	€5.00
ARMENIA	€5.57
FINLAND	€6.20
CYPRUS	€10.00
LATVIA	€12.00
LIECHTENSTEIN	€14.33
GIBRALTAR	€27.42
RUSSIA	€ 757.86

Access Info and OCCRP believe that there are two serious problems with the requirement to pay for access to each individual company record. First, this is a violation of the right of access to information which, as already stated, we believe should apply to company registers, which should be available free of charge.

The second problem is that for investigative journalists and for civil society organisations, the costs of conducting an investigation into, say, transnational organised crime, corruption, or human rights violations, soon mounts up and becomes prohibitive.

Recommendations »

- » All the countries in this survey should abolish record-by-record charges for accessing company registration records.

OBSTACLE 7: YOU HAVE TO KNOW WHAT YOU ARE LOOKING FOR

Even in those countries where some company register information is accessible online for free, there are usually limits placed on your ability to search through, review, download, and analyse the data.

In most countries you cannot usually do a blank search to browse freely through the data. This is the case for example in Cyprus, Czech Republic, Estonia, Finland, Germany, Latvia, Russia, Serbia, Spain, Sweden, Ukraine, and the United Kingdom. In general, you have to know either the name of the company or its tax or registration number in order to access the data.

In most of the countries where it is possible to search the company register, you can find out the names of the registered owners of companies but in 23 of the countries surveyed, you cannot conduct a search by name to find that which companies that person owns.

The table below shows whether it is possible to search using other criteria such as name of owner.

TABLE 3: CAN YOU SEARCH BY NAME OF COMPANY OWNER?

YES - SEARCH BY NAME OF OWNER POSSIBLE	NO - SEARCH BY NAME OF
Armenia, Denmark, France, Italy, Latvia, Russia*, Slovenia, Sweden, Ukraine *(To search by individual entrepreneur you need to enter BIN or VAT number, or specify the name and the area of residence)	Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Gibraltar, Greece, Hungary, Kosovo, Liechtenstein, Lithuania, Macedonia, Malta, Moldova, Montenegro, Netherlands, Norway, Romania, Serbia, Spain, Switzerland, United Kingdom
TOTAL: 9	TOTAL: 23

Currently, the restrictions on searching through and downloading the company register data means that much investigative work depends on tip-offs and leaks rather than on first-hand discoveries. If bulk access were made possible, this would make it easier for journalists and civil society organisations to uncover potential instances of wrong-doing and to raise the alarm.

Recommendations



- » All company registries should improve the functionality on their search engines in order to permit easier access to the data that they publish online.
- » It should be possible to download the full database in bulk and in a re-usable and searchable format so people can look through the data using their own search parameters.

OBSTACLE 8

BULK ACCESS MUST BE PAID FOR

In carrying out this research, we asked those company registers that answered our requests how much it would cost to access the entire database. We also searched on line on the websites of each registry to find this information where it was not otherwise provided.

For those countries which did provide us with this information, we found that the costs for a one-off access to the entire database ranged from around €75,000 in the Netherlands (being essentially the cost per record multiplied by the number of records), to €286,000 in Estonia or even €380,355 in Macedonia.

In the case of Russia, we were informed that an online subscription starts at €2,275.

Meanwhile, in the Czech Republic, as we went through our legal battle to have access, we were informed by the Ministry of Justice at one point that free access was possible but there would be a fee for obtaining the database from the private company that stores this. At another point we were told that the cost for paying the private company to export the database would be around €900.

Other countries which provided data on the cost of accessing the entire register were Slovenia, Sweden and Latvia as shown in the table below.

Rather remarkably, although we know that many company registers are available for those with an ability and readiness to pay for them, we are unable to find out how much this would cost us from a full 21 of the 32 jurisdictions surveyed. These are Croatia, Cyprus, France, Germany, Gibraltar, Greece, Hungary, Italy, Kosovo, Liechtenstein, Lithuania, Malta, Moldova, Montenegro, Norway, Romania, Serbia, Spain, Switzerland, Ukraine, and (at the time of conducting the research) the United Kingdom.

If we had been serious about buying the information, having been denied it under the right of access to information, no doubt we could have contact the sales departments of the respective company registers to negotiate a price. But that was beyond the goal of this project which was to endeavour to obtain full free access to the company register databases.

What these findings tell us is, essentially, that those with an ability to pay for access to information about the owners of companies, are able to obtain it, while journalists, activists and members of the general public without such resources, cannot. There is a seriously skewed playing field when it comes to accessing company ownership information.

Recommendations »

- » All countries in this survey should provide bulk access to the full company registration database in an open, re-useable format at no charge.

CASE STUDY:

ADVANCING THE CASE FOR FREE ACCESS VIA COURT APPEALS

At the outset of this research, only Denmark provided free access to its company registration database, although with the obstacle of needing to have a Danish electronic ID in order to access the data.

During the course of this project, the UK, as part of its Open Government Partnership and G8 commitments, pledged to open up its company register and as recently as June 2015 made good on that promise.



Access Info launched appeals against the refusals to provide access to the full company registers in a number of countries. In many cases these appeals did not get us very far primarily because of the problem of specific laws overriding the right of access to information.

In some cases our appeals had a minor impact, in others we have made significant progress towards achieving full, free access.

One instance of a smaller impact is Serbia where, although the Information Commissioner rejected our appeal on the grounds that the information is already available online (an exception in the Serbian freedom of information law), he did call on the Serbian Business Registers Agency to look into how it might improve the search functions on its website.

Similarly, in Switzerland, the Commissioner for Data Protection and Transparency called on the Federal Office of Statistics, which is responsible for the Register of Business Entities, to pay attention to our arguments and to review the conditions for accessing the data in the company registers during the next revision of the company register law. This recommendation came as part of a 25 November 2014 decision, issued over a year after Access Info filed the complaint, in which the Commissioner found that the Federal Office of Statistics was bound to respect the more specific laws on the company register, over the more general access to information law. The Commissioner found that since the law on access to information did not require the requestor to state the reasons for his or her request, there was no possibility of knowing whether the conditions for accessing the register under the specific company register laws had in fact been met in this case.

In two cases – those of the Czech Republic and Slovenia – legal appeals did result in advancing the case for free public access to the company register.

In Slovenia, the Information Commissioner ruled that we should have access to the company register database for free. The company registry body, the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES) had considered our request under the law on re-use of public information but had refused to process it because AJPES asserted that the request was incomplete because we had not stated who we were and what we planned to do with the information. The Information Commissioner ruled that AJPES was wrong to refuse to process our request because it in fact had been complete, and that therefore they should have provided us with access to the information free of charge and, on 27 January 2014, required AJPES to do so within 31 days. She also ruled that they should provide us with access to a document entitled "Structures of data in the Business Register of Slovenia for users".

However, instead of complying with the Information Commissioner's decision, the AJPES in February 2014 appealed against the Slovenian Information Commissioner, by presenting a case before the Administrative Court of the Republic of Slovenia. Access Info is still awaiting the ruling from the Court; legal experts have informed us that this process can take a couple of years.

In the Czech Republic, the Ministry of Justice at first denied us access to the company register database, but Access Info appealed with the help of a local lawyer and the refusal was annulled by the appeals body. The case was sent back to the Ministry of Justice for reconsideration on 19 November 2013. On 20 January 2014, after a series of follow-ups, the official response was eventually received from the Ministry of Justice. It stated that access could in fact be given for free, but that the database was very large and so it needed to be viewed in person and downloaded directly to a hard drive.

The next day, our partners visited the Ministry of Justice to pick up the USB stick containing the company register database. However, that database did not contain the names, dates of birth and addresses of individuals connected to these companies. At this juncture we were informed that there was a privacy issue which needed to be resolved.

Eventually, a full copy of the database was uploaded to the company register website on 30 May 2014, so it can now be downloaded in bulk for free, but it is missing the business area or concession of the company, and the names of company shareholders.

Following further requests, this time to the Ministry of Industry, a case is now underway in the Czech administrative court against the Ministry's refusal to provide access to data about companies that have been awarded liquor licenses. There is a particular interest in this subset of company information because of a scandal about fake alcohol which led to a number of deaths. The case was launched on 16 August 2014. The average time frame for a court case of this nature in the Czech Republic is of two years, so the verdict is expected in the second half of 2016.

A third country where we are still awaiting a final outcome to our appeal at the time of writing this report is Croatia, where Access Info and our partner, GONG, have two different appeals pending before the Information Commissioner. The first appeal is against the Croatian Chamber of Commerce, which denied our access to information request on the basis that the company register was protected by the Act on Database Secrecy. The other appeal is against the Croatian Ministry of Justice, which in addition to stating that the more specific company register laws overrides the access to information law, also argued that the database could not be provided due to the need to protect the efficiency and independence of their administrative procedures, which is one of the exceptions found in the Croatian Act on the Right of Access to Information. The appeal against the Ministry of Justice was presented on 9 December 2013 and the appeal against the Chamber of Commerce on 3 December 2014. It is expected that the Information Commissioner's decision on the complaints will be delivered within 2015.

OBSTACLE 9:

PERSONAL PRIVACY IS AN OBSTACLE... ...UNLESS YOU CAN PAY FOR THE DATA

In five of the 32 jurisdictions - Czech Republic, Italy, Serbia, Spain and Switzerland - we were specifically told in response to our access to information requests that we could not access the names of business owners for data protection reasons.

However, in all of these countries, provided one complies with the provisions for accessing the company register data, it is in fact possible to access the names of at least some individuals, whether they be legal representatives, CEOs or shareholders. For example, in Serbia you can access the names of present owners and their ownership percentage and the names of directors and those on other governance bodies such as steering committees. In Spain and in Switzerland you can access information about a company's administrators and its legal representatives, and in Italy you can search through the register using the name of an individual.

What this reveals is an inconsistent attitude towards the right to privacy: if you pay for access to the information, privacy is no longer considered an obstacle. But if you request access to the information using the freedom of information rules, you are told that personal privacy stands in the way.



TABLE 4: CAN YOU ACCESS THE NAME OF THE COMPANY OWNER (EITHER FOR FREE OR UPON PAYMENT)?

COUNTRY	COMPANY REPRESENTATIVE (LEGAL REP, CEO, BOARD OF DIRECTORS, ETC)	COMPANY SHAREHOLDERS AND/OR OWNERS	NONE
Armenia			X
Croatia	X		
Cyprus	X	X	
Czech Republic	X	X ¹	
Denmark	X	X	
Estonia	X		
Finland	X ²		
France	X		
Germany		X	X
Greece			X
Gibraltar			X
Hungary			X
Italy	X		
Kosovo	X	X	
Latvia			X
Liechtenstein			X
Lithuania			X
Macedonia	X	X	
Malta			X
Moldova		X	
Montenegro	X	X *	
Netherlands	X	X	
Norway			X
Romania	X	X	
Russia			X
Serbia	X	X	
Slovenia	X	X	
Spain	X		
Sweden		X ³	
Switzerland	X		
Ukraine		X	
United Kingdom	X		

¹ Technically available, though in copy of database obtained for free, shareholders were blanked out.

² Only through the Virre Information Service

³ In order to access the name it is required to previously explain how the information will be used.

During the research phase we also witnessed a step backwards in Finland, which is traditionally a very open country: On 1 January 2014 the Finnish Trade Register Act was amended so that personal identity codes are no longer shown on Trade Register extracts. The home addresses of those living abroad have also been removed from the register.

A positive development came in Slovenia, where the Information Commissioner ruled that we were allowed to access the names of individuals associated with companies in the register. That said, the decision also placed a limit on publishing that data in any way that would permit for searching by name.

Recommendations »

- » There should be more clarity over where the balance between the right of access to information and the right to privacy lies. Access Info Europe and OCCRP recommend that a protocol be established by all company registries by which those registering companies are informed that their data will be made public as a condition for registration. The full register, including the names of relevant individuals, should then be publicly available.

- » Privacy policies should always be applied consistently and it should not be possible to override supposed privacy considerations by simply paying for the information.

OBSTACLE 10

THERE ARE LIMITS ON REUSING THE DATA

In Slovenia, following an appeal presented in 2013 and decided in 2014, we won the right to access the full company register database, including the names of individuals. However, the Information Commissioner also imposed restrictions on the way in which we could re-use the information. The Information Commissioner stated that we could not make public the data in a way that would later allow for cross-checking of the names of individuals across companies, for data privacy reasons. The Slovenian Business registry has challenged even this decision before the Slovenian Administrative Court and the case is ongoing at time of writing (September 2015).

In Italy, we were told by the Business Register that it is “prohibited from engaging in the distribution and / or sales of data, and... in particular, to extract the data in an automated and massive way in order to speed up activities or create autonomous databases.”

The reasons underlying the limits on reuse seem to be either privacy (as in the case of Slovenia) or, in most cases, to protect the commercial model being used by the company registers. As noted in the introduction to this report, Access Info Europe considers that the registration of companies, being a public function mandated by law in the public interest, to be something that generates data that should fall under the scope of the right of access to information. As such, the reuse of this data should be permitted without restrictions, as international human rights tribunals have ruled that access to information is an intrinsic part of the fundamental human right to freedom of expression.



Recommendations



- » Company databases should not only be easy to access in bulk, but they should also be easy to re-use so there are no limitations on the right to reuse the data in ways that are consistent with the right to freedom of expression. Any limitations on reuse should be well justified and should be strictly necessary in a democratic society. It is legitimate to inform users that they may not be able to make use of the data obtained in ways that would violate personal data protection rules (such as using the information for marketing or spamming) but when it comes to permitting other members of society to know who the owners of companies are and in particular when it comes to investigations by public watchdogs such as journalists and human rights organisations, no limits should be placed on the use of the data.



"IT'S NONE OF YOUR BUSINESS!"

10 obstacles to accessing company register data using the right to information - 2016

Access Info Europe: www.access-info.org

OCCRP (Organized Crime and Corruption Reporting Project): www.occrp.org