OPEN OWNERSHIP

Effective consultation processes

for beneficial ownership transparency reform

Working Paper

June 2020

Executive Summary

Delivering improved beneficial ownership transparency is a process that should involve as many different groups as possible, from government officials to citizens and businesses.

Implemented effectively, streamlined data and information will help government officials, entrepreneurs, civil society, academics and law enforcement more easily achieve their different goals. However, getting key details wrong can end in increased bureaucracy and limited impact.

Consultation with these key stakeholder groups throughout the implementation process is a central part of any beneficial ownership transparency journey. Without this work, the system of collection and publication may not work well among impacted people and groups.

Highlighting the wider market efficiency and due diligence benefits of beneficial ownership reform for all businesses can expand the types of stakeholders that are consulted. As reform takes place, this can also help to create foundations for well used data that can deliver sustainable impact.

This briefing draws on OpenOwnership's experience supporting almost 40 countries to advance beneficial ownership transparency. Throughout this work we have gained insight into how consultation can be delivered within different political, social and economic contexts. This briefing provides government implementers and actors supporting reform with general guidance on effective consultation approaches. However, whilst the resources required to implement what is outlined below may not be available to most departments or agencies, help is offered from OpenOwnership, Open Government Partnership and others to support good consultation.

Introduction

OpenOwnership's implementation guide sets out six common elements of beneficial ownership reform:

- **01 Consider**: exploring the different policy benefits of beneficial ownership transparency and models of achieving these (see page 5).
- **02 Commit**: securing buy-in from key stakeholders; making public statements of intent (see page 7).
- **03 Legal**: creating or updating legal and policy frameworks to enable, support and mandate improved beneficial ownership transparency (see page 8).
- **04 Systems** and **05 Data**: systems development and data modelling and verification: creating or adapting ICT systems and business processes to collect and provide access to data on beneficial ownership; making sure the right field of data are collected to support priority use-cases and embedding mechanisms to increase data quality (see page 12).
- **06 Publish**: sustainable provision of openly licensed data according to a common standard (see page 15).

At each of these stages, consulting with key stakeholders can be critical to:

- Understand different user needs
- Identify potential pitfalls and challenges early on
- Find the connections between beneficial ownership disclosure and other issues such as public procurement or promoting inward investment
- Harness expertise from outside your organisation
- Build awareness of disclosure requirements and seed changes in behaviour that can support compliance
- Fulfil formal requirements for consultation

Each stage of the implementation cycle will require consultation and a thoughtful and tailored approach. An important question to consider throughout implementation is who will be affected by the decisions made. Ensuring there is a well-articulated answer to this question should lead to

effective decision-making on which people or groups must be involved to ensure accurate disclosure.

When identifying which stakeholder groups to involve, implementers should be guided by the policy goals that are being sought through beneficial ownership transparency. In general, stakeholders should include other government actors across different levels and agencies, civil society and private sector actors. The level of engagement with specific stakeholders in each group may vary according to the scope of reform, for example: where reform is targeted at companies in particular sectors such as extractives; at companies that are contracting with governments; or where reform is at sub-national level.

There is an understandable tendency in government to limit public communication to major policy announcements or occasions when there is a clear policy direction to communicate. Good consultation will have regular communication about a range of different parts of the project, so finding channels (e.g. blogs and social media) that demand less formal communication styles may be important to allow the project team to talk frequently about their work and keep everyone up to date.

Principles for good consultation and engagement

Good documentation

Throughout the process, documenting the inputs from different stakeholders, as well as keeping a good record and publishing updates on the progress of work and what has been learned, is essential to keep everyone who has participated up to date with progress and to provide a record of how and why key decisions have been made. This documentation will also be important when government officials or ministers change during implementation, to explain what has previously happened.

Maintain a good contact database

The aim throughout each stage of the consultation process should be to build a sustainable community of people interested in the reform who can be called upon to input. Finding respondents can be expensive and time-consuming, so ensuring those people or groups who do get involved can be easily contacted again supports success in the long term.

Develop ways to communicate with the largest audience possible

There is an understandable tendency in government to limit public communication to major policy announcements or occasions when there is a clear policy direction to communicate. Good consultation will have regular communication about a range of different parts of the project, so finding channels (e.g. blogs and social media) that demand less formal communication styles may be important to allow the project team to talk frequently about their work and keep everyone up to date.

01
Consider
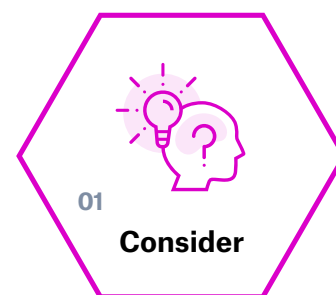
Consider

Prior to any formal commitment by a government to introduce beneficial ownership transparency reforms, it is likely that civil society, business and perhaps the government itself will have undertaken some type of formal or informal stakeholder engagement on what reform should look like. For civil society, this may be part of advocacy efforts aimed at making the case for reform.

Regardless of where consultation or stakeholder engagement is driven from, it is the 'Consider' stage of implementation that provides an opportunity to discuss the broadest questions about what beneficial ownership transparency should look like in a given country context. This is an opportunity to engage the widest possible range of views from all the people and groups likely to be most impacted, as well as those that will be indirectly affected.

Key areas for discussion at this stage may include:

– Which types of entities should be required to disclose beneficial ownership information?
– Who should have access to beneficial ownership data that is disclosed, and how should they be able to access it?
– What should be the breadth of disclosure? E.g., should it include relatives of beneficial owners?
– What should be the timeline for achieving disclosure?

For governments undertaking consultation at this phase, this is an opportunity to gather insight into the different groups affected, spot consequences that have not been considered before and help identify expertise that can support later delivery. On all sides, it is an opportunity to be exposed to the views of the different constituencies impacted in order to better understand their expectations for reform.

It is also critical at this point to clearly define what is, and what is not, in scope for consultation at the current stage, along with clear timelines and processes for participation. This will support everyone who may wish to get involved and provide a clear understanding on how to participate. Whilst the process should be as broad, inclusive and transparent as possible, successful consultation should be grounded in a clear remit and be time-bound. This will help ensure responses are useful in guiding decision-making and that the consultation facilitates subsequent progress.

To achieve the broadest engagement possible, a diverse set of consultation processes should be considered for this stage, which will allow people and groups at all levels of awareness and expertise to participate. Starting with a long list of all the different types of people or groups impacted by the reform, different approaches should be selected that raise awareness of the proposed changes and support participation from a diverse set of audiences. Effective consultation requires appropriate financial and human resources, however when done well, this will be a valuable investment that increases buy-in from key stakeholders and ultimately supports effective implementation.

Written consultation

Inviting respondents to give their view on a range of specific questions about the reform. Can be delivered offline or online.

Who does it reach?

Groups already aware of issues around beneficial ownership such as:

– specialist civil society;
– businesses, business associations and professional service providers most impacted by reform;
– academics interested in company law.

Recommendations

Make sure background documents and questions use accessible language. Ask key stakeholders to 'pilot test' the consultation documents first.

Give respondents the choice to reply only to the questions relevant to them.

Publish all the responses (with consent of respondents) along with your analysis of findings.

Broadcast or online content/campaign

Using video, social media, written or interactive voice response surveys, blogs or mainstream media outreach to raise awareness of potential reforms, and to support input and engagement from a broad range of audiences.

Who does it reach?

This is an opportunity to raise awareness of the issue and to encourage new groups to come forward to take part in the consultation. You might engage:

– wider business community;
– other civil groups not directly engaged in the anti-corruption and good governance agenda
– individual citizens.

Recommendations

Use example stories to explain the need for beneficial ownership transparency, and what it would mean.

Provide a mix between light-touch engagement (e.g. tweets, phone-ins), and signposting people to the full consultation.

Be prepared for some negative inputs: recognising that it helps to know about policy opposition early rather than late.

In-person meetings and workshops.

Much like written consultation, this approach is likely to engage those people or groups with the greatest existing interest in the area. Ensuring geographic representation is important, these should be planned to take place in as many areas as possible, and/or travel support for participants identified.

Who does it reach?

This approach is likely to engage those groups already aware of the issues around beneficial ownership.

However, if sequenced after a public awareness-raising campaign, it can be possible to engage newly interested people in this phase of consultation.

Recommendations

Prepare short briefing materials outlining the goals of the proposed reforms and key areas for consultation, for participants to read in advance.

Workshops and roundtable events can provide an opportunity for different stakeholder groups to better understand each other, as well as for you to gather their insights, ideas and concerns.

Workshops could be hosted by government actors or a third party, and a professional facilitator may help get the most out of the event.

Choose a workshop design that maximises the input you get from participants. Small group work with individual table rapporteurs taking notes may help you hear from more voices than an event all run in plenary.

Key outcomes of the 'consider' stage

1. There is greater awareness, across a more diverse set of groups and citizens of what beneficial ownership reforms are.

2. There is a group of key stakeholders who are well-informed about the proposed reforms and can be called upon and engaged further as the reform moves forward.

3. For government, policy goals should be clearly defined, and expectations should be effectively managed at this stage. If there are specific elements of beneficial ownership reform that are not for consideration or in scope, this should be made clear to everyone participating.

4. A draft of an official document such as a resolution on beneficial ownership reform may be a useful outcome from this initial phase that informs development of a commitment.

02
Commit

Commit

Commitments to beneficial ownership disclosure should be ambitious, specific and achievable, and clearly articulate the policy objectives and intended benefits. Commitments are stronger when they are mutually reinforcing with relevant international standards, such as the Extractive Industries Transparency Initiative (EITI) Standard and the Principles for Effective Beneficial Ownership Disclosure. Achievable commitments build on the current context (for example, if a non-public register already exists, a commitment is made to making it publicly available as open data).

Effective beneficial ownership disclosure, and the underlying policy and legal work required to achieve it, are rarely delivered by a single department or agency in government. Coupled with this, the efficacy of the reform relies on the use of new data by a broad range of stakeholders. As such, there is scope at the 'Commit' stage for government-related agencies and departments, civil society and business to make commitments to deliver reform. However, throughout the process it is important to have a clear understanding of which agency or department is the lead for implementation.

Conventional written consultation (online or offline)

Respondents are asked to give their view on a range of specific questions about the nature of the proposed commitment.

Likely audiences

This approach is likely to engage those groups already aware of the issues around beneficial ownership:

– Civil society
– Professional service providers and businesses/business groups most impacted by reform
– Academia

Utilise existing multi-stakeholder fora

Use these fora to gather views on proposed commitments and create an opportunity for other groups to commit to supporting the effective delivery of the reform. Connecting the reform process to established networks with shared interests can increase buy-in and improve sustainability of the reform process.

Likely audiences

This approach is likely to engage those groups already aware of the issues around beneficial ownership. Where existing multi-stakeholder groups exist, these should be considered opportunities for engagement. These might include:

– Chambers of Commerce or other groups of business
– OGP Multi-stakeholder Forum
– EITI Multi-stakeholder Groups
– Anti-Money Laundering and anti-tax evasion fora

Key outcomes of the 'commit' stage

1. Clear, time-bound, measurable commitments to beneficial ownership transparency are made and meet well-defined policy goals and incorporate feedback from stakeholders.
2. A named lead agency for implementation of the reform and clearly defined roles for other agencies involved in aspects of delivery.

Legal

Once a commitment to beneficial ownership disclosure has been made and the policy goals are clearly understood, most jurisdictions will need some form of legislation to mandate the disclosure on those entities in the scope of the reform. This will often include both new obligations on entities disclosing as well as sanctions imposed for non-compliance.

Ensuring beneficial ownership data is disclosed well relies on having effective, well-drafted legislation in place that enables beneficial ownership data to be collected and published and used to meet the policy goals of reform. At this stage of the process, many questions asked in the 'Consider' stage of consultation will be answered and decisions will be taken about what disclosure will look like and who it will impact.

There should be a formal, time-bound period of public consultation to allow stakeholders to review and comment on the draft legislation or regulation that has been developed. At this stage, there is a risk that broad-based public consultation will be reduced in favour of more targeted consultation focussed on people or groups who can most easily engage with the technicalities of beneficial ownership disclosure's legal drafting. Although it is important to ensure expert voices with legal and business expertise are able to input at this stage, it is also critical to ensure that civil society expertise and wider public consultation continue.

In addition to shaping reform to better meet the needs of users, engaging civil society and the wider public at this stage puts in place foundations for monitoring and follow-up consultation after the initial implementation. Delivering formal consultation effectively requires appropriate resources beyond the initial implementation phase This is particularly important for a comparatively new reform like beneficial ownership transparency; as good practice and international standards are evolving quickly, the initial implementation will need to be revisited, iterated and improved over time. Calibrating the initial implementation to stakeholder needs as accurately as possible will make this subsequent work easier and more cost effective.

Communicating about the potentially complex elements of legislation for beneficial ownership reform can be challenging. Explaining choices about disclosure thresholds, which entities are required to declare and for which persons' information is required, can be daunting. However, tools such as corporate ownership diagrams and models of final data disclosure under different policy choices can help engage stakeholders in this process. For example, diagrams like the one shown in Fig. 1 can be used to facilitate discussion about what information would need to be disclosed for companies with different ownership structures:

Figure 1: Illustrative diagram to help communicate how a beneficial ownership structure might be represented in data
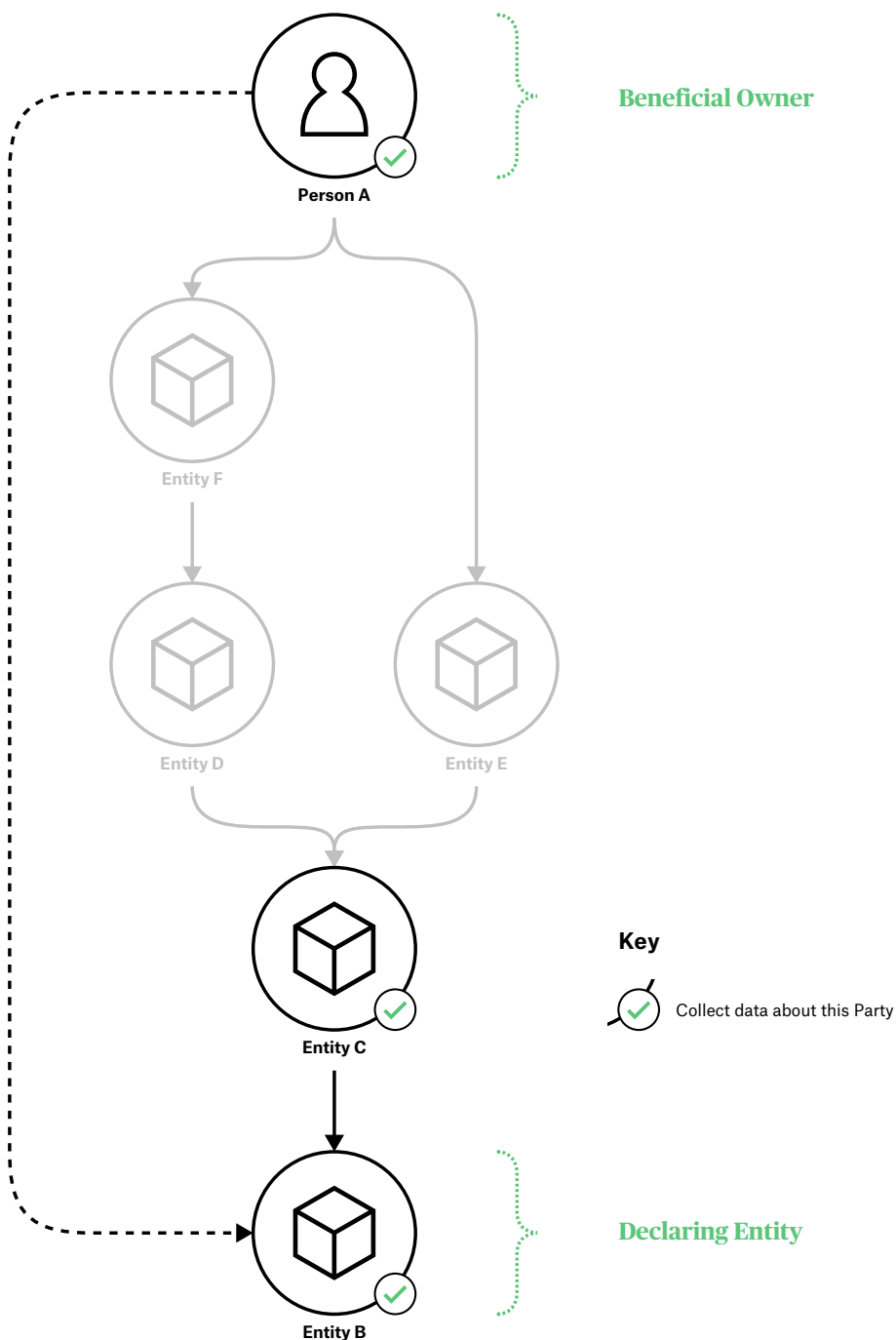
Diagrams like this, which use the beneficial ownership visualisation system (BOVS), are a really useful way to show how different choices in beneficial reform will effect the data finally produced and how useful it may be for different use cases. In this example disclosure framework 'Person A' is the beneficial owner and has an obligation to report that to 'Entity B', which is the declaring entity.

Maintaining stakeholder engagement with the reforms at this stage is critical to managing the expectations about what final disclosure will look like. As decisions are made about the scope and detail of disclosure, it is unlikely that every interested group will get everything they wish for from the reform. Maintaining broad engagement at this stage will help manage expectations and create a constructive community to engage in the long term as reforms are further developed through secondary legislation or regulation and system design.

When secondary legislation is being drafted, clear decisions will need to be made on the trade-off between getting the right depth of information from disclosing entities and ensuring that the process of disclosure is as straightforward for disclosing entities as possible. During this stage, it is important to consult with stakeholders who will need to use the data to achieve the policy goals of disclosure.

Decisions that may appear to legal drafters as minor administrative concerns may have a significant impact on the fields of data collected and published, and the format in which data is made available to users. For example, specifying a requirement to publish identifying information for companies, such as company number, significantly improves the ability of users to analyse the published data alongside other datasets. Details such as these are critical to creating impactful use of beneficial ownership data.

In addition to consulting on the content of draft legal reforms, it is during this stage that a detailed plan for the subsequent stages of implementation should be developed. Consulting with stakeholders to create a clear roadmap for reform that outlines actions, responsible agents and resources available to support implementation will help stakeholders understand what will happen next and manage expectations about timescale. Agreeing a clear roadmap also sets in place foundations for stakeholders to monitor progress and continue to support implementation.

Regular publishing

It is important that policymakers are open and transparent about what can and cannot be achieved in the reform. Implementing departments or agencies and other parts of government involved should inform and educate all stakeholders about the boundaries of their powers. Publishing regular updates via blogs or social media, releasing policy papers and explanatory notes will support groups to understand the drivers for reform and any constraints governments face. Aim to produce different types of communication with well-designed content that presents the choices to be made in language and a level of detail different audiences can understand.

Likely audiences

Aim to reach:

– Civil society
– Businesses/business groups most impacted by reform
– Academia
– Law profession
– Professional service providers

Conventional written consultation (online or offline)

Respondents are asked to give their view on a range of specific questions about the nature of the proposed commitment. The use of diagrams and visual tools for communication is important here to explain the choices to be made.

Beneficial ownership reform often takes place in contexts where more powerful actors wish to shape disclosure to meet their needs. Given this, it can be useful to allow submissions to be made separately by each party, with responses published after the submission deadline to retain transparency.

Likely audiences

This approach is likely to engage those groups already aware of the issues and with the expertise to input into consultation on legislation:

– Civil society
– Businesses/business groups most impacted by reform
– Academia
– Legal sector
– Professional service providers

Utilise existing multi-stakeholder fora

Use these fora to ensure the widest range of people and groups understand the choices to be made.

Likely audiences

This approach is likely to engage those groups already aware of the issues around beneficial ownership. Where existing multi-stakeholder groups exist, these should be considered opportunities for engagement. These might include:

– Chambers of Commerce or other groups of business
– OGP Civil Society networks
– EITI Multi-stakeholder Groups
– Anti-Money Laundering and anti-tax evasion fora

Key outcomes of the 'legal' stage

1. Decisions made on key parameters and aspects of reform, informed by stakeholder responses and reflected in draft primary and/or secondary legislation.
2. Stakeholders are aware of the scope and limitations of reform.
3. A roadmap for implementation of reform is agreed and published.

04
Systems

05
Data
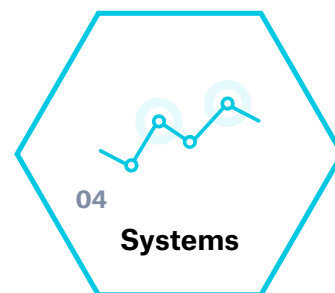
Systems and Data

The goal of this stage of implementation is not just to build a system of data collection, processing and publishing that conforms to new legislation, but also to build a well-designed system that serves the two main user groups: those disclosing data and those using data. To do this well means applying the principles of user-centred design.

User-centred design requires doing the following four things:

1. **Requirements gathering**: understanding and specifying the context of use
2. **Requirements specification**: specifying the user and organisational requirements
3. **Design**: producing designs and prototypes
4. **Evaluation**: carrying out a user-based assessment of the website or system developed

There are significant resources available online on how to design good user-centred technology products, and a number of governments around the world have laid out their approaches to this including Argentina, Canada, the UK and the United States. Below, we sketch out some approaches to achieving each of the four areas of good user-centred design.

Table 1: Approaches to achieving good user-centred design

Method	Output	Sample size	When to use
Focus groups A focus group involves encouraging an invited group of intended/actual users of a website or system to share their thoughts, feelings, attitudes and ideas on a certain subject.		Low	Requirements gathering
Questionnaires Questionnaires are a means of asking users for their responses to a predefined set of questions and are a good way of generating statistical data.	Statistical	High	Requirements gathering and evaluation
Interviews Interviews are usually employed early in the design process in order to gain a more detailed understanding of a domain/area of activity or specific requirements.		Low	Requirements gathering and evaluation
Usability testing A person is invited to attend a session in which they are asked to perform a series of tasks using the system while a moderator takes note of any difficulties they encounter.	Statistical and non-statistical	Low	Design and evaluation
Participatory design Participatory design does not just ask users for their opinions on design issues, but actively involves them in the design and decision-making processes.		Low	Design

Based on an approach used by digital agency Inviqa.[1]

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1   Inviqa, Alexander Baxevanis, "User-centred design: 6 popular UCD methods". Available at: https://inviqa.com/blog/user-centred-design-6-popular-ucd-methods [Accessed 26 June 2020]

Depending on the particular system that is being developed, different user groups will need to be consulted. The following illustrates four common types of system that implementers develop where user-centred design can strengthen data use and subsequent policy impact:

– **Development of a data input and storage system for use by staff at company registry:** consult staff who will input data to the system and access data stored within it, and representatives of companies who will be required to provide information to registry staff.

– **Development of a data input system for use by companies and/or professional service providers:** consult people who will be submitting data; for example, those working at companies that will need to disclose. Professional service providers may work with data for multiple companies and therefore may have different needs to companies submitting their own disclosure.

– **Development of a public website to publish beneficial ownership disclosures:** consult all groups of users who will need to use beneficial ownership data in order to achieve policy impact. For example: journalists, civil society organisations, small and large businesses, general public.

– **Development of web services to share (additional non-public) data with key stakeholders:** consult each stakeholder group; for example, staff in government departments such as tax authorities and financial intelligence units.

Engaging as broadly as possible with these user groups and undertaking good user-centred design with them will be key to creating an easy-to-use data collection system. Specific effort should be made to target 'edge cases' – users with atypical requirements such as very complex ownership structures, for example – to ensure the system can function across the full range of requirements that are needed.

Key outcomes from the 'data and systems' stage

1. Technical systems are built to collect, store and publish beneficial ownership data that fulfil the requirements of legislation and meet the needs of user groups.

2. Key user groups are aware of the new systems and ready to use them when the systems go live. For some groups such as registry staff, inputs at this stage can be used to help develop formal training on using the new systems.

3. Evaluation identifies aspects of the system to monitor or test closely after launch along with areas for future improvement, such as features not initially included in the system.

06

Publish

Publish

Once a system is designed and put live, and data is collected and published, the focus of engagement should be on gaining feedback on the live system. This will ensure that the data that is disclosed can be effectively used to achieve the policy goals.

Any user-centred design process will naturally be limited by the amount of engagement and testing that is possible within the time and resource constraints of a particular implementation. It is not until a system is made live and all users have interacted with it that the quality of the system can be properly tested.

To ensure a good feedback loop, some basic approaches should be followed:

1. Retain budget for further changes and modifications to the system to allow for changes based on user feedback. Earlier consultation with government agencies that influence budget decisions, and that benefit from using the data, will increase buy-in for sustaining reform after the initial implementation.

2. Maintain user-research teams during the live phase to ensure you have the capacity to keep testing the system when it is live.

3. Maintain a users-group who will feedback their experiences of using the system through short questionnaires, further interviews or focus groups.

4. To the greatest extent possible, ensure that the system for collection and publication has analytical capabilities built in to understand how users are interacting with it, where common problems are occurring and where users are terminating a transaction.

A live digital service will always require testing, maintenance and improvement. Ensuring the responsible department and agency has a budget for this long term, or a clear plan to ensure budget is available for monitoring and improvement, will be essential to the sustainability of the work.

Civil society can play an active role in assessing early releases of data and driving future improvements, and experience from the UK has shown that convening groups of users to perform analysis on early data release can lead to the identification of easily solvable problems that increase the usability of data and the overall policy impact.

Following the release of UK beneficial ownership data in 2016, DataKind UK, OpenCorporates, Spend Network and OCCRP brought together thirty volunteer data scientists to analyse the initial data disclosed on the register. One key problem identified was that the data entry system allowed for free text entry for a number of fields. This had led to over 500 different ways of recording "British" as the nationality of the person filing. A simple fix – inserting a pre-formatted list of nationalities – provided the clear remedy and UK Companies House was able to amend the system quickly to include this change. This markedly improved the usability of the data.

Key outcomes from the 'publish' stage

1. Published data is being used by people internal and external to governments in ways that enable policy impact.

2. There are mechanisms or systems for data users to feedback ideas to improve the system.

3. Statistics on user access to published data is being collected.

Conclusion

Explaining beneficial ownership reform can be challenging. It is a technically complex area where it is not always immediately obvious how policy or legislative choices will affect the data that is disclosed, and what impact such changes will have on the use of data to achieve policy goals.

Using creative, visual methods to engage all interested parties can be a useful way to cut through some of this complexity, show what will and will not be in scope and what information will be available once published.

It is also important to talk about the reforms from a number of different policy perspectives to engage stakeholders beyond the anti-corruption sphere. Doing so will strengthen anti-corruption measures too, the Anti-Corruption Resource Centre (U4) makes the case for this in its recent publication, "Overcoming the pitfalls of engaging communities in anti-corruption programmes", stating: "It is often more important to infuse anti-corruption elements into public service delivery projects than to focus on anti-corruption as a singular issue."[2]

Creating a high-quality open register of beneficial ownership is a public service delivery project with positive impacts for effective governance, markets and public oversight. It is important therefore to approach the delivery of beneficial ownership reforms with a holistic view of the possible impact and value. This will ensure that diverse and representative views are actively sought throughout the process of design and implementation and increase the impact and sustainability of reform.

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[2] U4 Anti-Corruption Resource Centre, "Overcoming the pitfalls of engaging communities in anti-corruption programmes". p. 11. 2020. Available at: https://www.u4.no/publications/overcoming-the-pitfalls-of-engaging-communities-in-anti-corruption-programmes.pdf [Accessed 24 June 2020].

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