

LEGAL REGIME OF BENEFICIAL OWNERSHIP IN CIVIL LAW SYSTEMS

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Annotation: This article examines the legal regime governing beneficial ownership within civil law jurisdictions, analyzing how these systems conceptualize, regulate, and implement beneficial ownership transparency requirements. Unlike common law systems that rely on trust structures and equitable ownership concepts, civil law jurisdictions have developed distinct approaches to beneficial ownership that reflect their codified legal traditions and emphasis on direct ownership rights. The study explores the evolution of beneficial ownership regimes across major civil law countries including France, Germany, Italy, and Spain, examining their implementation of European Union directives and international standards. The research demonstrates that while civil law systems initially lacked comprehensive beneficial ownership frameworks due to their limited recognition of trust structures, recent regulatory developments driven by anti-money laundering initiatives and Financial Action Task Force (FATF) recommendations have led to sophisticated beneficial ownership disclosure regimes. The article concludes that civil law systems are successfully adapting their legal frameworks to accommodate beneficial ownership transparency while maintaining their fundamental principles of codified law and direct ownership structures.

Keywords: Beneficial ownership, civil law systems, anti-money laundering, corporate transparency, ultimate beneficial ownership, legal entity customers

This article examines the legal regime governing beneficial ownership within civil law jurisdictions, analyzing how these systems conceptualize, regulate, and implement beneficial ownership transparency requirements. Unlike common law systems that rely on trust structures and equitable ownership concepts, civil law jurisdictions have developed distinct approaches to beneficial ownership that reflect their codified legal traditions and emphasis on direct ownership rights. The study explores the evolution of beneficial ownership regimes across major civil law countries including France, Germany, Italy, and Spain, examining their implementation of European Union directives and international standards. The research demonstrates that while civil law systems initially lacked comprehensive beneficial ownership frameworks due to

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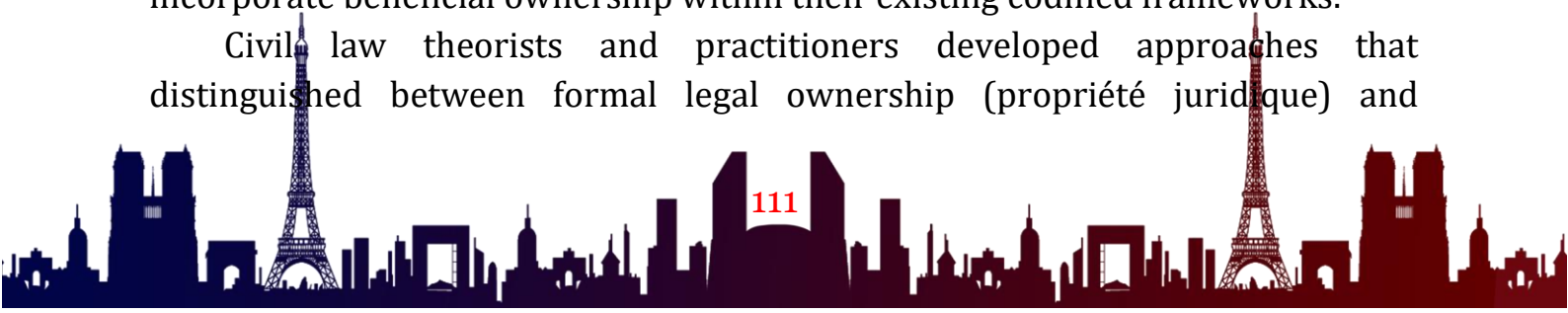
The development of beneficial ownership concepts in civil law systems represents a departure from traditional civilian legal theory, which emphasizes direct ownership and formal legal relationships. Classical civil law systems, derived from Roman law principles and codified in comprehensive legal codes, traditionally recognized ownership as a unified concept where legal title and beneficial enjoyment coincided. This contrasted sharply with common law systems, where the separation of legal and equitable ownership through trust structures had been recognized for centuries.

The need for beneficial ownership frameworks in civil law systems emerged from practical necessities rather than theoretical developments. The rise of complex corporate structures, international financial flows, and sophisticated money laundering schemes revealed vulnerabilities in traditional civil law approaches to ownership identification. Criminal organizations and corrupt individuals exploited the formalistic nature of civil law ownership concepts by creating layers of legal entities that obscured the identity of true controllers while remaining technically compliant with existing laws.

International pressure from organizations such as the FATF, the Organization for Economic Cooperation and Development (OECD), and the European Union accelerated the development of beneficial ownership frameworks in civil law jurisdictions. These organizations recognized that effective anti-money laundering and counter-terrorism financing required transparency regarding the natural persons behind corporate structures, regardless of the underlying legal system's traditional approaches to ownership.

The adaptation of beneficial ownership concepts to civil law systems required careful consideration of fundamental civilian legal principles. Unlike common law systems, where equity developed as a parallel system to address inadequacies in legal ownership concepts, civil law systems needed to incorporate beneficial ownership within their existing codified frameworks.

Civil law theorists and practitioners developed approaches that distinguished between formal legal ownership (*propriété juridique*) and



substantive economic control or benefit (contrôle économique or bénéfice économique). This distinction allowed civil law systems to maintain their emphasis on codified relationships while recognizing the practical reality that legal owners might not be the true controllers or beneficiaries of corporate entities.

The concept of "ultimate beneficial ownership" (UBO) became particularly important in civil law systems as it provided a framework for looking beyond formal ownership structures to identify natural persons who ultimately control or benefit from legal entities. This approach aligned with civil law systems' preference for clear, definitive rules while addressing the transparency concerns that drove international beneficial ownership initiatives.

Civil law systems integrated beneficial ownership requirements through various mechanisms that respected their codified traditions while achieving transparency objectives. Legislative codification became the primary method, with countries enacting specific statutes or amending existing corporate and commercial codes to include beneficial ownership disclosure requirements²².

Administrative implementation through regulatory agencies provided flexibility within the codified framework, allowing civil law systems to develop detailed procedures and requirements while maintaining legislative oversight. This approach proved particularly effective in countries like Germany and France, where administrative law plays a significant role in implementing statutory requirements.

International treaty incorporation allowed civil law systems to implement beneficial ownership requirements as part of their international obligations, providing legal basis for requirements that might otherwise conflict with traditional ownership concepts. The European Union's directives provided a particularly important framework for harmonizing beneficial ownership requirements across civil law member states. Germany's federal structure has created a complex but comprehensive approach to beneficial ownership regulation that reflects both its civil law traditions and its federal constitutional framework.

The German beneficial ownership register (Transparenzregister) was established under federal law but implemented through the Länder (federal states), creating multiple layers of oversight and administration.

German law adopts a relatively low threshold for beneficial ownership, defining beneficial owners as natural persons who directly or indirectly hold more than 25% of the capital or voting rights, or who otherwise control the



entity. However, German implementation faced significant privacy concerns, and following the EU Court of Justice decision, Germany restricted public access to beneficial ownership information.

The German approach illustrates how federal civil law systems can implement beneficial ownership requirements while respecting both constitutional limitations and international obligations. The integration of beneficial ownership requirements with Germany's existing commercial register system (Handelsregister) demonstrates the civilian preference for systematic, integrated approaches to legal regulation.

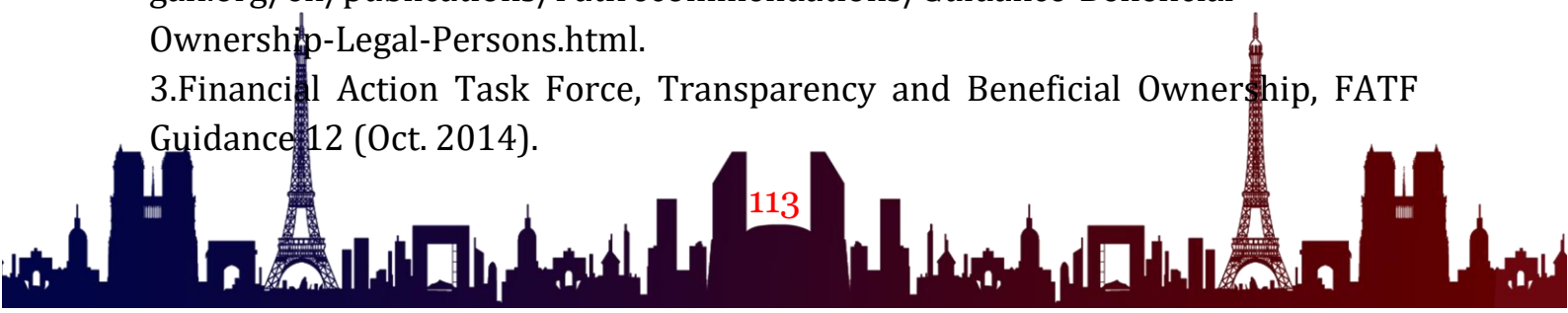
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The development of beneficial ownership regimes in civil law systems represents a remarkable adaptation of legal frameworks that traditionally emphasized formal, direct ownership relationships. Through innovative regulatory approaches, comprehensive legislative frameworks, and sophisticated administrative implementation, civil law jurisdictions have successfully integrated beneficial ownership transparency requirements while maintaining their fundamental characteristics and systematic approaches to legal regulation.

The comparative analysis reveals that civil law systems have developed diverse but effective approaches to beneficial ownership regulation, each reflecting national legal traditions while meeting international standards. The European Union's coordinating role has been particularly important, providing common standards while allowing flexibility for national implementation that respects different civilian legal traditions

References:

1. See generally Austin W. Scott, William F. Fratcher & Mark L. Ascher, Scott and Ascher on Trusts § 1.1 (5th ed. 2006).
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4. John Henry Merryman & Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* 1-4 (4th ed. 2018).

