

Annex 2 [Note verbale reference: CU 2023/225/DTA/CEB/CSS]

“Progress made and challenges encountered in implementing resolution 9/1”

States parties are invited to provide relevant information in line with paragraph 25 of resolution 9/1, entitled Sharm el-Sheikh declaration on strengthening international cooperation in the prevention of and fight against corruption during times of emergencies and crisis response and recovery, in which the Conference:

*[Requested] the secretariat to submit to the Conference of the States Parties at its tenth session a report on **progress made and challenges encountered in implementing [resolution 9/1]**¹.*

A. Contact Information

Please provide contact details for potential follow-up questions. Contact details will be treated confidentially.

Country:

Government Agency:

Department:

Contact Name:

Position:

Phone Number:

Email:

B. Questions

1. Progress made

Please describe the measures or steps your country has taken (or is planning to take, together with the related appropriate time frame) to implement operative paragraphs 1 to 21 of resolution 9/1. *Please state the relevant operative paragraphs in your answer.*

The Rapid Response and Special Police Services National Bureau of Investigation Asset Recovery Office takes the opportunity to add remarks in connection with point 11, 13 and 18 of Resolution 9/1 of the Sharm el-Sheikh declaration and highlight a few challenges.

11. - Reaffirms States parties’ commitment to making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate and timely beneficial ownership information is available and accessible to

¹ Please note that the secretariat has collected information on the implementation of paragraphs 22 and 23 of resolution 9/1 separately.

competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries, where consistent with the fundamental principles of domestic legal systems, and encourages States parties to take such measures also during times of emergencies and crisis response and recovery;

The legal background of the Central Bank Account and the Beneficial Owner Registrations:

- DIRECTIVE (EU) 2019/1153 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019;
- DIRECTIVE (EU) 2018/843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL;
- COMMISSION IMPLEMENTING REGULATION (EU) 2021/369 of 1 March 2021.

Act XLIII of 2021 on Setting Up and Operating the Data Reporting Background Relating to the Identification Obligation of Providers of Financial and Other Services. The entry into force of the above-mentioned law was 22.05.2021. The ultimate goal of the Central Registration is to get relevant information about the beneficial owner (minimum 1 private person) who is actually the owner of a bank account or a company. The National Tax and Customs Administration of Hungary (hereinafter: NTCA) supervises this registration as service provider and not as tax authority. This authority isn't entitled to conduct official procedures relating to the operation of the Central Registration.

Entitled authorities to this Central Registration:

- LAW ENFORCEMENT AGENCIES,
- NATIONAL SECURITY SERVICES;
- NATIONAL PROTECTIVE SERVICE;
- COUNTER TERRORISM CENTRE;
- NATIONAL TAX AND CUSTOMS ADMINISTRATION;
- PUBLIC PROSECUTOR'S OFFICE;
- CRIMINAL COURTS.

The content of Beneficial Owner registrations:

- national registration number of the data provider (financial institutions);
- the name, address, registration number and tax number of the data provider;
- data of beneficial owner (surname, forename, citizenship, date and place of birth, address or stay of residence);
- reliability index of the beneficial owner ("TT" index).

Expected result of the Central Registration:

- swift information exchange,
- effective cooperation with foreign authorities,
- identification of unknown perpetrators,
- tracing and confiscating of proceeds of crimes.

According to the Article 22 Section (1), (2) and (3) the DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law:

A system of interconnection of registers (European central platform) should have been established. The system of interconnection of registers shall be composed of: the registers of Member States "the platform" the portal serving as the European electronic access point.

Member States shall ensure the interoperability of their registers within the system of interconnection of registers via the platform.

In practice, the use of the BORIS system would greatly help the work of domestic law enforcement agencies through the rapid sharing of data in the European-level database of actual owners.

According to Directive (EU) 2019/1153 at least the Asset Recovery Offices should be designated from amongst the competent authorities and have direct access to the information held in centralised bank account registries when preventing, detecting or investigating a specific serious criminal offence or supporting a specific criminal investigation, including the identification, tracing and freezing of assets. Member States should have brought into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 August 2021.

The central bank account and the beneficial owner registers will aid the efficiency of both the national investigations and the international cooperation, but it has to be mentioned that very often the identification of the actual perpetrators are hindered by the fact that in many cases companies and bank accounts are written in the names of strawmen, making it difficult to keep track of money deriving from crimes both abroad and domestically. Another problem is the exact description of some names due to the use of different punctuation and writing.

According to Section 3/C. of the Government Decree No. 485 of 2015. (XII. 29.) the National Tax and Customs Administration is appointed to carry out the tasks in connection with the BO Registry and manage the BO data. This includes obtaining BO data from the financial institutions and the maintaining the BO Registry that contains the beneficial ownership information of the legal entities.

The BO information included in the BO Registry are updated monthly, the financial institutions forward the BO data by the 5th of every month, based on the data available in their registers on the last day of the preceding month.

After a successful registration the natural persons can access the BO Registry via their Client Gates (in Hungarian: Ügyfélkapu), the authorisation is based on the authorities and connected to the registered natural persons on behalf of the authorities. The access is provided via the webpage mentioned above (kny.nav.gov.hu). During the registration the National Tax and Customs Authority (NTCA) being the registration body and managing the BO Registry automatically examines whether the authority fits for the definition of the BO Act.

The authorities (law enforcement bodies, prosecutors, supervisory bodies, police, the financial intelligence unit and tax agencies) have the broadest access to the BO Registry. These organizations can fully acquaint themselves not only with the actual but also with the historical data contained in the Registry, furthermore they are entitled to know the data-supplier financial institution and the data of the so-called discrepancy reports made by the service providers or the authorities if they detect a substantive difference regarding the beneficial ownership between the beneficial ownership information known to them and the information recorded in the beneficial ownership registry.

13 - Encourages States parties to reinforce and enhance inter-agency cooperation at all levels to prevent individuals and companies, other legal entities, and systems used to transfer money,

as well as non-regulated or unregistered financial or commercial or non-commercial entities at serious risk of being abused for corruption and money-laundering, from committing or being used to facilitate acts of corruption, including during times of emergencies and crisis response and recovery, and to encourage and support companies and financial institutions in this regard, including to make better use of resources already expended;

The tasks defined by the Council Decision 2007/845/JHA of 6 December 2007 are fulfilled by the designated Asset Recovery Unit in Hungary.

Tasks – related to the cooperation concerning the tracing and identification of proceeds of crime and other crime related property – are performed by the Rapid Response and Special Police Services National Bureau of Investigation, Asset Recovery Office (NBI ARO, as a department) since 1st March 2015.

The four division of the NBI ARO are as follows:

- **Investigating Division,**
- **International Relations Division;**
- **Asset Reconnaissance Division;**
- **Financial Analytic Division.**

The legal background on the competences of the Rapid Response and Special Police Services National Bureau of Investigation Asset Recovery Office (hereinafter also as ARO):

Tasks, related to the cooperation concerning **the tracing and identification of proceeds of crime** and other crime related property – as established by Section 17 of Government Decree 329/2007. (XII.13.) on the Police forces and on the tasks and competences of the Police forces and by Act CLXXX of 2012 on cooperation in criminal matters with the Member States of the European Union and international cooperation of law enforcement authorities – are exclusively performed by the ARO.

In the framework of the above-mentioned the Hungarian ARO conducts - on the basis of direct requests from foreign AROs of EU member states and CARIN – asset tracing on national level with sole, nationwide competence.

To summarize the Hungarian ARO conducts asset recovery procedures to support the investigation both of domestic LEA authorities (Police, Tax and Customs Authority, prosecutor's offices) and foreign authorities' investigations.

The NBI ARO International Relations Division is responsible for international asset tracing (incoming and outgoing requests), keeping contact with other AROs, CARIN and ARIN partners.

In order to fulfil the requests in the most effective way to the foreign authorities, the competent authorities must verify the range of data, which can be requested in the framework of ARO cooperation via SIENA or via CARIN channel. Our foreign partner authorities via judicial channel may initiate coercive measures, search orders, the seizures of assets and sequestration orders by sending European Investigation Order, Freezing order or Mutual Legal Assistance.

The ARO HU could provide several examples of good practices in connection with its activity to aid the criminal investigations of domestic and foreign law enforcement authorities.

As a result of the identification of criminal assets, coercive measures are being introduced almost on a daily basis in domestic and foreign investigations. Such co-operation efforts may take the form of requests for international mutual legal assistance, European Investigation Orders, Freezing orders and Joint Investigation Teams (JITs). Proceedings can also be conducted in connection with any crime that generates wealth, including the proceeds of corruption.

The Hungarian legislations clearly state that it is obligatory for all investigators to check if asset tracing procedures could be started in criminal investigations (regardless of the nature of the crime).

The proposed **Directive of European Parliament and Commission and of The Council (dated: 25.05.2022) on asset recovery and confiscation** will increase the efficiency of the international cooperation in the future.

18. - Encourages States parties to, as appropriate and in accordance with domestic law and their respective applicable international obligations, develop and strengthen the use of reliable, high-quality, timely and effective electronic communication channels that enable anticorruption bodies, supreme audit institutions and other relevant entities to rapidly share timely information at the national and international levels through existing mechanisms, including those of the International Criminal Police Organization (INTERPOL), and consider accepting electronic copies in the sending and receiving of mutual legal assistance requests, including during times of emergencies and crisis response and recovery, and notes the new Global Operational Network of Anti-Corruption Law Enforcement Authorities, which aims to develop a quick, agile and efficient tool for combating cross-border corruption offences, strengthen communication exchange and peer learning between competent anti-corruption law enforcement authorities and complement and coordinate with existing and efficient tools for international cooperation;

In the fight against corruption, it is particularly important to strengthen the financial investigations and asset recovery processes in order to recover illegally acquired assets. The cooperation must be improved between the investigating bodies, prosecution and courts on national level and also between the national AROs on international level. The direct exchange of experience between the authorities of the Member States is highly important to establish best practices.

In order to fulfil the requests in the most effective way to the foreign authorities, the competent authorities must verify the range of data, which can be requested in the framework of the ARO cooperation via SIENA or via CARIN channel.

In Hungary, freezing and European Investigation Orders (EIO) are defined by the Act CLXXX of 2012 on the judicial cooperation in criminal matters with the Member States of the European Union, and the Mutual Legal Assistance (MLA) is defined by the Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters.

The NBI ARO International Relations Divisions conducted a total of 7 corruption-related (briberies and corruption) international asset tracing procedures between 2020 and 2022.

2. Challenges encountered

Please describe any challenges your country has encountered in implementing operative paragraphs 1 to 21 of resolution 9/1 regarding strengthening international cooperation in the prevention of and fight against corruption during times of emergencies and crisis response and recovery. *Please state the relevant operative paragraphs in your answer.*

Co-operation and information exchange with third countries is usually handled by using the given country's national CARIN (Camden Asset Recovery Inter-Agency Network) contact point. Members of the FIU-network - in cases where the concerned country's ARO and FIU agencies are not integrated - are contacted through the HFIU.

The international cooperation in asset recovery is operating in general. For EU Member States, cooperation is regulated by EU standards and community minimum implemented into national law (Act CLXXX of 2012 on cooperation in criminal matters with the Member States of the European Union). The network of offices specifically facilitating the exchange of data on asset recovery (ARO) and Council Decision 2007/845/JHA (6th December 2007), which regulates their operation, explicitly accelerated, facilitated and systematized the exchange of data between EU authorities.

Subsequent EU legislation (e.g. Directive (EU) 2015/849 - the 5th anti-money laundering Directive) enhanced further the efficiency of data exchange, the scope and speed of the data provided, with a very positive opportunity for Member State authorities to improve the cooperation.

According to practical experience, Member States have different levels of efficiency, different organizational structures and resources, so the ability of each Member State to cooperate in asset recovery varies greatly.

Strengthening AROs, equipping them nationally with adequate resources and competencies (and where it does not apply: necessarily with investigative powers and capacity) could greatly increase the international effectiveness of the network.

The cooperation within the ARO and the CARIN networks (or the latter's regional networks) can lead to truly effective global cooperation that can compete with the ever-expanding and accelerating crime trends. As the tracing of assets is essential in connection with every illegal income generating offences, corruption related investigations would also benefit from the strengthening of these networks.

The question itself sheds light on the difficulties of the present resources, legal frameworks and practitioner capabilities. At the system and international level, the problem was highlighted in the previous question. At national levels, the establishment of strong central asset recovery authorities could lead to even more efficient asset recovery activity which would affect the fight against corruption as well.

Primarily the normative regulators of the offshore areas and the insufficiency of cooperation of the competent authorities in that region sometimes prevent jurisdictions' efficiency to trace the transferred proceeds of crime.

At present, virtual currency, service providers are a particular problem for cross border recovery procedures, especially if their headquarters are based in the United States. These legal

entities have little to do with providing substantive information or participating in coercive financial measures. Offshore areas are also problematic mostly in terms of asset recovery. In addition, a few countries, e.g. China is not a member of CARIN or the Egmont group, therefore information exchange via these networks isn't possible with them.