

Questionnaire on Beneficial Ownership Information

Contributions by Austria

Contact Information

1. Definition of beneficial ownership & mechanisms for obtaining beneficial ownership information

- 1.1 Please provide the definition of “beneficial ownership” in your country for: (a) legal persons; and (b) legal arrangements, including the relevant legislation (if applicable). Please describe criteria and thresholds that are applied to determine beneficial ownership, including any criteria for exercising control without legal ownership (e.g. voting rights, right to appoint or remove board of directors).**

According to Article 2 BORA, a beneficial owner means any natural person(s) who ultimately owns or controls a legal entity, including at least the following:

1. in the case of companies, in particular in the case of legal entities pursuant to Article 1 para. 2 nos. 1 to 11, 13 and 14:
 - a) all natural persons, that either directly or indirectly hold a sufficient percentage of the shares or voting rights (including those held in the form of bearer shareholdings), who hold a sufficient ownership interest in the company (including in the form of cooperative shares or a capital share), or who exercise control over the company:

aa) **direct beneficial owner**: where a natural person holds a shareholding or voting rights of more than 25 % or an ownership interest of more than 25 % in the company, or a natural person or several natural persons jointly exercise direct control over the company, then this/these natural person(s) shall be considered as direct beneficial owner(s).

bb) **indirect beneficial owner**: where a legal entity holds a shareholding or voting rights of more than 25 % or an ownership interest of more than 25 % in the company and a natural person or several natural persons together jointly exercise direct or indirect control over this legal entity, then this/these natural person(s) shall be considered as indirect beneficial owner(s) of the company.

If several legal entities that are directly or indirectly controlled by the same natural person(s) hold a total directly held holding of shares or voting rights or an ownership interest of more than 25 % of the company, then this/these natural person(s) shall be considered as beneficial owners.

A directly held holding or shares or voting rights held by one or more of the aforementioned natural persons or a directly ownership interest shall be added respectively.

Ultimate legal entities are those legal entities in a chain of participations that are controlled directly by indirect beneficial owners as well as those legal entities in which indirect beneficial owners directly hold shares or an ownership interest, if these considered with the legal entity/entities constitute the beneficial ownership. If the beneficial owner performs a function pursuant to no. 2 or no. 3, then the respective legal entity shall always be considered the ultimate legal entity.

The term legal entity as used in these points also covers comparable legal entities as defined in Article 1 located in another Member State or third country.

Control has to be considered to exist in the case of a shareholding of 50% plus one share or an ownership interest of more than 50%, held either directly or indirectly. Furthermore, control shall also be deemed to exist when the criteria pursuant to Article 244 para. 2 UGB are met, or where a function is exercised pursuant to no. 2 or 3 at an ultimate legal entity, or where the company is ultimately controlled by other means. Otherwise a trustor or a comparable person exercises control by means of a trustee relationship or a comparable legal relationship.

b) **the natural persons that belong to the top management level of the company**, once all possible means have been exhausted and where no grounds for suspicion exist, that no person listed in lit. a can be identified. For the companies listed below, the following applies:

aa) in the case of ordinary partnerships and limited partnerships with their shareholders consisting exclusively of natural persons, the managing partners shall be considered as beneficial owners, provided that no grounds exist that show that the company is either directly or indirectly under the control of one or several other natural persons.

bb) in the case of commercial and industrial cooperatives the members of the top level of management (management board) shall be considered to be beneficial owners, or in the case that the directors are also entered in the register, then only the directors shall be considered to be beneficial owners.

cc) in the case of companies without owners, the natural persons who belong to the management board shall be considered as beneficial owners, provided that no grounds exist that show that the company is either directly or indirectly under the control of one or several other natural persons.

2. in the case of trusts, in particular legal entities pursuant to Article 1 para. 2 no. 17:

a) the settlor/trustor(s);

b) the trustee(s);

c) the protector(s), if any;

d) the beneficiaries, or where the individuals that are the beneficiaries of the trust have yet to be determined, the group of persons in whose interest the trust was established or operated (circle of beneficiaries); if persons belonging to this group receive benefits from the trust that exceed the value of EUR 2,000 in a calendar year, then they shall be considered as beneficiaries in the calendar year in question;

e) any other natural person exercising ultimate control over the trust by other means.

3. in the case of foundations, comparable legal entities and legal arrangements similar to trusts pursuant to Article 1 para. 2 no. 18, the natural persons who occupy comparable or similar positions to those listed in no. 2;

a) private foundations (Article 1 para. 2 no. 12):

aa) the founders;

bb) the beneficiaries, the group of persons (circle of beneficiaries) from whom the beneficiaries are selected on the basis of a separate determination (Article 5 PSG), if persons from this group receive benefits from the private foundation, the value of which exceeds EUR 2 000 within a calendar year, shall be considered as beneficiaries in the relevant calendar year or in the case of insurance associations transformed into private foundations pursuant to Article 66 VAG 2016, savings banks transformed into the legal form of private foundations pursuant to Article 27a of the Savings Banks Act (SpG; Sparkassengesetz), foundations established for the purpose of supporting the purpose of the entity pursuant to Article 4d para. 1 EStG 1988, foundations established for the purpose of supporting employees pursuant to Article 4d para. 2 EStG 1988, foundations for the purposes of profit-sharing by workers and employees pursuant to Article 4d paras. 3 and 4 EStG 1988 shall always be considered as the circle of beneficiaries;

cc) the members of the management board of the foundation;

dd) any other natural person exercising ultimate control over the private foundation by other means.

b) in the case of foundations and funds (Article 1 para. 2 nos. 15 and 16):

aa) the founders;

bb) the members of the management board of the foundation or the fund;

cc) the circle of beneficiaries;

dd) any other natural person exercising ultimate control over the foundation or fund by other means.

Furthermore, there is additional comprehensive explanation and guidance for determining, identifying and reporting of the UBO in the **BORA Decree by the Federal Ministry of Finance** (101 pages) which sets out the legal view of the ministry for a wide range of issues. The decree can be found online under the following link:
<https://www.bmf.gv.at/services/wierreg/rechtliche-grundlagen-faq-fallbeispiele-wierreg.html>

Moreover, there is an **extensive collection of cases** (103 pages), published by the Registry Authority which provides further guidance for determining, identifying and reporting of the UBO:
<https://www.bmf.gv.at/services/wierreg/rechtliche-grundlagen-faq-fallbeispiele-wierreg.html>

2. Access to basic information on legal persons

2.1 Please describe the process for obtaining basic information on legal persons created or registered in your country, including the role of the company registry.

The Austrian BO Register was established for the purpose of preventing money laundering and terrorist financing and contains data regarding the beneficial owners of companies, foundations and trusts. The Beneficial Owners Register Act (BORA), BGBl. I No. 136/2017, took effect on 15 January 2018 and implements the Register for Companies, Other Legal Entities and the Register for Trusts within a single central register.

The Austrian beneficial owner register was designed to be very innovative and effective in terms of transparency of beneficial ownership and is continuously refined. It was already presented as international best practice on several occasions. For example, the Austrian BO Register is mentioned by the FATF Best Practice Paper 2019 in context of several features.

The Business Register is interconnected with the BO Register. Information of any new companies formed is transferred automatically in the same moment to the BO Register. Data on beneficial owners is reported to and stored in the BO Register. Thus the answers to this questionnaire focus on the Austrian BO Register.

The BO Register is maintained by the Registry Authority established by the Federal Ministry of Finance. This authority has extensive analytic capabilities for the purpose of ensuring the accuracy and completeness of the data and preventing money laundering and terrorist financing, has the power to request documentation on beneficial ownership from companies and their legal and beneficial owners, and to carry out off-site audits. Technically, the Register is established by the Statistic Austria (Bundesanstalt Statistik Austria) based on the Commercial Register for administrative purposes so that the greatest possible synergy effects can be realized.

The master data of legal entities included in the BORA's scope of application is automatically taken from the Business Register, the Register of Associations and the Supplementary Register for Others. Thus all relevant legal entities are automatically imported and updated. This data is then either completed with the beneficial ownership information through automated or manual reports, with additional safeguards to ensure data quality.

Under Article 5 BORA, legal entities themselves must report the data about the beneficial owners to the BO Register electronically via the one-stop-shop Enterprise Service Portal (Unternehmensserviceportal, short: USP). The Austrian reporting system allows also reports by legal professionals on behalf of their clients. This happened to be a key factor for not only a high reporting rate of more than 97,39 %, whereas around 85,75 % of all reports have been filed through legal professionals, but also for a high data quality among all reports (as of 25. July 2022). In cases where the information on beneficial ownership is already registered in other existing registers, e.g. the Business Register, an exemption from the reporting obligation reduces the administrative burden on legal entities (= automated reports, Article 6 BORA). Based on the source registers (e.g. the Business Register), the system automatically detects if the conditions according to Article 6 BORA are met and if so, detects the nature and scope of the beneficial interest. For example, direct beneficial ownership of a natural person holding more than 25 % of company shares according to the Business Register will be automatically reported as such. In addition, relevant data of the Central residence register will be imported automatically. Any subsequent change in the source register (e.g. changes of beneficial owners or the senior management) lead to an automatic update of data in the BO Register. In case that there is another person a beneficial owner, e.g. because of a nominee arrangement, the Article 6 BORA is no longer applicable and the undertaking has to file an report.

2.2 Please list the categories of basic information on legal persons that is obtained and recorded by the company registry (or other relevant registries), e.g. name of entity, date of incorporation, tax ID number, etc.

Based on Article 5 para. 1 no. 1 and 2 BORA, legal entities have to report the following information about their beneficial to the BO Register:

- First and last names
- The number and type of the official photo identification (only in case they do not have a place of residence in Austria)
- Date and place of birth
- Nationality
- Place of residence
- Nature and scope of the beneficial interest.

One technical feature in the Austrian BO Register is that, if a beneficial owner to be reported has a primary residence address in Austria, only the first and last names and the date of birth have to be manually entered in the form. The data on the place of birth, the nationality and the place of residence is automatically transferred from the Central Residence Register to the BO Register. For natural persons with a primary residence in Austria, any changes in the above mentioned personal information will be automatically adopted through an interconnection with the Central Residence Register and an update is only necessary if the person does no longer have a primary residence address in Austria.

In addition, if the to be reported beneficial owner does not have a primary residence address in Austria, a proof of identity in form of a copy of a photo identification document must be submitted with the report (Article 5 para. 2 BORA). The purpose of this measure is to clearly identify the beneficial owner and prove its existence, and it also contributes to improving data quality in reporting on beneficial owners.

In case of **indirect beneficial ownership**, the following information regarding the ultimate legal entity must also be reported (Article 5 para. 1 no. 2 BORA):

- if the ultimate legal entity is a legal entity under Article 1 BORA, its identification number, as well as its holding in terms of number of shares, voting rights or the holding of the beneficial owner in the ultimate legal entity;
- if the ultimate legal entity is a legal entity comparable to one defined in Article 1 BORA, with its registered office in another Member State or a third country, the name and address of the registered office of the legal entity, the legal form, the identifiers that correspond to the identification number and the identification registry as well as the holding of shares, voting rights or the holding of the beneficial owner in the ultimate legal entity.

2.3 Is the company registry available publicly & online in your country?

YES: Public extracts from the register of beneficial owners are available since 10 January 2020 pursuant to Article 10 BORA. There are no access requirements for public inspection. Public extracts can be ordered via the official website of the Federal Ministry of Finance for a user charge of EUR 3,00 at <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/Public-access.html>:

The screenshot shows a website navigation menu on the left with the following items: Taxation, Customs, Budget & Economic Policy, Financial Sector (highlighted), Beneficial Owners Register Act - WEReG, Public access (highlighted), Structure of the Austrian Financial Sector, Austrian Financial Market Stability Package, Financial Market Supervision, Finance and Capital Markets in the EU, Money Laundering and Terrorist Financing, Austria and International Financial Institutions, Government Liabilities, and Combating Fraud. The main content area is titled 'Public access' and contains the following text: 'Public extracts containing the information of reported beneficial owners can be requested from the Register of Beneficial Owners. With the implemented changes due to the 5th Money Laundering Directive public extracts from the register of beneficial owners are now available. With the following Link [Public Extracts](#) are available for a user charge of EUR 3,00. Search queries can be conducted by using either the identification number or the name of the legal entity. A search of beneficial owners is not intended. **Here you find the guide to public inspection of the register of beneficial owners**

- Public extracts contain the following information:
- Identification number, identification register, name and address of the legal entity
- Legal form and information about the period of existence of the legal entity
- Forename and surname, date of birth, nationality and country of residence of beneficial owners
- Nature and scope of the beneficial interest

In cases where a restriction of inspection of the register has been granted details about the beneficial owner are not shown. Instead a reference advising about the restriction of inspection pursuant to this Article shown.

3. Access to beneficial ownership information of legal persons

3.1 Through which mechanism(s) can competent authorities (such as law enforcement, police, financial intelligence unit and tax agencies) access beneficial ownership information on companies and other legal persons created or registered in your country. Please select all that apply.

- **Through a registry/registries with beneficial ownership information**
- **Through a different mechanism**
- **Competent authorities do not currently have access to beneficial ownership information**

Public authorities may access the BO Register using a government application called “WiEReG” pursuant to Article 12 BORA. Access is permitted to the following authorities:

- the registry authority within the powers conferred upon it in accordance with this Federal Act
- the Financial Intelligence Unit (Geldwäschemeldestelle) (Article 4 para. 2 BKA-G) within the powers conferred upon it in accordance with the BKA-G;
- the following supervisory authorities within their duties for preventing the financial system from being used for the purpose of money laundering and terrorist financing:
 - the FMA in relation to its supervision of credit institutions and financial institutions pursuant to Article 25 FM-GwG;
 - the Federal Minister of Finance in relation to its supervision of holders of government-approved licences pursuant to Articles 14 and 21 GSpG;
 - the competent regional authorities with regard to the supervision of regionally authorised parties for the operation of gaming machines and providers of betting services pursuant to Article 9 para. 1 no. 5 within the meaning of the regulations set out under regional law;
 - the Bar Association within the scope of its supervision of attorneys;
 - the Austrian Chamber of Notaries (Notariatskammer) within the scope of its supervision of notaries;
 - The Chamber of Professional Accountants and Tax Advisors (KWT; Kammer der Wirtschaftstreuhänder) within the scope of its supervision of external auditors and tax advisors;
 - the President of the Austrian Economic Chambers (WKO) within the scope of the WKO's supervision of balance sheet accountants, accounts and payroll accountants pursuant to Article 1 BiBuG 2014;
 - the local administrative authorities within the scope of supervision of financial institutions pursuant to Article 9 para. 1 no. 3, traders on a commercial basis including auctioneers, provided that they accept payments in cash of at least EUR 10 000 pursuant to Article 365m1 para. 2 no. 1 GewO, real estate agents pursuant to Article 365m1 para. 2 no. 2 GewO, business consultants pursuant to Article 365m1 para. 2 no. 3 GewO, insurance brokers pursuant to Article 365m1 para. 2 no. 4 GewO;
- the local administrative authorities for the purposes of initiating and conducting of administrative penal proceedings;
- the law enforcement authorities, public prosecutors and criminal law courts;
- the fiscal penal authorities and the Federal Fiscal Court (Bundesfinanzgericht) for purposes under fiscal penal law;
- the Federal Government's tax authorities and the Federal Fiscal Court (Bundesfinanzgericht) for tax law purposes, where this is expedient and reasonable for the purpose of collection of taxes;
- the Oesterreichische Nationalbank for the purposes of the performance of its duties pursuant to Article 8 of the Sanctions Act (SanktG) and Article 5 of the Foreign Exchange Act of 2004 (DevG; Devisengesetz 2004);
- the Federal Minister of the Interior for the purposes of performing the duties conferred pursuant to Article 8 SanktG;
- the security authorities for the purposes of security policing.

If REGISTRY, please provide further details on such registry(ies) including:

Authority(ies)/agency(ies) responsible for obtaining and maintaining beneficial ownership information and for maintaining the register(ies). Please list if more than one;

The BO Register is maintained by the Registry Authority established by the Federal Ministry of Finance pursuant to Article 14 BORA. This authority has been granted extensive analytic capabilities for the purpose of ensuring the accuracy and completeness of the data and preventing ML/TF. The Registry Authority also has the power to request documentation on BO from companies.

Categories of beneficial ownership information (data fields) obtained, recorded and maintained on the registry(ies), e.g. name, nationality, date of birth, address, etc.;

Please refer to point 2.2.

Types of legal entities covered within the scope of the beneficial ownership registry(ies), including any exempt entities;

According to Article 1 para 2 BORA the following companies and other types of legal entities, trusts and arrangements of a similar nature to a trust are subject to reporting obligations and shall be considered as legal entities for the purposes of this Federal Act:

- ordinary partnerships (offene Gesellschaften);
- limited partnerships (Kommanditgesellschaften);
- stock companies (Aktiengesellschaften);
- limited liability companies (Gesellschaften mit beschränkter Haftung);
- commercial and industrial cooperative societies (Erwerbs- und Wirtschaftsgenossenschaften);
- mutual insurance associations (Versicherungsvereine auf Gegenseitigkeit);
- small mutual insurance associations (kleine Versicherungsvereine);
- savings banks (Sparkassen);
- European Economic Interest Groupings (EEIGs);
- European companies (legal form: SE; *societas Europaea*);
- European cooperative societies (legal form: SCE; *societas cooperativa Europaea*);
- private foundations pursuant to Article 1 PSG;
- other legal entities, required to be entered into the Commercial Register pursuant to Article 2 no. 13 of the Austrian Commercial Register Act (FBG; *Firmenbuchgesetz*);
- associations pursuant to Article 1 of the Associations Act (VerG; *Vereinsgesetz*);
- foundations and funds pursuant to Article 1 of the Federal Act on Foundations and Funds (BStFG 2015; *Bundes-Stiftungs- und Fondsgesetz 2015*);
- foundations and funds established on the basis of a provincial act, provided that the application of this Federal Act is allowed under provincial law;
- trusts pursuant to para. 3, if they are managed from within Austria, or in the case that their management is not in Austria or in another Member State, where the trustee establishes a business relationship on behalf of the trust or which commit themselves to acquire the ownership of a plot of land located in Austria. Management from within Austria shall in particular exist, where the trustee's place of residence or place of incorporation is in Austria;
- arrangements of a similar nature to trusts; i.e. other legal arrangements, for example *fiducie*, certain types of *Treuhand* or *fideicomisio* provided that such arrangements are comparable both in function and structure with a trust and are managed from within Austria, or in the case that the management is not located in Austria or in another Member State, where the person comparable to a trustee establishes a business relationship or which commit themselves to acquire the ownership of a plot of land located in Austria on behalf of the arrangement of a similar nature to a trust. Management from

within Austria shall in particular exist, if the holder of a position of authority of a comparable standing to a trustee has his/her place of residence or place of incorporation in Austria;

- foreign legal entities subject to reporting obligations: companies, foundations and comparable legal entities, whose registered office is not situated in Austria or in another Member State, provided that they commit themselves to acquire the ownership of a plot of land located in Austria. There are no companies and other types of legal entities, trusts and arrangements of a similar nature to a trust, resident in Austria which are exempted from reporting obligations.

Details of the registry's(ies)' access policy:

- **Is the information on the registry(ies) available to the public?**

YES

There comprehensive explanation on the Austrian BO Register and guidance for determining, identifying and reporting of the UBO in the BORA available on the website of the register:

Beneficial Owner Register (bmf.gv.at)

A Decree by the Federal Ministry of Finance (101 pages) is also online available, which sets out the legal view of the ministry for a wide range of issues. The decree can be found online under the following link: Legal basis, case studies, FAQs and information on registers of other countries (bmf.gv.at)

In the governmental application WiEReG a comprehensive user handbook may be downloaded. In addition staff of authorities did receive an intensive training on the functions of the application WiEReG and on the BORA act.

- **Does accessing beneficial ownership information in the registry(ies) entail any costs?**

Authorities may excess the register for free.

Obliged entities may excess the register for a usage fee:

- simple extracts: 3 Euro
- extended extracts: 3,6 Euro
- Compliance-Packages: 7,2 Euro

A lump sum payment of the fee for usage is possible upfront, which will gradually reduce to fees for usage from 2,6 for 50 excerpts to 2 Euro for 7.500 excerpts.

The general public can access the register for 3 Euro for a public extract

- **Does the registry(ies) provide features to search information by different types of information, e.g. legal entity name, name of director, name of beneficial owner, by first or last name, by business address, by registered agent? Is it possible to search for a combination of information (Boolean searches)?**

The **general public** may search for the legal entities by using the name or the national identifier pursuant to Article 10 BORA.

Obliged entities may search for legal entities by using the name or the national identifier and certain obliged entities may search for natural persons by using the first name, last name and date of birth pursuant to Article 9 para 3 BORA.

Authorities may search for legal entities by using the name or the national identifier and for natural persons by using the first name, last name and date of birth.

The BO Registry Authority, the Financial Intelligence Unit (Geldwäschemeldestelle) and the criminal police, the public prosecutor's offices and courts may use in addition advanced search options according to Article 12 para 3 and 4 BORA:

- Analytical search for natural persons: search all legal entities by entering one or several identifiers about a natural person (combinations allowed)
- Search for ultimate legal entities: search all legal entities by entering one or several identifiers about an ultimate legal entity (combinations allowed)

In addition, the **BO Registry Authority** is authorized according to Article 14 para 2 BORA to perform analyses for ensuring the correctness and completeness of the data as well as for the prevention of money laundering and terrorist financing.

- **Frequency of updates of information and triggers for updates;**

For legal entities, which are exempt from the reporting obligations, any changes are automatically reported to the BO Register on the day they occur.

Legal entities, subject to reporting obligations are obligated pursuant to Article 5 para. 1 BORA to perform an annual report of beneficial owners, which ensures that the information held in the register is current and accurate: Legal entities are required to conduct and review their due diligence requirements pursuant to Article 3 para. 1 BORA at least once a year. Within four weeks after the due diligence requirements, a report of beneficial owners has to be made where the changes of the beneficial ownership have to be reported or the current data has to be confirmed.

In cases where changes occur in the meantime, legal entities are required to report them according to Article 5 para 1 BORA within four weeks of obtaining knowledge of the change.

- **Any mechanisms to verify beneficial ownership information submitted to the registry(ies) by legal persons or their representatives (if they exist).**

In order to be able to help prevent money laundering and terrorist financing, the data stored in the register has to be of adequate quality. To this end, the BO Registry Authority adopts a multi-pronged approach based on internal and external mechanisms and thus makes a significant contribution to ensuring that the register data is adequate, accurate and up to date.

The external measures relate to the legal duty of obligated entities to inspect the Register of Beneficial Owners and report discrepancies to the BO Registry Authority if they spot any incorrect details for the beneficial owners reported.

The internal measures involved in applying risk-based supervision by the Registry Authority, which consists of reviews of reports based on a random, a risk-based and an ad hoc selection. The risk based case selection is based on the National Risk Assessment 2021, which contains a risk assessment for legal persons and trusts, which includes a detailed risk assessment of each legal form. (Please refer to Link NRA 2021) The results of the discrepancy reporting will feed into the ad hoc selection of cases. By using various sources of information (visual examination taking account of data from the Register of Companies, the Central Register, international information service providers, etc.) and individual

reviews based on documents, incorrect reports can be spotted and appropriate follow-up action can be taken:

- report discrepancies to the BO Registry Authority
- request documents for the purpose of conducting an individual review (off-site review based on documentation)
- notification to the Anti-Fraud Office in case of a fiscal offence pursuant to Article 15 BORA
- suspicious activity report to the Financial Intelligence Unit (FIU)

3.2 Please describe any other sources (mechanisms) through which competent authorities/agencies can access beneficial ownership information in your country. In each case, please describe how beneficial ownership information on companies and other legal entities is made available to authorities and/or the public (if applicable).

Examples may include through private-public partnerships (e.g. involving financial institutions, notaries and/or corporate service providers), through stock exchange or security exchange commission, or disclosure obligations for participation in public procurement processes, etc.

Public authorities may access the register using a government application called “WiEReG”.

Obligated entities may either use the web based application “WiEReG Management System” or the “WiEReG Webservice”, which guarantee an instant access to beneficial owner data. The Webservice supports pdf and xml excerpts, which allow an import of beneficial owner data in systems of credit institutions and other obligated entities like tax advisors. In addition, the WiEReG Change Management Service informs obligated entities in the event that the beneficial owner data with regard to a customer has changed. Report forms may be also integrated in business software of tax advisors and other professional party representatives, so that reporting to the beneficial owner register is as convenient as possible.

The general public may access the register by visiting the following website: Public access (bmf.gv.at)

3.3 Are foreign legal persons, foreign (express) trusts or foreign legal arrangements allowed to operate in/own assets/ and/or register in your country?

YES

If YES

- **how is basic information on these arrangements recorded (if at all)?**

Foreign legal entities are subject to reporting obligations in the following cases according to Article 1 para 1 no 19 BORA: companies, foundations and comparable legal entities, whose registered office is not situated in Austria or in another Member State, provided that they commit themselves to acquire the ownership of a plot of land located in Austria.

Foreign trusts are subject to reporting obligations in the following cases according to Article 1 para 1 no 17 BORA: if they are managed from within Austria, or in the case that their management is not in Austria or in another Member State, where the trustee establishes a business relationship on behalf of the trust or which commit themselves to acquire the ownership of a plot of land located in Austria. Management from within Austria shall in particular exist, where the trustee's place of residence or place of incorporation is in Austria;

Foreign arrangements of a similar nature to trusts are subject to reporting obligations in the following cases according to Article 1 para 1 no 17 BORA: if are managed from within Austria, or in the case that the management is not located in Austria or in another Member State, where the person comparable to a

trustee establishes a business relationship or which commit themselves to acquire the ownership of a plot of land located in Austria on behalf of the arrangement of a similar nature to a trust. Management from within Austria shall in particular exist, if the holder of a position of authority of a comparable standing to a trustee has his/her place of residence or place of incorporation in Austria;

- **How is beneficial ownership information on these arrangements recorded (if at all)? Please provide details of the relevant legislation and practices.**

Before acquiring land plots in Austria: the notarisation or recording of a notarial deed for the purpose of purchasing a plot of land located in Austria is only admissible pursuant to Article 3 para 8 BORA, if foreign legal entities as trusts and arrangements of a similar nature to trusts subject to reporting obligations present documents containing conclusive proof about their beneficial owners and a prove that they have reported their beneficial owners pursuant to Article 5 BORA. Proof of the report having been made is also possible by means of the notary obtaining an excerpt from the register.

4. Access to basic information and beneficial ownership information of (express) trusts and other similar legal arrangements

4.1 Does your country recognize (express) trusts or other similar legal arrangements?

NO

Under Austrian law trusts or other similar legal arrangements may not be created. However, trusts and other similar legal arrangements created under the law of another country may have their management in Austria, may acquire land plots or legal entities or may establish business relationships with obligated entities. For that reason this situations are within the scope of BORA.

If YES, please provide a broad overview of your country's system and mechanisms for obtaining beneficial ownership information on (express) trusts and other similar arrangements created or registered in your country.

If NO, please skip to question 5

4.2 How is basic information on (express) trusts and other legal arrangements obtained and recorded in your country?

Please refer to question 3.3.

4.3 How is beneficial ownership information on (express) trusts and other legal arrangements obtained and recorded in your country?

- **Through a registry/registries with beneficial ownership information**

Data on (express) trusts and other legal arrangements is stored in the BO Register. The same rules apply as for all other legal entities. Please refer to the description above.

- **Through a different mechanism**

- **Competent authorities do not currently have access to beneficial ownership information**

If REGISTRY, please provide details on the registry(ies), authority(ies)/agency(ies) in charge of maintaining the registry(ies), type of information collected, and details on the

access policy. If ALTERNATIVE MECHANISM, please provide details on the mechanism, type of information collected, and details on the access policy.

Data on (express) trusts and other legal arrangements is stored in the BO Register. The same rules apply as for all other legal entities. Please refer to the description above.

5. Sanctions

5.1 Please describe the types of sanctions, sanctionable conduct, and targets of sanctions for non-compliance with beneficial ownership disclosure regulations (whether on the registry(ies) or through an alternative mechanism).

As described above, the Registry Authority follows a multipronged approach.

Compliance with the obligation to report is ensured on an ongoing basis through the implementation of automated coercive penalties (Article 16 BORA). If a report is not filed within the deadline – either within 28 days of newly established legal entities or within 28 days after the annual reporting obligation – then the Tax Authority Austria will automatically send a reminder letter with the threat of a coercive penalty of € 1 000 to the legal entity. If the legal entity fails to report within the deadline (6 weeks) given in the reminder, the penalty will be set and a higher penalty of € 4 000 is threatened. If the legal entity still fails to report within the given deadline (a6 weeks), the coercive penalty of € 4 000 will be set and the case will be forwarded automatically to the responsible fiscal penal authority (Anti-Fraud Authority), which can set fiscal penalties up to € 200.000 for intentional violations of reporting obligations.

The sharp rise in the number of procedures is due to the obligation from 2020 onwards to submit reports annually (Article 3 para. 3 in conjunction with Article 5 para. 1 of the final part of the BORA), which was effectively introduced in February 2021.

The highly effective, automated coercive penalty helped to achieve a very high reporting compliance (as of July 25, 2022):

- 97,39% of all legal entities subject to reporting obligations have reported their beneficial owners
- 95,84% of the aforementioned legal entities have reported a yearly update of their beneficial owners

In addition, it is a financial offence to submit an incorrect or incomplete report and, in so doing, to fail to disclose beneficial owners (Article 15 para 1 no 1 BORA) or fail to comply with one's reporting obligations despite twice being requested to do so (Article 15 para 1 no 2 BORA see above). Failing to report a change within four weeks of becoming aware of it also constitutes a financial offence (Article 15 para 1 no 4 BORA). Further penal provisions relate to breaches of reporting obligations when an exemption from these obligations lapses (Article 15 para 1 no 3 BORA) and breaches of reporting or disclosure obligations by foreign legal entities or trustees (Article 15 para 1 no 5 or 6 BORA). Intentional violations of reporting and/or disclosure obligations attract penalties of up to EUR 200,000 pursuant to Article 15 para. 1 BORA, while doing so as a result of gross negligence is punishable by a fine of up to EUR 100,000.

It is also a financial offence to breach the retention obligations stipulated in Article 3 para. 2 BORA (Article 15 para 2 BORA) or intentionally provide fake or falsified documents in a compliance package (Article 15 para. 3 BORA). Intentionally passing on to third parties any extracts containing data records that have been marked as blocked from disclosure or subject to a restriction of access pursuant to Article 10a BORA is a financial offence pursuant to Article 15 para. 6 BORA, and is punishable by a fine of up to EUR 50,000.

The financial criminal authorities at the Anti-Fraud Office are responsible for enforcing fiscal penalty proceedings pursuant to Article 15 BORA.

5.2 Please describe the powers available to the designated authority(ies)/agency(ies) to enforce sanctions for non-compliance with the beneficial ownership disclosure requirements, including any statistics on enforcement of such sanctions.

Please see above.

6. International Cooperation, asset recovery and challenges
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6.1. Does your country make beneficial ownership information available to foreign competent authorities (directly or upon request)? Please provide details of the relevant legislative and regulatory framework in your country that allows for the international exchange of such information.

Pursuant to Article 12 para 5 BORA the authorities shall in the provision of assistance submit public excerpts to the competent authorities and central reporting bodies in other Member States.

6.2. Please describe how foreign competent authorities may request or access beneficial ownership information on legal persons and legal arrangements formed in your country. Which agency(ies)/authority(ies) is/are responsible for receiving and responding to foreign requests? Please provide contact information and instructions.

The BO Registry Authority is responsible for such requests in general. But all authorities listed in Article 12 may provide information on beneficial owners to their counterparts in foreign countries. However foreign authorities may also use the public access or the Beneficial Owner Interconnection System (BORIS) of the European Union.

6.3. In your opinion, what are the main challenges faced by foreign competent authorities to access beneficial ownership information held in your country?

There are only a few foreign authorities, which contacted us. We have an English Website, which will be found as first result, when searching for “beneficial owner register Austria”. In this website the contact details of the BO Registry Authority can be found easily. So we think that no barriers do exist. At the moment there is a very low demand for international cooperation. We assume that many countries are still busy with setting up beneficial owner registers, so that they do not reach out to contact us.

6.4. In your opinion, what are the main challenges faced by competent authorities of your country to access/receive beneficial ownership information held in a foreign country?

In general, the BO-Registry Authority uses international databases, like ORBIS, Dun and Bradstreet or may request any documentation from legal entities themselves. Usually all information can be retained by using this sources. In future the Beneficial ownership registers interconnection system (BORIS) will facilitate obtaining beneficial owner data. Austria was one of the first three countries, which connected its beneficial owner register to BORIS: [European e-Justice Portal - Beneficial ownership registers interconnection system \(BORIS\) \(europa.eu\)](#)

However, one of the main challenges is the lack of a list and description of the systems and competent authorities in member states on European level.

6.5. Do you have any case studies or examples where the transparency of beneficial ownership has enabled or enhanced the effective recovery and return of proceeds of crime in (or for) your country?

There are no official studies available so far. In the course of criminal investigations with regard to beneficial/economic ownership, the Asset Recovery Office makes use of various databases and registers:

- Beneficial Owner Register - Wirtschaftliche Eigentümer Registergesetz (WiEReG)

This register is used for searches regarding **legal entities, owners and supreme legal entities**. The register is maintained at the Austrian Ministry of Finance.

- Companies register

In the companies register database, beneficial owners can be looked up. The database is updated on a daily basis.

The Companies Register (earlier name: Commercial Register) is a public directory, kept at the Company Register Courts (established at Regional Courts (→ Ministry of Justice), respectively in Vienna at the Vienna Commercial Court (→ Ministry of Justice), and in Graz at the Graz Regional Court for Civil Matters (→ Ministry of Justice). It also includes the Register of Cooperatives that used to be kept separately. The owner of the property right (according to the Copyright Act - Urheberrechtsgesetz) to the database is the Federal Government.

The Federal Ministry of Justice is responsible for maintaining the register.

- Business Register

The Business Register (Unternehmensregister - UR) pursuant to sec. 25 Federal Statistics Act (Bundesstatistikgesetz - BstatG) is the master data register for the Corporate Service Portal (Unternehmensserviceportal - USP), which enables companies to access all integrated procedures in the portal.

The Austrian statistical office (Statistik Austria) is responsible for maintaining the Business Register.

Foreign authorities can obtain information at the Criminal Intelligence Service Austria via the liaison offices at **Europol, Interpol** or other, confidential networks. The same channels are used for information requests at international liaison offices.

7. Good Practices for Beneficial Ownership Transparency

7.1. Has your country implemented any specific good practices relating to Beneficial Ownership Transparency that you wish to highlight?

Examples could include good practices in verification, data format, searchability, use of technology, enforcement of sanctions, automatic red flagging, use or risk-based approach.

The Austrian beneficial owner register was designed to be very innovative and effective in terms of transparency of beneficial ownership and is continuously refined. It was already presented as international **best practice** on several occasions. For example, the Austrian BO Register is mentioned by the FATF Best Practice Paper 2019 in context of several features. We would like to highlight the following features:

- **High level of interconnection of domestic registers:** Automated reports for legal entities according to Article 6 BORA (refer to point 2.1) and automated updates of personal data via a direct connection to the permanent residence register (refer to point 2.2)
- **Effective enforcement of obligation to report:** Automated coercive penalties (refer to point 5.1)
- **Multipronged approach:** Mechanism ensuring that data is adequate, accurate and up-to-date (refer to point 3.1) featuring a risk based supervision of the BO Register (refer to point 3.1)
- **Full integration in business systems:** Deep Links, Webservice and Change management service allows the integration of the BO register into business systems of obligated entities and professional party representatives (refer to point 3.2)
- **Foundations, Trusts, Nominee Arrangements (Treuhand arrangements) were made fully transparent:** Trusts and foundations have to report of beneficiaries to the register and in cases where the shareholder is a nominee, the nominator has to be reported as beneficial owner. Public inspection is allowed in both cases

8. Follow-up to the special session of the General Assembly against corruption

8.1. Please describe any other measures, if any, that your country may have taken to implement paragraph 16¹ of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021.

Austria has committed to achieve a Top Level of beneficial owner transparency, featuring clear rules, a multipronged approach to ensure data quality, highly effective coercive penalties, public access and timely access and advanced functions for obligated entities (webservice, change management service) and timely access for all competent authorities and analytical search options for certain authorities. As described above, Paragraph 16 of this declaration is fulfilled to the highest extent possible.

¹ We commit to making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to 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 using as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. To this end, we will develop and implement the measures necessary to collect and share such information on the beneficial ownership of companies, legal structures and other complex legal mechanisms, and we will enhance the ability of competent authorities in this regard