

Annex

To facilitate the provision of information on legislation, policies, practices and institutions on promoting beneficial ownership information transparency, including existing registry(ies) and mechanism(s) to make requests for such information, the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use.

Collecting the information for this questionnaire may require cooperation by several different agencies/authorities. States parties may wish to send the questionnaire to the following agencies/authorities, depending on their national system for obtaining and recording information on legal persons and legal arrangements in their country, e.g.:

- Company registry and any other relevant registry(ies)
- Agency(ies)/authority(ies)/body(ies) responsible for obtaining and maintaining beneficial ownership information
- National competent authorities responsible for international cooperation in criminal matters, including freezing and confiscation of criminal proceeds

Questionnaire on Beneficial Ownership Information

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).

The Czech definition of a beneficial owner is based on the European Union AML (anti-money laundering) Directive but is more detailed. The definition of the beneficial owner of a legal person or its legal arrangement

is regulated in Sec. 2(c-e) and Sec. 3 – 6 of the Act No. 37/2021 Coll., on the Beneficial Ownership Register (hereinafter the “BOR Act”):

Section 2

For the purposes of this Act:

- c) “ultimate beneficiary” means a person who can directly or indirectly through another person or legal arrangement receive a significant part of the aggregate benefit generated by the operation or liquidation of a legal person or generated by the administration or termination of a legal arrangement (hereinafter “benefit”) and who does not further hand over this benefit,
- d) “person with ultimate influence” means a person who can, without the instruction of another person, exercise directly or indirectly decisive influence in a legal person or upon the administration of a legal arrangement,
- e) “beneficial owner” means every natural person who is an ultimate beneficiary or person with ultimate influence,

Section 3

(1) *Each person that can directly or indirectly obtain more than 25 % of the total benefit generated by the operation or liquidation of a legal person and does not further hand over this benefit is the ultimate beneficiary of a legal person; it is presumed benefit is not handed over.*

(2) *Each person that directly or indirectly has a right to a share of profits, other internal resources or liquidation balance of a business corporation (hereinafter „share of benefit“) larger than 25 % and does not further hand over this share of benefit is the ultimate beneficiary of a business corporation; it is presumed shares of benefit are not handed over.*

(3) *For the purposes of calculation of an indirect share of benefit*

- a) *the shares of benefit to which linked persons or legal arrangements in a chain have a right are multiplied,*
- b) *the products of shares of benefit from individual chains in a branching are summed up.*

Section 4

(1) *Each natural person who is a controlling person pursuant to the Act regulating business corporations is a person with ultimate influence.*

(2) *It is presumed that each natural person who is a member of the statutory body of a housing or social cooperative or of a non-business corporation is a person with ultimate influence.*

(3) *An indicator of the exercise of ultimate influence in a corporation by a natural person is his or her direct or indirect share of voting rights that significantly exceeds the shares of voting rights of other*

persons, especially if it is larger than 25 %.

(4) For the purposes of calculation of indirect voting share

a) the voting shares of linked persons or legal arrangements in a chain are multiplied, whereas, with the exception of the voting share in the corporation subject to calculation,

1. voting shares which give rise to the presumption of control pursuant to the Act regulating business corporations are counted as equaling 100 %,

2. shares not referred to in subparagraph 1. are counted as equalling 0 %.

b) the products of voting shares from individual chains in a branching are summed up.

Section 5

1) Each senior managing official of a corporation is irrefutably presumed to be its beneficial owner,

(a) if no beneficial owner can be identified even after making every effort that can be reasonably required of the registrant, or

(b) if the person with ultimate influence in the corporation is a legal person that does not have a beneficial owner pursuant to Section 7.

(2) If the person with ultimate influence in a corporation is a legal person that does not have a beneficial owner pursuant to Section 7 and another person is the ultimate beneficiary of the corporation, each senior managing official of the corporation and each individual who is the ultimate beneficiary of the corporation are beneficial owners of the corporation.

(3) If the person with ultimate influence is a legal person whose beneficial owner was determined pursuant to subsection 1 or 2, each senior managing official of the legal person is also the beneficial owner of all corporations in its subordinate structure of relations.

Section 6

(1) It is always irrefutably presumed, that the following natural persons are also the beneficial owners of an endowed institution:

a) its founder,

b) a member of its administrative or supervisory board or its inspector or a person in an equivalent position,

c) a person in whose personal support lies, according to the founding legal act of the endowed institution, the purpose of the endowed institution.

(2) It is always irrefutably presumed, that the following natural persons are also the beneficial owners of an institute or benevolent association:

a) its founder or

b) its director or member of its administrative board or a person in an equivalent position.

(3) It is always irrefutably presumed, that the following natural persons are also the beneficial owners of a legal arrangement:

a) its settlor,

- b) its trustee,
- c) a person entitled to exercise supervision over the legal arrangement and who can nominate or recall a trustee or a beneficiary (protector),
- d) its beneficiary,
- e) within the circle of persons in whose main interest the legal arrangement was founded or is administered, if he or she isn't a beneficiary.

(4) If there is a legal person in positions pursuant to subsections 1 to 3, it is irrefutably presumed that the beneficial owner of this legal person is the beneficial owner of the endowed institution, institute, benevolent association or legal arrangement.

Under the BOR Act, a beneficial owner is any natural person who is the ultimate beneficiary or person with ultimate influence. The beneficial owner is always a natural person. The BOR Act recognizes two equivalent components of the beneficial owner definition - ultimate influence and ultimate income. These components correspond to the basic characteristics of the general definition under the AML Directive and the FATF standards, that is, ownership and control. A person is then a beneficial owner either because he is the person with ultimate decisive influence (control) or because he is the ultimate beneficiary (ownership). Typically, however, both conditions will be met simultaneously. Beneficial ownership can be based on both legal and non-legal facts. The concepts of ultimate beneficiary and person with decisive influence are defined separately, not directly within the definition of beneficial owner.

Ownership

In the case of ownership and benefit, the BOR Act sets the limit of the share to more than 25% (Section 3 of the BOR Act). In the case of a business corporation, the ultimate beneficiary of a corporation is any person who is entitled, directly or indirectly, to a share in the profits, other own resources or the liquidation balance of the corporation in excess of 25% and does not pass on that share of the benefit; a share of the benefit shall not be deemed to be passed on under the provisions of section 3(2) of the BOR Act.

The provisions refer to both direct and indirect beneficial interests. Thus, it can also be applied to situations where the position of the beneficial owner of a business corporation is established by a chain of (typically) companies, one in which the other (and possibly a third, etc.) has an interest. The rules for calculating the so-called indirect beneficial interest are set out in paragraph 3.

Control

In the case of control, a 25% share of voting rights is an indicator of the exercise of decisive influence (Section 4(3) of the BOR Act). In relation to the definition of control, the BOR Act refers to the Act no. 90/2012 Coll. on the Business Corporations (hereinafter "Business Corporations Act") (Sec. 4(1) of the BOR Act).

According to sections 74 and 75 of the Business Corporations Act , a controlling person is a person who can directly or indirectly exercise decisive influence in a business corporation. The concept of control in Czech law is based on factuality. Control can be exercised by basically any means, including family ties or non-legal facts. Control implies the possibility of repeated exercise of influence. Control is not based on a specific action, but only on its possibility. For control, influence must be repeated and decisive. Section 75 then introduces several presumptions of control. For the sake of completeness, we set out here the full text of these provisions of the Business Corporations Act.

Section 74

(1) A controlling entity is an entity which can directly or indirectly exercise decisive influence on a business corporation. A controlled entity is a business corporation controlled by a controlling entity.

(2) Where the controlling entity is a business corporation, it shall be the parent business corporation. Where the controlled entity is a business corporation, it shall be a subsidiary business corporation.

(3) A dominant entity pursuant to Section 79 and a majority member shall always be controlling entities, unless stipulated otherwise in Section 75 in relation to the majority member. A dependant entity pursuant to Section 79 shall always be a controlled entity.

Section 75

(1) A controlling entity shall be deemed to be the person who can appoint or recall the majority of the persons that are members of the statutory body of the business corporation or persons in a similar position, and members of the supervisory body of the business corporation of which it is a member, or who is able to enforce such appointment or recall.

(2) A person shall be deemed to be a controlled entity, if he or she controls a share in the voting rights representing at least 40% of all votes in the business corporation, unless other person or persons acting in concert control the same or a higher share.

(3) Persons acting in concert, who jointly control a share in the voting rights representing at least 40% of all votes in the business corporation, shall be deemed to be controlling entities, unless other person or persons acting in concert control the same or a higher share.

(4) It is considered that the person or persons controlling is also the person who, alone or jointly with the persons acting in concert with him/her/it, disposes of the share of voting rights representing at least 30% of all votes in the commercial corporation and this share represented at the last 3 consecutive meetings of the executive body of that person more than half of the voting rights of the persons present.

Trusts and foundations

Who is always the beneficial owner of a trust, foundation, institute and public benefit corporation, irrespective of the substantive assessment, is determined by presumptions in Section 6 of the BOR Act. In relation to a trust, the position of beneficial owner is created by the functions within the trust as enumerated in the AML Directive. In the case of foundations and other listed legal entities, the regulation then bases the position of beneficial owner on functions within the legal entity that can be considered similar in some respects to certain functions within the trust (trustee - member of the statutory body). Furthermore, it is still the case that the beneficial owner of a trust (as well as of a foundation) is the person who meets the material criteria of a beneficial owner (exercise of decisive influence or ultimate benefit).

The entire BOR Act in English is accessible from this link:

https://esm.justice.cz/ias/issm/download/Act%2037-2021_EN.pdf

Sec. 4(4) of the act no. 253/2008 Coll., on certain measures against the laundering of the proceeds of crime and the financing of terrorism (hereinafter AML Act) provides the definition for the AML purposes as follows:

For the purposes of this Act, beneficial owner means

(a) the beneficial owner under the law governing the registration of beneficial owners; or

(b) the natural person for whom the transaction is carried out.

Recent legislative developments

Based on the request of the European Commission, an amendment to the BOR Act was prepared, which primarily changes the basic definition of beneficial owner. The definition will now more formally correspond to the definition of the AML Directive. The existing two-component definition of beneficial owner based on the concepts of ultimate beneficiary and person with ultimate influence is removed. The existing definitions are replaced by a general uniform definition taken from the introduction of Article 3(6) of the AML Directive. The proposal follows the wording of the AML Directive in order to allow for a single, harmonized interpretation.

The general definition is developed in relation to corporations in new Section 4 and in relation to legal arrangements and foundations (and similar legal persons) in the draft new Section 5a. It is clear from these provisions what is meant by 'owns or controls'.

Section 4

(1) *A corporation is ultimately owned or controlled by any natural person who, directly or indirectly through another person or legal arrangement*

(a) *has an ownership share in the corporation or a voting interest of more than 25%,*

(b) *has a right to a share of more than 25% of the profits, other own resources or liquidation balance,*

(c) *exercises a decisive influence in a corporation or corporations which, individually or together, have an interest in the corporation of more than 25 %; or*

(d) *exercises decisive influence in the corporation by other means.*

(2) *Decisive influence in a corporation is exercised by a person who, in his or her own discretion, regardless of whether and on what legal basis, can, directly or indirectly through another person or legal arrangement, achieve that the decision of the highest body of the corporation conforms to his or her will.*

(3) *Decisive influence in a business corporation is exercised by the controlling person in accordance with the law governing the legal relations of business corporations.*

(4) *Decisive influence in a corporation shall be deemed to be exercised by the person who may appoint or remove a majority of the persons who are members of the statutory body of the corporation.*

(5) *Decisive influence in a corporation other than a business corporation, in a housing or social cooperative or in an investment fund in the legal form of a joint stock company with variable share capital shall be deemed to be exercised by any natural person who is a member of their statutory body or a person in a similar capacity or a person representing a legal person in that body.*

(6) *For the purposes of calculating the amount of an indirect shareholding in a corporation, in the case of*

(a) *chaining, the shares held by the persons or legal arrangements connected shall be multiplied and*

(b) *a branching, the sums of the shares of each of the chaining arrangements shall be added together.*

(7) For the purpose of determining the beneficial owner of an investment fund in the legal form of a corporation with variable share capital, investment shares shall not be taken into account unless the articles of incorporation attach to such shares a voting right similar to that attaching to the founder shares.

Section 5a

(1) A foundation, institute, public benefit corporation or legal arrangement is ultimately owned or controlled by any natural person who exercises a decisive influence over it.

(2) Decisive influence in a foundation, institute and public benefit corporation is exercised by a person who, at his own discretion, regardless of whether and on what legal basis, can directly or indirectly through another person or legal arrangement, achieve that the decision of the statutory or other governing body conforms to his or her will.

(3) Decisive influence over the management of a legal arrangement is exercised by one who, in his own discretion, regardless of whether and on what legal basis, can directly or indirectly through another person or legal arrangement achieve that the decision of the trustee conforms to his or her will.

The abandonment of the concept of ultimate beneficiary (deletion of Section 3) does not result in a resignation to reflect the possibility of receiving a relevant benefit in the definition of the beneficial owner of the corporation. An important aspect of the existing legislation is partly retained, namely under section 4(1)(b) of the ESM Act as drafted.

The amendment also contains removal of certain exemptions from the registration obligation. Section 7 of the ESM Act is revised. Firstly, some of the existing exemptions are deleted, and secondly, a general substantive test is added on the basis of which a legal person can be found not to have a beneficial owner. Existing exceptions for private legal persons (e.g. political parties and political movements, churches, trade unions, unit owners' associations) are deleted.

The amendment will enter into force on 1 October 2022.

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.

All information required by law to be published (for extent see below) is available to anyone online without any need to register. It is possible to search information by name of the subject, name of the persons involved (natural or legal persons) or by identification number. It is also possible to use open data at link <https://dataor.justice.cz/> without any need for registration.

According to the act no. 304/2013 Coll., on the Public Registers (hereinafter Public Registers Act or Act on Public Registers), multiple public registers of legal persons exist, including the register of associations, the register of foundations, the commercial register and the register of benevolent associations. No legal entity can be established without a registration into the Public Register.

The Public register is an information system of public administration and is maintained by the competent courts. The information system is centrally managed by the Ministry of Justice. The public registers information system is linked to other public administration information systems, so it shares a range of identification data with them (register of inhabitants, register of territorial identification, addresses and real estates).

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.

Entities recorded in the Czech Public register are required to record *extensive* information which is all publicly available.

The required information on legal persons is registered in a public register managed electronically by a registrar court. Every public register can be accessed directly through the internet. It is also possible to electronically request an officially certified extract of any entry in any public register.

Section 2(1) of the Act on the Public Registers states that registrar courts maintain a special inset for each registered person, registered branch of its business enterprise, business enterprise of a foreign person or its registered branch, subsidiary association, or any other similar organizational unit of a foreign association operating on the territory of the Czech Republic.

In accordance with Section 25(1) of the Act on the Public Registers, the publicly available basic information includes: name and residence address of a registered person; object of activities and purpose of a person, if required by law; legal form of a legal person; date of establishment and termination of a legal person; identification number; name of a statutory body, number of its members, name, residence address or address of the place of stay of each of the members of the governing body, including the manner in which the member represents the legal person, and the date of their appointment and the date of the termination of the discharge of their office; if there is a control body, its name, number of members, name, residence address or address of the place of stay of each of the members of the control body; name, residence address or address of stay of the holder of commercial power of representation, the manner in which he acts, including the information on whether the commercial power of representation is concerned only with a particular branch, its identification and information on whether the holder of commercial power of representation is allowed to alienate or encumber real estate; information on beneficial status, if registered; other facts stated by the statute and the date of registration.

Depending on the form of the legal entity, the other scope of the recorded facts varies. In the case of a commercial register, for example, information on the amount of the share capital, the amount of the shareholders' contributions and other information provided for by law are also recorded. For example, limited liability company is required to provide information about its members (address, names, etc.).

Registrar courts also maintain collections of instruments, which are a specific component of the public registers. The Act on the Public Registers provides for collections of instruments in its sections 66-72. The collection of instruments is an accessory of each inset of a public register containing important legal documents pertaining to the registered entity and can also be accessed directly via the internet.

A registered person is obliged to file with the registrar court every legal document listed in the Act on the Public Registers (or other statutes) without undue delay. These legal documents include the memorandum of association of a legal person; the statute of a foundation; the statute of an endowment fund or institute, if issued; resolutions about the election, nomination, recall or different termination of the discharge of the office of persons in the statutory body, liquidators, insolvency practitioners, managers of registered branches, persons who as a legally established body or its members are entitled to impose liabilities on a legal person or represent it before court or are thus partaking in the management or control of a legal person; a ruling on the expulsion from office of a member of the statutory body of a business corporation; a ruling on the liability of members of a body upon a business corporation's bankruptcy; resolutions about the election, nomination, recall or a different termination of the discharge of the office of a trustee; annual reports; ordinary, extraordinary or consolidated financial statements, if they are not a part of the annual report; if the filing is required by statute,

a proposal for profit distribution or the settlement of loss and their final form, and, if it is not a part of the financial statements, the auditor's report on the revision of the financial statements; etc.

2.3 Is the company registry available publicly & online in your country? **YES /NO**

If **YES**, please provide links to the company registry and any other relevant registries of legal persons, or provide details about how the public can access them.

<https://or.justice.cz/ias/ui/rejstrik>

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.

Competent authorities can access BO information through BO Register.

? Competent authorities do not currently have access to beneficial ownership information

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

The Register of Beneficial Owners is partially accessible to the public, free of charge on the Internet on the website of the Register of Beneficial Owners. Through the web page, electronic extracts from the register can be obtained online. Anyone can thus obtain confirmed basic data on the BO of any legal entity registered in the register. Access to a wider range of data, or to all data, is then limited to entities selected by law.

It is possible to obtain a full extract of registered data from the register for the registering person (the legal entity or trust concerned) and the person registered as the beneficial owner.

A full extract can only be provided to certain entities such as tax authorities, the Czech National Bank and other public authorities. These authorities have remote access to the Register. The purpose of remote access is the quick availability of the necessary information to a legally privileged group of subjects. Selected entities can remotely access the data in the register of beneficial owners through an internet interface managed by the Ministry of Justice.

A complete extract from the register of beneficial owners can be obtained by remote access. Remote access and the processing of the remote access request are free of charge.

- 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 kept by the registrar courts, of which there are 7 in the Czech Republic. The Ministry of Justice provides the technical aspects of the BO Register. However it is possible to entry information to the Register through notary.

In principle, the notary and the court are equivalent authorities in terms of entering data in the register of beneficial owners, but the court is reserved for resolving discrepancies in the register of beneficial owners. Notarial entries are not subject to direct preventive control or review by the court.

Discrepancies in the BO register are reported by those entities that deal with the issue of beneficial owners and their identification within their activities. In this case, these are the public authorities that encounter irregularities in the course of their activities, as well as the obliged entities under the section 2 of the AML Act. These include credit institutions, financial institutions, and other entities. Qualified findings are forwarded to the court that maintains the beneficial owner register. Most discrepancies are reported by obliged entities under the AML Act.

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

Section 13 of the BOR Act provides an exhaustive list of recorded information about the beneficial owner and other related facts. These are (1) information identifying the beneficial owner's person and identity, (2) information explaining the basis for the beneficial owner's position, including information about the structure of the relationship, if any, (3) information about the duration of the beneficial owner's position, and (4) information about the legal entity or legal arrangement of which the beneficial owner is the beneficial owner. In addition, (5) data relating to the procedural aspects of the registration of the particulars (when they were made or made available) are also subject to registration. Finally, (6) data relating to the resolution of discrepancies in the records under Part Three of Title Six of the proposal are recorded. The provision transposes Article 30(1) and (3) to (5) and Article 31(1) and (3a) and (5) of the AML Directive.

For the benefit of completeness, we list here all the data recorded under Section 13 of the BOR Act:

Section 13

The following is registered or automatically transcribed into the Register of Beneficial Owners:

- a) the name and permanent address, alternatively also residence, if it differs from the permanent address, date of birth, national identification number or another unique identifier, if it was assigned, and nationality of a beneficial owner,*
- b) information about the character of a beneficial owner's position,*
- c) information about the size of a beneficial owner's direct or indirect share, if the share establishes beneficial ownership,*
- d) information about the fact establishing beneficial ownership, if it is not established by shares,*
- e) a description of the structure of relations, if it exists, including information to the extent of paragraphs h) and i) about legal persons or legal arrangements in the structure of relations and names of natural persons figuring independently in the structure of relations,*
- f) the date from which a natural person is a beneficial owner,*
- g) the date until which a natural person was a beneficial owner,*
- h) the name of the legal person or designation of the legal arrangement the beneficial ownership of which is registered,*
- i) the identification number of the legal person or designation of the legal arrangement the beneficial*

ownership of which is registered, if it has been assigned,

j) the date of registration or automatic transcription,

k) the moment current information was made accessible, and

l) a discrepancy notice

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

All legal entities and other legal arrangements (trusts) are covered within the scope of the BO Register. The only exceptions are persons with state participation corresponding to 100% of voting rights, public corporations (such as municipalities and regions), political parties, religious organizations, legal entities established by law. For details, see Section 7 of the BOR Act. These are persons whose transparency is ensured by other means (e.g., disclosure rules for political party financing) or for which the beneficial owner cannot be considered at all (those persons that are completely controlled by the state).

A bill is introduced in Parliament that would amend the BOR Act to better define beneficial owner along the lines of the AML Directive, limiting exemptions for entities that are deemed not to have a beneficial owner to public entities only. This amendment is expected to take effect on October 1, 2022.

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

Is the information on the registry(ies) available to the public? **YES / NO**

If YES, please include a link(s) to the registry(ies).

<https://esm.justice.cz/ias/issm/rejstrik>

There are three types of access to the Register of Beneficial Owners: for the public, for the registered person and for privileged authorities.

The public is given access to information on the name, state of residence, year and month of birth and nationality of the beneficial owner of the legal entity and on the nature of the beneficial owner's status and the size of the beneficial owner's shareholding, if the shareholding gives rise to his status. The information which is the result of an automatic transcription and is therefore already available in the public register is also public. In the case of registered beneficial owners of legal arrangements, the register is generally non-public.

Anyone can search the register by entering the identification number or the name of a particular legal entity. Anyone can also obtain directly from the website an electronic extract or a confirmation that no data are recorded for the entity in question.

Access to all data, including historical data, is provided to the legal person itself and the beneficial owner. The registrant can obtain an extract directly from the registry website, after authentication and authorisation via the data box information system (the legal entity must have a data box).

Public authorities have the most extensive access (for details see below). The scope of the information publicly disclosed is governed by the AML Directive. The scope of the public information on the beneficial owner of a legal person is the name, country of residence, year and month of birth, nationality of the beneficial owner, the

nature of the beneficial owner's status, the size of the beneficial owner's direct or indirect shareholding, if such shareholding gives rise to the beneficial owner's status, the date from which the natural person is the beneficial owner and the date until which the natural person was the beneficial owner.

In the case of trusts, the publication of identifying information about the beneficial owner shall be subject to the consent of the beneficial owner. Public disclosure of beneficial owner information is not required by the AML Directive.

If NO, please list the authorities/agencies that have access to this information,

or that can request access.

According to section 16 of the BOR Act, unlimited access is provided to:

- (a) the court or insolvency practitioner for the purposes of legal proceedings,
- (b) a notary public for registration purposes,
- (c) a law enforcement authority for the purposes of criminal proceedings and a public prosecutor for the purposes of exercising non-criminal jurisdiction,
- (d) the administrator of a tax, fee or other similar pecuniary charge for the purposes of the exercise of their administration,
- (e) an administrative authority for the purposes of conducting proceedings for an offence,
- (f) an intelligence service for the purpose of carrying out tasks under the law governing the activities of intelligence services,
- (g) the Financial Analytical Office, the Czech National Bank and other authorities in the performance of activities under the Act regulating certain measures against the legalisation of the proceeds of crime and the financing of terrorism or the Act regulating the implementation of international sanctions for the purpose of maintaining international peace and security, the protection of fundamental human rights and the fight against terrorism,
- (h) the Czech National Bank in the exercise of supervision over persons operating on the financial market and in the exercise of activities under the Act regulating recovery procedures and crisis resolution on the financial market,
- (i) the National Security Office, the Ministry of the Interior or the Intelligence Service for the purposes of security proceedings pursuant to the Act regulating the protection of classified information and security competence,
- (j) the Supreme Audit Office for the purpose of exercising its competence,
- (k) the Ministry of Finance for the purpose of exercising its powers under the law regulating gambling,
- (l) the Office for State Representation in Property Matters for the purpose of exercising its competence,
- (m) the State Land Office for the purposes of exercising its competence under the legislation under which the State Land Office disposes of State property,

- n) the Office for Supervision of the Management of Political Parties and Political Movements for the purposes of exercising its competence,
- o) an obliged person in connection with the identification and control of a client pursuant to the Act regulating certain measures against the legalization of proceeds of crime and the financing of terrorism,
- (p) a provider of public financial support for the purposes of exercising its powers under the law regulating financial control,
- (q) a managing authority, an intermediate body, a certifying authority and an audit authority for the purposes of exercising their powers under the directly applicable European Union regulation governing common provisions on the European Structural and Investment Funds³),
- (r) the paying agency and the certifying authority for the purposes of exercising their powers under the directly applicable European Union rules governing the financing, management and monitoring of the common agricultural policy⁴); and
- (s) that provided for by any other law.

Some information is restricted only to

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

Access to the information is free of charge.

- o 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)?

It is possible to search by name of the entity or its identification number in case of public access. In case of access provided to competent authorities, it is possible to search also by identification data of the beneficial owners.

- Frequency of updates of information and triggers for updates;

The records are changed whenever there are entries about the ownership structure in the public registers (in the case of automatic transcription). It is the duty of the persons to ensure that the data are entered in the register of registered owners (Section 9(1) of the BOR Act). The registering persons are both the legal persons themselves and, in the case of legal arrangements, their trustees. The registration can be ensured either proactively (by a motion to the court or a request to a notary) or by using the so-called automatic transcription.

The registration must be initiated within a specified period of time without undue delay after the occurrence of a decisive fact. A person other than the registering person, e.g., the beneficial owner, may also initiate the registration under the conditions of Section 26(3) of the BOR Act. Failure to comply with the registration obligation is subject to a fine of up to CZK 500,000. In addition, Sections 52 et seq. of the BOR Act provide for negative private law consequences of non-compliance with the registration obligation (see below).

A large number are automatically overwritten from the public registers and are thus automatically updated every time a public register entry is changed. The automatic overwriting is in principle independent of the activity of the registering person and occurs automatically if the situation in the public register (or the register of trusts) corresponds to the legal prerequisites. The automatic transcription is not a one-off event but represents a dynamic link between the status of the entry in the public register and the register of beneficial owners. The

automatic transcription does not relieve the registrant of the obligation to enter the correct details if the transcription does not correspond to the actual situation or is incomplete.

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

All entries in the public registers and the BO Register must be supported by documents proving the information entered. Moreover, the proper fulfilment of information and other obligations imposed by the BOR Act, or their enforcement, is further ensured by establishing a procedure in the event of discrepancies in the register of beneficial owners.

This is set out in detail in section 23 of the BOR Act.

Section 23

[...]

- (2) A document proving the identity of a foreign natural person means in particular
- a) an extract from a foreign register equivalent to the Population Register,
 - b) an extract from a foreign register equivalent to the Public Register or Register of Beneficial Owners,
 - c) an identity or travel document.
- (3) A document proving the position of the beneficial owner of relationship structure means in particular
- a) an extract from the Public Register or from a foreign register equivalent to the Public Register or the Register of Beneficial Owners,
 - b) a founding legal act,
 - c) a list of shareholders,
 - d) a decision of a body on the paying out of share of benefit,
 - e) a declaration of partners acting in concert,
 - f) a declaration of the registrant or beneficial owner on the status of the beneficial owner or on the structure of relations, if it is based on a legal fact which cannot be attested even after making every effort that can be reasonably required,
 - g) a declaration by the registrant or beneficial owner on the status of the beneficial owner or the structure of relations if it is not based on a legal fact.

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

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 / NO**

If YES,

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

Under Czech law, there are three situations: the legal regime for foreign legal entities established outside the EU, for foreign entities established in the EU, and for foreign trusts.

Foreign legal persons

A foreign person may do business in the Czech Republic under the same conditions as a Czech person, unless the law expressly provides otherwise.

Foreign persons can do business in the Czech Republic in several ways. They can establish a new company, participate in the business of an already established company by becoming its shareholders and also by locating their plant, usually a part of it, in the Czech Republic, as they undoubtedly operate a plant also in the territory of their home state. The establishment of a plant or a branch plant is subject to compulsory registration in the Commercial Register. Both the plant and the branch plant do not have legal personality. Both are objects of law.

Pursuant to Section 49 of Act No. 304/2013 Coll., on Public Registers, the following shall be entered in the Commercial Register in respect of a plant of a foreign person and a branch plant

- (a) the name, if different from the name or business name of the foreign person, the registered office or location of the plant or branch plant and its identification number,
- (b) the business or activity of the establishment or branch,
- (c) the name of the foreign person, its legal form and the amount of the subscribed capital in the relevant currency, if required,
- (d) the law of the State governing the foreign person and, if that law prescribes registration or if the person is registered, the register in which the person is registered and the registration number,
- (e) the particulars required by this Act to be entered in respect of a member of the statutory body or a proxy,
- (f) the particulars required by this Act to be entered in respect of the manager of a branch establishment and the address of his place of residence or, where different from the address of his place of residence, his domicile,
- (g) the dissolution of the foreign person, the appointment, identification and authorisation of the liquidator and the termination of the liquidation of the foreign person,
- (h) the commencement of insolvency or other similar proceedings in respect of the foreign person, the declaration and annulment of bankruptcy, the authorisation of reorganisation, the approval of a reorganisation plan, the execution of the reorganisation plan or substantial parts thereof or the details of any other similar decision in respect of the foreign person; and
- (i) the cessation of the operation of the plant or branch in the Czech Republic.

Foreign legal persons with registered office within EU

This issue is covered by EU law, in particular the so-called freedom of establishment enshrined in the primary law of the European Union, namely Article 49 TFEU. According to this provision, restrictions on the freedom of establishment for nationals of one Member State in the territory of another Member State are prohibited, as are restrictions on the establishment of agencies, branches or subsidiaries by nationals of one Member State established in the territory of another Member State.

EU legal entities are not required to register in the public register. As regards the branch plant itself, the Public Registers Act mentions the registration of a branch plant of a foreign person in Section 2(1). Here it provides

that the registration court shall keep a separate entry for each branch plant of a foreign person, regardless of the legal form or personal status of the founder. The list of particulars to be entered in the commercial register about a branch establishment of a foreign person is then contained in section 50 of the Public Registers Act, so that section 50 applies expressly to the establishment and branch establishment of a Union foreign person. Neither of these provisions, however, provides for an obligation for an EU foreign person to establish a branch establishment.

Foreign trusts

In addition to trusts established under Czech law, foreign trusts operating in the Czech Republic, i.e. established under the law of a foreign state, are obligatorily entered into the register of trusts. It is required to register for all foreign trusts with nexus with the Czech Republic pursuant provision of section 65a(2) of the BOR Act. According to section 65g, it is obligatory to register this information about foreign trust:

- (a) the designation of the foreign trust and its identification number,
- (b) the law of the State governing the foreign trust and, if that law prescribes registration, the register in which it is registered and the registration number,
- (c) the purpose of the foreign trust fund and, if applicable, the object of the activity, business or ancillary economic activity, if any,
- (d) the particulars required by this Act to be recorded with the trustee of the trust,
- (e) the dissolution of the foreign trust,
- (f) the declaration of bankruptcy or the commencement of other similar proceedings in respect of the foreign trust; and
- (g) termination of the foreign trust's activities in the Czech Republic.

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

Beneficial ownership information of entities under the jurisdiction of EU law is registered. In other words, all legal entities registered in EU Member States have obligation to register their beneficial owners. However, foreign legal persons under the jurisdiction of third states (non-EU members) do not have beneficial ownership information registered.

Nevertheless, in case of trusts, in addition to the beneficial owners of trusts with "Czech" trustees (i.e., domiciled or resident in the Czech Republic), beneficial owners of trusts with "non-EU trustees" (i.e., domiciled, resident or with a branch outside the European Union) are also recorded. For the second group of trusts, additional criteria are specified, which depend on the relationship or the operation of the legal arrangement in the Czech Republic.

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? **YES / NO**

• 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 legal arrangements created or registered in your country.

Trusts are subject to same rules relating to disclosure of BO information as other legal entities. Sec. 6(3) provides for a legal fiction that the beneficial owner of a legal arrangement is always also any natural person who is (a) its founder, (b) its trustee, (c) entitled to supervise the administration of the legal arrangement and who may appoint or remove a trustee or a defendant, (d) its beneficiary; or (e) from among the persons in whose main interest the legal arrangement has been established or is being administered, if he is not a trustee. This means that, from the point of view of the law and the Register, the aforementioned natural persons will always be the beneficial owner. This is a transposition of Article 3(6)(b) of the AML Directive, which also sets out who is the beneficial owner of the trust. Essentially all formal functions or roles that occur or may occur within the arrangement are listed.

Trusts are required by law (under sanctions) to disclose its BO structure as well additional information for the Register of Trusts according to Act on Public Registers.

There are three types of access provided to different persons or authorities into the Register as noted above.

• 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?

According to section 65a of the Public Registers Act, provisions of this Act on the registered person also apply mutatis mutandis to a trust or a foreign trust. The rights and obligations provided by this Act to a registered person shall be exercised by the trustee in relation to the trust fund. For details of the process see above.

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

? 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.

Rules on BO information on trusts are similar to rules on BO information on other legal entities. For details see 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).

The Czech legislation contains several regulations institutes are regulated to ensure effective, proportionate and dissuasive measures or sanctions are in place to ensure compliance with in relation to the registration of beneficial owners requirements. In principle, a distinction can be made between direct and indirect enforcement measures.

- Direct measures can be understood as regulating both the offences related to the breach of the registration obligation and the private law consequences of not registering the beneficial owner.
- Indirect measures are the negative consequences of non-compliance with the registration obligation, which affect legal persons in the context of specific processes (public procurement, etc.). The general public and free access to the Czech register of beneficial owners can also be seen as indirect measures to enforce compliance with the registration obligation.

Offences

A fine of up to CZK 500,000 may be imposed for offences consisting in a breach of the registering person's registration obligation under Section 9(1) of the BOR Act (Section 55 of the BOR Act). The same penalty is imposed on a person who violates the obligation to provide the necessary cooperation pursuant to Section 10 of the BOR Act. Thus, the non-cooperating beneficial owner or persons through whom his position is established may also be subject to a sanction.

Failure to enter any data in the register of beneficial owners is specifically sanctioned. In general, it is an offence to fail to ensure that the information recorded corresponds to the actual situation. The commission of the offences depends on a procedurally significant event in the irregularity procedure. The substantive assessment of the quality of the data in the records is thus left to the court. The offences and the imposition of penalties are subsequently decided in the regime of offence proceedings under Act No. 250/2016 Coll., on liability for offences and the procedure thereon. The administrative discretion focuses only on the assessment of the seriousness of the offence and the determination of the sanction. Offences are dealt with by municipalities with extended competence.

Private law consequences

In addition to fines, the negative private law consequences of not registering the beneficial owner are regulated (Section 52 et seq. of the BOR Act). The consequences depend both on the failure to register the correct person and on the failure to register any information at all. These consequences arise directly from the law and are therefore not dependent on a judicial or administrative decision.

Three consequences are regulated, namely

1. the unenforceability of the so-called shielding contracts (Section 52 of the BOR Act); and
2. the impossibility of paying out profits (Section 53 of the BOR Act); and
3. the prohibition of voting (Section 54 of the BOR Act) in the highest body (general meeting, membership meeting) of the business corporation to the beneficial owner who is not registered in the register of beneficial owners.

These consequences have a major impact on the contractual relations between business corporations and their

shareholders.

Unenforceability of contracts

According to Section 52 of the BOR Act, rights and obligations arising from contracts concealing the identity of the beneficial owner and arising at a time when the beneficial owner was not registered in the register of beneficial owners cannot be enforced. The purpose of the regulation is to prevent or hinder the activities of professional fictitious owners whose aim is to circumvent legal obligations or to facilitate property crime.

A sham contract is to be understood in particular as a contract of a command type, the purpose of which is to manage a legal person or other legal arrangement on the instructions of a certain person, which, from a formal point of view, bears no relation to the structure of the legal person or legal arrangement and which is not registered anywhere. These disguise contracts effectively constitute the incorporation of a third party as a member of the corporation (the so-called strawman). However, the fictitious owner (e.g., a contractually bound partner or managing director) is bound by all legal relations arising from his or her position in the legal person or legal structure.

As a consequence, the regulation creates uncertainty resulting from the transfer of similar disguising contracts to the extra-judicial sphere. The unenforceability of the obligations arising from the shielding contracts makes it impossible or at least significantly more difficult for formal owners to provide professional services. Given the impersonal nature of these services, formal owners will no longer be able to rely on being paid for the service. Clients, on the other hand, will not be able to rely on the services being provided or on the benefit of the formal exercise of the rights of the corporate body being passed on to them.

Prohibition of payment of profits and exercise of voting rights

The prohibition on the payment of (in particular) profits (Section 53 of the BOR Act) and the prohibition on the exercise of voting rights (Section 54 of the BOR Act) affect beneficial owners of corporations who are not registered in the register of beneficial owners. The same consequences also apply to legal persons of which they are also beneficial owners. Finally, legal persons that have no registered beneficial owner are also affected, contrary to the requirement of the law.

- A business corporation may not pay a share of a benefit (typically profit) to a beneficial owner not on record, or to a legal person or arrangement of which it is also a beneficial owner. A business corporation may also not pay a share of the benefit to a legal person or legal arrangement that has no beneficial owner on the register of beneficial owners.
- A non-registered beneficial owner may not exercise voting rights in the decision-making of the supreme body of that business corporation. Nor may voting rights be exercised by an entity of which the unregistered beneficial owner is also a beneficial owner. In general, voting rights may not be exercised by a legal person or an agent of a legal arrangement which has no beneficial owner registered in the register of beneficial owners.

Both the prohibition of payment of profit shares and the impossibility to exercise voting rights (so-called "sistation") are specific private law consequences of the failure to register a beneficial owner. This is an already existing mechanism of the corporate law, which is followed by the regulation in the law on registration of beneficial owners. In practice, illegal profit payments by the statutory body or invalid votes at general meetings are typically challenged by (minority) shareholders or shareholders or, for example, by insolvency administrators in the event of a company's bankruptcy. This provides them with a tool to challenge, for example, the non-transparent removal of their own resources from the corporation. In civil proceedings, the courts may subsequently declare certain acts invalid or, for example, declare a member of the statutory body liable for any damage caused to the corporation by the unlawful payment of profits. In the

case of wrongful payment of profits, the primary concern is that an unjust enrichment obligation arises between the corporation and the recipient of the profits.

The regime has been chosen in relation to the registration of beneficial owners in an attempt to create proportionate measures that preserve legal certainty and are both effective and dissuasive. The Czech legislation is based on the assumption that the private law negative consequences of irregularities are more effective and at the same time do not constitute a significant interference with the rights of registrants. Public law (financial, criminal) sanctions, especially when information about the real owner is hidden in order to carry out property crime, have only a very limited deterrent effect.

Indirect negative effects

Important negative consequences of the failure to comply with the obligation to register the beneficial owners include the exclusion of the contractor from the public procurement pursuant to Act No.134/2016 Coll., on Public Procurement, and the impossibility to provide a public subvention pursuant to Act No.218/2000 Coll. and Section 10a of Act No. This effect has a significant incentive to ensure that a large number of entities comply properly. A similar effect is exerted by the pressure from obliged entities who control the beneficial owners of their customers. In order for customer to obtain the services they require (e.g. a bank loan), they must have their beneficial owners duly registered.

The fact that the register is free of charge and publicly available without the need to log in (part of the data) has a strong coercive effect on the registration of the beneficial owner. Legal entities are thus under the permanent supervision of civil society, their customers or contractors, which leads them to duly comply with the registration obligation.

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.

Registrar courts can initiate proceedings with those legal entities, which do not comply with their obligation. During the first half of 2022 there were 1,053 proceedings, of which 245 are still ongoing.

On average, there are around 400 per quarter a year notices of discrepancy under section 42 of the BOR act are received by courts. The courts issue about the same number of notices of discrepancies for these entities, however, in many the registrants correct the data before the court has time to summon them to correct it. According to the courts, in the vast majority of cases, the registrants immediately correct the data in their records following a court notification.

Compliance of legal entities with the statutory obligations is high. As of 1 December 2021, beneficial owners were registered for 577,188 legal entities. This means that 89.6% of the 644,070 legal entities subject to the registration obligation have complied with this obligation. In the case of legal arrangements (trusts), the registration obligation has been complied with in 99.8% of cases (3,581 out of 3,588).

It has to be pointed out that the BOR Act is a new regulation and will be evaluated subsequently. The Czech Republic continues to monitor the level of compliance.

6. International Cooperation, asset recovery and challenges

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.

In general, Czech Republic provides legal assistance to foreign countries to the same extent as it can perform evidence collection actions within its domestic criminal proceedings.

Foreign counterparts are able to obtain basic BO information on legal persons via direct public access to Register of Beneficial Owners. This is because Section 14 para 1 of the BOR Act stipulates that information on BO's name, state of residence, year and month of birth, nationality, as well as information about the character of a beneficial owner's position, information about the size of a beneficial owner's direct or indirect share, if the share establishes beneficial ownership, the date from which a natural person is a beneficial owner, the date until which a natural person was a beneficial owner, is publicly accessible on web sites of Ministry of Justice. The exact link is as follows: <https://esm.justice.cz/ias/issm/rejstrik>.

Secondly, foreign counterparts may obtain the full set of information on BO, including on BO of legal arrangements, from the FIU. This is because the Act No 253/2008 Coll., on Selected Measures Against Legalization of Proceeds of Crime and Financing of Terrorism (hereinafter "AML Act"), sets out in Section 33 para 1 that "To implement this Act, the FIU, to the extent stipulated by international agreements binding upon the Czech Republic or by the relevant European Union law, cooperates with foreign authorities and international organizations which have similar competences." Furthermore, para 3 of the said Section stipulates that FIU may cooperate with international organizations and foreign public authorities having comparable competences based on reciprocity, as well as with other international organizations and foreign public authorities provided that the information exchanged would be used for the purpose of AML Act and protected at least to the extent given by AML Act.

As stipulated in Section 33 para 4 of the AML Act, the request must be justified and must include information on the intended use of the information received.

The English version of AML Act is accessible here: <https://www.financnianalytickyurad.cz/files/act-no-253-2008-sb-on-the-selected-measures-against-legitimisation-of-proceeds-of-crime-and-financing-of-terrorism-aml-act.pdf>.

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.

In general, when it comes to requests on BO information from FIU, the foreign counterparts may contact Financial Analytical Office. Its contact information is accessible here:
<https://www.financnianalytickyurad.cz/en/contacts>.

The most suitable way how to lodge the request for information is via Egmont Secure Web or via FIU.NET systems.

During criminal proceedings, the foreign authority must forward a request for legal assistance according to Article 46, paragraph 15 of the UN Convention against Corruption of October 31, 2003 to the Supreme Public Prosecutor's Office, which is the competent authority for the stage of proceedings before the indictment is filed to the court (pre-trial proceedings). After reviewing the request, the Supreme Public Prosecutor's Office forwards it to one of the eight regional public prosecutor's offices for collection of evidence. At these offices, there are prosecutors specialized in international judicial cooperation in criminal proceedings, including the

processing of requests for legal assistance, which greatly accelerated cooperation. These specialized prosecutors handle MLA requests with the help of police authorities, to whom they can give binding instructions on how to proceed. The answer is always sent to the foreign authority via:

Supreme Public Prosecutor's Office,

Jezuitská 4,

Brno 660 55,

the Czech Republic,

tel: ++420 542 512 300,

fax: ++420 542 512 350,

email: mo@nsz.brn.justice.cz

Within the framework of the European Union, a special procedure is established by the directive (EU) 2018/843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2018 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing which, on the one hand, imposes the maintenance of a central register of beneficial owners and, on the other hand, enables the sharing of information from these registers at the level of financial intelligence units.

However, operational information can also be transmitted at the level of police authorities. These requests shall be forwarded to:

Police of the Czech Republic

National Headquarters Against Organized Crime

Department of International Cooperation and Methodology - ARO/CARIN workplace

P.O.Box 41/NCOZ,

156 80 Praha 5 – Zbraslav

Fax: ++420 974 863 808

email: ncoz.aro@pcr.cz

The information shared by the police authorities of the Czech Republic can be used only for operational purposes, however, in accordance with Article 1(4) of the Council framework decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ: L 386 of 29.12.2006, p. 89), the judicial authorities of other EU member states may request the consent of one of the regional public prosecutor's office to use this information as evidence in criminal proceedings. Contact details for one of the eight regional prosecutor's offices is always provided in the police authority's response to a request for information.

However, operational information can also be transmitted at the level of police authorities. These requests shall be forwarded to:

Police of the Czech Republic

National Organized Crime Agency (NCOZ)

Department of International Cooperation and Methodology - ARO/CARIN Point of Contact

P.O.Box 41/NCOZ,

156 80 Praha 5 – Zbraslav

Tel: ++420 974 863 413

Fax: ++420 974 863 808

email: ncoz.aro@pcr.cz

As a public authority, the Police of the Czech Republic has been granted a full access to the Beneficial Ownership Database.

Upon a request submitted by a foreign law enforcement authority, there is a possibility to perform a full search both in the public and restricted parts of the database. Unlike the public, authorized users (police officers) may use the *advanced search option*, now enabling a wider choice of search criteria as follows:

Name of the subject (legal entity)

Subject identification number / file number

Surname / Name / Date of birth / type of beneficial ownership

Search can be performed to display either valid entries only or in combination with historical (void) records. Historical data are not available for an open-source-based search via the public part of the database.

The information shared by the police authorities of the Czech Republic can be used only for operational purposes, however, in accordance with Article 1(4) of the Council framework decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ: L 386 of 29.12.2006, p. 89), the judicial authorities of other EU member states may request the consent of one of the regional public prosecutor's office to use this information as evidence in criminal proceedings. Contact details for one of the eight regional prosecutor's offices is always provided in the police authority's response to a request for information.

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

In general, the challenges are the same as those concerning cases on national level.

In addition, while any foreign competent authority can retrieve basic beneficial ownership information in the Czech language, online and free of charge, a translation into the language of the foreign competent authority is necessary to understand the information from the national beneficial ownership information system which sometimes might be difficult.

In the near future, European competent authorities will have access to additional beneficial ownership information through the Beneficial Ownership Registers Interconnection System – BORIS. This option will not be available to competent authorities outside the European Union.

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?

The main challenge is the lack of possession of accurate, adequate and timely BO information by foreign counterparts. This does not apply to EU/EEA Member States, since EU legal framework is quite robust in this regard.

For the LEAs, the main problem is the incompleteness, inaccuracy and out-of-dateness of data and information in the relevant registration (property, company, business) registers and registries. And a long-term problem is also hidden ownership structures through offshore companies, trust funds, or even directly through loved ones or infected persons.

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?

It needs to be noted that BO information is routinely exchanged with foreign counterparts. On the other hand, it is rarely possible to recover proceeds of crime solely on the basis of BO information, as it makes up only part of the whole image.

In one investigation of a drug-related offence it was ascertained that the main perpetrator had established two

legal entities in the Czech Republic. Bank accounts were opened for these subjects as well. Both legal entities were owned by a UK company which was owned by another legal entity based in Florida, USA. No information on beneficial ownership was available from the official business registers in any of the countries involved. However, details on beneficial ownership in relation to the whole network of legal entities could be established from the bank following a legal request pursuant to Section 8 (2) of the Criminal Procedure Code as banks are expected to clarify beneficial ownership within their KYC procedures and are even entitled to do so by national AML legislation. As a result, law enforcement authorities succeeded in seizing criminal assets (i.e. funds and a vehicle) worth ca. 500,000.00 EUR.

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.

Even though some specific information is only restricted to competent authorities as well as institutions obliged under the AML Act, most information is publicly available without any charge and online. It is possible to find beneficial owner of all legal persons.

All required information which is saved into the Public Registers, Trust Register or Register of Beneficial Owners has to be verified either by court or notary. In other words, legal entity needs to prove all the information which is required to disclose to the Registers under sanctions.

Traditional forms of public law sanctions in the form of fines or even criminal law instruments to enforce obligations related to the recording of beneficial ownership data are often argued to be ineffective in combating money laundering and terrorist financing (and other property crimes). This is deduced from the logical reasoning that the perpetrator of serious economic crime will not be motivated to undertake registration activities, the proper performance of which would lead to his detection, by penalties lower than those threatened for the original crime.

At the same time, the ease of circumventing the requirement of transparency of legal persons by using so-called straw men is pointed out. Therefore, the Czech legislation has opted for a combination of several sanction mechanisms, including private sanctions, which force companies and other legal persons to obtain and keep adequate, accurate and up-to-date information about their real owner.

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

Principles of paragraph 161 of the political declaration adopted by the General Assembly are encompassed in the act no 253/2008 Coll., on certain measures against money laundering and terrorist financing (AML Act) and other legislation (such as BOR Act or Public Registers Act) implementing Directive (EU) 2015/849 of

the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

The main change is represented by the BOR Act. The register of beneficial owners is comprehensively regulated by the new Act No. 37/2021 Coll., on the register of beneficial owners. The register of beneficial owners is a continuation of the previously existing register of data on beneficial owners under Act No.304/2013 Coll.

In particular, the BOR Act regulates (1) the detailed definition of beneficial owner, (2) the method of access to the data in the register, (3) the process of registration of data on beneficial owner (registration in court proceedings or through a notary), (4) automatic transmission of certain data from the public registers, (5) the resolution of incorrect or missing data in the register, and (6) penalties for breach of obligations related to the registration of beneficial owners.

The BOR Act is a transposition of the AML Directive in relation to the issue of beneficial ownership registration. The direct source of inspiration for the transposed Directive was the 2012 FATF Recommendations (24 and 25) and the FATF Beneficial Owner Methodology in relation to beneficial ownership registration.

The beneficial ownership register is an information system of public administration and is maintained electronically by the competent courts. The information system is centrally managed by the Ministry of Justice. The Register of Beneficial Owners is used to record statutory data on the so-called beneficial owners of legal persons established in the Czech Republic and legal arrangements (Section 12 of the BOR Act).

In general, the registration of beneficial owners promotes transparency of legal persons and legal arrangements. The introduction of the registration obligation strengthens the transparency of the organizational and personal structure of legal entities, i.e. how it is managed, where its funds flow and which natural person manages it or receives its funds. Transparency has applications in other areas of law beyond money laundering, particularly in the control of the management of public funds or the assessment of conflicts of interest of members of corporate bodies. A positive side effect is also the transparency of the relationships and structures of legal persons in terms of enhancing credibility and competition in business dealings.

1 16. 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.