



Ministry of Justice

DEPARTMENT OF JUSTICE AFFAIRS
OFFICE OF THE HEAD OF THE DEPARTMENT

Rome, 9 August 2022

Cabinet of the Minister
International Affairs Service

Subject: U.N.O.D.C. Implementation of the Resolution “*Enhancing the use of beneficial ownership*”. Request for information on domestic legislation and practices.

File No. **DAG/0130902.E/** of 17.6.2022

Questionnaire on Beneficial Ownership 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).

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Under Italian law, the notion of “**beneficial ownership**” can be inferred, *a contrario*, from Article 512 *bis* of the Criminal Code, inserted in the Criminal Code by virtue of Article 4 of Legislative Decree No. 21/2018 to replace the previous Article 12 *quinquies* of Decree-Law No. 306/1992 (converted into Law No. 356/1992), according to which “ *unless the act constitutes a more serious crime, any person who **fictitiously attributes to others the ownership or availability of money, assets or other benefits** in order to circumvent the provisions of law concerning asset protection measures or smuggling, or to facilitate the commission of one of the offences referred to in Articles 648, 648 bis and 648 ter, shall be punished by imprisonment from two to six years*”.

The text of the above-mentioned provision of law refers to the “fictitious attribution” of ownership or “availability”, using deliberately non-technical terms, which do not contain any reference to instruments of civil law relating to the transfer of power - *de facto* or *de jure* - over an asset.

As regards the “evidence” of “fictitious interposition”, it should be pointed out how even the most formalistic and rigorous case-law considers that such proof can also be provided by circumstantial evidence.

In this connection, the provisions set out in Article 192, paragraph 2, of the Code of Criminal Procedure should be reminded, stating that: “*the existence of a fact cannot be inferred from circumstantial evidence unless such evidence is serious, precise and consistent*”.

In this regard, it appears appropriate to provide a list of the elements which may constitute “typical indicators” (so-called “*red flags*”) of fictitious interposition deriving from the case-law, i.e. indicators that the “interpreter” may take into consideration (by way of example, though not exhaustively) on the grounds of their “regular” presence in phenomenal reality, such as:

- the concentration in the hands of the alleged “interposing person” [*interponente*] of the powers of management and control of various allegedly interposed companies;
- an income of the allegedly interposed persons [*interposti*] over the years, which is incompatible with the undertaking of entrepreneurial initiatives;
- the concurrent exercise of another professional activity by the interposed persons;
- the lack of a specific entrepreneurial experience on the part of the interposed persons, especially where they are directors or owners of several companies;
- the existence of frequent contacts by telephone between the interposing persons and the persons who have accepted to hold shares or manage business on their behalf;



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- the transfer of assets between several companies attributable to the same substantial power over an asset;
- the existence of previous professional collaboration relationships or family relationships between the interposing persons and the persons who have accepted to hold shares or manage business on their behalf;
- the distribution of profits to silent partners;
- the finding of documentation relating to the various companies, which is available to the interposing person;
- having recourse to the same notary for the purpose of concluding the transfer of shares among the various companies.

More specifically, the definition of “beneficial ownership” for legal persons can be found in Article 20, paragraph 1, of Legislative Decree No. 231/2007: the beneficial owner of a legal person is the natural person or natural persons to whom, ultimately, the direct or indirect ownership of the entity or its control can be attributed.

The relevant legislation is contained in Legislative Decree No. 231/2007 and in the Decree of the Minister of the Economy and Finance No. 55 of 11 March 2022 (hereinafter referred to as Ministerial Decree 55/2022).

The criteria to determine the beneficial ownership are differentiated according to the type of entity (see Article 1, paragraph 2, points o), p) and q) of Ministerial Decree 55/2022):

1) companies with legal personality:

- ownership of a share amounting to more than 25% of the capital, held by a natural person;
- ownership of a percentage of shares amounting to more than 25% of the capital, held through subsidiaries, trust companies or intermediaries;
- where the examination of the ownership structure does not allow to identify unequivocally the natural person or natural persons to whom direct or indirect ownership of the entity or its control can be attributed, the beneficial owner shall be the natural person or natural persons to whom control of such an entity can be attributed on the basis of: control over the majority of voting rights at the ordinary general meeting; control over sufficient votes to exercise a dominant influence at the ordinary general meeting; existence of specific contractual constraints allowing to exercise a dominant influence;
- where the application of the criteria set out above does not allow to identify unequivocally one or more beneficial owners, the beneficial owner shall be the



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person(s) having powers of legal representation, administration and management of the company.

2) private legal persons (associations, foundations and other private institutions):

- the founders, if alive,
- the beneficiaries, when identified or easily identifiable;
- the persons endowed with powers of legal representation, administration and management.

3) trusts and similar legal arrangements:

- the settlor, the trustee or the protector;
- another person on behalf of the trustee, beneficiaries or class of beneficiaries and other natural persons controlling the trust or the trust-like legal arrangement and of any other natural person ultimately controlling the assets contributed to a trust or to a similar legal arrangement through direct or indirect ownership or by other means.

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 main institutional source for obtaining information on legal persons is the consultation of the Register of Companies, a public electronic register provided for in Article 2188 of the Civil Code and managed electronically, held by the Chamber of Commerce under the supervision of a judge. It provides a comprehensive overview of the legal situation of each company.

The Register is made up of an ordinary section and of several special sections.

The ordinary section comprises: partnerships and joint stock companies, cooperatives, consortia with external activities and consortium companies, companies established abroad with administrative office or secondary office in Italy; European economic interest groupings; public entities having as their exclusive or principal purpose the exercise of commercial activities; (not small) individual commercial entrepreneurs.

A special section includes the types of business qualifying as: agricultural company (natural persons and legal persons); small entrepreneur and/or small independent farmer; simple partnership.



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Moreover, there are appropriate sections in which a business is registered as innovative start-up; certified incubator; innovative SME; social enterprise; entities engaged in management and coordination activities and those subject to them (group links).

Other special sections comprise professional partnerships, companies registered in the national register for school-work alternation; documents translated from a language other than Italian.

The register contains the data (on the incorporation, changes and cessation) of all the companies, whatever their legal form and sector of economic activity, having their main office or local units in the national territory, as well as of other entities envisaged by law. It provides all key information concerning companies (name, statutes, directors, main office, etc.) and all the events after registration (e.g. changes to the statute and company positions, transfer of the main office, liquidation, insolvency proceedings, etc.).

The easiest way to obtain basic information is by applying for a company registration report, which can also be requested by common citizens and is available in English.

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.

According to the type of company, a company registration report shall indicate directors, holders of other positions or qualifications, business transfers, mergers, divisions, takeovers, main office and local units, dissolution, insolvency proceedings and deletion, auditors, members, supervisory bodies, activities, professional registers, rolls and licenses, parent companies or entities, shares in other companies, partners and holders of stocks and shares, information from the statute, the most recently filed statute, financial information.

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

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://www.registroimprese.it/visura-camerale-e-certificato>

3. Access to beneficial ownership information of legal persons

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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

On **25 May 2022** the **Decree of the Ministry of Economy and Finance No. 55/2022**, laying down “*Provisions on notification and access to, and consultation of data and information on **beneficial ownership** of companies with legal personality, of private legal persons, of trusts producing legal effects relevant for tax purposes, and of legal arrangements similar to trusts*” (hereinafter referred to as “Ministerial Decree”), was published in the Official Journal No. 121.

The obligation of notification of beneficial ownership shall enter into force following the publication of a decree by the Ministry for Economic Development certifying the operation of the system of notification of data and information on beneficial ownership (Article 3, paragraph 6 of Ministerial Decree n. 55/2022):

– within 60 days following 9 June 2022 (date of entry into force of Ministerial Decree No. 55/2022)

– in any event after the preparation of the technical specifications concerning the protection of personal data, of a ministerial decree concerning administrative fees and of an executive decree concerning the notification form to be used, as provided for by Ministerial Decree No. 55/2022.

It should be noted that, in accordance with Article 1 of Ministerial Decree No. 55/2022 and of Article 21 of the Anti-Money Laundering law, the following entities are required to notify information on beneficial ownership to the special section of the Register of Companies:

A) companies with legal personality (limited liability companies, joint stock companies, partnerships limited by shares, cooperatives, which are required to register in the Register of Companies). The notification shall be made by the directors;

B) private legal persons (associations, foundations and other private institutions), which are required to register in the Register of private legal persons under the Decree of the President of the Italian Republic No. 361 of 10 February 2000). The notification shall be made by the founder, if alive, or by the persons endowed with powers of representation and administration;



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C) trusts producing legal effects relevant for tax purposes, and legal arrangements similar to trusts. As regards the latter, the notification of data on beneficial ownership shall be made by the trustee.

The entities specified above shall be required to notify information and data on beneficial owners within 60 days following the publication of the decree by the Ministry for Economic Development (Article 3, paragraph 6).

The obligation to notify the information on beneficial owners is prescribed by Article 21 of Legislative Decree of 21 November 2007 (Anti-Money Laundering Law), paragraph 1 of which stipulates that:

“Companies with legal personality, which are required to register with the Register of Companies referred to in Article 2188 of the Civil Code, and private legal persons, which are required to register with the Register of private legal persons in accordance with Decree of the President of the Republic No. 361 of 10 February 2000, shall notify the information concerning their beneficial owners, exclusively by electronic means and exempt from stamp duty, to the Register of Companies for the purpose of storing them in a specific section [with private access]. Failure to notify the information on beneficial owners shall be punished by the same sanction as that indicated in Article 2630 of the Civil Code [administrative fine from 103 to 1,032 Eur. Where the report, notification or filing is made within thirty days of the expiry of the prescribed time limits, the administrative fine shall be reduced by one third]”.

Companies with legal personality and private legal persons, the incorporation of which is subsequent to the date of the decree by the Ministry for Economic Development on the operation of notification, shall make the notification within 30 days from registration in the respective registers. Trusts and similar legal arrangements, the incorporation of which is subsequent to the same date, shall make the notification within 30 days from their incorporation (Article 3, paragraph 7, of Ministerial Decree No. 55/2022).

The time limits set for notification of data and changes thereto are mandatory.

The creation of a special section of the Register of Companies regarding beneficial owners is based on Directive (EU) 2015/849, which provides that each Member State should ensure that companies and other legal entities incorporated in its territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of beneficial interests held. In addition, Directive (EU) 2015/849 provides that each State should ensure that the above-mentioned information is stored in a national central register in each Member State.



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**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;**

Ministerial Decree 55/2022 introduced two innovations in the Register of Companies:

- 1) an independent section containing the data and information on beneficial ownership of companies having legal personality and of private legal persons;
- 2) a special section, providing information on beneficial ownership of trusts producing legal effects relevant for tax purposes and of similar legal arrangements, established or resident in the territory of the Italian Republic.

There is a Register of Companies in each province. It is maintained by the Chamber of Commerce under the supervision of a judge appointed by the President of the Court and is governed by a Registrar appointed by the council represented by the Secretary General or by a director of the Chamber of Commerce, who will ensure that the Register of Companies is kept properly, in accordance with the relevant provisions and any decisions made by the Register Judge.

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

The directors of companies having legal personality and the founder, if alive, or the entities entitled to represent and manage private legal persons, shall notify to the Register of Companies the data and information on beneficial ownership, obtained pursuant to Article 22, paragraphs 3 and 4, of Legislative Decree No. 231/2007 for the purpose of entering and storing them in the independent section.

The trustee of a trust or similar legal arrangements shall notify to the Register of Companies the data and information on beneficial ownership, obtained pursuant to Article 22, paragraphs 5, of Legislative Decree No. 231/2007 for the purpose of entering and storing them in the independent section.

These persons are also required to notify any changes to the data and information on beneficial ownership within thirty days after the act giving rise to the change has been performed. The same persons shall confirm annually by a notification the data and



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information within twelve months from the date of the first notification or from the last notification of their change or from the last confirmation. Companies with legal personality may provide this confirmation upon filing their financial statements.

The notified data shall include:

- a) identification data and nationality of natural persons referred to as beneficial owners (name and surname, place and date of birth, registered residence and domicile, where different from registered residence, and tax code, where assigned)
- b) for companies with legal personality (limited liability companies, joint stock companies, partnerships limited by shares, cooperatives) notification of the following data is also required:

the percentage of participation in the entity's capital held by the natural person indicated as beneficial owner;

where the beneficial owner is not identified on the basis of the percentage of participation in the company's capital, the manner in which control is exercised, or, ultimately, the powers of legal representation, administration or management of the entity, exercised by the natural person referred to as beneficial owner;

- c) for private legal persons notification of the following data is also required:

the tax code ;

the name of the entity;

the registered office and, where different from the registered office, the administrative office of the entity;

the certified e-mail address;

- d) for trusts and similar legal arrangements notification of the following data is also required:

the tax code;

the name of the trust or similar legal arrangement;

the date, place and details of the trust deed or similar legal arrangements.

All notifications shall be made electronically.

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

The entities falling under the provisions on notification of the data to identify beneficial owners to the Register of Companies are as follows:

- 1) companies with legal personality: limited liability companies, joint stock companies, partnerships limited by shares, cooperatives);



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2) private legal persons (associations, foundations and other private institutions which acquire legal personality through registration in the register of legal persons, in accordance with Decree of the President of the Italian Republic No. 361 of 10 February 2000);

3) trusts and similar legal arrangements; legal arrangements similar to trusts are entities and arrangements which, due to their structure and functions, produce legal effects equivalent to those produced by express trusts, having also regard to the use of property for a purpose and to the control by a person other than the owner, in the interest of one or more beneficiaries or in pursuit of a specific purpose, in accordance with Article 22, paragraph 5-bis, of Legislative Decree No. 231/2007.

In exceptional circumstances access to information on beneficial ownership may be denied in whole or in part, where such access exposes the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is an incapacitated person or a minor, according to a case-by-case approach and following a detailed assessment of the exceptional nature of circumstances. The statistical data on the number of exclusions and on the grounds for the relevant decisions on exclusion shall be published and notified to the European Commission (see Article 21, paragraph 2, point f), second sentence, and paragraph 4, point d-bis, third sentence, of Legislative Decree No. 231/2007).

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

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

<https://www.registroimprese.it/visura-camerale-e-certificato>

The entities which can access data on beneficial ownership contained in the independent section and in the special section of the Register of Companies are given below.

Access by public authorities:

- the Ministry of the Economy and Finance, the Supervisory Authority of the sector, the Financial Intelligence Unit, the Antimafia Investigation Directorate, the Financial Police, acting in the cases set out in this Decree through the Special Unit of the Currency Police and «without any restrictions»;
- the National Antimafia and Antiterrorism Directorate
- judicial authorities, in accordance with their institutional functions;
- authorities tasked with combating tax evasion.

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Access by “obliged entities”.

In Italian law this term is used to refer to the entities - banking and financial intermediaries, financial operators, some professionals, non-financial operators, gaming service providers, companies providing centralised financial instrument management, companies providing the management of regulated markets of financial instruments, entities managing structures for trading financial instruments and interbank funds, companies managing settlement services relating to transactions in financial instruments, companies managing the clearing and guarantee systems for the transactions in financial instruments - which are under the obligation to comply with the provisions contained in Legislative Decree No. 231/2007, implementing Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Access by the public.

Data and information on beneficial ownership of companies having legal personality and of private legal persons may be accessed by the public upon request and without restrictions. Access by the public relates to the name, surname, month and year of birth, the country of residence and nationality of the beneficial owner and the conditions giving rise to the status of beneficial owner, pursuant to Article 20 of Legislative Decree No. 231/2007.

The data and information on beneficial ownership of trusts and trust-like legal arrangements, which are required to register in the special section, shall be made available to any natural or legal person, including the person representing “diffuse” interests, entitled to access under Legislative Decree No.231/2007. The request shall be submitted to the Chamber of Commerce with territorial jurisdiction.

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

As from 09 June 2022, the date of entry into force of the Decree, the Ministry for Economic Development shall have to issue additional decrees within sixty days:

- 1) A Decree to approve the relevant digital model to put in place communication to the Offices of the Register of Companies;
- 2) A Decree to establish administrative fees;
- 3) A Decree to adopt models to issue certificates and copies, also in a digital format;
- 4) A final Decree to ascertain the operation of the communication system.



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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)?

- **Frequency of updates of information and triggers for updates;**
- **Any mechanisms to verify beneficial ownership information submitted to the registry(ies) by legal persons or their representatives (if they exist).**

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).

Under Italian Anti-money laundering legislation, a beneficial owner is a natural person on behalf of whom a transaction is carried out, and in the case of legal persons, the natural persons who own or control such legal entity and are their beneficiaries. A precise and updated collection of information on a beneficial owner is important to trace the unlawful activities concealed within corporate structures, whether shell companies or not. “Obligated Entities” have a very important role, as described by Legislative Decree 231/2007, to adequately monitor the money-laundering risk of customers.

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

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

Data of all the companies, whatever their legal form and business sector, as well as their main office or units present on the national territory, can be found in the Register of Companies.



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

The general rules described above apply.

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

- 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.

see above

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

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 with 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.

see above

5. Sanctions



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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 Chamber of Commerce holding territorial jurisdiction ascertains and charges any breach in the obligation to notify data and information on beneficial ownership. An administrative fine from 103 to 1,032 Eur is envisaged.

The Chamber of Commerce shall also monitor self-declarations, and when it ascertains the untruthfulness of such declarations, it shall report the author concerned.

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.

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.

Decree no 55 of 11 March 2022 of the Ministry of the Economy and Finance, does not specifically regulate access to the register by foreign authorities. The fact that access to our national register by foreign authorities is not regulated does not prevent foreign authorities from EU member States to have access to data recorded therein, since the information recorded in our national registers are recorded in BORIS (Beneficial Ownership Registers Interconnection System) with a view to community information exchange, as envisaged by Directive 2017/1132 of the European Parliament and of the Council.

The subject matter is today regulated by Regulation EU 2021/369 of the Commission of 1 March 2021 that provides for the technicalities and procedures required for the Interconnection System of Central Registers as per Directive EU 2015/849 of the European Parliament and of the Council.



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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.

Within EU Member States relations, BORIS (Beneficial Ownership Registers Interconnection System) has been set up as a decentralised system interconnecting national central registers of beneficial owners and the European portal of digital justice system through the European central platform. **BORIS** acts as a central research service for information on beneficial ownership, in compliance with Directive EU 2015/849.

In terms of requests for access made by non-EU States, the specific rules that regulate cooperation between the said Authorities shall apply. When a request for information comes from a judicial authority of a foreign State then the specific provisions on judicial cooperation in civil and criminal matters shall apply and access to the register shall be made through the Italian judicial authority pursuant to an MLA request.

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

When a request for access comes from Authorities of non-EU States, the main challenge lies in identifying a legal framework for cooperating with the holders of the right of access to the register in light of the provisions of Legislative Decree no. 231/2007 and Ministerial Decree no. 55/2022.

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

The main challenge faced by the Italian Authorities lies in identifying the legal framework to obtain information from a foreign counterpart or to directly access the registers when envisaged by the legislation of the concerned State.

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?*



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At the state of play we do not have any case studies or examples with reference to the above.

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.*

At the state of play we do not have any information to be highlighted or disseminated as *good practices*.

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.

Since the main measures taken, as mentioned above, concern the Register of Beneficial Ownership of Companies, we would like to point out that our legislative and regulatory framework cannot as yet be considered as comprehensive.

In fact, as from 09 June 2022, the date of entry into force of Decree no. 55/2022, the Ministry for Economic Development is required to issue other decrees within sixty days:

- 1) A Decree to approve the relevant digital model to put in place communication to the Offices of the Register of Companies;
- 2) A Decree to establish administrative fees;
- 3) A Decree to adopt models to issue certificates and copies, also in a digital format;
- 4) A final Decree to ascertain the operation of the communication system.

The above instruments have the essential aim to collect, retain and share essential information on beneficial ownership of companies with a legal personality, private legal persons, trusts and similar arrangements.

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