Handbook for disclosure of ownership structures and beneficial owners

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INTRODUCTION

WHAT IS THE PURPOSE OF THIS HANDBOOK AND WHO WILL BENEFIT FROM IT?

Why is it necessary to disclose ownership structures and beneficial owners? This Handbookprovides a manual on how to disclose – both theoretically and practically – ownership and control structure of legal persons and arrangements without legal personality. The disclosure of ownership and control structure and beneficial owners can ensure increased transparency of ownership structures of legal persons and arrangements without legal personality and help verify suspicions of:

- **violation of the obligations to disclose ownership structures and beneficial owner(s)** required by EU and national legislation on (i) antimoney laundering, (ii) distribution of EU funds, and (iii) public contracts;

- **violation of international and antiterrorist sanctions**, in particular verification if funds and economic resources are not given at the disposal of legal persons ultimately owner and controlled by individuals or organizations listed as terrorists or persons subject to international sanctions;

- **economic criminality and violations of administrative law** which includes in particular acts of corruption and conflict of interests, for example, whether

  - by way of concealing the ownership structure and/or beneficial owner(s) the declared small or medium enterprise is in reality a part of a large company;

  - a member of the government or other public officials is not a person which is the ultimate beneficial owner of legal persons which receive subsidies and/or public contract by the public institution or body which they are heading or for which they work;

- **identification of a competitor (an economic unit) in the framework of the competition law** as a part of the process of determination of control over a competitor within the assessment of planned concentrations of competitors;

- **participation in the practices of corporate tax avoidance** that is for verification whether the ownership structure of a tax resident company in the EU does not lead to countries identified as tax havens and whether profits cannot through the ownership links be channeled out to tax havens;

- **financing of political parties by legal persons** with undisclosed owners or owners coming from foreign countries.

To whom may this Handbook help? This Handbook can help the bodies maintaining the registers of beneficial owner(s), EU institutions and bodies protecting financial interests of the European Union, financial intelligence units, criminal law enforcement bodies, tax authorities, competition law bodies and certain other administrative bodies, for example those surveying

the compliance with national legislation on preventing the conflicts of interest of public officials as well as non-profit organizations and investigative journalists.

1. The purpose and scope of this Handbook

Convergent application of similar notions relating to beneficial ownership. If the purpose of disclosure of beneficial owner(s) is the same in all areas concerned, then it is necessary to interpret the obligation of disclosure of ownership structure and beneficial owner(s) in a convergent manner.This Handbook satisfies the need for a converging guidance of the application of terms relating to ownership structure disclosure found in various pieces of EU legislation, such as the Directive 2015/849, Directive 2014/24, Regulations 966/2012 and 1268/2012 or Regulation 2001/2580.[1] It contains a convergent application of notions of corporate and control structure, beneficial owner, beneficial ownership, person(s) with controlling interest, a definition of information to be contained in the declaration on corporate and control structure, including persons with controlling interest, and the ways of evidencing this information. A common interpretation of terms relating to beneficial ownership identification contained in the aforementioned instruments can be provided thanks to the partly overlapping purpose of these instruments which is to prevent that neither private nor public funds fuel organized crime, support misuse of taxpayers‘ money or finance activities of belligerent states and organizations.

Types of disclosure of beneficial ownership structures and the scope of applicability of this Handbook.A number of aforementioned public institutions and bodies has to perform disclosures of ownership structures and beneficial owner(s) in order to fulfill their legal obligations. The disclosure of ownership structures and beneficial owner(s) includes two similar but not identical activities:

(i) **the activity of investigation of the ownership structure and beneficial owner(s)** which are at the moment of the start of the investigation unknown to the person performing the investigation:this Handbook is primarily destined for this activity of investigation by describing the process of investigation of ownership structures and beneficial owners;

(ii) **the activity of verification of ownership structures and beneficial owner(s)** – in contrast to the investigation the activity of verification of the ownership structure and beneficial owners consists in the assessment of an ownership structure and beneficial owners which at the moment of the start of this activity is known to the person which performs the verification because the ownership structure and the beneficial owners were submitted to it beforehand: this Handbook, in principle, does not provide for instructions for verification of compliance of previously submitted ownership structure and beneficial owners since in a number of steps this process deviates from the process of investigation of an unknown ownership structure[2].

[1] Arts.13 (1) (b), (d) and Art.30 (1), (2) and (4) Dir 2015/849; Art.51 (1) Dir 2014/24; Art.106 (4) and (10) and Art. 143 (2) Reg 966/2012 and 1268/2012; Art. 1 (5) and (6) Reg 2001/2580.

[2] The Practical Guide for verification of ownership structures and beneficial owners is available at the website www.transparencyid.com.

2. Investigation of ownership structures and beneficial owners

The activity of investigation of ownership structures and beneficial owners. The activity of investigation of ownership structures and beneficial owners of legal persons and arrangements without legal personality departs from the point where a certain persons, normally a public institution or a public body has an information about a certain legal person (examined legal person) and needs to identify and evidence the ownership structure and/or beneficial owner(s) of a certain legal person or an arrangements without legal personality which are unknown to the person supposed to perform the investigation of the ownership structure of such legal person or arrangement. In the main part of this Handbook a step-by-step process of how to reveal the ownership structure and beneficial owners is described.

2.1. Authorities protecting financial interests of the European Union

Financial Regulations concerning EU budget. With respect to the application of the budget of EU institutions, Article 106 (1) of Financial Regulation (EU) No 966/2012 stipulates that economic operators or persons having powers of representation, decision-making or control over them are excluded from EU financing when they have been the subject of a final judgment for fraud, including tax fraud[3]. However, this provision can be effectively applied to persons with direct and indirect controlling interest only with difficulties since public officials have little or no chance of discovering those economic operators subject to exclusion reason: they have only knowledge about the legal person which whom they directly contract, but not about natural or legal person which control or own them. Thus, recipients of EU funds and public contracts declare that they „have no knowledge“ – both of exclusion reasons and implicitly also of persons with direct and indirect interest – and officials of both EU and Member States' authorities receiving this declaration also confirm that "they have no knowledge" of the same. Thus, the absence of proof is taken for the proof of absence[4].

Partnership Agreements specific to Member States. Certain principles of the Financial Regulation, in particular the principle of sound financial management is applicable, also to the distribution of EU structural funds, together with the rules of Regulation (EC) no 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. In respect of individual Member States, the aforementioned general principles are further detailed in the so-called Partnership Agreements. For example, the Partnership Agreement between the EU and the Czech Republic relating to the distribution of EU structural funds requires the disclosure of the ownership structure and beneficial owner(s) from the recipients of EU funds[5] due to the fact that anonymous ownership structures have been widely used as a means of corruption in EU fund distribution[6]. However, a sufficiently

[3] The related Legal Entity Form and the declaration on exclusion reasons which the recipients of subsidies, grants or contracts of funds attributed by the EU Commission and other EU institutions allows the responsible officials of those institutions to check only the incorporation of the recipient, but no information on persons with direct or indirect control over the recipient nor its beneficial owner.

[4] This fallacy of considering "absence of a prove" as "a prove of absence" , which is negligently or intentionally used mostly by public administrations is described and conceptualized by Nassim N. Taleb in his seminal book Black Swan (The Black Swan: The Impact of the Highly Improbable: May 11, 2010).

[5] Partnership agreement between the EU and the Czech Republic for the programming period 2014–2020, Czech Republic, 202, available at: https://www.strukturalni-fondy.cz/en/Fondy-EU/2014-2020/Dohoda-o-partnerstvi

[6] European Commission, EU Anti-corruption Report, Annex 3 – Czech Republic, (COM(2014) 38 final, Issues in focus, 8-9; 'Analysis of anonymous recipients of funds from regional operation programs for the period 2007 – 2013, in the Czech Republic (with extension of the conclusions to the EU institutions)', (2016) Centrum of Excellence for Good Governance, 17-20; 'Public Money and Corruption Risks, The risks of system political

detailed and practically usable definition of ownership structures or a person with control does not exist in the Czech Republic, and the relevant Czech public authorities struggle with verification of both the ownership structures and the beneficial owners.

How can this Handbook help the EU institutions and bodies protecting financial interests of the European Union? This Handbook can helpthe European Commission, in particular the departments supervising the compliance with the requirements on disbursement of funds from the Commission's budget under the aforementioned Financial Regulations, in two ways: first, it will help them determine whether it is necessary to request the applicant or recipient to supply information or evidencing documents about its ownership structure or beneficial owner(s); this will be the case in situations where it is not possible to find information or relevant evidencing documents about the ownership structure or beneficial owner(s) from public sources. Second, it will help them determine the missing information about the ownership structure and/or beneficial owners as well as the relevant documents for evidencing of such information. In the same way, this Handbook can help bodies responsible for disbursement and/or auditing of payments from EU funds.

2.2. Financial intelligence units

Surveillance over the compliance of antimoney laundering rules by financial institutions and designated non-financial bodies and professions. Financial intelligence units are obliged to check compliance of financial institutions and designated non-financial bodies and professions with their obligation to ensure disclosure of ownership and control structure and their beneficial owners of their clients, which includes also the obligation to disclose ownership structure and beneficial owners in the case of indirect ownership. While at the EU level no explanatory or guidance documents exist as to how clients should perform such disclosure and how financial institutions and designated non-financial bodies and professions should verify whether their clients performed such disclosure in compliance with AML requirements, at the level of Member States such explanatory or guidance documents may exist: however, to our knowledge, if such documents describe the ways how to determine owners and their interests in cases of direct ownership, they rarely do so in sufficient detail in situation of indirect ownership where complex chains of corporate ownership have to be identified.

How can this Handbook help financial intelligence units of EU Member States? This Handbook helps financial intelligence units in determining the appropriate risk profile of a legal person or an arrangement without legal personality and help eliminate such risk. The following scale of intensity of risk factor is derived from risk factors indicated in Annexes II and III of the fourth Antimoney Laundering Directive of which four are relevant for the area of corporate ownership, ownership structures and beneficial owners: three of these factors concern the possible presence of a higher risk[7], one the presence of a lower risk[8]; these factors result from two common denominators – the possibility to obtain information of ownership

corruption in the management of EU funds and state-owned enterprises in the Czech Republic, Slovakia and Poland', (2013), Frank Bold, 31 and 64.

[7] Factors of higher risk are present, among others, if (i) legal persons or arrangements that are personal asset-holding vehicles; (ii) companies that have nominee shareholders or shares in bearer form; (iii) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business; (Pt 1, letters c), d) and f) of Annex III of the fourth Antimoney Laundering Directive).

[8] Factors of lower risk are present for example: (iv) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership (Annex Ii, pt. 1, letter (a).

(in corporate entities and arrangements without legal personality) and the availability of relevant documents evidencing information about the ownership.

- **high risk of fraud**: absence of information and relevant evidencing documents on ownership structure or beneficial owner(s) from public sources, including the presence of anonymous paper bearer shares;

- **medium risk of fraud**: absence of relevant evidencing documents on ownership structure or beneficial owner(s) from public sources;

- **low risk of fraud**: absence of relevant evidencing documents on ownership structures or the beneficial owner from public sources in situations where it is possible to obtain information on ownership structures or beneficial owners from other less relevant evidencing documents, such as accounting documents, available from public sources;

- **insignificant risk of fraud**: information and relevant evidencing documents on ownership structure or beneficial owner(s) are available from public sources, including the situation where within the ownership structure there is a joint-stock company whose shares are admitted to trading on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

a. Antimoney laundering rules

Fourth Antimoney Laundering Directive 2015/849/EU. Directive 2015/849/EU provides a sufficiently clear and precise definition of the beneficial owner, which is based on the FATF definition, but adds in respect of different corporate subjects, namely corporate entities, trusts and non-profit legal persons, the indications of the persons who shall be considered as beneficial owners in relation to these corporate subjects. Regarding the corporate entities it also provides an exception for companies listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information and defines what direct ownership[9] and indirect ownership[10] means, setting under both definition a threshold of 25 % plus one shareof the shares or voting rights or ownership interest in that entity as the limit above which the shareholding interest is relevant for consideration as an element of direct or indirect ownership. By contrast, Directive 2015/849/EUdoes not define the corresponding notions of ownership and control structure or the notion of the beneficial ownership interest. Yet, it imposes upon financial institutions and DNFBPs the obligation to check the control and ownership structure of their clients[11] and upon all legal persons the obligation to register in the newly created registers of beneficial owners their beneficial ownership interest next to their beneficial owners.[12] In addition, the Directive stipulates that the information on beneficial owner and the nature and extent of the beneficial interest held be

[9] A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership.

[10] A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership.

[11] Art. 13 (1) (b) Dir 2015/849.

[12] Article 30 (1) Dir 2015/849.

accessible to public authorities, obliged entities and any person or organization that can demonstrate a legitimate interest.[13]

FATF Guidance. In the FATF context, an indirect explanation of the meaning of the terms ownership and control structure and the beneficial ownership interest is currently given in the 2014 FATF Guidance on Transparency and Beneficial Ownership.[14] These guidelines clarify that the expressions "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership or control is exercised through a chain of ownership or by means of control other than direct control[15].

b. International and antiterrorist sanctions

Surveillance over the compliance of the general and specific EU Regulations on international and antiterrorist sanctions. Both the obliged entities under Regulation 2015/849 and the providers of public contracts and subsidies are obliged, in addition to the previously described duties, to observe the requirements of Regulation 2001/2580on specific restrictive measures directed against certain persons and entities with a view to combating terrorism in conjunction with specific Regulations imposing economic sanctions.[16] Both Regulation 2001/2580as well as the specific ones order freezing of all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included on the sanctions lists, prohibit making available of funds, other financial assets and economic resources, directly or indirectly, to, or for the benefit of those persons or entities, as well as providing financial services to them.[17] Unlike other above-mentioned instruments of EU law, the General Sanctions Regulation gives a hint on what ownership and control of another person or entity should mean. The Regulation stipulates, with respect to ownership, when assessing whether a company is owned by another person or entity, the criterion to be taken into account is the possession of more than 50% of the proprietary rights or having majority interest in a company as well as it defines criteria for establishing whether a person has a control over another legal person.[18]

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[13] Article 30 (5) Dir 2015/849.

[14] The term beneficial owner is defined in chapters IV, and the terms beneficial ownership information are defined with respect to legal persons and legal arrangements in chapters V and VI respectively of the FATF Guidance on Transparency and Beneficial Ownership.

[15]FATF Guidance on Transparency and Beneficial Ownership, Box 1, 8.

[16] The Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which this Regulation applies, in accordance with the provisions laid down in Article 1 (4), (5) and (6) of Common Position 2001/931/CFSP; such list shall consist of: (i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism; (ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism; (iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in points (i) and (ii); or (iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii) (Art. 2 (3) Reg 2001/2580).

[17] Art. 2 (1) (a) Reg 2001/2580.

[18] With respect to control is states that 'controlling a legal person, group or entity' means any of the following: (a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group or entity; (b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, group or entity who have held office during the present and previous financial year; (c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders' or members' voting rights in that legal person, group or entity; (d) having the right to exercise a

Control and ownership under the General Sanctions Regulation. The notion of control comprises the ability to take relevant decisions within the legal person and impose those decisions; control can be acquired by several means, for example, by owning a controlling a block of shares.[19]Control can be established by using threshold approach or majority interest approach. The threshold approach is based on minimum percentage of ownership interest in the legal person[20]. This approach is contained in the 2580/2001 Regulation and the corresponding Guidelines which consider a controlling person to be the person holding in a legal person an ownership interest of 50 % + 1 share. Under the majority interest approach control is not determined on the basis of ownership percentage but on the basis of effective control exercised through any contract, understanding, relationship, intermediary or tiered entity[21]. To determine the owner having control at each level of shareholding interest, both approaches have to be combined to capture situations where the interest of the majority owner does not exceed 50 %, but is still the highest one and ensures control to the majority owner.

Practical implications. In practice, this obligation entails for relevant subjects of private law as well as for public law organizations to check whether among the persons with ownership or control over the client or public funds or subsidies recipient there is no natural or legal person, including a state or state-like organizations, listed on the sanctions list[22] which are usually attached as annexes to the Regulations imposing sanctions on specific states or organizations[23].

2.3. Criminal law enforcement bodies

General considerations. The investigation of ownership structures and beneficial owners is also a part of activities of criminal law enforcement bodies. the problem of corruption and conflict of interest resulting from the opacity of ownership and control structures of recipients of public contracts and funds as well as the difficulties with verification of their structures and beneficial owners is not peculiar to the CzechRepublic. The Report of the World Bank of 2011 entitled “The Puppet Masters” described 150 large corruption cases and almost all of them involved the use of companies with anonymous owners up to the overall amount of USD 50 billion. Similarly, the World Economic Forum reported that “revealing complex corporate schemes and identifying who lies behind them, i.e. identifying their beneficial owners, is considered to be essential to reveal the full extent of the criminal infrastructure and to prevent future criminal activities”. Indeed, anonymously owned companies can buy property, make deals (and renege on them), launch intimidating lawsuits, manipulate tenders – and disappear

dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits its being subject to such agreement or provision; (e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right; (f) having the right to use all or part of the assets of a legal person, group or entity; (g) managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts; (h) sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them (Art. 1 (5) and (6) Reg 2001/2580).

[19] *Ibid.*, 8.

[20] FATF Guidance on transparency and beneficial ownership, pt. 33 (a), 15.

[21] *Ibid.*, pt. 33 (b), 15.

[22] Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, Dated 8 December 2003 (15579/0), as amended by doc. 9068/13 dated 30 April 2013 in relation to the notion of ownership and control (subheading "Compliance", p. I to V after para 55).

[23] European External Action Service, Consolidated list of EU financial sanctions and Consolidated list of persons, groups and entities subject to EU financial sanctions, 18 August 2015, available at: https://eeas.europa.eu/headquarters/headquarters-homepage_en/8442/Consolidated%20list%20of%20sanctions

when the going gets tough. Those who seek redress run into baffling bureaucracy and a legal morass. OECD indicates that *"almost every economic crime involves the misuse of corporate vehicles [i.e. companies]"*[24]. The UK government suggests that „*there is a clear link between such illicit financial flows and company structures*"[25] and admits that "*these issues are systemic and relate in many ways to the essence of the company form, which is largely replicated throughout international legal systems*"[26].

How can this Handbook help criminal law enforcement bodies in EU Member States? Criminal law enforcement bodies can benefit from this Handbook when prosecuting criminal activities, in particular more sophisticated forms of economic and financial criminality. The investigation of the ownership structures up to the beneficial owners may be necessary to find out who was the beneficiary of proceeds of a crime committed via a legal person or who was the ultimate person with controlling powers over a legal person who instructed, for example, managers of a company suspect of a criminal activity, to perform illegal acts on behalf of the company.

2.4. Tax authorities

The importance of identification of ownership structures for tax authorities. Opaque corporate ownership structures enable multinational corporations to hide profits or other corporate funds in low or zero tax jurisdictions. These structures function like an interconnected pipeline through which funds can be shifted from one jurisdiction to another. Profits generated in high revenue, but usually also highly taxed countries are moved along the lines of the corporate structure web to low tax countries. As a result, the EU subsidiary's taxable income is low, so it has only a little tax to pay, even if in such EU country the tax rate is relatively high, whereas the taxable income of the usually non-EU parent company in an offshore jurisdiction is high; yet, since the tax rate in the offshore country where the parent company concerned is based is low, also this parent company pays only very little in corporate tax, if any. Such aggressive tax planning practices reduce Member States' income from corporate tax collected from multinational corporations.Due to opacity of ownership structures of multinational corporations it is impossible to see how much multinational corporations present in EU Member States effectively pay in corporate tax and in which countries and whether they do not engage in corporate tax avoidance practices. If a corporation creates a complex ownership structures involving a number of subsidiaries in different countries, it can shift corporate funds or profits throughout this structure among different subsidiaries. For tax authorities of EU Member States it is difficult or impossible - in particular if the ownership structure extends outside the EU Member States – to know the entire corporate ownership structure of such a multinational corporation. Hence, if tax authorities of member countries cannot see subsidiaries within the "invisible" part of corporate ownership structure, multinational corporations can shift corporate funds and profits

[24] OECD (2011): Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes. "*Slush funds are created for the collection and distribution of some huge sums of money that are required to participate in corrupt practices. […] More sophisticated methods typically use bank accounts abroad, preferably in the offshore countries that allow non-transparent management accounts and ensure the anonymity of the ultimate owners. […]These hidden funds, often containing vast resources, finance gray economy*." (OECD: Bribery in Public Procurement: Methods, Actors and Counter Measures, 2007, p. 32).

[25] Transparency & Trust – Enhanced Transparency of Company Beneficial Ownership, Department for Business, Innovation & Skills, Impact Assessment, 25 June 2014, p. 7.

[26] "*These issues are systemic and relate in many ways to the essence of the company form, which is largely replicated throughout international legal systems*." (Transparency & Trust – Enhanced Transparency of Company Beneficial Ownership, Department for Business, Innovation & Skills, Impact Assessment, 25 June 2014, p. 10).

to those subsidiaries to escape corporate tax obligations. Despite its importance the arm's length principle in intragroup transfer pricing has limits due to incomplete picture of tax authorities over global corporate and tax structures of multinational corporations. In principle, intragroup transactions should be conducted at the market price of the goods and services traded, as if the subsidiaries were unrelated. In practice, arm's length pricing faces severe limitations[27].

How can this Handbook help tax authorities?Solid information on beneficial owners and their interestscan also serve the purposes of the fight against tax avoidance as confirmed by conclusions of the Council of Ministers on tax transparency from October 2016 which require the best possible quality of information on beneficial owners in the register of beneficial owner(s).[28] Determination of an ownership structure and beneficial owners helps establish the overall effective corporate tax rate of companies or group of companies:[29] Thus, it "helps to fill the gap between the creation/promotion of aggressive tax planning schemes and their identification by the tax authorities"[30]. If tax authorities are to find aggressive corporate tax planning schemes aimed circumventing of the corporate tax laws, they need to have "have a clear and complete picture of the global tax planning structures of multinational firms, and the implications of those structures for generating stateless income."[31] This Handbook enables tax authorities to make such clear picture of ownership structures of legal persons and groups of legal persons which represents the first step in determining whether a tax avoidance scheme is present and whether transfer pricing rules may be breached.

2.5. Authorities ensuring compliance with public procurement rules

Disclosure of ownership structures and beneficial owners of recipients of public contracts. The Public Procurement Directive oblige the tenderers who are competing for public contracts or grants attributed by EU bodies or bodies of EU Member States to prove that they or the persons who have control in them were not convicted by a final judgment or a final administrative decision that they for: (i) misrepresentation, (ii) violation of competition rules; (iii) violation of intellectual property rights; (iv) undue influence of the tendering process; (v) fraud, corruption, participation in criminal organization. Participants in tenders can prove that they or the persons which control them are not in any of the situation listed under (i) – (vii) by a declaration of honor which can take a form of a self-declaration called the European Single Procurement Document. Winning tenderers would then be obliged to provide a confirmation that the declaration of honor is still correct and prove that they or the persons which control them by the recent extract from the judicial record or, failing that, an equivalent document situation listed under (i) – (vii). If the tenderer or a person controlling a

[27]First, for a number of multinational companies, where the profits derive in part from synergies of being present across the globe, the very notion of arm's length pricing is conceptually flawed as there is no clear-cut way to attribute a portion of its income to any particular subsidiary. Second, it is not appropriate to expect source country tax authorities to have a detailed knowledge of the tax laws and financial accounting rules of many other jurisdictions, in order simply to evaluate the probative value of a taxpayer's claim that its intragroup dealings necessarily are at arm's-length by virtue of alleged symmetries in tax treatment for expense and income across the group's affiliates. Thus, the application of transfer pricing rules cannot be effectively.

[28] Pt. 8 of the Conclusions; available at: http://www.consilium.europa.eu/en/press/press-releases/2016/10/11-ecofin-conclusions-tax-transparency/

[29] Transparency International Czech Republic and Lexperanto: www.taxparentmark.eu

[30] OECD, Report on Disclosure Initiatives - Tackling Aggressive Tax Planning Through Improved Transparency and Disclosure (2011).

[31]Kleinbard, E.D., Through a Latte Darkly: Starbucks's Stateless Income Planning, Tax Notes, June 2013, USC Gould School of Law, p. 1532-1533).

tenderer is in of the situations defined under points (i) to (vii) of letter a) above, the contracting authority has to exclude him from the public contract. The persons who control the tenderer can be legal and/or natural person(s) and can have both direct and/or indirect control.

To fulfill the legal requirements prescribed by the EU Financial Regulation and the Public Procurement Directive, theoretically, the contracting authority should first check who the persons with control over the tenderer are. Hence, the contracting authorities should verify whether the disclosed controlling persons of the tenderer are indeed the persons controlling the tenderer. Second, the contracting authority should verify whether the tenderer and his identified controlling persons, whether natural or legal persons, are not in one of the prohibited situations described above.

How can this Handbook help authorities ensuring compliance with public procurement rules? Authorities ensuring compliance with public procurement rules can use this Handbook in order to check whether tenderers or public fund recipients have complied with their obligation not to have persons convicted of misrepresentation, violation of competition rules; violation of intellectual property rights, undue influence of the tendering process, fraud, corruption, participation in criminal organization do not have a direct or indirect control over the tenderer or the public contract recipient, in other words whether such persons are not present in their ownership structures or are not their beneficial owners.

2.6. Authorities protecting competition

General considerations. The protection of competition at the EU level as well as at the level of Member States includes protection against cartels, abuse of dominant position as well as the assessment of mergers (concentrations) from the perspective of preserving competitive market environment. In particular in the latter situation, the evaluation of whether certain competitor has a control over another competitor by way of owning share interest in such a competitor or by other means is a necessary preliminary step to assess compliance with the applicable competition rules on mergers (concentration).

How can his Handbook help competition authorities? When finding out whether a certain competitor has a control over another subject in the framework of assessment of the effects of concentrations the competition authorities have to undertake the analysis of the ownership and control structure of the competitors in question. Thus, this Handbook can help them in the investigation of the corporate and control structure of the competitors which supposed to realize the notified merger in order to be able, in the next, steps, to evaluate the compliance with the applicable concentration rules. At the same time, it can help assess which legal persons form a single economic unit.

2.7. Authorities surveying the conflict of interest of politicians and public officials

General considerations. Politicians and other public officers employed both with bodies and institutions of the EU and MemberStates are in general prohibited from getting into situations of conflict of interest. Such conflict-of-interest situations may arise, for example, when such politician or other public officer would own a share or membership interest in an entity which would receive monetary (subsidies or grants) or non-monetary favors from the public body or institution for which the politician or other public officer concerned works and has the possibility of influencing the granting of such favor. In certain Member States national

legislation may regulate the prohibition of conflict of interest via disclosed or undisclosed ownership or membership interest in more detail.

How can this Handbook help the bodies responsible for surveillance and/or enforcement of rules against conflict of interests of politicians and other public officers? Similarly to the criminal law enforcement bodies, the bodies responsible for surveillance and/or enforcement of rules against conflict of interests of politicians and other public officers can in case of suspicion of violation of the relevant conflict-of-interest rules via usually undisclosed ownership or membership interests of those politicians and other public officers, use this Handbook to investigate whether the suspect politician or other public official owns an interest or has a membership right in a legal person or arrangement for which he or she is able to arrange certain favors, and thus, confirm or infirm the existence of a situation of a conflict of interest.

2.8. Authorities supervising the financing of political parties or electoral financing

General considerations. In number of Member States financing of political parties or electoral campaign is regulated. These regulations may entail apart from imposition of financial limits on the amount of funds or other benefits donated to a political party or a candidate by a single natural or legal person also prohibition of political parties or electoral campaigns being financed by legal persons with undisclosed ownership structure or beneficial owners or coming from abroad or having non-domestic subjects within their ownership structures or as their beneficial owners. Both types of those regulations require an effective surveillance of the corporate ownership structures and beneficial owners of legal persons-donors of political parties or individual candidates for a public office.

How can this Handbook help authorities charged with surveillance of financing of political parties and/or electoral campaigns? Similarly to other public authorities this Handbook can help authorities supervising the financing of political parties or electoral financing to investigate ownership structures and beneficial owners of donors to political parties or electoral campaigns in order to identify possible breaches of financial limits on such financing: for example, if more companies controlled by a single person try to donate each a certain amount of funds to a political party which in total exceeds the sums of permitted financial limit of a donation allowed for a single entity.

2.9. Non-profit organizations and investigative journalists

General context. Non-profit organizations and investigative journalists regularly face in their investigative work the necessity of investigation of ownership structures and beneficial owners, as it was demonstrated in the recent cases of Luxleaks (2014), Swissleaks (2015) or Panama Papers (2016). The absence of sufficient know-how on how to find direct and indirect owners (ownership structure), including beneficial owners, or which questions should they ask the relevant persons when they encounter a non-disclosed or only partially disclosed ownership structure can represent an important obstacle in their work or lead them to incorrect conclusions.

How can this Handbook help non-profit organizations and investigative journalists? This Handbook can help the non-profit organizations and investigative journalists obtain the necessary knowledge on how to identify direct and indirect owners (ownership structures) and beneficial owners from the relevant and trustworthy sources and documents. It also enables

them to describe and record those structures and beneficial owns in a structured well arranged manner.

2.10. Legal entities

General considerations. If, on the one hand, group of companies may extend their corporate structure to almost any country on the globe, on the other hand, the authorities cannot follow corporate structures to all countries since companies may establish subsidiaries in countries which do not provide other countries with information on corporate ownership or do not keep records of corporate ownership in the form accessible to the public or authorities.

How can this Handbook help legal persons? Legal persons can according to this Handbook determine and record their ownership structure and beneficial owner(s) in line with the requirements mentioned in this sections, in particular in situations where they are asked to do so by the competent public authorities or financial institutions or designated non-financial bodies and professions. They can also disclose their ownership structures and beneficial owners if these are located in jurisdictions outside the EU or in countries with which no administrative cooperation or exchange of relevant information takes place.

3. Verification of ownership structures and beneficial owners

General considerations. Although similar to the process of investigation, the process of verification by public authorities or financial institutions and other designated non-financial bodies and professions of already disclosed ownership structures and beneficial owner(s), differs in certain important aspects from the investigative process. Therefore, for verification of accuracy and credibility of submitted ownership structure and beneficial owner(s) it is more appropriate to use the Practical Guide for verification of disclosed ownership structure and beneficial owner(s) available at www.transparencyid.com.

4. The absence of a practical application tool on disclosure of ownership structures and beneficial ownership

Definition of the ownership and control structure and beneficial owner. The term beneficial owner and the ownership and control structures first appeared at supranational level in the 2003 Revised Forty Recommendations[32] of the Financial Action Task Force.[33] The definition of beneficial owner was contained in the Glossary attached to these Recommendation and has stayed more or less unchanged up to now. The beneficial owner in the FATF context is defined as follows: "the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted". The definition also includes those persons who exercise ultimate effective control over a legal person or arrangement".[34] The process of identification and verification of the beneficial owner and ownership and control structure was described in an interpretative note to Recommendation 5.[35] In the new version of FATF Recommendations of 2012[36] the issue of

[32] Recommendations 5, 33 and 34.

[33] Financial Action Task Force is an intergovernmental organization existing since 1989, with headquarters in Paris, specialized in the fight against money laundering.

[34] FATF Glossary. Available at: http://www.fatf-gafi.org/glossary/

[35] Interpretative notes to the 2003 revised FATF Recommendations in W.C. Gilmore, 'Dirty Money – The evolution of international measures to counter money laundering and the financing of terrorism', (2012), 4th ed., Council of Europe Publishing, 305-307.

beneficial ownership of legal persons and arrangements appeared in Recommendations 10 (on customer due diligence), 24 (on beneficial ownership of legal persons) and 25 (on beneficial ownership of legal arrangements)[37]. However, the recommendations, as such, do not provide for a definition of the beneficial ownership interest or control and ownership structure. In EU law, the definition of the beneficial owner and the reference to a control and ownership structure appeared for the first time in Directive 2005/60.[38]

Simple vs. complex corporate ownership chains. The determination of beneficial owners and their interest may be an easy exercise if the ownership structure of a legal person is simple. A simple ownership structure refers to a situation when a legal person is directly owned by the beneficial owner, that is by one or more natural persons or ultimate public organizations. For example, in Company A, natural Persons X and Y can have each an ownership interest of 50% provided that their act on their own and not on behalf of any other persons on the basis of a power of attorney or other contract of representation. In such a case direct owners of company A correspond to legal owners which, in turn, correspond to beneficial owners.[39] The ownership structure of a legal person, in particular companies, can nevertheless be much more complex: it can have several levels of owners – legal or natural persons – up to the ultimate beneficial owners. Such a chain of owners and ownership interests represents a case of indirect ownership: in a situation of indirect ownership there is at least one other subject, legal person or other arrangements, between the legal person in question and the beneficial owner. For instance, a company registered in Member State A is wholly owned by a company registered in Member State B which is, in turn, fully owned by a company registered in Member State C which has a 100% shareholder a company registered in a non-EU Member States D which, in turn, has two 50% beneficial owners – natural persons (Persons X and Y).

Lack of clarity regarding the scope of ownership structure. The Anti-Money Laundering Directive 849/2015 (the AML Directive) uses the term ownership and control structure as well as the term beneficial interest but does not define either of them. Some guidance on the meaning of the term beneficial ownership is contained in the FATF Guidance on Transparency and Beneficial Ownership of October 2014 (the FATF Guidance), the problem with this guidance, however, is that it provides useful explanation on how to disclose and evidence corporate ownership only the most simple situation where the direct owner is at the same time the ultimate beneficial owner, such as shown in the following example:

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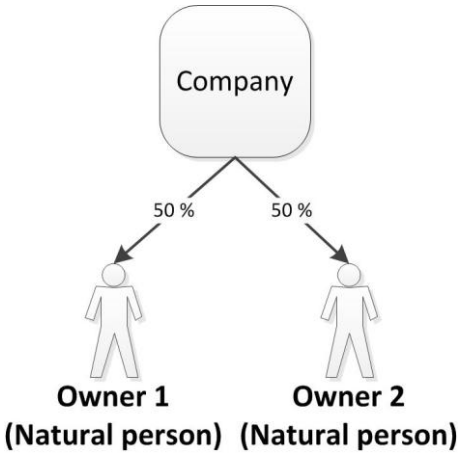
[36]FATF Recommendations**,** adopted on 16 February 2012, and updated in February 2013, October 2015, June 2016 and October 2016.

[37] Financial Action Task Force which exists as of 1989 represents a specialized international organization in the area of prevention of money laundering and financing of terrorism, including ownership structures and beneficial owners.

[38] OJ L 309, 25.11.2005, 15–36.

[39] The beneficial ownership interest, in such a case corresponds to a direct ownership interest: as stipulated in the definition of the beneficial owner in the Directive 2015/849 a shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership.

Example of a simple corporate ownership structure:

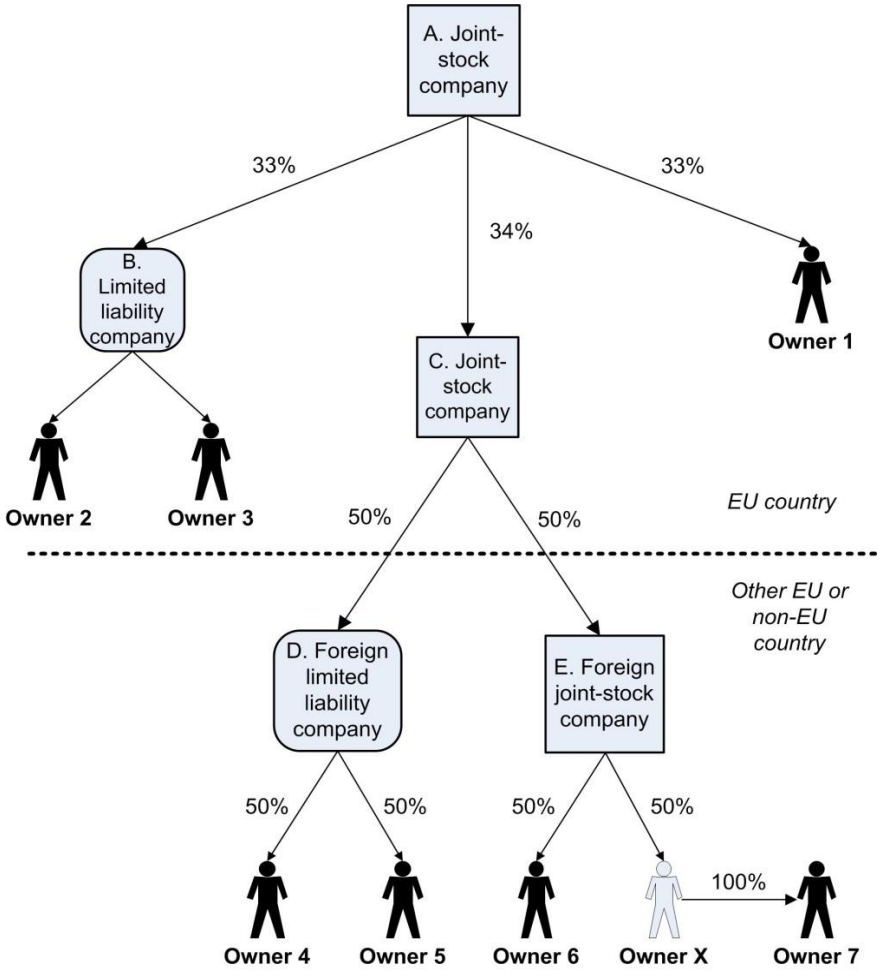


The FATF Guidance on Transparency and Beneficial Ownership does not provide help in specifying what is a beneficial ownership and ownership structure in more complex situations, such as demonstrated in the following example. For these more complex ownership structures it is therefore the Practical Guide which sets out the ways how their disclosure and evidencing should be done.

However, the application of the definition of beneficial ownership in such an indirect ownership scenario[40] may, however, not be so straightforward, especially in situations of plurality of owners. When determining the ownership structure in situation of indirect ownership it is necessary, in the first layer of shareholders (owners), to identify whether any shareholders act in concert, who is the controlling shareholder or shareholders, whether shareholders who have used their interest as a collateral have not surrendered their voting rights to collateral takers etc. This evaluation is necessary to make at any level of shareholders (owners) up to the level of beneficial owners. The absence of guidance on what the notion of beneficial ownership interest and the process of identification and evidencing of shareholding interest and their owners will lead to the diverging interpretation in different Member States which, in turn, will lead to two negative consequences: lack of effectiveness in disclosing, evidencing and verification of ownership structures and beneficial owners, on the one hand, inefficiency and administrative burden for the legal persons concerned, on the other hand.

[40] In this scenario beneficial ownership interest is an indirect ownership interest: as stipulated in the definition of the beneficial owner in Directive 2015/849 a shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership.

Example of a more complex corporate ownership structure:



Lack of clarity regarding the documents evidencing the ownership structures. At the same time, neither the AML Directive nor other aforementioned EU instruments nor the FATF Guidance explain by which documents the ownership structures should be evidenced, whether or not these documents are published and what is the legal force of these different documents. The FATF Guidance limits itself to a mere statement that corporate registers do not always require filing of information about owners of companies and that in Member States where the obligation to file information about ownership does exist, there is a varying discipline of companies in providing the information about ownership.

Lack of practical applicability of the explanatory documents to disclosure of ownership structure in concrete cases. Last but not least, the FATF Guidance is descriptive with recommendations to States, but is not practically applicable to concrete cases of company's ownership structures. In other words, the FATF Guidance is too vague to enable to officers or other persons to easily check in a step-by-step way the ownership structure of a concrete company.

MAIN PART – METHODOLOGY OF INVESTIGATION OF OWNERSHIP STRUCTURES AND BENEFICIAL OWNERS OF LEGAL ENTITIES AND ARRANGEMENTS WITHOU LEGAL PERSONALITY

0. Summary of the identification and evidencing of direct owners

Ownership structures. The ownership structure is composed of two elements: corporate subjects and interest. Corporate subjects in the ownership structure can be either (i) legal persons or arrangements without legal personality, including business corporations, such as limited liability companies, non-profit legal persons, such as associations or foundations, trusts or investment firms or funds with trust-like or entity-like structures; or they can be beneficial owners which may be either a natural person or an ultimate public organization. The ultimate public organization may be the international organization, the state, the territorial administrative unit, the professional chamber (such as the Czech Bar Association) or the autonomous institutions (e.g. university).

0.1 Summary of the process of identification and evidencing at one ownership level

Identification of direct owners of legal persons and other arrangements (Chapter A)

- **Step 1**: Verification of the examined legal person **(Part I.)**
- **Step 2**: Identification of the interest composition and determination of controlling interest **(Part II.)**
- **Step 3**: Identifications of subjects in the ownership structure and beneficial owner(s) **(Part III.)**
- **Evidencing of ownership structure(s) and beneficial owner(s) (Chapter B)**
- **Step 4**: Evidencing of subjects in the ownership structure and beneficial owners **(Part IV.)**
- **Step 5**: Evidencing of interests held by direct owners **(Part V.)**
- **Step 6**: Marking subjects in the ownership structure and beneficial owners as controlling and non-controlling **(Part VI.)**

0.2. Summary of the process of identification and evidencing up to the beneficial owner(s)

The difference between direct and indirect ownership. The outlined process will have to be used only once in the situation direct ownership, i.e. a shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person[41] (or an ultimate public organization). By contrast, in the situation of indirect ownership - i.e. a

[41] Art. 3 (6) (a) (i), second sub-paragraph, the first sentence of the AML Directive.

shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s) (or an ultimate public organization), or by multiple corporate entities, which are under the control of the same natural person(s) (or an ultimate public organization)[42] – the outlined process will have to be repeated not only with respect to the examined legal person (the first level of owners in the ownership structure), but with respect to the direct owners of direct owners of the examined legal persons (the second level of owners in the ownership structure) and further level of owners which are corporate subjects up to the level where only beneficial owner(s) – natural person(s) or ultimate public organization(s).

[42] Art. 3 (6) (a) (i), second sub-paragraph, the second sentence of the AML Directive.

A. IDENTIFICATION OF DIRECT OWNERS OF LEGAL PERSONS AND OTHER ARRANGEMENTS

General considerations. The negative phenomena of corporate tax avoidance, financing of corruption and other criminal activities, state capture and ineffective competition on the market for public funds stem from a common problem: the possibility for legal entities to create global opaque corporate structures (multinational corporations)[43]. With the exception of few countries with centrally planned economies or without the necessary infrastructures, any company can create a subsidiary in any country in the world and thus create a multinational corporation. The ownership structure of the multinational corporation can be transparent - so that it is possible for the authorities or the public to see all entities within this structure up to the ultimate beneficial owner[44] - or opaque. The opacity makes it possible to hide parts of these corporate structures in non-transparent jurisdictions, including the ultimate beneficial owner. The existence of global opaque corporate structures creates is a problem of information asymmetry[45]. If, on the one hand, multinational corporations may extend their corporate structure to almost any country on the globe, on the other hand, the authorities cannot follow corporate structures of multinational corporations to all countries since companies may establish subsidiaries in countries which do not provide other countries with information on corporate ownership or do not keep records of corporate ownership in the form accessible to the public or authorities.[46]

The identification of ownership interest(s) in the examined legal person and arrangements without legal personality and their owners. The process of identification of ownership interests in the examined legal person and arrangements without legal personality and their owners consists of three steps in the following order:

- **Step 1**: Verification of the examined legal person **(Part I.)**
- **Step 2**: Identification of the interest composition and determination of controlling interest **(Part II.)**
- **Step 3**: Identifications of subjects in the ownership structure and beneficial owner(s) **(Part III.)**

[43] The term multinational corporation refers to a group of legal entities which are registered in more than one country and are owned by the ultimate beneficial owner(s). In the related proposal of a legal text it is referred to as a conglomerate.

[44] The ultimate beneficial owner can be a natural person, public entity (such as the state) or a fund-like structure without legal personality which owns and/or controls a legal entity or a multinational corporation.

[45] Economic operators know their global corporate structures, irrespective of whether they are transparent or not, whereas public authorities of EU Member States do not have this information.

[46] "*These issues are systemic and relate in many ways to the essence of the company form, which is largely replicated throughout international legal systems*." (Transparency & Trust – Enhanced Transparency of Company Beneficial Ownership, Department for Business, Innovation & Skills, Impact Assessment, 25 June 2014, p. 10).

I. STEP 1: VERIFICATION OF THE EXAMINED LEGAL PERSON

General considerations. The examined legal person should be looked up in the corporate registry of the country where it is incorporated according to its name or registered (identification) number. The following information about the examined legal person should be retrieved from this corporate registry: (i) its full name, including the abbreviation of the legal form, (ii) the address of the seat of the legal person, (iii) identification number of the legal person, and (iv) the state of the seat of the examined legal person. Then, the first level of owners and interests relating to the examined legal person should be checked. In this context it is necessary to check that:

- first, the examined legal person does not represent the type of a legal person which does not have either the ownership structure or beneficial owner(s); in such a case it makes no sense to check either the direct nor indirect nor beneficial owner(s) of the examined legal person **(1. Legal persons without ownership structure nor beneficial owners)**;
- second, the examined legal person is not in a special situation from the perspective of ownership structure or beneficial owner(s); in such a case the ownership structure will in overwhelmingly not be a relevant factor for finding out who controls the legal person (**2. Legal person in a specific situation form the point of view of ownership structures and beneficial owners**).

1. Legal persons which do not have either ownership structure or beneficial owner(s)

General considerations. Legal persons without ownership structure nor beneficial owners are either corporate entities which do not have an ownership structure or beneficial owners only temporarily (**1.1. Companies which acquired its own shares**) or ultimate public organizations which never have ownership structure or beneficial owners (**1.2. Ultimate public organizations**).

1.1. Companies which temporarily acquired own shares

If it appears from the company's registry where the examined legal person is incorporated or from the annual report or annual financial statements that the company acquired its own shares, it will not have at the moment when it is examined any direct owners. However, as such situation is only temporary – the exact length of such temporary period will differ from MemberState to MemberState according to their legislation. After certain time, one should check the interest and its owners again since the company will be obliged to sell its own shares to a third person (or reduce the share capital).

1.2. Ultimate public organizations

Ultimate public organizations are constituted on a state basis (states), geographical basis (municipalities or regions) or on a basis of obligatory or voluntary or professional membership (universities, chambers of commerce, advocate or accounting associations etc.). by their nature do not have owners. Therefore, it makes no sense to check their direct, indirect or beneficial owners[47].

[47] For more details see Step 3 (Part A.III.1.2).

2. Legal persons in a special situation from the ownership structure and beneficial owner perspective

General considerations. In cases described in this section the ownership structure will bear certain specificities which will render the step-by-step process of checking its ownership structures up to the beneficial owner(s) futile. In this respect, for sub-types can be distinguished: first, different types investment firms and funds and other entities with a specific ownership nature (**2.1. Legal persons and arrangements without legal personality present at financial markets**); second, corporate entities whose ownership structures and beneficial owners are under a continuous surveillance of public regulatory bodies (**2.2. Banks, insurance companies and re-insurance companies**) and (**2.3. Legal persons ensuring functioning of financial markets**). Finally, there will be legal persons in respect of which the ownership structure will not be the relevant factor for determination of persons who control them **(2.4. Special types of legal persons from the point of view of their ownership structure)**.

2.1. Legal persons and arrangements without legal personality active on financial markets

General considerations. Legal persons present at the financial market with a specific nature of ownership structure are:

- companies whose shares are traded on the regulated markets or the multilateral trading facilities,
- investment firms and funds, and
- pension firms and funds.

a. Corporate entities whose shares are traded on a regulated market or a multilateral trading facility

Companies whose shares are traded on financial markets or multilateral trading facilities will have their direct owners and the amount of interest owned via such markets or MTFs displayed, at least in a summary form, at the web profile contained at the website of the financial market or MTF in question. If 75 % or a higher amount of interest in the examined legal person in the form of shares is traded on financial market, then it is not necessary – in the light of the antimoney laundering rules - to further check the direct or indirect, including beneficial, owner(s); if less than 75 % of interest in the form of shares is traded on a financial market or MTF, then it is necessary according to instructions contained in Step 2 to identify the composition of that part of interest which is not traded on the regulated market or MTF and the owner(s) of such interest.

b. Investment firms and funds

The overall purpose of investment funds is to aggregate investment assets from retail or professional clients – which in case of professional clients have or be at least two, in case of a special institutional investor even a single one – on the basis of an investment strategy contained in the founding document of a fund and regularly managed by a third party (investment company); so-called self-managed fund do not have an investment company. The

transfer or units or shares in certain investment funds can be restricted in the founding documents (statute).

Investment firms show certain difference compared to standard corporate entities or arrangements without legal personality which may have an influence on the following:

- they can take on different forms of corporate entities (companies) or arrangement without legal personality with special attributes: they can have a corporate-like structure issuing shares, or a fund-like structure,i.e. aggregation of investment property with notional interest of holders of such property interest issuing units in such funds, or finally, the form of specific investment trusts;

- they can be registered in standard public registries of legal persons, such as in the company registry, or special registers frequently maintained by their supervisory body;

- they can have variable capital (so called SICAV or SICAR entities);

- if having a fund-like structure, they can be open, that is to offer the right to the investor to buy from him the interest in the fund at any time, or closed, that is not to offer to investors such buy out rights;

- they can be more or less regulated depending on whether they participate in collective investment schemes or not and whether only professional or institutional or also retail clients can invest in them.

Practically, having regard to these specificities, if an investment firm is the examined legal person or a corporate subject in the ownership structure, the investigator should always check:

- the name of the investment firm or fund, as it may indicate the type of the form or fund,

- the founding document and/or the statute where it is commonly indicated which acquisitions it is allowed to do, in other in which corporate subjects it can acquire interest,

- the list of investors (interest holders or shareholders) which is habitually kept by the investment company, unless the fund is a self-managed fund which does not have,

- whether it is supervised and by which authority or whether upon creation its existence is only notified to the competent regulatory authority

From the perspective of the investigation of transparency, investment firms having an ownership structure equivalent or similar to a standard joint – stock company should not escape further examination of their direct or indirect or beneficial owners in the same way as standard joint-stock companies as described under Steps 2 to 6. Also the so-called closed investment funds should not escape further scrutiny since they may act as corporate entities with hidden (anonymous shareholders).

c. Collective investment funds

Collective investment funds are generally characterized by putting together investment assets and issuing shares or interests to multiple investors, in respect of in respect of such investment assets which are managed on the basis of a pre-designed investment strategy which should forma part of the founding document of such a fund. Collective investment funds can be either open or closed (in the meaning indicated above) as well as UCITS[48]-compliant[49] (highly regulated) or UCITS non-compliant (less-regulated). Similar considerations regarding third-party managed or self-managed investment funds referred to in the previous section apply also in this respects.

Hence, from the practical point of view, on the one hand, normally a UCITS-compliant open collective investment fund will not present a risk from the ownership transparency point of view; on the other hand, a UCITS non-compliant closed investment fund can act as a hidden joint-stock company with only few investors with the aim of anonymizing the identity of those investors in such fund who, if they were shareholders, would have to disclose their identity.

d. Pension investment firms and pension funds

As a general rule, regulations concerning pension investment firms and pension funds will be similar to that of regulated investment firms and funds since they will normally take the same or similar form and structure as the above described investment firms and funds.

2.2. Banks, insurance and re-insurance companies

In number of countries, in particular in the EU, banks, insurance companies, re-insurance companies are as regulated subjects are subject to the prior verification of their ownership structure and beneficial owners – with interests above 20 % (in certain countries even for interest as low as 5 %) – not only from the point of view of the transparency of those structures, but also from the perspective of credibility of individual direct or indirect owners including beneficial owners and the possibility of enforcement of measures taken by the regulatory bodies no matter in which jurisdiction the corporate subject in the ownership structure of a bank is established. Moreover, banks must have a specific legal form as well as specific type of shares as prescribed by the national legislation. In addition, banks are also often subject to the regulatory approval of acquisition of interest by other person in the bank or a corporate subject in its ownership structure of a bank as well as there is supervision over the acquisition of subsidiary entities. Finally, banks are subject to reporting requirements concerning, inter alia, their ownership structure and beneficial owners. Similar requirements apply to insurance or re-insurance companies.

Practically, the fact that banks, insurance as well as re-insurance companies are subject to such strict regulatory regime as far as the transparency of their ownership structure and beneficial owners are concerned means investigators intending to investigate the ownership structure of a bank or a subsidiary of a bank does not have to do the step-by-step investigation as described in this Handbook, but, if it has the necessary competences for doing so, it can ask the public authority supervising the ownership structure and beneficial owner(s) of a bank, insurance or re-insurance company to provide him with a complete information ownership

[48]Undertaking for collective investment in transferable securities.
[49]Fulfilling the relevant conditions of the EU UCITS regulation.

structure and beneficial owners of the bank substantiated by the relevant evidence. If the investigator does not have the relevant competences to ask the regulatory body for the complete and evidenced ownership structure and beneficial owner(s) of a bank, insurance or re-insurance company, it then has to perform the step-by-step investigation disclosure described in Steps 2 to 6 of this Handbook.

2.3. Legal persons ensuring the functioning of financial markets: financial intermediaries, central depositaries, providers of settlement and payment system or services of central counterparties

Given the systemic importance for the functioning of the financial markets equivalent to banks, insurance and re-insurance companies, legal persons ensuring the functioning of the financial market, such as financial intermediaries, central depositaries, providers of settlement and payment system or services of central counterparties, are subject to similar regulatory supervision as banks, insurance or re-insurance companies as far as their ownership structure and beneficial owners are concerned[50]. Hence, in the same vein as with respect to banks, if the investigators intends to investigate the ownership structure of one of the persons ensuring the functioning of financial markets it does not have to do the step-by-step investigation as described in this Handbook, but, if it has the necessary competences for doing so, it can ask the public authority supervising the ownership structure and beneficial owner(s) of such person to provide him with a complete information ownership structure and beneficial owners of such legal persons substantiated by the relevant evidence. If the investigator does not have the relevant competences to ask the regulatory body for the complete and evidenced ownership structure and beneficial owner(s) of a legal person ensuring the functioning of financial markets, it then has to perform the step-by-step investigation disclosure described in Steps 2 to 6 of this Handbook.

2.4. Special types of legal persons from the perspective of ownership structure and beneficial owner(s)

Special types of legal persons from the perspective of ownership structure and beneficial owner(s) are usually based on an associative principle: they can be profit-oriented, such as the European Economic Interest Grouping, or non-profit oriented, such as labor union or employers' associations, legal persons formed on the basis of a geographical (alliances of municipalities) or religious principle (ecclesiastic entities), European groupings of territorial associations or charity associations or cooperatives uniting house owners or condominium interest owners, school entities or art associations or foundations or other specific types of associations or foundations peculiar for every Member States. The special character of these legal persons results from the fact that the control over these special types of legal person will usually not be acquired on the basis of ownership interests, but on the basis of other interests. In these special types of legal persons the default evaluation of controlling persons should entail the check of influence of directors of such legal persons, and only then, unless these persons have control, the check on a case-by-case basis of those interests which can ensure the dominant influence of persons holding such interests. This special assessment of controlling persons shall concern, but shall not be limited to the following types of entities or arrangements with or without legal personality:

[50] See the preceding section 2.2.

- European Economic Interest Grouping[51],
- Ecclesiastic entities and their associations,
- Labour unions, their branches and associations,
- Union of employers, their branches and associations,
- Chambers of commerce,
- Agricultural cooperatives or similar entities,
- Housing cooperatives, associations and similar entities,
- Social charities and similar entities,
- Alliances of municipalities or regions,
- European grouping of territorial cooperation[52],
- School entities,
- Public foundations and similar entities,
- Political parties and institutes.

Depending on the country, these entities may not be registered in the standard registries of legal persons, i.e. company registries and/or registries of associations, foundations or similar non-profit legal persons, but may form a part of special registries or lists maintained by various ministries or other public bodies. Normally, these specific type of entities will have a memorandum or articles of associations or a founding deed which will represent a basic document describing the membership rights and the governing body or bodies; this basic document will ordinarily be filed in the registry where given entity is listed or, at least, such basic document will have to be stored at the address of the seat of such specific entity which will be registered in the aforementioned registry. Therefore, finding out the information about who has the dominant influence over such entity, whether the board of directors or a similar governing body or member(s) of such entity, should be possible by looking up the special entity in the register of such entities and/or in the basic document, memorandum of association, articles of association or a founding deed of such entity.

[51] Regulation (EEC) no. 2137/85
[52] Regulation (EC) no. 1082/2006.

II. STEP 2: IDENTIFICATION OF THE INTEREST COMPOSITION AND DETERMINATION OF CONTROLLING INTEREST

General considerations. The aim of Step 2 is the determination of the controlling interest and its owner in the examined legal person, or arrangement without legal personality. The controlling relationship is based on the ownership of interest, whether it will be accompanied by a contractual interest or not (usually in relation to companies), or on the way in which the ownership (membership) interest is defined in the articles or memorandum of association (usually in relation to non-profit legal persons or arrangements without legal personality, such as trust). First, the theoretical basis for determination of the amount of interest(s), the composition of interests and the ways and forms of control has to be explained (**1. Determination of the amount of interest and the forms of control**). Second, it results from this theoretical basis that the determination of composition of interests and forms of control will depend on whether the examined legal person is:

- **a corporate entity (company)**, in respect of which the controlling relationship will result from the ownership of the shareholding interest which may or may not be accompanied by a shareholder agreement (**2. Determination of the composition of interest in corporate entities**) OR

- **non-profit legal person**, in respect of which the relationship will result from the definition of membership interests in the founding documents and or other constitutive documents relating to the non-profit legal person or arrangements with personality (**3. Special types of determination of composition of interests and control**).

1. Determination of the amount of interests, its composition and the forms of control

General considerations. Determination of the amount of interest held in a legal person and the composition of such interest represents the basic method for ascertaining which interest is the controlling one and which person is the controlling person. Only with respect to controlling direct owners it make sense to further determine their controlling direct owners up to the moment when controlling persons are beneficial owners only. The minimum information about the ownership interest which is necessary to find out is the information about:

- the amount of interest expressed in percentage (e.g. 60 %) or in fractions (2/3),

- the period in which the owner holds the interest (e.g. 12 January 2013 to 20 July 2017 or 10 May 2015 up to present or as to certain data, such as 31 December 2017),

- the rights arising out of these interests, in particular whether it entails voting rights, rights to a dividend (profits) or other rights,

- other particularities, especially information whether the interest in the legal person is not an object of a security, pledge, mortgage or other type of collateral right transferring the voting rights in the legal person from its owner (shareholder) to the collateral taker.

With respect to corporate entities (companies), at least the information referred to under point (i) should be ascertainable from the relevant corporate registry; often, but not always

information referred to under point (ii) regarding the period for which the interest is held by a given person will be available in the public (corporate) registry; sometimes also information on other particularities (point (iv)), such as whether the interest is subject to a collateral right, could be accessible from the public (corporate) registry. The last type of an information about the nature of rights arising from the share or membership interest in a legal person (point (iii)) will be defined in the relevant legislative Act defining the rights of shareholders or members in the given legal persons which, to the extent permitted by the statutory provisions, can be extended, restricted or modified, in the articles of association, memorandum of association, founding deed or similar constitutive document of the legal person.

The thresholds of interests necessary for the determination of the controlling interest(s) as well as other rules defining under which circumstances a controlling interest can arise are laid down in legislative instruments at both the EU and the national level. (**1.1. Legislative thresholds and rules on controlling interests)**. The process determination of the amount(s) of interest, composition of interests and the resulting establishment of a controlling interest and its owner (controlling person) can be:

- **a standard one,** when first the amount and composition of interests is established (**1.2. Determination of the controlling interest on the basis of the established amount of interest or the composition of interests**) and then the highest amount interest or interests is considered as the controlling one (this way of determination of controlling interest will be usual in respect of corporate entities (companies));

- **a non-standard one,** when the amount and composition of interests will not be decisive or even relevant factors for the determination of the controlling interest (**1.3. Determination of the controlling interest by other means than on the basis of the established amount of interest or the composition of interests**), and hence, the factual dominant influence will have to be ascertained on the basis of case-by-case analysis of distribution of shareholders/members rights against each other or against the governing body or person of such legal person or arrangement (this way of determination of controlling interest will be usual in respect of non-profit legal persons and arrangements without legal personality).

1.1. Legislative thresholds and rules on controlling interests

General considerations. The interest in a corporate entity (company) is commonly determined on the basis of quantitative criteria (an amount of interest) which is normally indicated on the evidencing document. The interest in a legal entity entails voting rights which are relevant for determination of control and the controlling person; in a corporate entity (company) also the rights to profits (dividend) for the beneficiary of earnings of the company. The contents of these rights and certain other ancillary is normally defined by law.

Antimoney Laundering Directive. The fourth Antimoney Laundering Directive lays down a threshold of 25 % plus one share as a basic threshold on the basis of which direct or indirect owners, including beneficial owners, shall be determined. The Directive allows Member States to lower this threshold to a limit of 20 % and one share. Similar approach is also chosen by the relevant FATF documents[53].

[53] FATF Guidance on transparency and beneficial ownership, October 2014.

Accounting Directive. The Accounting Directive provides for a threshold of 20 % for the purpose of determination of a group which is obliged to draw up consolidated financial statements[54].

Regulation (EC) no. 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. This Regulation stipulates, with respect to ownership, when assessing whether a company is owned by another person or entity, the criterion to be taken into account is the possession of more than 50% of the proprietary rights or having majority interest in a company.

SME Recommendation. The ownership threshold of 25 % is also set out in the definition of a small and medium enterprise contained in the Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises.

1.2. Determination of the controlling interest on the basis of the established amount of interest or the composition of interests

Regulation (EC) no. 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. This Regulation, along with the relating guidelines[55], establishes material criteria of control since it stipulates that 'controlling a legal person, group or entity' means any of the following:

(a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group or entity;

(b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, group or entity who have held office during the present and previous financial year;

(c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders' or members' voting rights in that legal person, group or entity;

(d) having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits its being subject to such agreement or provision;

(e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;

(f) having the right to use all or part of the assets of a legal person, group or entity;

(g) managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts;

[54] Art. 22 (1) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

[55] Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, Dated 8 December 2003 (15579/0), as amended by doc. 9068/13 dated 30 April 2013 in relation to the notion of ownership and control (subheading "Compliance", p. I to V after para 55).

(h) sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them[56].

Accounting Directive. Also the Accounting Directive, when defining groups which are obliged to draw up annual financial statements provides for certain material criteria of control. Under the Accounting Directive the obligation to draw up consolidated financial statements and a consolidated management report arises if that undertaking (a parent undertaking):

(a) has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking);

(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking;

(c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions[57]; or

(d) is a shareholder in or member of an undertaking, and:

  (i) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated financial statements are drawn up, have been appointed solely as a result of the exercise of its voting rights; or

  (ii) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders' or members' voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements.

and possibly also if:

(e) that undertaking (a parent undertaking) has the power to exercise, or actually exercises, dominant influence or control over another undertaking (the subsidiary undertaking); or

(f) that undertaking (a parent undertaking) and another undertaking (the subsidiary undertaking) are managed on a unified basis by the parent undertaking.

Company laws of Member States. Member States laws applying to corporate entitles (companies) may determine other thresholds determining majority interest and controlling interest.

[56] Art. 1 (5) and (6) of Regulation (EC) No 2580/2001

[57] A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for such contracts or clauses shall not be required to apply this provision.

a. Dominant influence exercised individually

General considerations. Dominant influence can be exercised individually in which case a person holding dominant influence can exercise voting rights solely on the basis of its own discretion. Individual dominant influence can be based on a majority interest exceeding 50 % or on a qualified minority interest if it is accompanied by certain other circumstances, such as reverse control shareholding agreement.

Reverse controlling shareholder agreement. Reverse controlling shareholder agreement is an agreement under which a shareholder having less than 25% of the company capital concludes and agreement with shareholders having higher stake in the company that it would be the former who will take most of the profits from the company and control over the company – disproportionately to the amount of his/her share capital. Thus, minority shareholder can control the company without being caught by the anti-money laundering rules which require disclosure of shareholders with at least 25% of share capital. Although potentially in breach of the principle prohibiting the abuse of minority or majority of shareholding rights, given the collusion of the parties to such agreement that there is no incentive for either of them to invalidate such agreement.

b. Dominant influence exercised jointly

General considerations. Dominant influence can also be exercised jointly by more than one person on the basis of joint acting with other owners of interest in the given legal entity or on a unified basis where one or more entities exercise dominant influence over multiple other entities. Examples of joint acting can be represented by situations where:

- persons who concluded an agreement on exercise of voting rights;
- persons acting together tacitly (de facto), for example:
  - legal entity and a member of its board of directors or supervisory body or its liquidator;
  - controlling and controlled persons;
  - persons subject to management on a unified basis;
  - relatives and person in similar close personal relationship;
  - investment company and the investment or pension fund it manages etc.

Veto rights. Individual or joint acting establishing control can also be based on veto rights in strategic questions concerning the functioning of a legal entity.

1.3. Determination of the controlling interest by other means than on the basis of the established amount of interest or the composition of interests

General considerations. The interest in member-based non-profit legal persons is habitually not, in asset-based non-profit legal persons and arrangements without legal personality almost never by their very nature, determined on the basis of quantitative criteria of the amount of interest. Instead, it is frequently determined on the basis of material criteria. The scope and contents of rights arising from interest in a non-profit legal person is sometimes not even

defined in a law and is delineated in a founding or similar document of such non-profit legal person or arrangement without legal personality.

When determining controlling interest in non-profit legal persons the following criteria should be taken into account:

- the manner of distribution of membership rights and the amount of membership rights, that is whether membership rights are:
  - equally-distributed (each member has the same amount of votes): such non-profit legal person appears more likely to be a true association,
  - non-equally distributed (members do not have the same amount of votes): such non-profit legal person is more likely to behave like a corporate entity; in such a case the amount of interest and its composition should be done according to the criteria for corporate entities;
- number of members, in particular whether a non-profit legal person will have:
  - a low number of members (e.g. 3 or 4): it is more likely that one or more persons could be controlling member(s);
  - a high number of members: it is less likely that one or more persons could be controlling member(s);
- type of members – natural or legal persons:
  - natural persons only: if only natural persons are present and at the same time the non-profit legal person is not holding non-profit legal person, such non-profit legal person is less likely to have a controlling member or members;
  - legal persons only: if only legal persons are present in a higher number and at the same time the non-profit legal person is not a holding non-profit legal person, such non-profit legal person is less likely to have a controlling member or members – it can, for instance, be in such a case a true association of businesses.

Moreover, although not related to the assessment of controlling interest in the non-profit legal person, but related to the assessment of controlling interest owned by the non-profit legal person, it is also important to check whether or not the non-profit legal person owns direct or indirect interest in other legal persons, in particular corporate entities (companies) or profit-oriented arrangements without legal personality, and hence, whether it is a so-called holding non-profit legal person: if it is, a particular attention should be paid to the assessment of controlling persons since such non-profit legal person may be more likely to behave like a corporate entity and also to channel out its funds to its members as a means of hidden distribution of profits received thanks to its direct or indirect interests in profit oriented legal entities or arrangements without legal personality.

2. Determination of the composition of interest in corporate entities

General considerations. Since legal persons are obliged to know their beneficial owners, including their beneficial ownership interests exceeding 25 % and since in this way those

beneficial owners and beneficial ownership interest have to be registered in the registers of beneficial owners, it is reasonable if investigators also use this threshold as a basis for establishing ownership structures and beneficial owners. This section is therefore divided into the analysis of interests in the amount going beyond 25 % (**2.1. Interests exceeding 25 %**), then interest between 10 % and 25%, inclusive (**2.2. Interests exceeding 10 %, but not surpassing 25 %**) and interests below 10 % (**2.3. Interests in the amount of less than 10 %**). The determination of the controlling interest entails the next to the analysis of the quantitative aspect (amount and compositions of interest) also the analysis of the qualitative aspect (nature of rights giving rise to control).

2.1. Interests exceeding 25 %

General considerations. If the minimum threshold in the amount of 25 % plus one share (unit of interest) then the following situation may arise:

(a) individual majority interest: interest between 25 % + 1 share up to 100 %;

(b) two interests: with the amount between 25 % + 1 share up to 75 % each;

(c) three interests: with the amount 25 % + 1 share up to 50 % each.

a. Single majority interest: single interest between 25 % + 1 share up to 100 %

If thereis only one interest exceeding 25 % which is a majority one, the owner of such interest can exercise the rights arising out of this interest upon is own discretion without having to cooperate with other shareholders in order to put forward its will in the legal person concerned. In this situation such individual interest will take a form of either:

(i) a majority interest exceeding 50 % (50 % plus one share and more):

- **if the amount of majority interest exceeds 90 %** (or 95 % in certain countries), no other circumstances will have to be checked;

- **if the amount of a single majority interest is between 90 % (or 95 % in certain countries) and 50 %**, the existence of a reverse shareholder agreement in favor of a possible shareholder with an interest in the amount of 25 % and less has to be verified as well as possible joint acting (de facto or on the basis of a shareholder agreement) with a shareholder with an interest in the amount of 25 % and less;

(ii) a majority interest exceeding 25 % plus one share up to 50 %, inclusive:

- **if the amount of a single majority interest is between 50 % and 25 % + 1 share**, first, it has to be checked that other shareholders do not act jointly (de facto or on the basis of a shareholder agreement) in a way that it is actually them, not single majority shareholder, who become controlling persons (e.g. 40 % < 60 % (20 % + 20 % + 20 %); if not, second, the existence of a reverse shareholder agreement in favor of a possible shareholder with an interest in the amount of 25 % and less has to be verified; otherwise, third, possible joint acting (de facto or on the basis of a shareholder agreement) of the majority

shareholder with a shareholder with an interest in the amount of 25 % and less has to be checked;

b. Two interests, each exceeding 25 %

If in the legal person there are two interests above 25 %, these interests can be distributed in the following way:

(i) if interests are distributed **equally**, the following situations can arise:

- there are two interests in the amount of 50 % exactly or one interest in the amount of 50 % (50 % / 50 %) and other two interests in the amount of 25 % each whose owners act jointly (50 % / 25 % + 25 %);
  - in the first case which is a traditional joint venture (50 % / 50 %), both interests will be controlling and usually there will be a shareholder documenting joint acting of those shareholders, unless the company is dysfunctional due to the mutual blocking of shareholders;
  - in the second case (50 % / 25 % + 25 % or 50 % / 30 % + 20 % or similar equaling sums of interest), it is necessary to check whether this is a joint venture of all three participants or whether the majority shareholder is a controlling person or vice versa (usually on the basis of a shareholder agreement); if none is applicable, it has to be verified whether there is no reverse control agreement in favor of one of the 25 % shareholder or exceptionally, whether, the company is dysfunctional due to the mutual blocking of shareholders;
- there are two interests exceeding 25 %, but not surpassing 50 % with the existence of at least one other interest (e.g.: 40 % / 40 % / 20 %):
  - this situation can be a joint venture, with the minority shareholder using his interest only for investment purposes, therefore the existence of a shareholder agreement or de facto joint acting of the majority shareholders has to be checked – in such a case both majority shareholders will be controlling; in its absence, joint acting of each majority shareholder with a minority shareholder against the other majority shareholder should be verified – the two acting jointly will be controlling; at last, existence of a reverse control agreement in favor of the minority shareholder to the detriment of majority shareholders should be confirmed or excluded;

(ii) if interests are distributed **non-equally,** these situations can arise:

- there are two interests exceeding 25 %, but not surpassing 75 % without the existence of any other interest (e.g.: 60 % / 40 %): the majority shareholder will be controlling unless there is reverse controlling agreement in favor of the minority shareholder or unless both shareholders act jointly (both are controlling in such a latter case);

- there are two interests exceeding 25 %, but not surpassing 75 % with the existence of at least on other interest (e.g.: 55 % / 35 % / 10 % or 45 %, 30 % and 25 %): this situation will have to be assessed in the same way as the situation of 40 % / 40 % / 20 % described above.

c. Three interests in the amount exceeding 25 % up to 33,3 %

If in the legal person there are three interests above 25 %, these interests can be distributed in the following way:

(i) if interests are distributed **equally**, these situations can arise:

- there are three interests exactly in the amount of 33,3 % without the existence of any other interest (i.e. 33,3 % / 33,3 % / 33,3 %): this can result in possible:
  - joint venture (all are controlling) on the basis of a shareholder agreement or tacit behavior,
  - two against the other (those acting jointly are controlling) on the basis of a shareholder agreement or tacit behavior,
  - reverse control agreement (beneficiary of such agreement is controlling);
- there are three interests exceeding 25 %, but not surpassing 33,3 % with the existence of at least one other interest (e.g.: 30 % / 30 % / 30 % / 10 %):
  - all possibilities of determination of controlling as under the preceding bullet-point with more possible combinations under the second indent (two against the others);

(ii) if interests are distributed **non-equally,** these situations can arise:

- there are three interests exceeding 25 %, but not surpassing 33,3 % without the existence of any other interest (e.g.: 35% / 33 % / 32 %,):
  - all possibilities of determination of controlling as under the first bullet-point of point (i), and
  - a possibility that the majority shareholder is controlling, if the other two do not act jointly;
- there are three interests exceeding 25 %, but not surpassing 33,3 % with the existence of other interest (e.g. 28 % / 27 % / 26 % / 15 %):
  - same possibilities as under the second bullet-point of point (i) with controlling persons determined *mutatis mutandis*.

2.2. Interests exceeding 10 %, but not exceeding 25 %

In case there are share or membership interests in the amount between 10 % and 25 % inclusive, it is necessary:

- from the perspective of determination of the controlling person, to find out from the records of the meetings of shareholders or members (interest owners) in the last three years whether one or more shareholders or member with the interest in the amount between 10 % and 25 % does not exercise a dominant influence resulting from:
  - the existence of a shareholder agreement or de facto joint acting with majority shareholders (e.g. 60 % + 20 %) or minority shareholders in a way that shareholder with the interest in the amount between 10 % and 25 % together with other shareholder/member are a controlling shareholders/members (e.g. 40 % / (30 % + 25 %));
  - the fact that the interests of other shareholders or members are lower so that the majority interest is the interest with the amount between 10 to 25 % is the controlling interest and the owners of the remaining interest do not act jointly in a way that would be able to block decisions of the majority shareholder(s) in key issues;
  - the combination of the two preceding reasons;
- from the perspective of preventing antimoney laundering rules or rules defining the status of small and medium enterprises to verify:
  - in case of concentration of interests just under the limit of 25 % - for example, four interests in the amount of 25 % - whether certain owners of such interests do not act jointly and thus do not circumvent the antimoney laundering rules, on the basis, for example, from the records of the past meetings of the preceding meetings of shareholders or members up to the maximum of three years back;
  - the existence of a non-disclosed reverse control agreement in favor of the owner(s) in the amount between 10 % and 25 % inclusive, in order to circumvent the antimoney laundering rules; reverse control agreement, which is usually a non-disclosed, is an agreement between minority shareholders which cannot be squeezed-out, i.e. shareholder or shareholders with an interest between 10 % and 25 % inclusive, allows the latter minority shareholder to exercise the rights of the majority shareholder, for example, a minority shareholder with 15 % can thanks to the reverse shareholder agreement with a majority shareholder with 80 % exercise the rights of the majority shareholder and, thus, control the company in question.

2.3. Interests of 10 % and less and a possible existence of golden share

The threshold of 10 % (or 5 % in certain countries) of interest is relevant from the perspective of control of the legal person because interest owners (shareholders) with an interest below 10 % (or 5 % in certain countries) can be at any time squeezed from the company; squeeze-out means an obligatory transfer of shares of minority interest owners in a joint-stock company against a cash compensation. The owners with the interest of less than 10 % (or 5 %) cannot normally control the company alone – except for the situation of an extremely disintegrated shareholder base where a shareholder with the amount of less than 10 % could be a controlling person. The owners with interest of less 10 % can be controlling shareholders if acting jointly with majority shareholders. However, even in such a situation where they have concluded a shareholder agreement with a majority owner (shareholder) or a reverse

shareholder agreement their position will be very week: if the other majority shareholder breaks the shareholder agreement or the reverse shareholder agreement and squeezes out the minority shareholder with less than 10 % the latter minority shareholder will not have an effective means of redress against such act. Last but not least, certain shares, so-called golden shares, can entail much stronger rights that other shares of the same value, allowing the owner of such share to block certain decision of the majority shareholder or even to control the company: such kind of atypical shares may be present in companies with strategically activities or companies providing public services or companies being an important employer in certain region. The owner of such golden share will thus be a controlling shareholder with the majority shareholder(s).

3. Special ways of determination of interest composition and/or control

Unlike the corporate entities (companies) in respect of which the determination of controlling interest is mostly done via the quantitative aspect consisting in the amount of shareholder (ownership) interest(s), the determination of the controlling interest in respect of non-profit legal persons and arrangements without legal personality is mostly, but not exclusively, performed via the qualitative aspect of exercise of de facto influence in the non-profit legal person or arrangements without legal personality in question. The assessment of the control (dominant influence) will differ according to the type of the legal person or arrangement without legal personality with respect to:

- member-based non-profit legal persons **(3.1**),
- asset-based non-profit legal person, arrangements without legal person and certain investment firms or funds **(3.2.)**,
- a situation of presence in any type of a legal person of tacit shareholders, controlling collateral takers, priority shareholders and represented owners **(3.3).**

3.1. Member-based non-profit legal persons (associations)

In amember-based non-profit legal person, there will be one or more members with an interest exceeding 25 % if:

- in situation of equally distributed voting rights (each member has the same amount of votes), the total number of members is three;
- in situation of equally distributed voting rights (each member has the same amount of votes), the total number of members is four and more, and some of the members act jointly with other members so that the sum of such jointly acting members exceeds 25 % of voting rights;
- in situation of non-equally distributed voting rights (members have different amount of votes), the articles or memorandum of associations, founding deed or similar basic constitutive document of such non-profit legal person stipulate that at least one member has voting rights in the amount exceeding 25 %.

Unless, it clearly results from the latter situation that the amount of membership interest can be quantified – in which case the controlling interest should be determined according to the previous section A.II.2.1. of Step 2 – the controlling interest in the first two situations shall be

determined on the basis of material criteria. According to the material criteria, the control (dominant influence) shall be established by assessing who among the members of the member-based non-profit legal person (association) has the right to, alone or jointly with directors of such non-profit legal person, to actively decide, give consent to or veto decisions concerning the key issues relating to the functioning of the member-based non-profit legal person in question, in particular who of those members is:

- having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such member-based non-profit legal person;
- having appointed solely as a result of the exercise of one's rights a majority of the members of the administrative, management or supervisory bodies of such member-based non-profit legal person who have held office during the present and previous financial year;
- having the right to exercise a dominant influence over the such member-based non-profit legal person, pursuant to an agreement entered into with that legal person or to a provision in its Memorandum or Articles of Association, where the law governing that such member-based non-profit legal person permits its being subject to such agreement or provision;
- having the power to exercise the right to exercise a dominant influence referred to in the previous point, without being the holder of that right;
- having the right to use all or part of the assets of such member-based non-profit legal person;
- sharing jointly and severally the financial liabilities of member-based non-profit legal person, or guaranteeing them.

3.2. Non-profit asset-based legal persons, arrangements without legal personality and certain investment funds or firms

General considerations. In relation to the remaining types of corporate subjects, the controlling interest will have to be determined solely on the basis of material criteria, not on the basis of the amount of interest in such a corporate subject. Such determination of the controlling interest will have to be done with respect to:

- asset-based non-profit legal persons (associations),
- trusts,
- certain investment firms or funds.

a. Non-profit asset based legal persons(foundation)

Unlike in member-based non-profit legal persons, in asset-based non-profit legal persons (foundations), the founder or founders of such an asset-based non-profit legal person will have an interest in such a person which could be quantified in percent or in fractions. Thus, it will not be possible to determine on the basis of quantifiable criteria the persons having a control over such asset-based non-profit legal person. Hence, the determination of the

controlling persons among the founder(s) of such legal person or directors of such legal person will have to be performed on the basis of material criteria for control.

First, the scope of rights of founder(s) of the asset-based non-profit legal person has to analyzed, in particular whether the founder(s) is not prevented, by law, to exercise control over the asset-based non-profit legal person. If founders are not prevented from exercising control, the control (dominant influence) shall be established by assessing who among the founders has the right to, alone or jointly with directors of asset-based non-profit legal person, to actively decide, give consent to or veto decisions concerning the key issues relating to the functioning of the asset-based non-profit legal person in question, in particular who of those founders is:

- having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such asset-based non-profit legal person;
- having appointed solely as a result of the exercise of one's rights a majority of the members of the administrative, management or supervisory bodies of the asset-based non-profit legal person who have held office during the present and previous financial year;
- having the right to exercise a dominant influence over the asset-based non-profit legal person, pursuant to an agreement entered into with that legal person or to a provision in its Memorandum or Articles of Association, where the law governing that asset-based non-profit legal person permits its being subject to such agreement or provision;
- having the power to exercise the right to exercise a dominant influence referred to in the previous point, without being the holder of that right;
- having the right to use all or part of the assets of the asset-based non-profit legal person;
- sharing jointly and severally the financial liabilities of the asset-based non-profit legal person, or guaranteeing them.

If founder(s) cannot exercise the rights of control over the asset-based non-profit legal person (foundation) or he/she/they refrain from doing so, the controlling interest will be held by the director(s) of such asset-based non-profit legal person, who alone or jointly with others exercise the rights of control mentioned under the previous points in a way that grants them dominant influence over other persons involved in such asset-based non-profit legal person.

b. Trusts

Similarly to asset-based non-profit legal persons the controlling person(s) in the trust will have to be determined on the basis of material criteria only from among the persons involved in the trust. In line with the Antimoney Laundering Directive the following persons involved in the trust may exercise a de facto dominant influence in such a trust: the settler/founder, trustee(s), protector(s), if any, beneficiaries, any other person which could have a control over the trust by other means[58]. Who is such a person, who together or by acting jointly with others, exercises a dominant influence has to be established case-by-case on the basis of the

[58] Art. 3 (6) of the AML Directive.

delineation of rights and obligations in the founding deed of the trust in question and/or other basic constitutive documents relating to such trust. The dominant influence shall be established by assessing who has the right to, alone or jointly with other aforementioned persons involved in the trust, to actively decide, give consent to or veto decisions concerning the key issues relating to the functioning of the trust in question, in particular who of those persons is:

- having right to or having appointed solely as a result of the exercise of one's voting rights a trustee or majority of trustees, or the majority of the board of protectors, if it exists, who have held office during the present and previous financial year, as well as the right to appoint or remove beneficiaries within the same period;
- having the right to exercise a dominant influence over a trust, pursuant to an agreement entered into with other persons involved in such trust, or to a provision in its founding indeed, where the law governing that trust permits its being subject to such agreement or provision;
- having the power to exercise the right to exercise a dominant influence referred to in the previous point, without being the holder of that right;
- having the right to use all or part of the assets of the trust;
- managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts;
- sharing jointly and severally the financial liabilities of the trust or guaranteeing them.

c. Investment firms

If an investment firm or fund, including pension firms or funds, appears as direct shareholder or member of a legal person or a beneficiary of a trust, see above Section A.I.2.1. for more information.

3.3. Presence of concealed owners of interests, other types of interest and interests of represented owners

In each legal person, but most often in corporate entities companies, shareholders or members deriving their right to profit (dividend) or to voting rights on the basis of a contractual agreement, not on the basis of an shareholding or membership interest, can exist. At the same time, the beneficiaries of voting rights and right to profits (dividend) can be split so that these two types of rights are exercised separately. Last but not least, the formal (legal) owner can only represent the true owner. In this context, one can thus differentiate situations of:

a. presence of tacit shareholders,

b. collateral takers acting as controlling shareholders,

Although to certain extent similar, but conceptually different are situations:

c. of shareholders receiving profits (dividends), but not exercising voting rights, due to splitting of the interest into separated voting rights and rights to profit (dividend);

d. where interests will be held by formal (legal) owners in the name and/or on behalf of represented owners, i.e. where the true owner will be hidden behind an apparent formal (legal) owner on the basis of a contractual agreement, usually on direct or indirect representation.

a. Presence of tacit shareholders

Tacit shareholders are shareholders which benefit either from the possibility of exercising voting rights or from the right to a profit (dividend) of a corporate entity, but not on the basis of their shareholding interest, but on the basis of an agreement, usually undisclosed, with the corporate entity (company).

In respect of each examined legal person as well as each subject in the corporate structure, it is necessary to:

- ask examined legal person as well as each subject in the corporate structure whether any tacit shareholders with an interest exceeding 25 % of voting rights or rights to profit (dividend) are present,

- if presence of tacit shareholders is discovered, to find out whether,

  - tacit shareholders are natural or legal persons,

  - in which way they exercise their voting rights or rights to profit (dividends), whether alone or in joint acting with other shareholders, and whether they can be considered to controlling shareholders or not.

b. Collateral takers as controlling shareholders (interest owners)

An interest in a corporate entity (company), and in certain cases also in a non-profit legal person or a trust, can be made an object of a pledge, mortgage, security or other type of collateral right (referred to as collateral) in favor of collateral taker (usually a creditor). The collateral agreement on the basis of which the collateral is created can arrange for a transfer of voting rights in the corporate entity (company) or of the right to profits (dividend) in favor of the collateral taker. If the exercise of voting rights in a corporate entity are transferred in favor of a collateral taker (creditor), the collateral taker can thus become in this way a tacit shareholder.

Unless it can be found from the statement of the public registry or other publicly available corporate documents relating to the legal person, in particular a corporate entity, that an interest or shares are an object of a collateral, the examined legal person or the legal person in question has to be asked to make a declaration that its interest or shares are not collateralized. If the interest in a corporate entity, or more rarely in a non-profit legal person or a trust, is collateralized in favor of the collateral taker, it is necessary to verify whether:

- the collateral is established in favor of:

  - a bank or other financial institution,

  - other legal person than a bank or other financial institution,

- the collateral agreement contain a provision according to which the collateral taker (creditor) is entitled to:

  - exercise voting rights which are linked to the interest or shares which are collateralized,

  - enjoy the profits (dividend) arising out of the interest or shares which are collateralized.

If the collateralized amount of voting rights exceeds 25 % of voting rights in the legal person concerned and the collateral taker is not a bank or other financial institution, such collateral taker shall be identified, and if the amount of his voting rights he acquired on the basis of the collateral agreement make him a controlling person, he should be treated in that way, i.e. his direct and or indirect owners should be identified.

As to the collateral agreement, this agreement should be identified by:

- a number or other sign and/or parties to such agreement and/or the date or place of signature of such agreement,
- number of the section or article containing the obligation of the collateral giver or the right of the collateral taker to make binding instructions as to the way how voting rights should be exercised and/or the similar right of the collateral taker on the profits (dividend) arising out of the interest in the legal person.

c. Shareholders receiving profits (dividends), but not exercising voting rights

Priority shares giving rights to profits (dividends) but not entailing voting rights can be issued only by joint-stock companies, including the European company (SE). If priority shares are issued by a joint-stock company, this fact has to be mentioned in the articles of associations, memorandum of associations, founding deed or a similar basic corporate document relating to the joint-stock company in question. Hence,

- first, basic constitutive documents of a joint-stock company have to be verified whether or not they allow issuance of priority shares,

- second, if profits (dividends) were not paid out to priority shareholders, such shareholders may under certain circumstances acquire the voting rights: therefore, it may also be necessary to check whether the joint-stock company is not in default with paying the dividends due, and whether the priority shareholders have not become ordinary shareholders with voting rights and whether their shareholding interest has not exceeded 25 %.

d. Interests held by represented owners

The owner of the controlling interest indicated as the formal legal owner, for example, on the statement of the public register, does not have to be the final beneficial owner. The formal legal owner can represent, on the basis of direct or indirect representation, the true owner, at whichever level of ownership. In such a case the controlling owner is the represented owner, whether direct owner (corporate subject or beneficial owner). The disclosure of the represented direct or beneficial owner is performed as described in part A.III.1.1.b.

III. STEP 3: IDENTIFICATION OF SUBJECTS IN THE OWNERSHIP STRUCTURE AND BENEFICIAL OWNER(S)

General considerations. The beneficial owner – the natural person is expressly defined in the relevant provisions of the Antimoney Laundering Directive. The ultimate public organization is not defined in the same general way, but a number of individual directly applicable EU Regulation imposing sanctions on third-states and third-states individuals, public or private legal persons or entities[59]. If the examined legal person has an ownership structure, then the following two situations can arise:

(a) direct owners of the examined legal person are beneficial owners which corresponds to the situation of direct ownership[60]; in other words, the examined legal person is owned exclusively be beneficial owners – natural persons or beneficial owners – ultimate public organizations (**1. Beneficial owners**),

(b) direct owners are not beneficial owners of the examined legal person and, hence, they are one or more levels of corporate subjects between the examined legal person and the beneficial owners – the situation of indirect ownership[61] (**2. Subjects in the ownership structure**).

In addition, in certain situations the ownership interest can be owned in a particular way by particular subjects: for example, the owner of the interest may try to stay uncovered, for example, behind a person acting as a proxy for him/her; or the rights enshrined in the ownership interest can be separated so that voting rights are owned by someone else than the the right to a dividend (profits) (**3. Identification of owners concealed interests, other types of interests and represented owners**).

In a number of countries public bodies, in particular the law enforcement bodies have the possibilities to obtain information from different registries, including the corporate registry, directly by retrieving the from those registries via one or more dedicated IT systems. Although such IT systems may facilitate the practical work of gathering basic information about the examined persons and possibly direct owners, this way of retrieving of information does not exempt the public authorities from verifying the information about the legal persons or arrangements without legal personality according to this Handbook: for example, if certain information about a legal person and/or its direct owner contained in a corporate registry has, according to the law of the given Member State, a declaratory character only and has to be corroborated for further evidence, for instance, by an excerpt from a securities account, for it to be used as a reliable evifdence in a court proceeding, the mere fact that such information can be retrieved by a law enforcement body though a dedicated IT system will not change the character of such information from declaratory to a constitutive, i.e. it will not endow the information contained in the corporate registry by a stronger legal force.

Anti-Money Laundering Directive requires from: Member States to ensure that

- corporate and other legal entities incorporated within their territory

[59] List of sanctions imposed by the EU http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm).
[60] Art. 3 (6) (a), (i), first sub-paragraph, first sentence of the AML Directive.
[61] Art. 3 (6) (a), (i), first sub-paragraph, second sentence of the AML Directive.

- obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held;
- provide, in addition to information about their legal owner, information on the beneficial owner to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter II[62];

- the information about beneficiary ownership:
  - is held in a central register in each Member State, for example a commercial register, companies register or a public register[63],
  - the information held in the central register referred to in paragraph 3 is adequate, accurate and current[64];
- any person or organization that can demonstrate a legitimate interest:
  - have an access to at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held[65].

1. Beneficial owner(s)

The term beneficial owner and the ownership and control structures first appeared at supranational level in the 2003 Revised Forty Recommendations[66] of the Financial Action Task Force.[67] The definition of beneficial owner was contained in the Glossary attached to these Recommendation and has stayed more or less unchanged up to now. The beneficial owner in the FATF context is defined as follows: "the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted". The definition also includes those persons who exercise ultimate effective control over a legal person or arrangement".[68] The process of identification and verification of the beneficial owner and ownership and control structure was described in an interpretative note to Recommendation 5.[69] In the new version of FATF Recommendations of 2012[70] the issue of beneficial ownership of legal persons and arrangements appeared in Recommendations 10 (on

[62] Art. 30 (1) AML Directive.
[63] Art. 30 (3) AML Directive.
[64] Art. 30 (4) AML Directive.
[65] Art. 30 (5) AML Directive.
[66] Recommendations 5, 33 and 34.
[67] Financial Action Task Force is an intergovernmental organization existing since 1989, with headquarters in Paris, specialized in the fight against money laundering.
[68] FATF Glossary. Available at: http://www.fatf-gafi.org/glossary/
[69] Interpretative notes to the 2003 revised FATF Recommendations in W.C. Gilmore, 'Dirty Money – The evolution of international measures to counter money laundering and the financing of terrorism', (2012), 4th ed., Council of Europe Publishing, 305-307.
[70] FATF Recommendations**,** adopted on 16 February 2012, and updated in February 2013, October 2015, June 2016 and October 2016.

customer due diligence), 24 (on beneficial ownership of legal persons) and 25 (on beneficial ownership of legal arrangements)[71].

The fourth Antimoney Laundering Directive provides a sufficiently clear and precise definition of the beneficial owner in the context of the EU law. This definition is based on the FATF definition, but adds in respect of different corporate subjects, namely corporate entities, trusts and non-profit legal persons, the indications of the persons who shall be considered as beneficial owners in relation to those corporate subjects. Regarding the corporate entities it also provides an exception for companies listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information and defines what direct ownership[72] and indirect ownership[73] means, setting under both definition a threshold of 25 % plus one shareof the shares or voting rights or ownership interest in that entity as the limit above which the shareholding interest is relevant for consideration as an element of direct or indirect ownership.

In addition, Regulation (EC) no. 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism entails for relevant subjects of private law as well as for public law organizations the obligation check whether among the persons with ownership or control over the client or public funds or subsidies recipient there is no natural or legal person, including a state or state-like organization, listed on the sanctions list which are usually attached as annexes to the Regulations imposing sanctions on specific states or organizations.For the purpose of assessing whether making funds or economic resources available to non-listed person may amount to making them available to listed persons ownership and control are taken into account. Namely, if it is established that a non-listed person is owned or controlled by a listed person, making funds or economic resources to that non-listed person would be considered as making them indirectly available to that listed person.

Given the foregoing, the beneficial owners can be either:

- natural persons **(1.1), a**
- ultimate public organizations **(1.2).**

1.1. Beneficial owners – natural persons

General considerations. Regarding the beneficial owner it is necessary to verify the information about his identity (**a. Obtaining information about the identity of the beneficial owner – natural person**), as well as the information whether the beneficial owner acts in his/her name, or in the name of a third person (direct representation), and/or on his/her own behalf or on behalf of a third person (indirect representation) (**b. Verification of representation of the final beneficial owner).**

[71] Financial Action Task Force which exists as of 1989 represents a specialized international organization in the area of prevention of money laundering and financing of terrorism, including ownership structures and beneficial owners.

[72] A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership.

[73] A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership.

a. Obtaining information about beneficial owner(s) – natural person(s)

In respect of the beneficial owner who is a natural person it is necessary to:

- identify his/her name and surname, address and date of birth, and
- obtain an oral or written declaration that he/she acts in its own name and on its own behalf, and
- check whether the beneficial owner-natural person is:

  a. a lawyer/advocate/solicitor/barrister from the list of lawyers/advocates/solicitors/barristers which is usually maintained online by the relevant bar association/chamber of advocates/lawyers,

  b. a professional nominee either from the list of such nominees, if available, for example, on the website of a professional association of nominees, or byobtaining an oral or written declaration from such natural person that he/she is or is not a nominee,

  c. a so-called white horse, i.e. a person concealing the identity of the final beneficial owner, either from his/her life circumstance and/or by obtaining a declaration from such natural person that he/she is not a concealed representative,

(ii) If it appears that the declared beneficial owner – natural person is a lawyer/advocate/solicitor/barrister or a professional nominee or that he might be a white horse, this may create a reasonable suspicion that such a person is in fact acting on the name of on behalf of another person: in such a case further research about the existence of such a person should be obtained as well as to obtain information the existence of documents mentioned Part B.I.1.1.b. of this Handbook.

b. Verification whether the beneficial owner is final or whether he/she acts as a direct or indirect representative

If the indicated beneficial owner who is a natural person makes a declaration that he/she is only a formal (legal) owner acting on behalf of a final beneficial owner, it is necessary to identify:

- the type and detail of the relationship between the representing formal (legal) owner and the represented (final) beneficial owner, by finding out information about:

  - whether the representation of the final beneficial owner is a direct or indirect one, and whether there are any written or electronic documents where the contents of the relationship is documented,

  - the time of duration of the representation relationship (starting date and, if it exists, end date) and the conditions of such relationship, in particular whether the representative is obliged to fulfill the instruction of the person whom he/she is representing

- the represented final beneficial owner, by indicating information about the name and surname, address and date of birth of the final represented beneficial owner.

In addition, if the represented final beneficial owner is identified, it is necessary to check whether this represented final beneficial owner is also not only a representative of a further represented final beneficial owner etc.: this check has to be performed in the same way as the check of the existence of representation by the formal (legal) owner of the first level of representation described in the first section.

1.2. Ultimate public organizations

Ultimate public organizations are public law subject of last instance which cannot be owned by another person in the private law understanding. Ultimate public organizations are always final beneficial owners they are never represented in a similar way as natural persons – beneficial owner are. Ultimate public organizations can be either

(a) states, regional bodies, municipalities, self-governing bodies, autonomous public institutions,

(b) international organizations,

a. States, regional bodies, municipalities, self-governing bodies, autonomous public institutions

i. State

States are typical sovereigns which are constituted on a societal citizenship basis. For this reason, states are not owned by any other person(s) or in which no one has an ownership interest. By contrast, states can hold ownership interests in legal persons and arrangements without legal personality; holding of these ownership interest is usually managed by different state departments: depending on the national law, it has to be checked whether it is only the state who is the corporate subject who has the legal capacity to hold the relevant ownership interest (the state department administering the ownership interest may act only as a representative of the state in the name of the state or on its behalf) or whether it is the state department who has the legal capacity to hold the relevant ownership interest (the state department administering the ownership interest acts in its own name and on its own behalf). Depending on the solution adopted by the individual national law, it will be the state in question or the relevant department of the state administering the ownership interest which will appear in the relevant registry or on the document evidencing the owner of such interest in a legal person or legal arrangement.

ii. Self-governing public bodies (including regional bodies, municipalities, and professional self-regulated bodies of a public law character)

From the other national public law bodies other than the state itself which can take the role of beneficial owners owning direct or indirect interests in other legal persons or arrangements without legal personalities. Similarly to the state, self-governing public bodies are alsopublic law subject of last instance which cannot be owned by another person in the private law understanding. Self-governing public bodies acting as beneficial owners – ultimate public organizations owning interests in other legal persons or arrangements without legal can personality can, thus, be:

- self-standing states forming a federal state or regions,
- city municipalities or local municipalities
- professional self-regulatory organizations endowed with public law competences towards its members, such as associations of lawyers (bar associations), medical doctors, auditors, accountants, architects etc.

In relation to domestic self-governing public bodies, it will usually not be difficult to identify those subjects and gather basic identification information since this information will usually be known to investigators coming from the same State or it will be accessible for them through the available public law registers. By contrast, finding out information about the status and basic identification data of a non-domestic self-governing public body, in particular of those not coming from EU Member States may be particularly difficult: in this respect, often nothing than an internet research as to whether a non-domestic public law subject is indeed a self-governing public and how to correctly identify it will not be available.

iii. Autonomous public institutions

The last type of ultimate public organizations constituted under domestic laws which do not have an owner or in which there are no ownership interests in the private law meaning are various autonomous public institutions which serve certain general interest. However, among those autonomous public institutions, public corporate entities providing a service of a general interest cannot be counted: such entities, whether in the form of corporate entities (companies) or arrangements without legal personality, in which a state, region or local municipality has an ownership interest, or in the specific form of a state enterprise in which a state department exercises a specific right of control – which cannot be categorized as a company under the provisions of the relevant domestic law - , have to be considered as corporate entities or non-profit legal persons or arrangement without legal personality. Autonomous public institutions are instituted by legislative Acts, statutory regulations, government of ministerial ordinances. The following subjects which under the relevant national law will not take a form of a general or specific type of a corporate entity, non-profit legal person or arrangement without legal personality the interests in which can be owned in the private law meaning[74],can fall in the category of autonomous public institutions:

- state banks, funds or authorities supervising spending of public budgets,
- public entities ensuring building and/or maintenance of infrastructure networks, such as road, railroad, information, electricity, water, gas networks etc.
- public entities in the military area and entities charged with research or exploration of extraterritorial spaces, such as the oceans or seas, oceans or sea beds, uninhabited parts of the globe or extraterrestrial spaces,
- public media, such as public TV or radio stations,
- public research institutions,
- public institutions charged with cultural dissemination,

[74] In such a case they have to be considered corporate entities.

- public insurance companies, in particular health insurance companies,
- public universities, high schools or other schools, etc.

Similar considerations as to the relative easiness in identifying such domestic autonomous public institutions, and by contrast, difficulties in identifying the same public institutions of non-domestic character mentioned in the previous section in relation to self-governing public bodies apply also to autonomous public institutions.

b. International organizations

Next to states, also international organizations are subjects which are not owned by other persons in the private law understanding, but which can own interests in legal persons or arrangements without legal personality. Thus, also international organizations can be ultimate public organizations. Examples of international organizations of:

- a global character are the United Nations, International Monetary Funds, World Bank, NATO, World Trade Organization, Organizations for Economic Cooperation and Development etc.
- European character are the European Union, including European Central Bank, European Investment Bank, Council of Europe, European Bank for Research and Development, European Space Agency, Organization for Security and Cooperation in Europe.

2. Subjects in the ownership structure

General considerations. Next to beneficial owners the direct owners of the examined legal persons can also be corporate subjects, that is **(2.1.) corporate entities** (profit-oriented companies owned by private or public entities), **(2.2.) Non-profit legal persons** (member-based and asset-based) or **other arrangements without legal personality (trusts and similar arrangements) (2.3.)**.

2.1. Corporate entities (companies)

Corporate entities (companies) are legal persons which can pay out profits to the owners of share interest in such companies. In the first aspect – legal personality – they differ from trusts and similar arrangements which usually do not have a legal personality, in the latter aspect – the possibility to distribute profits (dividend) to their shareholders (interest owners) they differ from non-profit legal persons which cannot pay out profits to their members. In general, the examined legal person or any other corporate subject which is a legal person and is not a beneficial owner can take one of the following forms of a corporate entity (company):

(i) **Joint-stock company:** a company whose interest is represented by usually transferable shares which are owned by shareholders (interest owners);

(ii) **Limited liability company:** a company whose interest is either intangible (usually registered in a public registry only as well as its owners) or represented by usually transferable share certificates whose owners thus own interest in the company;

(iii) **European company (SE):** similar as a joint-stock company;

(iv) **Limited partnership or limited partnership with shares:** with two types of partners (interest owners) with intangible interest or tangible interest represented by shares or share certificates;

(v) **General partnership:** a company which, depending on the applicable national law,may or may not havelegal personality, and whose partners own an intangible interest in such company (usually registered in a public registry as well as its owners), which may or may not be transferable;

(vi) **Cooperative:** a company with variable number of members supposed to support the activities of their members;

(vii) **European cooperative company (SCE):** similar as the cooperative with cross-border EU dimension;

(viii) **Stated-owned enterprise (SOE)**: specific legal person wholly or partially managed by the state usually in order to provide services of general interest;

(ix) **Branch**: corporate entities (companies) can create branches with a limited or no legal capacity: branches or also named registered offices or registered bodies can have their own registration number and have to register in a public register in a state where they are active. Depending on the scope of legal personality (capacity) granted under the given national law to the branches, they can or cannot on their own shareholding or membership interests in other legal persons or arrangements without legal personality; it they cannot do so, they will acquire and own shareholding or membership interests in other legal persons or arrangements without legal personality in the name or on behalf of the corporate entity (company) of which they emanate. For the purpose of this Handbook and also the Auxiliary learning e-tool, the relationship between a corporate entity and a branch is equivalent to a relationship between a company which owns a 100 % share interest in its subsidiary.

The following basic identification information about corporate entities (companies) should always be gathered - in order to individually identify those corporate entities and not to confuse them with other entities – from the public registries where the corporate entities are incorporated:

- name,
- identification number obtained upon registration (or possibly also the LEI (Legal Entity Identification) number,
- address of the registered seat, and

if possible, also the following information which could help determine its direct or indirect owners, including beneficial owner(s)

- information about their direct owners, i.e. shareholders, members or holders or owners of other type of corporate interest, including their name, incorporation number and the address of their registered seat,

- other information concerning business activities, identity of directors or possibly members of supervisory bodies, company capital, and if available information about the changes of the name, address or type of the company, for example, under a merger, divestment or change of a legal form.

2.2. Non-profit legal persons

Non-profit legal persons are legal persons which cannot pay out to their member(s) or founder(s) profits in case they make some. In the first aspect – legal personality – they differ from trusts and similar arrangements which usually do not have a legal personality, in the latter aspect – the lack of the possibility to distribute profits (dividend) to their members/founders (interest owners), they differ from corporate entities which are allowed to pay out profits to their members. In general, the examined legal person or any other corporate subject which is a legal person and is not a beneficial owner can take one of the following forms of a non-profit legal person:

(i) **association:** an entity, which may or may not have a legal personality depending on the applicable law of the country where it comes from, pursuing non-profit goals; it should usually have three or more members, which the association may or may not register (member-based non-profit legal person) – the members can change, but the membership rights usually cannot be transferred;

(ii) **foundation: an aggregation of assets,** which may or may not have a legal personality depending on the applicable law of the country where it comes from, the incomes of which should serve a non-profit goal(asset-based non-profit legal person); it usually has one or few founders with specific rights or obligations which normally cannot be transferred or changed**;**

(iii) **other type of a non-profit legal person:** such a non-profit legal persons usually mixes the membership and asset aspect (and not being a special type of a legal person indicated in Part. A.I.2.4):

(iv) **branch:** similar as the branch of corporate entities (see the preceding section).

The following basic identification information about non-profit legal persons (both member-based as well as asset-based) should always be gathered - in order to individually identify those non-profit legal persons and not to confuse them with other entities – from the public registries where the non-profit legal persons are incorporated:

- name,
- identification number obtained upon registration (or possibly also the LEI (Legal Entity Identification) number,
- address of the registered seat, and

if possible, also the following information which could help determine its direct or indirect members, including beneficial owner(s):

- information about their direct owners, i.e. members or founders, including their name, incorporation number and the address of their registered seat,

- other information concerning activities, identity of directors or possibly members of supervisory bodies, company capital, and if available information about the changes of the name, address or type of the non-profit legal person, for example, under a merger, divestment or change of a legal form.

2.3. Arrangements without legal personality and other incorporated or non-incorporated entities

Arrangements without legal personality and other incorporated or non-incorporated entities involve:

a. trusts and similar arrangements,

b. certain investment undertakings.

a. Trusts and similar arrangements

Fourth Antimoney Laundering Directive, the transposition period of which expired on 26 June 2017, requires Member States to ensure that trustees of any express trust governed under their law obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of (a) the settler; (b) the trustee(s); (c) the protector (if any); (d) the beneficiaries or class of beneficiaries; and (e) any other natural person exercising effective control over the trust. This information shall be accessible to competent authorities and financial intelligence units and held in central registers and shall be adequate, accurate and up-to-date[75].

If atrust or similar arrangementis identified as a corporate subject present in theownership structure as a direct owner of an interest in the examined legal persons, it is necessary to identify the following basic identification data with respect to such trust or arrangement:

- name (of the trust),
- its identification (registration) number,

then,

- the settler/founder (of the trust)
- trustee(s);
- protector(s), if any;
- beneficiaries;
- any other person which could have a control over the trust by other means.

In respect of each of the aforementioned persons it is necessary to identify the following basic identification data:

- if it is a natural person: name and surname, address and date of birth,

[75] Art. 31 of the AML Directive.

- if it is a legal person: name, registration (incorporation) number and the address of the registered seat.

As to the retrieval of information in respect of arrangements without legal personality, such as trusts, fiducies, Treuhand, whether domestic or non-domestic ones, this can be particularly difficult in EU Member States where registers of such arrangements have not yet been put in place[76].

b. Certain investment undertakings

If an investment firm or fund, including pension firms or funds, appears as direct shareholder or member of a legal person or a beneficiary of a trust , see above Section A.I.2.1. for more information.

3. Non-domestic subjects in the ownership structures

General considerations. Finding out information about a non-domestic corporate subject (from the point of the investigator investigating the corporate structure and beneficial owner(s) of the examined legal person) in the ownership structure will usually be more difficult than with respect to the domestic subject in respect of which domestic public registers or other databases could be used. Regarding domestic sources, information about non-domestic subjects in the ownership structures or beneficial owners could be found in annual reports or annual financial statements of consolidated groups of companies, if these involve also non-domestic subjects. Information from such sources will, however, have to be verified in the non-domestic public registries, i.e. in the public registries where the researched non-domestic subject is incorporated. As to the non-domestic sources of information, investigators will often have to go to foreign public registers and try to find information about the existence of a non-domestic subject as well as basic identification data there. Unless a legal person, in particular a corporate entity (company), is incorporated in a country considered to be a tax haven where access to corporate registries is usually not accessible and has to be done under so-called registration agents who work for the company in question incorporated in such a tax haven, basic information about the existence of a legal person, and possibly also about its name and registration (incorporation) number can be obtained for free. In countries other than tax havens where there is a public access to public registers of legal persons, such access may be:

- free of charge: if free of charge, it will be possible search the information available in the public register on the legal person in question which may or may not include the information on the interest in the legal person and its owners (shareholders / members);

- paid: if paid, it will usually be possible to find in such a public register whether or not a given legal person – corporate entity or non-profit legal person exists – exists´: such free of charge information will usually include the name of the legal person and its registration (incorporation) number; further information about a legal person registered in such a register will have to be paid for.

Irrespective whether the access to the public registry is paid or free of charge, depending on the national legislation applying to the contents and functioning of this public registry the

[76] As required by the AML Directive whose transposition period expired on 26 June 2017.

information about the shareholders or members of the legal person may not appear in the public registry, either because it is not at all collected by the persons operating the public registry from the legal person or, if it is collected, because it is not made public or it is made available to certain national public authorities only.

The e-Justice portal of the European Commission. The basic information about the access to company registers in EU Member States and about their contents – public / non-public, paid / free of charge, with authentic information / with declaratory information only is provided at the e-Justice portal of the European Commission at the following website:

https://e-justice.europa.eu/content_business_registers_in_member_states-106-at-cs.do?init=true&member=1

Business Registers Interconnection System (BRIS)[77]. Since June 2017 company registers of certain EU Member States, Iceland, Liechtenstein and Norway are interconnected through the BRIS system on the basis of Directive 2012/17/EU and Regulation (EU) 2015/884. This system allows for research of basic data about corporate entities (companies) registered in an interconnected company registry of the given Member States through a common web gate: https://e-justice.europa.eu/content_business_registers_at_european_level-105-en.do

As to the retrieval of information in respect of arrangements without legal personality, such as trusts, fiducies, Treuhand, whether domestic or non-domestic ones, this can be particularly difficult in States where registers of such arrangements have not yet been put in place[78] (EU Member States) or where no registers of such arrangements exists or where it is not obligatory to register such arrangements therein (States outside the EU).

In States where certain information about certain legal persons, such as the information about shareholding or membership interest and their owners, are collected by public authorities, including similar information with respect to certain trusts, but are not made available to the public in any type of a public registry, then as a last resort, such information can be under certain conditions obtained from such authorities via the relevant mechanisms of administrative cross-border cooperation, if they exist.

4. Identification of tacit shareholders, controlling collateral takers, owners of priority shares and represented owners

Identification of existence and of basic identification data of tacit shareholders, controlling collateral takers, owners of priority shares and represented owners will depend on their type, that is whether they are beneficial owners (**Part A.III.1**), corporate entities (companies) (**Part A.III.2.1.**), non-profit legal persons (**Part A.III.2.2.**) or arrangements without legal personality (**Part A.III.2.3.**) as described in previous sections of this Step 3: the information identified in those sections which are supposed to be gathered in respect of the aforementioned type of a person will also have to be obtained with respect to tacit shareholders, controlling collateral takers, owners of priority shares and represented owners. At the same time, the process of obtaining such information about such persons and subjects will depend on whether they are domestic or non-domestic subjects (Part A.III.3.).

[77] Currently, not all corporate registries of EU Member States are interconnected through BRIS, however, in the near future, corporate registries of all EU Member States should join BRIS.
[78] As is required by the AML Directive whose transposition period expired on 26 June 2017.

B. EVIDENCING OF OWNERSHIP STRUCTURE(S) AND BENEFICIAL OWNER(S)

General considerations. The purpose of evidencing of information about the ownership structures, that about ownership interests and subjects in the ownership structures as well as beneficial owners, is to ensure credibility of information about the ownership structure and beneficial owners.

Identification of the evidencing documents. Each evidencing document has to be individually identified. The identification information relating to certain evidencing documents are defined in the law, such as the identification data of statements of the public (corporate) registries or statements from the securities account issued by depositories, banks or financial intermediaries; by contrast, other evidencing documents, in particular those issued by corporate subjects themselves, such as lists of shareholders, lists of trust beneficiaries, do not have their identification information defined by law and have to be set out in analogical way.

Identification of the issuers of the evidencing documents. In the framework of identification of evidencing documents, especially the issuer of such evidencing document has to be identified. The exact identification of the issuer of evidencing documents is a key aspect for credibility of the evidencing documents and, hence, of the information about the ownership structure and beneficial owners. In general, an evidencing document issued by a public institution will be more credible than a document issued by a private person other than the corporate subject which, in turn, will be more credible than evidencing documents issued by the corporate subject itself, in particular if such self-issued documents that are not public but kept secret, for example, in the place of the seat of the corporate subject.

Credibility of evidencing documents: evidencing documents about the existence of a subject vs. evidencing documents about the existence of ownership interest. On the one hand, the credibility of evidencing documents about the existence of corporate subjects, including beneficial owners, in particular the legal persons, will in an overwhelming majority of cases be of the highest possible rank: the evidencing documents are issued by public institutions maintaining public registers, the statements of such public registers will normally be publicly available and these statements from public registers will benefit from presumption of accuracy. Moreover, as a legal person usually comes to existence only upon a successful registration in a public register, a statement about the existence of a legal person from a public register, such as the corporate registry, will also be the only valid evidencing document about such fact. On the other hand, the documents evidencing the ownership interests in corporate subjects and their owners will more often than the evidencing documents about existence of legal persons not have the form of statements from a public registry benefiting from the presumption of accuracy: in certain situations there will be no publicly available evidencing documents about the ownership interest and their holders; in other situations there may be more than one evidencing document about the ownership interest and its direct owner(s) which, in turn, will require further evaluation of which of the available evidencing documents has the supreme legal force and is, thus, the legally decisive type of evidence.

Step-by-step process of evidencing interests and subjects in the corporate structure and beneficial owners. The process of evidencing interests and subjects in the corporate structure and beneficial owners consists of the following steps which should be undertaken in the following order:

- **Step 4**: Evidencing of subjects in the ownership structure and beneficial owners **(Part IV.)**
- **Step 5**: Evidencing of interests held by direct owners **(Part V.)**
- **Step 6**: Marking subjects in the ownership structure and beneficial owners as controlling and non-controlling **(Part VI.)**

I. STEP 4: EVIDENCING SUBJECTS IN THE OWNERSHIP STRUCTURE AND BENEFICIAL OWNERS

The type of evidencing documents about the existence of corporate subjects and beneficial owners differs. Information about beneficial owners, natural persons or ultimate public organizations, are evidenced by different documents (**1. Evidence of existence of beneficial owners**) than information about the existence on corporate subjects, that is corporate entities or arrangements without legal personality (**2. Evidence of existence of corporate subjects**). As far as obtaining of evidence about the existence of legal or natural persons by certain public authorities via dedicated IT systems from the various public registries is concerned, what has been said about obtaining of information in this ways can be used mutatis mutandis about obtaining evidence about such information.

1. Evidencing the identity of beneficial owner(s)

The information on beneficial owners are evidenced by different types of documents depending on whether the beneficial owner is a natural person (**1.1 Evidence on the existence on beneficial owner(s) – natural person(s)**) or ultimate public organization **(1.2. Evidence on existence of beneficial owner(s) – ultimate public organizations)**.

1.1 Evidence on the existence on beneficial owner(s) – natural person(s)

With respect to the beneficial owner it is necessary to obtain documents evidencing its identity (**a. Verification of documents evidencing the identity of the beneficial owner(s)**) and, in case the legal owner is only a representative of the final beneficial owner, also documents evidencing the relationship between the representative of the representing beneficial owner and represented final beneficial owner and documents evidencing the identity of the represented final beneficial owner (**b. Verification of documents evidencing the final beneficial owner and its representation**).

a. Verification of documents evidencing the identity of the beneficial owner(s)

Regarding the beneficial owner – natural person, it is necessary to:

- verify the existence of the natural person via his/her ID card or through the official national database of citizens;
- obtain his/her declaration that he/she acts in his/her name and on his/her own account and not on behalf of another person or on account of such other person; and
- seek a declaration whether such natural person is not a lawyer or advocate or a professional nominee as well as, where possible, to verify such declaration by way of status check of such person in the national register of lawyers/advocates or, if it exists, a national register of providers of nominee services.

An indication that the beneficial owner – natural person which owns the interest in his own name and on his own account is a lawyer/advocate or profession nominee may be a sign that such person does not actually own the interest in his/her name or on his/her behalf, but in the name or on behalf of a third person.

b. Verification of documents evidencing the final beneficial owner and its representation

If the beneficial owner – natural person declares that he/she is not the final beneficial owner because it acts as a direct or indirect representative of another person it is necessary to obtain:

- documents evidencing the identity of:
  - the acting (formal) beneficial owner representing the final (true) beneficial owner from his/her ID card and/or the register of citizens, and
  - the represented final (true) beneficial owner from his/her ID card and/or the register of citizens, as well as
- documents evidencing the existence of:
  - the contractual relationship based on a power of attorney or proxy or other act of direct or indirect representation between the acting (formal) beneficial owner and the final (true) beneficial owner,
  - bill of exchange, recognition of debt or another payment instrument in favor of the final (true) beneficial owner to the detriment of the acting (formal) beneficial owner which could serve as a means of pressure against the acting (formal) beneficial owner and which would oblige him to act upon instructions of the final (true) beneficial owner.

If there is more than one level of representation, for example, when the acting (formal) beneficial owner represents another (formal) beneficial owner which, in turn, represents the final (true) beneficial owner, it is necessary to verify all the levels of representation up to the final (true) beneficial owners. The same has to be done if there is more than one acting (formal) beneficial owner at the same level or more than one final (true) beneficial owner at the same level.

1.2. Evidence on existence of beneficial owner(s) – ultimate public organizations

If the beneficial owner is an ultimate public organization the evidence of its existence can be proven either by

- an excerpt from a public register of legal persons, corporate entities or a special register, or
- an Act, government ordinance or regulation or individual administrative act establishing the ultimate public organization, or
- in case of international organizations, by an international treaty or an Act of international organization, within the EU an instrument of the EU law establishing the ultimate public organization.

In cases where the existence of an ultimate public organization is proven by an Act, government ordinance or regulation or individual administrative act establishing the ultimate public organization, such legislative or administrative act should be identified by its number

or other identification and the specific part, section, article or paragraph in which the establishment of the ultimate public organization is provided for should be indicated.

In case of international organizations which are direct or indirect owners of a legal person or arrangement without legal personality if the State where such legal person or arrangement is established is a member of such international organization.

2. Evidencing the existence and the basic identification data of the subjects in the ownership structure

General considerations. The document **evidencing the establishment, existence and basic identification information about legal person(2.1)** will normally be a statement from the relevant public registry; in specific cases of legal persons not registered in any public registry, exceptionally, the evidence of the establishment, existence and basic identification information about legal persons can be represented by an Act, government ordinance or regulation or individual administrative act establishing the ultimate public organization. The **evidence of establishment, existence and basic identification information of a trust or similar arrangement without legal personality, including investment firms or funds (2.2.)** can, at least in the EU Member States, be a statement of the register of trusts or similar arrangements, or a memorandum or articles of association or a similar founding deed establishing such an arrangement without legal personality. **Obtaining evidence of establishment, existence and basic identification information about non-domestic legal persons, trusts or other arrangements (2.3)** may prove more difficult than obtaining the same evidence on the domestic ones.

2.1. Domestic legal persons

Since, as far as the establishment, existence and basic identifications information of legal person is concerned, the evidencing document with the supreme legal force is the statement of the relevant public registry, such as the companies registry of corporate entities and a registry of foundations and/or associations for non-profit legal persons, irrespective of possible diverging or contradictory information in the articles or memorandum of association or other founding deed of such legal person, the establishment, existence and basic identification information of legal person shall be evidenced by a statement or record of the relevant public registry.

In this way the establishment, existence and basic identifications information of the following types of corporate entities should be evidenced:

- joint-stock companies,
- limited liability companies,
- European company (SE);
- limited partnerships or limited partnerships with shares,
- general partnerships,
- cooperatives,

- European cooperative company (SCE),
- state-owned enterprises and similar entities;
- branches, including branches of non-domestic legal persons.

In parallel, in the same way the establishment, existence and basic identifications information of the following types of non-profit legal persons should be evidenced:

- associations,
- foundations,
- other types of charitativeorganisations with legal personality,
- branches, including branches of non-domestic non-profit legal persons.

2.2. Trusts and similar arrangements without legal personality, including investment trusts

Before the implementation of trust registers according to the Antimoney Laundering Directive, unless such register existed already, the relevant document evidencing the existence and the basic information about a trust or similar arrangement without legal personality is the founding deed of such a trust; in case of investment trust such evidencing document can be also a statement from a special registry of investment funds or trusts.

After the implementation of the trust registers according to the Antimoney Laundering Directive, unless such register existed already, the relevant document evidencing the existence and the basic information about a trust or similar arrangement without legal personality will be a statement from such registry.

2.3. Non-domestic legal persons and arrangements without legal personality

General considerations. Obtaining documents evidencing the existence and basic identification data of non-domestic legal persons and arrangements without legal personality will be in certain cases easier with respect to entities incorporated in EU/EEA Member States rather than those incorporated in third-countries.

a. Incorporated in an EU/EEA Member State

The easiest access to evidencing documents in respect of non-domestic EU corporate entities (companies) will be the access to evidencing documents relating to companies within the scope of the First Company Directive (2009/101/EC) which stipulates, first, that published data in corporate registries on these companies benefit from public trust and should be made available electronically, and second, that found documents, annual financial statement, the amount of share capital and appointment of directors shall be published.[79]

More difficult will be obtaining documents evidencing the existence and basic identification data about other companies than those covered by the First Company Directive or regulated by dedicated EU legislation, such as SEs or SCEs, since data which have to be published

[79] Art. 3 (m), pt. 7 of Directive 2009/101/EC.

about such companies are not harmonized at the EU level. Therefore, a check of conditions under the respective national law under which conditions such evidence can be accessed or retrieved will have to be done without a guarantee that the researched evidence will finally be obtained.

Most difficult will often be obtaining documents evidencing the existence and basic identification data about non-domestic trusts and arrangements without legal personality:the possibility of evidencing information about trusts and similar arrangements established within the EU depends on the implementation of the trust registers (see preceding section 2.2.)

b. Incorporated outside EU/EEA Member States

Obtaining document evidencing the existence of a legal person or arrangement without legal personality and their basic identification data, such as, its name, legal form, registration or incorporation number, the address of their registered seat, if they are coming from third states outside the EU or EEA requires to find out:

- whether in the state in question exists a public register of corporate entities or non-profit legal persons or trusts or similar arrangements, and

- if such register exists whether it could be accessed directly or via private registration agents; the latter may not always be reliable in delivering the requested statements as they are often acting under instructions of the company in question which may not want that an evidencing document about its existence is issued to the investigator or other third person.

II. STEP 5: EVIDENCING OF INTERESTS HELD BY DIRECT OWNERS

General considerations. When investigating the ownership structure and beneficial owners of a legal person, it is not possible to rely only on information on the ownership structure and/or beneficial owner(s) provided by the examined person or found somewhere on the internet. Declared ownership structure and beneficial owners have to be also evidenced. If not evidenced, the information on ownership structure and beneficial owners will not be credible and will not sustain judicial or administrative scrutiny. Hence, the burden of proof, in other words the obligation to come up with the relevant binding evidencing documents on the interest and their owner(s) lies with the investigator. The investigator has to find it himself/herself or in cooperation with the investigated person whom he may, under certain conditions, ask for delivery of evidencing documents which the latter person is obliged to keep and which are inaccessible to the investigator.

Practical problems in evidencing interests and their owners. On the one hand, holding or ownership interest or membership interest in legal persons can be in most of the countries of civilized world evidenced by some type of a document. Ownership or quasi-ownership right to any asset, including share or membership interest, is normally evidenced in a written or electronic form. On the other hand, neither EU antimoney laundering rules nor FATF guidelines stipulate by which documents interests and their owners should be evidenced. Documents evidencing ownership interest or membership interest in a legal person are sometimes public, sometimes not: rules public availability of documents evidencing information about interests in legal persons and their owners are very lavatory on this issue across the EU as well as in third countries. Also with respect to certain legal persons there can be more than one document evidencing the interest so that assessment as to which of the evidencing documents prevails over the other, i.e. has stronger legal force, has to be done. Last but not least, it is necessary to deal with the issue of reliability of evidencing documents in time, that is the question until when can a document which was issued at certain moment still serve as an evidence for information which may have changed in the meantime.

Process of obtaining relevant evidencing documents. The process of obtaining the relevant documents evidencing an interest in a legal person or an arrangement without legal personality and its direct owners differs depending on whether the corporate subject in questionis:

- a domestic legal person or arrangement without legal personality **(1.)**,
- a non-domestic legal person or arrangement without legal personality **(2.)**,
- a legal person based in the EU obtained Transparency ID (and/or Taxparent Mark) **(3.)**.

1. Evidencing of information about interest in domestic corporate subjects and in their owners

General considerations. The Antimoney Laundering Directive obliges all legal persons and arrangements without legal personality to know their beneficial owners and beneficial ownership interest; such obligation, if it is to have an useful effect "effet utile" has to entail, on the side of the legal person or arrangement without legal personality to keep or have access

to relevant documents evidencing the information on beneficial owner(s) and beneficial interest held by them. At the same time, the Antimoney Laundering Directive puts the onus on Member States when it obliges them to ensure that information on beneficial ownership interest held in central registers is adequate, accurate and current[80]. From the perspective of investigation, the investigator has to resolve the following problems in order to determine correctly the evidence serving to prove the information about the ownership structure and beneficial owners: (i) where to find the relevant evidencing document(s), and in case of plurality of evidencing documents, (ii) which of the evidencing document is the binding one, and (iii) how old can be the document evidencing the information found at a certain point of time by the investigator or declared by the examined legal person at certain point of time. The third question can be resolved only arbitrarily, this Handbook takes as the maximum the customary period of three months as the period of maximum age of an evidencing document: this means that the date of issue of the evidencing document must not precede for more than three months the date as to which it is proving the accuracy of information about the ownership structure or beneficial owner contained on such documents. Once such period of three month lapsed a new document with more recent date has to be obtained. By contrast, in the light of the first two criteria, that is the accessibility and the credibility the evidencing documents can be divided into the following categories:

- **statements of public registries (1.1.)**, which are documents issued by public bodies, such as registry courts or similar public administrative bodies and which benefit from the presumption of accuracy and public trust;

- **records issued by financial institutions and designated non-financial bodies and professions a defined under the Antimoney Laundering Directive (1.2.)**, such as banks, financial intermediaries, notaries or lawyers;

- **documents issued, kept and administered by corporate subjects themselves or by third persons acting under their control** (such as the list of shareholders) or by persons involved in a trust or similar arrangements **(1.3.)** (for example, a founding deed or list of trust beneficiaries);

- **other types of documents of subsidiary character (1.4.)**, which either do not have sufficient legal status to serve as evidencing documents or which evidence the information about ownership structure or beneficial owner(s) only as to certain date, but not continuously.

In this order the existence of such evidencing documents should be researched and relied upon. Last but not least, the question of plurality of evidencing documents about interests in legal persons has to be resolved **(1.5.)** as well as the question of identification and reliability and of evidencing documents issued by persons or bodies from non-EU Member States and the means of obtaining such documents **(1.6.)**.

1.1. Statements of public registries

A statement from a public registry may or may not include information on the interest in a corporate entity (company) and its owners. Therefore, it may or may not be able to serve as an evidencing document of the natural and amount of interest and its owners. Within the EU Directive 2009/101/EC foresees disclosure of certain minimum information about companies,

[80] Art. 30 (4) AML Directive.

such as instruments of constitution, identity of directors, supervisors, capital subscribed, certain financial documents, the registered office etc.[81] However, this Directive does not require the public disclosure of information about shareholders – neither in the public information nor in the disclosed documents[82]. Although certain Member States, in the absence of harmonized rules, adopt their own requirements for corporate structure disclosure the conditions of this disclosure vary significantly: both in terms of whether direct, indirect and/or ultimate shareholders should be disclosed as well as whether shareholders with any interest or qualified interest have to be disclosed.

The diversity of outcomes in this respect is found across as well as within individual Member States: for example, in the Netherlands the amount of ownership interest and its direct owner(s) will appear on the record from the corporate registry if the Dutch limited liability company or joint-stock company will have single shareholder, not in a situation where the limited liability company or joint-stock company will have more than one shareholder; by contrast, in Cyprus the amount of ownership interest and its direct owner(s) will be contained on the record from the corporate registry irrespective of the number of direct owners of such interest. In the Czech Republic whereas in respect of limited liability companies it is always possible to evidence their shareholders and their ownership interest by a record from the commercial registry, for joint-stock companies this is possible only if such company has a single direct shareholder; should the joint-stock company have more than one direct shareholder those shareholders, their names and the amount of their shareholding interests will not appear on the record from the companies registry.

At the same time, even if the statement of the public registry contains information about the interest and its owner, the legal nature of such information can differ: it can have a legally binding character, meaning that no other evidencing document can have higher legal force – in such a case the statement of the public register is the relevant and only reliable evidence of interest and its owner in the corporate entity. Or the statement of the public registry can be only declaratory, meaning that other evidencing document have a higher legal for than such statement and such statement cannot be relied upon on its own as the relevant document evidencing the interest and its owner in a corporate entity; in such a case, it has to be corroborated by further legal biding evidence – if information on the declaratory statement from public register and the relevant legally binding evidencing document differ, the latter trumps the former.

1.2.Statements and other documents containing information about ownership interest and their owners issued by third persons

General considerations. If the statement of the public registry cannot serve as the relevant legally binding document evidencing the scope and nature of interest in a corporate entity (company) and their owners, either because it does not contain information on interest and their owner(s) or because such information is declaratory only, other documents may fulfill the role of the relevant legally binding evidencing documents. These legally binding evidencing documents will be in respect of joint-stock companies with book-entry shares, documents relating to those book-entry shares, and with respect to investment firms including funds with units in book entry-form, documents relating to those units in book-entry form. In

[81] OJ L 258, 1.10.2009, 11–19.

[82] Information on the corporate structure of companies is not confidential. Its accessibility and credibility is however variable, depending on the accessibility of the public register, availability of the data on shareholders of the companies in the given public register and the legal value of the information about the shareholders.

addition, joint-stock companies with paper bearer shares, in jurisdictions where these shares can still can exist, may put such bearer shares into an irreversible deposit, kept, for example, by a bank or notary, and use the deposit confirmation as an evidencing documents issued by a third-party (a de facto immobilization of such shares).

a. Joint-stock companies with book-entry shares, including SE

General considerations. Depending on the law applicable to the joint-stock company in question, the legally binding evidencing document on the interest and its owner in such a joint-stock company will usually be a document relating to the issued book-entry shares, not a statement form a public registry even if such statement from the public registry contains information on interest and its owners. Which document relating to the issued book-entry shares of a joint-stock company will bet the relevant binding evidencing document will depend on the form of book-entry shares, that is whether these book-entry share will be registered or bearer shares:

- the register of shareholders kept by the depositary, in case the joint-stock company issued registered book-entry shares, or

- the statement of the securities account of owner oh book-entry shares or a register of securities account holders containing the shares of the joint-stock company maintained by the depositary administering the issuers account (account of the joint-stock company issuing shares), in case the joint-stock company issued book-entry bearer shares.

Within the EU, the document evidencing the owners of book-entry shares and their nature and amount can only be issued by a person providing the ancillary investment service "safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management."[83]

Whether and if, then in which form it is possible to obtain via a national or supranational central depositary to obtain information about the owners of securities registered in a security account is indicted ina study of European Central Bank entitled „*Market Analysis of Shareholder Transparency Regimes in Europe*“, available at:

https://www.ecb.europa.eu/paym/t2s/progress/pdf/subtrans/st_analysis_regimes.pdf??37612a2ca2536d82208128d7711f4bfd

i. Joint-stock company, including SE, with registered book-entry shares and immobilized shares

If the joint-stock company, including a SE, has registered book-entry shares or immobilized registered shares, the relevant binding evidencing document on the owner of these shares representing an interest in such joint-stock company will be the register of shareholders kept by the depositary, in case the joint-stock company issued registered book-entry shares.

Practically, the investigating person should first look up the founding document of a joint-stock company (articles or memorandum of association, founding deed or a similar basic document) to check whether the company has book-entry shares, and it has whether these book-entry shares are issued in a registered form. It should also check whether the founding

[83] Annex I, section B of Directive 2004/39/EC (MiFID).

document contains any information of the person supposed to maintain the register of shareholders. If it does not contain such information, the investigator should seek the information about the identity of the depositary (custodian) keeping the register of owners of book-entry shares of the company (such depositary will often maintain for the company also the issuers account) either from the examined legal person, the relevant corporate subject in the ownership structure or, if possible, through the mechanisms of identification of depositaries linked to the securities registration system maintained by the central depositary in the given Member State. Last but not least, it should be verified whether the person in the register of shareholders is registered there as final beneficial owner or as a representative of the final beneficial owner.

ii. Joint-stock company, including SE, with bearer book-entry shares and immobilized bearer shares

If the joint-stock company, including SE, has bearer book-entry shares or immobilized bearer shares, the relevant binding evidencing document on the owner of these shares representing an interest in such joint-stock company will be, depending on the national legislation applicable to the joint-stock company in question either:

- the statement of the securities account of owner of book-entry shares, or
- a register of securities account holders containing the shares of the joint-stock company maintained by the depositary administering the issuers account (account of the joint-stock company issuing shares), in case the joint-stock company issued book-entry bearer shares.

Practically, similarly as in the preceding case, the investigating person should first look up the founding document of a joint-stock company (articles or memorandum of association, founding deed or a similar basic document) to check whether the company has book-entry shares, and it has whether these book-entry shares are issued in a book-entry form. It should also check whether the founding document contains any information of the person supposed to maintain the issuer's account for the company.

In the first case scenario, where the relevant legally binding evidencing document will be represented by the statement of the securities account belonging to the owner of such account where the shares of the relevant company are registered, it is necessary to ask for such a statement of the securities account: nevertheless, the joint-stock company in question will usually not be in possession of or have access to such securities account since the account is maintained for the direct owner of shares (the shareholder), not the company. Therefore, such evidencing document in the form of the statement of the securities account has to requested either directly from the relevant identified shareholder through the mechanisms of identification of depositaries linked to the securities registration system maintained by the central depositary in the given MemberState.

In the second scenario, a similar approach to the one described under the previous point relating to registered book-entry shares should be applied when finding out information about the direct owners of book-entry bearer shares.

iii. Joint-stock company with paper bearer shares: deposit statement or agreement on deposit of paper bearer shares

When a joint-stock company has paper bearer shares, the ownership of those shares cannot be easily determined, unless the company or its shareholders such put these shares into an irreversible deposit, and operated, thus a de facto immobilization of such shares. In such a case the owner of such shares will become identifiable. He/she as well as his/her ownership of those bearer paper shares in irreversible deposit will then be possible to evidence by the confirmation from a bank or a notary the fact that these shares were put into the deposit.

Practically, it is necessary for the investigator, first to check in the founding document(s) that the joint-stock company in question issued paper bearer shares and possibly whether the founding document provide for a possibility to put the shares into a deposit and evidence its ownership by a confirmation of such deposit or a similar document. Second, the identification information of the person ensuring deposit of paper bearer shares for the company should be gathered. Third, it is necessary to find out from the contents of the deposit agreement whether such deposit is reversible (physical certificates can be taken out from the deposit and possibly returned there) or irreversible (physical certificates cannot ever be taken out from the deposit). Irrespective of the type of deposit, it is necessary to find out relevant information about the concluded deposit agreement, that meanswho are the parties to such agreement, when was the deposit agreement signed, whether it is the single existing deposit agreement or whether other deposit agreement can exist, how can the deposit agreement be rescinded etc.

- If such deposit is reversible, it is necessary to verify:
  - the time period (from when to when) the physical certificates representing the paper bearer shares were in the deposit as well as when they were out of the deposit, and then
  - who put the physical certificates into the deposit and, if relevant, who took them out,
- If such deposit is irreversible, it is necessary to verify:
  - verify as of when physical certificates representing the paper bearer shares have been in the deposit; and
  - who put the physical certificates into the deposit.

b. Certain investment firms involving investment funds with shares or units in book-entry form

General considerations. Book-entry units in investment funds, whether operated under collective investment schemes or outside such schemes, usually follow a similar, although not fully identical, regime as to the identification of their owner(s) as book-entry shares.

i. Investment firm involving a fund with units in book-entry form

Units evidencing an interest in fund are usually in a joint ownership of its owners, that is investors in such a fund. Practically, the form of units issued in book-entry form should be checked in the founding document of the investment firm or the fund which it is administering. Since, on the securities accounts to which the book-entry units of such funds

were credited, the name of the investment company administering the fund will be indicated, instead of the names of the investors, the identification of the investors will be possible only through the investment company, that is by requesting the register of investors which such investment company is normally obliged to keep with its depositary, usually maintaining also the issuer's account. Such register serves as the relevant binding document evidencing the interest in an investment fund represented by units issued in a book-entry form.

ii. Investment firm involving a corporate entity with book-entry shares

Investment firm involving a corporate entity, usually a joint-stock company with book-entry shares, is in no way different from the point of view of evidencing an interest and its owners in such a corporate entity, from a standard joint-stock company which issued book-entry shares. The process of identification of owners of such shares will, thus, depend on their form, i.e. whether those book-entry shares are issued in a registered form (registered in shareholder register) or in a book-entry form.

1.3. Documents evidencing interest issued by the legal person or an arrangement without legal personality concerned

If the interest and its owner(s) in a joint-stock company cannot be evidenced by a statement from the public registry which would contain legally binding information on shareholder(s) and their interest(s) nor by a statement from a securities account or register of shareholders holding book-entry shares maintained by the depositary nor if the interest and its owner(s) canbe evidenced a statement issued by a third-person, such as a bank or a notary, keeping paper bearer shares in an irreversible deposit, they have to be evidenced by a document issued by the corporate entity (company) or a non-profit legal person itself. The credibility of such self-issued evidencing document will logically be lower than a document issued by a public authority or a third person, since in particular if such self-issued document is not made available to the public, it can be easily manipulated.

The principal document supposed to continuously evidence shareholders or members of a corporate entity (company) or a non-profit legal person can is the list of shareholders or members, sometimes also called register of shareholders or members. Whether such list or register of shareholders or members exists with respect to the corporate entity / company in question can be found out either from the founding document or a similar basic document of the legal person in question or from the legislation applicable to the given corporate entity (company) or non-profit legal person. Such legislation may stipulate that even in the absence of a provision in the founding document mentioning that a list or register of shareholders or members is kept by the legal person, such legal person has to maintain a register of its shareholders or members, as the case may be; this list or register should usually be stored at the place of the registered seat of the legal person.

Given the aforementioned general considerations, if the list or register of shareholders or members is requested by the investigator to serve as an evidencing document of interest(s) and its owner(s) in a legal person which issued such list or register of shareholders or members, the investigator should also seek from this legal person a declaration that the list or register of shareholders or members is:

- the only existing one,
- up-to-date and complete,

- true and accurate.

Once such declaration obtained, if a such list or register should be considered credible, it should:

- contain information on interest and its owners (shareholders / members) which allow to identify the amount and the nature of the interest as well as its owners,
- includes all preceding shareholders or members in continuous timeline record without any gaps.

a. Joint-stock company with registered paper shares: list or register of shareholders

The list or register of shareholders will serve as the evidencing document for a joint-stock company with registered paper shares: it should be normally stored at the address of the registered seat of the joint-stock company. If requested as evidencing document, it should be accompanied by a declaration of such company that this list or register of is the only relevant register of shareholders, that it is true, accurate and up-to-date.

b. Limited liability company or other company with registered paper share certificates: list of share certificate owners

The list or register of shareholders or share certificate holders will serve as the evidencing document for a limited liability company or other company with registered paper share certificates: it should be normally stored at the address of the registered seat of the joint-stock company. If requested as evidencing document, it should be accompanied by a declaration of the such company that such list of is the only relevant list of share certificate owners, that it is true, accurate and up-to-date.

c. Cooperative and European cooperative company (SCE): list of cooperative members

Given their nature of a legal person with variable number of members, both the cooperative, established under national laws of individual MemberStates, and the European cooperative company (SCE) have to keep a register of their members, including the identification of the member of the cooperative as well as the information about the nature and character of his/her interest. This register of members may or may not be publicly available; it has to be stored at least at the registered address of the seat of the cooperative or the European cooperative company (SCE). The investigator should always ask for such a register of members, including a declaration that such a register of members is the only relevant register of members, that it is true, accurate and up-to-date.

d. Member-based non-profit legal persons (associations): register of members

Associations may or may not be obliged by national laws of Member States to keep track of their members, either in the form of register of members maintained by the association or by other means. Such register of members, if kept, may or may not be made public. If not publicly available, such register of members should be kept at least at the address of the registered seat of the association. The information on the manner of keeping register of members should be provided for in the founding document (articles of association). Nevertheless, if the associations based in the EU are to comply with the requirement of the fourth Antimoney Laundering Directive applying to all legal persons to know their beneficial

owners and their beneficial ownership interest, such associations shall keep a register of members so that they have knowledge about their direct members and could obtain from these direct owners further information on the indirect members (owners) up to the beneficial owners. The investigator should always ask for such a register of members, including a declaration that such a register of members is the only relevant register of members, that it is true, accurate and up-to-date.

e. Asset-based non-profit legal persons, trusts and similar arrangements: list of beneficiaries and/or founding deed

The document evidencing the settler/founder, beneficiaries, trustees and other members of a trust or founder of an asset-based non-profit legal persons:

- the founding deed of which will be with the settler/founder of a trust or in the register of non-profit legal person with respect to asset-based non-profit legal persons, or
- with respect to beneficiaries of a trust appointed by the trustee a document issued by him which will usually also be with him.

After the implementation of registers of trusts, it should be possible to obtain from such registries at least a founding document of a trust - which may or may not serve as an evidencing documents about the beneficiaries of a trust and possibly also certain appointment documents. However, it will not contain the list of beneficiaries, if this was issued by the trustee, where such possibility exists under national law.

f. Certain investment firms involving investment funds with units documented in paper form

General considerations. Investment firms in a corporate-like or fund-like form can issue papers certificates representing either shares in a joint-stock company or units in an investment fund or shares.

i. Investment firm involving an investment fund with units documented in a paper form

To evidence interests of holders in investment funds, in particular in a closed investment fund, issued in paper form, the list of such shareholders kept by investment company should be obtained from such investment company.

ii. Investment firm involving a corporate entity with registered paper sharesor certificates

To evidence interests of shareholders in an investment firm involving a corporate entity which issued registered paper shares, the evidencing documents indicated in Part A.II.1.3.a. – Joint-stock company with registered shares should be obtained.

1.4. Other documents evidencing interests or membership in legal persons or arrangements without legal personality

General considerations. If it is not possible to evidence the interest and its owners (shareholders or members) by relevant evidencing documents which prove the owner of such interest on a continuous basis, there is still a possibility to evidence such owner and his/her interest at least to a certain date in the past, that is as to the moment of incorporation of a legal

person or arrangement without legal personality or as to the moment when a shareholder meeting or meeting of members took place or as to the closing date of a financial year. The documents evidencing the interest and their owners in such a one-off way are evidencing documents of a corporate character issued by the legal person concerned **(a. Evidencing documents of a corporate character)**. These documents of corporate character will often be available, for example, in the file of the corporate entity in the corporate registry. Next to such evidencing documents of a corporate character, also documents of contractual character evidencing special types of interest holders as to certain date can exist: by contrast, such documents will usually not be publicly available and sometimes they will not be available even to the company concerned, but will only be available to the shareholders of the company or members of non-profit legal person concerned **(a. Evidencing documents of a contractual character)**.

a. Evidencing documents of corporate character

General considerations. The contents and the form of evidencing documents of corporate character is mostly defined in the legislative instruments at the EU and national level. Two types of documents of corporate character which can evidence the interest and its owners in a legal person, in particular in a corporate entity, exist: documents defined by company law (articles of association or memoranda of association, records of shareholder meetings, group of companies reports and documents evidencing mergers, divestments of conversion of legal form) and documents defined by the accounting legislation (annual financial statement, consolidated annual financial statement and annual report).

i. Articles and memoranda of association and other types of founding documents

All corporate subjects, including legal persons and arrangements without legal personality, must have a founding document or documents, in the form of articles of association, memorandum of association, founding deed, corporation contract or other founding document (the founding document). The founding document has to be in writing, sometimes even in the form of a notarial deed. Any founding document always contains information about at least either the interest in the corporate subject – its scope, nature, amount etc. – or the owner of such interest.

Regarding the information about the interest in the corporate subject, the founding document may serve as evidence for the following information on the nature and character of the interest:

- Joint-stock companies: number, type, form, nominal value of shares representing the interest in the company, and sometimes also information on the register of shareholders and special type of shares, usually on those without voting rights, but only rights to a profit (dividend);

- Other corporate entities other than joint-stock companies: type of interests, whether the interests are represented by share certificates or not, on the list of share certificate holders or lists of shareholders or members;

- Member-based non-profit legal persons: nature and scope of rights of members and in certain situations also on list of members;

- Asset-based non-profit legal persons: nature and scope of rights of founders;

- Trusts or similar arrangements: nature and scope of rights of individual persons involved in the trust.

As to the information about the interest owners, the founding document may serve as evidencing document in the following cases:

- Joint-stock companies, including European companies: sometimes with respect to the first shareholders;

- Other corporate entities other than joint-stock companies: at least with respect to the first interest owners, sometimes also on subsequent interest owners;

- Member-based non-profit legal persons: sometimes with respect to the first members;

- Asset-based non-profit legal persons: with respect to the founders, i.e. the first interest owners; if the interest is not transferable, they record the interest owners continuously;

- Trusts or similar arrangements: with respect to trustees, protectors, possibly also on beneficiaries, sometimes the first ones, sometimes also on subsequent ones.

The founding document is usually publicly available in the file of the legal person in the corporate registry where it is incorporated; if not, it must be stored at the address of the registered seat of the legal person. The investigator should always check the contents of the founding document of any corporate subject in order to evidence the relevant information about the nature and character of interest and possibly also on the interest owners, in most cases on the first interest owners only, with respect to certain asset-based non-profit legal persons, certain member-based corporate entities as well as with respect to certain trusts and similar arrangements also in relation to subsequent interest owners.

ii. Minutes and reports of meetings of shareholders of companies or members of legal persons

Every legal person, including both corporate entities (companies) and non-profit legal person, should hold at least one shareholder meeting or member meeting per year, in order at least to approve the annual financial statement of such company or non-profit legal person. The requirements which a record of a shareholder meeting or a member meeting has to comply with are in most countries defined in the law: one of these usual requirements for the record of such meeting is the list of shareholders or members (interest owners) present at the meeting. This list has to be contained in the record of the meeting or annexed to such record, including the identification data of the present members or shareholders, including the information whether they were present in the meeting on their own account or if they were represented; if represented, both the names of the representative and the represented shareholder should appear on this list. The identity of the shareholders or members present, including the representatives of the represented shareholders, should be verified by the person elected or appointed as president of such a meeting. The form of such record often depends on the nature of a decision taken at such a meeting: in certain cases the record of the meeting has therefore take the form of a notarial record, in other cases a simple form is sufficient.

A record of a shareholder or member meeting which contains a list of present shareholders or members can serve as an evidence that certain shareholders or members owned an interest in the corporate entity or non-profit legal person in question at the date when such meeting took place or at the so-called decisive date, i.e. a date preceding the meeting when shareholders

intending to participate at such a meeting were requested to prove their shareholding interest to the company concerned so that they could effectively vote in the announced shareholder meeting. The reliability of the record of the meeting of shareholders as far as it contains information on direct shareholders or members will be higher if such record will have the form of a notarial deed. The records of the meeting of shareholders or members should normally be publicly available in the file of the legal person in the public registry where such legal person is incorporated; if they are not, the legal person should keep originals of those records at the address of its seat.

iii. Group of companies reports

Certain national company laws oblige groups of companies, if certain conditions are fulfilled, to draw up a group of companies report[84] covering controlling and controlled entities (both directly and indirectly), indicate in this report possible contractual relationships between the controlling and controlled companies and make this group of companies report publicly available, usually via the file of at least one of the company within the group in the public registry where such company is incorporated. Hence, such publicly available group of companies report will contain at least a partial picture of the ownership structure of companies which make part of such group of companies report. Since such report should also contain contractual relationships between the controlling and controlled companies, it may provide indications of existence of shareholder agreements and substantiate joint acting of certain shareholders in certain corporate entities (companies).

However, the information on the ownership structure in such a group of companies report is effective only as to the date to which it was drawn up or a date which it covers. Since it does not have to be subject to an independent verification not does it have to substantiated by the relevant evidence, it may not always represent a reliable evidencing document proving a certain ownership structure: amount of interests and their owners indicated in such report should always be checked against the relevant binding legal evidence.

iv. Annual financial statements and consolidated annual financial statement

Basically all corporate entities (companies) must draw up and publish an annual financial statement covering the whole financial year of the company which may or may not coincide with the calendar year. The annual financial statement has to be approved by the general meeting of shareholders or members and made available to the public at the latest by the end of the financial year which follows the financial year which the annual financial statement covers: the annual financial statement is usually published in the file of a corporate entity (company) in the public registry; however, not from all public registries the filed annual financial statement has to be directly downloadable – in certain corporate registries only an indication that the annual financial statement was filed at certain date appears, yet the annual financial statement as such can be obtained only by regular post.

Unless the annual financial statement is a financial statement of a consolidated group, it does not have to contain information either about direct or indirect owners of a corporate entity nor information about the amount of their interest. Nevertheless, certain Member States required corporate entities incorporated under their jurisdiction to include the information about direct owners with a share interest of more than 20 % into the note to the annual financial statement; at the same time, certain corporate entities (companies) may publish in the annual financial

[84]For example, Czech Republic, Slovakia or Germany.

statement the information about direct or indirect owners and the amount of their interest on their own initiative, even if not obliged by any legal regulation.

Practically, it is always worth checking whether the published annual financial statement contains information about direct or indirect owners of the corporate entity (company) which published such a report. However, if it does contain information about direct or indirect owners, such information pertains only to the last day of the financial year which the annual financial statement covers. In addition, even if audited, information about direct or indirect owners is not always reliable since it may be difficult for the auditor to check the accuracy of the information about direct or indirect owners against the relevant and legally binding documents.

In contrast to the „normal" annual financial report, the consolidated annual financial statement of a group of companies has to contain at least the list of corporate entities forming the consolidated group (on the basis of ownership interest exceeding 20 %) in respect of which the annual financial statement is issued. Nonetheless, similarly to the normal annual financial statement report, the information about the direct or indirect owners (the ownership structure), if it is contained in such annual report will be effective only as to the last date of the year which the annual report covers.

Practically, an investigator should always check whether an annual report is not contained in the public registry in the file of the corporate entity (company) in such corporate registry; normally, the annual report should be published in this way at latest by the end of the financial year subsequent to that which the annual report covers.

The reliability of information on direct or indirect owners and their ownership interest in the corporate entity (the ownership structure) in the consolidated annual financial statement, will be to certain extent higher, if such statement will be audited by an independent auditor than in a situation where it will not be audited. However, even in a situation of audited financial statement, whether consolidated or not, the reliability of information on direct or indirect owners and their ownership interest should not be overestimated since the auditor will in most cases only check such information and against the documents submitted to him/her by the audited entity itself; only very seldom will he/she verify the information on direct or indirect owners and their ownership interest in the corporate entity against documents containing legally binding information in this respect.

v. Annual report

Certain corporate entities (companies) must, under certain circumstances, for example, when they are obliged to have their annual financial statement audited, draw up an annual report. The annual report has to be made public usually via the file of corporate entity (company) in the public register. The annual report can also contain annual financial statement, including consolidated annual financial statement. Hence, if a corporate entity (company) is obliged to publish a consolidated annual financial statement or is a part of a group obliged to publish consolidated annual financial statement, also the annual report will have to contain at least the list of corporate entities forming the consolidated group in respect of which the „consolidated" annual report is issued. Otherwise, the corporate entity may or may to have to indicate in the annual report its direct or indirect owners depending on the national legislation in the country where it is incorporated; even if not obliged by such national legislation, the corporate entity may indicate its direct or indirect owners, or subsidiaries, in such annual

report. Similarly to the annual financial statement report, the information about the direct or indirect owners (the ownership structure), if it is contained in such annual report will be effective only as to the last date of the year which the annual report covers. Its credibility, including the credibility of information on the ownership structure, will be to certain extent higher, although not decisive, if such annual report will be audited by an independent auditor. Practically, an investigator should always check whether an annual report is not contained in the public registry in the file of the corporate entity (company) in such corporate registry; normally, the annual report should be published in this way at latest by the end of the financial year subsequent to that which the annual report covers.

vi. Documents evidencing mergers, divestments or conversions of legal persons from one form to another

Documents evidencing mergers, divestments or conversion of legal persons from one form to another, or at least information about the fact that such merger, divestment of conversion took place are usually available in companies registry in respect of the company concerned. Due to the necessary involvement of shareholders or members of corporate entity or other legal person in such an operation, such documents may evidence the identity of a shareholder or a member of a legal person undergoing such merger, divestment or conversion of a legal form, as to the date as to which this legal operation takes place.

b. Evidencing documents of contractual character and other documents

General considerations. As it was indicated the ownership interest in a corporate entity (company) can also be established also on an act of contractual character. The existence of such contractual document will usually not be indicated in any of the public documents issued by the corporate entity (company), such as the annual report, annual financial statement or in the group of companies report. Therefore, it is necessary to ask the examined legal person or the relevant corporate subject in the ownership structure whether it has knowledge about the existence of such contractual documents and, if it has, whether it has an original or at least notarial copy of such agreements. Even more difficult could be to find out about the existence of a bill exchange the aim of which is to (i) make one shareholder observe the instructions of the other (in favor of whom the bill of exchange was issued) in exercising his/her voting rights or (ii) make the formal (legal) owner to observe the instruction of a third person in exercising the same voting rights, and thus, in both cases allow the beneficiary of the bill of exchange to act as a hidden controlling owner or final beneficial owner.

i. Documents of contractual character

The existence of the following contractual documents establishing an interest in a legal person, in particular in a corporate entity, should be checked either in the annual report, annual financial statements, group company report or by asking the examined legal person or the relevant corporate subject in the ownership structure about the existence of such contractual document concerning such person or subject:

- tacit shareholder agreement,
- collateral agreement the object of which are shares or interest in a legal person, in particular a corporate entity, concluded with other entity than a bank or financial institution, under which voting rights or its effective exercised are transferred on the collateral taker,

- shareholder agreement (on the exercise of voting rights in a corporate entity),
- reverse control shareholding agreement (in a corporate entity),
- direct (proxy or power of attorney) or indirect representation agreement.

With the exception of the agreement on direct or indirect representation of the interest owner (shareholder or a member), the first four agreements will usually be concluded by shareholders (interest owners) in a corporate entity, only relatively rarely will they be concluded among the members of a non-profit legal person: in relation to a non-profit legal persons, such agreements can be expected in relation to member-based non-profit legal persons which is at the same time a „holding non-profit legal person".

With the exception of the reverse control shareholding agreement and the agreement on direct or indirect representation of the interest owner (shareholder or a member), the examined legal person or the relevant corporate subject in the ownership structure should normally have one of the originals or at least a notarial copy of such agreements, if they exist. The investigator should, thus, ask for such original or a notarial copy of a tacit shareholder agreement, collateral agreement or shareholder agreement, if the existence of any of such agreements is established.

As to the reverse control shareholding agreement, only shareholders concerned by such agreement, not the corporate entity in question, will usually have knowledge of such agreement. If it is possible, the investigator should therefore ask those shareholders about the existence of such agreement, if circumstances hint upon a possibility that such agreement could exist.

The agreement on direct or indirect representation of the interest owner (shareholder or a member) will normally not be available to the legal person concerned, but at least the person who is presiding the shareholder meetings or the meetings of members should have a knowledge about the fact that certain shareholders or members have themselves represented at those meetings. Those shareholder or member representatives have to show to the person who is presiding the shareholder meetings or the meetings of members a power of attorney or a proxy or an agreement on representation so that the presiding person can verify which shareholder/member do they represent at such meeting.

If any of the aforementioned agreements exist, the investigator should ask for their originals.

ii. Payment instruments, in particular bills of exchange

Similar, but even more complex, situation can arise in case of existence of a scriptural payment instrument, like a bill of exchange, accepted by one shareholder in favor of another one or by a formal (legal) owner in favor of a third person, by which the beneficiary of the bill of exchange can force the shareholder to act according to his/her instructions. The examined legal person nor the relevant corporate subject in the ownership structure will have any information about the existence of such payment instruments between the interest owner(s) (shareholder(s)). One can find out about the existence of such bill of exchange serving as means of effective control of exercise of shareholding rights of one shareholder over another or over the formal (legal) owner in favor of a hidden third-person, only by asking those shareholders about the existence of such bill of exchange.

1.5. Plurality of documents evidencing interest in legal persons

Evidencing documents about the interest and its owners in legal persons or arrangement with legal personality have different legal force. Unlike with respect to documents evidencing the existence and basic identification information about a corporate subject where there normally will only a single document – a statement from the relevant public registry, with respect to documents evidencing the interest and its owner more than one evidencing document may exist. Should multiple evidencing documents about an interest in a corporate subject or its owner exist, an assessment as to their legal force (binding character) should be performed: as a result, only the document with the highest legal force should be the relevant legally binding evidencing document. For example, with respect to the Czech limited liability companies, if they have not issued shareholding certificates, the record from the registry is the legally binding document evidencing the shareholding interest and their owner; by contrast, if the limited liability company has issued shareholding certificates, the constitutive document is not the record from the companies registry, but the shareholder list or the shareholding certificate as such. Similarly, in case of the joint-stock company having a single shareholder the record from the commercial registry containing the name of the shareholder is not a constitutive evidencing document, this is represented by the list of shareholders and the share certificate – if the joint-stock company issued paper shares – or the list of shareholders kept by the custodian or the record of the shareholder account – if the joint-stock company issued dematerialized shares.

1.6. Documents evidencing interest and their owners in non-domestic subjects in the ownership structure

Finding evidence of information about ownership interest in domestic corporate subjects and their owner(s) will always be easier than in non-domestic corporate subjects since the investigator will usually be more familiar with domestic rules on identification and evidencing of interests and their owner in corporate subject as well as with the functioning of the relevant public registries. Also in the domestic context, investigators will sometimes have possibility to retrieve information and statements from those public registries more easily via dedicated IT systems. Finding evidence of information about ownership interest in domestic corporate subjects and their owner(s) in non-domestic subjects will either be more complex, but possible by way of direct access to the relevant registries, or possible only via the established mechanisms of international cooperation or not possible at all. As a last resort, thanks to the new obligation for all legal persons in the EU to know their beneficial owners and beneficial ownership interest (ownership structure) wherever such beneficial owners and ownership structure are located it will be possible to require the legal person to deliver information and evidence of interests and their owners in non-domestic subjects within the corporate ownership structure; in such a case, relevant domestic authorities will have to verify the accuracy of such information and documents.

2. Finding evidence of information about ownership interest in non-domestic corporate subjects and their owner(s)

Finding evidence of information about ownership interest in domestic corporate subjects and their owner(s) will always be easier than in non-domestic corporate subjects since the investigator will usually be more familiar with domestic rules on identification and evidencing of interests and their owner in corporate subject as well as with the functioning of the relevant public registries. Also in the domestic context, investigators will sometimes have

possibility to retrieve information and statements from those public registries more easily via dedicated IT systems. Finding evidence of information about ownership interest in domestic corporate subjects and their owner(s) in non-domestic subjects will either be more complex, but possible by way of direct access to the relevant registries, or possible only via the established mechanisms of international cooperation or not possible at all. As a last resort, thanks to the new obligation for all legal persons in the EU to know their beneficial owners and beneficial ownership interest (ownership structure) wherever such beneficial owners and ownership structure are located it will be possible to require the legal person to deliver information and evidence of interests and their owners in non-domestic subjects within the corporate ownership structure; in such a case, relevant domestic authorities will have to verify the accuracy of such information and documents.

3. Obtaining and verifying information and evidence about corporate subjects in the ownership structure of a legal person based in the EU which obtained Transparency ID or Taxparent Mark

In the near future, it will be easy to obtain directly information and evidence about the owners about corporate subjects in the ownership structure of a legal person based in the EU which obtained Transparency ID (and/or Taxparent Mark). If a certain legal person wants to obtain a Transparency ID, it has to publicly disclose its ownership structure up to beneficial owner(s) according to the Practical Guide on disclosure of ownership structures and beneficial owners[85]. The Practical Guide is divided in four parts: after the definitions of the main terms in the first part, the second parts lays down the contents of the declaration on corporate ownership structure and beneficial owners while the third part sets out the requirements for evidencing documents by which the information on legal persons and other entities and ownership interest can be proven. The last part adds rules on updating the disclosed and evidenced ownership structures.

3.1. Identification via declaration

The identification of the corporate ownership and control structure is done via a declaration on corporate ownership structure and beneficial owner. The aim of this declaration is to establish which information and evidence should be required from each person within the control and ownership structure. The ownership structure is composed of two elements: legal persons and other arrangements on the one hand – grouped under a common term corporate subjects - and ownership interest on the other hand. Corporate subjects in the ownership structure can be either business corporations, such as limited liability companies, non-profit legal persons, such as associations or foundations, or trust-like or fund-like structures, such as trusts or funds.

A beneficial owner may be either a natural person or an ultimate public organization. The ultimate public organization is a public law entity, such as an international organization, state, regional, municipal, local organization or other self-regulatory body, in which no other legal entity or arrangement has an interest or other relevant interest. The ultimate public organization may be an international organization, state, territorial administrative unit, professional chamber, e.g. bar association, or autonomous public institution, e.g. university.

Identification of corporate subjects in the ownership structure and beneficial owners is not sufficient. Neither the obliged entities nor public registers of beneficial owners under

[85] Available at www.transparencyid.com

Directive 2015/849 can content themselves with mere declarations of honor on who the beneficial owners are and what the nature and extent of their direct or indirect beneficial interest is. The requirement of evidencing of ownership structure and beneficial owners results from Art. 30 (4) of Directive 2015/849 which prescribes that the information about beneficial owners and their interests held in central register have to be adequate, accurate and current; its recital 14 stipulates that Member States may decide that obliged entities are responsible for filling in the register, the disclosure of the nature and extent of direct and indirect beneficial interest of beneficial owners will have to be evidenced.

3.2. Evidence

If any guidance on disclosure of corporate structure and beneficial owners is to have any value, it has to specify by which documents the information on ownership structure, including the evidence of entities within this structure and interests, and beneficial owners, should be evidenced. The existence of a legal person, including the information about its name, registration number, address and its management or supervisory body, can always be proven by an excerpt from a public registry. No legal person can exist without being registered in a public registry. The interest in legal persons, which laws of most countries qualify as an ownership interest[86] or a membership right,[87] is in almost all countries evidenced by a paper document or an electronic record. An ownership interest in a legal person can be evidenced above all by a record from a public registry; however, depending on the type of a legal person such evidence of ownership interest may not always be available.

If the information about an interest is not available in a record from a public registry, an interest in a company can be proven by its shares: if a company has book-entry shares, then the share will be proven by a record from the securities account by the holder of the account who, at the same time, will be owner of the share. By contrast, if a company has registered paper shares, then to evidence the shareholder interest, the list of shareholders accompanied by a copy of the share certificate and a declaration of honor that these copies reflect the originals should be delivered; when a company has paper bearer shares, where the ownership cannot be easily determined, it should put these shares into an irreversible deposit, a de facto immobilization of such shares since otherwise their owner will not be identifiable. The owner and the ownership of bearer paper shares in irreversible deposit will then be proven by the confirmation from a bank about the fact that these shares were put into such deposit.

Regarding non-profit legal persons, the membership interest therein, or more precisely the membership, will be proven either by a memorandum of association or a list of members. In respect of trust-like or fund-like arrangement the evidence about the interest in such an arrangement will be proven by a notarial deed establishing such arrangement and a copy of the list of beneficiaries.

In the context of evidencing interest in legal persons and other arrangements, the difficulty may appear in situations where it will be necessary to evidence an interest in a legal person or trust-like or fund-like arrangements which will be incorporated outside the European Union should be evidenced. Therefore, in case of documents issued by non-public entities, that is by a non-EU legal person in the ownership structure or by a non-EU custodian or a bank, additional documents should be required: from the non-EU legal person the Practical Guide requires in addition (i) a declaration on confidentiality waiver regarding the relevant securities

[86] Corporate entities and other arrangements.
[87] In non-profit legal persons.

account or deposit of paper bearer shares, and (ii) an authorization to obtain information regarding securities account or deposit with the bank which issued the relevant evidencing document. Furthermore, from a non-EU share account custodian or a depositary which issued such evidencing document, an undertaking of cooperation with authorities of EU Member States signed by the authorized bank officer should be required in order to make the verification of the evidencing documents submitted by the EU legal person in respect of legal persons and interest within its ownership structure but outside the EU possible.

The last issue which needs to be solved is how to verify whether the beneficial owner who is a natural person is the true or ultimate beneficial owner or whether he or she is only a formal legal beneficial owner who in reality acts on behalf of some other person. If the identified and evidenced ultimate owner is the beneficial owner it should be indicated – in the above-mentioned declaration identifying beneficial owner – whether the ultimate and beneficial owner is a lawyer or a professional nominee. This indication would help trace possible fraud since the situation when the declared ultimate beneficial owner is a lawyer or professional nominee could indicate that the declared ultimate beneficial owner may be acting on behalf of another person: the actual verification of this fact could, however, not be made within the identification and evidencing process but on a case-by-case basis by authorities of Member States in case of fraud suspicion which would give right to public authorities to lift the lawyer's secrecy. Nevertheless, such a declaration would at least expose the possibly fraudulent lawyer or professional nominee to a violation of ethical rules. Under the other option, with respect to the ultimate formal owner who would be acting on behalf of another person – the beneficial owner – it should be indicated in the aforementioned declaration that such ultimate formal (legal) owner is not a beneficial owner, and at the same time, this beneficial owner should be identified together with the identification a contract of representation, power of attorney or other document on the basis of which the ultimate legal owner is acting on behalf of ultimate beneficial owner. This process should be repeated should the indicated beneficial owner be in reality also only a representative acting on behalf of a further person until the moment when the true beneficial owner would be reached.

3.3. Updating, exemptions and other aspects

Requiring disclosure and evidencing of the ownership structure of legal persons would make little sense if these structures were not regularly updated. Both the ownership structures and beneficial owners can change the next moment after the disclosure has been done. Should the disclosed information about ownership structures and beneficial owners correspond to the reality, they must be updated in a way that they reflect the reality, but at the same time this updating must not be too cumbersome for the legal persons concerned.

Any useful guidance on beneficial ownership disclosure and evidencing must therefore resolve the issue of updating of disclosed ownership structures and beneficial owner(s). The updating has to deal with two situations: first, with a situation when in a certain period no changes in ownership structure took place, and second, with a reverse situation when one or more changes in ownership structures occurred in such period. An effective and at the same time efficient solution of these situations requires a differentiated approach: for situations where no changes occurred less evidence is necessary than for situations where changes did take place. In concrete terms, where during the past calendar quarter, there is a change in ownership of the interest in the corporate subject, then the declaration and evidencing documents should be updated at the end of this calendar quarter. If there are more subsequent changes in the calendar quarter, all these changes should be registered at once at the end of the calendar quarter in question. This means that at a maximum the ownership structure will

have to be updated four times a year. If during the calendar year no change in the ownership structure happened, the legal person should confirm this fact and provide up-to-date ownership documents to prove it.

The guidance should provide for exemptions from the disclosure and evidencing obligations. In principle, two exemptions can be foreseen. The first one relates to interests acquired on regulated market and multilateral trading facilities subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information, as set out in the definition of the beneficial owner under Directive 2015/849.[88] The second one is not laid down directly in any legal regulation but results from the EU as well as national prudential rules governing the licensing of financial and credit institutions, insurance companies financial intermediaries, investment and pension firms etc. The ownership structures and beneficial owners not only have to be identified, but are also subject to approval of the relevant regulatory bodies as far as the origin of their initial capital and the credibility of controlling persons is concerned, including their changes.

[88] Art. 3 (6) Dir 2015/849.

III. STEP 6: MARKING SUBJECTS IN THE OWNERSHIP STRUCTURE AND BENEFICIAL OWNERS AS CONTROLLING AND NON-CONTROLLING

At the end of disclosure of the first level of the ownership structure, it is useful to put down the basic information about the interests in the examined legal person exceeding 25 % and their owners as well as the information about documents evidencing the interest and the owners. At the same time, it is also useful to separate controlling and non-controlling owners: with respect to the direct controlling owners, the process of identification and evidencing of the interest and owners of such interest in the person of the controlling owner – as described in Steps 1 to 6 - will have to be performed in the same way as with respect to the examined legal person.

ADDENDUM – DIRECT RETRIEVING OF INFORMATION AND EVIDENCE ON OWNERSHIP STRUCTURES AND BENEFICIAL OWNERS OF LEGAL PERSONS

General considerations. As indicated in the Introduction the cost of finding of information and evidencing documents on ownership structures and beneficial owners will not be insignificant. Moreover, it will not always be possible reveal the entire ownership structure on the basis of publicly available information and evidence. To further reduce costs and increase effectiveness in investigating or disclosing the ownership structures and beneficial owners could be achieved by direct retrieval of information and evidence from registers or databases where legal persons would enter such information and evidence on ownership structures and beneficial owners.

1. Future system of direct retrieving of information and evidence on ownership structures based on certification

General considerations. If any economic operator could easily check the corporate structure of its prospective business counterparts, transactions costs could be mitigated. Non-negligible due diligence costs generated by the necessity of establishing the true identity of the person(s) controlling or owning the business with whom the company intends to contract could be to a large extent avoided. These savings would translate in enhanced trust in the business environment, thus helping to stimulate growth[89]. Furthermore, greater corporate transparency would reduce losses resulting from economic criminality. Since persons and entities engaged in economic criminality usually close down entities and arrangements through which their perform the illicit activities upon the very first moment when they could be revealed, the disclosure of corporate structures would by itself make disappear a non-negligible amount of such criminality. The economic criminality would be further trimmed down since thanks to the corporate structure disclosure significant portion of prosecution of criminal acts which today cannot be accomplished due to the impossibility to obtain information about corporate structures in particular from non-EU countries could be successfully brought to an end. Last but not least, the risk of disclosure would most probably prevent numerous cases of corruption and conflict-of-interest from being realized.

1.1. Certification of ownership structures thanks to the Transparency ID

A single certification scheme through the Transparency ID?A single certification scheme verifying corporate and control structures (beneficial ownership) and beneficial owners will resolve the problem of duplicate of the information on beneficial ownership and beneficial owners in the upcoming registers of beneficial owners (as well as the related need for reconciliation of differing information on the identical groups of companies and beneficial owners in different national registers of beneficial owner(s))[90]. Transparency ID and the Practical Guide was developed on the basis of investigations of causes of the Panama Papers scandal which showed that a number of financial institutions does not properly perform due diligence regarding the ownership structures and beneficial owner(s). During the analysis of

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89 Transparency & Trust – Enhanced Transparency of Company Beneficial Ownership, Department for Business, Innovation & Skills, Impact Assessment, 25 June 2014, p. 11).

90 The planned interconnection of corporate registers, possibly including also the interconnection of registers of beneficial owners, will not resolve this problem. Quite to the contrary it will exacerbate this problem since it will reveal the problem of duplicities and differing information on the same subjects.

the causes it appeared that there is no clear definition of what is a corporate ownership structure and no practical means how to effectively and efficiently check the corporate ownership structure and beneficial owner(s) of concrete companies. Similarly, when analyzing the implementation of beneficial ownership registers in EU Member States under the AML Directive national competent authorities complained about the same problem when trying to institute these registers. Also auditors and competent authorities responsible for checking ownership structures and beneficial owner(s) in relation to recipients of public contracts and EU funds in Member States, where these checks are obligatory, reported similar difficulties.

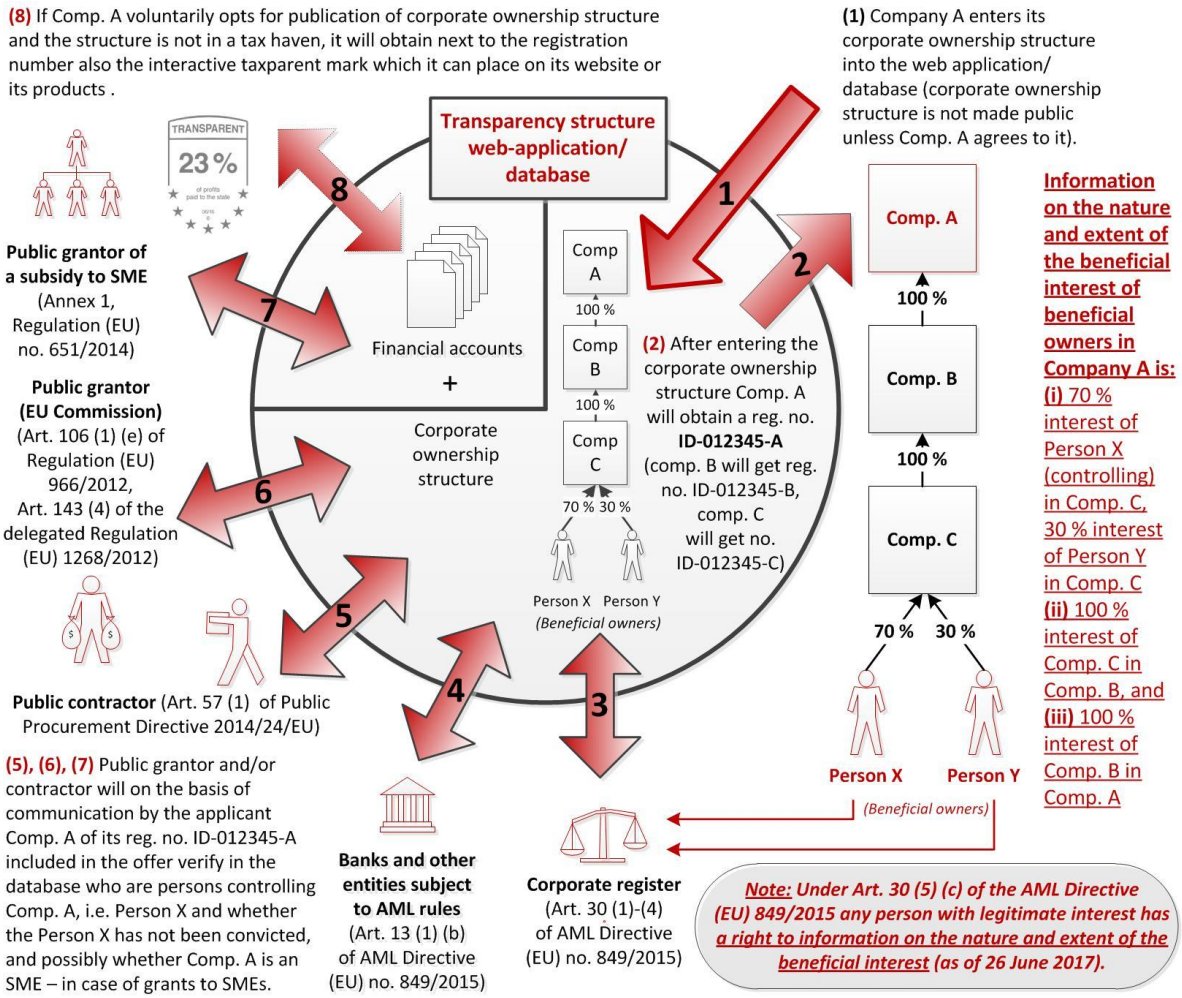
What does it certify? The purpose of the Transparency ID is to certify compliance with Art. 13 (1) (b), (d) and Art. 30 (1), (2), (4) of the EU AML Directive, Art. 57 (1), sub-p. 2 of the EU Public Procurement Directive, Art. 106 (4) and Art. 143 (2) of EU Financial Regulations 966/2012 and 1268/2012 and Guidelines on implementation of sanctions on EU Common Foreign and Security Policy.

Benefits. Transparency ID certification scheme provides clarity and legal certainty as to the contents of ownership structure and evidencing documents. It is compatible with the FATF Guidance. However, it is more detailed and thanks to this practically it is applicable for all types of ownership structures, regardless countries where these ownership structures can go. The key advantage of the certification of the ownership structure and beneficial owner(s) via Transparency ID is the effectiveness – the ownership structure and the beneficial owner(s) are not only declared in a structured way, but also evidenced by the relevant documents, thus, diminishing the possibilities for fraud to an irreducible minimum.

Costs. The costs of filing and evidencing corporate structures rate will always be proportional to the size of the company in question. While the costs of disclosing and documenting their corporate structure can be higher for larger multinational corporations with more complex corporate structure, these costs will be at the same time reduced by the „economies of scale" since large companies have dedicated staff which can easily provide the necessary disclosure documents, costs for companies with less complex corporate structure would be proportionally lower.

Cost reduction. Transparency ID certification scheme reduces costs for companies related to the verification of ownership structures and beneficial owner(s): for the businesses, if a group of company has complicated ownership structure, it is possible that only one company within the structure makes the whole declaration for the entire group. This will substantially diminish the costs for companies, in particular for those with complicated and cross-border structures. For example, a company with subsidiaries in all 28 Member States whose BO(s) or companies in the beneficial ownership chain would change would no longer have to file the same information about such change in 28 different public registers; such company could make a single filing through a web-application supporting the single certification scheme. The competent authorities of Member States responsible for keeping the register of beneficial owners, public authorities responsible for granting public contracts or subsidies as well as financial institutions and DNFPBs could retrieve this information from the aforementioned web-application upon the presentation of the Transparency ID by the legal person concerned which this person would receive after having gone through this certification scheme. Second, for financial institutions the Transparency ID will allow an easy possibility to check the ownership structure and beneficial owners of their clients who obtained the Transparency ID as these will be able to provide these structure only once (not separately to each financial institution and other bodies subject to AML rules or each relevant public authority); at the

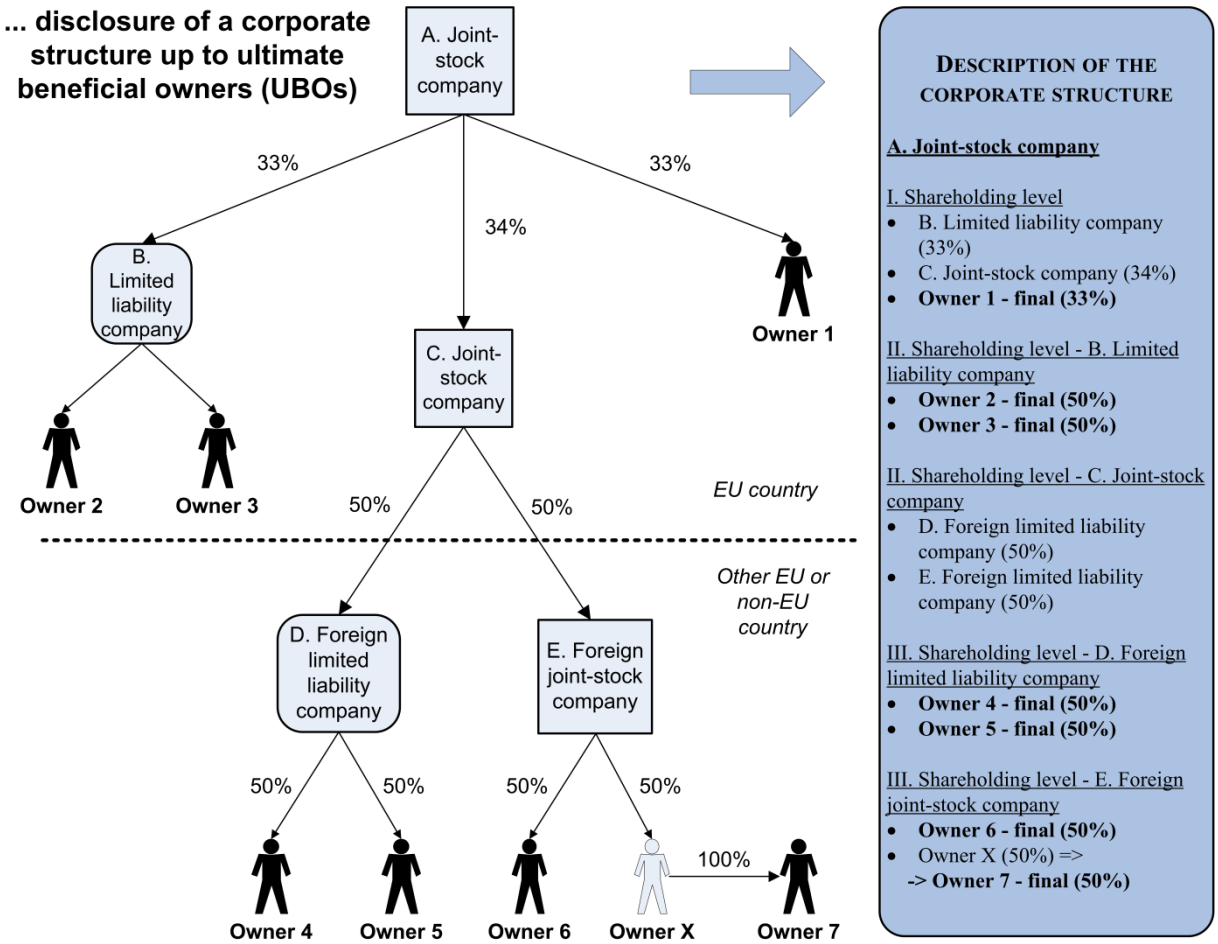
same time, financial institutions will benefit from updating of structures and beneficial owners in the underlying Transparency ID web-application. Third, for authorities keeping the registers of beneficial owners the underlying Transparency ID web-application/database could help solve the problem of "duplication" of information in beneficial owner registers for cross-border companies and "reconciliation" of differing information between national registers of beneficial owners.



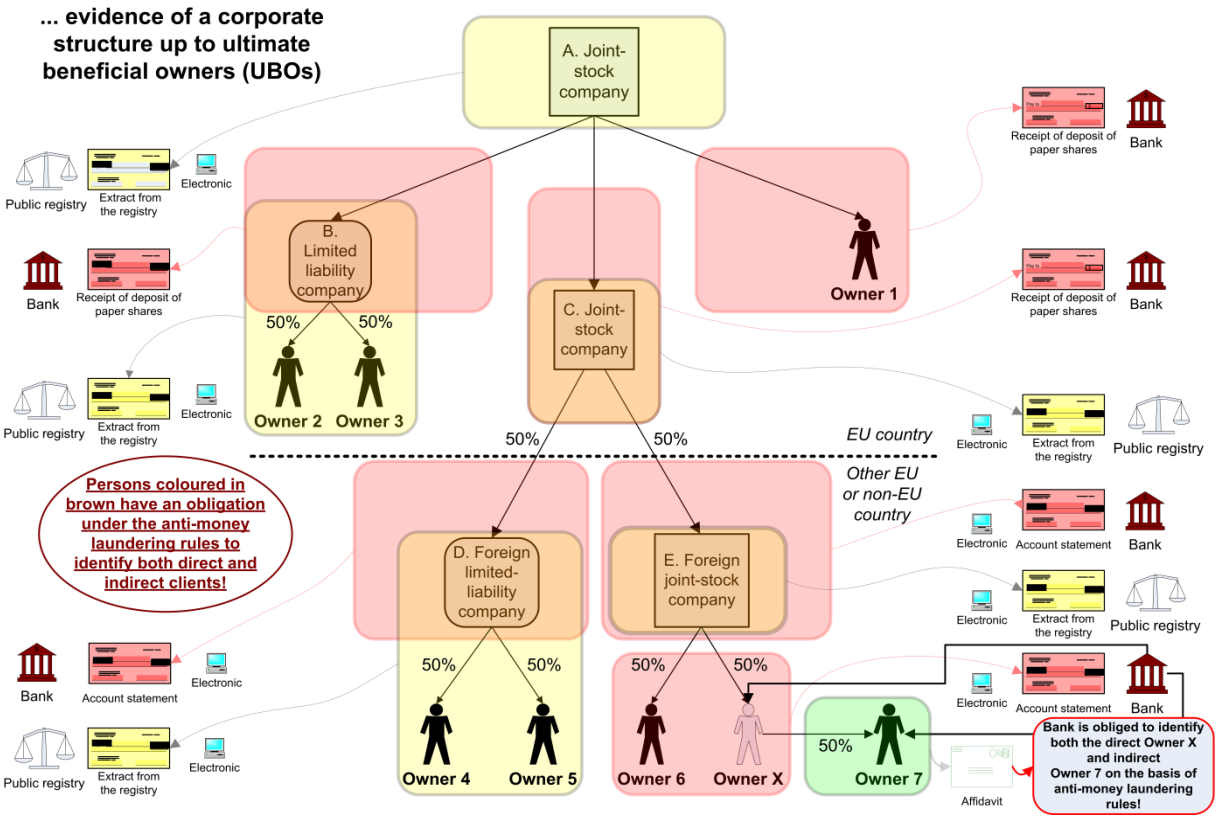
Facilitating the tasks of public authorities and financial and other institutions. Transparency ID and the Practical Guide will help public authorities and financial and other institutions. The Practical Guide will help public bodies verify corporate ownership structure until beneficial owner(s) in public procurement tenders and in granting of EU funds. Also, it will help banks and other non-financial bodies and professions to duly fulfill their duty to identify the corporate ownership and his beneficial owners. Moreover, it will help registry courts or similar bodies to verify whether declared beneficial owner of a company is the real beneficial owner and also the amount and extent of his beneficial interest.

1.2. Certification of ownership structures (parent, subsidiaries, collateral) thanks to the Taxparent mark

Practicalities of the Transparency ID certification scheme. The company wishing to obtain the Transparency ID has to provide a declaration describing its ownership structure and beneficial owner(s) and evidencing documents First, the companies should disclose their corporate structure up to the beneficial owners. This disclosure should include the disclosure of ultimate beneficial owners.



Second, if the information about corporate and control structure should have any reliability, it has to be evidenced by relevant documents



If the disclosed and evidenced corporate and control structures should provide an up-to-date picture they must be regularly updated.

a. Certification of corporate ownership structure for the purpose of determination whether a corporate entity is an SME

Disclosure of additional SME information next to the ownership structure and beneficial owners. The certification of an SME status of a company requires next to the verification of the transparency of the ownership structure – verification of presence partnership or linked enterprises - also a verification of certain other information, such as number of employees, turnover and balance sheet, usually contained in the annual financial statements, as defined, in the Recommendation of the European Commission2003/361/EC concerning the definition of micro, small and medium-sized enterprises[91] and interpreted in detail in the related User guide to the SME Definition[92].

b. Certification of ownership for corporate tax purposes

Disclosure of the effective corporate tax rate next to the disclosure of the ownership structure and beneficial owners. Once the transparency of corporate structures is accomplished, it is necessary to take the second step: find out how much of corporate tax group of companies pay in each country in relation to their global profits. If we know the global corporate structures of companies, we can also easily find out what is their global

[91] K(2003) 1422.
[92] http://ec.europa.eu/regional_policy/sources/conferences/state-aid/sme/smedefinitionguide_en.pdf

effective corporate tax rate (GECTR). The taxparent solution converts those publicly available data into a set of information which would be simply understandable to the consumer. Once all entities within the corporate ownership structure of multinational corporations are disclosed, whether for the public or the eyes of public authorities only, their effective tax rate consisting of amount of corporate tax paid and amount of profits (per jurisdiction) as well as their revenues (also per jurisdiction) shall be indicated. This information can be elicited from the financial statements which are published in the public commercial or corporate registers. The key piece of information in this set is the global effective corporate tax rate (GECTR): an amount in percentage corresponding to the sum of tax on profits (or loss) paid in each jurisdiction by all companies within a group divided by the sum of profits generated by the same companies of the group, both at an annual basis. The other pieces of information show that the company has a transparent corporate structure which is the necessary pre-condition for determination of the GECTR and how much the company paid in total in corporate tax in all EU Member States where it is present.

Illustration of a general example of disclosure of a corporate ownership structures – parent, subsidiary and sister – for the purpose of corporate tax transparency

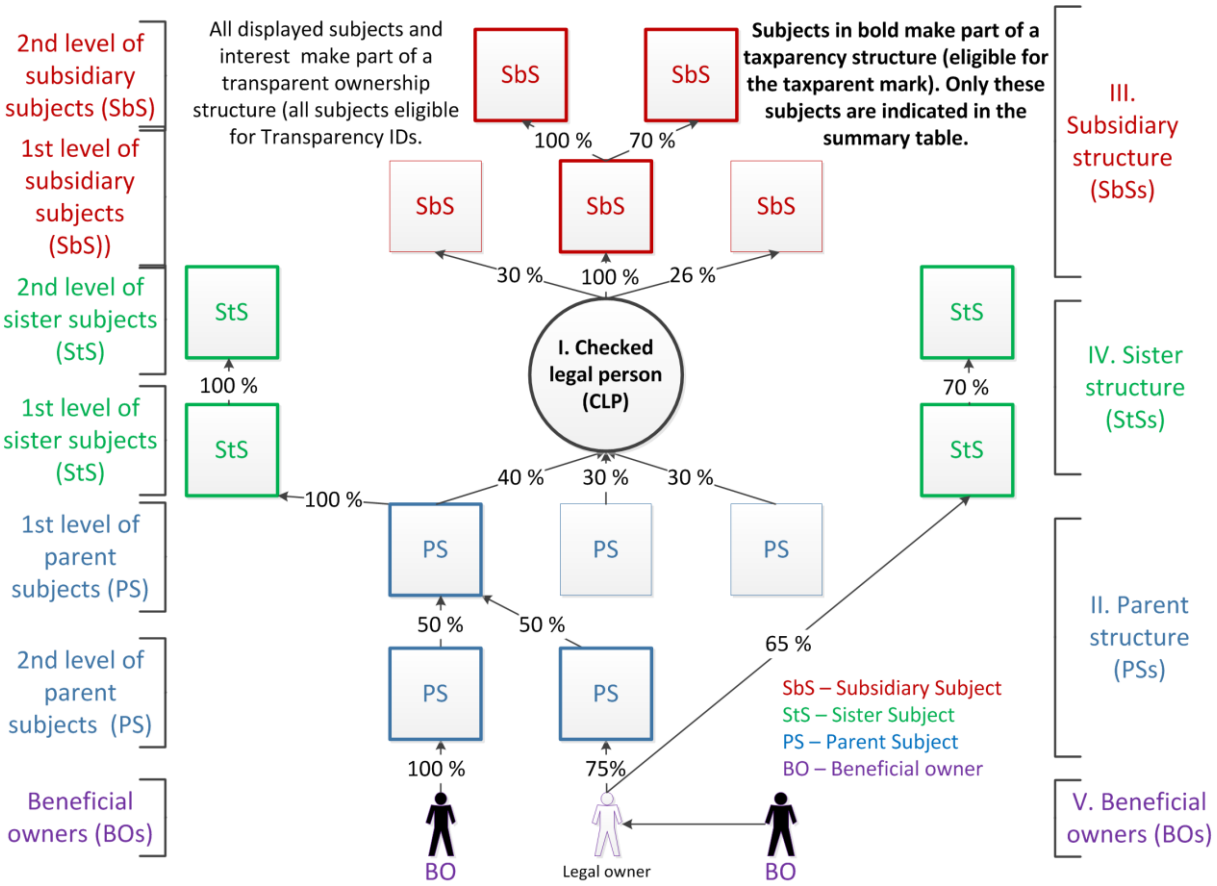
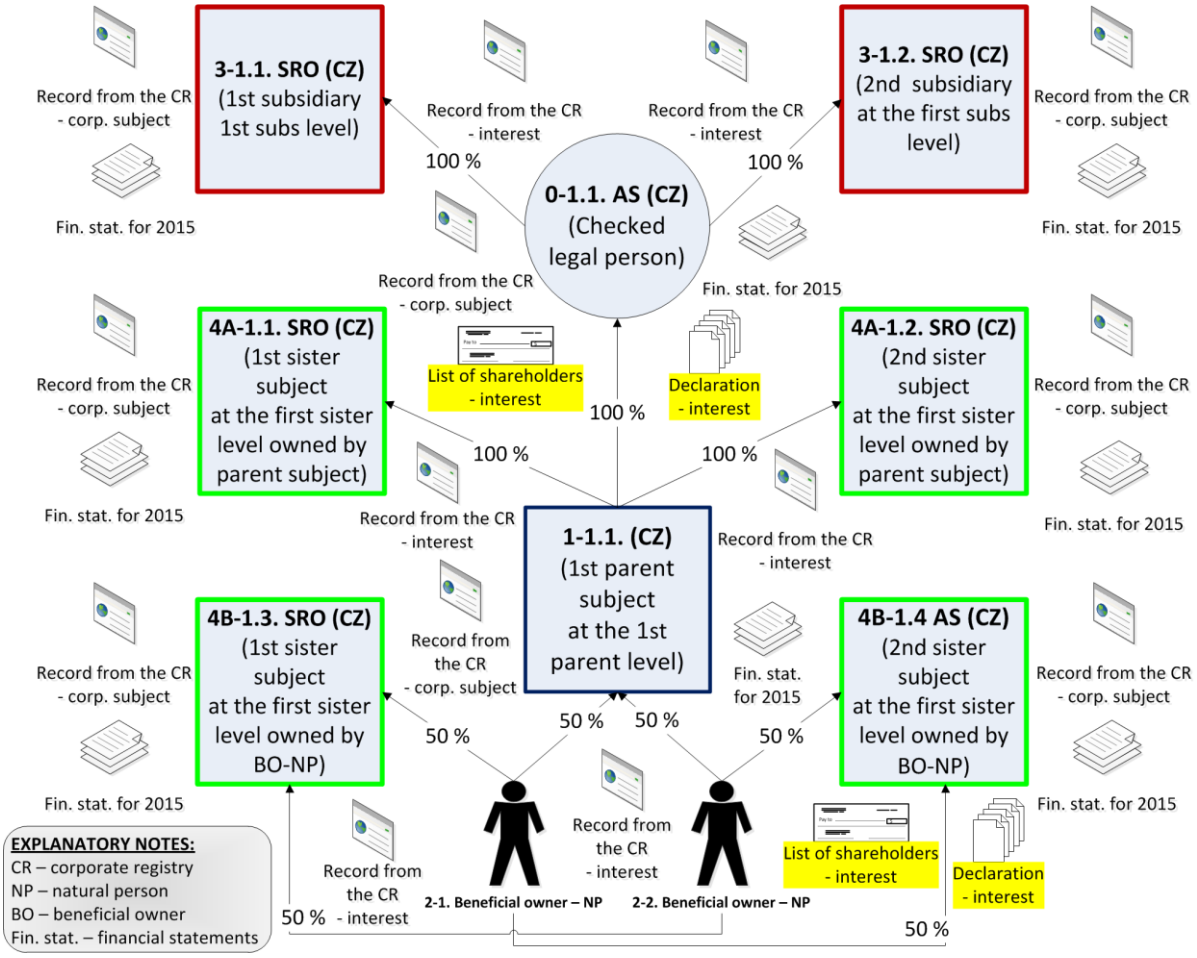


Illustration of an example of disclosure of a corporate ownership structure – parent, subsidiary, sister– of a concrete group of companies for the purposes of corporate tax transparency *(the yellow marked documents cannot be obtained from the available public sources and have to be requested from and delivered by the examined (registering) legal person)*



Certification of a corporate tax social responsibility by way of Taxparent mark. **Benefits**. Businesses which are both transparent as far as their ownership structure is concerned and give out what they should from their profits to the state should be encouraged to continue to do so by positive motivation rules. Acting correctly should translate in a tangible competitive advantage allowing honest companies enhance their public image. Hence, the taxparent mark will help honest corporations to attract consumers to buy their products. Who gets the taxparent mark will have a competitive advantage of a better reputation with the consumers since it will be able to "sell" them the fact that it is transparent and pays its fair share in corporate tax. Second, taxparent mark will create more level playing field for SMEs. To get the mark will be easy for the small companies with simple corporate structures. It will be slightly more time-consuming for larger corporations with more complex ownership structure. Yet, getting the mark will be non-discriminatory and proportionate to the size of the company. Third, if authorities granting public funds could start to require that private companies which apply for public contracts and grants have the taxparent mark, the corruption and state capture would be reduced. To achieve a more robust reduction similar requirement could be applied to groups of companies contracting with public institutions or

active in certain sensitive sectors, such as gambling, nuclear fuel or waste disposal, provision of offshore services etc.

Compliance with the country-by-country reporting obligations. Proposed amendment to the Accounting Directive[93] stipulates that Member States shall require ultimate parent undertakings governed by their national laws and having a consolidated net turnover exceeding EUR 750 000 000 as well as undertakings governed by their national laws that are not affiliated undertakings and having a net turnover exceeding EUR 750 000 000 to draw up and publish a report on income tax information on an annual basis. The report on income tax information shall be made accessible to the public on the website of the undertaking on the date of its publication[94]. The report on income tax information shall include information relating to all the activities of the undertaking and the ultimate parent undertaking, including activities of all affiliated undertakings consolidated in the financial statement in respect of the relevant financial year. This information shall comprise:

(a) a brief description of the nature of the activities;

(b) the number of employees;

(c) the amount of the net turnover, which includes the turnover made with related parties;

(d) the amount of profit or loss before income tax;

(e) the amount of income tax accrued (current year) which is the current tax expense recognized on taxable profits or losses of the financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction[95];

(f) the amount of income tax paid which is the amount of income tax paid during the relevant financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction; and

(g) the amount of accumulated earnings[96].

This report on income tax information shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC, together with documents referred to in Article 30(1) of this Directive and where relevant, with the accounting documents referred to in Article 9 of Council Directive 89/666/EEC and shall remain accessible on the website for a minimum of five consecutive years[97].

Following a simple mostly web based certification process described in the following section, the company would receive an interactive taxparent e-trustmark which it should put on its website: when the visitor clicks it the corporate structure and the GECTR of the company and the group to which it belongs will be displayed. The taxparent mark will be granted for the period of one year until the publication of the new accounting documents in the next year. Compliance with all the information set out in Art. 48a would result in the attribution of a

93 Directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (COM(2016) 198 final).

94 Art. 48b (1).

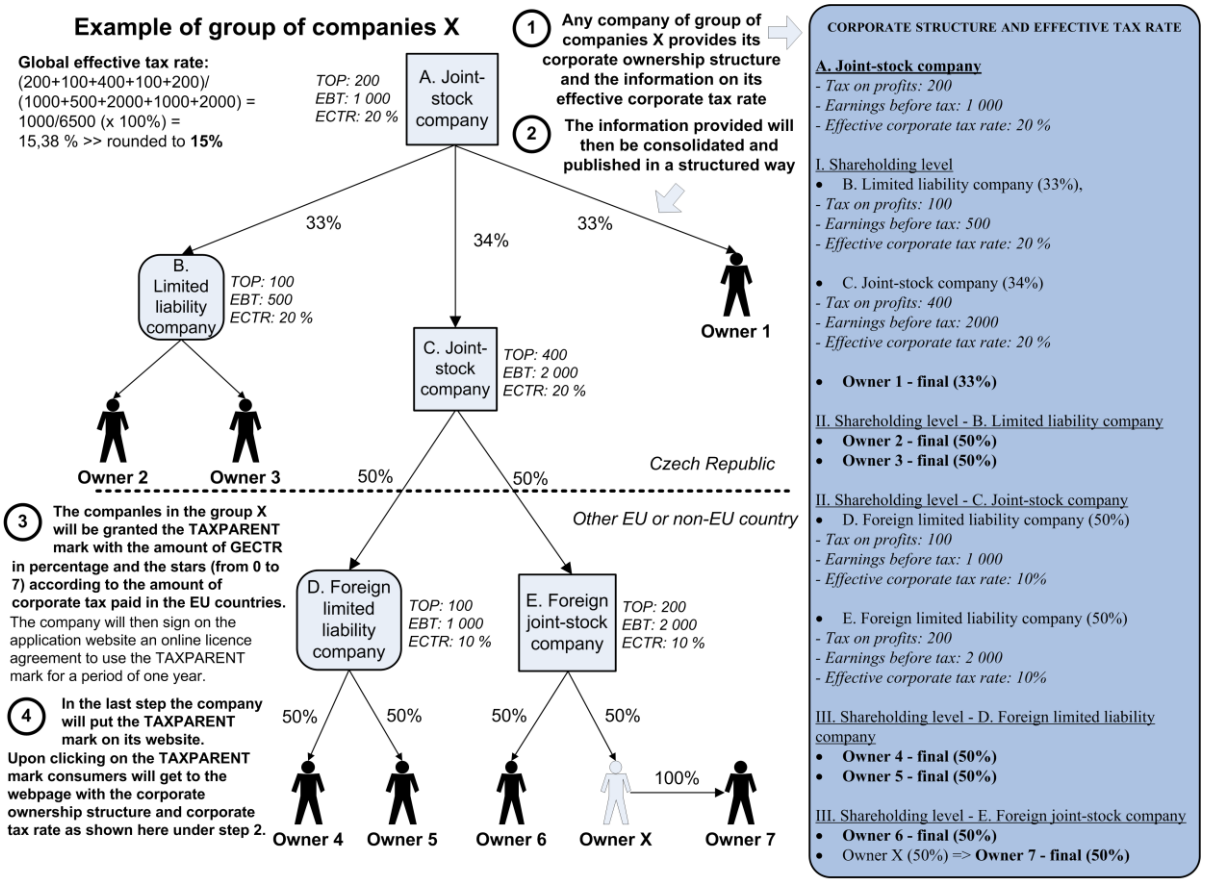
95 The current tax expense shall relate only to the activities of an undertaking in the current financial year and shall not include deferred taxes or provisions for uncertain tax liabilities.

96 Art. 48c.

97 Art. 48d.

golden TAXPARENT mark. This golden mark could be also attributed to companies, which, although not obliged in future to include in the annex to the financial statement the aforementioned country-by-country reporting information, would include this information in there published financial statements voluntarily.

Illustration of ownership structure and corporate tax information disclosure



2. Other possibilities of obtaining information on ownership structures (ARACHNE (Orbis, World Compliance))

General considerations. Although EU institutions are using systems like ARACHNE, ORBIS or other systems to find some information about corporate and control structures and/or beneficial owner, yet, this information contained in these systems is largely insufficient since it is based only on the collection of information published in voluntarily disclosed financial accounts of usually "clean" companies which have nothing to hide. Hence, the ARACHNE or ORBIS system will be of no use in respect of this important number of companies.