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and Norwegian Public Institutions, Local and Regional Authorities**

Project to strengthen anti-corruption and anti-money laundering systems in the Czech Republic

**Technical Paper:
Transparency of Beneficial Ownership Information for Corporate Entities and Trusts
in the Czech Republic**

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Abbreviations:

AML/CFT	Anti-Money Laundering/ Combating the Financing of Terrorism
CDD	Customer Due Diligence
COE	Council of Europe
CZ10	“Project to strengthen anti-corruption and anti-money laundering systems in the Czech Republic”
EEA	European Economic Area
FATF	Financial Action Task Force
LC	Largely compliant
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
PC	Partially compliant
G7/G8	Group of 7/8 (major advanced economies)
G20	Group of 20 (major advanced economies)

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1 EXECUTIVE SUMMARY

This technical paper, prepared for the project to “Strengthen the anti-corruption and anti-money laundering system in the Czech Republic, seeks to assist the Czech authorities in addressing the issue of transparency of corporate entities and trusts. It first approaches the topic from an international perspective and explores policy options and strategic issues towards achieving compliance with the Czech authorities’ current and pending international obligations. Furthermore the document analyses the current legal and institutional situation in the Czech Republic as of January 2015 with respect to transparency of beneficial ownership.

A basic factor on which the effectiveness of AML/CFT measures depends is the ability of obliged persons and competent authorities to be satisfied as to the identity of the natural persons who own or control legal persons and trusts. It has been recognized by all authorities involved in the anti-money laundering system in the Czech Republic that a lack of transparency in the beneficial ownership of legal entities constitutes a key vulnerability. The Czech Republic is not unique in that regard.

The Czech Republic has made significant progress with regard to company registration information, and the commercial register is now publicly available for online searching. Legislation was introduced with effect from 1 January 2014 to address bearer shares. The Czech authorities are planning to establish a central registry of beneficial owners.

Transparency of beneficial ownership is a topic which is currently receiving wide attention and one on which international consensus has yet to be reached. The international component of this paper draws mainly from the provisions of the FATF AML/CFT Recommendations, 2012, and the near-final EU Fourth Money Laundering Directive.

For clarity, the paper proposes for consideration a statement of objectives for this project, built upon the Czech Republic’s current and pending international AML/CFT obligations. Addressing the beneficial ownership issue is also of value for other important public policy areas, including anti-corruption and public procurement.

The paper analyses in detail the relevant FATF definitions, requirements and guidance. The FATF standard provides latitude as to the manner of accessing beneficial ownership information for corporate entities and trusts. For compliance, beneficial ownership information must be adequate, accurate, maintained up-to-date and provide for timely access by relevant authorities. There is no FATF requirement for broader or public access.

At EU level, the compromise reached in December 2014 towards finalisation of the Fourth Money Laundering Directive takes it beyond the FATF requirement and is expected to be the main determinant of future policy in Member States. On adoption, the Directive would require Member States to create a national register of beneficial owners, with access for authorities, obliged persons and other persons with a legitimate interest (e.g. media or NGOs). The paper analyses the main elements of the EU provisions.

The paper includes an analysis of the current domestic situation as regards ownership information in the Czech Republic. According to the main findings, the current Czech legislation is not designed to enable identification of beneficial owners. Although the Commercial Register provides beneficial ownership information in some cases, there are many situations when the Commercial Register does not provide that information. This currently represents the main obstacle to transparency.

Bearer shares as a typical non-transparent instrument were abolished by legislative change but other non-transparent instruments continue to exist.

Based on the existing data, it is impossible to statistically analyse the impact of the lacking access to beneficial ownership information. However, from the existing police reports it is obvious that the lack of access to beneficial ownership information is an impediment to the fight against crime.

In an outline risk assessment, the analysis highlights also the concerns raised domestically within the Czech Republic in relation to corruption, tax evasion and abuse of the public procurement process. The paper recommends that risks arising from the absence of reliable beneficial ownership information be considered in more detail in the National Risk Assessment, currently being prepared.

Looking to the future, the paper identifies and analyses a range of models to address beneficial ownership, up to and including full public access, listing advantages and disadvantages in each case. The paper also highlights a series of other practical issues for consideration by the Czech authorities, including the challenge of keeping a register updated.

The key question for policy decision is whether, and if yes to what extent, to provide for public access to a register of beneficial ownership. Many other practical questions also need to be addressed in designing an effective but proportionate solution to the issue of beneficial ownership information in the Czech Republic. A number of relevant recommendations are included in the paper; the final decisions are, of course, a matter for the Czech authorities and legislature.

2 ANALYSIS OF INTERNATIONAL STANDARDS

2.1 Introduction

This part of the technical paper seeks to inform and assist the Czech authorities in planning the next steps to address the issue of transparency of corporate entities and trusts. It approaches the topic from an international perspective and explores policy options and strategic issues towards achieving compliance with the Czech authorities' current and pending international obligations. In so doing, it highlights a range of practical challenges that would need to be addressed, with due regard to domestic laws, structures and circumstances.

A basic factor on which the effectiveness of AML/CFT measures depends is the ability of obliged persons and competent authorities to be satisfied as to the identity of the natural persons who own or control legal persons and trusts. The issues arising have been analysed in detail by the FATF and set out in a guidance note¹. In brief, for any person who can anonymously control the relationship of a company or other legal entity, or of a trust-type structure, with a bank or other obliged person, it is relatively easy to circumvent AML/CFT preventive measures. It is also challenging for the competent authorities to identify the ultimate owner(s) in case of suspicion of involvement in corruption, drug trafficking, tax evasion or other predicate crimes. Therefore, it is considered necessary for society to incur the burden and cost of putting in place a system of controls which, if effective, should yield net benefits in combating such crimes.

Transparency of beneficial ownership is a topic which is currently receiving wide attention and one on which international consensus has yet to be reached. As a consequence, it is difficult at this point to identify useful precedents from other jurisdictions. The analysis in this paper uses as its base the international standards and requirements that are of most relevance to the Czech Republic, either in their final form or at their current stage of development. The paper also includes reference to such limited public-domain information as is currently available on implementation in other jurisdictions of measures to identify the beneficial owners of registered companies and trusts.

For many countries, the topic of corporate transparency is a work-in-progress, both from a public-policy perspective and in terms of design and implementation of effective systems to capture identification information and make it available to an appropriate audience. Further international developments on this topic are anticipated but there are, to date, few examples of practical implementation or published plans for such a system. This paper should be considered, therefore, an interim assessment that is designed to contribute to debate rather than to present definitive findings.

Note that the scope of this exercise is limited to corporate entities and trusts registered in the Czech Republic. Many of the abuses of corporate structures to achieve anonymity involve using entities registered in two or more jurisdictions. Thus, they can be addressed only if each of the jurisdictions concerned takes equivalent action to achieve transparency. However, the authorities in the Czech Republic can only deal with their own entities, while, as part of a global initiative, it may be predicted that the international community will press all other jurisdictions to take similar steps in due course to improve overall corporate transparency and severely limit the scope for anonymity and misuse.

2.2 Background

The Czech Republic is currently undertaking a money laundering/terrorism financing National Risk Assessment (NRA), as required under FATF Recommendation 1. The Czech authorities have identified risks arising from the challenge of determining beneficial ownership of corporate entities as an area requiring additional analysis.

It has been recognized by all authorities involved in the anti-money laundering system in the Czech Republic that a lack of transparency in the beneficial ownership of legal entities constitutes one of the

¹ <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

key vulnerabilities, open to exploitation by criminals seeking to launder proceeds from virtually any type of predicate offence. According to the authorities one of the sectors most exposed to this vulnerability is the system of public finances/budgetary expenditure. The abuse of this system arguably generates the largest volumes of criminal proceeds in the Czech Republic and has the largest negative repercussions for the functioning of the system of government. Such lack of transparency also facilitates corruption, which is a core topic of the overall CZ10 project. At the same time Czech authorities are also concerned with other serious proceeds-generating offences, such as drug and human trafficking and other activities of organized crime which may lead to significant quantities of money laundering facilitated through the use of legal entities.

Under the new international standards the requirements for beneficial owners of corporate entities and trust-type structures have been significantly expanded by placing additional obligations on legal entities and/or government authorities to maintain reliable beneficial ownership information such that it is available to competent authorities in a timely manner. The relevant FATF Recommendations offer a degree of flexibility to governments in establishing specific methods to achieve this. The international impetus for effective action to tackle lack of transparency of corporate ownership has been further strengthened by the initiatives of the G7 and G20 towards the creation of centralised national registers of beneficial owners.

The Czech Republic has made significant progress with regard to company registration information, and the commercial register is now publicly available for online searching. Legislation was introduced with effect from 1 January 2014 to address bearer shares. These positive developments have not yet included any specific requirements with regard to the identification or registration of the ultimate beneficial owners of corporate entities. In line with international developments, the Czech authorities are now proposing to establish a central registry of beneficial owners.

Although initiatives internationally have not yet advanced to a conclusion in any jurisdiction, there has recently been a very significant development with political agreement at EU level on December 17, 2014 on a transparency framework for EEA Members. The compromise reached is based mainly around the creation of centralized registers at national level. The detailed provisions are set out in Articles 30 and 31 of the Fourth Money Laundering Directive². More and more countries are publishing commitments and action plans that include the creation of such central registries. Significant policy and practical questions remain, however, and their resolution is expected to be largely at the discretion of individual Member States – in particular whether to allow full public access to such registers or to limit access to the minimum needed to comply with the Directive, assuming it is adopted as currently drafted. Against this background, it is timely to formulate an action plan for the Czech Republic to address this topic, based on an assessment of the underlying risks.

2.3 Objective

The objective of the authorities may be stated as:

To put in place in the Czech Republic, within a realistic timeframe, the legal and institutional framework -- supported by measures for effective ongoing implementation -- to improve transparency of beneficial ownership for corporate entities and trusts and to achieve compliance with FATF Recommendations³ 24 and 25 (2012 version), together with full transposition of the relevant articles of the Fourth EU Money Laundering Directive, providing for the collection and registration of, and provision of appropriate access to, beneficial ownership information for all Czech-registered corporate entities and trusts.

² Final adoption of the Fourth EU Money Laundering Directive is awaited at time of writing

³ Arising from the Czech Republic's obligations as a member of MONEYVAL

This statement of objectives is being proposed for consideration with due regard to the various policy questions that need to be addressed (as discussed later in this paper) and to the practical implementation challenges to be tackled, not least with regard to the stock of legacy corporate entities and trusts⁴. The statement highlights, in particular, the importance of:

- the choice of timing for the introduction of beneficial ownership information requirements (given that most other jurisdictions have yet to publish implementation plans);
- the need to satisfy all elements of both the FATF and EU requirements (particularly to the extent that they diverge); and
- selecting institutional structures that are capable of demonstrable and effective implementation in practice (a key focus of future evaluations under the FATF Recommendations).

⁴ to the very limited extent that trusts have been created in the Czech Republic pursuant to the relevant January 2014 amendments to the Civil Code

3 INTERNATIONAL CONTEXT AND FATF

As an EU Member State and member of MONEYVAL, the Czech Republic has entered into obligations to comply with the relevant EU Directives (Third Money Laundering Directive, to be overtaken in 2015 by the Fourth Directive) and with the FATF Recommendations, 2012. As the FATF provided the policy platform from which the EU Directives are largely derived, its Recommendations are addressed first in the following analysis.

Accurate customer identification is and has been from the outset at the heart of AML/CFT preventive measures. It has long been recognised that corporate entities and trust-like structures offer the potential for abuse for purposes of money laundering, corruption, tax evasion, abuse of public procurement processes and other financial crime. In earlier versions of the FATF Recommendations, jurisdictions were required to have measures in place to ensure ready access to the identities of the ultimate beneficial owners of corporate entities and trust-type vehicles. The requirements were both far-reaching in scope and vague in their drafting and – with the exception of a number of offshore centres, did not generally cause jurisdictions to alter their domestic company registration systems or provide an effective basis for identification of the parties to a trust or similar entity. It was largely left to obliged persons to try to fill the gap by applying full CDD (Customer Due Diligence) measures to their customers and transactions. The effectiveness of such CDD measures applied by obliged persons was uneven at best and, in many cases, the approach adopted was seen to be totally ineffective. This is evident from a review of ratings applied in earlier rounds of evaluation by the FATF, MONEYVAL and other assessor bodies. Compliance with R.5 (CDD) was generally sub-standard. R.33 (Corporates) was rated non-compliant for many jurisdictions as was R.34 (covering Trusts and similar entities) for those jurisdictions for which it was relevant under their legal systems. The situation was not helped by the poor formulation of the FATF recommendations then applying.

These issues have been increasingly recognised in various fora – official and NGO. In the updated FATF Recommendations of 2012, the replacement recommendations (R.24 and R.25, respectively), provide much clearer requirements for identification and verification of beneficial owners of corporate and trust-type entities. With the commencement in 2014/15 of the next round of evaluations using the new standard, jurisdictions face a significant challenge to achieve compliance with the latest requirement, the key elements of which are highlighted below.

In support of the standard, the FATF also published in October 2014 relevant guidance entitled ‘Transparency and Beneficial Ownership’⁵. This is a well-drafted and comprehensive guidance document. Only the most significant concepts are highlighted here; supporting material and further explanations may be found in the FATF guidance.

Definition of Beneficial Owner

It may be useful at this point to include a reminder of what is meant in the international standards by the term ‘beneficial owner’:

The natural person who ultimately owns or controls:

- ***a customer or natural person on whose behalf a transaction is conducted; or***
- ***a legal person or arrangement.***

Internationally, this has proven to be one of the most challenging areas for implementation of effective AML/CFT measures across a wide range of assessed jurisdictions and is a significant reason for the generally poor ratings for (the previous) R.5 on customer due diligence (CDD), now R.10. It appears that the Czech Republic is no exception. From the brief round of meetings with some obliged persons in the Czech Republic, there were indications that elements of this definition are not well understood and, therefore, that implementation may not be effective in practice. There was confusion also in some meetings between the meaning of ‘control’ as used in the FATF Recommendations and

⁵ www.fatf-gafi.org/topics/fatfrecommendations/documents/transparency-and-beneficial-ownership.html

the company law/accounting definition of ‘control’, which is quite a separate concept. It is not known whether those interviewed are representative of the overall set of obliged persons in the Czech Republic but, particularly if they represent the most compliant category, further steps by the authorities will be needed to clarify the beneficial owner concept and set out clearly the expectations for implementation of effective CDD measures.

The above references to CDD are relevant to an understanding of the assessment of beneficial ownership provisions but are not the direct focus of this paper, which concerns ownership information in relation to corporate entities and trusts registered/created in the Czech Republic. The relevant current FATF Recommendations in this context are R.24 and R.25, which are explored in the following sections.

Essential elements of FATF R.24 – Transparency and beneficial ownership of legal persons

To parse the most relevant components of the standard:

Countries should ensure that there is:

- *adequate*
- *accurate and*
- *timely*

information on the beneficial *ownership and control* of legal persons that can be obtained or *accessed in a timely fashion by competent authorities*.

A number of elements warrant further clarification and comment:

- The information should be **adequate** for the purpose of identification of the ultimate beneficial owner – does this include verification of identity? What about intermediate ownership steps?
- The information should be **accurate**. How can its accuracy be confirmed (need for verification)? Even if confirmed to be accurate at the outset, what steps are in place to keep the information accurate on an ongoing basis and ensure that any changes in ultimate ownership are also identified?
- It is assumed that **timely** information means as up-to-date as possible.

Note that, under the FATF standard, the requirement is for access to the information by **competent authorities** (in this context primarily the FIU and law enforcement, but also potentially the relevant tax, anti-corruption and financial regulatory authorities and those dealing with public procurement); public access to the information is not necessary for FATF compliance nor is access by obliged persons. Also, wide discretion is allowed in determining the means of access to the information by the competent authorities – ‘**obtained or accessed**’ – while clearly the maintenance of an up-to-date register would meet this requirement, any other method that can be demonstrated by a jurisdiction to be effective would also suffice; the main challenge in choosing an alternative lies in the need to provide ‘**timely**’ access. Possible alternatives might include information collected and maintained by an obliged person or a register of its ownership maintained by or on behalf of the legal person itself.

The FATF Recommendations do not explicitly require the creation of a register of beneficial owners or the inclusion of beneficial ownership information on an official companies’ register. While this approach is recognised as one means of achieving compliance with the standard, other possibilities are also acceptable, separately or in combination. The details are set out in point 6 of Recommendation 24⁶.

*24.6 Countries should use **one or more** of the following mechanisms to ensure that information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority:*

⁶ Headings and text in **Bold** below have been added/adapted by the author, for clarity.

Mechanism 1 – Company Registries

(i) requiring company registries to obtain and hold up-to-date information on the companies' beneficial ownership;

Mechanism 2 (a) – Companies

(ii) requiring companies ,,,,,, to obtain and hold up-to-date information on the companies' beneficial ownership;

Mechanism 2 (b) – Companies

(iii) requiring companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership;

Mechanism 3 – Rely on existing information

(iv) using existing information, including:

- *information obtained by financial institutions and/or DNFBSs, in accordance with Recommendations 10 and 22;*
- *information held by other competent authorities on the legal and beneficial ownership of companies;*
- *information held by the company as required above; and*
- *available information on companies listed on a stock exchange, where disclosure requirements ensure adequate transparency of beneficial ownership.*

The above flexibility is governed, however, by an overarching requirement:

“24.7 Countries should require that the beneficial ownership information is accurate and as up-to-date as possible.”

Essential elements of FATF R.25 – Transparency and beneficial ownership of legal arrangements (in the Czech context, **trusts** from 2014 onwards)

The wording of the elements of R.25 is similar to R.24, except in that it refers to legal arrangements and places the main responsibility for obtaining and maintaining beneficial ownership information with trustees.

Countries should ensure that there is:

- adequate
- accurate and
- timely

information on the beneficial ownership and control of legal arrangements that can be obtained or accessed in a timely fashion by competent authorities.

The only legal arrangements in the Czech Republic identified for purposes of this paper are the trusts that may be created under Czech law pursuant to the amendments to the Civil Code from 2014 onwards. It is understood that, for tax and other reasons, they are not yet widely used and an expansion in their use is not anticipated. Therefore, the requirements for trusts are not analysed more deeply in this paper.

Record of implementation of FATF Recommendations

At this point, available implementation information is limited. Most data relates to assessments conducted under the 2002 version of the FATF Recommendations (for R.33 on legal persons and R.34 on legal arrangements, as then applied) and is summarised below. To date, four assessments under the 2012 FATF Recommendations have been published (Spain, Norway, Australia and Belgium) and reference is included below to the relevant findings for the current R.24 on legal persons and R.25 on legal arrangements.

For MONEYVAL members, an interesting insight is provided in the Horizontal Review of the Third Round (2010).⁷ Although some significant subsequent changes may have taken place in some MONEYVAL countries (as is the case in the Czech Republic), the review nonetheless contains some useful indicators, which are likely to be equally representative of non-MONEYVAL countries. More than two thirds of countries had sub-standard levels of compliance (Non-Compliant or Partially Compliant). The main problem in most of the countries was that verified information on the beneficial owner was not transparent and readily available in a timely way. In a large number of countries, the company registration system did not contain provisions requiring the recording and registering of any data specifically related to the beneficial owners.

A small number of positive examples were noted. One of the very few MONEYVAL countries where the company registration procedure extended to requesting and recording relevant information concerning beneficial ownership of legal entities was Armenia, where the recently adopted corporate legislation required that information on beneficial ownership of legal entities must be declared to the State Registry upon registration or upon changing the statutory capital, within the deadline of two business days. In Romania, information on all shareholders but also on beneficial owners was apparently requested during the company incorporation procedure, but registration of beneficiary ownership data in the Trade Register was not mandatory. There were a number of other positive examples of countries where transparency and availability of such information was provided by other means. In Malta, company service providers (lawyers and accountants) are persons subject to the AML legislation and as such required to obtain, verify and retain records of the beneficial ownership and control information on the companies they formed. Companies could only access the financial sector by providing this information and all this data was available to the authorities on a timely basis. A similar approach was found in Cyprus, but with a somewhat narrower coverage as it only obliged lawyers (when forming and administering companies) but not all company service providers.

The Horizontal Review concluded on R.33 that the standard is difficult to meet (and to rate) because there is no clear definition of what is “adequate” transparency. Countries in the higher range of ratings appeared to have been operating a combination of all the available mechanisms referred to in the FATF Methodology as effectively as was feasible and were able to demonstrate firm sanctioning where new information was not provided to the company register in the appropriate time.

The 2012 FATF Recommendation (R.24) addresses many of the uncertainties of its predecessor. However, it continues to allow wide scope to countries on methods of implementation, both direct and indirect. The following are the only published examples available to date of countries assessed under the 2012 standard.

It appears that Spain was given a positive finding based in large part on recently-updated company registration legislation, relying on notaries for beneficial ownership information, and on the use of a range of methods used by the authorities to identify the owners of Spanish-registered corporate entities. As in many other assessment reports over the years, a clear distinction is not evident between identification of registered owners and identification of beneficial owners. Neither is the matter of verification of identification information addressed. While it would be unfair to second guess the assessors in the absence of any information additional to that presented in the assessment report, there may be grounds for the view that the rating of LC (largely compliant) may prove generous.

For Norway, the position (and the rating of PC (partially compliant)) is more representative of the traditional role of the company registration function, which is largely neutral with regard to the information it collects and adds to the register, with no particular emphasis on ascertaining the identity of the beneficial owners and no requirement to verify such identification information as is provided.

⁷ www.coe.int/t/dghl/monitoring/moneyval/Publications/3rdHorizontalreview_en.pdf

The evaluation report for Australia (2015) includes a comprehensive analysis in line with the FATF Methodology. The rating for R.24 is PC (R.25 NC) as the evaluators focus on the legal and operational deficiencies in identifying beneficial owners.

For Belgium (2015), credit was given for the steps taken since the last evaluation to prohibit the issue of new bearer shares and for measures to dematerialise legacy bearer shares as a condition of their sale or to exercise voting rights. Thus, the rating was increased to LC. The emphasis in the registration system is on the registered rather than the beneficial owner; credit is given for access by the competent authorities to beneficial ownership information that can be obtained indirectly via CDD conducted by obliged persons and other sources. The rationale behind the assessment serves to illustrate the flexibility of the FATF Recommendation 24 by comparison with Article 30 of the EU's Fourth Money Laundering Directive.

Overall, albeit based on a small sample, it would appear that, in general, assessments of R.24 continue to be somewhat accommodating, continuing the pattern of the previous R.33. The emphasis continues to be placed, in accordance with the FATF standard, on the provision of access *by the authorities* to ownership information for corporate entities, by whatever means possible, including law enforcement-based investigations. The potential distinction for some corporate entities between registered owners and beneficial owners does not appear to be attracting much attention in some evaluations. As there is no particular requirement under R.24 for the creation or maintenance of a register of beneficial owners, the matter does not arise. Also, as it is beyond the scope of R.24, the question of granting access to the beneficial ownership information to obliged persons (or to the media or the public) is not discussed. The main question raised relates to the possible lack of timely access to the information for law enforcement purposes.

These initial assessment findings should, however, be viewed with caution. There has been a pattern recognizable from previous rounds of assessments that some early assessments tend to be softer and the 'steady state' of interpretation of the standard takes some time to emerge. On this topic, having regard to the significant hardening of public and political opinion since the finalization in 2012 of the current FATF Recommendations, interpretations in future assessments could be expected to be more demanding.

A small number of non-FATF member jurisdictions have been recognised as already having stronger requirements in place in relation to identification of beneficial owners of corporate entities. One example is Jersey, with the MONEYVAL horizontal review referring also to recent developments in Armenia and to progress made in Malta and, in part, Cyprus. Readers may be aware of other names to add to this list. In any event, the list will inevitably need to be enlarged as more and more countries – G7 members, EEA members and others - respond to the current international impetus and take action on this topic.

3.1 The 'Jersey model'

The case of Jersey, now a MONEYVAL member, is interesting as the only jurisdiction identified in this study as having a long-standing requirement for the registration of beneficial owners of its companies – albeit more by historical accident than designed for AML/CFT purposes. The register is maintained as part of the company registration system but the beneficial ownership information is available only to relevant authorities and is otherwise treated as strictly confidential. Although the authorities in Jersey contend that the information is kept up-to-date, some doubts have been voiced in the private sector on this point. Sanctions for non-compliance (including with the requirement to keep the Registrar informed of any changes) have been strengthened recently.

Jersey is a Crown Dependency and, in response to pressure from the UK authorities towards publicly accessible registers of beneficial owners, the Jersey authorities have been campaigning in favour of 'the Jersey model' – mandatory beneficial ownership information collected and maintained but available only to relevant authorities. A summary of the current arrangements in Jersey and the basis

for the case the authorities have made to maintain its status quo is publicly available.⁸ Overall, the Jersey example demonstrates how a registration system could be designed to work effectively and without undue administrative burden or cost to the private sector. The case made for confidentiality of the information has some merit but is probably overdone in the Jersey consultation document. In any event, as a precedent, it is now of less interest from a European perspective as it would not provide a basis for full compliance with the EU Fourth Money Laundering Directive.

3.2 G7/G8 and G20 initiatives

At the political level, the main driver for the creation of national registers of beneficial owners and trusts has come through the Group of Seven/Eight major economies (the G7/G8), with the UK the lead proponent, following many years of extensive lobbying by pro-transparency international NGOs. The topic also features on the agenda of the wider Group of Twenty Countries (G20) including in the context of fair distribution of global resources. The policy case for such transparency is self-evident as a means to counter many of the financial abuses of modern society – corruption and abuse of power, widespread tax evasion and use of creative tax structures (particularly using the anonymity of cross-border and/or complex corporate structures), various other forms of theft from national exchequers including through abuse of public procurement and privatisation processes, organised crime, together with money laundering and, potentially, financing of terrorism.

The Lough Erne declaration⁹ of June 2013 set out clearly the policy position of the members of the (then) G8 members. It was followed by the publication of Action Plans by each of the G8 members. While all G8 members committed themselves to, at least, a study of the issue, very few have so far publicly committed to the creation of a publicly-accessible register of beneficial owners (UK and France at time of drafting, though this will need to be updated as countries announce their final decisions). A summary of the publicly-stated positions as at November 2013 was published by Christian Aid/Global Witness.¹⁰

The UK government has also been pressing its Crown Dependencies and Territories, many of which would be categorised as offshore financial centres, to follow its lead and plan to provide for transparency. Some had already taken some steps in that direction (including Jersey, as mentioned above). A number of the jurisdictions involved have responded by publishing consultation documents, demonstrating varying levels of enthusiasm for change. The position at November 2013 is summarised in the Christian Aid/Global Witness study.

While the G7/G20 position does not in itself create any binding international obligations, it is indicative of the direction of international policy thinking. It is useful to note that their agreed initiative on transparency of beneficial ownership goes well beyond the requirement of the FATF Recommendations, particularly if based on the UK preference for a publicly-accessible register. The question arises as to whether the FATF will see a need in due course to revisit R.24 and R.25 in order to keep pace with international developments.

3.3 EU position

The initial objective of the EU's Fourth Money Laundering Directive was to update the AML/CFT requirements for EU (and in effect EEA) Member States in line with the revised FATF Recommendations of 2012. Following a decision of the European Parliament to respond to the momentum of the G7 initiative and the international pressure for improved transparency in financial, corporate and taxation matters, the EU has now reached a consensus to go well beyond the FATF standard in setting the requirement for the transparency of beneficial ownership of corporate entities. The latest EU position is evidently a compromise and leaves significant discretion to each Member

⁸www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Review%20of%20Transparency%20of%20Beneficial%20Ownership%20of%20Companies%2020140214%20LO.pdf

⁹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/207644/Common_Principles.pdf

¹⁰ www.globalwitness.org/sites/default/files/library/GW_CA_Company%20Ownership%20Paper_download.pdf

State to select a means of achieving at least the minimum requirements for beneficial ownership information in the relevant articles of the Directive (Articles 30 and 31), on adoption in its final form in 2015. Member States may choose to go beyond the minimum, at their discretion. The latest (and presumed to be final) text of Articles 30 and 31 are included as Appendix 3.

Legal Persons

Article 30 of the Fourth Money Laundering Directive addresses beneficial ownership information for legal persons. The latest proposed text may be summarised as follows:

- Corporate and other legal entities incorporated within [a Member State] are to be required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.
- The information is to be accessible in a timely manner by competent authorities and FIUs.
- The information is also to be held in a central register, for example a commercial register, companies register or a public register...and must be adequate, accurate and current.
- The register should be accessible:
 - (a) to competent authorities and FIUs, without any restriction;
 - (b) to obliged entities, within the framework of customer due diligence;
 - (c) to any person or organisation that can demonstrate a legitimate interest¹¹
- Member States may provide for an exemption to the access referred to in points (b) and (c) on a case-by-case basis in exceptional circumstances, where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable.

A number of points are worth noting:

- i. The onus is to be placed on the legal entities themselves to determine the identity of their beneficial owner(s), hold this information on an accessible register and keep the register up-to-date.
- ii. In addition, the legal entities are obliged to file the beneficial ownership information on a central register; the authorities are required to provide the legislative and operational basis for such a register.
- iii. There is no requirement for full public access to beneficial ownership information. Instead, the minimum requirement is for a more complex arrangement allowing access for a class of persons (to be defined at national level) with a 'legitimate interest' and providing for exemptions (also to be determined at national level) in case of risk as a consequence of transparency. While some reasonable arguments can be put forward in favour of each of these elements of Article 30, they have the potential to give rise to difficult and costly implementation challenges and may also create loop-holes and other unintended consequences,

Trusts

The latest proposal for beneficial ownership of trusts in Article 31 of the EU Fourth Money Laundering Directive is far less demanding than earlier proposals, recognising the private nature of many trust arrangements. Emphasis is now placed primarily on obliging the trustee(s) to maintain and declare beneficial ownership information. The requirement for the creation and maintenance by each Member States of a register of beneficial owners of trusts is restricted to those trusts that have taxation implications.

¹¹ to be granted access to at least specified identification data

Proposed Article 31 – Trusts

- Trustees of any express trust, governed under the law of the Member State, are to be required to obtain and hold adequate, accurate and up-to-date information on beneficial ownership to include the identity of:
 - (a) the settlor;
 - (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.
- Trustees must disclose their status and provide the information to obliged entities.
- Each Member State must require that the beneficial ownership information is held in a central register when the trust generates tax consequences, with timely and unrestricted access by competent authorities and FIUs.

A couple of additional points are worth noting in the case of trusts:

- i. There is no obligation for public access, access by obliged persons or access by persons with ‘legitimate interests’;
- ii. Only trusts with tax consequences need to be included on an official register. It is likely that, in order to obtain tax benefits, the trusts are already registered with the tax authorities. In this case, the Member State would need to ensure that the competent authorities and FIU would be granted unrestricted access to such tax records, if that has not already been provided for.

Legislating for and implementing the above requirements, for corporates and trusts, will give rise to a number of difficult decisions and ongoing challenges, many of which are analysed in the context of the Czech Republic later in this Technical Paper. Final adoption of the Fourth Money Laundering Directive is awaited.

4 ASSESSMENT OF THE CURRENT LEGAL AND INSTITUTIONAL FRAMEWORK IN THE CZECH REPUBLIC

4.1 Summary of findings

Despite recent developments, the current Czech legislation is not designed to enable identification of beneficial owners. Although the Commercial Register provides beneficial ownership information in some cases, there are many situations when the Commercial Register does not provide that information. This currently represents the main obstacle to transparency.

Bearer shares as a typical non-transparent instrument were abolished by legislative change. Other non-transparent instruments exist and should be further analysed in an impact assessment when legislative initiative emerges with the aim to increase transparency. Such other instruments can be included within the scope of the future transparency legislation.

Based on the existing data, it is impossible to statistically analyse the impact of the lacking access to beneficial ownership information. However, from the existing police reports it is obvious that the lack of access to beneficial ownership information is an impediment to the fight against crime.

4.2 General analysis

The issue of beneficial ownership in the Czech Republic has been analysed in the past and it is the intention of this report to build upon the existing findings and analyses. Primary background materials in this respect are the reports of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval). The Moneyval Report on the Fourth Assessment Visit dated 12 April 2011 analyses the situation in the Czech Republic as to the FATF Recommendations R.33 and R.34 (now Recommendations 24 and 25) and provides recommendations. In addition, subsequent follow-up reports monitor the progress in the Czech Republic in respect of the FATF recommendations, the most recent written analysis being dated 22 July 2014.

The main areas in need of improvement from the perspective of availability beneficial ownership information, as analysed in detail in the above documents, were:

- a) The authorities should provide an adequate level or reliability of information registered introducing transparency of ownership structure and more information on the final beneficial ownership.
- b) The authorities should introduce specific counter-measures to avoid the issuance of freely transferable bearer shares.

Both problematic areas were subject to legislative change in the recent years. The Czech Republic adopted a new Act on Public Registers of Legal and Physical Persons (Act No. 304/2013 Coll. of 12 September 2013, the „APR“) which newly regulates public registers, including the Commercial Register (the „ComReg“). The APR is effective since 1 January 2014. In addition, a new Act on Some Measures to Increase the Transparency of Joint Stock Companies and on Changes to Other Acts (Act No. 134/2013 Coll. of 7 May 2013, the „Transparency Act“), effective since 1 January 2014, changed the regulation of bearer shares with the aim to abolish anonymous ownership of shares.

However, the legislative intent and purpose of both acts is not identical and it is useful to identify it. While the purpose of the Transparency Act was, in essence, to abolish anonymous bearer shares, thus increasing transparency, the adoption of the APR was triggered by the adoption of new Czech civil legislation, namely the new Civil Code (Act No. 89/2012 Coll., the „CC“) and the new Act on Commercial Corporations (Act No. 90/2012 on Commercial Corporations and Cooperatives, the „ACC“). The CC and ACC brought a complete – and often dramatic – change in Czech civil and commercial law, carried out after more than ten years of legislative preparation and public debate. The CC and ACC can be seen as the legal culmination of the societal change started in 1989 from

centrally planned economics to a free market. Although partial changes to communist civil laws were added in the early 1990s and later, a complete overhaul has not taken place until 2012.

The adoption of the CC and the ACC triggered numerous changes across Czech legislation. The APR needs to be seen in this context as regulation that primarily adapted the existing rules on public registers to the intent and text of the CC and the ACC. Transparency was not the driving motif. Therefore, although the APR brought marginal improvements to transparency, it cannot be seen as a major step towards transparency. Most past findings of the Moneyval related to transparency and describing the functioning of the ComReg remain valid, because the APR was not drafted to remedy them.

The availability of beneficial ownership from the ComReg remains largely without a change. In a Limited Liability Company (LLC) the shareholders must be entered in the ComReg. However, when such a shareholder is a corporate entity, the entry in the ComReg does not provide beneficial ownership information. In a Joint Stock Company (JSC), only 100 % shareholder must be entered into the ComReg. Again, if such shareholder is a corporate entity, then the entry in the ComReg does not provide beneficial ownership information. In sum, the current Czech legislation is not designed to provide beneficial ownership information via ComReg. Although the ComReg as is may provide beneficial ownership information in many cases, there are many other cases when the ComReg does not provide such information.

The availability of the beneficial ownership information from the ComReg can be outlined as follows:

Type of Entity	Percentage of Shareholding (100 % or otherwise)	Shareholder is Physical v. Legal Person	Registration of Shareholder – Legal Person in CR v. not in CR	Availability of Beneficial Ownership Information from the ComReg
LLC	N/A	Physical Person	N/A	Information available. ¹²
		Legal Person	Registered in the CR	The information may be available from the ComReg depending on the entity and other criteria (back to column one).
			Not registered in the CR.	Information not available. The information may be available from foreign commercial registers.
JSC	100 % shareholder	Physical Person		Information available. ¹³
		Legal Person	Registered in the CR	The information may be available from the ComReg depending on the entity and other criteria (back to column one).
			Not registered in the CR.	Information not available. The information may be available from foreign commercial registers.
	Less than 100 % shareholder	-	-	Information not available.

¹² When claiming that the beneficial owner is identified, it is assumed that the entered shareholder – physical person is indeed the beneficial owner. For the purposes here, we make that assumption, even though the use of strawmen („white horses“ etc.) further qualifies this assumption.

¹³ See above.

When the beneficial ownership information is not available from the ComReg, there may be other sources available to public authorities. First, the companies are required by law to maintain internally a list of shareholders (both LLC and JSC). Second, the Securities Depository keeps records on the ownership of immaterialised shares. However, the two additional sources may indeed have the same limits as the information provided from the ComReg. Typically, if the company's list of shareholders or the records of the Securities Depository show ownership by an entity not registered in the Czech Republic, access to beneficial ownership information is difficult.

Finding - Although the Commercial Register provides beneficial ownership information in some cases, there are many situations when the Commercial Register does not provide that information. This currently represents the main obstacle to transparency.

4.3 The Act on Public Registers

The APR adapted the existing rules on public registers to the intent and text of the CC and the ACC. As to scope, the APR is relevant not only on the ComReg as the register for corporations (unlimited and limited partnerships, LLCs, JSCs and cooperatives), but also other legal entities (associations, foundations, institutes, owners associations), for which specific registers exist, separate from the ComReg.

Apart from particular requirements relevant to each register, the APR provides general principles applicable to all registers (Sections 1 – 10) and procedural rules. The procedural rules include the rules on motions (Sections 11 – 24) and the rules governing the processing of motions by the courts (Sections 75 – 107). In addition, and as an intended contribution to the speediness of registrations, notaries public were authorised to make entries into the public registers in specific cases (Sections 108 – 118). Entries by notary, however, still remain merely a letter of law and in practise notaries are still (as of January 2015) unable to make entries into the registers, because the information technology solution is not in line with the legislative text. Notaries public yet do not have active online access to the public registers.

If one compares the body of law related to ComReg pre-APR and under APR, there are only small substantive changes apart from notary entries into the ComReg. The intent of APR was not to redraft the body of law, but to a) regroup the existing body of law which existed as separate regulation in various act, and b) to connect it with the CC and the ACC. However, detailed analysis reveals minor developments of relatively technical nature. Most of those are without relevance to transparency.¹⁴

A technical change with some impact on transparency is the general requirement to enter not only permanent residence of physical persons, but also their real residence, if different from the permanent residence (Section 25, Para 1, Letters a), e), g), h), i); Section 48, Para 1, Letters h), i), j), k)). This regards members of statutory bodies, procurists as well as shareholders and partners. The change is a reaction on the undesirable situation when the registered persons cannot be reached on the address provided by the ComReg, because the registered address was only their permanent residence and not the actual one. The impact of this change needs to be assessed realistically. In essence, the change is irrelevant to the identified deficiency of the ComReg to contain beneficial ownership information.

Finding - Despite recent developments, the current Czech legislation is not designed to enable identification of beneficial owners.

¹⁴ E.g., 1. the issue of whether companies should register „default“ information, 2. whether non-Czech legal entities need to register their organisational branches, 3. which supervisory bodies should be registered in the ComReg beyond the Supervisory Board, and 4. what data not required by the law may be entered into the ComReg. It appears irrelevant for the purposes of this document to analyse these issues further.

4.4 The Transparency Act

The Transparency Act changed the regulation of bearer shares with the aim to abolish anonymous ownership of shares. The intent was to increase the transparency of ownership structure of joint stock companies and simplified identification of beneficial owners of JSCs both for public authorities and for JSCs themselves, which should find it easier to prove their ownership structure.

The mechanism of the act was simple. By law, and effective 1 January 2014, bearer shares changed to shares registered in name (Section 2 of the Transparency Act). The shareholders were given 6 months until 30 June 2014 to have their share certificates exchanged by JSC. As an incentive to shareholders, the act provides that shareholders who fail to provide their anonymous bearer shares to be exchanged for share certificates registered in their name will lose their right to dividends (Section 4). As an alternative to having the share certificate changed from bearer share to a share registered in the name, the law provided an option to have the bearer shares „immobilised“, i.e. put into escrow by qualified escrow agents, typically the banks. In such cases, even though the share certificate remains nominally a bearer share certificate, effectively its ownership is registered at every moment by the escrow agent and the certificates are no longer „mobile“, thus ownership of the stock cannot change hands without registration. The records of escrow agents are considered an effective functional equivalent of the record keeping by the central depository, which keeps ownership records of immaterialised shares.

As a result of the Transparency Act, shareholding in a JSC can be evidenced by one of the following means:

Type of Share	Description	Availability of ben. own. information
Immaterialised shares (<i>zaknihované akcie</i>)	No paper certificate exists. The shares are registered with the central depository of stock and exist as immaterialised shares.	The central depository has available the information on the owner. The JSC keeps a list of shareholders based on the record in the central depository.
Share certificates registered in the name (<i>listinné akcie na jméno</i>)	Share certificates have the name (and other identification data) of the owner on them.	The share certificate provides identification of owner. The JSC keeps a list of shareholders based on shareholder's notification.
Immobilised bearer share certificates (<i>imobilizované listinné akcie na majitele</i>)	The share certificates are on escrow, where the escrow agent keeps record of ownership.	The escrow agent keeps ownership data. The JSC keeps a list of shareholders based on shareholder's notification.

The new regulation of bearer shares and the abolition of anonymous bearer shares is a major step forward in providing a legal framework that prevents anonymous ownership. The effective impact again needs to be considered in a context. If a previously anonymous beneficial owner of a share in JSC adamantly desired to remain anonymous, the adoption of the Transparency Act merely provided the need to explore other avenues of attaining an ownership tool undisclosed to the authorities and/or to the general public. One such avenue is obvious from the above analysis of the Commercial Register, namely ownership via a corporation not registered in the Czech Republic. However, the fact that the Transparency Act made anonymous ownership more difficult and costly remains positive.

4.5 Other Non-Transparent Instruments

It follows from the above analysis that the transparency issue has not been addressed directly in the Czech legislation. The impact of the Transparency Act is important, but limited to joint stock companies and, more importantly, limited to the current standard on providing beneficial ownership information as per the regulation of the ComReg. In that context, as long as the main instruments to non-transparent ownership have not been addressed by the legislator, a detailed analysis of other instruments providing possibilities of non-transparent ownership is to a degree academical.

The particular instruments cited in this context emphasize silent partnerships and trusts. Those instruments deserve to be viewed in a context. Both silent partnerships and trusts can serve a valid economic purpose and their potential for abuse needs to be assessed before a policy is formulated. It is not the scope of this document to determine whether silent partnerships, trusts or other tools could become alternative tools for anonymous ownership once the Czech legislation will request that companies provide beneficial ownership information.

Silent partnerships, as of the current legal status, are a cumbersome tool for owners willing to remain anonymous. Silent partnerships as a living legal arrangement provide primarily a) a tool for employee participation on the economic results of companies, i.e. an equivalent of employee stock option plans (ESOP), b) a tool for investors willing to participate in the financing of a company, i.e. an equivalent of loans or credits. The abuse for AML or TF purposes has not been identified in the Czech Republic. Any hypothetical responsible initiative to abandon or limit silent partnerships should also analyse functional equivalents such as loans, credit arrangements, and ESOPs, which is not the scope of the current paper. It may be useful to realize that in a silent partnership, the silent partner is not truly anonymous as the relationship is based on a contract with the respective company, which by definition includes identification data of the silent partner. Those data can be collected from the company by the authorities.

It is foreseeable that a hypothetical legislation formulating the duty to register beneficial ownership of companies includes silent partners into its scope, so that any silent partner is subject to the same duty of transparency vis-a-vis public authorities as any other beneficial owner of a share in a company. Any such inclusion should be selective and target only silent partnerships with potential for abuse. This can be achieved by assuming that low percentage participation in a company's capital does not represent a transparency risk. Detailed legislative proposal requires an impact assessment.

Trusts are a new instrument in the Czech law and became possible since 1 January 2014 with the effectiveness of the new CC. It is somewhat schizophrenic from the Czech legislator to adopt the Transparency Act on one hand, abolishing anonymous bearer shares, and to adopt the CC with its regulation of trusts, which increases opportunities for anonymous ownership. The future of trusts in the Czech legal order remains uncertain. First, the potential usefulness of trust has been effectively thwarted by stringent tax treatment, adopted in 2013. Second, based on the reaction of the legal community, the Ministry of Justice prepared an amendment (under inter-ministry discussion as of January 2015) introducing effectively a register of trusts. At the same time, it is still a possibility that trusts as such will be abolished from the CC, given the public outcry.

Just as silent partnerships, trusts potentially could be used to hinder access to information about beneficial owners. Just as with silent partnerships, they represent a rather cumbersome tool. Trusts too are based on legal documents, identifying the beneficiary, and the information on the beneficiary can be collected from the trustee by the authorities should there be a suspicion of illegal dealing. Nevertheless, it is foreseeable that a hypothetical legislation formulating the duty to register beneficial ownership of companies includes trusts into its scope, so that any trust beneficiary is subject to the same duty of transparency vis-a-vis public authorities as any other beneficial owner of a share in a company. Detailed legislative proposal requires an impact assessment.

Finding. Other non-transparent instruments exist and should be further analysed in an impact assessment when legislative initiative emerges with the aim to increase transparency. Such other instruments can be included within the scope of the future transparency legislation.

5 RISKS ARISING FROM THE AML/CFT PERSPECTIVE

It was intended that in the framework of this project to strengthen anti-corruption and anti-money laundering systems in the Czech Republic, the current analysis will also gather the available data on scale of corruption, tax evasion, fraud, abuse in public procurement etc. that are related to the lack of beneficial ownership information.

To this purpose, the available statistics were provided by the FIU. The relevant data are contained in the „Final Report on the Problem of (Illegal) Proceeds and Money Laundering“ (*Závěrečná zpráva k problematice výnosů a praní peněz*) of the Office for Combating Corruption and Financial Crime (*Útvar odhalování korupce a finanční kriminality*) of the Police of the Czech Republic, where the most recent report is dated 31 July 2014 („**Report**“), of 157 pages.

The analysis of the Report and the available statistics therein can be summarized as follows:

- 1 The Police statistics are of excellent quality.
- 2 The Report recognizes that the lack of beneficial ownership is an important problem in the fight against corruption and money-laundering.
- 3 It cannot be quantified how much the lack of beneficial ownership directly contributes to criminal activities and to hiding the proceeds of criminal activities.

The primary purpose of the Report (and of previous reports containing equivalent statistics) is to provide data on property seized in criminal procedure, to evaluate such data and to provide recommendations. The methodology of collecting the data and evaluating them has been assessed, among others, by EU experts on financial crime and financial interrogation. The evaluation of 2012 is very positive and the evaluating report praises the overall system in the Czech Republic as exemplary (Report, p. 5, p. 151, pp. 156-7). In addition, the Czech Police shows positive and steadily increasing results in actually seizing the proceeds of crime. In 2013, the value of seized property was CZK 8 501 millions (EUR 305 millions).

Nevertheless, the Report (and assumingly previous reports) does not provide a basis for a statistical assessment on the impact of lacking beneficial ownership information. There is no figure showing how many crimes were either committed, detected, investigated or sentenced in relation to lacking beneficial ownership information. This cannot be seen as a defect of the statistics, the methodology of which is correct. It could be argued that police officers might monitor the use of non-transparent ownership structures in the investigated files and attempt to make a correlation between the phenomenon (non-transparent ownership structure) and the result of the investigation.¹⁵ Such monitoring has not occurred. Still, the Report provides insight as to the use of non-transparent ownership structures by criminals.

The Report indicates correlation between crime and non-transparent ownership structures in the following instances:

- a) The Report analyses the types of property seized, e.g. monies on bank accounts, other financial instruments, securities, real estate, shares in companies etc. When providing statistics as to seized real estate, the Report notes that criminals use more complex operations and real estate is often purchased by legal entities with no direct link to criminals, using a non-transparent ownership structure.
- b) The Report analyses the results of individual regional Police Directorates (per region) and of specialised Police departments (e.g. Office for Detecting Corruption and Financial Crime,

¹⁵ The hypotheses to be confirmed by such monitoring would be as follows: 1. The use of a non-transparent ownership structure increases the likelihood that the respective case does not proceed to indictment, compared to other cases where a non-transparent ownership structure has not been used; and 2. The use of a non-transparent ownership structure results in lower proceeds seized by the Czech Police, compared to other cases where a non-transparent ownership structure has not been used.

Office for Detecting Organised Crime etc.). In that context the Report also summarizes reports of individual regional Police Directors. In those reports, references are made to the risk of using trusts for hiding the proceeds of crime, however, no specific files were investigated where trusts have been used (Report, p. 34, p. 122, p. 148, p. 162).

- c) The use of off-shore companies to prevent seizing the proceeds of crime is repeatedly mentioned in the Report (p. 141, p. 147-8, p. 162). Such phenomenon is directly linked to the lack of available beneficial ownership.
- d) The use of strawmen („white horses“) to prevent seizing the proceeds of crime is repeatedly mentioned in the Report (p. 108, p. 131, p. 148).

Therefore, based on the available police statistics, only the obvious conclusion can be reached that the lack of beneficial ownership information represents a risk in the area of money laundering, financial crime and generally in the area of fight against crime. At the same time, direct statistical analysis of the absence of beneficial ownership cannot be made.

Finding. Based on the existing data, it is impossible to statistically analyse the impact of the lacking access to beneficial ownership information. However, from the existing police reports it is obvious that the lack of access to beneficial ownership information is an impediment to the fight against crime.

6 CZECH REPUBLIC – OUTLINE RISK ASSESSMENT

While some useful indicators can be found in this paper, it would not be feasible within the scope of this exercise to deliver a comprehensive assessment of the AML/CFT risks arising from corporate entities and trusts registered in the Czech Republic. It is important, however, for such a risk assessment to be conducted as soon as possible by the Czech authorities, as a prerequisite for compliance with FATF Recommendations 1, 24 and 25. The importance of this point is underlined on reading the initial examples of FATF assessments under the current methodology, both of which placed particular emphasis on having evidence of risk assessments conducted by the respective authorities. Such an assessment may validly be conducted as a component of an overall National Risk Assessment, as is currently being prepared by the Czech authorities. It would be equally acceptable to prepare a stand-alone assessment document dealing specifically with the risks arising from corporate entities and trusts.

Although not a full risk assessment, some useful points can be drawn from the research for this Technical Paper. It has already been noted that risks arising from the abuse of Czech corporate entities and, potentially, trusts arise not just for money laundering and, perhaps, terrorist financing but more broadly in areas which the CZ10 project is designed to address – corruption, tax evasion and, in particular, abuse of the public procurement process. The latter featured strongly as a topic of concern in the recent discussions with obliged persons. Parallel analysis exercises under CZ10 are addressing some of these issues in more detail.

Overall, it can be concluded that Czech-registered companies do not have any particular reputation internationally as being part of multi-national schemes for money laundering or other financial abuses. However, they are believed to be used domestically, in conjunction with foreign corporate structures, to collectively create a veil of anonymity to assist in domestic criminal activity and abuse of public procurement processes. As the public contracts involved can be substantial, the aggregate value of the potential abuse is believed to equate to many millions of euro. The Czech authorities are keenly aware of the problem, as is the public, and the authorities have taken a range of measures to try to mitigate the risk. As the effectiveness of the current measures is not yet persuasive, the authorities are planning additional measures, including those which may derive from project CZ10.

An important recent step in the Czech Republic was the introduction of new legislation to mitigate the (assumed-to-be high) risk arising from bearer shares. The legislation came into force on January 1, 2014 and in summary requires that, from July 1, 2014 any voting rights attached to bearer shares may no longer be exercised unless the shares have been registered by the company concerned. This measure falls short of a complete ban on the issue of bearer shares but, particularly for any new issues, should serve to largely or completely mitigate the risk by effectively neutralising the bearer attribute by means of the registration requirement. A relevant question for the authorities' risk assessment is whether or not the measures now in place to encourage registration of legacy bearer shares are proving effective, or have holders of bearer shares who wish to remain anonymous found a method of working around the provisions of the new law in order to avoid registration.

In a move that could be seen to increase the risk of misuse of corporate structures, the Czech Government introduced amendments to the Civil Code in early 2014 to provide for the creation under Czech law of a form of trust. Although the concept of trusts is normally associated with common law jurisdictions, a means has been found to try to define the concept into the Czech civil law system, based on the model applied in Quebec, Canada. The facility to create trusts in the Czech Republic is new and, so far, largely untested according to both the authorities and private sector representatives interviewed. While the possibilities that arise from the new provisions have attracted considerable attention, legal and other professionals appear to be adopting a wait-and-see approach before deciding whether the new legal structure may be of value to clients. With regard to controls, unlike most common law jurisdictions, safeguards have been built into the legislation allowing the creating of trusts such that only express trusts may be created and the inherent tax benefits can be enjoyed only following a process of registration with the Prague tax authorities. The current legal provisions are,

however, subject to amendment and a set of revisions to the law was prepared by the Ministry of Justice for adoption following a consultation process. The revisions are designed to provide additional clarity for some aspects of the initial provisions and to tighten the controls in place. Czech trusts may prove even less attractive as a consequence.

7 TRANSPARENCY OF BENEFICIAL OWNERSHIP INFORMATION – OUTLINE ANALYSIS OF POSSIBLE MODELS

This section presents a selection of theoretically possible approaches to the issue of beneficial ownership. Each is listed and described briefly below, in ascending order of transparency. For each model, a chart of advantages/benefits and disadvantages/costs has been prepared and is included as Appendix 1.

7.1 Model A. Take no further action

Characteristics: No central register of beneficial owners; no additional obligation on companies or trusts to maintain up-to-date information on beneficial owners.

Comment: Given the strength of the movement internationally towards achieving a high degree of transparency regarding beneficial ownership, particularly emanating from the European Parliament and the G7 leadership, doing nothing is not a realistic option at this stage. For the Czech Republic it would involve a decision not to transpose elements of the EU's Fourth Money Laundering Directive and could potentially make it difficult to achieve a satisfactory rating under the relevant FATF Recommendations. It is also not helpful from an AML/CFT perspective.

7.2 Model B. Focus only on anti-corruption and public procurement in the Czech Republic

Characteristics: No central register of beneficial owners for companies/trusts in general. However, additional obligations could be placed on any person seeking to conduct business with the broadly-defined public sector to provide verified information on the ultimate beneficial owners, including indirect controllers, of any entity linked to the contract application – whether registered in the Czech Republic or abroad.

Comment: It may seem attractive from a public policy perspective in the Czech Republic to concentrate primarily on fighting corruption and abuse of the public procurement process, as repeatedly identified by both the private and public sectors as an ongoing challenge facing the country. While this approach has merit and is certainly risk-based, it would be difficult to reconcile it with the obligation to transpose the Fourth Money Laundering Directive and could leave some areas of difficulty in seeking to achieve a satisfactory rating under the relevant FATF Recommendations. However, whatever model is finally chosen by the Czech authorities, it should be feasible to incorporate requirements tailored to provide the maximum support for public procurement control and anti-corruption measures, bringing together a number of strands of project CZ10.

7.3 Model C. Minimum steps to comply with FATF R.24/R.25

Characteristics: (Extracted verbatim from the FATF assessment Methodology, February 2013)

“Beneficial Ownership Information

24.6 Countries should use one or more of the following mechanisms to ensure that information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority:

- (a) requiring companies or company registries to obtain and hold up-to-date information on the companies' beneficial ownership;*
- (b) requiring companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership;*
- (c) using existing information, including:*
 - (i) information obtained by financial institutions and/or DNFBPs, in accordance with Recommendations 10 and 22;*
 - (ii) information held by other competent authorities on the legal and beneficial ownership of companies;*

- (iii) information held by the company as required in criterion 24.3 above; and
- (iv) available information on companies listed on a stock exchange, where disclosure requirements ensure adequate transparency of beneficial ownership.

24.7 Countries should require that the beneficial ownership information is accurate and as up-to-date as possible.

24.8 Countries should ensure that companies co-operate with competent authorities to the fullest extent possible in determining the beneficial owner, by:

- (a) requiring that one or more natural persons resident in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities; and/or
- (b) requiring that a DNFBP in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities; and/or
- (c) taking other comparable measures, specifically identified by the country.”

Comment: As outlined earlier, the FATF Recommendations allow for a range or combination of direct and indirect methods by which the competent authorities may gain access to beneficial ownership information, as needed for analysis or investigation purposes. There is no requirement for a central register and the minimum steps for compliance could involve nothing more than ensuring that the FIU and law enforcement agencies have powers to require companies to disclose whatever information they have gathered in relation to their owners. However, the international impetus towards greater transparency of beneficial ownership has already moved beyond the minimum requirements for FATF compliance.

7.4 Model D. The ‘Jersey model’

Characteristics: Mandatory registration in a central register of beneficial owners, subject to a strong enforcement threat, but with access to the data limited to domestic competent authorities, thus ensuring confidentiality of the beneficial ownership information is largely maintained.

Comment: From the viewpoint of all relevant public authorities, this approach has merit as it would ensure access to the beneficial ownership information needed to support them in fulfilling their statutory duties. However, the Jersey model would not meet the minimum access requirements of the EU Fourth Money Laundering Directive.

7.5 Model E. Minimum to transpose EU Fourth Money Laundering Directive

Characteristics: The responsibility to identify their ultimate owners is being placed on the legal entities themselves and the beneficial ownership information will also have to be listed in central registers in each EU Member State. The central registers are to be accessible to the competent authorities and their financial intelligence units (without any restriction), to "obliged entities" (such as banks conducting "customer due diligence"), and also to persons with a "legitimate interest", whose access may be subject to online registration and to the payment of a fee to cover administrative costs. Any person or organisation that can demonstrate a "legitimate interest", such as an NGO, investigative journalist or other concerned citizen, may also be able to access partially-redacted beneficial ownership information comprising the beneficial owner's name, month and year of birth, nationality, residency and details on ownership. Exemptions from access would be possible in exceptional circumstances, including based on risk of misuse of the information for criminal purposes.

Comment: In the areas of beneficial ownership, the provisions of the Fourth Money Laundering Directive are far-reaching, complex and demanding. Implementation of some of the provisions will not be straightforward. Many questions arise for each Member State, including:

- i) Where to locate the central register and whether to seek to combine it with current company registers;
- ii) Whether to seek to define a category of “persons with legitimate interest” or address data requests on a case-by-case basis; how to choose the authority or agency that is to have responsibility to make such decisions (including addressing their legal powers, resources, training, providing a rule-book to guide their decisions and providing for an appeals mechanism);
- iii) Whether to charge for access to beneficial ownership information;
- iv) How to deal with requests for exemption on grounds of safety; how to choose the authority or agency that is to have responsibility to make such decisions (including addressing their legal powers, resources, training, providing a rule-book to guide their decisions and providing for an appeals mechanism);
- v) How to reconcile the requirements arising from the Fourth Money Laundering Directive with data protection obligations;
- vi) Whether to avoid many of these difficult decisions and costly administrative structures by moving to a public access system.

7.6 Model F. Full public transparency

Characteristics: Mandatory registration in a centralised system of registration of beneficial owners of companies/legal entities, maintained up-to-date, subject to a strong enforcement threat, with access available publicly (with the option of applying fees and/or controlling access, where justified on a risk basis). A separate decision would be needed on whether or not to also provide public access to beneficial owner information for trusts.

Comment: As the Czech Republic has already introduced an online database for company registration, with arrangements for public access, it is already in a much stronger position than many other jurisdictions to add a ‘bolt-on’ component for beneficial ownership information for registered companies. Steps would be needed to address categories of legal person not included in the current commercial register and to give separate consideration to trusts. A range of policy issues arises, including those outlined later in this paper. Probably the most significant issue would be the impact on the personal privacy of beneficial owners, the cost of which could be viewed as disproportionate to the public policy benefits of this level of transparency. Potential conflict with data protection legislation also needs to be considered carefully. A number of countries, notably the UK, are strongly of the view that such invasion of privacy is warranted to counter the current level of abuse of corporate anonymity, particularly for tax evasion purposes, though they no longer favour an equivalent level of transparency for trusts. Many of the matters arising for decision are discussed in the Issues and Challenges section below.

8 BENEFICIAL OWNERSHIP – ISSUES AND CHALLENGES

Arising from the analysis above, a number of issues warrant particular mention. The list below should not be considered exhaustive and other matters are likely to arise in deliberations on proposals for legislative amendments.

8.1 Differences in obligations under FATF Recommendations and the EU Directive

Although the obligations in terms of beneficial ownership information for corporates under the EU Fourth Money Laundering Directive are more demanding than those of the parallel FATF Recommendation, it should not be assumed that a transposition of Article 30 of the Directive will, of itself, result in an acceptable compliance rating under FATF Recommendation 24. It is important to consider separately each of the requirements from both sources. For example,

- Recommendation 24 includes a requirement that ML/TF risks relating to lack of beneficial ownership information should be analysed in the National Risk Assessment.
- MONEYVAL evaluators will seek evidence to demonstrate effectiveness – the authorities need be in a position in advance of the next evaluation in 2016 to demonstrate at least 6-12 months practical implementation of any new measures – or at least of measures directly relevant to compliance with the FATF standard, which offers more flexibility in choice of method than will be the case under the EU Directive.
- The evaluators will check that the requirements are applied effectively to each category of legal person and to trusts; any omission, no matter how immaterial in the opinion of the authorities, is liable to be criticised.

In recent FATF evaluations, there were criticisms that registration information was not demonstrated to be accurate and up-to-date. In the absence of some means of data verification, these are likely to arise as implementation issues in many evaluations.

8.2 Achieving practical benefits and enhancing effectiveness

While the Technical Paper has emphasised the Czech Republic's international obligations, it is also important that the additional costs and burdens created in identifying beneficial owners are matched or exceeded by practical benefits, while recognising that such benefits are likely to prove more difficult to quantify. In the context of the Czech Republic, there would be merit in linking beneficial ownership information requirements as closely as possible to anti-corruption measures and, in particular, public procurement requirements. More broadly, it is essential to provide for comprehensive coverage in designing the reporting system to avoid leaving loopholes to be exploited by the unscrupulous. Otherwise, any remaining pockets of anonymity could undermine the credibility and investment value of the reporting system and damage the Czech Republic's reputation.

8.3 The value of a risk-based approach to beneficial ownership information

While the application of a risk-based approach is central to the 2012 FATF Recommendations (and thus could be extended to determining beneficial ownership), there does not appear to be any obvious equivalent discretion under Articles 30 and 31 of the Fourth Money Laundering Directive. In discussions regarding this Technical Paper, some categories of legal person were identified in the Czech Republic which could not reasonably give rise to ML/TF risk. It would be regrettable if a valid legal basis could not be identified to exclude from costly and intrusive registration requirements such categories as are identified by the Czech authorities, based on reasoned analysis, as not presenting material ML/TF risk. It is noted that another Member State (the UK) has published proposals¹⁶ that appear to be selective in the categories of legal person they plan to include on their public register.

¹⁶www.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf

8.4 Potential for conflict with Data Protection legislation

There has long been friction between the information needs of effective AML/CFT compliance systems and Data Protection requirements, not least at EU level. While the Fourth Money Laundering Directive seeks to mitigate this potential for conflict in its recitals, issues may nonetheless arise at the legislative or implementation stage in individual Member States.

Both the creation of a central register containing personal information and the decision regarding public access thereto may be expected to be of interest from a data protection perspective. Applying the concept that information may be used only for the purpose for which it was intended and that it may not be retained beyond the timeframe for which it is needed for its original intended purpose, there may be some difficulty in reconciling this with a decision to create a register of beneficial ownership. One of the questions arising is how to get explicit authorisation from the individual beneficial owners for the inclusion of their personal information on a register, particularly if they are not resident in the Czech Republic and their connection to the registered company may be indirectly through a chain of other, foreign registered, entities. A further and significant challenge arises in relation to companies already registered in the Czech Republic (legacy companies, in this context) as regards validly obtaining information on their beneficial owners for inclusion on the register.

That said, a case could be made that for the owners/controllers of most companies and other legal persons, it is already a requirement for beneficial ownership information to be provided in order to create and maintain a business relationship with a bank, lawyer or other obliged person. It is also a reasonable expectation that beneficial ownership be declared as part of any public procurement application or as part of other anti-corruption measures. Therefore, many owners/controllers have a vested interest which can be progressed only by providing beneficial ownership information. Mechanisms already exist for access to this information by the FAU and law enforcement authorities. The main additional step, therefore, relates to placing this information on a register that provides for wider access. One approach to addressing data protection concerns in this regard is to include as part of the filing process an explicit consent - for purposes of data protection legislation - to publication, indefinite retention and use of the information for the purposes set out in legislation (but no other purpose). In any case where an applicant is not prepared to sign (on paper or electronically) such a declaration, perhaps access to the data could be limited to the competent authorities; it is noted that such cases might be of particular interest to the FAU for analysis purposes.

These are just some of the challenges arising in the data protection area. Early consultation with the data protection authority may be useful to clarify areas of difficulty and agree solutions. It should be feasible, through careful drafting, to find resolutions to these issues, in the wider public interest, at the legislative level.

8.5 Choice of timing of introduction of beneficial ownership information regime

Once the Fourth Money Laundering Directive has been adopted at EU level (assumed to be mid-late 2015), Member States then have two years in which to transpose its provisions. The timing of legislative amendments to transpose the Directive into Czech law is a matter for the Czech authorities and legislature. However, having regard to the Directive itself and the potential complexities of putting in place structures for its registration, access and exemption arrangements, it is not clear that there is merit in being an early adopter. Helpful precedents and trends may become evident from the implementation plans of other Member States. As noted, given that the Directive's provisions go beyond the FATF Recommendations, implementation of measures to conform to the Directive is not in itself a prerequisite for FATF compliance and, therefore, not essential prior to the MONEYVAL mutual evaluation scheduled for 2016. A case built upon a range of other approaches could be considered acceptable for purposes of demonstrating compliance with R.24/25 (see published evaluation reports as noted in this paper). However, if effective implementation of the Directive's provisions could be achieved quickly, that should facilitate a positive outcome on this element of the MONEYVAL evaluation.

8.6 Risk of arbitrage and cost of competitive disadvantage

While EEA members could be expected to introduce broadly similar requirements for identification of beneficial owners within a similar timeframe, the same is not the case for the rest of the world. Some (perhaps significant) business may be lost to non-EEA competitor jurisdictions, as company owners move to protect their current levels of anonymity. As an EU Member State, the Czech Republic will have to accept such consequences; and perhaps the absence of such companies would not be a bad thing, if their owners are connected to corruption or other illegal activities. However, the design of the registration system should be no more onerous than is absolutely necessary to meet the requirements of the EU Directive and obtain the information needed by the competent authorities. An efficient and convenient automated filing system is to be encouraged, as cooperation from the business community is preferable to trying to force unwilling compliance.

8.7 Practicalities of creating a central register for legal entities

The choice of location for the central registry of beneficial ownership information of legal entities is a decision for the Czech authorities. It is understood that agreement has been reached among the authorities that beneficial ownership fields should be added to the current commercial register. This agreement is to be welcomed as it should provide for the most efficient and effective means of collecting the data, building on the current online filing arrangements.

Reference has already been made above to addressing the question of the beneficial owners of corporate entities currently registered in the Czech Republic. There would be little benefit in applying a requirement for registration of beneficial owners only to newly-established companies. Therefore, a suitable and legally-valid treatment would need to be devised to deal with the current stock of 'legacy' companies and other legal persons.

8.8 Whether to apply a minimum reporting threshold

In determining the filing requirements, the question arises as to whether to adopt the threshold of 25 percent as the minimum holding specified in the Directive for CDD purposes so as to qualify as a beneficial owner. Note that this threshold can be overridden by the concept of 'control', which could at least in theory be exercised based on a much lower level of shareholding or none at all.

The question is a complex one and difficult to resolve comprehensively, as it could be argued that holdings well below 25 percent can be sufficiently material in some companies to be relevant from an AML/CFT perspective. Moreover, control is a concept that is notoriously difficult to define and can include indirect control by third parties, for example in cases where the registered shareholder is a 'straw man'.

If, in the absence of a more complete solution, the beneficial ownership registration threshold for the Czech Republic is set at 25 percent, the limitations of the register need to be acknowledged to avoid misrepresentation of its limited value. As noted in the Directive, obliged persons should not be permitted to rely exclusively on the register for CDD purposes but should be required to explore more deeply the issue of ownership and control, and to satisfy themselves that they know the identity of the 'real' beneficial owner(s) in every case.

8.9 Ensuring data quality

To be of meaningful value, beneficial ownership information needs to be:

- Adequate
- Accurate and
- Current.

This can be very difficult to achieve in practice and often impossible to assess in the absence of information from independent sources. From an evaluation perspective, the challenge will be to

demonstrate the quality of the registered information, under each of the above criteria. The adequacy of the information could be defined as a function of:

- The scope of coverage of types of legal entity in the legislation;
- The basic verification steps on filing, including the completeness of the filing (e.g. no empty fields accepted).

The following factors are relevant in considering the accuracy and currency of the information:

- Practical experience of the competent authorities and obliged persons in using the register, by comparing its contents, where feasible, with other sources of information (including directly from the beneficial owner);
- If flaws are identified, what are the requirements to correct them; what is the experience in practice; where is the evidence to demonstrate these experiences?
- Important to maintain statistical records of any testing of the reliability of the data on the register, whether by the Commercial Register, the FAU or law enforcement;
- Are records up-to-date? A choice needs to be made between event-driven filing and periodic (annual?) filing. Event-driven is more useful and reliable, but more costly. Periodic filing is liable to be inaccurate in the short-term – just when needed for CDD, analysis, or investigation. As part of verification, provision could be made for a periodic (annual?) renewal of information, possibly as a component of the existing annual filing requirements. If periodic reporting is chosen, it would be important that filing includes any intermediate changes in ownership, not just the opening and closing positions in the period.

While it is difficult to build in any meaningful reward for companies that make the effort to comply in a timely fashion with beneficial ownership registration requirements (perhaps a lower fee for early filing?), it is important for quality control to provide and implement powers of sanction for those who do not meet the information and filing requirements. Sanctions need to be effective, proportionate and dissuasive.

An additional concern is that, in some cases, company registrars may be at the mercy of the company owners/controllers and perhaps lacking the powers to force the natural persons who are at any given time the ultimate beneficial owners to reveal their true identities. This could be the case in particular with Czech companies that are owned by foreign legal entities or trusts, perhaps involving complex ownership chains. In such cases, the company registrars may find themselves unwittingly committing an offence under the law. Perhaps some scope could be provided (in legislation or guidance) for company registrars to report their concerns to an appropriate authority if they have reason to suspect that the beneficial ownership provided to them may be unreliable.

8.10 Verification of beneficial ownership information

From the outset of the international AML/CFT requirements, there has been disagreement and inconsistency regarding the need for verification of information provided to obliged persons with regard to beneficial ownership. Unless firm guidance is provided by the authorities, this uncertainty is likely to reappear in the creation of a central register of corporate beneficial owners.

Relevant questions include whether it would be sufficient to accept without verification a signed declaration from a person claiming to be the beneficial owner (thus running the risk of fraud or the use of ‘straw men’). Would it be acceptable for a professional person in the Czech Republic or abroad, for example a lawyer, accountant or notary, to sign the declaration on behalf of a beneficial owner? Or should it be the requirement that all such signatures should be notarised with an accompanying statement that original official identification documents have been sighted as part of a verification process? What role, if any, should be given to the keeper of the official central register to independently verify the bona fides of the identification information provided (a role that company registration authorities in most countries do not currently carry out, though there are exceptions)?

The guiding principle should be that the information held on a register needs to be demonstrably accurate and reliable if it is to be of any practical value. For this purpose, relying only on self-declarations, while practical, might not prove adequate.

If, nonetheless, the Czech authorities opt for self-declaration (as it is understood is the preferred option of at least one other Member State, the UK), some additional means of data verification could be employed. For example, one or more of the following approaches could be considered:

- Annual data refresh requirement;
- Statement as part of the annual audit process that beneficial ownership has been verified;
- Sample testing by the registration authority, to request a small sample of companies each year – selected using risk-based criteria - to provide supporting documentation of their beneficial ownership.

No verification system can, in itself, exclude the risk of false or misleading self-declarations of beneficial ownership. Persons who are determined to preserve their anonymity – whether for valid personal reasons or to disguise criminal activities – have an incentive to mislead or to arrange for another person to file false information on their behalf. Distinguishing valid from false declarations may not prove possible. In reality, therefore, it is only through access to additional information about the parties concerned that inconsistencies could be identified. For this purpose, the FAU and law enforcement agencies are best placed to notice such inconsistencies. However, obliged persons (particularly banks and lawyers) may also have access to information regarding the parties, their transactions or activities that would give grounds for suspicion.

8.11 Beneficial ownership information needs to be kept up-to-date

The history of company registries internationally indicates that it is not easy, even with sanctions, to achieve an acceptable level of compliance with ongoing filing obligations. This is likely to be equally true for a register of beneficial owners.

If information on the register needs to be demonstrably accurate and reliable, it follows that it also must be kept up to date. Mandatory filing requirements can be devised and introduced for companies and trustees placing the onus on them, on pain of proportionate and dissuasive sanctions, to inform the registry promptly of any change in beneficial ownership. The difficulty arises mainly with enforcement as, by their nature, filing omissions are not generally easy to identify. In the case of complex corporate structures, particularly where they are cross-border, changes in beneficial ownership elsewhere might not even be known to the representatives of the Czech company or trust. This is a difficult issue to resolve and 100 per cent. accuracy might not ever be achievable, thus undermining the credibility of the overall register.

From an analysis perspective, it could be interesting for the FAU to monitor any sudden changes in company registration information around the time of establishment of a register of beneficial ownership, as this might be indicative of subterfuge by those trying to hide their identity.

8.12 Granting access to the register

A fundamental question is whether to provide for public access (to at least a limited set of information on each beneficial owner) or whether to comply with just the minimum requirements of the Directive by providing access to:

- The FAU and relevant competent authorities;
- Obligated persons for the purpose of conducting CDD; and
- ‘persons with a legitimate interest’.

Defining a legislative basis for access by the first two of these categories should be straightforward and access for them is directly relevant to their respective roles in AML/CFT. However, the AML/CFT connection to ‘persons with legitimate interests’ is less clear, though their inclusion in the

Directive could be of value in, for example, an anti-corruption context. As drafted, the Directive would appear to leave it to individual Member States to define ‘persons with legitimate interests’, though there would be merit in conducting some pre-transposition consultation among Member States with a view to a measure of consistency of interpretation. It is expected, based on European Parliament press releases, that the category could include some non-government organisations (NGOs), for example those with an interest in monitoring for corruption, as well as investigative journalists. However, in the absence of any clear definition of the term, it appears that anyone could claim to have a legitimate interest in the beneficial ownership information. It would be necessary to have in place a decision-making mechanism, though the Directive does not provide any assistance in setting a basis for determining who should be granted or who should be refused access, and on what grounds. In case of refusal, there may also be a need for an appeals mechanism, to minimise the legal risk of being sued for damages. The Czech Republic could avoid having to define ‘persons with legitimate interest’ or having to create such a potentially complex and costly decision-making mechanism by opting, as the UK plans to do, for a publicly accessible register, with certain limitations to observe data protection principles.

8.13 Dealing with the issue of exemptions from transparency

A further complication arising from the Directive is the need to provide for the possibility of exemption from access in certain limited circumstances relating to a fear or risk of abuse for criminal purposes of beneficial ownership information. The Directive sets out the forms of risk in question (fraud, kidnapping, etc.) but provides no guidance on the decision-making mechanism needed to decide on the validity of claims for exemption. Given the nature of the threats involved and the type of protection in question, the issue appears suitable to consideration and decision in a court of law. It would be important, however, to develop guidance and protocols to assist a court in determining valid grounds for exemption and to set out an appropriate application procedure, including as regards corroborating information and/or documentation to be provided in support of the application. In the absence of some minimum application criteria, the exemption option could easily be open to abuse, thus undermining the value of the beneficial ownership registry.

8.14 Addressing legacy bearer shares or other anonymous structures

While bearer shares might not be seen as particularly material in the Czech Republic following the 2014 legislative changes, a means needs to be sought to bring any remaining anonymous instruments, or investment/loan arrangements with ownership rights, within the scope of beneficial owner registration requirements. As this topic is likely to be a particular focus of attention for MONEYVAL evaluators, further steps are needed; some suggestions follow.

In imposing an obligation on each legal person to obtain, maintain and file information on their beneficial owners, presumably this would apply to all shareholders (or at least those with holdings above the 25 percent threshold set out in the Directive), including any remaining holders of bearer shares. If this is the case, company registrars could be placed under an onerous legal burden if they are required to track down the holders of bearer shares that have not to date declared themselves (as required since 1 July 2014 in order to sell such shares or exercise voting rights) or who choose to remain anonymous. If the Czech authorities opt for the 25 percent threshold, then any not-yet-dematerialised bearer shares representing holdings below the threshold would not be affected by the new beneficial ownership requirements, thus leaving a loophole in the scope of coverage.

An alternative approach, which the UK proposes to adopt, is to enact legislation to require companies to cancel all bearer shares (or bearer warrants giving rights to shares) following an appropriate notice period in which such rights may be exercised or registered. The Czech authorities might wish to consider a similar approach in order to eliminate completely any remaining potential for reputational damage and abuse arising from bearer instruments.

8.15 Dealing with beneficial ownership information for trusts

In the case of trusts, under the proposed Article 31 of the Fourth Money Laundering Directive, the requirement for a ‘central register’ is limited to express trusts that ‘generate tax consequences’. Given the limited basis on which trusts can be created under the Czech Civil Code, it is understood that all Czech trusts would, by definition, generate tax consequences (albeit with potentially negative tax results). It is further understood that there is already some form of requirement for registration of such trusts with the tax authorities. This arrangement may need to be formalised and, as needed, extended to apply to all parts of the country in order to demonstrate full transposition of the provisions of Article 31.

A question arises regarding the ease of access by the FAU and law enforcement authorities to information on trusts held by the tax authorities, including in responding to information requests from foreign FIUs, in order to comply with the requirements in the Directive.

8.16 Identification of beneficial owners of offshore corporate structures doing business in the Czech Republic

The issue of beneficial ownership of foreign structures is key to ensuring a comprehensive transparency regime for incoming capital flows and business activities in the Czech Republic. In many cases it may not be sufficient to oblige solely domestic legal entities and trusts to disclose beneficial ownership information whether it be through a centralized registry or any other regime.

As practice has it, domestic economic interests often disguise themselves to authorities (be they tax, AML or other law enforcement) by moving ownership of assets to legal entities incorporated abroad, who would then return to the Czech Republic to do business as a foreign economic agent. Thus, a non-transparent business link between a domestic company and a foreign structure affiliated to the same beneficial owner can be a typical method to shift proceeds out of reach of domestic authorities, either for tax optimisation, or to disguise criminal proceeds (e.g. derived from abuse of a public procurement contract).

Hence, addressing beneficial ownership of domestically registered structures will only resolve a part of the transparency equation. Measures should be equally considered to oblige foreign economic entities operating in the Czech Republic to disclose their beneficial owners. Equally, consideration should be given to obliging domestically registered entities and their beneficial owners to declare any ownership/affiliation/control of entities incorporated in other jurisdictions.

Obliging foreign entities operating in (or into) the Czech Republic to disclose beneficial ownership information could be limited to cases when such disclosure has not taken place in the country of their incorporation. When beneficial ownership information is available in a foreign jurisdiction it should be easily accessible to Czech authorities (e.g. if it is public, or through some other readily functioning mechanism such as an agreement between Central Registries of the Czech Republic and the foreign jurisdiction).

The above-mentioned measures should also be considered for situations when the foreign counterpart/affiliate is a trust or any other type of legal arrangement.

As with the planned domestic beneficial ownership disclosure obligations, measures with regard to foreign structures/affiliates could be enforced and supported by sanctions for non-disclosure. A particular category warranting closest scrutiny in this case would be legal persons participating in government tenders and programs, whether they are registered abroad, or are domestically-registered legal persons linked with foreign structures through affiliation to a single beneficial owner.

8.17 Central register – other practical challenges

A range of other practical questions could be raised in relation to the creation of a central register, including the how, where and by whom it would be operated. However, as these are domestic matters for the Czech authorities and there are few, if any, useful examples to mention from an international perspective, these issues are more appropriately left to domestic analysis.

9 RECOMMENDATIONS

Based on the risk analysis in this Technical Paper, the following recommendations are offered for consideration:

- The Czech authorities should consider in detail the risks arising from the absence of reliable beneficial ownership information when developing the ML/TF National Risk Assessment;
- The Czech Republic should ensure by legislation that information regarding beneficial ownership is available to the extent foreseen by the forthcoming Fourth Money Laundering Directive;
- The authorities should also ensure that those elements of the relevant FATF Recommendations that differ from the EU Directive are also addressed appropriately;
- In drafting the legislation, attention should be paid to beneficial ownership of business entities registered in the Commercial Register, but also to other types of legal entities (including NGOs);
- In adopting the legislation, a risk-based approach is appropriate, if compatible with the Fourth Money Laundering Directive. Therefore, special types of legal entities (e.g. religious societies, educational legal entities etc.) may or may not be subject to such legislation, depending on the outcome of the National Risk Assessment;
- The authorities should consider carefully the choice of timing of introduction of the beneficial ownership information requirements as either early or late adoption may have disadvantages;
- In developing the system for collection and retention of beneficial ownership information, one of the objectives should be that the additional costs and burdens imposed would be matched or exceeded by the practical public-policy benefits;
- The authorities should explore all available legal and practical steps that, while avoiding any abuse of data protection principles, still permit the implementation of an efficient and effective registration system for beneficial owners;
- The authorities should take steps to ensure that the information held on the register is demonstrably accurate and reliable, to be of any practical value. For this purpose, relying only on self-declarations might not prove adequate. The options for including some methods of verification should be explored.
- The authorities could consider avoiding having to define ‘persons with legitimate interest’ by opting for a publicly accessible register, with certain limitations to observe data protection principles.
- It is important for quality control to provide and implement powers of sanction for those who do not meet the information and filing requirements. Sanctions need to be effective, proportionate and dissuasive.

10 CONCLUSION

This technical paper, prepared in the context of the CZ10 project, approached the issue of transparency of corporate entities and trusts from an international perspective and explored policy options and strategic issues towards achieving compliance with the Czech authorities’ current and pending international obligations. As policy issues are raised for decisions to be taken, ultimately, by the Czech Government, no firm conclusions are included.

The paper outlines the steps that would be needed to achieve compliance with the obligations accepted by the Czech Republic under the relevant FATF Recommendations and, of particular importance, in relation to the pending EU Fourth Money Laundering Directive. In this context, the key question relates to the form that a central register of beneficial ownership might take, the manner of its creation and, in particular, whether or not to provide for public access to the information to be contained therein.

11 APPENDIX 1: POSITIVE AND NEGATIVE FACTORS RELATED TO POSSIBLE APPROACHES TO THE TRANSPARENCY OF BENEFICIAL OWNERSHIP INFORMATION

The following are lists of some of the advantages/benefits and disadvantages/costs of each of the models identified. The lists are not intended to be exhaustive and may be amended and/or supplemented by the Czech authorities. See Section 7 of this Technical Paper for definition and description of each model.

Model A. Take no further action – no central register; main reliance on FAU/law enforcement techniques

Advantages/benefits:

- Would serve to protect the privacy of beneficial owners, from the Czech Republic or abroad.
- Limited information would continue to be obtained by some relevant Czech authorities, particularly for AML/CFT purposes;
- Would avoid the cost and complexity of establishing a central register;
- Would avoid conflict with Data Protection legislation.

Disadvantages/costs:

- Does not meet the requirement for transposition of EU Fourth Money Laundering Directive, if adopted as currently drafted;
- Would not assist in achieving compliance with relevant FATF Recommendations;
- Provides no assistance in the AML/CFT CDD processes of obliged persons in the Czech Republic or abroad;
- Does nothing to satisfy the demands of the media or the NGO transparency lobby.
- Could damage the reputation of the Czech Republic, particularly if there is a widespread move towards global corporate transparency;
- Increases the risk of ML/FT activity occurring.

Model B. A possible Czech variant, with a focus gathering beneficial ownership information only for purposes of anti-corruption and public procurement

Advantages/benefits:

- Would avoid the cost and complexity of establishing a central register;
- In an indirect manner, could help to meet some of the public policy needs of relevant Czech authorities, particularly for anti-corruption and public procurement;
- Would serve to protect the privacy of beneficial owners, from the Czech Republic or abroad.
- Could avoid conflict with Data Protection legislation.

Disadvantages/costs:

- Does not meet the requirement for transposition of EU Fourth Money Laundering Directive, if adopted as currently drafted;
- Would not assist in achieving compliance with relevant FATF Recommendations;
- Would not provide much useful information to other relevant Czech authorities, particularly for AML/CFT purposes;
- Provides no assistance in the AML/CFT CDD processes of obliged persons in the Czech Republic or abroad;
- Does nothing to satisfy the demands of the media or the NGO transparency lobby;
- Increases the risk of ML/FT activity occurring in sectors other than public procurement.

Model C. Minimum to comply with FATF R.24/R.25 – range of options not necessarily requiring central register

Advantages/benefits:

- Range of data access options could be designed to provide a basis for compliance with relevant FATF Recommendations, if timely access could be achieved, supported by persuasive sanctions;
- Could avoid the cost and complexity of establishing a central register;
- In an indirect manner, could help to meet some of the public policy needs of relevant Czech authorities, including for AML/CFT, tax administration, anti-corruption and public procurement, though perhaps at higher overall cost;
- Would serve to protect the privacy of beneficial owners, from the Czech Republic or abroad.
- Could avoid conflict with Data Protection legislation;
- May decrease the risk of ML/TF activity occurring through the misuse of legal persons and arrangements.

Disadvantages/costs:

- Does not meet the requirement for transposition of EU Fourth Money Laundering Directive, if adopted as currently drafted;
- Provides no assistance in the AML/CFT CDD processes of obliged persons in the Czech Republic or abroad;
- Does nothing to satisfy the demands of the media or the NGO transparency lobby;

Model D. Central register with access for authorities only (the ‘Jersey model’)

Advantages/benefits:

- Could be designed to provide a basis for compliance with relevant FATF Recommendations;
- Meets the public policy needs of all relevant Czech authorities, including for AML/CFT, tax administration, anti-corruption and public procurement;
- Avoids complex and difficult decisions and costly processes to determine which categories of person should have access to the central register;
- Could be cheaper to establish and maintain than more transparent models.
- Would serve to protect to some extent the privacy of beneficial owners, from the Czech Republic or abroad.
- Could reduce conflict with Data Protection legislation;
- May significantly decrease the risk of ML/TF activity occurring through the misuse of legal persons and arrangements.

Disadvantages/costs:

- Does not meet the requirement for transposition of EU Fourth Money Laundering Directive, if adopted as currently drafted;
- Provides no assistance in the AML/CFT CDD processes of obliged persons in the Czech Republic or abroad;
- Does nothing to satisfy the demands of the media or the NGO transparency lobby;
- The beneficial ownership information is of value only if it is reliable and kept up-to-date – this could entail difficult and expensive verification processes, supported by persuasive sanctions for non-compliance;

Model E. Minimum to transpose EU Fourth Money Laundering Directive (as currently drafted) – central register with broader range of targeted access

Advantages/benefits:

- Meets the requirement for transposition of EU Fourth Money Laundering Directive;
- Exceeds minimum as a basis for compliance with relevant FATF Recommendations;
- Meets the public policy needs of all relevant Czech authorities, including for AML/CFT, tax administration, anti-corruption and public procurement;
- Assists in the AML/CFT CDD processes of obliged persons in the Czech Republic;
- Could satisfy the demands of the media and, to some degree, the NGO transparency lobby;

- May significantly decrease the risk of ML/TF activity occurring through the misuse of legal persons and arrangements.

Disadvantages/costs:

- May require complex and difficult decisions and costly processes to determine which categories of person should have access to the central register;
- The beneficial ownership information is of value only if it is reliable and kept up-to-date – this could entail difficult and expensive verification processes, supported by dissuasive sanctions for non-compliance;
- There would be a significant loss of privacy for beneficial owners, which could be seen as disproportionate to the benefits of providing access to the media;
- Providing media access to beneficial ownership information may conflict with Data Protection legislation, unless legislative steps are included to reconcile the two objectives;
- Risk of abuse of the identification information and no control over its subsequent use or publication;
- Could potentially impact negatively on inward direct investment from businesses that seek anonymity of ownership;
- For trusts, challenge of deciding which parties should be identified as beneficial owners might not always be identified in the trust instrument (e.g., if they are yet to be born).

Model F. Central register with full public access

Advantages/benefits:

- Exceeds minimum for transposition of EU Fourth Money Laundering Directive;
- Exceeds minimum as a basis for compliance with relevant FATF Recommendations;
- Would align the Czech Republic with the leading global proponents of corporate transparency;
- Avoids complex and difficult decisions and costly processes to determine which categories of person should have access to the central register;
- Meets the public policy needs of all relevant Czech authorities, including for AML/CFT, tax administration, anti-corruption and public procurement;
- Assists in the AML/CFT CDD processes of obliged persons in the Czech Republic and abroad;
- Provides a useful source for information to AML/CFT and relevant authorities from other jurisdictions;
- Satisfies the transparency lobby and NGOs.
- With public access, there is potential for accuracy of the data to be improved as individuals could see information held on the register concerning them and could seek to have any errors or omissions corrected;
- Additional transparency likely to enhance the Czech Republic's international reputation;
- May significantly decrease the risk of ML/TF activity occurring through the misuse of legal persons and arrangements.

Disadvantages/costs:

- The establishment of a central register carries initial and ongoing costs, at least some of which would probably need to be met from public funds;
- The beneficial ownership information is of value only if it is reliable and kept up-to-date – this could entail difficult and expensive verification processes, supported by persuasive sanctions for non-compliance;
- There would be a significant loss of privacy for beneficial owners, which could be seen as disproportionate to the benefits of public access;

- Publication of beneficial ownership information may conflict with Data Protection legislation, unless legislative steps are included to reconcile the two objectives;
- Risk of abuse of the identification information and no control over its subsequent use or publication;
- Could potentially impact negatively on inward direct investment from businesses that seek anonymity of ownership;
- For trusts, challenge of deciding which parties should be identified as beneficial owners might not always be identified in the trust instrument (e.g., if they are yet to be born).

12 APPENDIX 2: FATF RECOMMENDATIONS¹⁷ ON TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS

Recommendation 24 - Transparency and beneficial ownership of legal persons

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

Recommendation 25 - Transparency and beneficial ownership of legal arrangements

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

¹⁷ http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

13 APPENDIX 3: DRAFT FOURTH MONEY LAUNDERING DIRECTIVE¹⁸

CHAPTER III - BENEFICIAL OWNERSHIP INFORMATION

Article 30

- 1 Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.
Member States shall ensure that those entities are required to 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.
- 2 Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.
- 3 Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State, for example a commercial register, companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council¹, or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The information on beneficial ownership contained in that database may be collected in accordance with national systems.
- 4 Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current.
- 5 Member States shall ensure that the information on the beneficial ownership is accessible in all cases:
 - a) to competent authorities and FIUs, without any restriction;
 - b) to obliged entities, within the framework of customer due diligence in accordance with Chapter II;
 - c) to any person or organisation that can demonstrate a legitimate interest.

The persons or organisations referred to in point (c) shall access 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. For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and may be subject to online registration and to the payment of a fee. The fees charged for obtaining the information shall not exceed the administrative costs thereof.
- 6 The central register referred to in paragraph 3 shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the entity concerned. It shall also allow timely access by obliged entities when taking customer due diligence measures.
- 7 Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of other Member States in a timely manner.
- 8 Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.
- 9 Member States may provide for an exemption to the access referred to in points (b) and (c) of paragraph 5 to all or part of the information on the beneficial ownership on a case-by-

¹⁸ <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%205933%202015%20INIT>

case basis in exceptional circumstances, where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable. Exemptions granted pursuant to this paragraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.

- 10 By...*, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring the safe and efficient interconnection of the central registers referred to in paragraph 3 via the European central platform established by Article 4a(1) of Directive 2009/101/EC. Where appropriate, that report shall be accompanied by a legislative proposal.

Article 31

- 1 Member States shall require 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 settlor;
 - (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.
- 2 Member States shall ensure that trustees disclose their status and provide the information referred to in paragraph 1 to obliged entities in a timely manner where, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the thresholds set out in points (b), (c) and (d) of Article 11.
- 3 Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.
- 4 Member States shall require that the information referred to in paragraph 1 is held in a central register when the trust generates tax consequences. The central register shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the parties to the trust concerned. It may also allow timely access by obliged entities, within the framework of customer due diligence in accordance with Chapter II. Member States shall notify to the Commission the characteristics of those national mechanisms.
- 5 Member States shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and up-to-date.
- 6 Member States shall ensure that obliged entities do not rely exclusively on the central register referred to in paragraph 4 to fulfil their customer due diligence requirements as laid down in Chapter II. Those requirements shall be fulfilled by using a risk-based approach.
- 7 Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 4 to the competent authorities and to the FIUs of other Member States in a timely manner.
- 8 Member States shall ensure that the measures provided for in this article apply to other types of legal arrangements having a structure or functions similar to trusts.
- 9 By...*, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring safe and

efficient interconnection of the central registers. Where appropriate, that report shall be accompanied by a legislative proposal.

14 ADDITIONAL REFERENCE MATERIALS

- i. FATF Guidance on Beneficial Ownership¹⁹
- ii. Jersey consultation paper²⁰
- iii. G7/G8 Lough Erne Declaration²¹ and G20 Statement of Principles²²
- iv. Christian Aid / Global Witness published comparison of transparency commitments²³

¹⁹ <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

²⁰ <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Review%20of%20Transparency%20of%20Beneficial%20Ownership%20of%20Companies%2020140214%20LO.pdf>

²¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207644/Common_Principles.pdf

²² https://g20.org/wp-content/uploads/2014/12/g20_high-level_principles_beneficial_ownership_transparency.pdf

²³ https://www.globalwitness.org/sites/default/files/library/GW_CA_Company%20Ownership%20Paper_download.pdf