

NATIONAL-LEVEL CORPORATE ANTI-ABUSE MEASURES RELEVANT TO THE EU COMPANY LAW PACKAGE

Expert Questionnaire

Bulgaria

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1) Anti-abuse mechanisms - do any of the following mechanisms exist in this country? If so, how do they work?

a. Disqualified Directors

i. Is there an official definition of “disqualified director”? If so, what are the grounds for disqualification? In which law can this be found? (link to legal text(s))

Some main provisions concerning the disqualification of directors/managers are put into the Commerce Act (Commercial Law) of Bulgaria:

<http://www.bulgaria-commercial-law.bg/commerce-act.html>

There is no common official definition, but there are some restrictions for persons who apply for positions as managers, or are nominated as board members, or want to establish companies as sole entrepreneurs. The common conditions for disqualification of a person to be appointed as manager, member of a board or controlling body of company, or who intends to be sole entrepreneur, are as follows:

-Participation of such person as manager or member of the board/controlling body of company, or acting as sole entrepreneur of company, terminated due to bankruptcy;

-Participation of such person as manager or member of the board/controlling body of company, which is in a penal decree in force has been found to violate its obligations to establish and maintain certain designated levels of reserves as set out in the Oil and Oil Products Reserves Act. This does not concern many of the companies.

For example:

Sole entrepreneur. Ineligible to be a sole entrepreneur shall be a person:

1. *who is bankrupt and his rights have not been restored;*
2. *who has intentionally gone bankrupt and has left unsatisfied creditors;*
3. *who has been convicted for bankruptcy;*
4. *who has been a manager, a member of an executive or controlling body of a company terminated due to bankruptcy during the last two years preceding the date of the decision of declaring bankruptcy if any unsatisfied creditors have been left;*
5. *who had been a manager, member of managing or control body of any company, in regard to which non-performance of obligations to constitute and hold stocks under the Obligatory Stocks of Crude Oil and Petroleum Products Act at levels, designated for it, had been ascertained by an effective penal decree.*

Procurator(manager)-a natural person commissioned and authorised by a merchant or other company to manage his undertaking for remuneration).

A person cannot be a procurator if declared insolvent or having been a manager, a member of a managing or controlling body of a company terminated for bankruptcy within two years

before the date of the decision for declaring bankruptcy if any unsatisfied creditors have remained.

Limited liability company

The following cannot be a manager: any person declared insolvent, a member of a management or control body of a company terminated due to insolvency during the last two years preceding the date of the decision for declaring insolvency if any unsatisfied creditors have remained. Also cannot be a manager: a person, who has been a manager, member of a management or control body of a company, which in a valid penal decree has been found in breach of their obligations to create and maintain the prescribed reserve levels under the Act on Reserves of Crude Oil and Petroleum Products.

The following may not be controllers: managers and company employees, spouses and relatives of the managers and company employees, persons who have been deprived due to a conviction of the right to hold a position of financial accountability.

Joint stock company

A person may not be member of a board (board of directors in one-tier system, supervisory board and managing board in the two-tier system), if he/she:

- 1. has been a member of a management or controlling body of a company terminated due to bankruptcy during the last two years preceding the date of the decision for declaring bankruptcy, if there remain unsatisfied creditors;*
- 2. has been a member of a management or controlling body of a company, which in a penal decree in force has been found to violate its obligations to establish and maintain certain designated levels of reserves as set out in the Oil and Oil Products Reserves Act.*
- 3. does not meet other requirements provided for in the statutes.*

ii. Is there an official list of (current) disqualified directors? If so, where can this be found? (name of organization maintaining it and link)

There is no official list of the (current) disqualified directors. However, the registration body and the other institutions responsible for the control of registration and of regulation of company activities have access to all the cases where the above-mentioned conditions for disqualification (point i) could be identified, for example – companies terminated due to insolvency/bankruptcy etc.

iii. If there is an official list, who has access to this list (general public or restricted)?

There is no official list. However, all the bodies and institutions which are responsible for the company registration, regulation of company activities, procedures for insolvency and bankruptcy etc. have access to the cases mentioned in point i:

- Registry Agency (Commercial register);
- Ministry of Economics;
- Ministry of Finance;
- National Revenue Agency;
- Financial Intelligence Agency;
- Financial Supervision Commission;
- Prosecutors' offices;
- Courts

Some other bodies responsible for regulation of company activities also could have access.

The information is not restricted for the public. If there is an interest expressed by a natural or legal person, institution or media, obtaining such information is possible. The procedures for dissolution, liquidation and bankruptcy/insolvency are made at the court and the decisions of the court shall be registered at the Commercial register. The list of such companies is public and everybody can obtain information about the managers or members of the boards of such companies. The procedure to obtain such information follows the rules of the Registry Agency (Commercial register) on access to information.

b. Beneficial Owners

i. Where is the database of beneficial owners and which organisation maintains it (link)?

The data on beneficial owners should be put into the Commercial register at the Registry Agency, according to new amendments in the Commercial Act –art.65 A. <https://lex.bg/laws/ldoc/-14917630> (in Bulgarian)¹ and in the Law for Measures Against Money Laundering: <http://bcnl.org/en/legislation/law-for-the-measures-against-money-laundering.html>

The procedure for registration requires the following data on the beneficial owners:

- Data on physical persons: names, identification number, citizenship, date of birth, country of residence;
- Data on the controlling company (in case the company which is applying for registration is under control of another company) - registration data, owners, representatives, form of the company, seat, address and identification data on the persons, who represent it;
- Data on the representative who is residing in Bulgaria (in case of registration of a branch of a company, with its seat in another country);
- All changes in ownership

ii. Are there any checks on the authenticity of beneficial owners, or does the organisation depend on a “statutory declaration” or “affidavit” from the company directors?

Usually the statutory declaration/ affidavit from the company is used, but the authenticity of the beneficial owners is also checked by the employees in the Commercial Register.

The companies, applying for registration shall provide all the necessary data on their beneficial owners, in case the beneficial owners are not mentioned among the official owners in the documents for firm foundation.

The documents containing data on the beneficial owners are reviewed separately from the other documents according to:

The Law on the Commercial Register and the Register of the Non-profit Legal Entities (<https://www.lex.bg/laws/ldoc/2135522741>),

The Law on the measures against money laundering (<http://bcnl.org/en/legislation/law-for-the-measures-against-money-laundering.html>)

and

¹ This link refers to the Bulgarian text, as the new amendments could be found only in Bulgarian. The link with English text of the Commercial law is mentioned above, on point i)

The Law on the economic and financial relations with companies, registered under preferential tax regime jurisdictions, the persons related to them, and their beneficial owners. (<https://www.lex.bg/bg/laws/ldoc/2136014509>).

The commercial register officers shall check the identity of the beneficial owners, based on the available data. They can also get information from the other authorities and institutions, which are responsible for check of the beneficial owners in cases of trade deals, financial transactions etc.

In the case of foreign owned companies and owners who are not Bulgarian residents, the officers can use the common network with registry authorities from another member states.

In case of data indicating possible money laundering or other violations of the law, the Registry agency shall inform the institutions, which are responsible for detailed checks.

Additional notes:

According to the Law on Measures Against Money Laundering (<http://bcnl.org/en/legislation/law-for-the-measures-against-money-laundering.html>):

The Bulgarian National Bank, banks and other financial organisations (insurance companies, brokers, financial intermediators and others), public administration bodies, including the National Revenue Agency, Non-profit legal entities (NGOs and others), notaries, legal and financial consultants, etc. have the right to check the identity of beneficial owners, in case they have relations with the company. They should also share their information with the Financial Intelligence Directorate at the National Security Agency, in cases of doubt or proof of money laundering or other criminal actions. This is especially envisaged for the banks.

All the institutions, companies and non-profit legal entities, who have obligations to make checks according to the Law on the measures against money laundering shall keep the data for at least 5 years, with the exception of cases when the Financial Intelligence Directorate at the National Security Agency can recommend extension of the term, but up to 2 additional years. The information on the physical and legal persons for whom data on money laundering or terrorism finance are collected at special register at the National Revenue Agency. Also, other authorities like Financial Intelligence Directorate and other directorates of the National Security Agency, prosecutors' offices, courts etc. shall have access to these data.

iii. How quickly must the company give notice when ownership has changed (updating of lists/databases)?

According to the Commercial law, the notice should be given within 7 days of the date of change of ownership.

iv. Who has access to the beneficial ownership database? Does the general public have unrestricted access, restricted access or no access?

The general public has access to data in the Commercial register if the name and/or personnel identification number of owner/s or /and special identification number (BULSTAT number) of the company are known.

According to the Rules of the Registration Agency everybody can have on-line access with application and presenting his/her identity card (or special code, issued by the Registration Agency in cases of on-line access). Public institutions and companies, as well the officially registered Non-Profit Legal Entities have access due to their functions.

c. Electronic identity (eID) scheme – is there a scheme registered with the European Commission, and if so, what eIDAS level of assurance does it have?

There is an electronic identity scheme. According to the Law on Electronic Documents and Electronic ID (<https://www.lex.bg/laws/ldoc/2135180800>), a general, improved and qualified electronic signature is used. The law is prepared in accordance to the Regulation N 910/2014 (EC). The Executive Agency “Bulgarian Accreditation Service” is responsible on the certification of the devices for carrying out qualified electronic signatures and electronic seals. There is also a public register of the persons, who are certified to use electronic signatures and seals and of the devices they are using for qualified electronic signatures and seals.

However, this eID scheme is still not registered with the European Commission, as the procedure for final establishment of the electronic identity scheme has been extended to 2023. The Registry agency requires a qualified electronic signature and seal for on-line registration.

2) Company registry – transparency, access, cost

a. Which organization maintains the company registry? (name and link)

The company registry is maintained by the Commercial register, which is a division of the Registry Agency (<https://www.registryagency.bg/bg/registri/targovski-registar>).

There is also another compulsory register, which is managed by the Registry Agency. This is register BULSTAT, where all the companies and Non-profit legal entities should be registered, as well as self-employed persons. It is linked with the corporate tax regime for companies and ensures a specific identification code for every company, legal non-profit entity and self – employed person. Every company has a unique BULSTAT number, which is of use for search of company data in the Commercial register.

In addition to companies founded in Bulgaria, the branches of companies whose seats are in another Member State shall be registered in the Commercial register and in BULSTAT register.

b. To what extent is the registry digitalized? Can company foundations/registrations and reporting be carried out fully online/digitally?

The registration procedure can be implemented on-line, with the exception of the verification of the company foundation at the notary.²

² Usually in Bulgarian law and practice the verification at notary is not defined as a step of registration, it is a step in company foundation. The term “registration” usually is used concerning the registration at the Commercial register or other registers.

The verification of the company foundation at the notary is compulsory for general partnerships and limited partnerships. For the Limited Liability company only the verification at the notary of the signature of agreements and declarations of the person, appointed as a manager are compulsory. For the Joint Stock corporation, verification at the notary is compulsory for the signatures of the agreements and declarations of the board members (board of directors or supervisory and managing board).

The online registration fee, envisaged by the Registry Agency is lower than the usual fee. Some of the documents can only be presented on-line for example for documents for Joint Stock corporations or Limited Partnerships with shares. The annual financial reports and annual reports of the companies should also be submitted on-line.

All information and documents are preserved on-line. The Registry Agency provides information on all the registered companies to the National Revenue Agency and to other institutions.

c. Are bulk downloads of the entire list of registered companies possible?

Bulk downloads of the entire list of registered companies are not possible.

Searching for data not older than 30 days is possible and then the list of companies and some basic information on them can be downloaded. These include:

- the name (both spelled in Bulgarian and in Latin letters);
- date of foundation;
- data on the business (scope of activity);
- address of the seat;
- name/s of the owner and manager/s or representative/s;
- volume of the capital due to the founding documents;
- common identification code (BULSTAT).

However, particular documents, like the foundation contract, declarations, protocols etc., can be downloaded with representation of special code, issued by the Registry Agency, electronic signature or special code for access to the data of the National Revenue Agency.

Information could be downloaded for the following cases:

- *general registration data: registration of new companies, registration of dissolutions;*
- *registration of change of circumstances (change of capital, change of owners etc.);*
- *registration of reports (annual report, accounting report etc.);*
- *registration of bankruptcies and liquidations;*
- *registration of transformations, including CBM, establishment of European economic interest grouping, European companies and European cooperative societies*

d. Does the registry have search features beyond the name of the company or person (e.g. by sector or employee size)

These is not possible by the normal means of access. Such information may be obtained in case of application for a special preparation of the data.

e. What is the typical cost of downloading a document from the registry?

For annual access to all information in both the Commercial register and the register for non-profit legal entities the cost is 100 BGN (50 Euro).

For special services the minimum cost is 100 BGN (50 Euro)

Access to information concerning particular registrations, without details. This means subscription for regular general information on registration procedures. For example- information on registration of: new company, company transformation, bankruptcy, dissolution, liquidation etc. The usual price is 0,40 BGN (0,20 Euro) per case

f. Is there information on employment levels beyond what is contained in annual accounts?

No - usually such information can be found in the register only if it is put into the annual reports or annual financial reports of the companies. Sometimes the number of employees is mentioned, but many of the reports do not contain such information.

g. Information on European company forms and EU reorganizations (CBM) - is a search possible for companies with the SE legal form or companies reorganized through a CBM?

Currently there is no special mechanism to search for European company forms and EU reorganization (e.g. CBM) in the register, except search on the base of criteria "transformation", where all the transformations are listed.

3) Firm foundations

a. What authority or organization is responsible for registering new companies (with link)?

The authority is the Registry Agency - Commercial register (<https://www.registryagency.bg/bg/registri/targovski-registar>).

b. What are the steps needed to found and register a new company? To what extent can these happen digitally?

The steps are as follows:

- Decision on founding new company, which is taken by the future owners or partners;
- Preparing contract or act on foundation and verification at notary. Various forms of companies have various regimes of verification at notary;
- Preparation of all the required documents;
- Procedure of registration at the Commercial register

The application for the registration should include:*

- *data on the applicant - names, ID data, addresses;*
- *business name of the company;*
- *data on the registration procedure: foundation of company;*
- *data on the business (subject, sector/s, scope of activity);*
- *the amount of the firm's capital; the number of shares of all the partners;*
- *a statutory declaration/affidavit, signed by the executive director, sole entrepreneur, proxy or other person, according to the envisaged in the law cases*

The act of foundation should be in original or with copies, verified by notary.

The documents can be submitted on-line

Note: In cases of changes, which shall be registered, the application shall contain the subject of registration: changes of ownership; changes of capital; merger; acquisition; other form of restructuring/transformation; bankruptcy; liquidation; dissolution etc.

c. What checks (if any) are done on the authenticity of documents, identity of founders, record of founders (e.g. disqualification as directors) and beneficial owners

i. By registration authority

Checks are made on the authenticity of documents, the identity of founders, record of founders are made on every registration application. Another check made by the registration authority concerns whether any of the owners have participated in a company which is insolvent or bankrupt.

The registration authority shall make separate checks on the applications concerning the registration of the beneficial owners (according to the Law on Measures Against Money Laundering and Law on the economic and financial relations with the companies, registered under preferential tax regime jurisdictions, the persons, related to them and their beneficial owners) (<https://www.lex.bg/bg/laws/ldoc/2136014509>).

ii. By notaries

Notaries usually check the identity of the owners, in case of the foundation of a new company or changes in the ownership, and the authenticity of documents.

Note: Notaries are listed in the Law on the measures against money laundering among the institutions, companies etc., who are responsible to make checks concerning possible money laundering. These especially concern cases when their clients have to pay more than 15 000 Euro (approximately. 30000 BGN) by bank transfer or purchases exceeded 5000 Euro (approximately 10000 BGN) in cash. (<http://bcnl.org/en/legislation/law-for-the-measures-against-money-laundering.html>)

iii. By “facilitator” companies (foundation agents)

Note: According to the available resources, foundation agents are not compulsory according to the Bulgarian law. In some cases the partners could hire such person (consultant, facilitator) or company, involved in such activities.

Usually this is doing by companies or physical persons, providing legal consultations, but economists or financial experts could be also involved. These could happen in case of mergers (including CBM), when the single companies’ owners or/managers don’t know each other.

They play a role mainly in cases of CBM or registration of branch of foreign companies. They could be used in cases of foundation of new companies or domestic /local mergers, but they are used rarely, as participating partners prefer to avoid additional expenses. The other reason is that usually local company owners and managers don’t think this kind of assistance is necessary for them.

Note: Persons and companies providing legal services and/or providing services concerning company foundation, registration etc. are also listed in the Law on the measures against money laundering, among the persons and legal entities who are responsible for making checks concerning possible money laundering. The requirements concerning them and rules on their activity are similar to those for notaries. (<http://bcnl.org/en/legislation/law-for-the-measures-against-money-laundering.html>)

The responsibility to make checks concerning possible money laundering is also related to the persons who provide special services, like providing addresses for registration of company seats, renting out offices or estate property, intermediation and management and other services.

(<http://bcnl.org/en/legislation/law-for-the-measures-against-money-laundering.html>)

4) Cross-border Mergers (CBMs)

- a. **Which authority is responsible for the pre-merger certificate (outbound CBMs), which authority is responsible for approving the merger (inbound CBMs)? (name and link)**

Pre-merger certificate:

There are pre-merger requirements based on the Commercial Law and Law on the Commercial Register

<http://www.bulgaria-commercial-law.bg/commerce-act.html>

Note: Transformation may not be carried out in case a participating company whose seat is in the Republic of Bulgaria owns land, and the newly incorporated company or the recipient one has its seat outside the Republic of Bulgaria. The said prohibition shall be applied according to the terms, ensuing from the accession of the Republic of Bulgaria to the European Union.

The common draft merger terms shall be examined/audited with regards to each merger or merged company having a seat in the Republic of Bulgaria by a specified examiner (auditor/inspector) appointed by the managing body of the respective company. At the joint request of all merging and merged companies the registry officers at the Registry agency may appoint a common examines for all merging and merged companies, including those with a seat in other Member States.

The examiner, appointed under the terms of Commercial Law of Bulgaria, or appointed pursuant to the law of another Member State, where a merging or merged company has its seat, shall have all rights of information and shall bear responsibility under the rules of Commercial Law.

The appointed examiner shall draw up a report on the inspection intended for the partners or stockholders of the respective company. When a common examiner has been appointed, he/she shall draw up a common report for all companies. The report of the examiner shall contain information on the capital and an assessment of whether the ratio of exchange stipulated by the contract or the draft terms of transformation is adequate and reasonable. Inspection of the merger shall not be carried out if all partners or stockholders in the transforming and recipient companies have given their written consent thereto.

Submitted at the disposal of the partners and stockholders, prior to adopting the decision for transformation, shall be:

1. *the contract or the draft terms of transformation;*
2. *the report of the managing body;*
3. *the report of the examiner /inspector;*
4. *the annual financial reports and the reports on the activity of all transforming and recipient companies for the latest three financial years, if any;*
5. *the balance sheet*
6. *the drafts for a new company contract or statutes of each of the newly established companies, respectively of amendments and supplements of the statutes or of the company contract of each of the transforming and recipient companies.*

Mergers are approved by the Registry agency (Commercial register)

The managing body of the newly incorporated or the recipient company having a seat in the Republic of Bulgaria shall declare the merger or consolidation for entering in the commercial register. The check by the Registry agency should contain:

Whether the requirements of the Regulation 2157/2001 (EC) are covered and whether the companies, founding the new company have covered these rules; whether the requirements of the Bulgarian law are implemented.

Note: In case the recipient or the newly incorporated company has its seat in another Member State, the managing body of each of the transforming companies with a seat in the Republic of Bulgaria shall request from the commercial register the issue of a certificate of the legality of the transformation with regards to the said company. Attached to the request shall be the decision on transformation, the consents as per the CL of Bulgaria, the examiner's report and proof that the decision has been taken according to all requirements of the law, as well as a declaration that the company does not own land in accordance with the prohibition set out in CL of Bulgaria.

b. What personnel capacity/qualifications does the authority/ies listed above (organization(s) granting the pre-merger certificate + approving merger) have?

The examiner/auditor shall be a certified auditor and cannot be a person who was an auditor of any of the companies participating in the merger in the last two years; furthermore, they cannot be appointed to be their auditor in the next two years.

There requirements on the personnel of the Registry Agency who are especially hired for registration of companies: education in law, capacity/right to be lawyers, and at least 3 years practice /length of service as lawyers.

c. What (if any) anti-abuse checks are made?

i. Purpose of reorganization

The purpose of reorganization shall be mentioned in the merger report/s. Where a newly incorporated company by merger has its seat in the Republic of Bulgaria or where in case of merger the capital of the recipient company with a seat in the Republic of Bulgaria is increased, the examiner shall also draw up a report concerning the examination of the capital.

ii. Background check on directors

The directors are checked according to the common rules, mentioned above. For the directors, which are not Bulgarian citizens, or haven't resided in Bulgaria before the merger, the common network with registry authorities from another member states.

iii. Identity of beneficial owners

The identities of the beneficial owners are checked according to the common rules mentioned above. In cases of doubts of their identity, the agency could be supported by other public administration bodies in Bulgaria. It could use also a common network with the registry authorities from other member states. The identities of beneficial owners shall be checked by another institutions, mentioned above, in cases of financial transactions, trade deals etc.

iv. Worker I/C/P arrangements

Usually, the Registry agency checks for worker I/C/P arrangements. The protocol of establishment of EWC or similar body is required.