

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

Expert Questionnaire

Czechia
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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))

Although there is no legal or official definition of “disqualified director”, the concept of disqualified directors exists under Czech law. In certain cases, a member of a statutory body might be disqualified.

According to the Section 63 of the Act No. 90/2012 Coll., on Commercial Companies and Cooperatives (Business Corporations Act)¹, the court may decide that a member of the statutory body of a business corporation is prohibited from holding office as a member of the statutory body of any business corporation for a period of 3 years, if such member has seriously or repeatedly breached his or her duties in the past 3 years. Moreover, the court shall decide on the expulsion of a member of the statutory body if such member has breached his or her duties and these actions contributed to the bankruptcy of the business corporation.

A petition for a decision on the expulsion may be filed by anyone who has an important interest therein; the court can even render a decision ex officio.

If a person breaches the prohibition imposed by an expulsion decision, such person shall be liable for the fulfilment of all obligations of the business corporation arising during the period when the same acted as a member of its statutory body despite the prohibition. The court can repeatedly decide that such person is prohibited from holding the office as a member of the statutory body of any business corporation, this time for a period of 10 years (Section 65 of the Business Corporations Act).

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 disqualified directors.

¹ Act No. 90/2012 Coll., on Commercial Companies and Cooperatives:
<https://www.zakonyprolidi.cz/cs/2012-90>

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

N/A

b. Beneficial Owners

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

The database of beneficial owners is an information system of the public administration, whose administrator is the Ministry of Justice. It is maintained by the courts which have jurisdiction over the registration proceedings (registration courts).

The database can be accessed here: <https://esm.justice.cz/ias/issm/rejstrik>. At present, the data contained in the database are not accessible to the general public.

However, the database of beneficial owners will be significantly amended from 1 June 2021, when the Act No. 37/2021 Coll., on the Database of Beneficial Owners², will become effective. This Act is based on and transposes the recent EU legislation on this topic. Based on this Act, the general public will have online access to the database of beneficial owners and some of its data (name, state of residence, month and year of birth, nationality of beneficial owners and basic information about the facts establishing their position). Also, the Act No. 37/2021 Coll. Introduces new sanctions for infringements of the obligation to register (Sections 55 – 57).

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?

According to the Act No. 37/2021 Coll., the registration is not subject to any checks, so the registration courts depend on a statutory declaration from the company directors. However, the registration of certain companies is automated, as the data from the Commercial Register are copied into the database of beneficial owners. A company shall ask for a modification if the data do not appear to be correct.

A public authority may notify the competent registration court if it becomes aware of a discrepancy in the database during the performance of its activities. The notification must be accompanied by documents demonstrating the discrepancy (Section 42 of the Act No. 37/2021 Coll.).

When it is appropriate for the protection of rights of third parties, the competent registration court starts proceedings on the discrepancy, which may lead to a sanction being imposed on the company concerned (Section 44 of the Act No. 37/2021 Coll.).

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

According to the Section 9 of the Act No. 37/2021 Coll., the company have the obligation to ensure that the data on its beneficial owners are valid and correct. Therefore, after a change

² Act No. 37/2021 Coll., on the Database of Beneficial Owners: <https://www.zakonyprolidi.cz/cs/2021-37>

in ownership or in other relevant information about the beneficial owners, the company must give notice to the competent registration court without undue delay.

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

Government institutions, financial authorities, courts, and law enforcement authorities have unrestricted access to the database of beneficial owners for the purpose of performing their functions.

At present, the general public has no access to the database of beneficial owners. From 1 June 2021, when Act No. 37/2021 Coll. will become effective, the general public will have restricted access to the database. The scope of such access will cover the following data about beneficial owners: name, state of residence, month and year of birth, nationality and basic information about the facts establishing their position.

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?

Czechia has an EU-notified eID scheme based on the electronic national identity card which has the assurance level 'High'.

2) Company registry – transparency, access, cost

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

In Czechia, the Commercial Register (*Obchodní rejstřík*) is maintained by the registration courts. It is administered by the Ministry of Justice. The Commercial Register can be accessed here: <https://or.justice.cz/ias/ui/rejstrik>

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

The Commercial Register is fully digitalized and accessible online to the general public without any restriction.

The foundation of a company cannot be carried out fully digitally, because a foundation legal act (Memorandum of Association / Articles of Association) requires the form of a notarial deed. Also, some other documents necessary for the registration of a newly founded company with the Commercial Register require verified signatures (e.g. sworn statement of members of its statutory body). Although a verified signature can be added digitally, it is not common.

As for subsequent modifications to the entry in the Commercial Register, these can be done online provided that the background documents required for the modification do not require the form of a notarial deed and / or they were converted to the digital form in accordance with the law.

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

The Ministry of Justice may limit or prohibit access to the Commercial Register and its data to any user who sends more than 300 requests per day and / or tries to break the protection of the server or who sends more than 50 requests to be processed within one minute.

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

Yes. Basically, the Commercial Register can be (and in most cases is) searched by entity name, identification number or case number (i.e. number of entry).

However, the search can be further specified by the following criteria: legal form, street, or town.

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

The online access to the Commercial Register is available to the general public without any restrictions. Anyone may consult it and download an officially certified electronic copy of the entry (in PDF), free of charge. Such copy is signed electronically using a qualified system certificate from the relevant registration court.

Anyone can also download any document submitted by any registered company and published in a special section of the Commercial Register (e.g. foundation legal acts and their amendments, annual accounts, annual reports), free of charge.

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

There is not.

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?

Companies with the SE legal form registered in Czechia are part of the Commercial Register, therefore it is possible to search for them there. However, there is not any specific search function for that.

Regarding cross-border mergers, companies involved in CBM have the obligation to publish the draft terms of merger in the Commercial Register which can be accessed and downloaded, and also the obligation to publish the notice of planned cross-border merger in Commercial Journal (Section 33 of the Act No. 125/2008 Coll., on Transformation of Commercial Companies and Cooperatives³).

³ Act No. 125/2008 Coll., on Transformation of Commercial Companies and Cooperatives:
<https://www.zakonyprolidi.cz/cs/2008-125>

3) Firm foundations

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

A new company can be registered either by a competent registration court (Section 75 of the Act No. 304/2013 Coll., on Public Registers)⁴, i.e. the regional court in whose district would be located the registered office of a newly founded company, or by a notary (Section 108 of the Act No. 304/2013 Coll.).

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

Under Czech law, a commercial company is founded when its founders draw up a foundation legal act (Memorandum of Association / Articles of Association) which requires the form of a notarial deed. It cannot be carried out digitally, for it needs to be done in person (in the presence of founders or proxy holders).

After that, the company needs to be registered in the Commercial Register within 6 months of its foundation (Section 9 of the Business Corporations Act). Before the registration in the Commercial Register, there are other steps that need to be taken, in particular:

- obtaining the company's business licence;
- decision on the location of the company's registered office; and
- fulfilment of the contribution obligation of the founders.

Also, some other documents necessary for the registration of a newly founded company to the Commercial Register require verified signatures (e.g. sworn statement of members of its statutory body). Although a verified signature can be added digitally, it is not common.

Provided that all the previous steps were taken and all the documents necessary for the registration were drafted and signed, the process of registration of a newly founded company at the Commercial Register could be completed either by the notary, who has direct online access to the Commercial Register, or by the registration court.

The latter option requires the completion of a special registration form, which is accessible online, and its delivery, together with all background documents, to the registration court. If all the background documents are converted to the digital form in accordance with the law, it is possible to submit the registration application online.

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

For the purposes of foundation of a company, during the drawing up of a foundation legal act, the notary verifies the identity of founders and/or proxy holders. The proxy requires a verified

⁴ Act No. 304/2013 Coll., on Public Registers: <https://www.zakonyprolidi.cz/cs/2013-304>

signature, so the identity of founders is always checked. The intensity of the check done by the notary at this stage may vary (levels of check are outlined in more detail below).

For the purposes of registration at the Commercial Register, the registration authority (notary or registration court) checks the criminal record of founders, the validity of the address of the company's office and the authenticity of all submitted documents. These need to be originals, verified copies or their authorized conversions; some of them also require verified signatures.

ii. By notaries

There are four levels of checks done by the notary regarding the identity of founders, proxy holders and/or beneficial owners:

Basic identification of the client

While founding a company, notaries have the obligation to identify founders. A natural person can be identified by a valid identity card (or other identity document). A legal person can be identified by its extract from the Commercial Register (Section 64 of the Act No. 358/1992 Coll., on Notaries⁵).

Further identification of the client

If the activity concerns more than EUR 1.000, anti-money laundering provisions apply. The client is obliged to provide necessary information for the identification. If the notary has a suspicion that the client does not act in his or her own name, the notary shall ask the client to present an authorisation that he or she may act on behalf of another person (Section 8 of the Act No. 253/2008 Coll., on anti-money laundering⁶).

Check on the beneficial owner

The notary checks the beneficial owner of the legal person, if the activity concerns more than EUR 15.000, if the client is deemed to be a politically exposed person, and in some other cases (Section 9 of the Act No. 253/2008 Coll.).

Strengthened check on the beneficial owner and identification

If either the client, the activity, or the commercial relationship represents a high risk of money laundering, the law requires the verification of the authenticity of documents and information from multiple credible sources, as well as the acquisition of further information on the beneficial owner (Section 9a of the Act No. 253/2008 Coll.).

iii. By “facilitator” companies (foundation agents)

There are some “facilitator” companies in Czechia that can assist with a creation of the basic forms of commercial companies, but they are not specifically regulated by the law. Therefore, there are no special anti-abuse requirements for these companies.

⁵ Act No. 358/1992 Coll., on Notaries: <https://www.zakonyprolidi.cz/cs/1992-358>

⁶ Act No. 253/2008 Coll., on anti-money laundering: <https://www.zakonyprolidi.cz/cs/2008-253>

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)

Under Czech law, pre-merger certificates for cross-border mergers (CBMs) are issued by notaries upon request by a Czech company involved in CBM. In the pre-merger certificate, the notary certifies that such Czech company has fulfilled all legal requirements for a CBM (Section 59x of the Act No. 125/2008 Coll.).

In case of an inbound CBM, the notary also issues the Certificate for Registration to the Commercial Register certifying the fulfilment of all legal requirements for the registration (Section 59z of the Act No. 125/2008 Coll.).

In case of large-scale merges, there is a special requirement for authorisation issued by the Office for the Protection of Competition (*Úřad pro ochranu hospodářské soutěže*; the official website: <https://www.uohs.cz/en/homepage.html>). This requirement applies when:

- I. the net annual turnover of all competitors reached approx. EUR 55 million on the Czech market and at least two of them reached the net annual turnover of approx. EUR 9,5 million on the Czech market each; or
- II. the net annual turnover of one of the competitors reached approx. EUR 55 million on the Czech market and the net annual turnover of another competitor reached approx. EUR 55 million on the global market (Section 13 of the Act No. 143/2001 Coll., on Protection of Competition).⁷

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

The **Notary** is a natural person entrusted with the notarial office. A person can be appointed a notary if he or she has full legal capacity, have obtained a university degree in law, have no criminal record, have completed at least five years of notarial working experience, and have passed a notarial exam. In Czechia, there are a limited number of notaries.

The **Office for the Protection of Competition**, established by the Act No. 143/2001 Coll., is the central authority of state administration responsible for creating conditions that favour and protect competition, supervision over public procurement and consultation and monitoring in relation to the provision of state aid. Within the Office, there is a special Mergers Department composed of lawyers experienced in this field of law.

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

i. Purpose of reorganization

Under Czech law, the statutory body of every company involved in the merger shall draw up a detailed report on the merger, including its purpose (Section 24 of the Act No. 125/2008 Coll.). In the case of large-scale mergers (see above), the Office for the Protection of Competition examines the proposed merger from the perspective of maintaining and developing effective

⁷ Act No. 143/2001 Coll., on Protection of Competition: <https://www.zakonyprolidi.cz/cs/2001-143>

competition and its potential impact on the national market. The aim is to prevent the merger from establishing a dominant position on the market.

ii. Background check on directors

None.

iii. Identity of beneficial owners

None.

iv. Worker I/C/P arrangements

The draft terms of merger shall indicate information on the procedure to establish rules for the involvement of employees in the acquiring company and expected implications of the proposed CBM for employees (Section 191 of the Act No. 125/2008 Coll.).

The manner and the extent of involvement of employees must be approved, either together with the draft terms of merger or separately, by the general meeting of every Czech company involved in the CBM. Such approval requires the form of a notarial deed, so it is the notary who checks that it has been carried out properly (Section 202 of the Act No. 125/2008 Coll.).