

Article 72(1)(e) and Annex XVII CPR

Context

Article 72(1)(e) and Annex XVII CPR require the MAs to collect data (i.e., first/ last name, date of birth person and VAT or tax identification number) about beneficial owners (i.e., the person who ultimately owns or controls a company) at 2 levels:

- beneficial owners behind the partner organisations (data field 3);
- beneficial owners behind the contractors contracted by the partner organisations to implement the project when the public procurement procedures are above EU-thresholds (data field 23).

Why are we discussing this?

There are 2 issues with this requirement.

1. This requirement applies irrespective of whether the expenditure is based on real costs or SCOs.

- *BUT it's against the principles of SCOs and simplification attempts. As when SCOs are used, management verifications are limited to verifying that the conditions for reimbursement are met and that the operation complied with the applicable legislation (and not around expenditures and the collection of data is linked to expenditure).*
- *To comprehensively identify awarded public contracts, the corresponding expenditure must be identified, which again goes against the principle that management verifications should not cover the underlying costs or specific procurement procedures.*

Member States' plea: the requirement to record Annex XVII beneficial owner data for above EU threshold contracts and sub-contractor should NOT apply to expenditures reimbursed on the basis of SCOs.

2. The EC communicated that it is not enough to rely on the data from the national registers but the programmes are expected to have the data directly stored and available in the programme's monitoring system (there is a data flow between the programme's monitoring system and national registers or partners have to provide the information about their own and their contractors' beneficial owners directly in the programme's monitoring system).

Such interpretation caused a wave of reaction by the MS. The solution proposed by Ireland (in the context of real costs) is strongly supported by Interact and other Member States; i.e.:

1. *"MAs require the beneficiaries to provide their unique identification number in the application form and will do the same for their contracts when it comes to reporting expenditure.*
2. *MAs record these unique identification numbers on the ICT system.*
3. *For the information about the beneficial owners, MAs rely on the information stored in the national registers based on the unique reference numbers, and access this through third party professional services firms, **if and when a need arises.***
4. *MAs do not store the data on beneficial owners on our ICT systems.*
5. ***MAs can share the company unique reference numbers with data mining tools, such as ARACHNE, and these tools can access any national registers that are available.***
6. *Contractor and sub-contractor data is NOT required for expenditure using SCOs, in particular SCOs using flat rates for indirect costs."*

For information, in Jems a similar solution is proposed – in the contracting section, for each partner it is possible to add a field on ultimate beneficial owners (it's not mandatory by default). If it is added, one needs to add at least the TAX or other ID number so that the programme can link the beneficial owner

to the national register/ Arachne/ other EU database (or if a programme wants to actively built a link to a national database which is possible if programmes want too). Jems allows the data to be recorded whenever programmes want too. It is nowhere by the system defined that this data is mandatory, the fields are there, the programmes can do what they want with it. Programmes can decide to make the fields mandatory for certain thresholds using the system's pre-submission check plugin and that can even be set by each programme differently.

Update of the information note on collecting of data (after CPR expert group meeting, end of April):
“The managing authorities are therefore encouraged to contact the authorities in the Member States which handle access to the central registers on beneficial owners and to ensure access as appropriate and a continuous use of the data stored in such registers, in order to comply with their obligations under Articles 69(2), 72(1)(e) and Annex XVII of the CPR.”

State of play after the last CPR expert group meeting (26-27 April)

Discussion on this topic is still ongoing within the EC, the EC will report on the outcomes at the next CPR Expert Group meeting (19-20 June 2023).

Discuss the topic:

- Any other issues/ questions about Article 72(1)(e) andor Annex XVII CPR?
- How are you going to address the topic in your programme/ in your monitoring system (if different to Jems)? How will you communicate the information to beneficiaries?