

ANNA ĆWIAKKAŁA-MAŁYS

ORCID: 0000-0001-9812-2118

Uniwersytet Wrocławski

IWONA PIOTROWSKA*

ORCID: 0000-0002-8361-4010

Ministerstwo Finansów

VERIFICATION OF A FOREIGN BUSINESS PARTNER BASED ON EXAMPLES OF CHOSEN PUBLIC OPEN-SOURCE REGISTERS IN THE CONTEXT OF DUE DILIGENCE

Abstract: Verification of foreign business partners that are registered in European Union is possible through integrated commercial register of member states. The community trade register can be accessed via free service on the “e-Justice” website. The portals also allows one to verify the insolvency and bankruptcy register or the register of actual beneficial owners. The scope of presented information is determined by internal law of each member state. Thus there is a lack of uniformity in presenting business information regarding registered entities in individual countries. This article presents and compares internal solutions in access to public information on companies in three countries from the former Easter Block, i.e. so-called post-transformation countries, that is the Czech Republic, the Slovak Republic and Bulgaria.

Keywords: public information databases, commercial register, insolvency register, beneficial ownership register

INTRODUCTION

The due diligence criteria developed by the Ministry of Finance, in principle, apply to local business entities and transactions between them¹. However, the principle of formal verification (so-called formal criteria) of counterparties can be

* The position presented in the publication is not the opinion of the Ministry of Finance, but solely that of the author as a private individual.

¹ More in *Metodyka w zakresie oceny dochowania należytej staranności przez nabywców towarów w transakcjach krajowych* (wersja zaktualizowana), Ministerstwo Finansów, <https://www.>

applied to foreign business partners². The access to integrated community trade register is possible online via a free service on the “e-Justice” portal. Open access to administrative databases and registers, including the commercial register, the insolvency and bankruptcy register or actual beneficiary owners, is becoming a standard in e-administration in majority of European Union countries.

The aim of this article is to present existing solutions in terms of accessibility to company information at two levels: the EU level and in selected European countries. The registers of three post-transformation countries such as the Czech Republic, the Slovak Republic and Bulgaria were chosen for comparison.

“E-JUSTICE” PORTAL (E-JUSTICE.EUROPA.EU)

The European e-Justice Portal (“e-Justice”)³ is a universal and electronic form of access to information on commercial register on the EU and member states level⁴. The access to information available on “e-Justice” is free of charge⁵ and does not require registration or login⁶.

The e-justice.europa.eu portal provides basic information on business entities from EU member countries as well as links to national registers⁷. In accordance with the Directive 2012/17/UE⁸, the portal is intended to provide information from registers of all EU member countries as well as Iceland, Lichtenstein and Norway.

podatki.gov.pl/media/7236/aktualizacja-metodyki-w-zakresie-oceny-dochowania-nalezytej-staranosci-przez-nabywcow-towarow-w-transakcjach-krajowych.pdf (accessed: 26.02.2023).

² More in A. Cwiąkała-Malys, I. Piotrowska, *Elementy białego wywiadu na usługach administracji podatkowej w walce z oszustwami podatkowymi. Prawno-finansowe systemy funkcjonowania wybranych jednostek organizacyjnych*, Wrocław 2021, <https://bibliotekacyfrowa.pl/publication/142667> (accessed: 2.06.2023), p. 28.

³ Polish version of the portal; The European e-Justice Portal: <https://e-justice.europa.eu/home?action=home&plang=pl>. Website, <https://e-justice.europa.eu/> available in 23 languages, including Polish.

⁴ https://e-justice.europa.eu/514/PL/registers__business_insolvency_amp_land (accessed: 27.04.2023).

⁵ In case of documents and detailed data, for which member states charge fees, which are available via “e-Justice”, BRIS allows the users to pay online.

⁶ It is possible to share selected information from national registers with and without login option by a registered user. The only requirement is to indicate an e-mail address in order to transfer information about the acceptance of “the order” to access the data from the national registers. Documents that are sent via electronic mail are available for download for 6 days after the delivery. Declared time of submitting the documents by the national registry office is up to 14 days. https://e-justice.europa.eu/489/PL/business_registers__search_for_a_company_in_the_eu?EUROPEAN_UNION&action=maximize&idSubpage=1&member=1 (accessed: 27.04.2023).

⁷ https://e-justice.europa.eu/106/PL/business_registers_in_eu_countries (accessed: 27.04.2023).

⁸ Directive of the European Parliament and the Council 2012/17/EU dated 13 June 2012 amending the Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council on the integration of central, commercial and companies

“Business register — search for companies in EU” is a section where “e-Justice” portal allows to search and access information on companies from national commercial registers⁹. Currently, information from 29 European countries is available through “e-Justice” portal¹⁰. To facilitate this, “a company finder” has been launched on a portal.

The main search criterion is a company name (*Company name*) or its registration number (or subsidiary number) in the national register (*Company registration number*). Second vital, but not obligatory, parameter is a selection of the country of registration of a company. The “find company service” allows to find companies without indicating a particular country. It is then possible to (by default) choose “select all” option.

The obtained results allow to, first of all, confirm the existence of the company (with the given name), its number in the national commercial register, date of establishment/registration of a company, its status (active, de-registered), its type (legal form), the seat of the company, identifier of the business register and the European unique identifier (The European Unique Identifier — EUID)¹¹, and information on documents submitted by the company with regards to its activity. In case of a merger there is also the identifier of a merged company indicated. The legal form of a company is stated in the original (national) language, and a short description of a legal form is available in all official languages of the European Union¹².

The “e-Justice” portal allows to find insolvent entities (natural and legal persons) from the whole European Union in accordance with Article 25 of Regulation (EU) 2015/848 of the European Parliament and of the Council. Currently, information¹³ from the insolvency registers of 18 European countries such as Germany, Estonia, Ireland, Spain, Croatia, France, Cyprus, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Poland, Romania, Slovakia, Finland and Sweden is available. However, this does not mean that the access to the bankruptcy registers of remaining countries is impossible but only that they have not been integrated into the e-justice.europa.eu website yet.

register, <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:32012L0017&from=GA> (accessed: 27.04.2023).

⁹ https://e-justice.europa.eu/489/PL/business_registers__search_for_a_company_in_the_eu (accessed: 27.04.2023).

¹⁰ The integration of business registers in all EU Member States (Business Register Integration System, for short: BRIS) took place in June 2017.

¹¹ An identification code that allows companies and their branches in other Member States to be identified, consisting of: a country code, a company identification code or number and a registration number. The EUID facilitates the exchange of information and communication between company registration systems.

¹² A. Cwiąkała-Małys, I. Piotrowska, *Przeciwdziałanie szarej strefie w Polsce...*, <https://bibliotekacyfrowa.pl/publication/142667> (accessed: 2.06.2023), p. 170.

¹³ Search engine available on https://e-justice.europa.eu/246/PL/bankruptcy_amp_insolvency_registers__search_for_insolvent_debtors_in_the_eu (accessed: 10.05.2023).

The e-justice.europa.eu website also provides information on a system of integration of actual beneficiary ownership (The Beneficial Ownership Registers Interconnection System, for short: BORIS), which is “a tool connecting central national registers containing information on actual beneficiaries of companies and other legal persons, trusts and other types of legal arrangements”¹⁴.

The verdict of the Court of Justice of 22 November 2022, in the joined cases WM (C-37/20) and Sovim SA (C-601/20) v Luxembourg Business Registers¹⁵, has invalidated the obligation introduced by the Directive 2018/843¹⁶ amending Directive 2015/849¹⁷, for member states to make it possible to any person to access all information about actual beneficiaries of legal persons, stored in central registers. The Court concluded that unrestricted public access is neither strictly necessary for the prevention of money laundering and financing terrorism, nor proportionate, that is why serious interference with fundamental rights cannot be justified, specifically in the right to respect the private life and the protection of personal data, contained in Articles 7 and 8 of the Charter¹⁸.

¹⁴ https://e-justice.europa.eu/514/PL/registers__business__insolvency__amp__land (accessed: 3.05.2023).

¹⁵ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=268059&pageIndex=0&doclang=PL&mode=req&dir=&occ=first&part=1&cid=568304> (accessed: 3.05.2023).

¹⁶ Directive of the European Parliament and the Council (EU) 2018/843 dated 30 May 2018 amending Directive (EU) 2015/849 on the prevention on the use of financial system for the purpose of money laundering or terrorists financing and amending Directives 2009/138/EC and 2013/36/EU, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=celex%3A32018L0843> (accessed: 3.05.2023).

¹⁷ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC: “(14) ... Member states should therefore ensure that entities registered in their territory, under national law, are provided with and possess proper, adequate, and updated information about actual beneficiaries, in addition to basic information such as the company name, the address and confirmation of registration and legal ownership, For better transparency, in order to fight with inappropriate use of legal entities, member states should ensure that information about beneficiaries is stored in a proper way in a central register, located outside main office fully complying with the Union law. For this purpose member states can use central database where the information about actual beneficiaries is gathered or the business register or other central register. Member states may decide that obliged entities are responsible for completing the register. Member states should ensure that the information is available, in all cases, to competent authorities and units of financial analysis and provide them to the obliged entities at the time they take customer due diligence measures. Member States should also ensure that other persons who can demonstrate a legitimate interest with reference to information relating to money laundering, terrorist financing and related predicate offences — such as corruption, tax offences and fraud — are given access to information on beneficiaries, while respecting data protection principles. People demonstrating a legitimate interest should have access to information in the nature and scale of their interest, including the approximate value of that interest”, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=celex%3A32015L0849> (accessed: 3.05.2023).

¹⁸ https://e-justice.europa.eu/38576/PL/beneficial_ownership_registers__search_for_beneficial_ownership_information (accessed: 3.06.2023).

The Court of Justice adds that “the optional provisions which allow Member States to make information on beneficial ownership available on condition of on-line registration and to provide, in exceptional circumstances, for an exemption from access to that information by the general public, respectively, are not, in themselves, capable of demonstrating either a proper balance between the objective of general interest pursued and the fundamental rights enshrined in Articles 7 and 8 of the Charter, or the existence of sufficient safeguards enabling data subjects to protect their personal data effectively against the risks of abuse”¹⁹.

As it was indicated on the portal page, the CJEU judgement “caused, that a system of integration of actual beneficiary registers (BORIS) no longer guarantees public access to information stored in national registers of actual beneficiaries, but the Commission will still continue to work on ensuring access for the appropriate authorities and mandatory entities”²⁰. Additionally, the EC ensures that legal and technical possibilities to implement public access subject to proving legitimate interest will be examined²¹.

In this transitional period, individual national registers of actual beneficiaries can be accessed through the national registers following the rules applicable in each member country²².

At the moment²³, public access to beneficiary registers in²⁴: the Netherlands (KvK), Luxembourg (RBE), Germany (Transparenzregister), Austria (BORA), Ireland (RBO), Malta (MBR), Cyprus (ROC) is suspended.

COMMERCIAL REGISTERS, INSOLVENCY AND ACTUAL BENEFICIAL OWNERS REGISTERS

Some of the European countries make available, within the framework of common online services, search tools that enable verification of domestic taxpayers with regard to registration data, information on the VAT registration status, reliability in terms of fulfilling tax payers obligation, possession of licences or permissions to perform licenced activity. The following part presents chosen solutions

¹⁹ Press release No 188/22 22 November 2022, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-11/cp220188en.pdf>, (accessed: 3.06.2023), p. 2.

²⁰ https://e-justice.europa.eu/38576/PL/beneficial_ownership_registers__search_for_beneficial_ownership_information (accessed: 3.06.2023).

²¹ *Ibidem*.

²² A list of websites of the national registers of actual beneficiaries of member states is available at https://e-justice.europa.eu/38576/PL/beneficial_ownership_registers__search_for_beneficial_ownership_information?action=maximizeMS&clang=pl&idSubpage=1&member=1 (accessed: 3.06.2023).

²³ As of 6.06.2023.

²⁴ Further countries blocking an access to the Actual Register of Beneficiaries, <https://spolki.blog/zawieszony-dostep-do-rejestrów-beneficjentów-w-ue/> (accessed: 6.06.2023).

for the availability of online services that enables verification of taxpayers in three post-transformation countries such as: the Czech Republic, The Slovak Republic and Bulgaria²⁵.

THE CZECH REPUBLIC

The Czech Portál živnostenského podnikání (for short: RŽP) is an official online business portal through which information from the Czech trade register is accessible in a public, open and free service. An institution that is responsible making the information available is the Czech Ministry of Industry and Trade which provides online service via RŽP website: www.rzp.cz/portal/cs/²⁶.

Searching information about an entity (*Vyhledání subjektu*)²⁷ is possible on the basis of criterion of the name of the entity (*subjekt*) or its beginning and its identification number IČO (*Identifikační Číslo Organizace*)²⁸. For natural persons, who are related to an economic entity because of their role (function) in a given time, search criterion can be the name and surname and the date of birth. Information regarding the searched entity can be viewed online free of charge according to the actual state (*Údaje bez historie*) and in “full” version, with historical changes (*Údaje s historií*).

Information regarding the entity can be downloaded in an electronic version free of charge (extract in PDF file format)²⁹ but only according to the current state (*pouze platné*).

Register of Business Activities³⁰ (*Obchodní rejstřík*), Insolvency Register³¹ (*Insolvenční rejstřík*) and Actual Beneficiaries Register³² (*Evidence skutečných majitelů*) in the Czech Republic are managed by The Ministry of Justice and the access is possible via website www.justice.cz³³ and the internet portal portal.justice.cz³⁴.

In the public register of economic activities³⁵ (*Veřejný rejstřík — Obchodní rejstřík*) information about entities can be viewed free of charge in an online version

²⁵ More about commercial registers e.g. Estonia, Hungary, Latvia in: A. Ćwikała-Malys, I. Piotrowska, *Weryfikacja zagranicznego kontrahenta a proces zachowania należytej staranności*, unpublished, 2023.

²⁶ English version: <https://www.rzp.cz/portal/en/> (accessed: 29.04.2023).

²⁷ https://www.rzp.cz/cgi-bin/aps_cacheWEB.sh?VSS_SERV=ZVWSBJFND (accessed: 29.04.2023).

²⁸ IČO is an identification numer of the entity given by Czech Statistical Office (Český statistický úřad).

²⁹ Service available on *Elektronický výpis z ŽR*.

³⁰ <https://or.justice.cz/ias/ui/rejstrik>.

³¹ <https://isir.justice.cz/isir/common/index.do>.

³² <https://esm.justice.cz/ias/issm/rejstrik>.

³³ <https://www.justice.cz>.

³⁴ <http://portal.justice.cz>.

³⁵ <https://or.justice.cz/ias/ui/rejstrik> (accessed: 29.04.2023).

according to the current state (*Výpis platných*) and in “full” version, including historical changes (*Úplný výpis*).

It is also possible to download an electronic version (extract in PDF file version)³⁶ regarding the given entity both in the current version and with historical changes.

Public access to the Czech Insolvency Register³⁷ (*Insolvenční rejstřík*) allows to view information about economic entities and individuals free of charge in an online version. In the register there is only information about debtholders, against whom the insolvency procedures were opened after 1.01.2008 and who were not removed from the register according to Article 425 of the Insolvency Act³⁸.

The Czech *Actual Beneficiary Register*³⁹ (*Evidence skutečných majitelů*) allows to search information about economic entities in an online version free of charge. The register provides data regarding the surname, country of residence, year and month of birth and nationality of the actual beneficiary of a legal person, as well as the nature of beneficiary position and size of the beneficial owner's shareholding, if the shareholding determines its status⁴⁰.

The current Czech Actual Beneficiary Register was established by the Act No. 37/2021 on the register of actual beneficiaries (zákonem č. 37/2021 Sb., o evidenci skutečných majitelů, in short: ZESM) and replaced or amended actual beneficiaries register that was in accordance with the Act No. 304/2013. The data entered according to regulations that were binding until 31 May 2021 in the old registers have been transferred to the present records.

Information on the verified entities, both in the insolvency register and in the actual beneficiaries register, can be downloaded in an electronic, free of charge version (extract in the PDF file format)⁴¹.

THE SLOVAK REPUBLIC

The Slovak Commercial Register (*Obchodný register SR*) is managed by the Ministry of Justice (Ministerstvo spravodlivosti SR)⁴². The Commercial Register in Slovak and English version is accessible on the website www.orsr.sk⁴³.

³⁶ Service available on *Stáhnout PDF verzi výpisu*.

³⁷ <https://isir.justice.cz/isir/common/index.do> (accessed: 29.04.2023).

³⁸ Debtors against whom insolvency or arrangement proceedings were initiated before 1.01.2008, can be found in the Insolvency Register available on the website upadci.justice.cz, https://upadci.justice.cz/p_i8.php.

³⁹ <https://esm.justice.cz/ias/issm/rejstrik>.

⁴⁰ <https://esm.justice.cz/ias/issm/napoveda;jsessionid=CS2n+vbJ3yGAm-EARxa9o28y> (accessed: 4.06.2023).

⁴¹ Service available in *Stáhnout PDF verzi výpisu*.

⁴² The Ministry of Justice of the Slovak Republic publishes Commercial Journal (Economic Journal). Online access service is available on obchodnyvestnik.justice.gov.sk. It is also possible to search online entries regarding business entities and to generate a free electronic copy.

⁴³ <https://www.orsr.sk/> (accessed: 24.04.2023).

Access to information from the Slovak register is open to public and is free of charge. Searching for information is possible based on (service *Vyhľadávanie podľa*): name of the entity (*obchodného mena*) and an identification number (*identifikačného čísla*, in short: *IC*). Additionally, it is possible to search for connections in the business register for a natural person (*priezviska a mena osoby*), who is related to an economic entity due to his/her role (function) in a given unit, where the criterion can be the name or surname. Viewing the information from the online register may include actual data (*Aktuálny*) or full data, that is, including historical data (*Úplný*).

Slovakia also gives an access to the Register of Partners from the Public Sector (*Register partnerov verejného sektora*, in short: RPVS) on the website rpvs.gov.sk⁴⁴. RPVS is managed only in an electronic version and information that can be found there are legally binding, which means that the data released in RPVS is valid for all and there is no need to prove it in front of public authorities, and the public authority has the option to review the data.

RPVS has taken over the management of the register of end users of benefits that was maintained by the Slovak Procurement Office until 31.01.2017. People entered in the register of the end users are considered to be registered in RPVS. However, these people were obliged to verify the identity of end users of benefits according to new regulations by 31.07.2017. Failure to comply with this obligation in a given time resulted in automatic deletion from RPVS, meaning that people who were deleted from the records could not apply for cash or other benefits from the public sector⁴⁵.

BULGARIA

The Bulgarian Register of Business Activity and Register of Non-Profit Organizations (*Търговски регистър и регистър на юридическите лица с нестопанска цел*, in short: *ТПРЮЛНЦ* — translation *TRRJULNC*) is managed by the Registry Agency (*Агенция по вписванията*) under the Ministry of Justice. This Agency provides free of charge and open access to data and parts of the documents via portal of electronic services portal.registryagency.bg⁴⁶.

⁴⁴ A natural person is a public sector partner, an individual (entrepreneur) and a legal entity that receives a financial or property payment from the state, local government and other public sector entities above the limit set by law. Also subject to registration in the RPVS are persons who conclude a contract, framework agreement or concession agreement pursuant to public procurement regulations, service providers, a person to whom a claim against the state or public sector entities has been transferred or otherwise assigned. Registration in the RPVS is voluntary and can also be made by individuals, natural persons (entrepreneurs) and legal entities that are not public sector partners. Register website: <https://rpvs.gov.sk/rpvs/> (accessed: 24.04.2023).

⁴⁵ <https://www.justice.gov.sk/sluzby/register-partnerov-verejneho-sektora/> (accessed: 24.04.2023).

⁴⁶ <https://portal.registryagency.bg/> (accessed: 5.05.2023).

Companies, branches of foreign companies, non-profit legal persons and branches of non-profit legal persons (i.e. non-profit organizations) are subject to registration in the business register and in the register of non-profit organization ТРПЮЛНЦ. The ТРПЮЛНЦ register is maintained in an electronic form and is available to everyone. The access to the database of the Registry Agency is free of charge. The main criterion of searching for an economic entity on the portal⁴⁷ is an identification number (ЕИК, ПИК or БУЛСТАТ, Eng. UIC, PIC, BULSTAT) or the name of the entity (*Фирма/Наименование*).

The Bulgarian National Fiscal Agency (*Национална Агенция за Приходите*, in short: *НАП*) manages taxes and social security contributions, other public and private state receivables and controls gambling activities. On the portal website portal.nra.bg⁴⁸ НАП provides service for checking if the entity was on the list of debtors (legal and natural persons) with overdue public liabilities over 5000 BGN in accordance with Article 182(3)(2) ДОРС. One of the criteria for legal persons is number ЕИК or БУЛСТАТ (Eng. UIC, BULSTAT) and the name of the entity (or part of it). For natural persons a criterion for verification is the following number ЕИК or БУЛСТАТ and name/surname.

The Register of Insolvency, i.e. “Information System for Insolvency Proceedings” (*Информационна система за производство по несъстоятелност*) is managed by Bulgarian Ministry of Justice. An online access is possible via website ispn.mjs.bg⁴⁹ free of charge. One of the criteria to search for an entity in the insolvency register for legal persons is the name of the entity or an identification number ЕИК or БУЛСТАТ.

The Bulgarian tax administration НАП within the scope of free public services makes it possible to check information in the records on:

— online shop registered in the tax office — the search engine allows to browse a public list of e-shops⁵⁰ (e.g. by e-shop name, address or web platform address);

— websites through which gambling is organized — the search engine allows to search the public list of websites⁵¹ — a list of websites through which gambling is organized by persons without a licence according to Gambling Act can be downloaded in PDF file;

— entities conducting currency exchange activities⁵² — a list of the entities can be downloaded in the XLS format.

⁴⁷ <https://portal.registryagency.bg/CR/reports/VerificationPersonOrg> (accessed: 5.05.2023).

⁴⁸ <https://portal.nra.bg/embed/enf-app-list/main.html> (accessed: 5.05.2023).

⁴⁹ <https://ispn.mjs.bg/MJ/ispn.nsf/indexPublic.xsp?page=searchDeb> (accessed: 5.05.2023).

⁵⁰ Search engine available on <https://portal.nra.bg/home.html#/goto:dec2009.REGRE-PESHOP.home>.

⁵¹ Search engine available on <https://nra.bg/wps/portal/nra/registers-i-spisuci/Spisuci/page.Spisuci-na-internet-stranicite-chrez-koito-se-organizirat-hazarni-igri>.

⁵² Register available on https://nraapp02.nra.bg/exchreport/faces/officelist.jspx?_afzLoop=5886077224955000&_afzWindowMode=0&_adf.ctrl-state=149je2ed5o_4.

Additionally you can also check:

— virtual currency exchangers⁵³ — public register of those who perform virtual currencies exchange which are recognized as unsecure in gold and providers of custodial services, this can be downloaded in XLS format;

— people exempted from the security when purchasing liquid fuels (Article 176c(15) on VAT)⁵⁴.

CONCLUSIONS

Providing access to information from business and commercial registers through the European portal “e-Justice” is an important element in the integration of e-services of administration at the EU level. Unification of the scope of information presented in an open and free form is still a big problem. The main obstacles are internal laws (procedures) of member states. The biggest obstacle to the integration of business information is the withdrawal of public (open) information presentation about beneficiaries by some member states.

It is interesting that post-transformation countries that were presented — The Czech Republic, The Slovak Republic and Bulgaria — present their registration information from their own business registers to a relatively wide extent.

The current solutions presented on the example of the three European countries indicated that it is possible to have better accessibility to information also form tax administration databases. It would contribute — at least partially — to reducing the risk of doing business or starting a business with foreign contractors that could be fake entities or those generating (tax) debts.

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⁵³ Register available on <https://nra.bg/wps/portal/nra/registers-i-spisuci/registers/page.virtualni.valuti>.

⁵⁴ Register available on <https://portal.nra.bg/home.html#/goto:dec2009.REGREP176.home>.

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