



Finding a balance between transparency and privacy

A study of the impact of the UBO register on high-net-worth families and family businesses in twelve European countries

December 2015



The UBO register at a glance

Although there is still a great deal of uncertainty surrounding the precise details of the UBO register, our study among twelve countries shows that the introduction of this register will have an impact on the privacy and feelings of security of UBOs. The national legislator must take these concerns into account in the weighing up of the public demand for transparency and the right of the individual to privacy when introducing the register. We must therefore follow the developments surrounding the introduction of this register carefully.

- 1** The fourth Anti-Money Laundering Directive aims to fight tax evasion, money laundering and terrorist financing. More transparency is seen as an important factor in solving this problem and the UBO register as an important instrument, a register for ultimate beneficial owners. EU member states have some room for interpretation on shaping the UBO-register. The deadline for implementation is 27 June 2017.



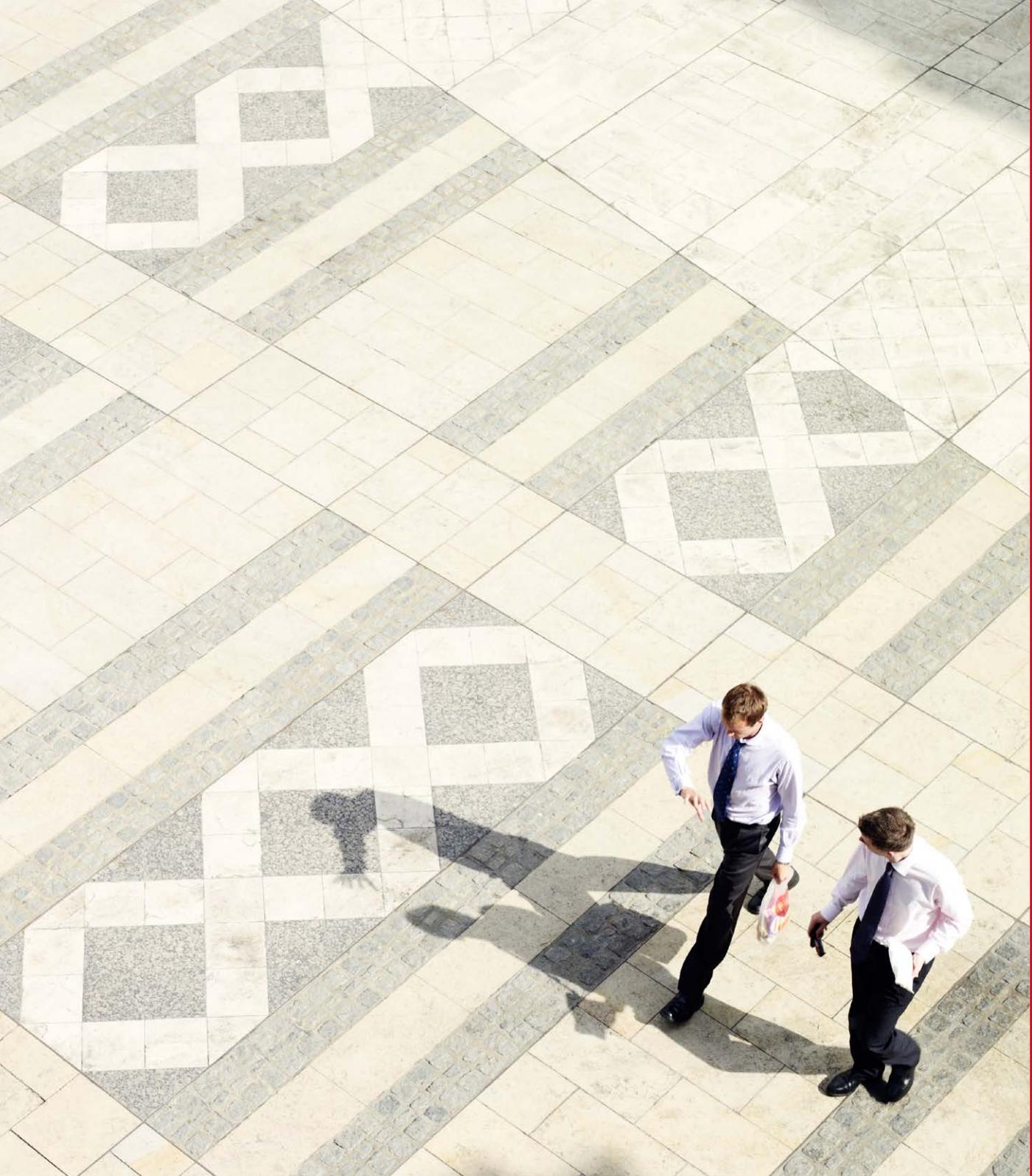
- 2** Every natural person who has control over more than 25% of the assets of a legal person or a trust qualifies as a UBO (Ultimate Beneficial Owner).



- 4** The UBO register balances between transparency and the right to privacy. It is highly important that the right balance is found.

- 3** The UBO register is accessible to investigative services, specific professional groups and third parties with a legitimate interest. One of the questions is whether journalists have a legitimate interest.





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Foreword

This publication 'Finding a balance between transparency and privacy' presents the results of our study of the impact of the UBO register on high-net-worth families and family businesses in twelve European countries. Family businesses form the backbone of the national economies of all of these countries. In this study, we have identified and analysed the existing and future registration arrangements for you. We hope that this publication will contribute to a thorough, substantive discussion on the tension between transparency and privacy.

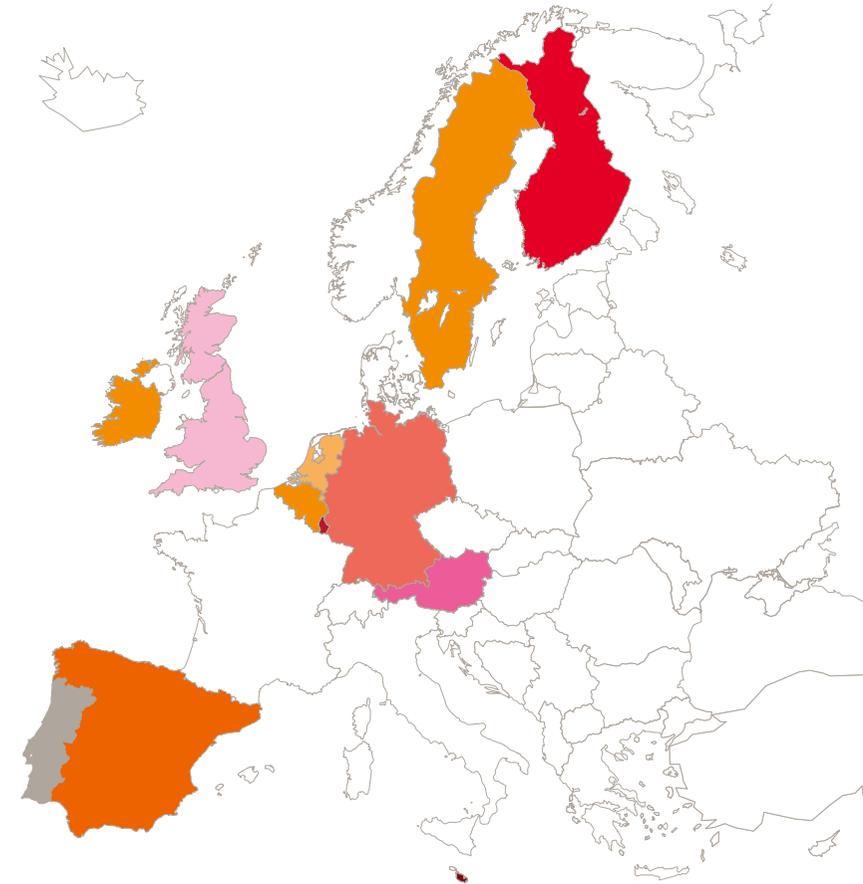
The UBO register is coming – it is a fact. UBO stands for ‘ultimate beneficial owner’, the ultimate owner or beneficiary of, for example, a company or a trust. A UBO is any natural person who has direct or indirect control over more than 25%.

The mandatory introduction of this register arises from the fourth Anti-Money Laundering Directive (AMLD IV), which the European Parliament adopted on 20 May 2015. The Netherlands must transpose this Directive into its national legislation by 27 June 2017. The objective of the Directive is - by means of transparency - to fight tax evasion, money laundering and terrorist financing. This is a laudable objective, but the question arises whether the UBO register, as prescribed in the Directive, is the right instrument to achieve it. Or will the UBO register be a blow to the right to privacy? And is there a risk that the register will have the opposite effect to what was intended?

Family businesses are the backbone of the European economy

Family businesses make an extraordinarily significant contribution to the European economy. The vast majority of companies in almost every European country comprise family businesses and, in most countries, this segment contributes 50% or more to the Gross National Product. Although family businesses are, on average, slightly smaller than other businesses, they generate practically half of all jobs.

More information about this can be found in our report on family business succession tax schemes in Western Europe - “*Western-Europe aligned on tax treatment of Family Business transfer*”.



The announcement of the obligatory register has caused a great deal of disquiet among high-net-worth individuals and family businesses; for reasons of security and confidentiality, they could prefer to remain anonymous. This is understandable, because a readily accessible register containing their personal details could form a threat to their privacy and possibly even their personal security, and that of their children. If, as a result, family businesses adopt a reticent attitude and withdraw into their shells, it is not inconceivable that the register will have a counterproductive effect and will ultimately lead to less transparency.

Transparency

These days, transparency is an essential aspect of the social debate. There is a substantial, increasing need for information, partly as a result of technological developments and the accessibility of the internet. There is also a need in society at large to determine for oneself what news to follow, how and when. Transparency can, however, be divided up into three elements. Firstly, the matters about which someone has to be transparent, for example, on the basis of the law. Secondly, the matters about which someone wants to be transparent, for example, because it contributes to the desired image of an organisation. Thirdly, the matters about which no one wants to be transparent, for example, the recipe of your most successful product. Depending on the social trend, these three elements will have more or less weight. What in any case is remarkable is that, in recent years, the weight of the first two of these three elements has been increasing. This is reflected in the social debate, in which a desire for confidentiality is increasingly likely to lead to immediate insinuations.

A great deal will depend on how member states incorporate the European Directive into their national legislation, because every member state has a degree of freedom in this. This is why we have carried out a study into the expectations in twelve European countries regarding the way in which this register is to be introduced and the impact it will have on entrepreneurial and high-net-worth families.

We urge the legislators within Europe to find a good balance between the public desire for transparency and the individual right to privacy so that every individual can be certain that his/her personal details will be processed with adequate guarantees.



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What are the current registration requirements?

In the EU, legal entities have to deal with registration requirements which are intended to facilitate a transparent capital market. These registration obligations are primarily based on national legislation, which means that current arrangements in the twelve countries investigated differ. In some cases, the national legislation is a consequence of the implementation of a European Directive. In this chapter, we outline the current registration obligations in these countries.

Our study has shown that, in the countries concerned, differences exist in the degree to which information is recorded and made accessible, although this may not be the case for everyone. These differences relate to information about entities and to information about their UBOs. We discuss the following aspects: (1) types of entities, the information to be published, and access, (2) UBO details and access and (3) the registration authorities.

Types of entities, details to be published and access

Current registration obligations in the countries investigated apply both to legal persons - such as public and private companies limited by shares, associations and foundations - and to partnerships - such as professional partnerships, limited partnerships and general (or commercial) partnerships.

Public and private limited companies in all twelve countries are subject to registration obligations. This registration always concerns general details relating to the identity of the entity, such as the name, place of business and details of the director(s). The different countries also require various additional details about the entity. Pursuant to European regulations, legal persons are, furthermore, obliged to publish their annual financial statements. Countries, such as the Netherlands and Sweden, have broad publication regulations which, for example, apply to general or commercial partnerships, associations and foundations. Table 1 contains a summary of the current information requirements for limited liability companies in the twelve countries investigated.

Table 1. Current information requirements regarding limited liability companies

	Corporate name	Legal form	Statutory seat and address	Description of activities	Commercial register number	Date on the deed of incorporation	Details shareholders
Austria	x	x	x	x	x	x	x
Belgium	x	x	x	x	x	x	*
Finland	x	x	x	x	x	x	-
Germany	x	x	x	x	x	x	x
Ireland	x	x	x	x	x	x	x
Luxembourg	x	x	x	x	x	-	-
Malta	x	x	x	x	x	x	x
The Netherlands	x	x	x	x	x	x	x
Portugal	x	x	x	x	x	x	x**
Spain	x	x	x	x	x	x	x
Sweden	x	x	x	x	x	x	-
United Kingdom	x	x	x	x	x	x	x

- x Required
- Not required
- * Companies should disclose the identity of jointly and liable shareholders, founders and shareholders who have not yet fully paid up their contribution in their extract of the deed of incorporation
- ** Only for Sociedade por Quotas

In most countries, this information is freely accessible to the public, although there are exceptions in various countries. In Finland, certain personal information (social security number and home address) of e.g. directors is collected but only a limited group of people have access to such personal information. In Germany, the details of one-man businesses, general or commercial partnerships, limited partnerships, associations and foundations are not open to the public and in Malta, there is limited access to details of foundations and associations and none at all to those of trusts.

UBO details and access

The obligation to collect information regarding UBOs is not regulated in the same way in all countries. Before we go into the differences in detail, it is important to establish precisely what the term 'UBO' is understood to mean. The current obligation to identify UBOs is a consequence of the

implementation of the third Anti-Money Laundering Directive (AMLD III). In this Directive, a UBO is described as the natural person who is the ultimate owner of, or has control over the entity. But a UBO is also the natural person at whose expense a transaction or activity is conducted. Someone qualifies as a UBO if he/she holds more than 25% of the ownership or voting rights in an entity. In the case of administered funds, the UBO is the beneficiary of more than 25% of the assets. The report by the European Commission¹ reveals that, in practice, there is a great deal of uncertainty about the designation and identification of UBOs. In Finland and Sweden information about UBOs does not have to be registered, however, the company must maintain and update a shareholders register which must be kept accessible to everyone at the head office of the company. The Netherlands only has an obligation to register 100% shareholders in the freely accessible Commercial Register. Moreover, the current registration systems differ in several ways, as shown in Table 2.

1. Brussels, 18.3.2015 COM(2015) 136 final: Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance.

Table 2. Current information requirements regarding shareholders of limited liability companies

	Name	Function	Address	Shares interest	Birthplace/date	Tax number
Austria	x	-	-	x	x	x
Belgium	x	-	-	-	-	-
Finland	-	-	-	-	-	-
Germany	x	-	-	x	-	-
Ireland	x	-	x	x	-	-
Luxembourg	-	-	-	-	-	-
Malta	x	-	x	x	-	-
The Netherlands**	x	x	-	-	x	-
Portugal	x	x	x	x	-	x
Spain**	x	x	-	-	x	-
Sweden	-	-	-	-	-	-
United Kingdom	x	-	x	x	-	-

x Required

- Not required

** Only in the case of 100% shareholders

In most countries, high-net-worth individuals enjoy a certain degree of anonymity, particularly in the context of a family business or a family trust. In Finland and Sweden, everyone in general has access to all current official registers but, as Table II shows, these registers do not contain any information about the shareholders and therefore none about their UBOs either. In Finland, the Tax and Customs Administration publishes a public list of taxpayers' income and capital gains tax whereas in Belgium, the Minister of Finance can grant a derogation if publication of information on the UBO can lead to danger for the family.

In the Netherlands, the information in the Commercial Register is open to the public and anyone can request it. But only a limited group of people and institutions, such as civil-law notaries, have access to the private addresses of director (natural person).

Registration authorities

The organisation designated as the competent authority for the registration of the details in question in the various EU Member States differs. Some countries, such as Spain and Finland, have designated a single central authority as the party responsible for the registration. Some countries, furthermore, have given responsibility for the registration to more than one authority. Malta has a differentiated system of this kind, with three authorities being entrusted with keeping the details: the Registry of Companies, the Malta Stock Exchange and the Registrar of Legal Persons.

The countries Ireland, Luxembourg and the Netherlands have designated the Chamber of Commerce as sole competent institution. Spain has designated the Association of Registrars as the registration authority. In Austria, the court is the competent authority. In Belgium are three authorities responsible for the registration: the Registry of the Commercial Court, the Crossroad Bank for Enterprises and the National Bank of Belgium. In most countries, the responsibility for complying with the obligation to register with the Commercial Register lies with the entity itself and, therefore, with its directors. In that context, a Chamber of Commerce only registers and checks the information it receives.

It is clear that the registration obligations in the different countries only correspond in the case of companies limited by shares, which have to submit certain basic information. The arrangements as regards the other registration obligations, how access is organised and the authorities responsible for managing the registrations in the countries investigated vary considerably. As the following chapter shows, none of the countries currently register UBOs in the way prescribed by the fourth Anti-Money Laundering Directive (AMLD IV).²

2. Directive 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.



An overview of the UBO register

This chapter focuses on the UBO register as an element of AMLD IV. The UBO register, the introduction of which is mandatory, will be accessible to three groups of people and institutions. The objective of AMLD IV is, through transparency, to fight tax evasion, money laundering and terrorist financing.³ The idea behind registration is therefore to create more transparency to prevent the abuse of legal entities and constructs. The Directive gives its own definitions of terms such as legal entity, legal construct and UBO.

3. Brussels, 18.3.2015 COM(2015) 136 final: Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance.

UBO

An ‘ultimate beneficial owner’/beneficiary (UBO) is a natural person with a direct or indirect interest of more than 25% in a legal person or a legal construct. This may be a financial and/or controlling interest, or control over more than 25% of the assets of a legal person or trust.

Access to Financial Intelligence Units (FIU) and for client screening

The UBO register will be accessible to various parties, the first being the Financial Intelligence Unit (FIU). In so far as the member states do not yet have an operationally independent, autonomous FIU, they must set one up. Suspicious transactions and other relevant information to prevent and fight money laundering and terrorist financing must be reported to this national government agency. The FIU receives information and can request it too. Subsequently, this agency will analyse and possibly distribute the information collected. The FIU distributes the results of its analysis among the ‘competent authorities’ if it suspects that money originates from money laundering or is being used for terrorist financing. In this case, the competent authorities are the national authorities entrusted with supervising credit or financial institutions.

Besides government agencies, certain companies and professional groups will be allowed to inspect these details. These companies and groups comprise enterprises which are obliged to trace the identity of their clients under the regulations for fighting money laundering practices and terrorist financing. A bank can therefore request information from the register in connection with client screening. By means of the register, the bank can identify the UBO of a legal entity or construct. The UBO will then be assessed and continuously monitored to see whether his/her transactions are consistent with the details known about him/her. Those who consult the register do not have to notify the people about whom they request information.

Access to third parties

Other parties must show that they have a ‘legitimate interest’ in inspecting the UBO register before being permitted to do so. The threshold laid down by the Directive on this legitimate interest is that it must concern money laundering, terrorist financing or the related basic offences, such as fraud and corruption. Journalists are expected to be included in this group. The Directive does not clearly demarcate the group, which means that the register could be readily accessible. The information provided comprises, in any case, the name of the beneficiary (or beneficiaries), date of birth (month and year), nationality, country of residence and nature and size of his/her financial and/or controlling interest. It is possible that those given access to the register will have to pay a small fee for this information.

What details will the UBO register contain?

The ownership details of the UBOs must be included in a central register– such as a Commercial Register, company register or some other public register.

The obligatory details on the UBOs of legal persons are, in any case:

- name;
- date of birth (month and year);
- nationality;
- state of residence;
- nature and size of the interest.

In the case of trusts, the following details will be obligatory:

- settlor
- trustee(s)
- protector
- beneficiary(ies)
- all other persons who have control of the trust.

Legal entity

Legal entity refers to a legal person. Every member state has its own legal forms.

Exceptions to the provision of details

In exceptional cases, member states can refuse access to some or all of the information to entities which are obliged to trace the identity of their clients and third parties with a legitimate interest. In the case of a request from a credit or financial institution, a member state cannot claim an exception. Each case will be assessed individually. These cases relate to situations in which those involved are under age or vulnerable for any other reason, or run the risk of becoming the victim of fraud, kidnapping, blackmail, violence or intimidation if the information is provided.

Collection, storage and provision of details

Each member state has its own UBO register. Member states must ensure that companies and foundations collect and store the correct details. In the case of express trusts, too, member states must arrange for trustees to submit the correct information concerning those involved.

Member states must ensure that, in the case of client screening, a copy is saved of the documents and information necessary for ascertaining the identity of the UBO. The retention period is five years from the end of the business relationship with the client or from the date of a one-off transaction. This term also applies to transaction documents. After this

Legal construct

A legal construct has the same structure and function as a foundation or trust: the administration of assets for third parties. An express trust, for example, falls under this category. The objective of an express trust is to bring the assets under the power of a trustee for a beneficiary.

period, the entities which are obliged to trace the identity of their clients must delete the details they have collected for the client screening. The five-year period can be extended once by five extra years.

Because of the cross-border nature of money laundering practices and terrorist financing, international cooperation in the EU is extremely important. The FIUs of different member states can request information from one another. A refusal is only possible in exceptional cases. A member state can, however, opt to set up a self-regulatory agency, if required. This agency will then be notified first, instead of the FIUs. If the member state chooses, this agency may also refuse to give the FIUs specific information. For example, information originating from lawyers who advise their clients during legal proceedings.

The introduction of the UBO register pursuant to AMLD IV goes a step further than current information requirements. How substantial these changes are will depend on the way in which the member states implement the Directive, given that they have a certain degree of freedom in doing so. In order to build up a picture of the situation at this point in time, we have carried out a study into the expectations surrounding the introduction of this register in twelve European countries and the impact it will have on entrepreneurial and high-net-worth families.

What are the expectations?

The introduction of AMLD IV will undoubtedly entail a great many changes in the registration obligations for family companies and their major shareholders in Europe. But it remains to be seen precisely what these changes are and how big their impact will be. The changes will depend on a number of factors, such as the right to privacy and the guarantees on data protection.⁴ Our study has shown that, in most of the countries investigated, data protection is the area causing the most concern. The change in system necessary for the introduction of the UBO register also has consequences for the costs of compliance and the administrative burdens of family companies, among others.

4. Brussels, 18.3.2015 COM(2015) 136 final: Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance.

The introduction of this register may have major consequences for the ownership structures intended to provide entrepreneurial and high-net-worth families with a certain degree of protection of privacy and security. In the Netherlands, this concerns the use of Trust Office Foundations or of open limited partnerships, for example. In Portugal, it concerns more complex international structures held through the Sociedade Anónima (which shareholders are currently not publically disclosed). High-net-worth German families are concerned about the distinction between private and business assets which will become known as a result of the registration. In the United Kingdom (UK) the anxieties are primarily focused on trusts. At the moment, trusts in the UK do not have to register any information about their trustees, protectors or beneficiaries. The families affected by these changes may even consider the option of relocating their family businesses to EU member states with a limited introduction of the UBO register or even outside Europe because of these feelings of insecurity. If that should happen, the UBO register will have overreached itself. In Sweden, furthermore, the families concerned are worried about the increase in the administrative burden that this Directive will entail for their companies.

We can conclude that the implementation of AMLD IV entails substantial system reforms for which the majority of countries are not yet prepared. This applies, for example, to the way in which entities are identified. In AMLD III, there was still a distinction between the registration obligations for institutions and persons on the one hand and those for legal persons and partnerships on the other. Registration obligations will be better harmonised as a result of AMLD IV and the introduction of the UBO register.

It has also become apparent that, in the countries investigated, there is still a lot of uncertainty about the administrative burden and penalties for non-compliance with the obligations. What is more, the countries investigated indicate that a suitable balance must be found between the implementation of AMLD IV and due regard for data protection and the privacy of UBOs. This is particularly important because, in many cases, the introduction of the UBO register may affect the security of UBOs.



Austria

At present it is unsure whether Austria will set up a separate UBO register for trusts as the (common law) concept of trusts is unfamiliar to Austrian law. However Austria has a legal regime on private foundations, whereby it is unclear whether a separate UBO register for such foundations will be established or whether for such foundations the same UBO regime as for “ordinary” corporate entities will be applicable.

Finland

The expectation is that the UBO register will make details such as the names and places of residence of UBOs available to third parties. This will also apply to the details of minors. A point of attention here is that there will be no publication restrictions on details from the UBO register which are made available to journalists. Although the risk of physical threat (kidnapping, for instance) is judged to be low, this is expected to be one of the reasons not to include the tax and social insurance number and the precise addresses of UBOs. The Finnish patent registration agency will be responsible for the registration of UBOs' details. There will be administrative penalties for non-compliance with the information requirements. For the financial companies falling under the supervision of the Finnish Financial Supervisory Authority, a penalty of EUR five million is expected and, for all other entities, a penalty of EUR one million. Its implementation analysis puts Finland in the lead compared to the other countries; it has set up a working group to this end.

United Kingdom

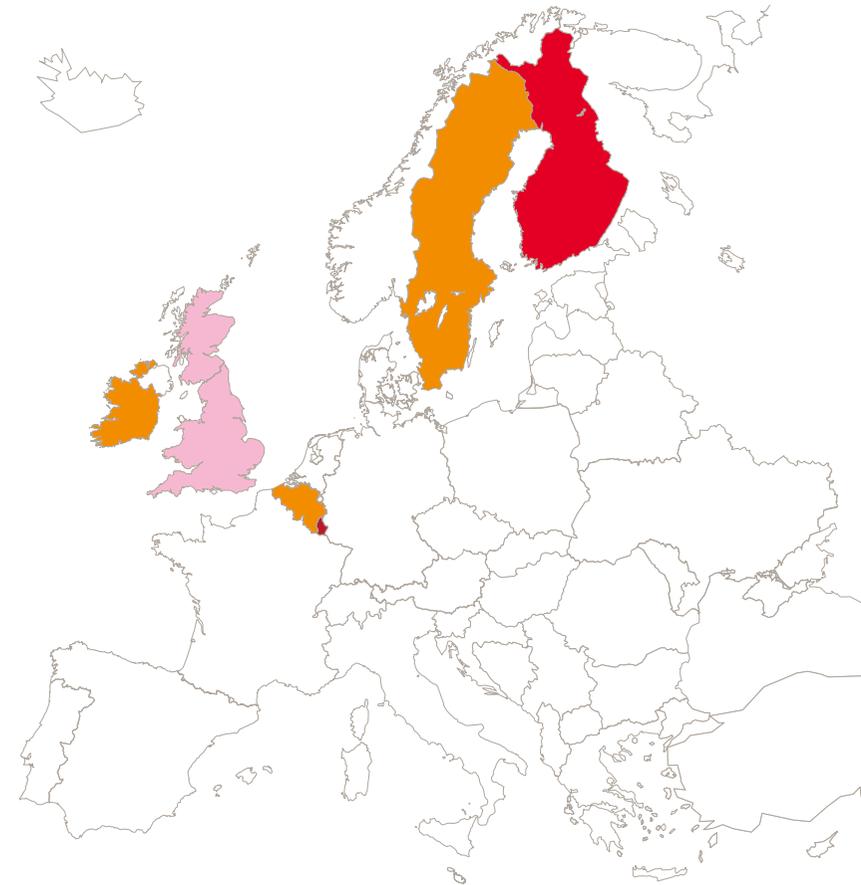
The UK will in part satisfy its obligations under the directive next year (April 2016) with the introduction of the 'Persons of Significant Control register' (PSC). The register will not only record UBOs against the 25% threshold but will be required to record persons who may or actually exercise significant influence or control over a company or limited liability partnership irrespective of whether they hold shares directly or indirectly. Statutory guidance will be released providing details of who these persons may be. Unless a PSC can obtain a confidentiality order the details of their control/influence will be publicly available on a searchable register.

In addition to the PSC, once the full Directive is transposed into national law, the registration obligation will apply to trusts, which is not currently the case. The government has taken a positive stance with regard to the introduction of the UBO register for 'Limited Liability Companies' and 'Limited Liability Partnerships'. If a third party requests information about a UBO from a company and the company in question is of the opinion that there is no legitimate reason to do so, the company can report this to the court and the applicant. The judge will then have to determine whether the request is lawful or not. The expectation is that the concept of 'legitimate interest' will be interpreted broadly. The UBO register will, furthermore, entail major changes which will affect the privacy of UBOs. The 'Companies House' will keep the UBO register. Non-compliance with the obligations will result in criminal penalties. This may result in deprivation of liberty or a penalty.

The UK envisages high administrative and compliance costs on the introduction of the UBO register.

Belgium, Ireland and Sweden

There is still no information available in these countries about the way in which the Directive will be implemented. Sweden does, however, expect significant changes which will affect the privacy of UBOs and increase the administrative burden.



Luxembourg

The Luxembourg legislator will adhere very closely to the text of the Directive during implementation. The UBO register will not fall under the Chamber of Commerce but under a private institution. It is, however, not yet clear which one.

Spain

The Association of Registrars will function as the UBO register. The expectation is that penalties for non-compliance will be geared to the existing administrative penalty system.

Portugal

The UBO register is likely to have the greatest impact on the 'Sociedade Anónima'. The introduction of the Directive will mean that the identity of the shareholders will be visible, including those in more complex international structures. The Institute of Registration and Civil-law Notary Affairs is to place the UBO register in a central Commercial Register.

Germany

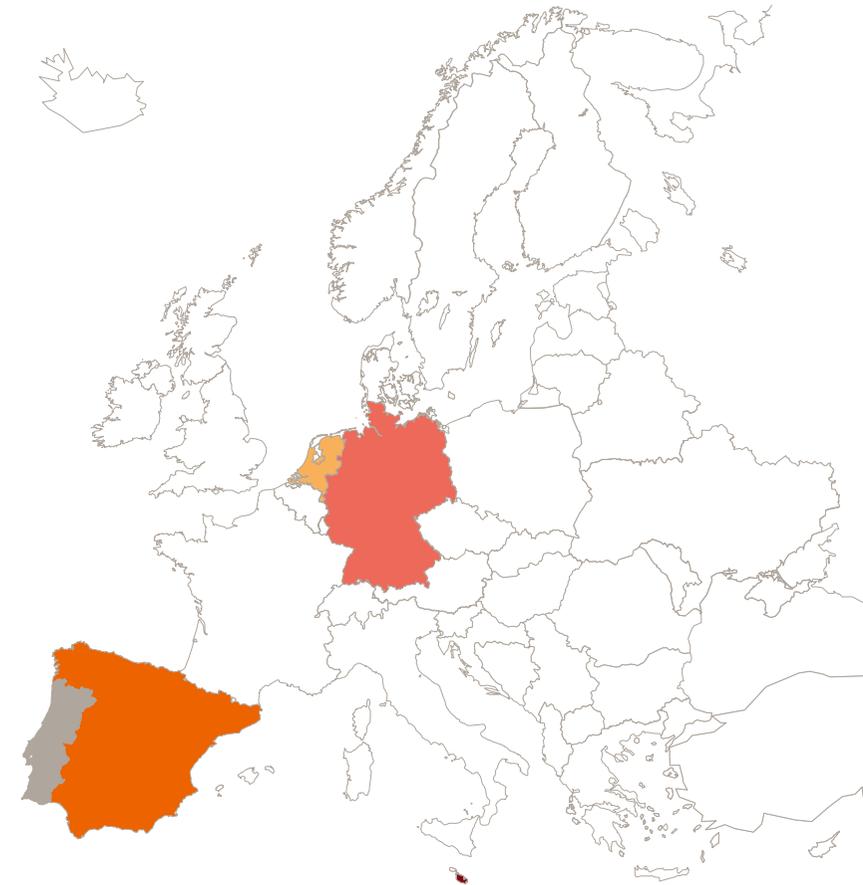
Germany expects a distinction to arise between business and private assets on the arrival of the UBO register. This distinction, and the possible security risks for minors, could have a negative effect. There has, as yet, been little communication from the government about the exact details of the register, but the assumption is that the threshold for legitimate interest will be relatively low. This means that third parties, such as creditors, curators and the German tax and customs administration will benefit from the UBO register. The same rules will apply to journalists as under the current regime, that is, they may freely publish any details they have acquired lawfully. The impact will be greatest in the case of a spread family equity interest. So far, no information has been released about the authorities who will manage the UBO.

The Netherlands

The Dutch government will make use of the entire two years which have been given for the introduction of the UBO register, because it is expected to be a radical process. The government is currently considering designating the Chamber of Commerce and the notarial profession as the parties responsible for the UBO register.

At the end of 2012, the Netherlands announced that it would be setting up a Central Shareholders' Register (CSR).⁵ The intended purpose of a register of this kind is to make transparent the shareholders' interests in private limited companies and unlisted public limited companies. A significant difference between the UBO register and the CSR is that the CSR is only accessible to the public services in the context of control, supervision and enforcement, and not to the public. The shareholders themselves and those in the notarial profession also have access to the register. This guarantees the privacy of the shareholders. A common element in the UBO register and the CSR is the central collection and accessibility of the information about shares and shareholders. There are plans to incorporate the institution of the UBO register in the legislative bill on the introduction of the CSR.

5. Parliamentary papers II 2012/13, 32 608, no. 4.



Malta

The expectation is that the implementation of the Directive will mainly impact entities whose UBOs do not have to be registered under current regulations. The Registrar of Companies and the Registrar of Legal Persons will be responsible for the registration. A striking point is that registration is currently not obligatory. If it becomes so in the future, this could have a large impact on the position of UBOs of trust assets.



The impact on society

The underlying reason for the introduction of the UBO register is the intensification of the European fight against tax evasion, money laundering practices and terrorist financing. The transparency that will result from the UBO register is seen as a means to achieve this objective. But there is also a drawback to it, because its introduction may have a considerable impact on the privacy and security of entrepreneurial and high-net-worth families. This is why it is vital to conduct discussions on how the justified objective of the AMLD can be realised without having excessively harmful effects or potentially harmful effects.

The European legislator considers the registration of all UBOs essential if the identities of the natural persons behind the legal entities set up in Europe are to be made clear. Their registration should ensure that potential money laundering practices, terrorist financing or other serious offences such as corruption and fraud, come to light more easily. As a result of public registration, people should no longer be able to hide behind ‘opaque webs of legal constructs’.

Accessibility of the register

However, the broad and relatively simple access to this register of personal details which is envisaged is giving rise to concern. This concern is explicitly not because of its accessibility to government and investigative services. After all, it is quite logical that these parties have access to UBO registers. What is alarming those involved is the access to be given to the extensive group of institutions which are obliged to trace the identity of their clients. And this applies even more to the not-yet-demarcated group with a demonstrable ‘legitimate interest’ relating to the fight against money laundering practices and terrorist financing. How are we to define a ‘legitimate interest’? The European legislator is leaving the interpretation of this concept largely to the European member states. The interpretation determines the size of the group which can consult the register by invoking this interest. The question is whether the interest of effective enforcement (tracing and supervision) or journalistic truth finding is sufficient and whether this interest will be weighed up against the interest of the protection of the UBO’s privacy. The Directive does, however, prescribe that access to the register must, in any case, be regulated in conformity with the protection of privacy rules and regulations.

Limits to transparency

It goes without saying that the interests of those involved may be seriously prejudiced by the careless or incompetent processing of personal details. This risk justifies the inclusion of safeguards for the prevention of abuse. Furthermore, entrepreneurial and high-net-worth families fear that the public information will lead to undesirable mentions on ‘lists of millionaires’ and the not-inconceivable risk of blackmail, violence, intimidation, kidnapping or fraud. This is particularly so in the case of minors or other vulnerable individuals. These concerns are evident in almost all the countries investigated. The more readily accessible privacy sensitive details are, the greater the risk. The Directive contains an exception to the registration obligation for minors and other vulnerable individuals. In other cases, an exception is only possible if there is a demonstrable threat to personal security. It is, however, up to the UBO to demonstrate this. But what constitutes a ‘demonstrable threat’ and how can the UBO substantiate it? A threat of danger is indeed extremely difficult to demonstrate.



The essence of the dialogue

Various standpoints concerning this theme can be heard in the community. On the one hand, there are parties who embrace the UBO register on the basis of the public demand for more transparency. And, on the other, there are parties who are concerned about the undesirable consequences an increase in transparency might have and are more on the side of the protection of privacy. Most of the points put forward by both sides are valid. What is the essence of the dialogue?

It goes without saying that the objective of the EU Anti-Money Laundering Directive (AMLD) – by means of transparency to fight tax evasion, money laundering and terrorist financing – is important and valid. However, the debate is more about the way in which the objective is being pursued, that is, the means to the end.

The proposed means to increase transparency is to document the identities of UBOs. The registration of the details concerned is, in fact, intended to expose criminal or undesirable activities so that the government can tackle them. The objective of this registration is therefore not to ascertain precisely how many shares someone has or to estimate the value of assets.

And then there is the importance of family businesses for the European economy. The vast majority of companies in almost every European country comprise family businesses. So there are also economic reasons for dealing circumspectly with this group of companies. The UBO register is not exactly going to ‘lubricate the engine of the European economy’. Shouldn’t we therefore be exercising extreme prudence with regard to this register?

The ongoing debate

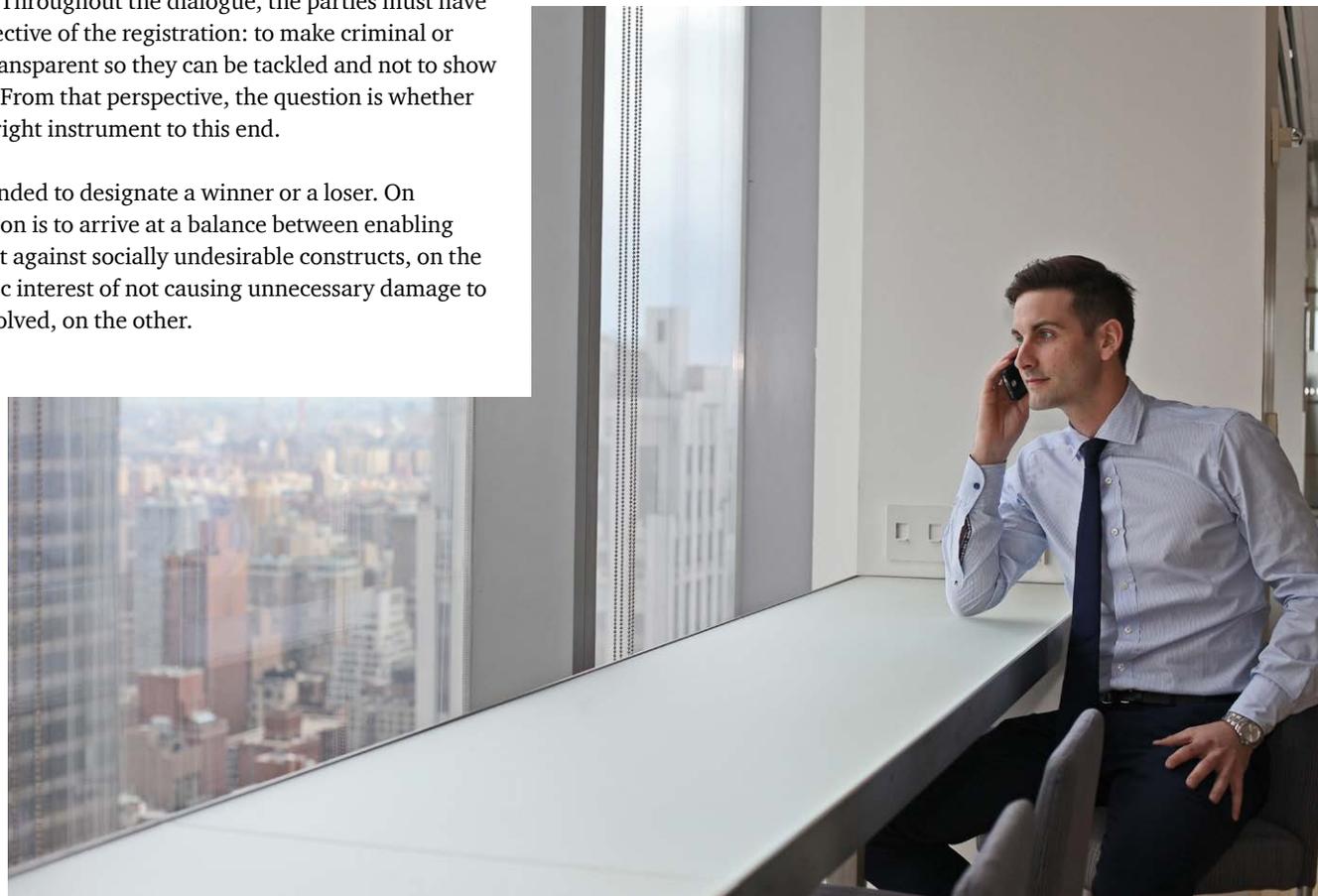
We have lined up a number of arguments in the debate on transparency versus the protection of privacy below.

More attention for transparency		More attention for the protection of privacy
The justified objective of the UBO register is to prevent people from setting up non-bona fide constructs.	↔	But there are, as yet, no controls on any non-bona fide people who may want to consult the UBO register.
The risk of kidnapping will not be any greater when the UBO register is introduced. The reasoning for this standpoint is that the UBO register does not contain more information than is currently already available because most of the owners of large companies and the members of their families are already known. What is more, there will be no private addresses in the UBO register, only contact information relating to the companies and basic identity information.	↔	The UBO register will, however, contain more information than must currently be provided since every shareholder with an interest of more than 25% will be included in it. There are owners of large companies who are currently not known because, for very diverse reasons, they wish to remain anonymous and avoid publicity. This group will in future be easier to track down through their inclusion in the UBO register. Although the risk will only increase slightly, the consequences are disproportionately far reaching if someone is kidnapped or blackmailed, however unlikely that is.
The ownership percentages for the identification of UBOs are not easy to convert to a monetary value because information about that is not available to the public.	↔	Family companies are usually obliged to publish their annual report and accounts, which include the values in question, in the various Commercial Registers. It is most certainly possible to convert ownership percentages in the UBO register into approximate monetary values.
The inclusion of an exception for family companies will render the UBO register useless. Those with malicious intent would then be able to set up a family business relatively easily and thus evade having to provide the relevant information. On the contrary, the security of high-net-worth families would benefit from the UBO register because crime can then be tackled more effectively.	↔	The question here is whether the UBO register is sufficiently effective to justify an (albeit relatively small) increase in the risk of frightening consequences.

A well-founded dialogue

The dialogue must clearly concentrate on the relevant issues: the access to and the form and size of the register. This dialogue must be thorough and well substantiated. Throughout the dialogue, the parties must have a clear vision of the objective of the registration: to make criminal or undesirable activities transparent so they can be tackled and not to show what people are worth. From that perspective, the question is whether the UBO register is the right instrument to this end.

The dialogue is not intended to designate a winner or a loser. On the contrary, the intention is to arrive at a balance between enabling transparency in the fight against socially undesirable constructs, on the one hand, and the public interest of not causing unnecessary damage to the privacy of those involved, on the other.



Conclusions and recommendations

The UBO register is coming - it is a fact, but its definitive form in the various EU member states has not yet been established. The objective of the register is - by means of transparency - to fight tax evasion, money laundering and terrorist financing. The question is, however, whether this register goes further than necessary or that there is even a risk that it will have the opposite effect to what was intended.

Our study shows that the introduction of the UBO register will have a negative impact on the privacy and feelings of security of UBOs. The concerns it is causing deserve serious attention. The national legislator must take these concerns into consideration in finding a good balance between the socially desirable transparency and the individual right to privacy. The personal details of every member of our society must be processed with proper safeguards.

Expectations in the various countries

In most of the countries investigated, the concerns surrounding the introduction of the UBO register focus mainly on the protection of personal details, particularly those relating to minors and other vulnerable people. Some countries also mention an increase in the administrative burden for companies. However, the countries investigated differ when it comes to their assessment of whether making UBOs' details available to the public forms a real threat to their safety. As the report shows, opinions on this point also differ among the various stakeholders.

Some countries already have free access to all official registers, but their current registration obligations are not as comprehensive as they will be when the UBO register is introduced pursuant to AMLD IV. Other countries already recognise the threat to the personal security of high-net-worth families in their current registration and have provisions for the protection of details.

Yet other countries, such as Finland, are expected to be selective about what UBO details they make available to the public: the names and places of residence of UBOs to be readily available, but not their tax and social insurance numbers or their precise addresses. A striking point, however, is that journalists in Finland are expected to be permitted to use the details they obtain from the UBO register freely and that no legal impediments are imposed upon them to prevent this.

Germany is afraid of the possible security risks for minors and the negative effect of the distinction that is expected to arise between business and private assets on the introduction of the UBO register. Although the precise details of the UBO register are not yet known, it would appear that the interpretation of the concept of 'legitimate interest' on which third parties can rely will be broad so that creditors, curators and the German tax and customs administration will have ready access to the UBO register. It will also be broadly interpreted in the UK but, in this country, it is still possible that people with a legitimate interest will be refused access to UBOs' details in case of doubt. The judge will verify this in retrospect.

As regards trusts, the Austrian UBO register will possibly not contain any details about trusts because Austria does not have a separate trust regime. In the UK and Malta, however, the arrival of the UBO register will have a major impact on UBOs because these countries do not currently have any registration obligations for trusts. There have not yet been any signals that an exception or restriction will be created for details about trusts in these countries.

The comparison between the EU and the US shows that the US does not currently have a register which can be compared with the UBO register. In view of the objective for which the UBO register is being introduced - to fight tax evasion, money laundering and terrorist financing - a register of this kind would instinctively seem appropriate for a country like the US which is at the forefront in the fight against terrorism. Although the US is not currently expected to introduce a UBO register, it will be interesting to see whether other jurisdictions will follow the European example.

Attention for privacy and security

There is still a lot of uncertainty about precisely how the UBO register will be introduced in the countries investigated. There have been many manifestations of concern regarding the privacy and feelings of security of UBOs in response to the framework prescribed by AMLD IV. The national legislator must take these concerns seriously and take them into account when weighing up transparency against privacy. After all, the Directive prescribes that access to the register must be arranged in conformity with the rules and regulations concerning the protection of privacy. It is important, here, that a well-founded dialogue is held on the relevant issues such as the access to and the form and size of the register. This dialogue must also be thorough and well substantiated. The objective of the registration is not to ascertain the size of each shareholder's block of shares or the value of his/her assets, but to expose criminal or undesirable activities and deal with them quickly. This raises serious doubts as to whether the UBO register is a sufficiently refined instrument to this end. In view of the importance of family businesses for the European economy, the introduction of the register requires caution at the very least.

The national legislator must therefore approach the introduction of this register circumspectly. We advocate that these concerns be taken into account and incorporated in the design of the UBO register. After all, even though the risk of undesirable consequences is slight, if they do arise, these consequences are disproportionately great.

It extremely important to find a good balance between transparency and the protection of privacy in the UBO register.



Clarification

For this study, we enlisted our PwC family business specialists from twelve countries: Austria, Belgium, Finland, Germany, Ireland, Luxembourg, Malta, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. In this appendix, we explain the design of our study and our approach.

Research question

Our principle research question is:

‘What is the impact of the UBO- register that is introduced by the fourth anti-money laundering directive, on Family business owners and their family in the EU?’

To answer the question, we drew up the following sub-questions:

1. What are the current registration obligations for this group?
2. How does the UBO register compare to anti-money laundering regulations in another jurisdiction, i.e. the US?
3. What does the current debate on this issue focus on?
4. Is the introduction of the UBO- register a proportional measure?

Study method

- We submitted a questionnaire containing 15 questions based on the above sub-questions to our family business specialists in the subject countries.
- We produced a summary of the answers to the questionnaire, processed the answers into the report and then submitted this report to the subject countries for comment. Based on the responses, we requested answers to specific follow-up questions where necessary.





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