

Considering privacy on the brink of full transparency

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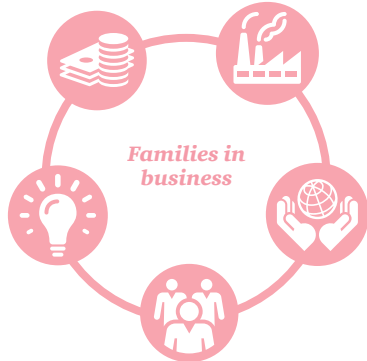
*A follow-up study of the
impact of the UBO register
on entrepreneurial and
high-net-worth families in
sixteen European countries*

July 2017



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 sixteen 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 of the individual right to privacy when introducing the register.



- 1** The fourth Anti-Money Laundering Directive (the Directive) aims to fight tax evasion, money laundering and terrorist financing. More transparency is considered to be an important factor in solving this problem and the UBO register, a register for ultimate beneficial owners, an important instrument. EU member states have some room for interpretation on shaping the UBO-register. The deadline for implementation was 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. For trusts (and equivalents), the definition of beneficial owner is much broader. The consequence is that almost every relevant person qualifies as a UBO (the settlor, the trustee(s), the protector (if any), the beneficiaries, or any other natural person exercising ultimate control over the trust).



- 4** The UBO register balances between transparency and the right to privacy. It is highly important that a the right balance is found. It remains to be seen whether this balance can be found. The choice for a public register must not be dealt with lightly, it can have a radical impact on the right to privacy.

- 3** Based on the Directive, the UBO register is accessible to investigative services, specific professional groups and third parties with a legitimate interest. One of the questions is whether investigative journalists have a legitimate interest. Because trusts fulfill a different function than a company, a third party with a legitimate interest has no access to information about the UBO of a trust. EU member states appear to prefer to implement public registers, at the expense of the right to privacy.





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Foreword

Following our previous publications [‘Finding a balance between transparency and privacy’](#) and [‘How does privacy fit into a transparent world?’](#), this update examines the latest developments relating the UBO register. The report contains the results of our follow-up study on the impact of the UBO register on wealthy families and family businesses and how sixteen European countries are expected to implement registration. In all these countries, family businesses are the backbone of the national economy. With this third publication on the UBO register, it is also our intention to contribute to a thorough, in-depth debate on the tension between transparency and privacy.

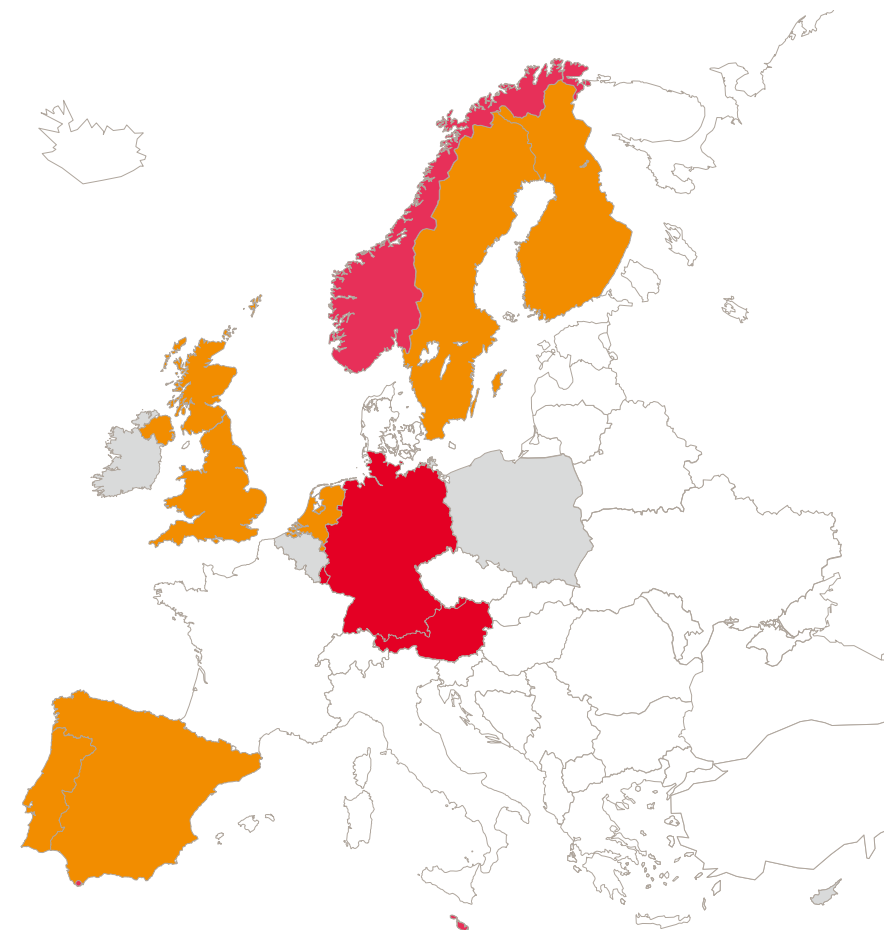
At the time of writing, the deadline for implementation of the UBO register was imminent and at the time of publication, the deadline will have passed. Two findings are especially noteworthy: firstly, a relatively large number of EU Member States will not have met the deadline; secondly, the necessary substantive discussion about the tension between transparency and privacy has still not taken place - not at EU level and not at lower levels. However, more than half of the Member States have opted for a restricted register.

In a world that is constantly changing, a solid, substantive discussion about the tension between transparency and privacy is crucial. On the one hand, the general public increasingly demands transparency. At European level - in the run-up to the actual implementation of the UBO register based on the 4th Anti-Money Laundering Directive (Directive) - this demand has taken the form of a new proposal to include more strict conditions in the Directive.

On the other hand, the right to privacy is dynamic and the definition must constantly be reformulated in interaction with developments in society and technological innovations: what extend is given to the scope of protection and what are the legitimate limitations? These are questions that we reflect upon in this publication.

Background to the UBO register

Mandatory implementation of the UBO register is stipulated by the Directive adopted by the European Parliament on 20 May 2015. The deadline for transposing the Directive into national legislation was 27 June 2017, which applies to the Netherlands and all other EU Member States. The Directive gives each Member State some room to manoeuvre in determining how the European registration obligations should be transposed into national law. The goal of the Directive is - via the instrument of transparency - to tackle tax evasion, money laundering and terrorism financing - a commendable goal, although the question remains whether a public UBO register is the right means to achieve this goal. What would the effectiveness of a public register be? Would this have a detrimental effect on the right to privacy? And would the register end up being counterproductive if the effects are excessive? These questions are also central to this follow-up study.



Family businesses are the backbone of the European economy

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

You can read more about this in our report on family business succession tax schemes in Western Europe - [‘Western Europe aligned on tax treatment of Family Business transfer’](#).

In the meantime, several countries have opted for a register that is partially public: Finland, the Netherlands, Austria, Portugal, Spain and Sweden. In the United Kingdom, inquiry is made to verify whether the “People with Significant Control” register is already in line with the mandatory UBO register. In other countries, such as Belgium and Ireland, it is not yet clear whether the register will be accessible to the public or if it will be restricted. Gibraltar and Germany have opted for a register that third parties can only access if they have a ‘legitimate interest’. The concept of ‘legitimate interest’ already exists in German legislation and will be interpreted accordingly. Cross-border research appears to be important for all EU Member States. Even Norway, an EEA country that did not participate in previous studies, has joined our follow-up research. It is expected that the UBO register will be accessible only to those with a ‘legitimate interest’ and access must be necessary and proportionate.

The announcement of the obligatory register has caused a great deal of disquiet amongst wealthy individuals and family businesses who prefer anonymity for reasons of security and confidentiality. Our study and the response to our previous reports confirm that the introduction of the UBO register impacts the sense of privacy and security of UBOs. This is understandable because a readily accessible register containing their personal details could pose a threat to the privacy of UBOs and even have

implications for their personal safety and that of their children. Monitoring on the part of the government is understandable, and is not the fundamental problem. The public availability is worrying. Because of the risk of a random malicious person consulting the register, it would not be inconceivable for UBOs to look for ways to circumvent appearing in the register. If family businesses are going to choose a cautious approach, it could be that the mandatory transparency will prove counterproductive, ultimately resulting in ineffective legislation.

As said, a thorough examination of the trade-off between public access to the register and infringement of the fundamental right to privacy has been difficult to discern in the political debate and the Dutch consultation proposal. However, at European level, the independent European Data Protection Supervisor has declared that making the UBO register publicly accessible is disproportionate.

We therefore urge the legislators to carefully weigh up the pros and cons of privacy versus transparency. This should lead to a good balance between the public desire for transparency and the individual right to privacy. Every individual must be certain that his/her personal details will be processed with adequate safeguards.



Renate de Lange-Snijders
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Norway: the newcomer from the EEA

This year, the survey was expanded from fifteen to sixteen countries. The newcomer, Norway, has a special status, because it is not an EU Member State but a member of the European Economic Area (EEA). In principle, an EU directive is not binding for EEA Member States; that would require an additional action. Norway has opted to make the register public under two conditions: the user must be able to demonstrate a legitimate interest, and access must be necessary and proportional in relation to the aim of combating terrorism financing and preventing money laundering.

What is the EEA?

Besides the EU Member States, the European Economic Area (EEA) includes Liechtenstein, Norway and Iceland. These last three countries are part of the European Free Trade Association (EFTA). The EEA came about through an agreement between the Member States of the EC (forerunner of the EU) and those three EFTA Member States. The economic purpose of the EEA agreement is cooperation between the EU Member States and the three EFTA Member States. In principle these three countries must implement EU legislation with regard to the EU's internal market. More specifically, it was agreed that the EFTA Member States would implement uniform legislation on social policy, consumer protection, the environment, and business law (including the UBO register) in their national legislation. The EEA agreement was concluded in 1992 and entered into force on 1 January 1994.



Norway

In December 2016, a committee established by the Norwegian government published a proposal for the UBO register. Interested parties can supply input to this. Following this, a proposal will be submitted to parliament. The expectation is that the UBO register will only be accessible to someone with a 'legitimate interest', meaning that access is necessary for the disclosure or prevention of money laundering and disclosure or prevention of the funding of terrorism. Moreover, access must be necessary and proportional. In addition to the minimum details prescribed by the Directive, the register will also include the date of birth of UBOs. As this information includes no sensitive data according to Norwegian law, it is possible that journalists will be permitted to publish the information contained in the register. However, as yet no official announcements about this have been made. The legislative proposal stipulates that the register will be compulsory for numerous entities, including private limited companies, public limited companies, European companies, cooperatives and public-sector enterprises. In addition, hospital trusts must provide information about their UBOs. The UBO register will probably be administered by Brønnøysund Register Centre. UBO data on foreign trusts or other legal constructions will be kept in a separate register. A fine may follow if an entity fails to provide the information within a specified period.



The UBO register: an update

All EU Member States should have transposed the Directive into their national legislation before 27 June 2017. Thus far, most Member States have announced the outline of their UBO register in a legislative proposal. However, Cyprus, Poland and Spain have not even got around to a legislative proposal. Some Member States have opted for either a wholly or partially public register, such as Finland, the Netherlands, Austria, Portugal and Spain. Other Member States, such as Germany, Gibraltar, Malta and Norway, have opted for a more or less closed register which is accessible to third parties with a legitimate interest. However, it is not universally clear what 'legitimate interest' means. A few Member States have not yet decided whether the register will be public or closed: specifically Belgium, Ireland, Luxembourg and Poland. In short, just before the deadline, complete clarity about the UBO register has not been provided anyway.

Germany

In February 2017 the German government submitted a legislative proposal on the Directive's implementation. The proposal is currently before the upper house of parliament (Bundesrat). The proposal states that the Act will enter into force on 26 June 2017 and that from 1 October data must be submitted to the register. The register will be compulsory for companies and registered partnerships, amongst others. It will also be compulsory for foreign trusts and non-incorporated, self interested foundations or similar structures, with trustees that have Germany as seat or place of residence.

It is important to note that - based on the proposal - reporting obligations are considered to be fulfilled if the respective information is already available in other electronic official registers such as the German Trade Register.

Government agencies will have full access to the register insofar as is necessary for the fulfilment of their duties. Parties with statutory obligations (such as banks and civil-law notaries) will be granted access if they demonstrate that they need the information to meet their client identification obligations. Other parties will be granted access if they can demonstrate a 'legitimate interest'. This term is used in existing legislation and will be interpreted accordingly. The register will only contain details of the name, date of birth, address, nature and size of the interest of the UBO. Persons with a 'legitimate interest' can obtain details of the name and the nature and size of the interest, but apart from that only the month and year of birth and the country of residence. The data can be wholly or partially shielded if the UBO can demonstrate that the information could place him/her in jeopardy in the event of becoming the victim of criminal activities. Minors or persons incapable of performing legal acts can also be protected by shielding their information. However, it is not possible to restrict access to information by government agencies. Nor will banks and civil-law notaries be subject to any restrictions if they need the information for client identification.



Belgium

On 31 March 2017 the Belgian cabinet presented the Council of State with a legislative proposal on the introduction of the UBO register. The content of the legislative proposal is not yet known, but according to reports it states amongst other things that domestic companies, foundations and trusts must provide details of their UBO. The register will be administered by the Ministry of Finance. The Directive's introduction is seen as one of the measures in response to the terrorist attack in Brussels on 22 March 2016. It is still unclear whether the register will be public. However, the expectation is that a public register would increase the risks for ultimate beneficiaries. Following consultation with the committee for privacy, a Royal Decree will determine more specific matters: the method of obtaining data, the nature of the data, and how the data will be administered, accessed and used.

Finland

In November 2016 the Finnish government presented the legislative proposal on the Directive's implementation. However, the legislation has not entered into force yet.

The register will be compulsory for foreign express trusts or similar legal constructions, companies, religious institutions, foundations and associations. In the case of an association, the chairperson will be regarded as the UBO, except when someone else is the actual beneficiary, in which case that person will be deemed to be the UBO.

The proposed public register will be included in existing registers: Trade Register, Register of Associations, and Register of Foundations and the Register of Religious Communities, all of which are governed by the Finnish Patent and Register Office. Everyone will have access to UBO data such as name, date of birth, nationality, state of residence and the nature and size of the interest held. Further information on this is to be provided on request to certain entities in order to complete their anti-money laundering processes.

Gibraltar

Few new developments have taken place in Gibraltar over the past year. As indicated in our previous report, the UBO register will not be public but will be accessible to third parties with a 'legitimate interest'. This term is expected to be interpreted on a case-by-case basis. The Finance Centre Director will administer the register.

With regard to the registration of UBOs of trusts and foundations: they are only expected to be registered when the existence of the entity has tax consequences. Amongst others, the directors and senior personnel of companies, the officers of foundations and trustees are likely to be registered.

Cyprus

There have not been any new developments concerning the UBO register in Cyprus so far.



Luxembourg.

On 31 March 2017 the Luxembourg cabinet approved a legislative proposal on the introduction of the UBO register. Based on information from the Ministry of Justice, there is draft legislation for implementation of a UBO-register for entities registered in Luxembourg. It is expected to be published soon.

Trusts and fiduciaries will be subject to different regulation. This is also draft legislation, but there is no current development known.

For entities registered in Luxembourg, the register of beneficial owners will be part of the trade register, but the databases will be kept separated. Foreign entities as well as mutual funds are excluded from this register.

The identification of the beneficial owner will be required, as well as the nature of the interest and its extent. The information needs to be exact, current and complete. Sanctions are foreseen for companies that do not provide correct data to the register. If it is a new entity, the beneficial owner needs to be registered within 30 days, from the moment of the entity's creation or the change of its beneficial owner. If an entity already exists, the registration period is extended to six months. The register does not verify the data it receives by the companies before publishing it. The draft legislation contains an obligation for all persons who have access to the register to inform the trade register in case of discrepancy, but no sanction is foreseen in case of non-compliance. The consultation of the register will not be mandatory, the register will only be an optional tool for e.g. client identification. Nevertheless, a highly recommended tool to use.

The extend of access depends on which of the three groups you belong to.

- For the competent authorities: unlimited access to the register.
- For self-regulated bodies and professionals with client identification requirements: unlimited access to the name of the beneficial owners but no access to their address and national identification number.
- For all persons residing in Luxembourg that have a legitimate interest: the request for access needs to be written, motivated and submitted to a committee for assessment on a case-by-case basis.

The UBO-register comes with a protection regime: limitation of access can be requested in case of risk of fraud, violence or if the beneficial owner is a minor. The request needs to be written, motivated and submitted to a committee that will assess it on a case-by-case basis.



Malta

There have not been any new developments concerning the UBO register in Malta so far. The legislation is expected to be published within the coming months.

Ireland

Part of the Directive was transposed into Irish law with effect from 15 November 2016. On the basis of this, legal entities are obliged to keep current, accurate information on UBOs in internal registers. This gives legal entities the opportunity to collect information before the Directive is fully implemented. From 26 June 2017 companies will be able to electronically file the UBO registers. There is likely to be a three-month period in which to file the UBO registers through the online portal without being in breach of the statutory duty to file (i.e. 26 September 2017). Failure to comply with the legislation is a serious offence which is subject to a fine of up to EUR 5,000, for citizens as well as legal entities.

The Companies Registration Office will administer a central UBO register. It is not yet known whether the information in the UBO register will be public. This will be decided once the responses to the consultation document have been analysed. The information can in any case be accessed by the competent authorities.

Information on trusts is likely to be placed under a separate nonpublic register.

The Netherlands

The legislative proposal on the UBO register was submitted for consultation in the Netherlands on 31 March 2017. Consultation has meanwhile been completed with more than forty public responses.

The UBO register will become part of the Commercial Register, with the Chamber of Commerce as administrator. The exact definition of a UBO is not included in the legislative proposal and will follow later in subordinate legislation. The register will be public, but for third parties and institutions that are under a notification obligation, such as service providers, banks and insurers, it will only be searchable by the name of the company or legal entity and not by the name of the UBO. An exception only applies to the Financial Intelligence Unit (FIU): that agency can search the register on the basis of private persons.

Details such as UBO's name, month and year of birth, nationality, state of residence and the nature and size of the beneficial interest are accessible to anyone. The citizen service number, foreign tax identification number, date, country and place of birth are not public and can only be seen by the competent authorities and the FIU. In certain cases a UBO may request that the data be shielded. However, competent authorities such as the Public Prosecution Service, police, Tax and Customs Administration, and the FIU can always see the data.

Compulsory registration applies to businesses, foundations, associations, rederijen, professional partnerships, cooperatives and European companies, amongst others. A trust register will not be established because Dutch law does not recognise trusts or similar constructions. Existing companies and legal entities must register UBO data within 18 months of the UBO Act entering into force.



Austria

On 12 April 2017, the Austrian Ministry of Finance published a draft for a Beneficial Ownership Register Law (wirtschaftliches Eigentümer Registergesetz). The proposal foresees that the act enters in force on 15 January 2018. The relevant information will then have to be submitted from 1 June 2018 onwards.

It is envisaged that all legal entities registered in the Companies Register as well as associations, foundations, trusts and trust-like entities have to submit data about their beneficial owners, regardless of being transparent or not. Persons with a direct or indirect interest of more than 25% or who are members of a controlling board qualify as UBO. In case of foundations, trusts and trust-like entities, the settlor, protector and beneficiaries qualify as UBO.

The information to be submitted to the Register includes the identity of the UBO, his residency and specifics regarding the way ownership or control is exercised.

The register will effectively be operated by the Ministry of Finance. The information registered is accessible to financial institutions, advisors, accountants, agents, brokers and all businesses accepting cash transactions over EUR 10,000 under the condition that they need the information to fulfill their Anti Money Laundering Obligations or that they can prove that they have another legitimate interest in the information. Also, certain federal financial authorities, as well as local administrative authorities and other governmental and non-governmental bodies will have access to the Register.

Not meeting filing obligations could be sanctioned with a fine of up to EUR 200,000. Misuse of the data can be fined up to EUR 10,000.

Poland

The Polish Council of Ministers presented a legislative proposal on the register's implementation, early May 2017. Next, the legislation draft will be submitted to the Polish parliament for approval. According to the available proposal the Act shall enter into force three months after publication, whereas the provisions referring to the register of the beneficial owners' shall enter into force 18 months after publication. It is proposed for the register to be compulsory for companies, foundations and associations and publicly available. The register shall be maintained by the Polish Minister of Finance. If an entity subject to registration fails to register the beneficial owner in the specific period of time, a fine of up to PLN 1,000,000 may be applied.



Spain

The Spanish regulator has issued a public consultation paper, but the document published does not detail how the UBO regime will be regulated. Members of the industry were able to provide feedback until 10 June. The legislation for the UBO register in Spain is expected to enter into force in June/July 2017. It is known that the information in the commercial register will be public. The UBO information in the register of the General Council of Notaries will be accessible to the regulatory authority of the Spanish anti-money-laundering program, and other government agencies. Other entities that are subject to the anti-money-laundering legislation will only be given access if they have concluded certain relevant agreements with the General Council of Notaries.

Portugal

Recently the Government's legislative proposal related to the UBO register was submitted for debate in Parliament.

The register will be public and administered by the Portuguese Commercial Registrar. Compulsory registration will apply to associations, cooperatives, foundations, commercial companies, amongst others.

Pursuant to personal data protection laws, only a minimum amount of data will be made available to the public. Nevertheless competent authorities such as judicial authorities, police and Portuguese Tax Authorities should always be able to access the data.

Some details have been revealed about fines that will apply to non-compliance with registration obligations. For example: non-compliance leads to prohibition of profits' distribution or the conclusion of public contracts.

It is expected that further legislative details related to UBO's register will be revealed soon.



Sweden

A public register will be established. The register will be administered by Bolagsverket, the Swedish Companies Registration Office. The obligation to register applies to domestic and foreign legal entities that run a business in Sweden. The obligation to register also covers natural persons who live in Sweden and administer a trust or similar legal construction established under foreign law (e.g. a trustee). An exception will apply to legal entities in the public sector and companies listed on the stock exchange. Access to the UBO register will not be regulated in law but in regulations of administrative authorities. It is therefore still unclear precisely how detailed the information included in the register will be and how accessible the register will be to the public.

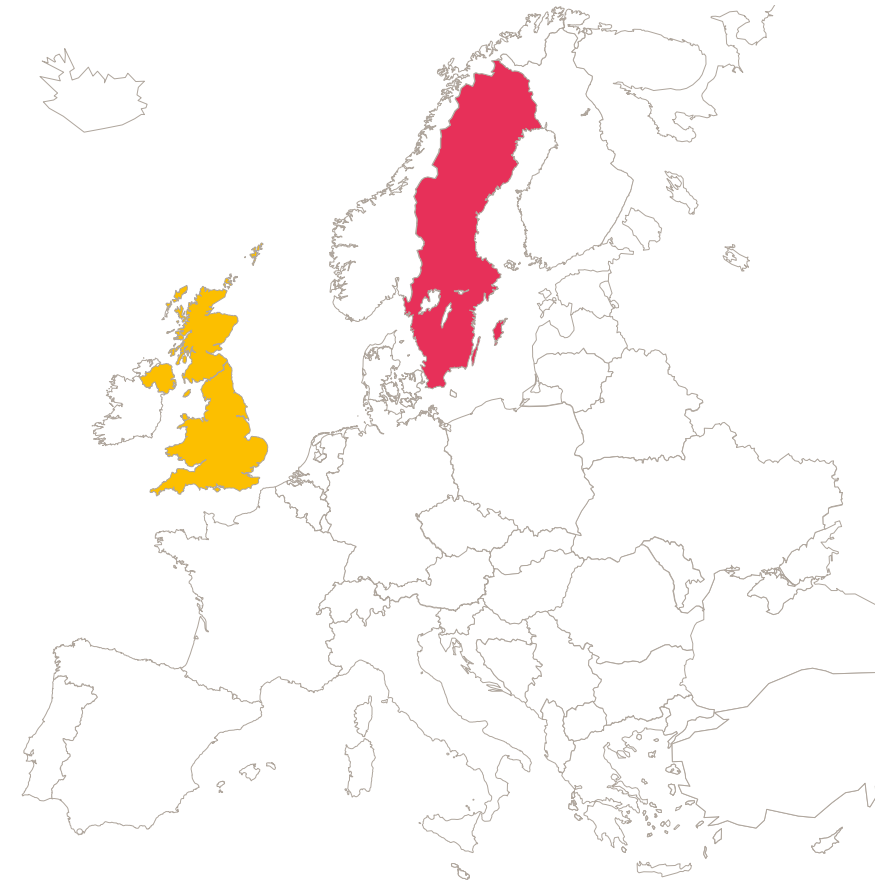
In Sweden companies are already obliged to disclose its shareholders upon demand. The government uses this fact as an argument for a public UBO register. UBOs are anxious that a public UBO register could lead to an increase in crimes such as fraud, kidnapping and robbery.

United Kingdom

The register in the United Kingdom 'People with Significant Control' (PSC) entered into force in April 2016 and already covers many of the obligations imposed by the UBO register.

In September 2016 the British government published a consultation document on the UBO register to examine the extent to which the PSC register and other existing national legislation already conform to the Directive. The government has not yet published the responses to the consultation documents, a Ministerial Statement is expected to clarify how the Directive will be implemented and the changes to be made to the PSC legislation. UK Companies House is writing to directors of UK companies asking them to clarify their PSC filings where there is a belief that the PSC disclosure is wrong.

In addition new statutory forms are being introduced that can be used to notify Companies House of changes to the UBO and UBO details. There is also a proposal requiring that, within a 14-day period, a notification has to be sent to Companies House for all changes to legal and beneficial ownership.





Developments concerning the Directive's amendment

In July 2016 the European Commission (EC) submitted a proposal to strengthen the Directive with regard to the UBO register's compulsory introduction. The aim of the proposal is to combat money laundering better by requiring greater transparency. For instance, the EC proposes lowering the threshold in the register, including more types of entities, and making the register more accessible.

The proposal is an update to the fourth anti-money laundering directive (Directive) and is referred to as the fifth anti-money laundering directive (AMLD V). According to the EU's decision-making procedure (known as the co-decision procedure, see diagram), both the Council of Ministers (also known as the Council of the European Union, or in short the Council)² and the European Parliament (EP) can amend EC's proposal. The procedure works as follows: the EC publishes a new legislative proposal. First, the proposal goes to the competent committee in the EP. This committee determines the EP's position. This is often followed by negotiations with the EP, to accelerate the procedure. If the Council and the EP reach a compromise, the co-decision procedure continues. The EP then approves the proposal in a plenary meeting, after which the proposal goes to the Council.

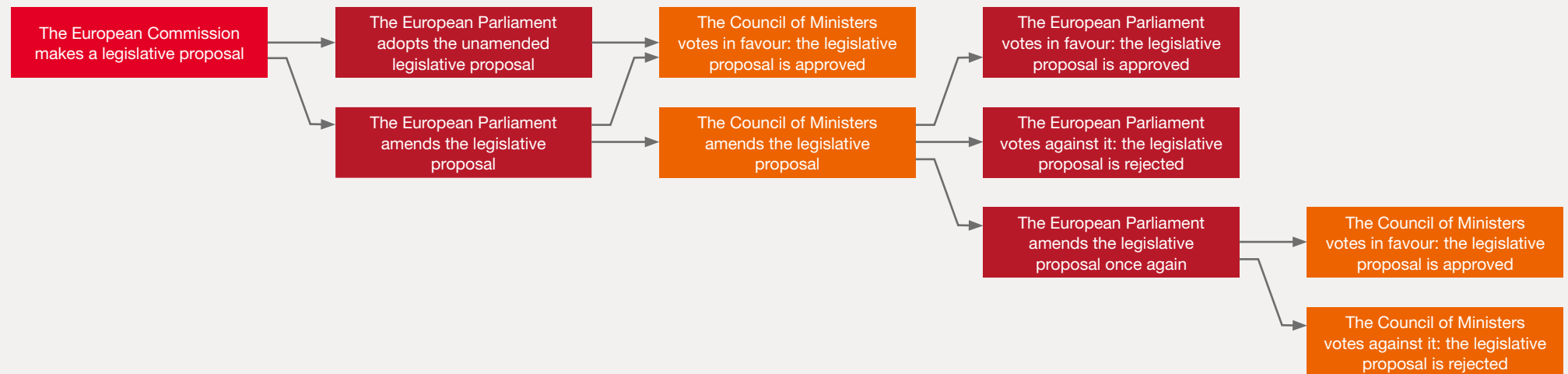
2. This is not the same as the European Council.

EC proposals on amending the anti-money laundering directive

The EC has submitted the following proposals, amongst others.

- For investment entities, persons with a holding of 10% qualify as UBO. That is therefore a reduction from the required holding of more than 25% which applies to all other entities.
- UBOs of entities (such as a private limited company), and UBOs of trusts and foundations (or entities similar to these) which operate a business will be included in a public UBO register.
- UBOs of trusts and foundations (or entities similar to these) which do not operate a business will be included in a UBO register which is accessible to third parties with a legitimate interest.
- The UBO registers of the different EU member states will be linked to each other, so that UBO information becomes accessible throughout the EU.

The normal legislative procedure: from proposal to law



The European Data Protection Supervisor warns that the measures the Commission proposes are not proportional in relation to the intended aim and that they involve significant and unnecessary risks for personal privacy and data protection. The supervisor is also of the opinion that there is a danger that the collected data will be used for purposes other than preventing money laundering.

EP: yet more transparency

In February, the competent committees of the EP adopted a number of amendments to the EC's proposal. Some aspects of the amendments go even further than the EC in making the registers transparent. The main changes vis-à-vis the EC's proposal are as follows.

- Every European citizen will be given access to the registers - including the UBO information of trusts and foundations (or entities similar to these) which do not operate a business - therefore not just citizens who have a 'legitimate interest'.
- All legal constructions which have a structure and function similar to that of trusts must be treated as trusts by the Member States and must meet all transparency requirements.

In March 2017 the EP decided to commence negotiations with the Council.

The Council: a little more reticent

Meanwhile various unofficial texts have been published containing the Council's position and the Member States have held talks about the position the Council will take relative to the EP. The Council's main position appears to be that of deleting a paragraph that qualifies shareholders in an investment entity as UBOs when they have an interest of 10% or more. The Netherlands also rejected this paragraph. Like the EP, the Council would treat entities as trust funds sooner. The Council has also indicated that access to the register should be in accordance with data protection legislation.

Expectations for the second half of the year

In the present talks between the EP and the Council, the Council's position on providing access to the data appears to be more reticent than that of the EP. It is therefore a matter of waiting to see what the final version of the EC proposal on tightening the Directive looks like and the extent to which the Council tones down the proposal.

Directive on access to UBO information for tax authorities

Separate from the amendment proposal for the Directive, on 6 December 2016 the Council adopted another Directive which compels member states to grant each other access to UBO information.

AML V timeline





Conclusion

The formal date for EU Member States to implement the UBO Register into their national legislation has expired at the time of publication of this report. Pursuant to the 4th Anti-Money Laundering Directive, the deadline for introduction of the UBO registers was 27 June 2017. A relatively large number of Member States will have missed this deadline. In our estimation, this is due in particular to this being a difficult and sensitive subject. Indeed, the introduction of a register that could be potentially open to the public, infringes a core, fundamental right of UBOs, i.e. their right to privacy. How does one balance such a fundamental right on the one hand with such an important objective of the Directive - the prevention of terrorism financing and money laundering - on the other hand? The most important thing is, in any case, that these two interests are actually balanced against each other and those who are affected, i.e. you as UBO, can follow this balancing process. Unfortunately, this seems to be missing frequently.

A proper balance has not been struck in the publicly available documents of the EU decision-making process, and not in the implementation procedures of a relatively large number of EU Member States (including the Netherlands) and, as yet, not in the EU's procedure to adapt the Directive.

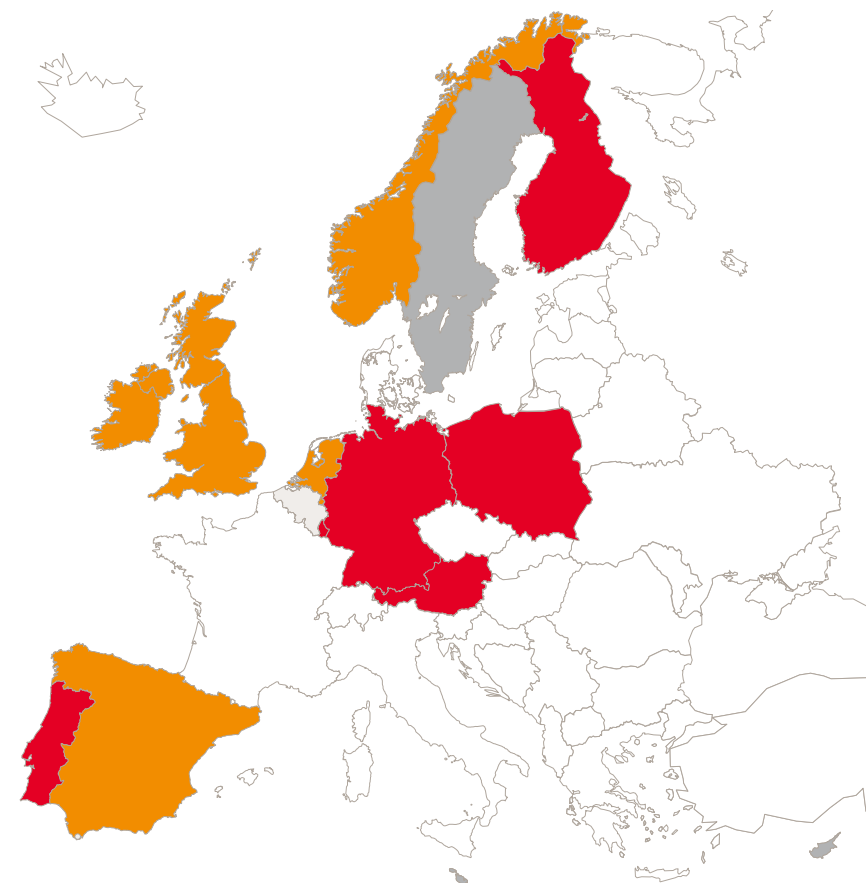
Status of implementation

In more than half of the relevant Member States, an implementation proposal has been submitted to the national legislator, or consultation has taken place around a legislative proposal. However, a remarkably large number of Member States have not yet announced a legislative proposal or a draft legislative proposal. Only Ireland and the United Kingdom have partly implemented a UBO register.

In our second report on the UBO register ("How does privacy fit into a transparent world?") there appeared to be a clear tendency among EU Member States to implement a publicly accessible register. This is possibly due to the struggle of interpreting the concept of 'legitimate interest'. But the picture emerging in this third report is clearly different: five or six of the relevant States have opted for a restricted UBO register. Third parties can only access the register if they have a legitimate interest. At this stage of implementation it is not yet clear which circumstances constitute a legitimate interest.

Developments regarding amendment of the Directive

In July 2016 the European Commission proposed a firm amendment to the Directive. With the aim of advancing the mandatory introduction of the UBO register in the Member States to 1 January 2017, reducing the percentage necessary to qualify as a UBO to 10% and mandatory public access to the UBO registers.



Status of implementation

Legislative proposal published	Red
Consultation	Orange
No legislative proposal yet	Grey



It has become clear that these proposals are not sufficiently widespread supported within the EU. The proposal has stalled in the course of the normal legislative procedure. The amendment proposal has entered into a special consultation stage, whereby delegates of the European Commission, the European Parliament and the Council are brought together in a mediation committee. This procedure is likely to take substantial time. The date of 1 January 2017 has in any case expired and the other adaptations seem to have somewhat softened.

Finally

The amendment to the Directive is progressing slowly. The deadline of 26 June 2017 was not met by a sizeable number of EU Member States and several EU member states have opted for a restricted UBO register. These three developments indicate a shift of sentiment in comparison to previous years. Transparency is still at the top of the agenda, but there seems to be a conflict with the desired form, as well as the impact it is likely to have on stakeholders.

This change in attitude offers more scope for the much-needed balance between transparency and the right to privacy, and paves the way for the robust public debate that this difficult and sensitive balance of interests deserves!

Retrospect



*In the first publication on the UBO register: “**Finding a balance between transparency and privacy**”, we informed you about the consequences of the UBO register for you and your (family) business and about the broad European context. For this we enlisted our PwC family business specialists from twelve countries, to investigate the impact of the UBO register for wealthy families and family business owners. – December 2015*



*In the second publication on the UBO register: “**How does privacy fit into a transparent world?**”, you will find a status update on the implementation of the UBO register in the EU Member States and you can read about how this issue is perceived from a US point of view. For this we enlisted our PwC family business specialists from fifteen countries, to investigate the impact of the UBO register for wealthy families and family business owners. – July 2016*

Clarification

For this study, we enlisted our PwC family business specialists from sixteen countries: Austria, Belgium, Cyprus, Finland, Germany, Gibraltar, Ireland, Luxembourg, Malta, the Netherlands, Norway, Poland, 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. How is the UBO register implemented in the various EU Member States?
2. What does the current political and societal debate on this issue focus on?
3. What is the added value of a publicly accessible UBO register?

Study method

We submitted a questionnaire containing fifteen questions based on the above sub-questions to our family business specialists in the countries involved. 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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