

## Finding a balance between transparency, privacy and security

*EuropeanFamilyBusinesses* fully supports the principles laid out in the EU's fourth anti-money laundering directive (4 AMLD). Regarding the provision within the 4 AMLD that will oblige EU member states to maintain beneficial ownership registers, listing information on the ultimate beneficial owners of corporate and other legal entities, *EuropeanFamilyBusinesses* understands the importance of such registers to trace criminal activity **but emphasizes the necessity to guarantee the safe use and distribution of the information**. Considering the economic importance of family businesses in Europe, the justification to grant full public access to the beneficial ownership registers, under the new proposal (2016/0208 (COD)) might pose significant risks for family businesses. As a result, *EuropeanFamilyBusinesses* expects strict provisions that will safeguard the privacy and security of family businesses:

### Protecting vulnerable individuals

*EuropeanFamilyBusinesses* is concerned that the Ultimate Beneficial Ownership (UBO) registers could expose many vulnerable individuals<sup>1</sup> to risks of fraud kidnapping, blackmail, violence or intimidation. The directive makes provisions, in 'exceptional circumstance,' for Member States to provide an exemption from such access to all or part of the information on a case-by case basis.

Considering that family businesses tend to have more concentrated share ownership, most family businesses are likely to be more affected by these obligations than other anonymous corporations. *EuropeanFamilyBusinesses* believes that Member States should be able to freely grant exemptions for family businesses as the impact of the obligations will be more significant on this type of business entity

### Defining Legitimate Interest

The family business community maintains that the demonstration of 'legitimate interest', as laid out in the 4 AMLD, to access beneficial ownership information, must depend on the highest standards since one could be potentially prying into the private life of a family. To ensure a consistent implementation across the European Union, *EuropeanFamilyBusinesses* expects to see a clear definition of what constitutes a 'legitimate interest' and how it would be applied in practice.

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<sup>1</sup> Examples of vulnerable individuals include young people who have acquired a shareholding in a large successful family business as a young adult or child.

# EFB position on Beneficial Ownership Registers 27/09/2016



It must be noted that many countries are struggling<sup>2</sup> with application of the concept of 'legitimate interest'. *European Family Businesses* believes that an acceptable compromise would be that national Financial Intelligence Units (FIU) act as arbiters to grant access to information that has been requested by a third party. The FIUs would only grant access to information by having already performed some pre-investigation on its side.

## Trusts and other legal entities

The special treatment for trusts and trust like entities corresponds with the position held by trusts, which is very different from that of a company. A trust traditionally stands for the provision of protection for vulnerable people and of confidentiality, the detailing of inheritance of property and family businesses and the protection of specific assets.

This treatment is in line with the confidential character of these legal entities. As a result, including trusts into the UBO registers effectively defeats the purpose of a trust. An acceptable solution would be that a separate register is created for trusts and other similar legal entities which is monitored by competent authorities where public access is granted once 'legitimate interest' is established.

In general, family businesses must maintain the right to privacy with regards to their ownership structures. This is one of their core strengths that leads to effective decision making and strong economic performance.

*EuropeanFamilyBusinesses* would like to re-iterate the fact that family businesses have no problem with disclosing information for **official use** to competent bodies or institutions. However, considering the scope and significance of the original 4 AMLD, and the variance in application of the directive by Member States, *EuropeanFamilyBusinesses* suggests that the obligations as laid out in the 4 AMLD on UBOs should not be amended until all Member States have been able to apply the original provisions and verify the quality of the information that would be inputted into the UBOs and performed a comprehensive review of the impact and utility of the UBOs.

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<sup>2</sup> 'How does privacy fit into a transparent world?' July 216, PwC