



Family Business Services

Are you ready to have your name in a
central EU shareholder's register?

EFB Summit of 30th May, 2017

Cees Nijman



UBO register's current
developments and most
controversial discussions

AGENDA

1. The Fourth EU Anti-Money Laundering Directive
2. Who is UBO?
3. Which entities must register?
4. What information needs to be included in the register?
5. Transparency versus Privacy
6. Proposed additional measures concerning the register
7. Implementation in legislation of various countries

1. The 4th EU ALMD

- **Adopted by the European Parliament on May 20, 2015**
- **The directive must be implemented in the legislation of the Member States on or before June 26, 2017**
- **Introduction of a central UBO register in every Member State**
- **Access for authorities and those with a legitimate interest**
- **Article 30: corporations / Article 31: trusts**



1. The 4th EU ALMD

Objectives:

- ❑ **Prevention of the use of the financial system for the purpose of money laundering and terrorist financing**
- ❑ **Organised criminal and terrorism financing can damage the stability and reputation of the financial sector and threaten the internal markets**



2. Who is UBO?

- **The following individuals qualify as a UBO under the Directive where it comes to legal entities:**
 - i) An individual who directly or indirectly has a shareholding of more than 25% or**
 - ii) Who has the power (>25%) over such entity**
 - iii) If no such person can be identified, then the individuals belonging senior management staff are designated as UBO**
- **The identities of the following persons must be registered by trusts if the trust has tax consequences:**
 - **the founder of the trust**
 - **the trustee(s)**
 - **the protector (where applicable)**
 - **the beneficiaries (or class of beneficiaries) and**
 - **any other individual exercising effective control over the trust**

2. Who is UBO?

Is X a UBO of NL BV?



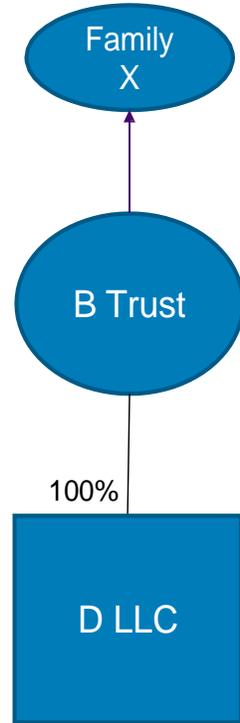
2. Who is UBO?

Is X a UBO of BVBA?



2. Who is UBO?

Are the X family members, being father, mother and child, UBO of D LLC?



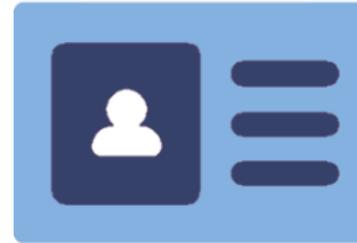
3. Entities that must register their UBO(s)

- **All corporations and other legal entities incorporated within the territory of a Member State**
- **How about corporations and legal entities not incorporated within their territory?**
- **Trusts who fall under the laws of the Member State**
- **All those entities are required to obtain and hold adequate, accurate and up to date information on their beneficial owners. A UBO is obligated to cooperate**
- **Intermediaries such as banks, financial institutions, trust offices, notaries, external accountants, auditors, tax advisors, have the duty to notify the register if they receive UBO-information which differs from the information as laid down in the register**

4. What UBO-information needs to be included in the register?

The following information on the UBO of legal entities must be included in the register:

- name
- month of birth
- year of birth
- nationality
- country of residence
- nature and extent of the economic interest held by the UBO



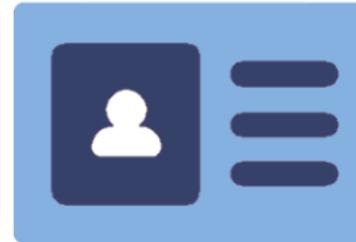
the above is accessible to all including organisations and persons with a legitimate interest

In all cases, in addition the following information is available to FIE's and intermediaries:

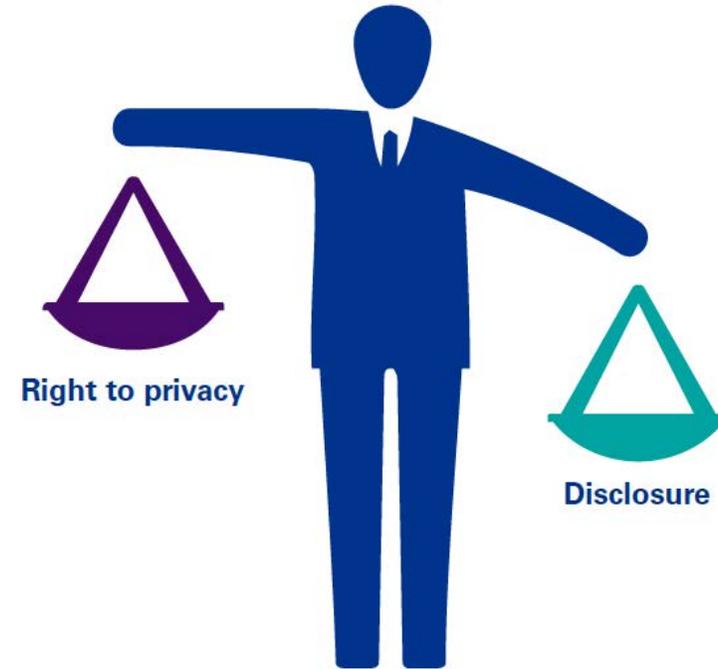
- date of birth
- place of birth
- home address
- tax Identification Number

4. What UBO-information needs to be included in the register?

- **UBO register for trusts is only accessible for authorities and FIE's**
- **Without the UBO's knowing**
- **Member States can require online registration of those with a legitimate interest**
- **Member States can ask a price for the information**
- **The price can not exceed the administrative costs**



5. Transparency versus Privacy



5. Transparency versus Privacy

AMLD4 provides for exceptions when risk of:

- *fraud*
- *kidnapping*
- *blackmail*
- *violence*
- *intimidation*

*or where the beneficial owner is a **minor** or otherwise **incapable***

Proposal 25 Nov 2016: Member States may decide to opt for such wider access in their national legislation in case they choose to do so having regard to the utmost importance to retain balance and proportionality in the aim of transparency and the aim of protection of fundamental rights of the individuals especially the right to privacy

5. Privacy in France

French Constitutional Court: public trust registry is in conflict with the French Constitution

- **October 21, 2016**
- **The trust registry was introduced to counter tax evasion and money laundering using trusts**
Although the pursuit of this goal, according to the French Court, is in principle in line with the French Constitution and can justify the invasion of the privacy of citizens, the invasion of this right to privacy by the trust registry should not go beyond what is necessary to achieve this goal
- **Disproportionate invasion of the right to privacy**

The judgement by the French Constitutional Court does not relate to the UBO registry that all EU Member States must implement by virtue of the fourth European Anti-Money Laundering Directive

Nevertheless:

- **This judgement fosters the idea that a publicly accessible UBO registry is not necessarily consistent with National law**

6.1. Proposed additional measures concerning the register

On July 5, 2016, the European Commission announced it wanted to take a number of additional measures:

- ~~• full public access to the UBO registers~~
- ~~• reduction of the percentage necessary to qualify as a UBO from 25% to 10% for “businesses that risk being used for money laundering or tax evasion”. The European Commission proposed using the definition ‘Passive Non-Financial Entity’, which is also used in other guidelines. Unlisted investment companies could fall under this definition.~~
- **Direct interconnection of registers between Member States, to facilitate the cooperation between Member States**

6.2. Ecofin meeting on December 6, 2016:

As from 1.1.2018:

- **Tax authorities have access to anti-money laundering information, including customer due diligence information, and information on beneficial ownership**
- **Public access to the UBO information on «trusts» if there is a legitimate interest**

7. Situation in the Netherlands

The Netherlands

What is the status of the implementation of the UBO register (AMLD 4) into your domestic legislation?	A public consultation has been released in April 2017
How is "UBO" defined in your current legislation?	<ol style="list-style-type: none"> 1. A natural person who holds a share of more than 25% of the issued capital or can exercise more than 25% of the voting rights in the shareholder's meeting of a legal person other than a foundation, or can exercise actual control over this legal person, unless this legal person is a company subject to disclosure requirements as referred to in Directive 2004/109/EC. 2. Beneficiary of 25% or more of the assets of a foundation or a trust as referred to in the Convention on the Law of Trusts and on their recognition or the party that has special control over 25% or more of the assets of a foundation or trust
Which information needs to be disclosed in the register?	<p>Public information: name, month and year of birth, nationality, country of residence, nature and extent (in ranges of 25, 50, 75 and 100%) of the beneficial interest held</p> <p>Non-public information: date of birth, place and country of birth, address, taxpayer number, nature, number, date and place of issuance of ID, documentation to substantiate the UBO status and the extent of the beneficial interest held</p>
Which entities do not need to register their UBO?	<p>Passive CV and foreign legal entities that do not operate a business in the Netherlands</p> <p>Uncertain: FGR</p>
Who can access the register?	Competent authorities and FIU-NL will get full access to all information in the UBO register, all other persons will only be able to access the public information listed above
Which safeguards, if any, will be in place to protect the UBO's privacy?	<p>here are a number of (privacy) safeguards to access the UBO register:</p> <ol style="list-style-type: none"> (1) every user will be registered (2) the user needs to pay a fee (to cover the administrative costs of maintaining the register) to access the register (3) part of the information will not be visible for everyone, and (4) under certain circumstances information will not be available for everyone

7. What did Switzerland do?

Switzerland

What is the status of the implementation of the UBO register (AMLD 4) into YOUR domestic legislation?	The Law implementing the recommendations of the Financial Action Task Force (FATF) entered into force on 1 July 2015
How is "UBO" defined in your current legislation?	The natural person who enjoys the benefits of ownership even though the title is in another name
Which information needs to be disclosed in the register?	First and surname and address of the beneficial owner
Which entities do not need to register their UBO?	The General Partnership, the Limited Partnership, the Partnership limited by Shares, associations
Who can access the register?	It is not a public register. The board of director keeps the register and has access. Under certain circumstances public authorities can access the register as well
Which safeguards, if any, will be in place to protect the UBO's privacy?	n.a.

7. What did Germany do?

Germany

What is the status of the implementation of the UBO register (AMLD 4) into YOUR domestic legislation?	
How is "UBO" defined in your current legislation?	
Which information needs to be disclosed in the register?	
Which entities do not need to register their UBO?	
Who can access the register?	
Which safeguards, if any, will be in place to protect the UBO's privacy?	

7. Beyond the EU

Beyond the EU



Global action on exchange of information on UBO

- **45 countries** have committed to the project on automatic exchange of information on beneficial ownership



Contact details

Cees Nijman
Partner Meijburg & Co
+31 622778385



kpmg.com/socialmedia



kpmg.com/app

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