

Financial Crime News

The register of beneficial owners under the fourth Anti-Money Laundering Directive



The European Parliament adopted the fourth Anti-Money Laundering Directive. EU Member States, including Malta, must transpose this Directive into national legislation by 26 June 2017. The objective of the Directive is to strengthen the fight against tax evasion, money laundering and terrorist financing.

The Directive will bring about a number of changes to the present regime. One of the important changes, debated even during the Directive's initial stages, is the Ultimate Beneficial Owner (UBO) register.

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.

Chapter III of the AMLD IV sets out the requirement for beneficial ownership information to be held in a central register. Article 30 specifically addresses corporate and other legal entities, whilst Article 31 deals with trusts and similar arrangements.

PwC recently carried out a study of the impact of the UBO register on high net-worth families and family businesses in twelve European countries, including Malta. Although there is still a great deal of uncertainty surrounding the precise details of the manner in which the UBO register will be implemented, this study concludes that the introduction of this register is expected to have an impact on the privacy and security of UBOs.

What are the main issues around the implementation of the UBO register?

Structure and location of the register

The Directive stipulates that in the case of corporate entities Member States have to obtain and hold adequate, accurate and current information on their beneficial ownership, including details of beneficial interests held. In the case of trusts this information shall include the settlor, trustee, protector (if any), beneficiaries or class of beneficiaries and any other natural person exercising effective control over the trust. This information must be held in a central register but the directive does not indicate whether there should be a single register for both corporate entities and trusts. The effort and cost to maintain this register is expected to be significant and opting for multiple registers can only add to this burden.

With respect to the location of the register, the directive suggests possible options but is not prescriptive. In Malta, most of the information vis-à-vis corporates is already held with the Registrar of Companies. However as yet, there are no definite decisions as to whether or not Malta will adopt a single register and where such register or registers will be located.

Access to the register by competent authorities and subject persons

The Directive is very clear that in case of both corporates and trusts, competent authorities and FIUs, must be granted timely access to the information in the UBO Register. The Directive however does not specify which entities are captured within the definition of ‘competent authority’. For example, would tax authorities fall within such a definition? Another consideration is whether other European ‘competent authorities’ and FIUs are to be granted direct access to the Maltese register or whether these should direct their query to local competent authorities and FIAU.

In the case of corporate and other legal entities, subject persons will also have access to the central register, when these are performing customer due diligence procedures. However, in the case of trusts the Directive provides the option to Member States to grant access to subject persons. Therefore, Member States may adopt different approaches in this respect.

Access to the register by third parties

In the case of corporate and other legal entities other parties must demonstrate that they have a ‘legitimate interest’ in the UBO register before being granted access. The legitimate interest 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 granted access to the register will have to pay a nominal fee for this information. Third parties will not have access to beneficial information pertaining to trusts.

Responsibility to maintain the register updated

The Directive requires Member States to ensure that the registers maintained are adequate, accurate and current. Each Member State will have to decide who will be responsible for these updates and it appears that the company in the case of corporates and trustees in the case of trusts will be entrusted with this responsibility. The question that arises is who, in the case of a company, will assume responsibility, the directors, the company secretary or the beneficial owners themselves?

Corporate service providers will want to follow this area closely as it may have a major impact on their operations.

Concerns by UBOs

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. However, there is also a drawback to it, because its introduction may have a considerable impact on the privacy and security of high-net-worth individuals and family businesses. UBOs 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 twelve countries investigated in the PwC study. This may potentially lead UBOs to shift their interests outside of the EU where they would not be subject to such exposure.

Member states have a certain degree of freedom in the manner in which the UBO register is implemented. Apart from ensuring that the Directive requirements are properly transposed into national legislation, concerns raised by UBOs must also be taken into account. It is therefore essential that dialogue with representative bodies and competent authorities take place to ensure a fair and balanced implementation of the UBO Register.

For an additional insight to the challenges and positions adopted so far by the other eleven countries who participated in this exercise, we invite you to read the full PwC study [‘Finding a balance between transparency and privacy’](#)

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