



Ultimate Beneficial Owner (UBO) Register Requirements: The Netherlands, Belgium, Luxembourg and Ireland

The Ultimate Beneficial Owner (UBO) register has been introduced in the Netherlands, Belgium, Luxembourg and Ireland (as well as in many other EU countries). In the succeeding pages, you will find a summary of the relevant aspects of this new legislation for the Netherlands, Belgium, Luxembourg and Ireland, as well as details of how we can assist to ensure compliance.

The Netherlands	2
Belgium	4
Luxembourg	6
Ireland	8



The Netherlands

Background

On 4 April 2019, the Dutch Minister of Finance submitted a bill to the lower house of the Dutch parliament introducing an obligation for a wide range of legal entities and other organisational forms (hereinafter entities) to provide information on their UBOs in the register of the Chamber of Commerce. Some of the information will also be accessible to the general public. The bill, which derives from the EU's Fourth and Fifth Anti-Money Laundering (AML) Directives, consists of amendments to existing Dutch national legislation such as the Money Laundering and Terrorist Financing (Prevention) Act (*Wet ter voorkoming van witwassen en financiering van terrorisme: Wwft*) and the Trade Register Act 2007.

Which persons and entities are covered?

In general, a UBO is considered to be an private individual person with ultimate ownership of or control over an entity (at least 25% of shares/voting or exercise rights).

The following entities will have to provide UBO information to the Chamber of Commerce, insofar as relevant:

1. Private limited liability companies (*besloten vennootschappen*) and public limited liability companies (*naamloze vennootschappen*), with the exception of (i) listed companies that are subject to the disclosure requirements laid down in the EU Transparency Directive or to equivalent international requirements, and (ii) wholly owned subsidiaries of the listed companies described in (i)
2. Foundations (*stichtingen*), cooperatives (*coöperaties*), mutual insurance associations (*onderlinge waarborgmaatschappijen*), associations (*verenigingen*) with full legal capacity, and associations with limited legal capacity operating a business
3. Private partnerships (*maatschappen*), limited partnerships (*commanditaire vennootschappen*), general partnerships (*vennootschappen onder firma*), and European companies and cooperative societies having their corporate seat in the Netherlands.

The obligation for trusts, mutual funds and other legal arrangements or entities will be regulated in a separate draft bill expected to come into force around 10 March 2020. This trust register, unlike the

UBO register, will not be publicly available, and solely persons with a legitimate interest shall be able to access it.

What information should be provided?

The UBO information to be provided includes:

- Full name
- Date and place of birth, nationality and country of residence
- Private residential address
- Citizen service number (*Burgerservicenummer*, or BSN) / foreign tax identification number (TIN)
- Copy of passport / ID
- Nature and extent of the interests held
- Documentation supporting (a) the conclusion that the individual qualifies as UBO and (b) the nature and size of the beneficial interest held.

In addition to the obligation to provide UBO information to the register of the Chamber of Commerce, entities will be required to maintain adequate, accurate and up-to-date records of such information themselves. UBOs will be required to cooperate in the performance of the above obligation by providing the relevant entity/entities with all information necessary for this purpose. In the event the information changes, a new filing should be made to keep the Chamber of Commerce up to date.

Who has access to the UBO register?

A limited amount of information is accessible to the general public and can be viewed after the specific person is registered with the Chamber of Commerce. This information only includes first and last name, month and year of birth, country of residence, nationality and nature and extent of the UBO's economic interest.

All other information (as per the above list) is solely accessible to Dutch authorities such as the Dutch Central Bank.



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Sanctions for non-compliance

Non-compliance by entities or UBOs with the respective obligations may lead to the imposition of administrative or even criminal sanctions. Intentional violations may result in imprisonment for up to two years, community service or a fine of up to €20,750. In other cases, violations may result in detention for up to six months, community service or a fine of up to €20,750.

Timing

The obligation to file the UBO information starts on 1 January 2020.

Entities that are already registered in the register of the Chamber of Commerce will have 18 months from 1 January 2020 to file UBO information.



Belgium

Background

The law of 18 September 2017 – regarding prevention of the use of the financial system for the purposes of money laundering or terrorist financing and limitations to the use of cash – provides for the creation in Belgium of a centralised register of UBOs.

This law implements the Fourth AML Directive, which requires the EU member states to take legal and regulatory measures to the effect that:

1. Companies and other entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial owners
2. A centralised register storing information on the beneficial owners of these entities is established in order to facilitate access to this information.

All changes should be transmitted within the month and by electronic means to the UBO register.

Which persons and entities are covered?

The law identifies various categories of beneficial owners depending on the legal entity to which they belong. Three types of legal entities are identified – company, A(I)SBL and foundation – as well as trusts and other similar entities.

The following persons are considered as beneficial owners of companies:

1. The natural person(s) who has/have direct or indirect ownership of a sufficient percentage of the voting rights or ownership interest in that entity, including through bearer shareholdings. A shareholding of more than 25% or an ownership interest of more than 25% in the entity held by a natural person shall be an indication of direct ownership or sufficient percentage of voting rights. In the case of indirect ownership, the percentage to be taken into account is the weighted percentage
2. The natural person(s) who control(s) the company by any other means (e.g. shareholders' agreement, the power to appoint members of the management board, veto right)
3. The natural person(s) who hold(s) the position of senior managing official(s) if, after having exhausted all other means of identification, and provided there are no grounds for suspicion, none of the aforementioned persons is identified or if

it is not sure that the person(s) identified is/are the beneficial owner(s). Being a residual category, the identification of a beneficial owner must be duly documented and justified (e.g. measures and actions undertaken to identify the two first categories, results of said measures and actions).

The following persons are considered as beneficial owners of A(I)SBL and foundations:

Administrators; persons entitled to represent the A(I)SBL; persons in charge of the daily management of the A(I)SBL or foundation; the foundation's founders; the natural persons or, when those persons have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; any other natural person exercising ultimate control over the A(I)SBL or foundation by other means.

The following persons are considered as beneficial owners of the trusts and other similar legal arrangements:

The settlor; the trustee(s); the protector; the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates; any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

What information should be provided?

- Full name
- Date and place of birth, nationality and country of residence
- Private residential address
- Belgian national identification number /foreign TIN
- Copy of passport /ID
- Nature and extent of the interests held
- Date that the individual became a beneficial owner
- Structure chart
- Information about the companies in the structure (incorporation date, registered office address, registration details and % held).



Who has access to the UBO register?

The data of the UBO register will be available to:

- The competent authorities referred to in Articles 2 and 17 of the Royal Decree of 30 July 2018
- The subject entities referred to in Article 5 of the Law of 18 September 2017, only in the context of the performance of their due diligence obligations relating to customers. Access for these entities will be charged
- Any member of the general public for UBOs of companies. This access will be limited to a certain amount of information and will be charged
- Any person demonstrating a legitimate interest in the UBOs of A(l)SBL, foundations, trusts and similar legal arrangements. This access will be limited to a certain amount of information and will be charged
- Any person who submits a written application to the Treasury Administration, for A(l)SBL, foundations, trusts and similar legal arrangements that control a company, A(l)SBL or foundation. This access will be limited to a certain amount of information and will be charged.

In the case of a company of which an intermediate entity is an A(l)SBL, foundation, trust or similar legal arrangement, the UBOs of such entities will be accessible to persons demonstrating a legitimate interest.

Access to UBO information is in accordance with data protection rules and may result in the payment of administrative fees.

UBOs will have the opportunity to know all the authorities, organisations and individuals who have, during the past six months, consulted or updated their data – with the exception of the administrative and judicial authorities responsible for the investigation and repression of offenses. They may submit their request to obtain the information from the Administrator-General of the Treasury Administration.

The consultation of the register data is recorded and kept for a period of 10 years.

Sanctions for non-compliance

Administrative fines from €250 up to €50,000 may be given if incorrect UBO register declarations are made. Any changes must be communicated within a year and annual confirmation that the information is still accurate is required.

Timing

All current companies and A(l)SBL/foundations must be registered before the end of September 2019.



Luxembourg

Background

On 6 December 2017, the Luxembourg Parliament published two bills of laws (PL 7216 and PL 7217) aimed at implementing new transparency measures provided by the Fourth AML Directive. These bills of laws intended to create central registers of UBOs (as per the requirements of the Fourth AML Directive), which will be implemented in all EU member states.

PL 7216 relates to the creation of a central register of beneficial owners of fiduciary arrangements under the authority of the *Administration de l'Enregistrement et des Domaines*, while PL 7217 provides for the set-up of a central register of beneficial owners of Luxembourg legal entities under the authority of the Minister of Justice. PL 7217 was analysed, discussed and adopted in parliamentary session on 18 December 2018. The law dated 13 January 2019 setting up a register of beneficial owners – known as the RBO Law – was published on 15 January 2019 in the Luxembourg Official Gazette (*Mémorial A*).

Which persons and entities are covered?

The following entities will have to provide the UBO information to the *Registre des Bénéficiaires Effectifs* (RBE):

1. Corporate partnerships limited by shares (*sociétés en commandite par actions*)
2. Common limited partnerships (*sociétés en commandite simple*)
3. Special limited partnerships (*sociétés en commandite spéciale*)
4. Interest groupings (*groupements d'intérêt économique*, or GIE)
5. European interest groupings (*groupements européens d'intérêt économique*, or GEIE)
6. Investment funds (*fonds d'investissement*) and all mutual funds (*fonds communs de placement*, or FCPs)
7. Civil companies (*sociétés civiles*) and non-profit associations (*associations sans but lucratif*)
8. Foundations (*fondations*)
9. Pension savings associations (*associations d'épargnes pensions*)
10. Agricultural associations (*associations agricoles*)
11. Public establishments of the State and

municipalities (*établissements publics de l'Etat et des communes*).

What information should be provided?

The required information regarding beneficial ownership that must be recorded and kept in the RBE pursuant to the RBO Law is as follows:

- Full name
- Date and place of birth, nationality and country of residence
- Luxembourg national identification number / foreign TIN
- Nature and extent of the interests held

As far as address is concerned, the RBO Law allows some flexibility. The option is given to specify either the precise private address or business address mentioning:

- For addresses in the Grand Duchy of Luxembourg: the usual residence entered in the national register or, for business addresses, the building number, street, locality and postal code
- For addresses situated outside the Grand Duchy of Luxembourg: the building number, street, locality, postal code and country.

In addition to the obligation to provide UBO information to the RBE, entities will be required to maintain adequate, accurate and up-to-date records of such information themselves. UBOs will be required to cooperate in the performance of the above obligation by providing the relevant entity/entities with all information necessary for this purpose. In the event the information changes, a new filing should be made to keep the RBE up to date.

Who has access to the UBO register?

The RBO can be accessed free of charge by the public, without justification. The search on the RBO is carried out by the *Registre du commerce et des sociétés* (RCS) number or by the name of the registered entity.

All information entered into the RBO concerning the registered entity is accessible, with the exception of the address and identification number of the UBOs.

Information is accessible six months after the entry into force of the RBO Law, starting 1 September 2019.



Sanctions for non-compliance

Non-compliance by entities or UBOs may lead to the imposition of criminal fines ranging from €1,250 to €1,250,000. Registered entities may be liable if they (i) fail to obtain and hold the internal file with the aforementioned required information, (ii) omit to file the required information to the RBE, or (iii) voluntarily provided inaccurate, incomplete or obsolete information on their UBO. UBOs may be liable if they fail to provide the required information.

Timing

The obligation to file the UBO information started on 1 March 2019.

- Entities that are already registered in the RCS will have six months from 1 March 2019 to file UBO information
- New entities incorporated after 1 March 2019 will have 30 days to proceed with the filing. In general, a UBO is considered to be a private individual person with ultimate ownership of or control over an entity (at least 25% of shares/voting or exercise rights).



Ireland

Background

On 15 November 2016, Ireland introduced the EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016, which placed an obligation on certain corporate or legal entities incorporated in Ireland to obtain and hold adequate, accurate and current information on their UBOs.

On 22 March 2019, Ireland made further implementations of the EU's Fourth AML Directive by way of Statutory Instrument No 110 of 2019 of the EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019. SI No 110 provided for the creation of a new central register of the UBOs of Irish corporate entities.

On 29 July 2019, the Registrar of Companies was appointed as the Registrar of the Central Register and a Central Register of Beneficial Ownership (RBO) was launched.

Which persons and entities are covered?

The regulations apply to every corporate or other legal entity except for those (i) listed on a regulated market that is subject to disclosure requirements consistent with the law of the EU, or (ii) subject to equivalent international standards which ensure adequate transparency of ownership information.

The regulations require the relevant corporate or legal entities incorporated in Ireland to take reasonable steps to collect and maintain accurate and current information on their beneficial owners, and to keep the RBO up to date.

A beneficial owner is defined in Article 3(6), Fourth AML Directive, as any natural person(s) who ultimately owns or controls the company and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

1. The natural person(s) who ultimately owns the Irish company through direct or indirect ownership of more than 25% of the shares or voting rights or ownership interest in that entity
2. The natural person(s) who ultimately controls the Irish company by other means, including control obtained through a shareholders' agreement, the exercise of dominant influence or the power to appoint 'senior management' to the company.

If, after having exhausted all possible means and provided there are no grounds for suspicion, no

person under point (1) or (2) is identified, the natural person(s) who hold the position of senior managing official(s) shall be recorded on the RBO.

The obligation for trustees of certain Irish trusts to establish and maintain registers of beneficial ownership is governed by the EU (Anti-Money Laundering: Beneficial Ownership of Trust) Regulation 2019. This trustee register, unlike the RBO, will not be publicly available. It shall solely be made available to the Revenue Commissioner, Central Bank, Department of Finance and other competent authorities upon request.

What information should be provided?

The following information must be maintained in the RBO in respect of each beneficial owner:

- Full name
- Date and place of birth, nationality and country of residence
- Private residential address
- Personal Public Service Number (PPSN)*
- Nature and extent of the interests held
- Date that the individual was entered in the RBO as a beneficial owner
- If applicable, the date on which that person ceases to be a beneficial owner.

* The provision of a PPSN is a new requirement under the 2019 Regulations. It is a unique reference number issued to all Irish residents for dealings with public service agencies. If a beneficial owner does not have an Irish PPSN, they must apply for an RBO Transaction Number by filing a Form BEN2 - Declaration as to Verification of Identity with the Registrar.



Who has access to the UBO register?

The following parties will have unrestricted access to the RBO:

- An Garda Síochána
- FIU Ireland
- Revenue Commissioners
- Criminal Assets Bureau
- Competent authorities engaged in the prevention, detection or investigation of possible money laundering or terrorist financing
- An inspector appointed under section 764(1) of the Companies Act 2014.

It's important to note that PPSN details will not be available under unrestricted access.

The following parties will have restricted access to the RBO upon payment of a small fee:

- Designated person who forms a business relationship with a relevant entity or is taking customer due diligence measures in relation to a relevant entity
- A member of the public.

The information available under restricted access will be limited to (i) the name, month and year of birth, the country of residence and nationality of each UBO, and (ii) a statement of the nature and extent of the interests held or the nature and extent of control exercised by each UBO.

Sanctions for non-compliance

A relevant entity that fails to comply with the regulations shall be liable to a class A fine (a fine of up to €5,000) or, on conviction on indictment, a fine not exceeding €500,000. In addition to these fines, custodial sentences of up to 12 months can be imposed on any person who makes a false statement to the Registrar, and does so knowingly or recklessly.

Timing

Under the 2016 Regulations, the relevant entities should currently maintain a register of beneficial owners on appropriate company secretarial software.

The RBO launched in July 2019 and relevant entities have until 22 November 2019 to file their beneficial ownership details on the central register.

Newly incorporated entities must file their beneficial ownership details within five months of incorporation.

Companies also have a legal obligation to keep the beneficial owners details up to date on the RBO. Any changes must be notified to the Registrar within 14 days.



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How IQ-EQ can help

We are already well prepared for these mandatory UBO registration obligations and are assisting clients with a streamlined, multi-step process to ensure compliance. For further information and to discuss your specific requirements, please speak to our dedicated key contact in your jurisdiction.

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