

The UBO register enters into effect on 31 October 2018

Are you a director or business manager of a Belgian company? If so, then as of 31 October 2018 you have the obligation to pass on to the new Belgian UBO register the identity of this company's ultimate beneficial owner ("UBO").^[1]

On 14 August 2018 the Belgian Official Journal published the Royal Decree that establishes what data of the ultimate beneficial owner are included in the UBO register and who can access this UBO register.

In earlier newsflashes we reported to you that the anonymity of the shareholder is being partially lifted as part of the fight against money-laundering and terrorism via the creation of a UBO register in Belgium. In those newsflashes you can find who the "ultimate beneficial owner" of a company is and what sanctions directors can incur if they fail to communicate the necessary information to the register. The short take is as follows:

- The UBO is the natural person who, directly or indirectly, is owner of or has control over the company. An interest of 25% of the voting rights in a company is an indication of control. It is important to note that this only concerns natural persons.
- If a company does not communicate who its UBO is, its directors can incur sanctions. There are both administrative and criminal-law fines that (taking into account the current criminal-law surcharge) can amount to 50,000 EUR.

In this newsflash we will explain the Royal Decree.

The information in the register

The information that must be entered into the register includes both personal data of the UBO (besides name and date of birth, this also includes the residential address and the national register number) and information about the participation of the UBO (the date on which the capacity of UBO was acquired, the data of all intermediaries if it concerns an indirect UBO, the scope of the UBO's interest in the company, etc.).

The directors must turn these data over to the register within a month after they become known or are modified. If the UBO does not provide his data to the company, the company is authorised to make searches in the national register. The information is then kept in the register until ten years after the company loses its legal personality.

The Royal Decree provides several mechanisms so that the UBO is informed when his data are included in the register.

- The company must first inform its UBO on a permanent medium about (amongst other things) the possibility of learning about the data that are included in the register.
- The manager of the register must also inform the UBO of the recording in the register and passes on the information that is registered.
- Finally, the UBO can submit an application to learn what data are registered.

Several mechanisms are also provided in order to guarantee that the information in the register is and remains correct.

- Each year the directors must update the information in the register.
- The UBO himself can - free of charge - ask the company (or via the manager of the register) to update his data and delete incorrect data.
- Each entity subject to the anti-money laundering laws (e.g. banks, insurers, external accountants, casinos, lawyers in certain cases, etc.) has a reporting duty if it determines that certain data (which it, for example, must request within the framework of its obligations under the Anti-Money Laundering Act) do not correspond to information from the register.
- Finally, the manager of the register can also correct the data. Provided that it requests advice from the Data Protection Authority, it can for example also consult the other databases within the FPS Finance.

Access to the register

The most striking thing about the RD is perhaps the provisions concerning access to the register.

Obviously the register will be open for government bodies that are active in combatting money laundering and terrorist financing. The tax authority will also receive access. The RD does place some restrictions on this access, however. For example, the government authorities with an access right must take all necessary technical and organisational measures in order to e.g. guarantee that each access or request is authorised and legitimate in light of the objectives of the Anti-Money Laundering Act and that the information is used solely for these purposes.

More striking is that every citizen will also get access to the register, although not to all of the data contained therein. The address of the UBO and the scope of his participation in the company, for example, will not be accessible. Moreover, this access right for the citizen is tempered because an administrative fee will be charged (one which is still being established) and because it will only be

possible to request information on the basis of the enterprise number or the name of the company, and thus not in the name of the UBO.

The UBO and the company involved are not informed of who has inspected the register. However, each consultation of the register is recorded and kept for ten years.

The RD also provides the possibility for the UBO to submit a request to limit or exclude the information visible for citizens. For this the UBO must demonstrate that access of the general public to the information entails a disproportionate risk for him, or a risk of fraud, abduction, blackmail, extortion, harassment, violence or intimidation. The manager of the register then assesses on a case by case basis whether the departure can be authorised.

What do you have to do and by when?

The RD enters into effect on 31 October 2018. Given the period of one month to communicate data, that would in principle mean that the directors must pass on the information to the register by 30 November 2018 at the latest. Nevertheless, it was very recently published on the FPS Finance web page with practical info (which you can find [here](#)) that time would be given until 31 March 2019 to register the UBO for the first time. This is done electronically via the online platform MyMinfin.

[¹] And it is not only companies that are targeted: a UBO must also be designated for associations, for example. However, in this newsflash we only examine the obligations for companies.

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