

Luxembourg register of beneficial owners: Are you ready?

March 2018

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Draft Luxembourg bill of law transposing article 30 of Directive (EU) 2015/849 (the fourth anti-money laundering directive (AMLD IV))

The Luxembourg parliament is reviewing the draft bill of law implementing article 30 of AMLD IV, with a view to implementing additional obligations for certain Luxembourg corporate entities to improve ongoing efforts against money laundering, financing terrorism and organized crime.

The new main obligations are the following:

1. to obtain and maintain up-to-date information concerning beneficial owners at the registered office;
2. to file such information in a new, specially-created register in Luxembourg; and
3. to provide information (including information on legal owners):
 - (a) to national authorities (upon simple request); and
 - (b) to certain professional organizations and professionals of the financial sector (upon motivated request).

Obligation to conserve documentation at the registered office in Luxembourg

Each corporate entity falling within the scope of the draft bill is required to obtain and maintain the following information at its registered offices in Luxembourg:

1. the first and last names of its beneficial owners;
2. the nationalities of its beneficial owners;
3. the dates and places of birth of its beneficial owners;
4. the countries of residence of its beneficial owners;
5. the precise private or professional addresses of its beneficial owners;
6. the identification numbers of its beneficial owners; and
7. the nature and scope of the stakes held by its beneficial owners.

The information must be exact and up to date.

Definition of beneficial owners under Luxembourg law

The draft bill does not create a new definition of beneficial ownership under Luxembourg law. Instead, it cross-references to the definition under the act of 12 November 2004 on the fight against money laundering and terrorist

financing, as amended, which defines a beneficial owner as “any natural person who ultimately owns or controls an entity and/or any natural person on whose behalf a transaction or activity is conducted.”¹

For a corporate entity, any natural person directly or indirectly holding a percentage of more than 25% of its shares or voting rights is deemed to be a beneficial owner. The definition is not limitative, so natural persons holding a lesser percentage could still be deemed to be a beneficial owner. It is hoped that additional clarity on the definition of beneficial ownership will be made in the draft bill or to the Luxembourg legal environment.

New register

The above information (together with the supporting documentation) shall be provided by the relevant corporate entity within a period of one month from the date of its incorporation (or any changes to its beneficial ownership) to a new register of beneficial ownership (the “REBECO”).²

The REBECO will be required to proceed with the filing within a period of three business days or reject the filing if it is incomplete, does not comply with applicable law or regulations or is inconsistent with the supporting documentation.

Access to the register

The draft bill provides that national authorities and members of the Luxembourg court administration have access to all of the information filed with the REBECO. Professional bodies and professionals shall have access to the information listed at items 1 - 4 and 7 above when acting within the scope of their AML obligations.

The draft bill also provides that resident organizations and persons may request access to the information filed with the REBECO, provided that they have a legitimate interest in doing so. The exact persons who may be authorized to request access and the nature of their legitimate interest are still under discussion.

Communication of information to national authorities, professional bodies and certain professionals

The draft bill provides that corporate entities must provide the above information, as well as information on their legal owners, to any national authority upon simple request. The same information (except for the precise addresses and identification numbers) must be provided to certain professional bodies and to certain professionals upon a duly motivated request.

Any request from professional bodies must be made within the scope of their mission of supervising efforts against money laundering and the financing of terrorism, and requests from professionals must be made within the scope of their customer due diligence procedures.

Criminal sanctions

The draft bill further provides for criminal fines in an amount ranging from EUR 1,250 to EUR 1,250,000 for corporate entities or their representatives (*mandataires*) which fail to comply with their obligations thereunder.

Transitional period

The draft bill provides for a six-month transition period following the entry into force of the law. Access to the REBECO will only be granted at the end of such six-month period.

Outstanding issues

The draft bill is still undergoing the required consultation process with the Luxembourg legal, financial and commercial sectors’ representative bodies. It is expected that the legislator will provide additional details on *inter alia* the scope of the draft bill of law, the information and documents to be filed with the REBECO, the access by third parties to the REBECO.

¹ Article 1 (7) of the act of 12 November 2004 on the fight against money laundering and terrorist financing transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

² The REBECO shall be managed by the *groupement d’intérêt économique RCSL*, i.e., the legal entity currently managing the Luxembourg trade and companies’ register (*Registre de commerce et des sociétés de Luxembourg*).

EU impact

France has recently set up a register of beneficial owners of corporate and other legal entities incorporated within the French territory³, which forms a part of the existing French Trade and Companies Register. A French decree sets out the information to be provided and the persons that can access the register. The French register entered into force on 1st August 2017, with a deadline until 1st April 2018 for existing legal entities to provide the required information.

In Belgium, the law of 18 September 2017 on the prevention of money laundering sets out the principle of a register of ultimate beneficial owners, created within the Ministry of Finance. A Royal Decree should provide the practical information regarding the register, such as the persons who can obtain access to it or the modalities for such access. The register is expected to enter into force in June 2018. However, the entry into force and the publication of the Royal Decree is subject to the publication of an opinion by the Privacy Commission (*Commission de la vie privée / Commissie voor de bescherming van de persoonlijke levenssfeer*) and neither this draft Royal Decree nor the opinion have been made publicly available.

For additional information on how article 30 of AMLD IV was transposed in Belgium, please see the earlier client alert issued by the Brussels office, using the links below:

Please follow this [link](#) to download PDF, or go to

<https://www.whitecase.com/publications/alert/belgium-issues-new-law-anti-money-laundering-transposing-fourth-eu-directive-and?s=aml%20belgium>

Please do not hesitate to contact the White & Case Luxembourg team if you have any questions or would like to learn more about how the bill will impact your companies in Luxembourg.

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³ Law Sapin II, 9 December 2016