

FAQ: Luxembourg among the first countries in the EU to establish a public Ultimate Beneficial Owner Business Register

The setting up of a public Ultimate Beneficial Owner (UBO) register is a strong act of transparency, as well as a challenge for the Member States. What is your assessment?

It is indeed a strong act of transparency, all the more so as Luxembourg was one of the first countries in Europe to set up a fully public and accessible UBO register. Along with Bulgaria, Denmark, Latvia and Slovenia, Luxembourg is one of the few European Union countries to have opted for a register that is completely open and accessible to the general public (including journalists) without any restrictions. The data can be consulted free of charge online without prior authentication or registration.

What is the completeness rate of the UBO register?

The law dated January 13, 2019 with effect from March 1, 2019 set up the Luxembourg UBO register. At the end of 2020, the completeness rate of the register was around 90%.

The Luxembourg register cannot be searched by name. Why did you make this choice? Are you in favour of a more open and accessible consultation of your register by the general public (including access by name)?

Luxembourg is one of the few EU countries to have set up a register that is completely open and accessible to the public without any restrictions. Its consultation is free of charge and without prior authentication or registration, which also makes it possible for journalists or NGOs to access the data of the register.

The rules for its public consultation have been guided by the necessary steps to find the right balance between safeguarding the right to privacy of those registered in the UBO on the one hand, and the principle of transparency on the other.

Is there a procedure for verifying the accuracy of information on beneficial owners? Errors and inconsistencies seem to exist in the UBO register.

There is a procedure for verifying the accuracy of information of beneficial owners. Determining the status of beneficial owners is the responsibility of the registered entity, which expressly commits vis-à-vis the UBO to provide adequate, accurate and timely data.

A willfully incorrect declaration made to the UBO is punishable under criminal law by a fine of between 1,250 and 1,250,000 euros. The Luxembourg Business Register, which is in charge of the Luxembourg UBO, checks the submitted registrations, verifying the accuracy of the data communicated against the supporting documents attached.

The register is not the only mechanism for identifying the beneficial owners. The law stipulates in particular that professionals such as lawyers, notaries, banks and all other entities that have to apply AML cannot rely exclusively on the UBO to identify the beneficial owners. Indeed, under AML/CFT legislation, professionals are subject to the duty of due diligence, which requires the professional to identify their client as well as the beneficial owner of the transaction.

The due diligence obligation also includes constant vigilance of the business relationship by examining the transactions concluded throughout the duration of the business relationship and, if necessary, verifying the origin of the funds.

The mere suspicion of money laundering should furthermore not lead to the automatic deletion from the UBO, as some observers have made recently on the use of UBO data.

Is it true that exemptions can be granted on the public nature of the information entered in the UBO Register? Will these entities or people not be checked?

Exemptions to the public nature of the information entered in the UBO register are exceptional measures that are decided on a very strict case-by-case evaluation by the Luxembourg Business Register, which manages the UBO. Any request for limited access must be supported by precise and detailed information as well as concrete evidence to explain and justify such an exemption.

Please find more details on the procedure under article 15 of the law of January 13, 2019:

<http://legilux.public.lu/eli/etat/leg/loi/2019/01/13/a15/jo>

It is furthermore important to highlight that even though an exemption can be granted on the public nature of the information, AML checks on this person will still have to be performed by all the relevant actors.

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A number of foreign persons involved in corruption cases, or linked to organised crime, have opened companies in Luxembourg, apparently without raising a red flag. How is this possible?

Professionals are obliged to cooperate fully with the Luxembourg authorities responsible for the fight against money laundering and terrorist financing, in particular with the Financial Intelligence Unit (FIU), the supervisory authorities and the self-regulatory bodies. In particular, professionals must inform the FIU of any case of money laundering or suspicion of money laundering. Any failings by professionals will be sanctioned accordingly.

In the context of investment funds, why can there be discrepancies in the number of beneficial owners listed in the RBE and other sources such as, for instance, SEC Investment Adviser Public Disclosure (SEC IADP)?

Discrepancies can be possible as often these sources are not really comparable and were designed for different purposes and, depending on the jurisdiction, may even have different definitions of ultimate beneficial owners, based on economic notions (who "profits") or notions of company control, or may apply different ownership thresholds. It is therefore not really possible to draw conclusions based on apparent discrepancies and it is certainly wrong to infer that information in Luxembourg's RBE is false or incomplete simply by comparing information in the RBE with an entirely different type of source, such as the SEC IADP for instance.

The RBE in Luxembourg is a beneficial ownership register to identify individuals that are the ultimate beneficial owners of a company and/or holding a controlling interest (in the case of funds, for instance, controlling more than 25%)

The SEC IADP register, on the other hand, provides information on investment advisors and stock brokers registered and supervised by the SEC but is not intended to disclose the beneficial owners of each fund advised by these investment advisors (indeed very often the beneficial owners in this context would be the beneficial owners of the listed asset management company, which has to communicate UBOs with more than 5% to the SEC; and not necessarily the UBOs of the investment funds itself).

The RBE in Luxembourg and the SEC IADP were simply not designed for the same purpose and do not hold the same information.