



ACCESS TO INFORMATION ON BENEFICIAL OWNERSHIP IN BELGIUM : THE LEGITIMATE INTEREST

1. Legal basis and starting point
2. Access to the register : evolution
3. Access : legitimate interest
4. Follow-up and next steps



LEGAL BASIS AND STARTING POINT

- Law of 18 September 2017 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and limitations to the use of cash, articles 73 – 75, 132, §6 and 133, §3 (as last amended by the law of 8 February 2023)
- Royal Decree of 30 July 2018 concerning the operating procedures of the UBO Register (as last amended by the Royal Decree of 8 February 2023)
- Transposes the 4th and 5th EU Directive on AML
- Compliant with GDPR
- Provides all legal provisions for the access and functioning of the register
- [UBO register | Compliance | FPS Finances \(belgium.be\)](#)



ACCESS TO THE REGISTER : EVOLUTION

- Starting point in **2019** : as determined by the 4th and 5th Directive AML
 - Competent authorities (as determined by AML) and the FIU : direct full access to all data
 - Obligated entities : direct full access when performing AML client due diligence
 - The general public : without conditions to minimum set of data
 - **2022** : three major problems arise
 - RRF funds : identification of beneficial owners required but use of register not mentioned in the EU Regulation 2021/241 : access is violation of GDPR
 - Sanctions Russia : verification beneficial owners not in AML framework and no legal basis for access sanctions authorities : access is violation of GDPR
 - Court of Justice Ruling Sovim (22/11, C-37/20 and C-601/20) : access general public violates fundamental rights and GDPR : only access justified by legitimate interest
- ➔ **2023** : legislative amendments : expansion and modification of the access



ACCESS : LEGITIMATE INTEREST (1)

- 22/11/22: Court of Justice Ruling Sovim (22/11, C-37/20 and C-601/20)
: access general public violates fundamental rights and GDPR : only access justified by legitimate interest
 - Same plaintiff had opened proceedings at Belgian highest administrative court
 - Difference with LU register : in Belgium only access by EiD, no free access on internet
- Belgium **closed the register** on 23/11/22 for the general public
 - In view of the same challenge in court : BE would certainly lose the case
 - If kept open : would be massive risk of litigation for a huge number of cases
- Analysis of the ruling : **return to the text of the 4th Directive**
 - ➔ Legislative amendment necessary
 - Could be done very quickly : already project in final stages to amend the Royal Decree



ACCESS : LEGITIMATE INTEREST (2)

- BE defines legitimate interest and criteria for refusing access
 - Applicable from 17/02/2023
 - Safeguards and gatekeeper : BE Treasury
- Legitimate interest
 - 3 possibilities
 - No list of persons or organizations or categories of entities
- Reasons to refuse access
 - 6 criteria



ACCESS : LEGITIMATE INTEREST (3)

- Legitimate interest : 3 possibilities :

the applicant

1. Has a purpose or durable and effective activities in connection with the fight against moneylaundering, financing of terrorism and the underlying criminal activities
 - Underlying criminal activities : defined in legislation AML : 28 crimes listed
2. Is acting as legal representative in court within the context of the purpose or activities in point 1, with the aim to defend an interest connected to that purpose or those activities
3. Will have economic relations or transactions with an entity that has to register its UBO's and the applicant is involved in activities relevant for the fight against moneylaundering, financing of terrorism and the underlying criminal activities and he has not yet access to the register (for ex. as an obliged entity)



ACCESS : LEGITIMATE INTEREST (4)

- Refusal of access: 6 criteria
 1. Procedure for request is **not followed**
 2. The **required information is not given** by the applicant
 3. The applicant **already has access** (for example as an obliged entity)
 4. The Treasury establishes or suspects that the request for access is **intended for other purposes than those authorized by the law** (purposes in law for GDPR compliance)
 5. The Treasury establishes or suspects that the request for access **does not comply with the conditions of legitimate interest**
 6. The Treasury determines on a case by case basis that **access would be a disproportionate risk** for the beneficial owner, a risk for fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation or the beneficial owner is a minor or otherwise legally incompetent (= criteria for having a derogation)



ACCESS : LEGITIMATE INTEREST (5)

- Practical application
 - The register was designed for full access to the public (via EiD)
 - ➔ ICT modifications necessary : takes time
 - For the moment : access determined on a case by case basis
 - Demand via email : general address UBO register
 - Problem : demands are mixed with other requests : difficult to find them
 - But : no avalanche of demands : number stays limited
 - Staff has to be trained to apply the legal criteria
 - For example : information has to be submitted to the Treasury but staff has to respect the legal privilege of lawyers and confidentiality of sources of journalists : this kind of information can not be requested



FOLLOW-UP AND NEXT STEPS

- The new AML Package : may require new modifications of the legislation
- Regulations on restrictive measures : continued implementation
- Operational modifications of the UBO-register (IT, internal procedures, etc)



THANK YOU FOR YOUR ATTENTION