



## Court doubts the legitimacy of the Dutch UBO-register

On 18 March 2021, the District Court of The Hague rendered its judgement in the case instituted by the foundation Privacy First against the state regarding the Dutch UBO-register. Privacy First states that the UBO-register violates the right to privacy and claimed, among other things, that the UBO-register should be abolished. The court rejected the claim of Privacy First, but expressed its doubts as to the legitimacy of the (partly) public nature of the UBO-register.

In this newsletter we will set out the most important aspects of the verdict of the District Court of The Hague. For more information about the Dutch UBO-register we refer to our Quoted '[The Dutch UBO-register for corporate and other legal entities](#)'.

### The UBO-register: what is it?

The UBO-register is part of the Dutch Trade Register and contains certain personal details of ultimate beneficial owners (**UBOs**) of Dutch corporate and other legal entities. This (partly) publicly accessible UBO-register is based on the amended fourth EU Anti-Money Laundering Directive (**the Directive**) and was implemented in the Netherlands on 27 September 2020. Corporate and other legal entities which were already incorporated or established before 27 September 2020 have from this date 18 months to register certain personal details of their UBO(s) (**UBO-information**). Corporate or other legal entities incorporated on or after 27 September 2020 must register their UBO-information within one week after incorporation (usually together with the registration of that entity with the Dutch Trade Register).

## Which UBO-information is publicly accessible?

Part of the UBO-information in the UBO-register is publicly accessible. Another part of the information is only accessible to certain competent authorities and the Financial Intelligence Unit.

### Publicly accessible UBO-information

- Surname and last name;
- Month and year of birth;
- Nationality;
- Country of residence; and
- Nature (shares, voting rights or ownership interest) and size of the beneficial interest held (presented in fixed ranges of more than 25% to 50%, more than 50% to 75% or more than 75% up to and including 100%).

### Not publicly accessible UBO-information

- Citizen Service Number (*Burgerservicenummer*, 'BSN') / foreign tax identification number (TIN);
- Date of birth;
- Country and place of birth;
- Address;
- Copy of passport / ID; and
- Documentation supporting (i) the conclusion that the individual qualifies as UBO and (ii) the nature and size of the beneficial interest held.

The UBO-information will remain accessible for a period ending ten years after the deregistration of the corporate or other legal entity from the Dutch Trade Register.

## Can UBO-information be shielded?

Based on the Directive, Member States may provide for public access to UBO-information to be shielded, on a case-by-case basis, if the UBO is a minor or legally incapable, or if the publication of UBO-information would expose the UBO to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.

In the Netherlands, the UBO-information of a minor or person who is legally incapable will be shielded. In other cases, UBO-information will only be shielded if a UBO is under "police protection": this is the case if a UBO is under the protection of the Public Prosecutor or the National Coordinator for Counterterrorism and Security.

## On what grounds does Privacy First challenge the UBO-register?

Privacy First argued before court that the UBO-register, and in particular the public access to the UBO-information, conflicts with the right to privacy and goes beyond what is necessary to achieve the objectives of the UBO-register. Privacy First argued that the public access to UBO-information is not necessary for the prevention of money laundering and terrorist financing.

Privacy First requested the District Court of The Hague to set aside (i) the obligation to register UBO-information and (ii) the (partly) public accessibility of the UBO-register. In addition, Privacy First requested the court to, if necessary, ask preliminary questions to the European Court of Justice (**ECJ**) on both aspects.

## What is the verdict of District Court of The Hague?

The court rejected the claims of Privacy First. The court ruled that there is no room for it to set aside the obligation to register UBO-information and the (partly) public accessibility of the UBO-register. The court reached this verdict due to the fact that the Directive on which the implementation of the UBO-register is based is still in force and the ECJ has yet to rule on the (un)lawfulness of the Directive. As long as such judgment has not been rendered, the court cannot put the Dutch State in a position wherein it is clearly acting in conflict with the Directive.

In case of doubt about the legitimacy of the UBO-register, the court could ask preliminary questions to the ECJ. In this context, the court indicated that it has its doubts about the legitimacy of the (partly) public accessibility of the UBO-register, considering that this may go beyond what is necessary to realize the objectives of the Directive.

Nevertheless, the court decided not to ask preliminary questions to the ECJ given the fact that a court in Luxembourg has already asked preliminary questions about the same matter. The court does not consider it useful to ask similar preliminary questions because, according to the court, the same kind of questions will not lead to a different outcome.

With respect to the obligation to register UBO-information as such, the court will not ask preliminary questions to the ECJ because, according to the court, Privacy First has insufficiently substantiated its claim that the establishment of a UBO-register as such violates the fundamental rights of UBOs. Privacy First's argument that there is a considerable chance that the non-public UBO-information will be disclosed through, for example, data breaches, is insufficiently substantiated according to the court.

Privacy First has announced that it will analyze the court's verdict and may take the case to a higher court.

## Developments in Luxembourg and Belgium

In Luxembourg cases are pending for which preliminary questions have been asked to the ECJ regarding (i) the compatibility of the UBO-register with the right to protection of personal data and (ii) a clarification of the conditions under which Member States may provide for the shielding of UBO-information. It is unknown when the ECJ will reach its verdict.

To the best of our knowledge, no lawsuit is pending (yet) in Belgium regarding the UBO-register. Worth mentioning is that at the beginning of this year, the Belgian UBO-register was taken offline for some time after the discovery of a data breach.

## Contact

Do you have any questions about the UBO-register? Maybe an informal introductory meeting would be of interest? Please contact your Loyens & Loeff adviser or get in touch with one of our dedicated advisers in the [Family Owned Business & Private Wealth department](#).

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