

Bill of Law No 7217 establishing a “register of beneficial owners”

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On December 5, 2017 bill of Law No 7217 establishing a “register of beneficial owners” (the “Bill of Law”) was introduced before the Luxembourg Parliament in order to transpose – amongst others – articles 30 and 31 of European Directive 2015/849 of the European Parliament and the Council of 20 May 2015 (better known as the “4th AML Directive”). The said articles aim to set up at the European level and for each country concerned a “register of beneficial owners”.

It is worth noting that Luxembourg had passed legislation earlier transposing most of the 4th AML Directive but waited until the end of the year to file a bill dealing with the register of beneficial owners (notwithstanding the fact that the deadline for transposition set forth in the directive was June 26, 2017).

A beneficial owner is defined by the law of November 12, 2004 on the fight against money laundering and the financing of terrorism, as amended (the “AML Law”) as: “any natural person who, ultimately, owns or controls the customer and / or any natural person for whom a transaction is carried out or an activity carried out”. This definition may evolve with the implementation of the new law. The distinction between civil and commercial companies disappears.

Concretely, how will it work in Luxembourg?

The register of beneficial owners – also known as REBECO – will be managed by the Register of Commerce and Companies of Luxembourg (“RCSL”).

All beneficial owners of companies registered with the RCSL will have to be registered with the REBECO and provide the REBECO with the information listed in article 3 of the Bill of Law, namely:

- name / first name / nationality / date and place of birth;
- country of residence;
- private or professional address;
- Luxembourg or foreign identification number; and
- the nature and extent of the “effective interests held”.

Companies falling within the scope of the law shall have six months from the day the enactment of the Bill of Law to comply with this obligation.

Of critical importance is that Luxembourg has deliberately chosen an as restricted as possible right of access to the REBECO, in contrast to some of its neighbors such as France, Belgium, or the Netherlands, who have all opted for a wider opening of their respective registers.

¹ Notably, the Bar Association, the Chamber of Notaries, the Institute of Company Auditors.

² *Inter alia*: credit institutions and professionals of the financial sector, insurance undertakings, pension funds, management companies, securitization undertakings, statutory auditors, accountants, real estate agent, notaries, lawyers etc.

Access to the REBECO is strictly circumscribed by articles 11 and following of the Bill of Law and will only be allowed for (i) national authorities, (ii) regulated professions, and (iii) persons with a "legitimate interest", as described below.

The Bill of Law contains no specific provision for foreign national authorities to access the REBECO. Nevertheless, it is worth noting that the 4th AML Directive contemplates an interconnection of the different national beneficial owner's registers at the EU level by 26 June 2019.

1. Unlimited and unconditional access to the REBECO :

The Luxembourg authorities competent for the fight against money laundering and terrorism financing will be able to access all information contained in the REBECO electronically by means of a password.

2. Limited and unconditional access to the REBECO :

Luxembourg's self-regulated bodies with a general supervisory role¹ will, electronically by means of a password, have access to certain information from the REBECO, solely in the context of their duties to fight money laundering and terrorism financing.

These bodies will have no access to (i) the private or professional address, nor (ii) the Luxembourg or foreign identification number, of the beneficial owners.

Professionals referred to in article 2 of the AML Law² shall have access to the same information, on condition that it concerns their clients.

3. Limited and conditional access to the REBECO :

Individuals or organizations resident in Luxembourg that can demonstrate a "legitimate interest" in knowing the details of a beneficial owner may obtain limited access to the REBECO. They must apply for permission and state the reasons for their request to a commission (to be formed), which may accept or refuse to grant them access to the REBECO. In case of acceptance, those people or organizations will only be able to access to (i) the name, first name, and nationality, (ii) the month and year of birth, and (iii) the country of residence, of the beneficial owners of the entity concerned, as well as (iv) the nature and extent of the effective interests held by them in entity concerned.

It is worth noting that the Bill of Law remains silent on what constitutes a "legitimate interest".

Penalties in case of non-compliance with REBECO registration

When an entity fails to comply with its obligations or knowingly provides inaccurate, incomplete or non-current data, penalties (fines) ranging from EUR 1,250 to EUR 1.250.000 may be imposed to that entity.

Upcoming evolution

Certain aspects of the Bill of Law are likely to further evolve with the entry into force of the Regulation (EU) 2016/679 of the European Parliament and the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

We shall continue to monitor developments closely.

No date has yet been set for a vote on the Bill of Law in Parliament.