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Law, Tax

Transparency Register

Selected by Member States

October 2017



Introduction

Among other measures designed to combat money laundering and terrorist financing, the 4th Money Laundering Directive requires the EU member states to set up registers of the ultimate beneficial owners of legal entities. It was left up to the individual member states how to implement the directive, and in doing so, member states have taken different approaches.

In order to give an initial overview, CMS has summarized the regulations in selected member states. Of particular relevance to shareholders are those countries in which direct and indirect shareholders have an active obligation to make any necessary notification.

Legend

- Listed Companies: Companies listed on a regulated market
- UBO: Ultimate Beneficial Owner
- Transparency Register: A central transparency register in accordance with the Directive (EU) 2015/849

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Overview of the implementation of a Transparency Register



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What is the legal basis of the Transparency Register in the respective Member State?	Is there an obligation of an UBO or a shareholder to proactively provide information on the UBO to the legal entity?	Is there an obligation of a legal entity to actively inquire with its shareholders/partners on the identity of the UBO(s)?	Who is required to make filings with the Transparency Register, the legal entity or the UBO?	Are there exemptions to the filing obligation?	What is the due date for the <u>initial</u> filing with the Transparency Register?	What are the sanctions in case of a breach of the transparency obligation?	Is the Transparency Register established as a separate register or part of an existing register?
Act on the Establishment of a Register of the Ultimate Beneficial Owners of Companies, other Juridical Persons and Trusts (<i>Bundesgesetz über die Einrichtung eines Registers der wirtschaftlichen Eigentümer von Gesellschaften, anderen juristischen Personen und Trusts (Wirtschaftliche Eigentümer Registergesetz)</i>).	Yes. Beneficial and legal owners have to provide the legal entity with all documents and information necessary.	Yes. Legal entities are obliged to take appropriate measures to verify whether the information provided is correct and to fully understand the ownership and control structure.	The legal entity.	No filings in the case of <ul style="list-style-type: none"> Partnerships (<i>Offene Gesellschaft, Kommanditgesellschaft</i>), if all personally liable shareholders are natural persons. Limited liability companies, if all shareholders are natural persons. Cooperatives and Industrial Societies (<i>Erwerbs- u. Wirtschaftsgenossenschaften</i>). Mutual insurance associations (<i>Versicherungsvereine auf Gegenseitigkeit</i>). Associations pursuant to the Austrian Associations Act (<i>Vereine gemäß Vereinsgesetz</i>). Listed Companies. 	1 June 2018	Administrative fines	Filings have to occur via the <i>Unternehmensserviceportal</i> . (www.usp.gv.at)

Overview of the implementation of a Transparency Register



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Law dated 18 September 2017 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and on the restriction for the use of cash.	No. The law does not indicate an obligation of an UBO or a shareholder to proactively provide information on the UBO to the legal entity but this is still subject to the implementing royal decree to be adopted.	No. There is no obligation for legal entities to actively inquire with its shareholders on the identity of the UBO. However, in the event such entities are to engage in a business relationship with certain service provider (e.g. financial institutions, insurances, auditing firms etc.) they will be required to identify their UBO and disclose this information, subject to certain exemption.	The legal entity (still subject to the implementing royal decree to be adopted).	Yes , for listed companies. This is still subject to the implementing royal decree to be adopted.	n/a	In case where it is impossible for the legal entity to successfully go through the identification process, any business relationship or operation run through the entity will be precluded. In addition, there are administrative and criminal fines.	Pending to decree.

Overview of the implementation of a Transparency Register



Bulgaria



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At present, there is a draft law only to implement the Directive. There is an existing law (Beneficial Owners Act) which is not designed to implement the Directive.	n/a	Under the Beneficial Owners Act, only legal entities which intend to carry out certain economic activities explicitly listed in the Beneficial Owners Act are obliged to disclose their beneficial owners.	The legal entity.	The Beneficial Owners Act exempts only companies that are listed companies, or are subsidiaries of listed companies. In each case, the listing should be either in a Member State or a country with which either the EU or Bulgaria have entered into agreements providing for the exchange of information between their governments.	n/a	n/a	n/a

Overview of the implementation of a Transparency Register



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Act. No. 368/2016 Coll. implements the Directive and amends Act No. 253/2008 Coll., on selected measures against legitimization of the proceeds of crime and financing of terrorism and some further acts.	No. There is no obligation of the UBO(s) to provide the legal entity with any information in this respect.	Yes. Each legal entity shall maintain and keep up-to-date records about their respective UBO(s) and the reasons why such person(s) is considered the legal entity's UBO.	The legal entity.	No.	1 January 2019 or 1 January 2021	None.	Each legal entity registered in the Czech commercial register shall be responsible for providing the respective court administering their file.

Overview of the implementation of a Transparency Register



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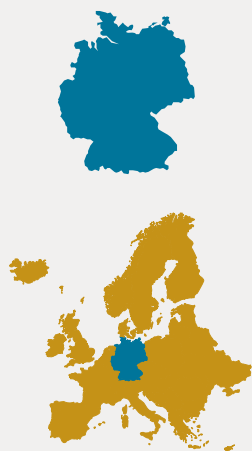
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Ordinance n°2016-1635 dated December, 1st 2016, which was itself authorized by a parent act n°2016-731 dated June, 3rd 2016. Additional measures have been given by a decree 2017-1094 dated June, 12th 2017.	No.	Yes. Legal entities should endeavor to find accurate information, in accordance with a "best efforts" standard.	The legal entity.	Yes , for listed companies and State-owned industrial and commercial establishments (EPIC).	Companies incorporated as from 1 August 2017 must comply upon incorporation; companies incorporated before that date must comply before 1 April 2018.	6 month imprisonment and a fine amounting to EUR 7,500 as well as specific ancillary punishments such as prohibition to manage a company (art. L. 561-49).	Central register for beneficial ownership information is attached to the already existing trade and companies register (R.C.S.).

Overview of the implementation of a Transparency Register



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Part 4 of the German Anti Money Laundering Act (<i>Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten - Geldwäschegesetz — GwG</i>) as amended on 23 June 2017.	Yes. Any shareholder who is a UBO or directly controlled by a UBO as well as any UBO has to provide the required information (unless such information is available from certain public records in Germany).	No. The obligations of the management are limited to collecting and processing information which was made available to it.	The legal entity.	If to the extent that the information on the UBO is available from certain public records in Germany, no filings have to be made.	1 October 2017	Administrative fines against shareholders, UBO and management in breach of their obligations.	As a separate register called Transparenzregister. transparenzregister.de

Overview of the implementation of a Transparency Register



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Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing (in Hungarian: 2017. évi LIII. törvény a pénzmosás és a terrorizmus finanszírozása megelőzéséről és megakadályozásáról).	Pursuant to the Act LIII of 2017, legal entities are not required to directly submit information to a central register regarding their UBO. However, in the event such entities are to engage in a business relationship with certain service provider (e.g. financial institutions, insurances, auditing firms etc.) they will be required in certain cases to provide certain information to the service providers as in accordance with the Act LIII as part of the service providers' customer due diligence. Such due diligence will include customer identification and verification procedures, including the identification and verification of the customer's agent, proxy or other authorized representative. In the framework of the customer due diligence, customers are required to provide information regarding their UBOs as well. The collected and recorded data on the UBOs of customers (legal persons, unincorporated organizations and fiduciary managers) will then be forwarded to the central register by the service provider, provided such data is not already recorded in the central register.					Service providers must refuse to carry out transactions following 26 June 2019 if no information is not available.	n/a

Overview of the implementation of a Transparency Register



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<p>At present, there is a draft law only to implement the Directive by amending:</p> <ul style="list-style-type: none"> the Trade Register Act 2007 (<i>Handelsregisterwet 2007</i>); the Money Laundering and Terrorist Financing Prevention Act (<i>Wet ter voorkoming van witwassen en financiering van terrorisme</i>); the Economic Offences Act (<i>Wet op de economische delicten</i>). 	According to the draft law, yes .	According to the draft law, yes .	The legal entity.	<p>According to the draft law, exemptions are available for:</p> <ul style="list-style-type: none"> foreign legal entities with headquarters or a branch in the Netherlands; associations for owners of apartments; legal entities governed by public law, i.e. governmental organisations; church organisations. 	n/a	Unknown at this stage.	<p>According to the draft law:</p> <ul style="list-style-type: none"> information on UBOs is to be registered with the trade register of the Dutch Chamber of Commerce; filing can be done either electronically on the website of the Dutch Chamber of Commerce or by means of paper forms.

Overview of the implementation of a Transparency Register



Poland



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At present, there is a draft law only to implement the Directive by the Act on counteracting money laundering and terrorism financing.	No. Pursuant to the draft law, UBOs have to provide information only upon request.	Yes. Pursuant to the draft, the legal entity will be obliged to identify the UBO (not only take steps in order to identify such UBO).	The legal entity.	Public joint stock companies (" <i>spółka publiczna</i> " — within the meaning of this term under the Act of 29 July 2005 on Public Offer and the Conditions for the Introducing Financial Instruments to the Organised Trading System and Public Companies Act) and civil partnerships (" <i>spółka cywilna</i> ") will not be obliged to file with the Register.	Legal entities registered in the National Court Register (" <i>Krajowy Rejestr Sądowy</i> ") before the entrance into force of the Act will be required to file to the register the information regarding their UBOs within 6 months.	Administrative fine.	According to the draft law it is proposed to establish a so called Central Register of Beneficial Owners (" <i>Centralny Rejestr Beneficjentów Rzeczywistych</i> ").

Overview of the implementation of a Transparency Register



Portugal (1)



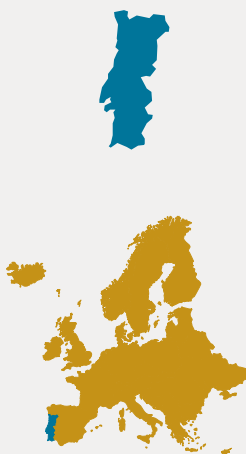
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<p>In Portugal, Law no. 89/2017, of 21st August, implements Chapter III – Beneficial Ownership Information of Directive 2015/849 EU into Portuguese Law (“Law 89/2017”) and article 34 of the Law 83/2017, of 18th August (“Law 83/2017”), on anti-money laundering and anti-terrorist financing measures, approving the Beneficial Ownership Central Registry (<i>Registo Central de Beneficiário Efetivo</i>) (“RCBE” and the regulation “RCBE Regime”).</p> <p>Law 89/2017 shall enter into force 90 days after 21 of August 2017.</p> <p>Some aspects of Law 89/2017 are still subject to further regulation, to be adopted in the form of joint regulations of the Ministry of Finance and Ministry of Justice, which are expected to be approved until the entry into force of Law 89/2017, to occur 90 days after 21 of August 2017.</p>	<p>Yes.</p> <p>Shareholders of a legal entity are bound to provide the relevant information on the beneficial owner, and, if applicable, of its respective Portuguese tax representative (please note that an individual or a legal person must appoint a tax representative resident in Portugal if they reside in a non-EU country) to the entities and communicate any change occurred to the relevant information provided. The obligation to maintain this register is expressly set out for commercial companies but according article 7 of Law 89/2017 the same also applies to the remaining entities subject to the RCBE Regime with the “required adjustments”.</p>	<p>No.</p> <p>Pursuant to the Law, the legal entities must file and keep updated the relevant information on the beneficial owner referred to in the previous column. In addition to the information referred to in Law 89/2017, the legal entities must also provide all the indicative circumstances on the capacity of beneficial owner and their economic interest in the respective legal entity. This information must be updated whenever a change occurs to the beneficial owners and is subject to annual confirmation, regarding its accuracy and sufficiency.</p> <p>We note that it is still pending further regulation on the form of declaration regarding the beneficial owner, to be adopted by joint regulation of the Ministry of Finance and Ministry of Justice, and it is expected the same to rule on the documents that have to be attached/provided in the context of the information on the beneficial owner by the entity.</p>	<p>The legal entity. In accordance with the Law, proxies may be appointed to fulfil the declarative obligations.</p>

Overview of the implementation of a Transparency Register



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Content

Are there exemptions to the filing obligation?	What is the due date for the <u>initial</u> filing with the Transparency Register?	What are the sanctions in case of a breach of the transparency obligation?	Is the Transparency Register established as a separate register or part of an existing register?
<p>The following entities fall out of the scope of the filing obligation:</p> <ul style="list-style-type: none"> • diplomatic and consular missions, as well as international entities of public nature recognized by the international agreement of which the Portuguese State is a party, set or with host agreement in Portugal; • the services and the entities part of the State administration's local, regional and central subsectors; • the independent administrative entities; • the Bank of Portugal and the Regulatory Authority for the Media; • companies with shares admitted to trading in a regulated market, subject to the information disclosure requirements in accordance with the European Union law or equivalent international rules, which ensure sufficient transparency regarding the information related with the ownership of the shares; • consortiums and complementary group of companies; • condominiums, with regard to buildings or group of buildings, constituted under horizontal property, provided that the following requirements are met: • total asset value not exceeding EUR 2,000,000; and • a percentage of more than 50% cannot be owned by one owner, by co-owners, or by an individual or individuals that, in accordance with Law 83/2017, of 18th August, are to be considered as beneficial owners. 	<p>The initial filing by already existing entities will have to occur within the deadline to be established by regulation of the Ministry of Finance and Ministry of Justice, which has not been approved yet.</p> <p>If the legal entity is to be incorporated after the entry into force of the Law, the incorporation act must already provide information on the beneficial owner and the initial filing shall occur with the filing for registration of the incorporation act with the Commercial Registry Office or with the first register with the Central File of Legal Entities (Ficheiro Central de Pessoas Coletivas) in case of entities not subject to registration with the Commercial Registry Office.</p>	<p>An entity that does not comply with the filing shall not be allowed to: Distribute dividends; Execute agreements with the Portuguese State and other public entities and any of such agreements that have already been entered into shall not be re-newed; Apply for the concession of public services; To trade on a regulated market financial instruments representing or capable of being converted into its share capital; To launch public offers of distribution of any financial instrument issued by such entity; To enter into any transaction regarding the transfer of the ownership of, incorporation, acquisition or disposal of any fruition rights or any security interests over any real estate assets.</p> <p>Non-compliance with the obligation to maintain an updated register on the beneficial owner(s) subjects the entity to the application of an administrative penalty ranging from EUR 1,000 to EUR 50,000.</p>	<p>The central register/database shall be the <i>Registo Central de Beneficiário Efetivo</i> (RCBE), which will be managed by the Public Institute of Registries and Notarial Services (<i>Instituto dos Registos e do Notariado</i>).</p>

Overview of the implementation of a Transparency Register



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At present, there is a draft law only to implement the Directive by the Act on the prevention and combating money laundering and terrorism financing.	Based on the provisions of the draft law, there is no specific deadline for legal entities registered in Romania to obtain and hold adequate information regarding their UBOs and have such information registered with the central registry at the level of the specific authorities provided by the Draft Law, depending on the type of entity. Nevertheless, the legal entities registered in Romania are required to provide to the reporting entities information regarding the UBOs (in addition to information on the shareholders), when the reporting entities perform the customer due diligence measures (e.g. for opening bank accounts, for certain transactions, etc.). It appears that the legal entities registered in Romania are required to provide to the reporting entities information on the UBOs, when the reporting entities perform the customer due diligence measures. Subsequently, the reporting entities would register the information with the central registers.					n/a	For non-governmental organisations and foundations, the registry will be kept by the Ministry of Justice, for legal entities, the registry will be kept by the National Trade Registry Office, for trusts (in Romanian fiducie), the registry will be kept by the National Fiscal Administration Agency, for companies listed on regulated markets, the registry will be kept by the Central Depository.

Overview of the implementation of a Transparency Register



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Switzerland is not a member of the EU. Therefore the Directive is not (directly) applicable. The following legislation is dealing with the subject matter of the Directive: (i) The Federal Act on Combating Money Laundering and Terrorist Financing (AMLA) and (ii) certain amendments of various federal acts, including the Swiss Code of Obligations, with view to the revised FATF Recommendations 2012.	There is a notification obligation applicable to shareholders upon acquisition of shares in stock corporations or limited liability companies, subject to certain thresholds and exceptions.	The legal entity itself or its directors, respectively, are responsible for (i) maintaining a register of UBOs and (ii) ensuring that no shareholder exercises its shareholder's rights while violating such notification obligations.	There is no Transparency Register and, accordingly, no filing obligations with such register. However, each legal entity is required to maintain a register of UBOs based on respective notifications by the shareholders.	There is no Transparency Register and, accordingly, no filing obligations with such register. The shareholder's notification obligation (based on which the register of UBOs is maintained) is not applicable concerning an acquisition of shares: <ul style="list-style-type: none"> • by virtue of which the threshold of 25% of the legal entity's capital or voting rights is not reached by the acquirer; • in a legal entity which is (partially) listed on a stock exchange or, pursuant to part of the doctrine, if the acquirer or any of the acquirer's beneficial owners is listed on a stock exchange; or • which are organised as intermediated securities in accordance with the Intermediated Securities Act of 3 October 2008; the legal entity shall designate the custodian where the shares are held or recorded in the main register (custodian must be in Switzerland). 	There is no Transparency Register and, accordingly, no filing obligations with such register. However, the notification by the shareholders must be submitted to the legal entity within one month from the respective acquisition.	If a shareholder fails to comply with the obligation to notify the legal entity of the UBO, such shareholder's (i) participation rights (in particular voting rights) are suspended and (ii) only such monetary rights (in particular the right to dividends) originating after fulfilment of the obligation may be asserted.	There is no Transparency Register. The register of UBO's has to be maintained by each legal entity either as part of the (existing) shareholder register or as a separate register.

Overview of the implementation of a Transparency Register



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What is the legal basis of the Transparency Register in the respective Member State?	Is there an obligation of an UBO or a share-holder to proactively provide information on the UBO to the legal entity?	Is there an obligation of a legal entity to actively inquire with its shareholders/partners on the identity of the UBO(s)?	Who is required to make filings with the Transparency Register, the legal entity or the UBO?	Are there exemptions to the filing obligation?	What is the due date for the <u>initial</u> filing with the Transparency Register?	What are the sanctions in case of a breach of the transparency obligation?	Is the Transparency Register established as a separate register or part of an existing register?
The relevant provisions are implemented in the UK through the Persons with Significant Control ("PSC") regime. The PSC regime is set out in Part 21A and Schedule 1A and 1B of the Companies Act 2006, which were inserted by the Small Business, Enterprise and Employment Act 2015 and were subsequently amended by the Information about People with Significant Control (Amendment) Regulations 2017 and the Scottish Partnerships (Register of People with Significant Control) Regulations 2017.	Yes. Upon the receipt of an investigation notice, the recipient has one month to provide the UK legal entity with the information requested. Even if not served with an investigation notice, a person who thinks they should be recorded in a UK legal entity's register has an obligation to proactively notify the UK legal entity. Among others, this includes individuals or corporations that are registered holders of more than 25% of the shares in the legal entity, but in some circumstances the registrable persons will instead be individuals or corporations that directly or indirectly control such registered holders. The person recorded on the register must also notify the legal entity of any changes in the person's details or if the person ceases to be registrable.	Yes. Each legal entity itself must take reasonable steps to identify any UBOs or others that are registrable. In particular, it must send out an investigation notice to anyone whom it knows or has reasonable cause to believe to be registrable, requiring them to state whether they are registrable and to supply or confirm particulars. The legal entity must also keep the register up to date, sending out investigative notices if it has reasonable cause to believe that a change has occurred.	The legal entity, which must keep its register up to date and make various filings at Companies House.	UK companies whose shares are listed on a regulated market in an EEA state (including the UK Main Market (the Official List) of the London Stock Exchange, but not including the AIM Market) or on certain markets in Israel, Japan, Switzerland and the USA that are specified in Schedule 1 to The Register of People with Significant Control Regulations 2016 are not required to maintain a register, but they are still obliged to notify a UK legal entity if they think that they should be recorded in the entity's register.	Legal entities must enter the details of each UBO or other registrable person in its internal register within 14 days of the details being confirmed or ascertained. Within 14 days of doing so, the legal entities must also provide the details to Companies House.	There is a range of sanctions for non-compliance with the Act, including restrictions on the relevant shares/partnership interests, so that all voting, dividend and other share/partnership interest rights would be suspended and no transfers would be permissible without a court order.	The legal entity keeps the register and must make regular filings reflecting the contents of the register with Companies House.



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