LOOKING BACK, AND THE ROAD AHEAD: A PROSPECTIVE ANALYSIS OF THE BELGIAN UBO REGISTER

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This article is part of the outreach activities initiated by the Belgium Treasury, fostering discussion and enhancing the understanding of the purposes, uses and implementation of beneficial ownership registers.

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INTRODUCTION

Since its publication in 2015, and in particular since its initial implementation deadline of 26 June 2017, the EU anti-money laundering Directive 2015/849 as amended (“EU AMLD”) has been a much debated and highly anticipated regulatory framework.

One of the reasons for this was the fact that, for the first time, the European Union ("EU") co-legislators were requiring Member States to implement centralized public registers containing information on the beneficial owners (“BO”) of legal entities, trusts and legal arrangements similar to trusts (“BO Register”).

The aim of this article is to shed light on a selection of the numerous practical challenges and questions a jurisdiction will face when pursuing such “Registry approach” in view of increasing the transparency of legal persons and arrangements and providing a timely access to beneficial ownership information to its competent authorities.

Through practical examples taken from the Belgian BO Register, this article will highlight the issues identified and the technical solutions that were implemented to address them.

After reading this article, you will understand how Belgium implemented its BO Register obligations, ensuring effectiveness while making the different business processes the easiest and most cost efficient possible for all stakeholders involved. The longer-term strategy of making BO Registers both a source of information and intelligence will also be briefly touched upon.
I. A BRIEF HISTORY OF BELGIUM’S BO REGISTER IMPLEMENTATION

In Belgium, the General Administration of the Treasury of the Federal Public Service Finance has been in charge of the development and management of the central BO Register. This register centralises BO information pertaining to all entities and arrangements covered by the EU AMLD framework, namely, corporates, trusts, legal entities such as foundations and legal arrangements similar to trusts.1

The way Belgium has been implementing the BO Register from 2016 to 2020 can be sequenced in two main phases, namely the initial technical implementation phase that lasted from mid-2016 to mid-2018 and the consolidation phase that extended from mid-2018 to the end of 2020.

Considering the objectives and scope of this article, we will focus on the initial technical implementation phase where both challenges and issues were identified, and the corresponding technical solutions conceptualized, developed, and put into production.

Furthermore, such sequencing also enables us to point to the outcome and output of the work conducted. For instance, the thorough mapping and consultative exercise that was conducted at the time of inception enabled the project team to identify a number of issues as well as the key building blocks and key features that would further support and ensure the efficiency and effectiveness of the solutions developed.

In the course of this mapping and consultation exercise, the following elements were identified as of high importance by the AML/CFT stakeholders consulted:

- Ensuring data availability, data accessibility and data quality;
- Ensuring the ease of use and lessened administrative burden and implementing costs for the registration and consultation processes;
- Ensuring (and be able to demonstrate) the effectiveness of this new tool in mitigating the risks of misuse of legal entities and arrangements for money laundering, terrorism financing as well as associated criminal offences.

In view of these needs, the project team identified several building blocks that would ultimately facilitate the identification and development of adequate technical solutions. To list a few, these building blocks included:

- Developing a digital by design and digital by default tool:
  This was the first building block identified and aimed at conceptualizing and developing fully digital business processes, from the authentication of the users, to the BO registration, the BO consultation and the implementation of monitoring and risk-based supervision of the information held.

- Developing a future proof BO Register:
  The digital solution as well as the policy and regulatory framework needed to (i) be able to resist the test of time and (ii) be in line with the “only once” principle by maximizing the reuse of existing (vetted) information as well as existing available IT solutions (e.g. high assurance eID authentication mechanism used in Belgium since 2002).

- Developing an open administration:

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1 For the purpose of the BO definition, certain legal entities such as foundations are assimilated to legal arrangements similar to trusts.
This building block consisted amongst others in ensuring that the feedback from the relevant stakeholders was heard and that corresponding actions were taken to address the questions raised and suggestions made. It also includes the development of partnerships with both private and public stakeholders to further enhance the effectiveness of the BO Register.

With the above needs and corresponding building blocks identified, the project team could focus on the development of the technical solution using two key technical features, namely:

- The use of digital authentication mechanisms enabling the high assurance identification of all users, as well as the group of users to which they belong (e.g. competent authorities, obliged entities, members of the general public);

- The interconnection of separate base registries to ensure the reuse of (vetted) existing information and enable the prefilling of a number of data fields in the BO Register. This was implemented through the interconnexion of the BO Register with two base registries, namely the commerce registry and the national registry of natural persons. This interconnection enabled the BO Register to prefill a high number of data points which proved useful to address concerns related to the quality of the information registered, the ease of registration, the consultation and supervision or monitoring of the information.

Such technical features will be discussed below accompanied with print-screens of the platform. They will illustrate several processes that are key to the BO Register such as, for instance, the process through which a user connects to the platform, (vetted) information is extracted and prefilled from existing base registries, ex-ante and ex-post controls are executed to avoid or detect errors in the registration of the identity, nature, and extent of the interest of the BO.
II. AUTHENTICATION MECHANISMS AND ACCESS/ROLE MANAGEMENT

No matter the category to which you belong (i.e. FIU, competent authority, obliged entity, member of the general public), if you want to access Belgium’s BO Register you are required to identify yourself using one of the accepted high assurance authentication methods.

As illustrated in the figure 1 below, for Belgian citizens or foreign citizens that possess a Belgian tax identification number\(^2\) (“TIN”), options 1 and 2 indicated below are available. The option 2 is available at the extra condition that the person has a bank account in Belgium and is registered within the dedicated mobile application. Foreign citizens that possess an eIDAS compliant authentication key can also use it to identify themselves to consult the BO Register, as indicated by the item 3.

![Figure 1: Available identification and authentication methods](#)

The Figure 2 below illustrates the item 3 of Figure 1, namely the possibility for EU citizens or non-EU citizens with recognised eIDAS compliant authentication method to connect to the Belgian BO Register remotely and directly.

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\(^2\) Otherwise known as its “national register number” or “national bis register number”.

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Jurisdictions whose eIDAS authentication mechanism are accepted to connect to Belgium’s BO Register

Based on the TIN number of the natural person logging in and depending on the category of user (s)he belongs to, a certain role with specific access rights will be granted.

Let us take for instance the example of a legal representative that wants to connect in the name of his/her company. In order for the system to recognise the fact that (s)he is a legal representative of a legal entity that is required to disclose its BOs, the BO Register will make a query to the commerce registry to make sure that this person holds a legal function within the company that grants him/her the right to register the BOs of the company.

Albeit with some additional specificities, the same mechanism applies when granting access to authorized agents of competent authorities, obliged entities (and their authorized employees/agents), etc.

Besides the obvious value of such mechanism in terms of efficiency and ease of use, a noteworthy indirect positive consequence is the fact that numerous entities for which the information had not been updated in the commerce registry (and sometimes for years) could not connect to the BO Register. This resulted in a noticeable influx of requests received by the commerce registry during the first year of the registration period of entities asking for their basic information to be updated.
III. VISUALIZING THE COMPANY AND BO INFORMATION

Once the authentication has been successfully made through one of the available digital keys, the legal representative mentioned above will be redirected to the homepage of the legal entity where (s)he will be able to register or update the legal entity’s BO information.

*Figure 3 hereunder is a screenshot of said homepage. It illustrates the following noteworthy features:*

**Item 1** To make sure the user visualises in which capacity (s)he is connected, the user’s TIN number or the unique ID number of the legal entity or arrangement will appear under the item 1. This will depend on whether the user connected in his/her own name or in the name of a company;

**Item 2** Information pertaining to the legal entity that is available at the commerce registry will be extracted and displayed here. This enables amongst others, the legal representative to identify missing information or any information that is not up to date;

**Item 3** This feature is only available to users that are either competent authorities or obliged entities. The EU AMLD requires such users to notify discrepancies they observe between information they hold and information that is available in the register. As it is a new feature, it is currently being laid out and outreach activities are planned to inform those users on how this mechanism works, the type of information that should be reported as well as what will happen once a notification is submitted;

**Item 4** This item enables the legal representative to modify information related to the ownership and control structure (see Figure 4 below). Information on the entity itself such as the address, cannot currently be modified directly through the BO Register platform. This item is only available to natural persons that have the rights to act in the name of the legal entity or arrangement (e.g. legal representative, person in charge of the daily management, accountants, lawyers and any third party who received a digital power attorney).
On the homepage of the legal entity, a specific section is dedicated to the BO information, as illustrated in the Figure 4 below. Several interesting features are worth noting here, namely:

**Item 1** This item indicates the last date upon which the BO information has been confirmed or modified. The regulatory framework indeed provides for a mandatory yearly confirmation as from the last modification has been made;

**Item 2** This item groups different sets of information available on the BO. For instance, there is a possibility to have the list of all BO where, when clicking on one of them, the platform will list all legal entities and arrangements for which the person is registered as BO. Likewise, it is possible to register and visualize BO that are “grouped” (e.g. for instance in the case of a shareholders agreement). Another feature is the possibility for competent authorities to visualize the history of modifications made;

**Item 3** This item shows the ownership structure with all legal intermediaries registered up to the identified BO (i.e. BO TESTC).

**Item 4** All the information related to the nature and extent of the BO interest held in the entity is visible here. The column “Type” indicates whether it is a natural person or a legal person (i.e. a legal intermediary), the column “%C” and “%V” relate respectively to the percentage of shares of capital and of voting rights owned or controlled by the BO. The column “Nature of the Control” indicates the category of BO to which the natural person belongs (i.e. cat. 1: controlling ownership of shares or voting rights, cat. 2: control by other means, cat. 3: senior management).

**Item 5** This item was added in order to enable the visualization of the ownership structure in the form of an “ownership tree” as indicated in Figure 5 on the next page.
Figure 5: Ownership chart visual
IV. EX-ANTE AND EX-POST CONTROL AND VERIFICATION MECHANISMS

We will describe in this Section the specific ex-ante (or preventive) control mechanisms that have been developed and imbedded in the back end of the platform in order to avoid mistakes at the time of registration. Ex-post (or quantitative and qualitative) controls and verification mechanisms that have been implemented will also briefly be discussed.

These mechanisms relate to both the information on the identity of the natural person registered as BO and the information related to the nature and extent of the interest held.

Regarding the information pertaining to the identity of the BO - a key feature of such BO Register model - is the direct link established with the national registry of natural persons.

The Figure 6 on the next page illustrates a number of notable features in this regard, namely:

**Item 1** This item illustrates the fact that the BO Register is directly connected to the Belgian national registry of natural persons.

Hence, once you have opted for the registration of a natural person as a BO of an entity or arrangement, you will have two options, namely (i) to extract the available identity information for natural persons (i.e. nationals and non-nationals) that have a Belgian TIN number or (ii) to manually input the identity information of foreign nationals that do not have a Belgian TIN number (see Figure 7 below).

What this feature offers is a high level of assurance that, for BO that have a Belgian TIN number, the information on the identity of the person has been vetted by a Belgian public authority. The required level of data quality is therefore ensured for the identity of those BO.

One remaining issue regarding the identity information of BO are for those natural persons that do not possess a Belgian TIN number (e.g. this would be the case for a BO that has no administrative link whatsoever with Belgium). This vulnerability in terms of data quality has been identified and several mitigating measures are being implemented and investigated.

**Item 2** This item illustrates the available options to search for a natural person in the national registry of natural persons. Such search can be made either through the combination of the first name, last name and date of birth of the natural person, or with his/her unique TIN number.

**Item 3** This item illustrates the message the system provides when the combination of the three information or the TIN used does not match any entries in the natural person registry.
Figure 6: Searching a natural person in the national registry of natural persons

Figure 7 below illustrates the availability of the same features for foreign nationals that do not possess a Belgian TIN, on the condition that they were previously registered in the BO Register. In this case the search can be done through their first name, last and date of birth or their foreign TIN.

Regarding the later, the item 2 illustrates an interesting feature that was developed to limit the creation of multiple profiles for foreign nationals that do not possess a Belgian TIN. In such a case and if the natural person has not yet been created in the BO Register data base, the legal representative will create a profile identifying first of all the country of nationality of the person. Based on the country selected, the system will automatically detect the TIN format of the country and require that the TIN be in line with the TIN format of the country of nationality. Such automatic formatting of the TIN is currently only available for EU jurisdictions.

Figure 7: Registering a foreign natural that does not possess a Belgian ID number
Once the natural person to be registered as a BO has been identified, the Figure 8 below illustrates all the information on the nature and extent of the ownership or control that is to be registered by the legal representative. The preventive controls embedded in the back end of the BO Register are also illustrated in said figure.

It should be recalled here that the screenshots displayed are related to the registration of BO information of legal entities that are corporates, hence for which the three-tiered cascade test is to be applied.

The registration of BO information for NPOs, charities and foundations for instance are sequenced slightly differently due to the fact that (i) they are considered by law for BO purposes as legal arrangement similar to trusts, and (ii) that existing information on their BO (i.e. administrators, persons in charge of the daily management, special representatives) is readily available at the commerce registry.

Thus, for the information that is already available on the BO of such entities, the legal representative will have the option to extract it and fill the BO Register after confirming the validity of the information. The requirement for such “active extraction” is intended to avoid the reuse of erroneous or outdated information, which was identified as an issue for such entities.

Here again, a balance was struck between the need to ensure a high level of quality of the information and the ease of registration for users that should not be expected to be neither AML specialists nor tech savvy.

*The following items of Figure 8 below are noteworthy:*

**Item 1** This item indicates the natural person that is being registered.

**Item 2** This item relates to the category of BO to which the natural person belongs.

Hence, here the legal representative will need to indicate whether the natural person controls the company through (the ownership or control of) a controlling ownership of shares or voting rights (i.e. category 1 BO), whether (s)he controls the entity through other means (i.e. category 2 BO), or whether the natural person is a senior manager of the entity (i.e. residual and “exceptional” category 3 BO).

It should be noted that if the registration is made for a trust, foundation or similar legal entities or for a legal arrangement similar to a trust, the specific categories of BO of those types of entities and arrangement will appear in the top-down list (e.g. settlor, trustee, protector, beneficiary or class thereof and any other controlling person in the case of trusts or persons holding a similar position in the case of foundations and similar legal entities).

**Item 3** This data field indicates the start date of the control, in other words it indicates since when has the person been BO of the entity. Several business rules have been implemented to avoid the registration of certain illogic or impossible dates.

**Item 4** This data field relates to the end date of the control.

**Item 5** This item relates to two data fields that are specific to BO of first category. If this category is opted for, then the specific percentage of shares of capital as well as the percentage of voting rights in the legal entity must be indicated. Several business rules have also been implemented here to block the registration of certain information.
Item 6  This field enables the legal representative to add a free text in order to explain the registration made or clarify any elements related to the registration made.

For instance, if a category 3 BO has been registered, this field is used to describe why such registration has been made, what steps were taken to identify BO of first or second category, etc.

Item 7  Since October 2020, the regulatory framework requires the upload of supporting documents demonstrating that the information on the BO is adequate, accurate and up to date (e.g. relevant extracts from deeds and incorporation documents, register of shares, with legalization requirements under certain conditions).

Besides the ex-ante verification and preventive control mechanisms described above, a feature that was recently put into production is the possibility for competent authorities and obliged entities to notify discrepancies they might come across when consulting the register or when consulting extracts of the register provided by clients.

The EU AMLD provides that, under certain conditions, competent authorities and obliged entities have to notify discrepancies they observe between information that is in the BO Register and information they are aware of. In Belgium, such discrepancies are notified through the online platform as illustrated below.

*Figure 9 (Item 1) below shows how the discrepancy notification module is accessed, through a button accessible on the home page of all legal entities and arrangements.*
Once the authorized user clicks on the button, the discrepancy notification page will appear, as illustrated *in Figure 10 below*. Items 1, 2 and 3 indicate the data fields for which a notification can be made. Hence, the competent authority or obliged entity can choose between information relating to the entity itself (e.g. wrong address), the control information of the BO (i.e. the identity of the BO and the nature and extent of his/her interest) or information that is actually missing (e.g. a BO is missing).
In Figure 11 below, the item 1 shows the data fields that can be selected when a notification is made on the BO information of the legal entity. Hence, the notification will be made in this case on one of the data fields related to the nature and extent of the selected BO.

![Figure 11: Discrepancy notification control dataset selection](image)

Other types of ex-post control mechanisms have been implemented, which we will only mention here.

Such mechanisms include the notification to the BO that (s)he has been registered as BO of a legal entity or arrangement that is specified in the notification, the sending of circa 117,000 notices advising entities to register their BO, the development of a risk-based supervision (e.g. identifying, assessing and mitigating risks related to the BO information available in specific sectors, types of legal entities and arrangements), the development of public and private partnerships to enhance the use and quality of the BO Register.

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3 This resulted in more than 50,000 entities registering their BO information. The entities that did not fulfil their BO registration obligations after this phase will be subjected to administrative fines or judicial liquidation procedures.
CONCLUSION

From the interconnection of various base registries to implementing complex IT solutions with specific access rights, from the gathering of BO information to its understanding, from the development of a risk-based supervision strategy to its implementation, the policy and operational issues and challenges that jurisdictions will face when implementing the “Registry approach” are numerous and multifaceted. Having a clear view and understanding of such challenges is key to address them and is a crucial part of the implementation of such project that should be tackled at the onset.

Ensuring a high level of effectiveness of the legal or regulatory frameworks aimed at mitigating risks related to the misuse of legal persons and arrangements remains pretty much a work in progress and although the road travelled since 2016 and the publication of the EU AMLD is bearing its first fruits, there remains a significant road ahead and efforts should be sustained.

As for the General Administration of the Treasury, the focus for the coming year 2021 will be on (i) exchanging and sharing experiences and lessons learned with other jurisdictions engaged in the implementation of such BO Registers, (ii) partnering with relevant competent authorities to further understand how the information available (or the lack thereof) can be used to identify and understand certain typologies of ownership/control structures, (iii) engaging with relevant obliged entities to enhance their use of the BO Register, and, last but not least, (iv) developing and implementing a risk-based approach to the monitoring and supervision of the BO information available.

For BO Registers to deliver on the strong expectations vested upon them and evolve from information gatherers to intelligence enablers, they will need to tackle significant remaining challenges, some of which have already been identified, some of which are being analysed, some for which solutions are being developed and implemented.