

EU Directives, Legislative Amendments and Changes to the Rules for Registering Ultimate Beneficial Owners in Austria

03.04.2020

**International Bar Association
4th Floor
10 St Bride Street
London EC4A 4AD
Tel: +44 (0)20 842 0090
Fax: +44 (0)20 842 0091
www.ibanet.org**



EU Directives, Legislative Amendments and Changes to the Rules for Registering Ultimate Beneficial Owners in Austria



Sharon Schmidt
OBLIN Attorneys at Law
sharon.schmidt@oblin.at
+43 1 505 37 05 – 0
<https://www.oblin.at>

The incremental decline in Austrian litigation activity can largely be ascribed to the continued popularity of ADR methods, allowing for global enforceability in cross-border disputes. Yet notwithstanding these trends, Austria has also witnessed a surge of new developments in relation to matters pertaining to public and private enforcement.

In an effort to implement recent EU Directives, Austria has been subject to a number of legislative changes and adaptations. Particularly noteworthy have been the amendments made to Austrian competition law, based on EU Directive 2014/104, as set forth in the Austrian Cartel Act (“KartG”). The new rules include provisions on the submission of damages claims regarding antitrust infringements and are aimed at establishing greater certainty surrounding their enforcement. They also offer changes to the limitation period for bringing such actions, extend rules on disclosure and shift the burden of proof to rest with the defendant. This development has been supplemented by the implementation of the EU Directive 2016/943 and the resulting amendments to the Federal Act against Unfair Competition (UWG), centring on the protection of undisclosed business information and the prevention of industrial espionage.

Most recently, it has been the implementation of EU Directive 2018/843, amending the local Ultimate Beneficial Owner Registry Law, that has attracted particular attention as the latest addition to what has become an intricate and highly sophisticated compliance scheme. Since coming into legal force on 10 January 2020 (further revisions

EU Directives, Legislative Amendments and Changes to the Rules for Registering Ultimate Beneficial Owners in Austria

effective as of November 2020 and March 2021), these amendments have introduced profound changes, some of which have been highlighted below.

I. Public Access

- Access has traditionally been reserved to a limited group of individuals (e.g. notaries, creditors, attorneys-at-law etc.) and those having a legitimate interest to obtain information from the Register.
- As of now anyone seeking access is guaranteed to obtain information on any legal entity's beneficial owner.

II. Notification Requirements

- Annual reviews to verify whether data entries are both complete and correct have formerly been deemed sufficient. Changes had to be documented and required notification. If no alterations were made to the Register no further action would be required.
- At present, necessary changes must be registered within four weeks of the annual review being finalised. In the absence of such changes, an express notification must be provided confirming the validity of the registered data.

III. Trusts

- Transactions centring on the use of trusts have previously been subject to the Austrian WiEReG assuming there is a direct relationship between their administration and the forum (potential indicators include the trustee's permanent residence or legal seat).
- Registration is required irrespective of the location of administration (whether Austria or another EU Member State) provided the trustee has entered into business relationships within or engaged in transactions involving purchases of real estate located in Austria. With regard to trusteeships, ownership interests must be identified in the Register.

IV. Penalties

- Incorrect/incomplete notifications, failures to comply with notification requirements (following two requests) or neglecting to register relevant changes within a four-week timeframe have been penalised in monetary terms (EUR 200,000 (intent); EUR 100,000 (gross negligence)).
- The grounds for imposing penalties remain unchanged but have been extended. Failing to retain documents or other information necessary to ensure compliance with the aforementioned obligations allows for the imposition of fines (EUR 75,000 (intent), EUR 25,000 (gross negligence)). Should a party become aware of information being either incomplete or false an electronic note has to be entered unless revisions are offered within a reasonable time. Penalties may now be imposed within six weeks instead of three months.

V. Compliance Package

- As of November, a new data platform is going to enter into force with the aim to centralise all of the relevant documentation surrounding the verification of ultimate beneficial ownership. Termed as the “Compliance Package” it purports to facilitate the Register’s operation by storing previously uploaded notes, records and confirmations supplied by reporting entities.

Concluding Remarks

Austria’s commitment to the creation of a minimum standard of public access to beneficial ownership has been reinforced and furthered by the recent amendments to the UBO register that entered into force with the onset of this year. As an extensive platform that centralises beneficial ownership information, it serves as an essential tool in preventing money laundering, tax evasion and terrorist financing. In addition to the often overlooked but critical role of establishing citizen trust, this revised and streamlined approach also allows businesses to reduce costs and minimise the



EU Directives, Legislative Amendments and Changes to the Rules for Registering Ultimate Beneficial Owners in Austria

complexity surrounding their exercise of due diligence and risk management. By facilitating accessibility and increasing transparency, the recent adaptations of Austria's legal provisions on UBO registers has the potential to solidify market stability as well as increase investor confidence and effectiveness in the allocation of capital.

The central location for recording both natural persons and legal entities taken together with the newly implemented procedural amendments, constitute critical tools in the practice of litigators both in relation to their asset tracing abilities and enforcement powers. With access to a now significantly broadened scope of information, they will be better equipped to combat complex crime and corruption in a manner that is not merely reactive but more effective and expedient.