

The general public's access to information on beneficial owners of companies held invalid

In a judgment handed down on November 22, 2022, the Court of Justice of the European Union, sitting as the Grand Chamber, held that, in the light of the Charter of Fundamental Rights of the European Union, the provision of the so-called anti-money-laundering Directive whereby Member States must ensure that the information on the beneficial owners of corporate and other legal entities incorporated within their territory is accessible in all cases to any member of the general public is invalid.

In order to combat money laundering and terrorist financing, European Union law^[1] requires Member States to maintain a register containing information on the beneficial owners of corporate and other legal entities incorporated within their territory.

In France, Ordinance No. 2016-1635 of December 1, 2016 on the strengthening of the French system for the prevention of money laundering and the financing of terrorism, which transposed Article 30 of Directive 2015/849/EU, created a register of the beneficial owners of legal entities that records identification data on their beneficial owner(s), his/her/their place of residence as well as the way in which he/she/they exercise(s) control over the relevant company or entity^[2]. It should be recalled that the term "Beneficial owner (s)" is defined in Article R.561-1 of the French Monetary and Financial Code as follows: "*Natural person(s) who either hold, directly or indirectly, more than 25 percent of the share capital or voting rights of the company, or who exercise, by any other means, a power of control over the corporation within the meaning of Article L. 233-3 I §3 and §4 of the French Commercial Code*".

In addition, since April 2021 and the entry into force of Ordinance No. 2020-115 of February 12, 2020 on the strengthening of the national system for combating money laundering and the financing of terrorism^[3], some information recorded in the register of beneficial owners is now freely accessible via the website "DATA INPI" managed by the *Institut National de la Propriété Industrielle* (French Trademark and Patent Office, commonly known by the acronym "INPI"). This information includes, but is not limited to, the identity, month and year of birth, country of residence and nationality of the beneficial owners, as well as the nature and extent of the

beneficial interests they hold in the relevant company or legal entity.

Similarly, in Luxembourg, in accordance with the Anti-Money Laundering Directive, a law adopted in 2019 established a register of beneficial owners and provides that some of the information on such beneficial owners is accessible to the general public through the Internet. In this context, a Luxembourg court was asked by two beneficial owners of Luxembourg companies to restrict the general public's access to information concerning them. The court then referred a series of questions to the Court of Justice of the European Union (the "**CJEU**") for a preliminary ruling concerning the validity and interpretation of some provisions of the Anti-Money Laundering Directive in the light of the fundamental rights to respect for private and family life and to the protection of personal data, enshrined respectively in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the "**Charter**").

In its November 22, 2022 judgment, the CJEU, sitting as the Grand Chamber, held that, in light of the Charter, the provision of the Anti-Money Laundering Directive whereby Member States must ensure that the information on the beneficial owners of corporate and other legal entities incorporated within their territory is accessible in all cases to any member of the general public was invalid.

More specifically, according to the CJEU, *"the general public's access to information on beneficial ownership constitutes a serious interference with the fundamental rights to respect for private life and to the protection of personal data enshrined in Articles 7 and 8 of the Charter, respectively. Indeed, the information disclosed enables a potentially unlimited number of persons to find out about the material and financial situation of a beneficial owner."*

The CJEU then tempered this statement by observing that the EU legislature, in seeking to prevent money laundering and terrorist financing, *"pursues an objective of general interest capable of justifying even serious interferences with the fundamental rights enshrined in Articles 7 and 8 of the Charter, and that the general public's access to information on beneficial ownership is appropriate for contributing to the attainment of that objective."*

Yet, in the end, the CJEU found that *"the interference entailed by that measure is neither limited to what is strictly necessary nor proportionate to the objective pursued."* In addition, according to the CJEU, *"the regime introduced by the Anti-Money Laundering Directive amounts to a considerably more serious interference with the fundamental rights guaranteed in Articles 7 and 8 of the Charter than the former regime - which provided for, in addition to access by the competent authorities and certain entities, access by any person or organization capable of demonstrating a legitimate interest - without that increased interference being capable of being offset by any benefits which might result from the new regime as compared against the former regime, in terms of combating money laundering and terrorist financing."*

Insofar as a reference for a preliminary ruling allows the courts and tribunals of the Member States to refer questions to the CJEU about the interpretation of EU law or the validity of a EU act without the latter being entitled to decide on the dispute itself, it is now up to the Luxembourg court to dispose of the case in accordance with the CJEU's decision.

Although the practical consequences of this decision are not yet known, it is nevertheless certain that it deals a serious blow to the register of beneficial owners, as we know it in France, at least as regards its accessibility by the general public.

[1] Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, hereinafter the **Anti-Money Laundering Directive**

[2] For further information, please see our articles entitled [Register of beneficial owners: Effective as of August 1, 2017, companies and other entities incorporated with the Register of Trade and Companies will have the obligation to disclose their beneficial owner\(s\)](#), [Register of beneficial owners: How to identify such owners?](#) and [Identification of beneficial owners: Publication of the Decree implementing Ordinance n°2016-1335 of December 1, 2016 that strengthens French rules against money laundering and terrorist financing](#) published on our Blog in June 2017, November 2017 and May 2018 respectively.

[3] For the transposition of Directive (Eu) 2018/843 of the European Parliament and of the Council of May 30, 2018 amending the Anti-Money Laundering Directive

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