

Register of beneficial owners: access to the general public considered as invalid by the CJEU

The Court of Justice of the European Union (the “CJEU”) rendered on 22 November 2022 its decision on the two requests for a preliminary ruling addressed by the Luxembourg District Court in relation to the interpretation of certain provisions of the Directive 2015/849 (i.e. the 4th AML Directive), as amended by the Directive 2018/84 (i.e. the 5th AML Directive).



Among the different questions raised in these two requests for a preliminary ruling, the first treated by the CJEU was whether the provision of the amended 4th AML Directive, which obliges Member States to ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory be accessible in all cases to the general public was valid in light of the Charter of Fundamental Rights of the European Union (the “**Charter**”).

After having considered that the general public's access to information on beneficial ownership, provided for in the amended 4th AML Directive, constituted a serious interfer-

ence with the rights guaranteed in the Charter, the CJEU then proceeded to an analysis of the conditions under which it would be possible to derogate to such fundamental rights.

Whereas, the Court noted that the principle of legality was respected, that such interference did not undermine the essence of the fundamental rights enshrined in the Charter and it could be deemed to pursue an objective of general interest recognised by the European Union, the Court however decided, on the question of whether such interference was appropriate, necessary and proportionate to the objective pursued that said interference was not limited to what was strictly nec-

essary and that there was no proper balance between the objective of general interest pursued and the fundamental rights enshrined in the Charter and no sufficient safeguards enabling data subjects to protect their personal data effectively against the risks of abuse.

Considering the above the Court ruled that the provision of the amended 4th AML Directive which obliges Member States to ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory be accessible in all cases to any member of the general public, was invalid.

The full judgment rendered by the CJEU is available [here](#) and the CJEU official press release can be found [here](#).

It results from those considerations that the Luxembourg Business Register as administrator of the Luxembourg Register of Beneficial Owners (the “RBO”), in concertation with the Luxembourg Ministry of Justice, decided on 22 November 2022 to temporarily suspend the access to the RBO.

Such suspension only concerns the general public and professionals (e.g. credit institutions, professionals of the financial sector, insurance undertakings, independent auditors, chartered accountants, notaries, lawyers, etc.). It however does not apply to national authorities which have dedicated access through an intranet portal, enabling them to continue to carry out their tasks in the fight against money laundering and terrorist financing.

The press release published by the Ministry of Justice on 23 November 2022 on the topic can be found [here](#).

In light of such decision, the European Parliament and Council will likely need to reshape the 4th AML Directive as amended by the 5th AML Directive with respect to the access of the grand public to the registers of beneficial owners at least. The law of 13 January 2019 introducing a Register of Beneficial Owners, as amended will similarly need to be amended.

Do not hesitate to contact us should you have any question on the above.

Your contacts



Mathieu Laurent
Avocat à la Cour, Partner
Luther S.A. Luxembourg
T +352 27484 1
mathieu.laurent@luther-lawfirm.com



Euryale Didillon
Avocat à la Cour, Counsel
Luther S.A. Luxembourg
T +352 27484 1
euryale.didillon@luther-lawfirm.com



Marie Romero
Avocat à la Cour, Senior Associate
Luther S.A. Luxembourg
T +352 27484 1
marie.romero@luther-lawfirm.com

