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By PwC Deutschland | 23 November 2022

EU money laundering directive: General access to information on owners of companies not valid

Following two requests from Luxembourg for a preliminary ruling the European Court of Justice held that the national provision whereby the information on the beneficial ownership of companies incorporated within the EU is accessible in all cases and to any member of the general public to be invalid.

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Background

In compliance with the EU money-laundering directive, Luxembourg enacted legislation providing for a Register of Beneficial Ownership. This law provides that a whole series of information on the beneficial owners of registered entities must be entered and retained in that register. Some of that information is accessible to the general public, in particular through the Internet. That regulation also provides that a beneficial owner may request Luxembourg Business Registers (LBR), the administrator of the Register, to restrict access to such information in certain cases.

In that context, the Luxembourg District Court had to deal with two complaints brought by a Luxembourg company and by the beneficial owner of such a company, both of which had previously unsuccessfully requested LBR to restrict the general public's access to information concerning them. Since that court considered that the disclosure of such information is capable of entailing a disproportionate risk of interference with the fundamental rights of the beneficial owners concerned, it referred a series of questions to the Court of Justice for a preliminary ruling concerning the interpretation of certain provisions of the EU money laundering directive and the validity of those provisions in the light of the Charter of Fundamental Rights of the European Union ('the Charter').

ECJ decision

In its judgment, the ECJ holds that, in the light of the Charter, the provision of the anti-money-laundering directive whereby Member States must ensure that the information on the beneficial ownership of corporate and other legal entities incorporated within their territory is accessible in all cases and to any member of the general public is invalid.

According to the ECJ, 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. Furthermore, the potential consequences for the data subjects resulting from possible abuse of their personal data are exacerbated by the fact that, once those data have been made available to the general public, they can not only be freely consulted, but also retained and disseminated.

Besides, the ECJ notes that the interference entailed by that measure is neither limited to what is strictly necessary nor proportionate to the objective pursued.

For more information on the ECJ judgment, see the **ECJ PRESS RELEASE** No 188/22.

The full ECJ judgment on the joined cases C-37/20 *Luxembourg Business Registers* and C-601/20 *Sovim* to be found **here**.

Keywords

Geldwäschebekämpfung / Anti Money Laundering (AML), register of companies