



## PRESS RELEASE No 188/22

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Judgment of the Court in Joined Cases C-37/20 | Luxembourg Business Registers and C-601/20 | Sovim

### **Anti-money-laundering directive: the provision whereby the information on the beneficial ownership of companies incorporated within the territory of the Member States is accessible in all cases to any member of the general public is invalid**

*The interference with the rights guaranteed by the Charter entailed by that measure is neither limited to what is strictly necessary nor proportionate to the objective pursued*

In accordance with the anti-money-laundering directive,<sup>1</sup> a Luxembourg law adopted in 2019<sup>2</sup> established a Register of Beneficial Ownership and 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 law 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 tribunal d'arrondissement de Luxembourg (Luxembourg District Court, Luxembourg) was seised of two actions, brought by a Luxembourgish company and by the beneficial owner of such a company, respectively, 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 anti-money-laundering directive and the validity of those provisions in the light of the Charter of Fundamental Rights of the European Union ('the Charter').

In today's judgment, the Court, sitting as the Grand Chamber, 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 to any member of the general public is invalid.**

According to the Court, 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,**

<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 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 (OJ 2015 L 141, p. 73), as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 (OJ 2018 L 156, p. 43).

<sup>2</sup> Loi du 13 janvier 2019 instituant un Registre des bénéficiaires effectifs (mémorial A 15) (Law of 13 January 2019 establishing a Register of Beneficial Ownership).

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.

That said, the Court finds that, by the measure at issue, the EU legislature seeks to prevent money laundering and terrorist financing by creating, by means of increased transparency, an environment less likely to be used for those purposes. It holds that the legislature thereby 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**.

The Court holds, however, that the interference entailed by that measure is **neither limited to what is strictly necessary nor proportionate to the objective pursued**. In addition to the fact that the provisions at issue allow for data to be made available to the public which are not sufficiently defined and identifiable, 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, as well as access by the competent authorities and certain entities, for access by any person or organisation 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. In particular, the fact that it may be **difficult** to provide a detailed **definition** of the circumstances and conditions under which such a **legitimate interest** exists, relied upon by the Commission, **is no reason for** the EU legislature to provide for the general public to access the information in question. The Court adds that the optional provisions which allow Member States to **make information on beneficial ownership available on condition of online registration** and to **provide**, in exceptional circumstances, **for an exemption from access to that information by the general public**, respectively, are not, in themselves, **capable of demonstrating either a proper balance** between the objective of general interest pursued and the fundamental rights enshrined in Articles 7 and 8 of the Charter, **or the existence of sufficient safeguards** enabling data subjects to protect their personal data effectively against the risks of abuse.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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