

## AML: ECJ Rules Publication of Beneficial Ownership Register Invalid

A recent judgment of the Court of Justice of the European Union (the “CJEU”) has called into question the publication of beneficial ownership registers maintained for anti-money laundering purposes.

### Background:

In Europe, The Anti Money Laundering Directives (the “AML Directives”) are key pieces of legislation which aim to prevent the European Union’s financial system from being used to launder money. Article 30 of Directive 2015/849 of 20 May 2015 (more commonly known as the fourth anti-money laundering directive), requires Member States to: (a) ensure that corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership and (b) ensure that the information is included in a central register.

In Ireland the Central Bank of Ireland published Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector (“the Guidelines”) on 6 September 2019, which were revised on 23 June 2021. The Guidelines set out the expectations of the Central Bank in respect of credit and financial institutions compliance with their AML/CFT obligations as set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the CJA 2010), following the transposition of the EU’s Fourth and Fifth Anti-Money Laundering Directives into Irish Law. The Guidelines also incorporate expectations set out in previous Central Bank AML/CFT sectoral reports, AML/CFT bulletins, and relevant European Supervisory Authority Guidelines.

### The preliminary ruling:

Article 1(15)(c) of Directive 2018/843 (which amends the first subparagraph of Article 30(5) of Directive 2015/849) states that Member States should ensure that information on beneficial owners is available any member of the general public. Members of the general public have access to the name, the month and year of birth, the country of residence, nationality of the beneficial owner and the nature and extent of the beneficial

interest held. Access to this information may be limited by Member States in exceptional circumstances which is assessed on a case-by-case basis. Two applications were brought before the manager of the Register of Beneficial Owners in Luxembourg seeking to limit access to the information relating to a named beneficial owner, namely: Case C- 37/20 and Case C-601/20. The applications were refused, and an appeal was brought before the Tribunal d’arrondissement of Luxembourg (the “Tribunal”).

The Tribunal was of the view that the disclosure of such information was capable of entailing a disproportionate risk of interference with the fundamental rights of the beneficial owners and submitted a request for a preliminary ruling which was lodged in the Court of Justice of the European Union (the “CJEU”) on 21 May 2021. A total of six questions were submitted by the Tribunal in respect of case C -37/20 and C-601/20. The primary focus of the CJEU was a question which was submitted in the context of case C 601/20 which concerned the validity of article 1 (15) (c) in light of privacy rights.

### The Court’s Decision:

On 22nd November 2022, the CJEU published its decision which invalidated article 1 (15) (c). The CJEU held that the general public’s access to this information 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 of Fundamental Rights of the European Union.

### Conclusion:

In light of this decision, Luxembourg has temporarily suspended access to information contained in the beneficial ownership register. It is anticipated that jurisdictions across the EU will follow suit.



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