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Judgment of the Court in Joined Cases C-37-20 and C-601-20 regarding the Anti-money laundering directive

In its 22 November 2022 judgment, the Court of Justice of the European Union (“CJEU”) invalidates the provision of the 5th AML Directive^[1] whereby the access to information on the beneficial owners of companies and of other legal entities incorporated in the territory of the Member States in the beneficial owners registers be accessible in all cases to any member of the general public.

The Luxembourg law dated 13 January 2019, establishing a register of beneficial owners as amended, provides, in accordance with the 5th AML Directive, that some personal data of the beneficial owners of the companies that are registered with the Luxembourg trade and company register shall be accessible to the general public through the beneficial owner register (“RBE”) website. Beneficial owners and companies may request the RBE to restrict the access to the general public in certain circumstances where such access would expose the beneficial owner to a disproportionate risk (risk of fraud, abduction, blackmail, extortion, violence etc). The judgment of the CJEU was rendered following two requests for a preliminary ruling from the *Tribunal d’Arrondissement de Luxembourg* (Luxembourg District Court) in the context a dispute between companies and beneficial owners and the Luxembourg Business Register (“LBR”) where the LBR denied them the possibility to limit the access of the general public to information concerning them. The CJEU had to give answers on the interpretation of different provisions of the 5th AML Directive.

The CJEU concluded that:

- > the general public's access to information on beneficial owners without distinction as to the quality of users, which is required by the text of the 5th AML Directive, constitutes a serious interference with the rights guaranteed in Articles 7 (right to the respect of private and family life) and 8 (right to the protection of personal data) of the Charter of Fundamental Rights of the European Union;
- > such interference is not strictly necessary and is not proportionate with the objectives of the general interest pursued by the 5th AML Directive in the fight against money laundering and terrorism financing and the existence of sufficient safeguards enabling data subjects to protect their personal data effectively against abuse.

As a consequence of the decision by the CJEU, the access via internet to the RBE website has temporarily been suspended. The Luxembourg Ministry of Justice and the LBR are currently working on a technical and legal solution to quickly guarantee access to the RBE for the professionals referred to in article 2 of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing, as well as for the press and civil society organizations having a link with the prevention and fight against money laundering and terrorist financing and which have a legitimate interest in accessing information on beneficial owners.

To be continued...

[1]Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

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