

Court of Justice of the European Union rules that the UBO register must not be publicly accessible

On November 22, 2022 the Court of Justice of the European Union (the “**CJEU**”) rendered judgment on the UBO register. The respect for private life and the right to the protection of personal data took center stage in the judgment. In short, the CJEU ruled that the provision in the EU Anti-Money Laundering Directive providing for Member States to ensure that UBO information is accessible to any member of the general public, was insufficiently substantiated and thus invalid.

The UBO register

The UBO register, the part of the Trade Register where beneficial owners of legal entities, other entities and trust-like entities (“**UBOs**”) are registered, has been the subject of debate for quite a few years now. The objective of the UBO register, which had to be introduced pursuant to EU legislation, is to make legal arrangements more transparent. This transparency must help to prevent money laundering and the financing of terrorism. In particular, there was and still is a great deal of objection to making the UBO data accessible to the general public, as required by the legislator. Those same objections have also been raised with regard to comparable EU UBO registers. The judgment by the CJEU was in response to several questions that had been raised in two Luxembourg cases for which a preliminary ruling from the CJEU had been requested.

The CJEU noted that allowing the general public access to information on UBOs constitutes serious interference with the fundamental rights to respect for private life and to protection of personal data. After all, the information entered in the UBO register makes it possible to obtain personal information about the registered UBOs. According to the CJEU, this interference is not limited to what is strictly necessary nor proportionate to the objective pursued.

Infringement of fundamental rights

The current regime constitutes a significant infringement of the aforementioned fundamental rights, without that infringement being offset by any benefits. The CJEU also does not see any justification for making all the information accessible to the general public. According to the CJEU, making the UBO information available to the general public on condition of online registration or exemptions in exceptional circumstances are not in themselves measures capable of demonstrating a proper balance between the objective of general interest pursued and those fundamental rights.

Public access has always been called into question

Making the UBO register accessible to the public has been called into question from the very moment the UBO register was announced. In 2020 Privacy First, a private interest organization, filed a lawsuit against the Dutch government. The foundation prioritized the privacy of the data of beneficial owners and argued that it could not be safeguarded if everyone had access to that data simply by paying EUR 2.50 to request an extract from the UBO register. The foundation demanded that the UBO register in the Netherlands be discontinued. In this lawsuit, the District Court in The Hague ruled

that there were no objections to the use of the fully public UBO register. The judgment by the CJEU has now established that allowing the public to request information from a UBO register is a serious violation of privacy.

Practical aspects to consider

In response to the judgment by the CJEU, the Minister of Finance notified the Speaker of the Lower House of Parliament on November 22, 2022 that she had asked the Dutch Chamber of Commerce to temporarily stop providing information from the UBO register, effective as of November 22. The Chamber of Commerce will adhere to this until further decisions on this matter have been taken by the government.

The judgment does not affect the obligation to record UBOs in the UBO register. All kinds of authorities/agencies (including the Public Prosecutor's Office and the Dutch Tax and Customs Administration) will continue to have the same access as before.

We will closely follow developments.

If you have any questions about the UBO register or how this judgment may affect your personal situation, feel free to contact Meijburg & Co and/or Meijburg Legal.

KPMG Meijburg & Co
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