

Luxembourg Register of Beneficial Ownership's online access on the way to comply with ECJ decision

Insights - 08/12/2022

The Luxembourg Register of Beneficial Ownership's online access has been recently re-established for users having an identified access.

Such access had been suspended following the European Court of Justice's declaration that the Fifth Directive (EU) 2018/843 provision allowing free public access is invalid.

The Fifth Directive (EU) 2018/843 on the fight against money laundering and terrorist financing (the **Directive**) introduced the beneficial ownership register scheme with the aim to increase information sharing. Luxembourg implemented its Register of Beneficial Ownership on 1st March 2019 (the **RBO**), allowing free public and online access to information on the beneficial owners of the companies which are registered with the Luxembourg Trade and Companies Register (the **Beneficial Owners**).

Although the Luxembourg law of 13 January 2019 establishing the RBO (the **Law**) sets an exception to this free public access, such exception can only be invoked by the Beneficial Owners under certain limited circumstances : they must be either minors or incapacitated, or be able to demonstrate the existence of a disproportionate risk, a risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.

In consideration of certain EU protection laws however, the validity of this free public access has been challenged before the District Court of Luxembourg. The Beneficial Owners who filed the complaints were claiming that the general public's access to their personal information should be restricted and conditioned. In particular, the system should be compliant with the GDPR provisions and the EU Charter on Fundamental Rights.

As a result, the Luxembourg District Court submitted a request for a preliminary ruling to the European Court of Justice (the **ECJ**) in early 2020, asking the latter to interpret the relevant

texts of the Directive as implemented in the Law.

More specifically, it was asked whether the provisions, whereby the general public's access to information on the Beneficial Owners of EU companies must be accessible in all cases to any member of the general public, was valid.

The Advocate General of the ECJ released opinion on 20 January 2022, whereby he confirmed the validity of the system of public access to information on the Beneficial Owners of companies. In its decision of 22 November 2022 nonetheless, the ECJ ruled a contrario that this free access constitutes an infringement to the fundamental rights of the Beneficial Owners, namely the fundamental rights to respect for private life and the protection of personal data protection. As such, this interference is not strictly necessary and is not justified by the purpose pursued, ie countering money laundering and terrorist financing.

With this decision, the ECJ therefore declared invalid the Directive's provision stating that the information on the Beneficial Owners of EU companies must be freely accessible to any member of the general public.

As the Law partially transposes a European provision now deemed invalid, and in order to comply with the European case law, the Luxembourg Ministry of Justice therefore made the decision to immediately suspend the online access to the RBO for all users for a temporary period. In the meantime, limited access has been restored as per the Government's announcement, whereas an alternative solution allowing access to the RBE data for professionals is being implemented. Further developments are still expected regarding the access for other users having a legitimate interest (eg journalists).

It should however be noted that the requirement to register the Beneficial Owners of Luxembourg legal entities and partnerships in the RBO continues to apply.

For more information, contact the author of this briefing.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



[Bertrand Gérardin](#)

Partner

[Luxembourg Legal Services](#)

E: bertrand.geradin@ogier.com

T: [+352 2712 2029](tel:+35227122029)

Related Services

[Corporate](#)

[Regulatory](#)

[Legal](#)