

Privacy, transparency, money laundering and terrorism: big changes to the Register of Beneficial Ownership

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Despite changes to the general public's access to the Register of Beneficial Ownership ("RBO"), the requirement to register the beneficial owners of Ireland legal entities in the RBO continues to apply.

Last week the EU Court of Justice found that those provisions of two EU Directives (2015/849 and 2018/843) which, read together, require EU Member States to ensure that information on the beneficial ownership of companies (and other legal entities) incorporated within their territories is accessible to any member of the general public, constitutes an interference with the rights to privacy guaranteed in Articles 7 and 8 of the EU Charter of Fundamental Rights.

Article 7 of the Charter guarantees everyone the right to respect for his or her private and family life, home and communications, while Article 8(1) confers on everyone the right to the protection of their personal data.

The Directives, insofar as they required Member States to ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory is accessible in all cases to any member of the general public, were invalid.

| The finding of the Court

Applying a proportionality analysis to the impugned Directives, the Court found that the nature and extent of their interference with the right to privacy bestowed on all citizens by the Charter was disproportionate to the objectives which the Directives sought to address, being, in the words of Directive 2015/849 itself, "to prevent the use of the European Union's financial system for the purposes of money laundering and terrorist financing".

The Court also found that the measures introduced by the Directives were not strictly necessary

to achieve the (legitimate) objectives of the Directives, namely the prevention of money laundering and terrorism.

Why inappropriate, disproportionate and not strictly necessary?

The reasoning of the Court was essentially that the information required to be included in a register of beneficial ownership (**RBO**) under the Directives comprised two distinct types of personal data, namely that relating to the identity of beneficial owners (name, month and year of birth and nationality) as well as economic data, ie the nature and extent of the beneficial interest held).

The availability of such extensive personal data to everyone (i.e., all members of the public, as opposed to only competent authorities and persons capable of demonstrating a legitimate interest – the position prior to the amendment of Directive 2015/849 by 2018/843) was too broad a measure to address the problem of money laundering and the financing of terrorism.

What will the effect of this decision be on Ireland?

In Ireland, the effect of the Court's decision is that the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 and the RBO maintained by Ireland's Central Bank pursuant to those Regulations (or, at the very least, the public's access to it) are in jeopardy. It is likely that the 2019 Regulations, which were promulgated in response to the 2018 Directive, will need to be revisited.

Initial Irish RBO Office response

In the meanwhile, upon discrete enquiries to the local RBO department on 7 December 2022, we were informed as follows:

"Following a recent judgement by the European Court of Justice the search facility on the RBO register for beneficial ownership information is now suspended.

"The RBO is currently working on providing access for Designated Persons only.

"Currently there is no access to reports. Existing registered designated person[s] should have been emailed with further information on this issue

"Please continue to monitor the home page of the RBO website, as information will be posted there as soon as it becomes available.

"The procedure for registering as a Designated person is changing so again as it has not been

finalised I urge you to review our website in the next few days for update and contact us again if you fall under the criteria of a Designated person once the registry has been updated."

A "designated person" is, broadly speaking, a person who is obliged to undertake anti-money laundering (**AML**) investigations in respect of clients (for example, banks, accountants, auditors and legal professionals). Whether such people will be able to access the Irish RBO for purposes other than AML investigations remains to be seen.

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