

Court of Justice of the European Union's Decision on Beneficial Owners

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In a judgment handed down on 22 November 2022, the European Court, sitting as the Grand Chamber, held an anti-money-laundering directive to be invalid which required Member States under the Charter of Fundamental Rights of the European Union (the "Charter") to ensure that beneficial ownership information of corporate and other legal entities incorporated within a particular territory was accessible in all cases to any member of the general public.

According to the Court, the general public's access to beneficial ownership information constituted a serious interference with the fundamental rights to respect for private life and to the protection of personal data embodied in Articles 7 and 8 of the Charter (the "Articles"). The Court considered that information disclosed enabled a potentially unlimited number of persons to find out about the material and financial situation of a beneficial owner. Furthermore, not only were there potential consequences for data subjects arising from the possible misuse of their personal data, but once data had been made publically available, it could be freely accessed at any time, retained and disseminated.

It was recognised that the EU legislature seeks to prevent money laundering and terrorist financing by creating, through increased transparency, an environment less likely to be used for those purposes and the EU's pursuit of its general interest objective is capable of justifying serious interferences with the fundamental rights enshrined in the Articles. However, the Court held that the interference caused by the anti-money laundering directive was not limited to what was strictly necessary or proportionate to the objective and the directive introduced a regime that was considerably more serious in its interference with the fundamental rights in the Articles than the former regime which only allowed access to beneficial ownership information by competent authorities and certain entities and by those capable of demonstrating a legitimate interest. In particular, the fact that it may be difficult to provide a detailed description of the circumstances under which a legitimate interest existed under the previous regime was not considered to be a sufficient reason to provide for the general public to access the relevant information.

It was also noted that the optional provisions allowing Member States to make beneficial ownership information available on condition of online registration and to provide, in exceptional circumstances, for exemptions from access by the general public, did not demonstrate a proper balance between the general interest objective and the fundamental rights in the Articles, or provide sufficient safeguards for the protection of data subjects' personal data against the potential risks of abuse.

The Cayman Islands Government is currently considering industry feedback in relation to the Beneficial Ownership Transparency Bill 2022 and associated regulations, which propose to establish public beneficial ownership registers in the jurisdiction. It remains to be seen whether the government revises its proposed changes to honour data subjects' privacy rights over the general public's access to beneficial ownership information in line with this decision.

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