

### LEGAL ALERT: EU-Court: Public access to UBO register is invalid

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#### Key takeaways

Ⓐ The European Court of Justice (the “**Court**”) ruled on 22 November 2022 that public access to information in the UBO register is invalid.

Ⓐ The Court held that public access to the ultimate beneficial owner (the “**UBO**”) information constitutes a serious interference with the right to respect private life and the right to protection of personal data. This infringement of fundamental rights through public access goes beyond what is necessary, according to the Court, and is disproportionate to the objective it pursues.

Ⓐ In response, the Minister of Finance has requested the Chamber of Commerce to temporarily stop providing information until further notice.

Ⓐ However, the obligation for legal entities to register UBOs remains in force.

#### Introduction of Dutch UBO Register

The obligation to establish a UBO register stems from the Fourth Anti-Money Laundering Directive (EU/2015/849), as amended by the Fifth Anti-Money Laundering Directive (EU/2018/843) (the “**Directive**”). The UBO register should help preventing the financial system from being used for money laundering or terrorist financing. The UBO register includes certain personal data of UBOs of companies and other legal entities (“**entities**”).

The Dutch UBO register came into effect on September 27, 2020 and is administered by the Dutch Chamber of Commerce.

#### Public disclosure of UBO information based on current legislation

The UBO regulations assume that the Dutch UBO register is a public register. Under the current UBO laws and regulations, in exceptional circumstances the UBO can apply to the Chamber of Commerce to have the public data in the UBO register blocked. Briefly, an appeal for blocking is only granted if the UBO is a minor, placed under guardianship, or similarly restricted in his legal capacity.

#### Publicly accessible information of the ultimate beneficial owner:

- ⇒ First and last name;
- ⇒ Month and year of birth;
- ⇒ Nationality;
- ⇒ State of residence; and
- ⇒ Nature and extent of the UBO's held economic interest.

Competent authorities (such as the AFM, DNB, Tax Authority, FIOD, the Public Prosecutor, etc.) and the Financial Intelligence Unit have access to all information (including shielded information).

## **Court ruling**

The Court's ruling follows preliminary questions raised by the Luxembourg court and deviates from the idea that UBO information should always be generally accessible to the public. In its ruling, the Court found the invalidity of the Directive's provision that Member States must ensure that information on UBOs of entities is accessible to the general public in all cases. Public access to UBO information, according to the Court, constitutes a serious interference with the right to respect private life and the right to protection of personal data (Articles 7 and 8 of the Charter of Fundamental Rights of the European Union).

A restriction on these fundamental rights can be justified if the measure pursues an objective of general interest and is necessary and proportionate. The purpose of the Directive is to counter money laundering and terrorist financing. Public accessibility to the UBO register aims to contribute thereto by increasing transparency about UBOs of entities. The Court determined that the restriction of fundamental rights through public accessibility goes beyond what is necessary and disproportionate to the objective it pursues. The disclosed information did allow a potentially unlimited number of persons to obtain information about in particular the financial situation of UBOs. Nonetheless, the potential consequences for the data of UBOs as any misuse of their personal data could be worsened by the fact that, once made available to the general public, such data can not only be freely accessed, but also stored and disseminated.

## **Consequences for the Dutch UBO-register**

The Court's ruling is primarily addressed to the European legislator and the European Commission but also has implications for the Dutch UBO register. The Minister of Finance has reacted to the ruling and demanded the Chamber of Commerce to temporarily refrain from providing information of the UBO register, which is honoured by the Chamber of Commerce. In the coming months, the Minister will analyse the ruling further with all parties involved and will consult with the European Commission to see what information provision is possible, also in light of supervision.

Please note that the ruling does not affect the obligation for legal entities to register UBOs.

## **QUESTIONS OR FURTHER INFORMATION**

If you have any questions or appreciate receiving more information on this Alert, please contact your regular contact at WLP-Law or any of the undersigned:

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