



## **Recent developments on Beneficial Ownership Registers - when transparency clashes with fundamental rights | 1**

The European Union has adopted various anti-money laundering directives in recent years, with the Fourth Anti-Money Laundering Directive requiring member states to implement central registers of beneficial owners of companies and the Fifth Anti-Money Laundering Directive, requiring each EU member state to make the information stored on its central register publicly accessible.

In consequence of these directives, a number of countries including Luxembourg have since 2019 maintained a register of beneficial ownership with unrestricted public access. However, actions were brought in Luxembourg on the basis that this level of unlimited access to personal information endangered the privacy of the respective beneficial owners and the case was referred to the Court of Justice of the European Union.

The European Court of Justice decision, which was rendered on 22 November 2022 has far-reaching consequences for the ongoing viability of a number of public registers containing the personal details of the beneficial owners of companies.

The judgment has some striking findings, including:

1. the interference with rights by the introduction of public registers of beneficial owners was neither limited to what is strictly necessary, nor was it proportionate to the objectives being pursued;
2. public access to personal information constitutes a “serious interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter” [of Fundamental Rights of the European Union], being the rights to respect for private life and to the protection of personal data; and
3. the increased interference was not capable of being offset by any benefits which might result from the new regime.

As a result of this ruling, a number of EU countries have already taken down access to their public registers.

Although Jersey is not part of the EU and the judgment, therefore, has no direct impact, in 2019, Jersey made a political commitment to enable public access to its beneficial ownership registers, which is aligned to the approach taken in the EU Anti Money Laundering Directives.

Therefore, this ruling will undoubtedly have an impact in Jersey when making decisions about the future of Jersey’s beneficial ownership registers and indeed the government of Jersey has already announced that it is delaying the implementation of legislation to implement full public access to registers of company beneficial ownership, following this decision.

However, notwithstanding the delay in the implementation of full public access to registers of company beneficial ownership, entities registered in Jersey are already required to provide verified beneficial ownership information on entities in Jersey. The verifying of such information, especially by regulated trust and corporate service providers, ensures the accuracy of data that is shared with relevant authorities and indeed law enforcement authorities can request and receive beneficial ownership information from the Jersey Company Registry within 24 hours, or potentially sooner if urgent. The Financial Action Task Force



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(FATF) has recognised the merit of this effective measure in supporting the fight against financial crime.

The arguments for and against public registers are long established, with supporters of public registers arguing that public registers seek to prevent money laundering by creating complete transparency which would act as a powerful deterrent. On the other hand, arguments against public registers include, as highlighted in the judgment, the principle that the fundamental rights of beneficial owners (including the right to privacy and protection of personal data) should outweigh the public interest in preventing money laundering through public access. The judgment also highlighted the risk, where providing information on public registers could potentially, in certain circumstances, expose beneficial owners and their families to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.

It is unknown what the approach will be going forward, as the international community awaits the next moves concerning EU public registers. However, it can be argued that the recent judgment supports the view that Jersey's approach of identifying beneficial owners and holding such verified beneficial owner information on their registers, that can be shared with the relevant authorities if required, may represent an appropriate balance between the rights of beneficial owners and the need to prevent money laundering and terrorist financing.