

ATOZ ALERT

Luxembourg RBE: access to information on the beneficial ownership of companies to the general public suspended further to CJEU decision

25 November 2022

Background

The law of 13 January 2019 (the “RBE Law”) has established a register of beneficial owners in Luxembourg (the “RBE”), as part of the implementation of some provisions of the Directives 2015/849/EU (“AMLD IV”) and 2018/843/EU (“AMLD V”).

Art 1(15)(c) of AMLD V amending Art 30 (5) of AMLD IV provides that each Member State must 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.

Until now, in accordance with the RBE Law, several information on the beneficial owners of companies, including the name, the date and place of birth, nationality, country of residence and interest held was available to the public on the RBE website.

The RBE Law provides however that a registered entity or a beneficial owner may request the Luxembourg Business Register (“LBR”), on a case-by-case basis and under exceptional circumstances, to limit access to the information to national authorities.

Request for a preliminary ruling by the Luxembourg District Court

WM vs LBR

YO, a real estate company, lodged an application with LBR, pursuant to Art 15 of the RBE Law, requesting that access to the information concerning WM, its beneficial owner, contained in the RBE, be restricted solely to the entities mentioned in that provision, on the ground that the general public’s access to that information would seriously, actually and immediately expose WM and his family to a disproportionate risk and risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. The application was rejected by the LBR in a decision of 20 November 2019. On 5 December 2019, WM brought an action before the Luxembourg District Court.

Sovim SA vs LBR

Sovim lodged an application with LBR, pursuant to Art 15 of the RBE Law, requesting that access to the information concerning its beneficial owner, as available in the RBE, be restricted solely to the entities mentioned in that provision. That application was also rejected by the LBR in a decision of 6 February 2020. On 24 February 2020, Sovim brought an action before the Luxembourg District Court.

Pursuant to the WM and Sovim actions, in 2020, the Luxembourg District Court asked the Court of Justice of the European Union (“CJEU”) to give a preliminary ruling on:

- the interpretation and scope of the concepts of “exceptional circumstances” and “risk” set out in Art 30(9) of AMLD IV and the corresponding national provisions in Art 15 (1) of the RBE Law; and
- the validity of Art 1(15)(c) of AMLD V amending Art 30 (5) of AMLD IV concerning the access to the general public of information on the beneficial ownership of companies and of other legal entities in the light of Art 7 and 8 of the EU Charter of Fundamental Rights (the “Charter”)

The decision of the CJEU

On 22 November 2022, the CJEU rendered its judgment regarding the joined cases C-37/20 (WM and LBR) and C-601/20 (Sovim SA and LBR).

It is reminded that Art 7 of the Charter guarantees everyone the right to respect for his or her private and family life, home and communications, while Art 8(1) of the Charter expressly confers on everyone the right to the protection of personal data concerning him or her.

The CJEU ruled in its judgment that the general public’s access to information on beneficial ownership, provided for in Art 30(5) of AMLD IV, as amended by Art 1 (15) c of AMLD V, constitutes an interference with the rights guaranteed in Art 7 and 8 of the Charter and therefore that Art 30 (5) of AMLD IV is invalid.

The Court motivated its ruling by explaining that the necessary balance and proportionality between privacy and transparency was not respected. According to the CJEU, it cannot be considered that the interference with the rights guaranteed in Art 7 and 8 of the Charter, which results from the general public’s access to information on beneficial ownership, is limited to what is strictly necessary.

Therefore, the fight against money laundering and terrorism financing, which is the objective of AMLD IV and AMLD V, should not necessarily entail access to the public to information on the identity of the beneficial owners of companies.

RBE access to be temporarily limited to professionals

Following the CJEU decision, on 22 November 2022, the LBR indicated on its website that the access to the RBE website via the internet is temporarily suspended. A solution allowing access to the RBE data by “Professionals” as defined in the RBE Law will be communicated shortly.

The definition of “professionals” under the RBE Law refers to the definition of “professionals” under the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (“AML Law”).

The list of professionals defined in the AML Law includes notably but not only:

- credit institutions and professionals of the financial sector;
- insurance undertakings and professionals of the insurance sector;
- management companies;

- undertakings for collective investment and investment companies in risk capital;
- any person carrying out the Family Office activity;
- *réviseurs d'entreprises* (statutory auditors), *réviseurs d'entreprises agréés* (approved statutory auditors), *cabinets de révision* (audit firms) and *cabinets de révision agréés* (approved audit firms);
- lawyers, notaries, bailiffs.

From now on and until further notice, the information on beneficial owners of companies on the RBE website won't be available anymore to the public and will be restricted to professionals.

For the avoidance of doubt, the above change does not affect the reporting obligations of the Luxembourg entities.

What is next

Further to the CJEU decision, we will follow with attention within the coming days and weeks:

- any communication of the LBR on the modalities to restrict the access of information on the identity of the beneficial owners of companies to professionals;
- the feedback of the European Commission on the invalidity of Art 30 (5) of AMLD IV;
- the decision of Luxembourg District Court which requested a preliminary ruling to the CJEU on the two pending cases.

Do you have further questions?



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