AG Opinion on Public Access to Information on Beneficial Owners

Thomas Wahl

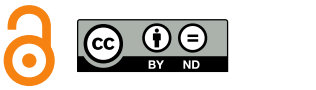
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AUTHOR

Thomas Wahl
Senior Researcher
Max Planck Institute for the Study of Crime, Security and Law

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In his opinion of 20 January 2022, Advocate General (AG) *Giovanni Pitruzzella* concluded that the fourth anti-money laundering (AML) Directive (Directive 2015/849) as amended by the fifth AML Directive (Directive 2018/843) is partly invalid. In essence, the case addresses the question of balancing transparency requirements (concerning beneficial owners and the control structures of companies for the prevention of and fight against money laundering and terrorist financing) with respect for fundamental rights (in particular the beneficial owners' rights to privacy and protection of their personal data).

Background of the case

In the cases at issue (Joined Cases C-37/20 and C-601/20 – *WM and Sovim SA v Luxembourg Business Registers*), two registered beneficial owners of Luxembourg-based companies asked to limit access by any member of the general public to their data, because disclosure of that data would entail a disproportionate risk infringement of their fundamental rights. The Luxembourg authority responsible for the registrations denied the request. The *tribunal d'arrondissement de Luxembourg* referred several questions to the CJEU regarding the validity and interpretation of Art. 30 of the AML Directives. This article regulates which information on beneficial ownership must be collected and registered in central registers of the EU Member States. According to Art. 30(5), Member States must ensure that certain data on beneficial owners are accessible in all cases, *inter alia*, accessible to any member of the general public. Member States can grant access to further data. Art. 30(9) provides for an exemption to such access in exceptional circumstances, to be laid down in national law. This is the case if access would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence, or intimidation.

The AG's opinion

The AG first stressed that public access to the data constitutes an interference with the beneficial owners' fundamental rights, despite this interference not being particularly serious. Second, the AG verified whether the limitation to fundamental rights (notably Arts. 7 and 8 of the Charter) can be justified. In this context, he identified two problematic points in the provision of Art. 30 of Directive 2015/849 as amended by Directive 2018/843:

- Regarding Art. 30(5), the EU legislature failed to identify the scope and nature of personal data in a clear and precise manner when it left it up to the EU Member States to make accessible to members of the general public additional information on beneficial ownership – the AML Directive is invalid in this respect;

- Regarding Art. 30(9), the establishment of exemptions cannot necessarily be read as being up to the discretion of Member States only (as worded in the Directive), but it is an obligation of Member States to implement exemptions into their national law. In this context, the AG acknowledged the purpose of providing access to beneficial ownership data to members of the general public (persons/organisations no longer having to demonstrate a legitimate interest), but this access must be flanked by appropriate safeguards for the beneficial owners' fundamental rights.

In conclusion, however, AG *Pitruzzella* considers the access scheme for beneficial ownership information as established by the fourth and fifth AML Directives to be in line with EU fundamental rights law.

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