



LIMITATION OF PUBLIC ACCESS TO THE REGISTER OF BENEFICIAL OWNERS: THE ISSUE IS TAKEN UP BY THE COURT OF JUSTICE OF THE EUROPEAN UNION

As of the 1st of March 2019, the register of beneficial owners of legal entities (“RBE”) is effective in Luxembourg. The register is open to the public, i.e. as a general rule, anyone can consult the information about the beneficial owners.

There is, however, an exception to this general rule. According to art. 15 of the law on the register of beneficial owners¹, at the beneficial owner’s or the company’s request public access to the information can be limited. In this case, the access will be available only to state authorities, financial and credit institutions, notaries, and bailiffs. To apply the exception, one needs to prove that publishing the information would expose the beneficial owner to a “disproportionate risk” of fraud, kidnapping, blackmail, extortion, harassment, violence, or intimidation. The law also mentions that the limitation of public access can only be made “in exceptional circumstances”.

During its relatively short existence, the register of Luxembourg’s beneficial owners has received over 16,000 requests for limitation of public access to information. Most of them have been rejected by the RBO administration. Some of the applicants who disagree with this decision have decided to bring the case to trial.

It should be noted that for the sake of the protection of beneficial owners, the information is not available to the general public during the whole period of examination of the access limitation request by the RBO administration. If the RBO administration refuses to limit the access, the information remains closed to public for another 15 days – the time allowed to bring the case to the court. The information remains closed for the public pending court decision. By the second quarter of 2020, the courts of Luxembourg had registered more than 100 relevant cases. This number keeps growing.

The beneficial owners who do not have convincing personal evidence of a “disproportionate risk”, may argue a violation of their rights under the General Data Protection Regulation. RBE, acting as a controller of personal data, is under an obligation to inform the data subjects (beneficial owners) about the persons who consult these data (GDPR, Art. 13). If the register is open to the general public, it is impossible to fulfil this obligation.

¹ Loi du 13 janvier 2019 instituant un registre de bénéficiaires effectifs



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The Luxembourg courts have also encountered a problem of interpretation of the concepts of “disproportionate risk” which the applicants usually refer to, and “exceptional circumstances” which justify the limitation of access to information. Taking to account that these notions originate from the EU directives², the Luxembourg courts have requested a preliminary ruling from the Court of Justice of the European Union (the CJEU).

Since the submission of the referral for a preliminary ruling before the CJEU, the cases brought before the Luxembourg courts have been suspended, pending the CJEU decision.

² Directive (EU) 2015/849; Directive (EU) 2018/843

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