

ACCESS TO BENEFICIAL OWNERSHIP REGISTERS

Regulating legitimate interest access in the
6th EU anti-money laundering directive

ACCESS TO BENEFICIAL OWNERSHIP REGISTERS & THE CJEU RULING

Anonymous companies have become synonymous with money laundering, but they are also conduits of corruption, tax abuse and environmental crime. Thanks to the decades of secrecy that such opaque entities have provided, unscrupulous individuals from across the world were able to find safe haven in the EU – circumventing sanctions, evading accountability and committing further crimes with impunity.

With such widespread infractions, EU authorities alone cannot uncover all the abuses and keep up with criminals' evolving methods. Many schemes and remaining loopholes would go undetected if not for the dedicated work of investigative journalists, activists and academics around the world.

The EU acknowledged this back in 2015 and then again in 2018 with its anti-money laundering directive, which established and then widened stakeholder access to beneficial ownership information of companies. The impact of these measures was just becoming visible when last November the EU Court of Justice (CJEU) invalidated public access provisions. As a result of the ruling, the previous directive where access to beneficial ownership data was based on legitimate interest was reinstated.

However, there were significant challenges in the implementation of legitimate interest access in the past, which now need to be addressed by EU institutions and member states.

The EU 6th Anti-Money Laundering Directive (AMLD6) currently under discussion by EU co-legislators offers the opportunity to address these issues while fully respecting the CJEU ruling. In particular, the proposal agreed by the European Parliament will ensure that civil society, media, academia and foreign competent authorities do not

encounter barriers when seeking ownership information for anonymous companies created across the EU, regardless of where they are based.

During the negotiation of the EU AMLD6, we urge EU institutions to consider the following issues:

PRESUMPTION VERSUS THE NEED TO DEMONSTRATE LEGITIMATE INTEREST ACCESS

There is a presumption that journalists and civil society organisations involved in the prevention of money laundering and its predicate offences should have access to beneficial ownership information. Paragraph 74 of the CJEU ruling explicitly states that “both the press and civil society organisations that are connected with the prevention and combating of money laundering and terrorist financing have a legitimate interest in accessing information on beneficial ownership”. This means journalists and civil society organisations have a legitimate interest in accessing any type of beneficial ownership information without having to demonstrate their legitimate interest on specific cases.

This presumption should be reflected in the text of AMLD6. A legislative distinction should thus be envisaged between media and civil society organisations engaged in the fight against money laundering and/or its predicate offences, where a legitimate interest in access can be presumed in general, and the public, where a legitimate interest might need to be verified in an individual case.

Such an approach would ensure a consistent application across member states and avoid unnecessarily cumbersome verification procedures.

There is enough evidence from the implementation of the AMLD4 where member states applied different criteria in determining access by journalists and civil society, often rejecting access to the beneficial ownership information of certain legal entities and accepting it in other cases.¹

DEFINITION OF JOURNALISTS AND CIVIL SOCIETY ORGANISATIONS

Journalists and civil society organisations have been considered by the European Court of Human Rights as “public watchdogs” and as such play an important role in “imparting information and ideas on all matters of public interest to the public’s right to receive them”.²

In considering access to beneficial ownership information to journalists and civil society organisations, the AMLD6 should provide a wide scope, ensuring that media/press organisations, affiliated and independent journalists, bloggers or any other individuals who enhance/facilitate access to information that is in the public interest are covered, regardless of whether this person has formal press accreditation or affiliation to a media association (especially because, in certain countries, this is not a requirement to work as a journalist). Similarly, civil society organisations should encompass all non-for-profit, non-governmental organisations and local citizen associations.

The legislator should not forget that public watchdogs have increased protections under Article 10 of the European Convention on Human Rights under the condition that they also respect and fulfil certain responsibilities, including the obligation of “responsible journalism” (that should be extended to all public watchdogs). This means that it is expected that these groups will treat access to the beneficial ownership registers in a responsible manner and use it in an ethical and professional manner in the public interest.

Moreover, to respond to the CJEU ruling, AMLD6 can specify that access to beneficial ownership registers should be granted to public watchdogs connected to the prevention of money laundering, its predicate offences or terrorism financing. That is, public watchdogs that, as a stated purpose, work or report

on issues connected to money laundering, predicate offences or terrorism financing. Access should not be subject to proof of registration or professional association membership as these vary across Member States.

MODALITY OF ACCESS

Journalists and civil society organisations connected to the prevention of money laundering, its predicate offences or terrorism financing should gain general access to beneficial ownership registers without the need to request access on a case-by-case basis.

Such generalised access would ensure member states cannot restrict the ability of public watchdogs to conduct their work, while ensuring they have timely access to information which the ruling explicitly states they should have.

These actors could be required to register once with at least one member state, demonstrating that they fulfil the requirements mentioned above (i.e., public watchdog connected to the prevention and combating of money laundering, its predicate offences or terrorism financing). Once access is granted, journalists and civil society organisations should be able to freely search the beneficial ownership register. Such an approach has already been implemented in Luxembourg, for example, following the ruling. Journalists are given a digital token that enables them to access and use the register.

Furthermore, recognition by one member state should serve as sufficient grounds for ensuring access to beneficial ownership registers in other member states as well as to the interconnected beneficial ownership register, in line with the European single market rules. The member state could require the public watchdog in question to reconfirm its status on an annual basis.

¹ See, for example, the case study on Germany (page 33) in Transparency International’s 2018 report, [G20 Leaders or Laggards? Reviewing G20 Promises on Ending Anonymous Companies](#)

² See the Court’s [Guide on Article 10 of the European Convention on Human Rights](#)

NO RESTRICTIONS TO ACCESS BASED ON NATIONALITY/LOCATION

As member states consider setting up registration mechanisms for those who have or need to demonstrate a legitimate interest, particularly through e-identification systems, there is a risk that access is de facto restricted to nationals of that country or selected EU member states. Research by Transparency International on the implementation of the AMLD5³ showed that this was the case even with public beneficial ownership registers.

Co-legislators should therefore ensure that journalists and civil society organisations playing a role in the prevention and combating of money laundering, its predicate offences or terrorism financing from inside and outside the European Union have access to beneficial ownership registers. Other actors that can demonstrate a legitimate interest should also be able to access the information regardless of where they are based, their place of registration or nationality.

MONEY LAUNDERING PREDICATE OFFENCES SHOULD BE EXPLICITLY MENTIONED

Recital 14 of the AMLD4 made it clear that access to beneficial ownership information based on a legitimate interest was linked to “money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax crimes and fraud”.

Amendments to Article 12 of the AMLD6 should also specify a legitimate interest connected to associated predicate offences. As EU co-legislators consider broadening the types of associated predicate offences covered, this should be reflected accordingly.

LEGITIMATE INTEREST BY OTHER ACTORS

The CJEU ruling also mentions other actors that may have a legitimate interest in accessing beneficial ownership information. It considers persons who wish to know the identity of the beneficial owners of a company or other legal entity “because they are likely to enter into transactions with them” to have a

legitimate interest in accessing information on beneficial ownership. In this case the legitimate interest will need to be “proved” in that specific case – (i.e., why that actor needs to access information on a specific legal entity or beneficial owners). We believe therefore that these cases should be treated differently than those of journalists and civil society organisations.

In addition, there are other actors that should be considered by the legislators as having legitimate interest, including:

- + government authorities beyond those listed in Article 11 (election management bodies, supreme audit institutions), when access to beneficial ownership information will support the prevention and combating of money laundering and predicate offences
- + foreign competent authorities tasked with the fight against money laundering, its predicate offences or terrorism financing
- + academics working on studies and analysis to support the fight against money laundering
- + any other member of the public that can demonstrate a legitimate interest (in connection with the objectives of the AMLD6)

In addition to case-by-case analysis, any of these actors should be able to request general access to the register through a “partnership” model. A similar model exists now in Lithuania.

TIERED ACCESS TO INFORMATION

The CJEU ruling found that the tiered access provided by the AMLD5 was not sufficient to protect the rights of beneficial owners. Legislators should now clearly specify the fields of information that will be made available to those that have or can demonstrate a legitimate interest. They should include:

1. **In the case of legal entities:** the name, the month and year of birth and the country of residence and nationality of the beneficial owner, the nature and extent (in exact percentages) of the beneficial interest held, the date they became beneficial owners, historical ownership information as well as corporate contact details of the legal entity and the full ownership chain. No additional information

³ Transparency International (2021), [Access Denied? Availability and Accessibility of Beneficial Ownership Data in the European Union](#)

about the beneficial owner beyond their relationship with the legal entity is required.

2. **In the case of trusts and other legal arrangements:** the name, the month and year of birth and the country of residence and nationality of the beneficial owner of all parties to the trust, the nature and extent of the beneficial interest held, the date they became beneficial owners, as well as corporate contact details of the express trust or similar legal arrangements, or of the trustee or person holding an equivalent position. In line with Financial Action Task Force recommendations, information on the beneficial owner of all parties to the trust should be disclosed.
3. **In case there is no beneficial owner identified:** justification should be provided as to why there is no beneficial owner or that the beneficial owner could not be identified and the name, the month and year of birth and the country of residence and nationality of the natural person(s) who hold the position of senior managing official(s) in the corporate or legal entity as referred to in article 10(3)(b).

backgrounds or likely involved in wrongdoing. There have been cases in the past where, for instance, requests made by journalists under freedom of information acts were leaked to the individual concerned with terrible consequences to journalists – from harassment to the assassination of a journalist in Slovakia.

EU co-legislators should ensure that under no circumstances should the personal data of those accessing beneficial ownership information be shared with the legal entity or beneficial owner. Authorities can set up mechanisms to ensure adequate use of the information.

TIPPING OFF RISKS

Recital 38 of the AMLD5 includes a provision allowing member states to consider making information related to the requesting person along with the legal basis for their request available to the beneficial owner. Analysis by Transparency International shows that at least six member states have put provisions in place that enable them to share information on consultations made in the register with the legal entity/beneficial owner. In most cases, member states share general statistics about the requestor, such as the sector in which they operate (e.g., total number of consultations made by journalists, civil society organisations, financial institutions, etc.) upon request.

In at least one member state – Lithuania – however, detailed information is shared with the beneficial owner, including the full name of the requestor and the reason provided for accessing the data.

As the EU transitions back to a framework where user registration will be a requirement and in certain circumstances legitimate interest will need to be demonstrated with detailed information about the user and the background for the request provided, such a provision offers significant risks, particularly for journalists and civil society who may be reporting on individuals with suspicious

