

CJEU: WM AND SOVIM SA v. LUXEMBOURG BUSINESS REGISTERS (Joined Cases C-37/20 and C-601/20): Rethinking Transparency of Ultimate Beneficial Owners Registers/ Daniel Zigo

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Abstract: *Rules against money laundering and terrorist financing are an area of law in which the European Union is significantly active and introduces many innovations. Public registers of beneficial ownership were one of the crucial tools with which this legislation promoted the openness of corporate structures in the European environment. For this reason, the judgment of the European Court of Justice in the Joined Cases C-37/20 and C-601/20, WM and Sovim SA v. Luxembourg Business Registers, which cancelled public access to beneficial ownership registers, caused an immense response. Part of the public sees this step as a major blow to the transparency and part as a victory for the rights of individuals. This paper explains the factual situation in the given case, summarises the Advocate General's opinion and analyses the reasons that led the Court to the presented conclusions. The author also reflects on the jurisprudence of the Court, which led to the issuance of this decision and its importance in the field of AML and the protection of the right to privacy in general. Based on these facts, the conclusion presents the possible development of future beneficial ownership registers in the EU.*

Key words: *Register of Beneficial Owners; AML; Sovim Case; Transparency; Data Protection; Right to Privacy; CJEU*

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1. INTRODUCTION

In recent years, the European Union ("the EU") has been at the forefront of efforts¹ to combat money laundering and countering the financing of terrorism ("AML"). It regularly brings the highest legislation standards in this area, which tries to reflect new trends in circumventing AML rules and incorporate Financial Action Task Force ("FATF") recommendations. Currently, the European Commission has mainly dealt with the

¹ The position of the EU in the field of AML regulation in the world is based on the analysis of various international organisations, primarily the FATF, which issues its Recommendations (the latest version - Recommendations 2012, as amended in November 2023).

implementation of the 6th AML directive² and the proposal of an extensive legislative package in the area of AML,³ while some earlier regulations in this area are understood as a legislative standard on which further development is based.

Such a piece of legislation is, for example, the 4th AML directive,⁴ which came into effect on 26 June 2017 and brought new obligations in the area of customer due diligence by obliged entities (e.g., banks), but in particular, ordered Member States to obtain and hold current and accurate information on beneficial ownership of legal entities in a central register which would be accessible by any person or organisation with the ability to demonstrate a legitimate interest. The 5th AML directive⁵ then came into force on 10 January 2020 and amended the 4th AML directive, bringing some obligations concerning high-risk third countries' virtual – cryptocurrency exchanges, but mainly changing access to the central registers on beneficial ownership established by the previous directive. The registers became open to the general public, and people who wanted to gain access to its data no longer needed to prove a legitimate interest. The registers of beneficial owners have become an essential element of AML measures, as they have introduced broad obligations for all legal entities in the EU. The directive itself justifies this change by saying that *"public access to beneficial ownership information allows greater scrutiny of information by civil society, including by the press or civil society organizations, and contributes to preserving trust in the integrity of business transactions and of the financial system and the need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise be able to hide their identity behind a corporate structure"* (The 5th AML directive, recitals 25, 30).

The regulation of beneficial ownership is an influential measure that has spread to many countries of the world. In addition to the EU Member States, it is currently in effect in many countries in Europe, Africa, Asia and South America. Altogether, approximately 32 states have established a public register of beneficial owners today, and many others have adopted it as a commitment to the future (The map: Worldwide commitments and action, 2023). From this point of view, publicly available registers of beneficial owners are therefore perceived as *state-of-the-art* in the field of AML and a fundamental element on which new measures will be based in the future (Radon and Achuthan, 2017, p. 103). However, part of the professional public or the business sector, for a longer time, perceived the conflict between the right to privacy along with the protection of personal data and the publicity of data in the registers and pointed out their discord, even though the establishment of these registers has become one of the main topics of AML policies today (Milaj and Kaiser, 2017, p. 125).

Precisely in the context of the above, the decision of the Court of Justice of the EU ("CJEU"), sitting as the Grand Chamber, in Joined Cases C-37/20 and C-601/20 in WM and Sovim SA v. Luxembourg Business Register, may have appeared surprising for part

² Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

³ On 20 July 2021, the European Commission presented a package of legislative proposals to strengthen the EU's AML regulatory framework, for example by establishing the European Anti-Money Laundering Authority. Available at: https://finance.ec.europa.eu/publications/anti-money-laundering-and-countermeasures-financing-terrorism-legislative-package_en (accessed on 18.12.2023).

⁴ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

⁵ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

of the professional public and non-governmental organisations. In this case, the Court, within the assessment of two requests for a preliminary ruling, expressed the incompatibility of the general public's access to the data in the beneficial ownership registers with the right to privacy and the protection of the personal data of the beneficial owners.

The paper aims to subject the Court's decision to analysis and clarify what facts led the CJEU to conclusions that deviate from the legislation other EU institutions considered a new standard. In terms of structure, the paper will provide an overview of the background of the mentioned case, the Opinion of the Advocate General, and the decision and reasoning of the Court, while the conclusion will provide comments regarding the importance and expected further development in this area.

2. CASE BACKGROUND

The analysed case involved two disputes between Luxembourg companies and the Luxembourg Business Register, which were filed at the Luxembourg District Court. The 4th AML directive, as amended by the 5th AML directive and also the Luxembourg law,⁶ which transposed the directives, allowed an exception from the mandatory disclosure of data on beneficial owners, namely *on a case-by-case basis in exceptional circumstances where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence, or intimidation, or where the beneficial owner is a minor or otherwise incapable* (The 4th AML directive as amended, Article 30(9)). Both companies applied to the Luxembourg Business Register for an exemption, although each for a different reason, and both of these applications were rejected; therefore, the companies brought complaints to the Luxembourg District Court.

YO, a real estate company, requested to restrict access in registry to personal information regarding WM, its beneficial owner, 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, since his position as executive officer requires him frequently to travel to countries whose political regime is unstable and where there is a high level of crime, which creates a significant risk of mentioned eventualities (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 21).

Sovim SA, a Luxembourg company, requested that access to the information concerning its beneficial owner contained in the registry be restricted solely to the state authorities, financial institutions and persons acting as public officers. Sovim justified this request with the legal opinion that granting public access to the identity and personal data of its beneficial owner would infringe on the right to respect for private and family life and the right to the protection of personal data, according to Articles 7⁷ and 8⁸ of the Charter of Fundamental Rights of the European Union ("the Charter"). It also constitutes an infringement of several provisions of the General Data Protection Regulation ("the

⁶ Law of 13 January 2019 establishing a Register of Beneficial Ownership, Mémorial A 2019, No 15.

⁷ Article 7 of the Charter: „Everyone has the right to respect for his or her private and family life, home and communications.”

⁸ Article 8 of the Charter:

„1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.”.

GDPR") (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 27). Sovim claimed that this obligation was primarily affecting the principles relating to the processing of personal data contained in Article 5 of the GDPR and also, inter alia, Article 25, which stipulates that only personal data necessary for each specific purpose of the processing shall be processed.

Luxembourg District Court decided to stay the proceedings in both cases and to refer questions to the CJEU for a preliminary ruling. The Court raised several questions about the interpretation to be given. Case C-37/20 WM mainly included the concepts of exceptional circumstances, risk and disproportionate risk within the meaning of Article 30(9) of the 4th AML directive as amended. In Case C-601/20 Sovim, the Luxembourg District Court asked, in particular, whether the general public's access to the data in the registry of beneficial owners is compatible with the Charter and the GDPR.

3. REASONING OF THE COURT'S JUDGMENT

3.1 *Opinion of the Advocate General*

Advocate General G. Pitruzzella delivered his Opinion on the request for a preliminary ruling from the District Court of Luxembourg before the CJEU's decision on 20 January 2022. In his Opinion, the Advocate General divided the preliminary questions asked by the Luxembourg court into three key areas. In the first place, he examined the validity of the public access to beneficial ownership information and its system of exceptions in the light of the rights to respect for private life and protection of personal data enshrined in the Charter (Opinion of the Advocate General G. Pitruzzella, 2022, para. 34). A second set of questions aimed to verify the compatibility of the public access to beneficial ownership information with several provisions of the GDPR (Opinion of the Advocate General G. Pitruzzella, 2022, para. 35). A third group of preliminary questions concerned the interpretation of the 4th AML directive as amended in terms of exceptions to the regulation of public access to information on beneficial ownership (Opinion of the Advocate General G. Pitruzzella, 2022, para. 36).

Before answering these primary questions, the Advocate General ("AG") made some preliminary remarks regarding the principle of transparency in Union law, which also plays a fundamental role in the cases under discussion. First, he stated that based on the constitutional traditions of individual member states, state activity must be determined by transparency and that this transparency may only be limited in exceptional cases. This fact contrasts with the confidentiality of the private sphere, protected by the recognition of the fundamental right to privacy, the object of which is respect for private life. However, for reasons of an objective or subjective nature, there may be a general interest in knowing some aspects belonging to the private sphere of an individual. For such reasons, the scope of the principle of transparency has been expanded, for example, to the regulation of financial markets, in which this principle contributes to the fight against such phenomena as corruption or terrorism. According to the AG, the acceptability of such interference with the right to privacy is also confirmed by the jurisprudence of the CJEU.⁹ In this part, the AG concluded that, although transparency is characteristic of the public sector, it can apply to some aspects of the activities of private entities as long as these affect the fundamental interests of society (Opinion of the Advocate General G. Pitruzzella, 2022, para. 48).

⁹ Here, the AG refers to cases such as CJEU, judgment of 9 November 2010, Volker und Markus Schecke and Eifert, Joined Cases C-92/09, C-93/09, ECLI:EU:C:2010:662, or CJEU, judgment of 18 June 2020, Commission v Hungary (Transparency of Associations), C-78/18, EU:C:2020:476.

The AG further provided an analysis in which he examined individual groups of preliminary questions as they were defined. He identified that the disclosure of beneficial owners' data is an interference with the rights established by the Charter, while the interference itself is acceptable as long as it is legal, respects the essence of these rights, corresponds to the objectives of general interest and is proportional (Opinion of the Advocate General G. Pitruzzella, 2022, para. 80). After discussing these conditions, the AG came to the opinion that the harmful effects on the persons affected by the publicity of registers can be considered moderate, due to the limited scope and not particularly sensitive nature of the personal data that is the subject of the intervention. Thus, he considered the interference with the fundamental rights guaranteed in Articles 7 and 8 of the Charter to be not particularly serious, as they do not in themselves allow to obtain accurate information about the persons concerned and therefore do not directly and intensively affect the intimacy of their private life (Opinion of the Advocate General G. Pitruzzella, 2022, para. 104). Despite this conclusion about the most fundamental issue of the proceedings, the AG proposed invalidating part of the 4th AML directive as amended. The EU legislator amended Article 30(5) subpara. 2 and 3 of the 4th AML directive¹⁰ so that individual Member States can extend the range of personal data available to the general public. Thus, while the AG considered the range of affected data defined by the directive to be a moderate interference with the rights of individuals, it is possible to expand it¹¹ and thereby increase the intensity of the interference. For these reasons, the AG proposed to declare Article 30(5) subpara. 2 and 3 of the 4th AML directive as amended as invalid insofar as it provides that all members of the public have "at least" access to the data mentioned there enabling member states to expand the number of published data. The AG also reached an interesting conclusion concerning the access to data in the registers. He concluded that to ensure that beneficial owners have sufficient guarantees to protect their data against the risk of abuse, it is necessary for the Member States to be aware of the identity of the members of the public accessing these registers and to provide the beneficial owner with information on these persons if this proves necessary to ensure respect for fundamental rights. AG proposed to achieve this intention by, for example, the obligation to register persons before accessing the register (Opinion of the Advocate General G. Pitruzzella, 2022, para. 208).¹²

Furthermore, the AG commented on individual preliminary questions and provided his Opinion on interpretation issues. The most important part of his Opinion was the proposal to declare parts of the 4th AML directive as invalid, as this indicated what a certain part of the professional public (especially those on the private sector side) had perceived for a longer time (Noseda, 2022; or Prince Michael von und zu Liechtenstein, 2017), that the publication of personal data of beneficial owners, even if carried out in the public interest, may to a certain extent violate the rights of these persons. In part, this Opinion foreshadowed the development of the decision in the main case, even though the AG was more moderate in his Opinion.

¹⁰ The persons or organisations referred to in point (c) shall access **at least** the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.

¹¹ The AG provided in para. 104 of the Opinion as an example of serious interference in particular access to a person's exact contact details, such as address of residence or residence, which was an approach chosen by several Member States.

¹² Several member states made access to the register conditional on the registration of persons already before the decision in the matter, for example, Germany, Luxembourg, Spain, and Austria while other states such as Denmark, Romania or Slovakia allowed full access to the register without user authentication (European e-Justice Portal Beneficial ownership registers interconnection system 2023).

3.2 Judgement of the CJEU

While the AG, in his Opinion, provided a relatively comprehensive legal elaboration of the case facts and the development of EU law in the subject area, the CJEU was more concise and direct in its decision. In the judgment, the Court focused mainly on the first of the preliminary questions asked in the case of Sovim (Case C-601/20), namely the issue of compliance of point (c) of the first subparagraph of Article 30(5) of the 4th AML directive as amended, which provides that *“Member States must ensure that information on the beneficial ownership of legal entities incorporated within their territory is accessible to any member of the general public”*, with Articles 7 and 8 of the Charter.

In this regard, the Court first had to deal with whether the general public's access to data on beneficial owners interferes with the rights of respect for private and family life and personal data protection. According to the Court, it was apparent that the publication of data on identified individuals within the scope of AML directives in publicly accessible registers affects the fundamental right to respect for private life, being of no relevance in that respect that the data concerned may relate to activities of a professional nature.¹³ (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 38). It was also apparent from the Court's settled case law¹⁴ that making personal data available to third parties constituted an interference with the fundamental rights, while it did not matter whether the published private information was sensitive or whether the persons concerned had been inconvenienced in any way (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 39).

Since the CJEU came to the opinion that there was an interference with the rights of respect for private and family life and protection of personal data, it further examined the seriousness of that interference. In this regard, the Court noted that the published data allows a profile to be drawn up concerning specific personal identifying data, e.g., the state of the person's wealth and the economic sectors, countries and specific undertakings in which he or she has invested (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 41). Moreover, making such information available to the general public can also cause a situation where it will be freely accessed also by persons who, for reasons unrelated to the objective of the AML directives, seek to find out about the material and financial situation of a beneficial owner. As long as such data has already been made available to the general public, it can be viewed, stored and disseminated freely, and it is practically impossible for the affected persons to defend themselves against abuse effectively. For these reasons, the CJEU considers the general public's access to information on beneficial ownership a serious interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 44). There has already been a departure from the Opinion of the AG, who considered it a moderate interference.

Considering that fundamental rights of respect for private and family life and protection of personal data are not absolute rights, limitations can be made, but any limitation on the exercise of the rights must be provided for by law and respect the essence of these rights. Proportional limitations may be made on the rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others (The Charter, Article

¹³ The court referred to its previous decisions regarding the protection of rights enshrined in Articles 7 and 8 of the Charter, in particular CJEU, judgment of 9 November 2010, Volker und Markus Schecke and Eifert, Joined Cases C-92/09, C-93/09, ECLI:EU:C:2010:662.

¹⁴ The CJEU refers, for example, to the judgment of 21 June 2022, Ligue des droits humains, C-817/19, EU:C:2022:491.

52(1)). The CJEU examined the fulfilment of these conditions concerning the publication of data on beneficial owners to assess the acceptability of its interference with fundamental rights.

1. Observance of the principle of legality

While this principle states that any limitation of the exercise of fundamental rights must be established by law, the answer to this aspect was quite evident as the publication of data on beneficial owners for the general public was provided for by the 5th AML directive, amending the 4th AML directive. CJEU, therefore, concluded that the legality principle was observed (*WM and Sovim SA v Luxembourg Business Registers*, 2022, para. 49).

2. Respect for the essence of the fundamental rights guaranteed in Articles 7 and 8 of the Charter

The Court approached this criterion so that it does not appear that the publication of information on beneficial owners for the general public would violate the essence of the rights outlined in Articles 7 and 8 of the Charter. Data published in registers of beneficial owners included information on the identity of the beneficial owner and details of his beneficial interest, and even though the scope of data published by individual Member states was not listed exhaustively by the 4th AML directive, only adequate information related to the purposes of that directive were to be collected and published (The 4th AML directive as amended, Article 30(1)). For this reason, in the opinion of the CJEU, no collection of information that would undermine the essence of the rights of respect for private and family life and protection of personal data should occur in terms of the provisions of the AML directives (*WM and Sovim SA v Luxembourg Business Registers*, 2022, para. 54).

3. The objective of general interest recognized by the European Union

The Court also examined whether public access to beneficial ownership data fulfils any of the objectives of general interest recognised by the EU. The primary purpose of adopting this measure, according to recital 30 of the 5th AML directive, was that such access "allows greater scrutiny of information by civil society and contributes to preserving trust in the integrity of business transactions and of the financial system" and "can contribute" to combating the misuse of legal entities for money laundering or terrorist financing.

In the opinion of the CJEU, the goal of preventing money laundering and terrorist financing is an objective of general interest that is capable of justifying even serious interferences with fundamental rights (*WM and Sovim SA v Luxembourg Business Registers*, 2022, para. 59), whereas referred to its earlier decision in case C-817/19 *Ligue des droits humains*, where collection and use of travellers data was considered in line with the EU's fundamental rights, while Member States had been granted even broader powers if there was a demonstrable threat of terrorism (Kuşkonmaz, 2023, p. 301). Despite this opinion, the CJEU continued to address the principle of transparency, since the Council of the European Union directly referred to this principle in connection with the general public's access to information on beneficial ownership. The principle of transparency, arising from Articles 1 and 10 TEU and Article 15 TFEU, however, affects mainly activities on the part of the public sector, while the obligation to publish data on beneficial owners applies across the board, especially to the private sector. For this reason, the CJEU reached the opinion that the principle of transparency cannot be considered, as such, an objective of general interest capable of justifying the interference

with fundamental rights (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 62). The Court dealt with the question of the objective of general interest relatively briefly and even though it devoted more space to the principle of transparency, the relevant conclusion of this section is the fact that the goal of preventing money laundering and terrorist financing is a sufficient objective of general interest. This conclusion also stems from the subsequent parts of the decision, but in this part, its significance is slightly lost due to the brevity with which the Court addressed it and a slight departure to the principle of transparency.

4. *Whether the interference at issue is appropriate, necessary, and proportionate*

In the concluding part, the Court focused in detail on the critical issue of the judgement, which is whether interference with the fundamental rights of respect for private and family life and protection of personal data was appropriate, necessary, and proportionate concerning the objective pursued.¹⁵ From the Court's point of view, it was necessary to ascertain that the general public's access to information on beneficial ownership is appropriate for attaining the objective of general interest, further that the interference with rights is limited to the lowest necessary level and, lastly, that the importance of the objective is not disproportionate to the seriousness of this interference (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 66).

As mentioned, the Court identified the prevention of money laundering and terrorist financing as an objective of general interest in connection with the general public's access to information on beneficial ownership. Also, in the opinion of the CJEU, this measure is appropriate to achieve the objective in question because public access to data and increased transparency creates an environment that is less likely to be used for such illegal purposes (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 67).

When examining the necessity requirement, the Court returned to the previous wording of point (c) of the first subparagraph of Article 30(5) of the 4th AML directive, where access to beneficial ownership data was conditional on demonstrating a legitimate interest. The concept of 'legitimate interest' did not have a uniform interpretation. The Commission subsequently decided for practical reasons to abandon its use in the 5th AML Directive, as it considered the adoption of the definition to be difficult (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 70). On the contrary, the CJEU considered the fact that the adoption of a uniform definition of a legitimate interest was a difficult task as an insufficient argument for justifying the necessity of the general public's access to data on beneficial ownership. The Court also argued that the publicity of beneficial ownership data allows greater scrutiny of information by civil society since, in its opinion, the press and various societal organisations have a legitimate interest in accessing this information. Therefore, in the Court's view, general public access could not be considered strictly necessary (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 76).

On the question of proportionality, the CJEU came to the opinion that there is no proper balance between the objective of general interest pursued and the fundamental rights enshrined in Articles 7 and 8 of the Charter or sufficient safeguards protecting data against the risks of abuse. Although, according to the Court, the 5th AML directive defines

¹⁵ The requirement of proportionality, in addition to aptitude and necessity, is based on the court's settled case-law, referring for example to the judgment of 5 April 2022, Commissioner of An Garda Síochána and Others, C-140/20, EU:C:2022:258, paragraph 93, where the CJEU examined the compliance of retention traffic and location data and their use in criminal proceedings with the EU law.

a specific range of published data, provides an exception from publication in exceptional circumstances and allows Member States to make access to data subject to registration, at the same time, the extent of published data is not sufficiently defined and identifiable.¹⁶ The Court also considered the role of combatting money laundering and terrorist financing as a matter for the public authorities and entities such as banks. The transfer of these tasks, through the publicity of data to the general public, increased the interference with the rights of respect for private and family life and the protection of personal data. However, according to the Court, it did not bring additional benefits compared to the previous regime (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 83-85).

For the stated reasons, point (c) of the first subparagraph of Article 30(5) of the 4th AML directive as amended, enabling the general public's access to information on beneficial ownership, did not pass the proportionality test performed by the CJEU and was declared invalid by its decision. The CJEU subsequently did not deal with further questions of the Luxembourg District Court, as it did not consider it necessary given its decision.

4. CONCLUSION

With its judgment in the dispute between corporate transparency and privacy protection, the CJEU firmly sided with privacy. It also deviated from the Opinion of the AG, whose proposal was not as resolute as the judgment. In general, in the EU, there are different approaches to data transparency between the individual member states, with the EU institutions often leaning towards greater openness. However, the CJEU invalidated one of the very significant measures in the area of AML and set the limits of interference with the rights of respect for private and family life and protection of personal data. Even the fact that it rejected transparency in the private sector as an objective of general interest (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 62) indicates that states cannot arbitrarily interfere with the rights of subjects, even if it is convenient for them (Siems, 2023, p. 9). The judgment of the CJEU may seem surprising given the fact that the publication of data on beneficial ownership was an essential milestone in AML regulation, which was recommended for a long time by AML standard bearers such as the FATF (FATF, 2019, p. 16). However, it was preceded by the development of the jurisprudence of this Court and the attitude of some member states that are not supporters of broad transparency. In the individual decisions to which the CJEU referred, it indicated for a longer period its approach in the event of a conflict between mandatory data disclosure and the right to privacy. For example, in the judgment in the case, *Ligue des droits humains*,¹⁷ the Court considered that the retention of passengers data for reasons of protection against terrorism and crime is consistent with the law if it is limited to the necessary period and scope, then in the judgment of case *Commissioner of An Garda Síochána*¹⁸ it decided that the general and indiscriminate retention of traffic and location data relating to electronic communication is contrary to EU law. In the past, the Court ruled in favour of the protection of personal data and privacy

¹⁶ Third subparagraph of Article 30(5) of the 4th AML directive as amended provided that: „Member States may, ... provide for access to additional information enabling the identification of the beneficial owner. That additional information shall include **at least** the date of birth or contact details in accordance with data protection rules.”

According to the court, the words "at least" were problematic.

¹⁷ CJEU, judgment of 21 June 2022, *Ligue des droits humains*, C-817/19, ECLI:EU:C:2022:491.

¹⁸ CJEU, judgment of 5 April 2022, *Commissioner of An Garda Síochána*, C-140/20, ECLI:EU:C:2022:258.

even in cases where the publication of data was connected with the element of protection of public resources, such as in the case of *Volker und Markus Schecke and Eifert*,¹⁹ which concerned the publication of data on recipients of subsidies from agricultural funds or in the case *Vyriausioji tarnybinės etikos komisija*,²⁰ where Lithuanian law required beneficiaries of public funds to file declarations of interest, including some data from their personal life. In this context, the French Constitutional Court also made an interesting decision in 2016 that declared the publication of the register of beneficial owners of trusts as an infringement on the right of respect for private life (Panico, 2020, p. 494). It is necessary to point out that, even after the changes brought by the 5th AML directive, the registers of beneficial owners of trusts on the EU level remained in the access regime for persons that can demonstrate a legitimate interest (The 4th AML directive as amended, Article 31(4)). This fact is apparently connected with the decision mentioned above of the French Constitutional Court.

The conclusion of the Court in *WM and Sovim SA v Luxembourg Business Registers* was largely criticised by part of the professional public, which are supporters of openness and claim that public access to data on beneficial owners significantly helped the fight against money laundering (Tax Justice Network, 2022). Essential actors in this field are investigative journalists and non-governmental organisations, which generally do not have access to data intended for state authorities and often work with leaked data or information from whistleblowers. However, such sources are available sporadically, therefore, the availability of public sources of data is vital for the work of these actors. The decision of the CJEU in this matter is thus perceived as a significant setback to efforts to combat transnational corruption (Haberly et al., 2023, p. 24). On the other hand, advocates of personal data protection can counter the argument that the relevant public should continue to have access by demonstrating legitimate interest (Brewczyńska, 2022, p. 6). In such a case, access to data might be less comfortable, but the rights of persons would be protected, and at the same time, important actors could carry out their activities. It is, therefore, questionable whether, despite the usefulness of the third sector in the fight against money laundering, the permanent online publication for everyone is justified under these conditions. Some experts agree with the Court's decision that unrestricted online disclosure of beneficial ownership to everyone may have gone too far (Siems, 2023, p. 10).

The judgment of the CJEU in the case of *WM and Sovim SA in Luxembourg Business Registers* is significant for the EU institutions and individual Member States. It hints at further developments in the field of AML law and sets the conditions for other state registries or any area where the state publishes data about citizens. The level of information sharing between the state and the public differs in individual Member States. While some share large amounts of data about their citizens online, privacy and confidentiality prevail elsewhere (Miller, 2017, p. 93). In its legislation, the EU must find a consensus between these different approaches and set the level of transparency and privacy to an acceptable level. The decision of the CJEU in question may be necessary in the future, not only for the EU legislation, but also for specific laws adopted at the national level of the Member States. In the area of AML legislation, the Court was particular in how it envisions adjustments in this area to align with the rights of individuals. It is clear from the decision that the appropriate objective of general interest is preventing money laundering and terrorist financing, and, on the contrary, new rules should not be based

¹⁹ CJEU, judgment of 9 November 2010, *Volker und Markus Schecke and Eifert*, Joined Cases C-92/09, C-93/09, ECLI:EU:C:2010:662.

²⁰ CJEU, judgment of 1 August 2022, *Vyriausioji tarnybinės etikos komisija*, C-184/20, ECLI:EU:C:2022:601.

only on the principle of transparency, which should not apply to the openness of the private sector. The Court also quite clearly defined who should have access to the data in the register – journalists, non-governmental organisations, or even business partners of the company should in all circumstances be included in the circle of subjects with a legitimate interest (WM and Sovim SA v Luxembourg Business Registers, 2022, para. 74). All these details provided helpful guidance for the Commission in planning amendments to this legislation. In the article, we also addressed the Opinion of the Advocate General, which was more moderate than the court in privacy protection, but also provided very interesting opinions regarding the necessary improvements in AML. His Opinion and judgment showed the need for a precise definition of the data to be published so that it could not be disproportionately expanded.

The AG also suggested introducing a general obligation to require the registration of persons with access to data in the registers so that the state can ensure their protection. Likewise, it is essential to introduce exceptions to data disclosure that are functional and not just formal (Opinion of the Advocate General G. Pitruzzella, 2022, para. 280). Other experts also see the obligation to register as the right step. However, it is essential that the technical solution for registration is practical and enables quick access to data by relevant actors. In this context, for example, the possibility of using the European eID and data wallet, which would enable the automatic sharing of information from various state registers, for example, with registered press, financial authorities and investigative authorities, is pointed out (Mooij, 2023, p. 8). The most crucial task following the decision, is for the EU Commission to re-functionalise the sharing of information on beneficial ownership, is the correct design of the definition of legitimate interest. As we mentioned above, the Court here provided relatively broad guidance as to whom it considers subjects fulfilling this definition, but it is clear that it will be in the interest of the EU institutions to define this criterion in the broadest possible way. The EU is aware of this task, and several reports indicate progress in achieving it. In March 2023, the Parliament approved the AML/CFT package proposal, which also regulates access to information on beneficial ownership (European Parliament, 2023). Final decisions on these proposals and their implementation will depend on negotiations between the EU Council, the European Commission and the European Parliament.

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