

Ireland Update: Public Access to Beneficial Ownership Information Impacted by ECJ Ruling

Public access to information on the beneficial owners of companies and certain other entities ("In-Scope Entities") in Ireland (and other EU member states) will be greatly restricted after a recent ruling by the Court of Justice of the European Union ("ECJ").

Background

Pursuant to the EU's fourth anti-money laundering directive (as amended) ("4MLD")¹, each EU member state is required to put in place a central register of beneficial ownership ("Ownership Register") with the aim of increasing the transparency of ownership of In-Scope Entities.

Consistent with the position across the EU, since 2019, access to a restricted sub-set of information on the beneficial owners of In-Scope Entities formed in Ireland has been available to the public on the Irish Ownership Register.

The introduction of publicly accessible Ownership Registers gave rise to concerns from an invasion of privacy perspective. While the legislation permitted beneficial owners to apply for restriction of public access in certain cases, such requests were often rejected by the authorities.

ECJ Judgement

On 22 November 2022, the ECJ ruled² that the legal provision, whereby information on the beneficial ownership of In-Scope Entities is accessible in all cases to any member of the general public, is invalid. The ECJ found that the provision excessively infringed certain fundamental rights under the Charter of Fundamental Rights of the EU, namely the right to respect for private life and to the protection of personal data. The ECJ ruled that public access to the Ownership Registers constituted an infringement of individuals' rights in a way that went further than was strictly necessary and which was not proportionate to the objective of the Ownership Registers in fighting money laundering and terrorist financing.

Implications

While the ECJ's ruling will have implications for public access to Ownership Registers, the access rights of Designated Persons³ and Competent Authorities⁴ to the Irish Ownership Register will not be altered.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>

² <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-11/cp220188en.pdf>

³ Designated Persons are those persons required by Part 4 of the 2010 Criminal Justice (Money Laundering and Terrorist Financing) Act to conduct customer due diligence tests (e.g.

financial institutions, accountants, auditors, tax advisers, legal professionals and dealers in expensive goods such as houses, cars, jewellery, etc.)

⁴ Competent authorities are those bodies engaged in the prevention, detection or investigation of possible money laundering or terrorist financing such as an Garda Síochána, Financial Intelligence Units, Revenue Commissioners, Criminal Assets Bureau, the Central Bank of Ireland, the Department of Justice & Equality, etc.

Legitimate Interests Grounds

The ECJ ruling will require that open public access to beneficial ownership information of In-Scope Entities, as prescribed under 4MLD, will need to be reassessed, and a change in the law may be expected.

While it is only speculation at this point, the outcome may be that public access to the Ownership Registers could be adjusted to more closely align with the corresponding terms which apply to accessing information on the beneficial ownership of trusts, that is, requiring that access by a member of the public should be on the basis of a demonstrable legitimate interest.

Following this ECJ decision, the Irish Ownership Register has restricted access to search the register to Designated Persons and Competent Authorities only, with very limited information being available to other parties⁵.

How the Maples Group Can Help

We will continue to monitor the practical effects of the ECJ's judgement. In the meantime, please do not hesitate to contact your usual Maples Group contact should you wish to discuss the implications of this development.

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⁵ The Irish Ownership Register website currently states that, in accordance with the recent ruling of the ECJ, only the

entity profile is available to the public which will show the number of beneficial owners filed.