

## UBO INFORMATION TRANSPARENCY IN THE CORPORATE REGISTERS AND ITS EFFECT ON PRIVACY PROTECTION FROM AML-CFT PERSPECTIVE

*UDC 351:347.714]:342.738(4-672EU:497.11)*

*343.9.024:336.7+323.28:336](4-672EU)*

*339.923:061.1OECD*

**Isidora Mitić**

Faculty of Law, University of Niš, Republic of Serbia

**Abstract.** *This paper examines the essence of standards set by the European Union legislation, regulating two areas of law which are mutually opposite but vastly interconnected in practice, particularly from the perspective of AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism). Identifying the exact position of the thin line that distinguishes between the right to free access to information and the right to protect the privacy of personal data is of great importance and has a legitimate purpose because the complexity of schemes aimed at attaining the set goals can easily be misused to conceal the violation of a basic human right in practice. This paper analyses the legitimacy of complete transparency of personal data of the actual (direct or indirect) owner as the basic tool for preventing the abuse of the financial system for money laundering and terrorism financing purposes. This paper attempts to explain and correlate the two aforementioned rights by analysing them from the perspective of the Ultimate Beneficial Owner (UBO).*

**Key words:** *AML-CFT, UBO, UBO Register, due diligence, right to be informed, privacy protection, data protection, ECJ, C-37/20, C-601/20*

### 1. INTRODUCTION

Corporate Due Diligence (hereinafter: **DD**) represents a process laid out as a professional duty that consists of a set of appropriate measures, which are integrated into a corporate strategy of enterprises and carried out by means of correctly identifying their customers/clients prior to entering into a legally binding relationship, with the aim to prevent, mitigate and account for how they address their actual and potential adverse impacts.

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Received April 22<sup>nd</sup> 2023 / Accepted May 19<sup>th</sup>, 2023

**Corresponding author:** Isidora Mitić, PhD Student, Faculty of Law, University of Niš, Trg kralja Aleksandra 11, 18105 Niš, Serbia. E-mail: [miticisidora@gmail.com](mailto:miticisidora@gmail.com)

The Organisation for Economic Co-operation and Development (hereinafter: the **OECD**<sup>1</sup>) has promoted responsible business conduct since the 1970s when the “OECD Guidelines for multinational enterprises”<sup>2</sup> were initially published (Martin-Ortega, 2013:57). The Guidelines are a comprehensive code multilaterally agreed by the adhering governments, which can be described “as the principal intergovernmentally agreed ‘soft law’ tool of corporate accountability” (Ward, 2001: 1<sup>3</sup>). It consists of non-binding principles and standards which define “the responsible business conduct in the global context, consistent with applicable laws and internationally recognized standards” (OECD, 2011: 3). In order to compliment such a merely corporate tool, the OECD additionally adopted the Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones<sup>4</sup> and Due Diligence Guidance for responsible business conduct which presents the first government-backed reference on Due Diligence (hereinafter: DD<sup>5</sup>) that applies to all sectors and all businesses<sup>6</sup>.

The Customer DD (hereinafter: the **CDD**) is the foundation of the Anti-Money Laundering and Combating the Financing of Terrorism controls (hereinfter: **AML-CFT**) and compliance for the financial sector (Drezner, 2007). Business entities are free to develop methods in order to comply, which is most commonly achieved by creating and implementing internal AML-CFT policies. Such policies commonly include: (1) integration of appropriate DD standards, (2) monitoring its progress and effectiveness, and (3) communication with relevant national bodies regarding the DD and its outcome.

Following the disclosure of the Panama Papers in 2016 and the Paradise Papers in 2017, the general public gained an insight into the complex organizational structures of corporate legal entities and how they can be used to cover illegal financial income (Daudrikh, 2021: 136). As a consequence, the beneficial ownership transparency agenda (Vali, 2017:136) has gained significant momentum over the past decade and consequently built upon the Financial Action Task Force (hereinafter: the **FATF**<sup>7</sup>) recommendations (the global standard for anti-money laundering) and action plan principles to prevent the misuse of companies and legal arrangements (Van der Merwe, 2020: 2). As an intergovernmental organisation and a policymaking body for combating money laundering, which sets “standards for the development and support of national and international anti-money laundering and terrorist financing policies” (Korauš, Dobrovič, Polák, Kelemen, 2019: 1272), the FATF called upon its members to further “step up their efforts and focus on increasing the transparency concerning the provision of information on the beneficial ownership of legal entities”(Davila, Barron, Law: 2019: 11).

<sup>1</sup> The OECD (*fr. Organisation de coopération et de développement économiques*) was established as an international organization in 1961, with headquarters in Paris, France. Its mission is to shape policies that foster prosperity, equality, opportunity and well-being for all. For more, see: <https://www.oecd.org/> (accessed on 27 December 2022)

<sup>2</sup> The OECD guidelines for multinational enterprises, Chapter II – General Policies, para. 10; for more, see: <https://www.oecd.org/daf/inv/mne/48004323.pdf>

<sup>3</sup> For more, see: Ward, 2001; <https://www.oecd.org/investment/investmentfordevelopment/33807204.pdf>

<sup>4</sup> The Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones was adopted by the OECD Council 8 June 2006. See: OECD (2006); <https://www.oecd.org/daf/inv/corporateresponsibility/36885821.pdf>

<sup>5</sup> As defined in the OECD *Guidelines for Multinational Enterprises (2011)*, due diligence (DD) is a process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts (OECD, 2011: 20).

<sup>6</sup> The OECD Due Diligence Guidance for responsible Business Conduct was adopted in June 2018. See: OECD (2018), <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

<sup>7</sup> For more on the Financial Action Task Force (*fr. Groupe d'action financière*), see: <https://www.fatf-gafi.org/>

## 2. DD IMPLEMENTATION

The centrepiece of the implementation of such mechanisms is envisaged internally within the entity's compliance team<sup>8</sup>, who are the first line of defence. The compliance team consists of first class professionals specialised in the AML-CFT who are in charge of fulfilling the professional duty of care (hereinafter: the **DCA**). There are two functions of a compliance team: (1) Know Your Customer (hereinafter: the **KYC**), and (2) Regulatory function<sup>9</sup>. In view of the topic of this paper, only the first function is relevant and appropriate in regard to the DD process. Therefore, upon receiving the initial set of needed information and/or documents, the compliance team is obliged to perform a thorough review and careful consideration of the information obtained, in order to determine the overall risk of cooperation with a specific client.<sup>10</sup> This can be determined based on: (i) the type of client, (ii) the type of the underlying project, and (iii) the geographical location of both. The risk factor can be set as low, medium or high; accordingly, the overall DD process can be simplified (*Simplified Due Diligence/SDD*)<sup>11</sup> or enhanced (*Enhanced Due Diligence/EDD*)<sup>12</sup>, as set out by the AMLD 3<sup>13</sup>.

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<sup>8</sup> In the Grand Duchy of Luxembourg, the Financial Sector Supervisory Commission (*fr. Commission de Surveillance du Secteur Financier*) (hereinafter: the CSSF) is a national body whose statutory mission is to ensure that all the persons subject to its supervision, authorization or registration comply with the professional AML/CTF obligations; for more, see: <https://www.cssf.lu/en/anti-money-laundering-and-countering-the-financing-of-terrorism/>.

<sup>9</sup> The main purpose of the regulatory compliance is to drive accountability in the legal entity by (1) following the external legal mandates set forth by the state, federal, or international government, and (2) implementing them into internal policy in order to comply.

<sup>10</sup> DD is performed in order to comply with the AML-CFT rules formed by any law, statute, regulation, circular or guidelines applicable from time to time. In Luxembourg, the DD phase starts with obtaining relevant documents and/or information for the purpose of proper initial identification (and maintaining) of the UBOs. The documents may differ depending on whether the UBO is a natural or a legal person. (A) In case the UBO is a natural person, the most common documents required are: (1) valid identification document, such as the ID and/or the passport, (2) proof of personal residence, such as a utility bill (for electricity, gas, landline) or a similar bill (excluding mobile phone, car, or any other bill which is older than 3-6 months), (3) the UBO declaration (stating the source of funds and no PEP status), (4) Structure Chart (containing all entities in the structure from the underlying project to the UBO and percentage of holding), (5) tax/operating memorandum (containing information such as: a) explanation of the structure with the Structure Chart itself on display; b) tax considerations and requirements such as: DAC 6, ATAD, BEPS, MiFID II; c) if this is DAC6 reportable or not; d) impact by ATAD and BEPS; e) tax category and treatment; f) VAT implication; g) reasons for jurisdiction; h) cash repatriation, and i) exit strategy); (6) additionally, the compliance team shall perform World Check and Internet Check internally in order to see if any red flags/hits appear (the World Check procedure is most commonly performed in the database in order to check whether a natural person is charged with the commission of any crimes, or whether there is an ongoing and/or finished court proceeding). (B) In case the UBO is a corporate entity (*persona ficta*), the most common documents required are: (1) AoA/AoI or LPA, (2) corporate extract/LEI, (3) corporate number or equivalent, such as TIN, (4) proof of shareholding/shareholder register (if the share is 25% or more); in some cases, it is expectable to have the names of minority shareholders struck-out from the shareholder register in order to protect their identity; (5) the UBO declaration signed, (6) proof that it is still an active entity and not liquidated/ negative certificate, (7) Structure Chart, (8) tax memo, and (9) FY statement /AA. This is common market practice in Luxembourg.

<sup>11</sup> In case SDD may be performed in a branch (if allowed by the entity's internal policy), they may request an AML (reliance) letter from their branch located in a different jurisdiction, or (if regulated) from another fiduciary which provides services to such a client.

<sup>12</sup> Such a division was introduced by the AMLD 3.

<sup>13</sup> See: Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Depending on the current standards set out by the EU<sup>14</sup>, the internal entities' (i) Preferred Risk Appetite (hereinafter: the **PRA**), (ii) the Risk Assessment (hereinafter: the **RA**) and (iii) the Risk Based Approach (hereinafter: the **RBA**), the outcome may differ per the Business Risk Committee (**BRC**) of each complying entity.<sup>15</sup>

### 3. UBO AND THE IMPORTANCE OF UBO IDENTIFICATION

The ownership in the structure can be defined as a control-enhancing mechanisms, for which two prominent examples are significant: voting rights and economic ownership (Vermeulen, 2012: 11). On the one hand, one can hold more votes than economic ownership (“*empty voting*”) and consequently have the control (Mitić, 2021:92) in the sense that the Corporate Law generally makes voting power proportional to economic ownership (Hu, Black, 2005:811). On the other hand, one can hold undisclosed economic ownership without votes, but often with the *de facto* ability to acquire votes if needed (a situation termed “*hidden ownership*”) (Hu, Black, 2007: 1).

In Europe, the Beneficial Owner (hereinafter: the **BO**) is one of the most important concepts used in tax treaties (Li, 2012: 187). It was introduced in double tax treaties in the 1966 protocol to the then-existing 1945 US-UK double tax treaty<sup>16</sup> (Collier, 2011:686), where the BO was presented as a resident who acquired shares’’ for *bona fide* commercial reasons and not primarily for the purposes of securing the benefits’’ (Turksen, Abukari, 2021: 406). The broad definitions have led to divergent interpretations (Bergstrom, 2018: 2015) of the BO. Thus, one can assume that a unique definition could efficiently prevent individuals from hiding behind opaque structures and nominees from engaging in AML-CFT (Knobel, Meinzer, Harari, 2017: 2).

As a consequence of the 1968–1970 discussions, the BO was introduced by the OECD in the Model draft issued in 1974 and this became the revised 1977 OECD Model (Collier, 2011: 687), named “*OECD Model Tax Convention on Income and Capital*” (Bundgaard, Sørensen, 2018: 590), where the concept was based on ownership of income (Vasović, 2020: 218). The European Union (hereinafter: the **EU**) Transparency Directive<sup>17</sup> of 1988 initially required disclosure of shareholdings above 5% (*major or significant holding*) in listed companies (Kleimeier, Whidbee, 2000: 95). In the EU legislation, the Ultimate Beneficial Owner (hereinafter: the **UBO**) was further instigated by the legislation of the

<sup>14</sup> For example: (1) the EU Regulation in regards to the High risk Country List, which was initially set as a legal requirement by the AMLD 4 “Commission Delegated Regulation (EU) 2023/410 of 19 December 2022 amending Delegated Regulation (EU) 2016/1675 as regards adding the Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and the United Arab Emirates to Table I of the Annex to Delegated Regulation (EU) 2016/1675 and deleting Nicaragua, Pakistan and Zimbabwe”, and (2) Revised EU methodology for identifying high-risk third countries under Directive (EU) 2015/849, SWD(2020), which followed the adoption of the “FATF Roadmap” (2017) which describes the main steps, assessment criteria and follow-up by taking the FATF list as a starting point (See: <https://data.consilium.europa.eu/doc/document/ST-11189-2017-INIT/en/pdf>).

<sup>15</sup> For example, in the Grand Duchy of Luxembourg, the Customer DD is set out as mandatory by Art. 3 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (the AML Act); see : [https://www.cssf.lu/wp-content/uploads/L\\_121104\\_AML.pdf](https://www.cssf.lu/wp-content/uploads/L_121104_AML.pdf) (the AML Act)

<sup>16</sup> United States-United Kingdom Income Tax Convention (1975); see: <https://www.irs.gov/pub/irs-trty/uk.pdf>

<sup>17</sup> Council Directive 88/627/EEC of 12 December 1988 on information to be published when a major holding in a listed company is acquired or disposed of, OJ L 348, 17.12.1988.

European Parliament and of the Council in its AMLD 4, which increased the overall transparency and the access to beneficial ownership information (Mitsilegas, Vavoula, 2016: 264). As defined by AMLD 4,<sup>18</sup> the UBO is a natural/physical person who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted and includes at least 25 % plus one share or an ownership interest of more than 25 % in the customer<sup>19</sup> (Daudrikh, 2021: 137).

In the Republic of Serbia (hereinafter: **the RS**), the UBO is defined in the Act on the Central Register of Beneficial Owners as follows: "the beneficial owner of the Registered Entity is: (1) a natural person who is directly or indirectly the owner of 25% or more of shares, holding voting rights or other rights, on the basis of which he participates in the management of the registered entity with 25% or more shares; (2) a natural person who directly or indirectly has a predominant influence on business management and decision-making; (3) a natural person who indirectly provides the funds to the registered entity and, on that basis, significantly influences the decision-making of the management body of the registered entity when deciding on financing and operations; (4) a natural person who is the founder, trustee, protector, or beneficiary if designated, as well as the person who has a dominant position in the management of the trust; (5) a natural person who is registered for the representation of cooperatives, associations, foundations, endowments and institutions, if the authorized person for representation has not registered another natural person as the real owner<sup>20</sup>." In the RS, the BO was initially introduced by the Serbian Corporate Income Tax Act<sup>21</sup> (hereinafter: the **CITA**)<sup>22</sup> (Vasović, 2020:219).

#### 4. EU AML LAW

Money laundering (hereinafter: **ML**) is the disguising the origins of illegally obtained proceeds so that they appear to have originated from legitimate sources (McCarthy, Santenb, 2014: 2). In practice, this process is most commonly divided into three stages: (1) placement<sup>23</sup>, (2) structuring<sup>24</sup> or layering<sup>25</sup>, and (3) integration<sup>26</sup>, which are aimed at releasing laundered funds (cash or assets) into the legal financial system, and ultimately ensure turnover of funds as if they were obtained through a legitimate source (Singha, Best, 2017: 2). In the context of

<sup>18</sup> Art. 3 – 1 (6) of the 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.

<sup>19</sup> In the Grand Duchy of Luxembourg, the UBO is defined by and in accordance with the amended AML Act. In the Republic of Serbia, the UBO is defined in the Act on the Central Registration of Beneficial Owners of the RS.

<sup>20</sup> Article 3 of the Act on Central Registration of Beneficial Owners (Zakon o centralnoj evidenciji stvornih vlasnika, *Sl. glasnik RS*, br. 41/2018, 91/2019 i 105/2021).

<sup>21</sup> The Serbian Corporate Income Tax Act introduced tax on profit of legal entities (Zakon o porezu na dobit pravnih lica, *Sl. glasnik RS*, br. 25/2001, 80/2002, 80/2002, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014, 142/2014, 91/2015, 112/2015, 113/2017, 95/2018, 86/2019, 153/2020 i 118/2021).

<sup>22</sup> Article 40a of the Corporate Income Tax Act RS.

<sup>23</sup> The money laundering process is initiated by moving the money/funds which are obtained through criminal activity and placing the proceeds into a legitimate source of income.

<sup>24</sup> The structuring phase involves breaking down large bulk funds into a series of smaller transactions, with the goal of falling under the threshold of AML regulations.

<sup>25</sup> Layering or structuring often takes place across borders to make it more difficult for national AML authorities to detect foul play. Tactics may include trading in foreign currencies in international markets, purchasing foreign money orders, and selling luxury assets.

<sup>26</sup> Integration takes place once the funds are integrated back into the legitimate financial accounts, which is typically done by involving a series of smaller transactions in order not to get detected and caught.

sophisticated and constantly evolving ML and Terrorism Financing (hereinafter: **TF**) operations (FATF, 2019), criminals and organized crime networks (including terrorist groups) on a daily basis attempt to sabotage financial investigations conducted by the authorised national and international bodies, by rapidly transferring their assets between different bank accounts, currencies and jurisdictions (Pavlidis, 2020: 369). Thus, large and complex organisations can be suitable for providing a cover-up for corporate and financial crimes (Lord, van Wingerde, Campbell, 2018:15). In order to prevent such conduct, legal entities are obliged to adopt and implement appropriate internal AML/CFT policies which allow them to both detect and prevent this type of unwanted activities (Hampton, Levi, 1999: 653).

The EU's initial efforts to regulate this matter date back to 1990, when the EU adopted its First Anti-money Laundering Directive (AMLD 1)<sup>27</sup>; the second one was adopted in 2001 (AMLD 2)<sup>28</sup>, the third one in 2005 (AMLD 3)<sup>29</sup>, the fourth one in 2015 (AMLD 4)<sup>30</sup>, the fifth one in 2018 (AMLD 5)<sup>31</sup><sup>32</sup> and the sixth one in 2021 (AMLD 6)<sup>33</sup>. The aim was to align the EU's anti-money laundering framework with that of international organisations such as the FATF, considering that the crime of ML threatens the core of the financial system (Zoppei, 2015 :131).

## 5. LUXEMBOURG AML ACT

The EU Member States (hereinafter: the **MSSs**) are obliged to harmonize their legislative framework with the EU law and introduce the concept of AML set out by the EU standards into their national legislation<sup>34</sup>. This is most commonly accomplished by enacting a subject-specific legislative act (*Lex specialis*) which is explicitly regulating this area. For example, on 12 November 2004, the Grand Duchy of Luxembourg adopted its national *lex specialis* - the Anti-Money Laundering Act (the **AML Act**) regulating the area of AML/CFT at the domestic level (*Law of 12 November 2004 on the fight against money laundering and*

<sup>27</sup> Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering; see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31991L0308>

<sup>28</sup> Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

<sup>29</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. This Directive aimed to expand the scope of anti-money laundering by including certain non-financial businesses and professions. It refined the Risk-based Approach (the **RBA**), and the Customer Due Diligence (the **CDD**) which was improved and divided into: (1) Simplified Due Diligence (the **SDD**) and (2) Enhanced Due Diligence (the **EDD**).

<sup>30</sup> 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.

<sup>31</sup> Directive (EU) 2018/843 of the EP 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.

<sup>32</sup> In the EU, another angle of combating ML was tackled by adopting the AML Criminal Law Directive (*Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law*), which presents a critical perspective on the use of criminal law to tackle economic problems. This Directive was amended, consolidated, supplemented, repealed, replaced or restated several times. See: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.284.01.0022.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.284.01.0022.01.ENG)

<sup>33</sup> Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law; see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L1673>

<sup>34</sup> In Luxembourg, provisions were included in: (1) Article 506-1 of the Criminal Code (*Code pénal Luxembourg*); and (2) AML/FT Act of 12 November 2004 on the fight against money laundering and terrorist financing.

*terrorist financing*).<sup>35</sup> By comparison, in the Republic of Serbia, AML is not regulated by the Corporate Code but only by the Criminal Code of the RS<sup>36</sup> (Jovašević, 2004: 47).

This legislative act of Luxembourg has not only implemented the mandatory rules of AMLDs but also (1) extended the definition of the UBO, and (2) introduced new institutions in charge of ensuring control and compliance: (a) a Compliance Officer at the appropriate hierarchical level who is a qualified person responsible for the control of AML/CFT (AML compliance officer, *fr. Responsable du Contrôle - RC*)<sup>37</sup>, and (b) a responsible person among the members of their management bodies who is in charge of compliance with the applicable professional obligations in the fight against money laundering and terrorist financing (*fr. Responsable du respect des obligations - RR*)<sup>38</sup>. The DD process which is to be performed by the legal entities on their customers is regulated by the Article 3 of the AML Act, which describes the main steps, assessment criteria and follow-up.

## 6. UBO REGISTERS

In the 1970s, the OECD raised interest in creating an adequate register which would implement the mechanisms envisaged within the Guidelines, by instituting a network of National Contact Points (the **NCPs**)<sup>39</sup> within adhering countries, with the aim of ensuring that they observe internationally agreed standards of DCA in order to prevent the adverse impacts of their activities and contribute to sustainable development (OECD, 2018:93). Governments could partner up with the private sector to ensure that the proposed sophisticated verification system will implement the technology and best practices already available in the financial and consumer industry (Knobel, 2019: 5).

At the EU level, the goal of the legislative framework regulating the AML-CFT is to ensure that the appropriate measures shall be properly implemented by each MS (Nestorova, 2019: 91). With the aim of achieving this goal, the AMLD 4 introduced the register of beneficial owners as a mechanism to combat money laundering (Harari, Knobel, Meinzer, Palanský, 2020, 8). At the EU level, a central register named the Beneficial Ownership Register Interconnection System (the **BORIS**)<sup>40</sup> was introduced with the aim to gather all information in the national UBO registers. At the national level, MSs were obliged to ensure the implementation of the AMLD 4 and establishment of national UBO

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<sup>35</sup> Luxembourg AML/CFT Act of 12 November 2004 (updated version from 12 August 2022); see: [https://www.cssf.lu/wp-content/uploads/L\\_121104\\_AML.pdf](https://www.cssf.lu/wp-content/uploads/L_121104_AML.pdf) (last accessed on 27<sup>th</sup> December 2022)

<sup>36</sup> Article 248 of the Criminal Code of the Republic of Serbia (Krivični zakonik, *Službeni glasnik RS*, br. 85/2005, 88/2005-ispr., 107/2005-ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019).

<sup>37</sup> Article 4 (1) of the AML Act (updated in 2022)

<sup>38</sup> In its FAQ of 25 November 2019, the CSSF reiterated that every Luxembourg investment fund and investment fund manager shall be legally obliged to appoint such an officer, in order to cover the ML/FT risk exposure in the National Risk Assessment of the investments sector (CSSF, 2021). In 2012, the CSSF brought Regulation No. 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing.

<sup>39</sup> As stated in the OECD Guide for National Contact Points on Structures and Activities, the NCP may be senior government officials or a government office headed by a senior official, an interagency group or one that contains independent experts, or it may be established on a multi-stakeholder basis as a cooperative body including representatives of the business community, employee organisations and others (OECD, 2019:18). See: <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>

<sup>40</sup> BORIS (2022), [https://e-justice.europa.eu/38590/EN/beneficial\\_ownership\\_registers\\_interconnection\\_system\\_boris](https://e-justice.europa.eu/38590/EN/beneficial_ownership_registers_interconnection_system_boris)

registers, and to enforce a high level of transparency which would also allow a proper approach to identifying individuals who are UBOs (Sepp, 2017: 157).

For example, in the Grand Duchy of Luxembourg, the UBO register (*fr. Registre des Bénéficiaires Effectifs, RBE Register*<sup>41</sup>) was introduced by means of the national Law of 13 January 2019 (the **RBE Law**<sup>42</sup>). It was enforced in the year of 2019, when Luxembourg's Trade and Companies Register of Luxembourg (the **LBR**<sup>43</sup>) introduced a special section. The UBO register was internally organised in line with its procedure guide<sup>44</sup> ("*RBE User's Guide*"<sup>45</sup>) which was initially functioning in line with the high transparency standards set out by the AMLD 4 and operating on the open-access basis (*fr. libre accès*)<sup>46</sup>. The UBO register was fully transparent until November 2022, when the accessibility rules were changed by the ECJ decision (joint cases C-37/20 and C-601/20).

The Republic of Serbia took an approach similar to Luxembourg's approach. The Company Act of the RS and the Corporate Registers Act<sup>47</sup> as a *lex specialis* have set out a number of provisions which regulate the operation of the Serbian Agency for Business Registers<sup>48</sup> (hereinafter: the **ABR**). The ABR is also a web-based data-base that contains UBO data, and is fully transparent via open-access, which, considering the outcome of the recent ECJ case, consequently may need to be further adjusted in order to comply with data protection regulations.

## 7. ECJ CASES C-37/20 AND C-601/20

The RBE Register in Luxembourg operated in line with the principle of complete transparency (En. open access, Fr. *libre accès*) from the time when it was established in 2019 up until November 2022, which was changed by the decision of the European Court of Justice (the **ECJ**) in joint cases C-37/20 and C-601/20. The District Court in Luxembourg (*fr. Tribunal d'arrondissement de et à Luxembourg*<sup>49</sup>) submitted two references to the ECJ regarding the protection of the right to privacy of UBOs and the review of the validity of fully transparent and publicly available personal data. The initial case (C-37/20) was initiated before the District Court in Luxembourg by a natural person and in connection with the protection of the right to privacy of the real owners, on the grounds that the publication of personal data exposed the applicant and his family to a disproportionately high risk of fraud, kidnapping, blackmail, extortion, harassment, violence and/or intimidation<sup>50</sup>. The next proceeding (C-601/20) was

<sup>41</sup> Luxembourg register of the Beneficial Owners: <https://www.lbr.lu/mjrsc-rbe/jsp/webapp/static/mjrsc/en/mjrsc-rbe/legal.html?pageTitle=footer.legalaspect> (last assessed on 27<sup>th</sup> December 2022)

<sup>42</sup> RBE Act (2019): Law of 13 January 2019 establishing the Beneficial Owner Register; [https://www.cssf.lu/wp-content/uploads/L\\_130119\\_RBE\\_eng.pdf](https://www.cssf.lu/wp-content/uploads/L_130119_RBE_eng.pdf)

<sup>43</sup> Luxembourg Business Register (2022): <https://www.lbr.lu/> (last assessed on 27<sup>th</sup> December 2022)

<sup>44</sup> RBE Declaration of Beneficial Owners, User's Guide (n.d): [https://www.lbr.lu/mjrsc-rbe/jsp/webapp/static/mjrsc/fr/mjrsc-rbe/pdf/guide\\_declaration\\_electronique.pdf](https://www.lbr.lu/mjrsc-rbe/jsp/webapp/static/mjrsc/fr/mjrsc-rbe/pdf/guide_declaration_electronique.pdf)

<sup>45</sup> RBE Declaration of Beneficial Owners, Explanatory Guide, 2020

<sup>46</sup> Thus, free access to information has been made available not only to users that are entitled to introduce new information in the system/register and create modifications and/or other input in relation to the UBOs but also to other anonymous users. Yet, the issue was that the information contained private data and were of sensitive nature.

<sup>47</sup> Act on the Registration Procedure in the Agency for Business Registers (Zakon o postupku registracije u agenciji za privredne registre, *Sl. glasnik RS*, br. 99/2011, 83/2014, 31/2019 i 105/2021), herein: the Corporate Registers Act.

<sup>48</sup> The Agency for Business Registers (Serb. *Agencija za privredne registre*, APR), see: <https://www.apr.gov.rs/>

<sup>49</sup> La Justice (2022): District Courts (Fr. *Tribunaux D'arrondissement*), <https://justice.public.lu/fr/organisation-justice/juridictions-judiciaires/tribunaux-arrondissement.html>

<sup>50</sup> Chevalier & Sciales (2022): <https://www.cs-avocats.lu/corporate/european-court-of-justice-issues-clarification-on-luxembourg-business-registers-and-fundamental-rights-of-beneficial-owners/>



initiated before the District Court in Luxembourg by a legal entity (SOVIM SA) for the purpose of obtaining adequate protection of personal data, based on public access to the register of beneficial owners;<sup>51</sup> the main argument was based on the justification and merit of the transparency of UBO personal and private information/data (Chevalier & Sciales, 2022).

In addition to the practical challenges, the ECJ has brought privacy and data protection back into the debate at an indelibly high level (Thomas-James, 2023 :307). According to the opinion of the ECJ, which was presented in the court decision of 22 November 2022 (ECLI:EU:C:2022:912<sup>52</sup>), public access to information on UBOs represents a serious interference with the fundamental rights to respect for private life and protection of personal data, guaranteed in Articles 7 and 8 of the EU Charter (*en. Charter of Fundamental Rights of the European Union*<sup>53</sup>, the **CFR**).

At the time of writing this paper, negotiations on further actions which are to be taken by the register of beneficial owners are underway. As open access is no longer an option, an adequate protection mechanism must be implemented. Currently, in addition to the public prosecutor, authorised third parties (e.g. Law Offices) may request the UBO extract containing the information which was available online prior to the judgment. By adopting such an approach, the open-access was modified into limited-access.

## 8. RIGHT TO BE INFORMED V. DATA PROTECTION

In the context of financial investigations, it is necessary to develop proper methods that serve as the basis for creating software for systematic detection of unusual business operations (Korauš, Dobrovič, Polák, Kelemen, 2019: 1271). With the aim of being compliant with the legislature, an issue may arise in the context of the efficiency of financial investigations in the exchange of private information collected from the UBOs (Pavlidis, 2020: 370). Over the years, the UBO data transparency has become one of the leading tools to tackle illicit financial flows related to AML-CFT (Knobel, Harari, Meinzer, 2018: 2); nevertheless, it has raised issues in the sphere of proper data protection. Gathering, safekeeping and maintaining of personal UBO data should have been done in compliance with the General Data Protection Regulation<sup>54</sup> (hereinafter: the **GDPR**). The GDPR includes both the public interest as legitimate interest justifications for the right to be informed<sup>55</sup> and the right of data protection<sup>56</sup> (Phillips, 2018: 576). Considering these rights, it was of great importance to determine the fine line between them, in order to avoid the inconsistency concerning the object and purpose of the data protection mechanisms.

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<sup>51</sup> The collected data (which is made public) consist of: full first, middle (if any) and last name, age, nationality, ID and residential address.

<sup>52</sup> ECJ Case no. ECLI:EU:C:2022:912, available at: <https://curia.europa.eu/juris/documents.jsf?num=C-37/20>

<sup>53</sup> See: Charter of Fundamental Rights of the European Union, *OJ C 326, 26.10.2012*.

<sup>54</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); See: <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

<sup>55</sup> Art. 13 – 14 of the General Data Protection Regulation (the GDPR)

<sup>56</sup> The GDPR has six general data protection principles (fairness and lawfulness, purpose limitation, data minimization, accuracy, storage limitation, and integrity and confidentiality) but data protection by design and default is at the core of the GDPR (Goddard, 2017: 703).

Similarly to the RBE register in Luxembourg, the Serbian ABR has made such data<sup>57</sup> publically available to the extent permitted by the Corporate Registers Act.<sup>58</sup> However, the data protection framework is still not implemented in a proper way that would sufficiently ensure the exercise of the UBOs right to data protection, which is also regulated at a national level by means of the Personal Data Protection Act.<sup>59</sup>

## 9. DISCUSSION AND CONCLUSION

Therefore, one can conclude that the issue lays in the fact that the collected private data is commonly not only registered and maintained but also made publically available on the official website of the Corporate Registers, based on which it was not subject to any proper data protection, confidentiality and/or non-disclosure obligations. The previous lack of case law and uncertainty in data protection in general made the EU AML-CFT provisions easily interpreted in a way that the publication of certain personal data is justified if full transparency of such information is provided with the aim of ensuring protection against the ML-FT.

Arguably, in relation to combating against ML-FT, the general rule for the successful implementation of both the right to be informed and privacy protection regulations should be bound by statutory secrecy obligations or confidentiality undertakings equal to those (but not limited to) determined by the GDPR. In view of securing a proper approach to this matter, any electronic government system should rely on the ability of the system to ensure the confidentiality, integrity, truthfulness and accuracy of registered ownership information and proper and justified access to records. In that context, any document which contains personal data should be adequately stored in the server and the authorised bodies shall exert their best efforts to ensure safe data processing in order to prevent and combat the ML-TF. Without prejudice to the above and, the author can conclude that the concept has diverse application in different jurisdictions. Despite the ECJ opinion, its interpretation is commonly vague and ambiguous, which leads to breaches and inadequate implementations of the data protection rights.

### Abbreviations

AA – Annual Accounts

AML – Anti Money Laundering

AML-CFT – Anti Money Laundering / Combating the Financing of Terrorism

AMLD – Anti Money Laundering Directive of the EU

AML ACT - Law of 12 November 2004 on the fight against money laundering and terrorist financing transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering

AoA/ AoI – Articles of Association / Articles of Incorporation

BO – Beneficial Owner

BRC – Business Risk Committee

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<sup>57</sup> Unlike in RS where the register itself is uploading the information in the data-base, in the RBE Register the authorised entities such as law offices or regulated fiduciaries, which hold a licenced and activated biometrical card named „Lux trust“ can submit a request in the system with sufficient proof of identity and residence.

<sup>58</sup> Article 9a of the Company Act RS (Zakon o privrednim društvima, *Služeni glasnik RS*, br. 36/2011, 99/2011, 83/2014-dr. zakon, 5/2015, 44/2018, 95/2018, 91/2019 i 109/2021).

<sup>59</sup> The Personal Data Protection Act RS (Zakon o zaštiti podataka o ličnosti, *Sl. glasnik RS*, br. 87/2018).

CDD – Client Due Diligence  
 CFR – The Charter of Fundamental Rights of the European Union  
 CFT – Combating the Financing of Terrorism  
 CITA – Serbian Corporate Income Tax Act  
 CSSF – Commission de Surveillance du Secteur Financier  
 DCA – Duty of Care  
 DOB – Date of Birth  
 DD – Due Diligence  
 ECJ – European Court of Justice  
 EDD – Enhanced Due diligence  
 EU – European Union  
 FATF – Financial Action Task Force  
 FT – Financing of Terrorism  
 FY – Financial Year  
 GDPR – General Data Protection Regulation  
 ID – Identity document  
 LBR – Luxembourg Business Register  
 LEI – Legal Entity Identifier  
 LPA – Limited Partnership Agreement  
 ML – Money Laundering  
 MS – Member State  
 OECD – Organization for Economic Co-operation and Development  
 PEP – Politically Exposed Person  
 PRA – Preferred Risk Appetite  
 RA – Risk Assessment  
 RBA – Risk Based Approach  
 RBE – Registre des Bénéficiaires Effectifs  
 RBO – Register of Beneficial Owners  
 RS – Republic of Serbia  
 SDD – Simplified Due Diligence  
 TIN – Tax Identification Number  
 UB – Utility Bill  
 UBO – Ultimate Beneficial Owner  
 WC – World Check

#### REFERENCES

- Bergstrom, M. (2018). The Many Uses of Anti-Money Laundering Regulation—Over Time and into the Future, *German Law Journal*, Vol. 19 No. 5, 2018.
- Bundgaard, J., Winther-Sørensen, N. (2018). Beneficial Ownership in International Financing Structures, *Tax Analysis*, 2018.
- Collier, R. (2011). Clarity, Opacity and Beneficial Ownership, *British Tax Review Issue 6*, 2011;
- Daudrikh, Y. (2021). Beneficial Owner Central Registry as a tool to fight Money Laundering and Terrorist Financing, *Financial Law Review*, No. 24 (4)/2021.
- Davila, J., Barron, M., Law, T. (2019). Towards a Global Norm of Beneficial Ownership Transparency, Adam Smith International, 2019; <https://adamsmithinternational.com/app/uploads/2019/07/Towards-a-Global-Norm-of-Beneficial-Ownership-Transparency-Phase-2-Paper-March-2019.pdf>
- Goddard, M. (2017). The EU General Data Protection Regulation (GDPR): European regulation that has a global impact, *International Journal of Market Research*, Vol. 59 Issue 6, 2017.
- Hampton, M.P., Levi, M. (1999). Fast Spinning into Oblivion? Recent Developments in Money-Laundering Policies and Offshore Finance Centres, *Third World Quarterly*, The New Politics of Corruption, Vol. 20, No. 3, 1999.
- Harari, M., Knobel, A., Meinzer, M., Palanský, M. (2020). Ownership registration of different types of legal structures from an international comparative perspective State of play of beneficial ownership - Update 2020, *Tax Justice Network*, 2020.

- Hu, H.T.C., Black, B. (2005). The new vote buying: Empty voting and hidden (morphable) ownership, *Southern California Law Review*, Vol. 79:811, 2005.
- Hu, H.T.C., Black, B., Funds, H. (2007), Insiders and the Decoupling of Economic and Voting Ownership: Empty Voting and Hidden (Morphable) Ownership, *Journal of Corporate Finance*, 2007.
- Jovašević, D. (2004). Pranje novca u teoriji i praksi krivičnog prava (Money Laundering in Criminal law theory and practice), *Pravo teorija i praksa*, Novi Sad: Savez udruženja pravnika Vojvodine, 2004.
- Li, J. (2012). Beneficial Ownership in Tax Treaties: Judicial Interpretation and the Case for Clarity, *Osgoode Hall Law School, York University*, No. 4/2012, 2012.
- Kleimeier, S., Whidbee D.A. (2001). Do shareholders value financial transparency? Evidence from Germany, *International Journal of Game Theory*, 2001.
- Knobel, A. (2019) , Beneficial ownership verification: ensuring the truthfulness and accuracy of registered ownership information, *Tax Justice Network*, 2019.
- Knobel, A., Harari, M., Meinzer, M. (2018). The state of play of beneficial ownership registration: A visual overview, *Tax Justice Network*, 2018.
- Knobel, A., Meinzer, M., Harari, M. (2017). What should be included in Corporate Registries? A Data Checklist, *Tax Justice Network*, 2017.
- Koraus, A., Dobrovič, J., Polák, J., Kelemen, P. (2019). Security position and detection of unusual business operations from science and research perspective, entrepreneurship and sustainability issues, *Entrepreneurship and Sustainability Issues*, Vol 6, 2019.
- Lord N., Van Wingerde K., Campbell L. (2018). Organising the Monies of Corporate Financial Crimes via Organisational Structures: Ostensible Legitimacy, Effective Anonymity and Third-Party Facilitation, *Organizational Aspects of Corporate and Organizational Crime*, vol.8(2),17; <https://www.mdpi.com/2076-3387/8/2/17>.
- McCarthy, K.J, van Santenb, P., Fiedler. I. (2015). Modeling the money launderer: Microtheoretical arguments on anti-money laundering policy, *International Review of Law and Economics*, 2015.
- Martin-Ortega, O. (2013). Human Rights Due Diligence for Corporations: From voluntary standards to hard law at last?, *Netherlands Quarterly of Human Rights*, Vol. 31/4, 44–74, 2013.
- Mitić, I. (2021). Pranje novca kao posledica prekograničnog povezivanja privrednih društava iz ugla korporativnog prava (Money Laundering as a Consequence of Cross-Border Company Mergers and Acquisitions: Comparative Law Perspective), *Pravni Horizonti* Pravnog fakulteta u Nišu, 6p. 2021/4.
- Mitsilegas, V. Vavoula, N. (2016). Challenges for Fundamental Rights and the Rule of Law, The evolving EU anti-money laundering regime, The Evolving EU Anti-Money Laundering Regime 2016; <https://journals.sagepub.com/doi/abs/10.1177/1023263X1602300204?journalCode=maaa>
- Nestorova, V. (2019). Anti-money laundering policies in the financial sector, *Limen Bulgaria*, 2019.
- Pavlidis, G. (2020). Financial information in the context of anti-money laundering: Broadening the access of law enforcement and facilitating information exchanges, *Journal of Money Laundering Control*.
- Phillips, M. (2018). International data-sharing norms: from the OECD to the General Data Protection Regulation (GDPR), *Springer*, 2018.
- Sepp, K. (2017). Legal Arrangements Similar to Trusts in Estonia under the EU's Anti-money-laundering Directive, *Juridica International*, 2017.
- Singha, K., Best, P. (2017). Anti-Money Laundering: Using data visualization to identify suspicious activity, *International Journal of Accounting Information Systems*, 2017.
- Thomas-James D. (2023). Editorial: The Court of Justice of the European Union and the beginning of the end for corporate transparency, *Journal of Financial Crime*, <https://www.emerald.com/insight/content/doi/10.1108/JFC-03-2023-293/full/pdf?title=editorial-the-court-of-justice-of-the-european-union-and-the-beginning-of-the-end-for-corporate-transparency>.
- Turksen U., Abukari, A. (2021). OECD's global principles and EU's tax crime measures, *Journal of Financial Crime*, Vol. 28, 2021.
- Vail, N. (2018). Cracking Shells: The Panama Papers & Looking to the European Union's Anti-Money Laundering Directive as a Framework for Implementing a Multilateral Agreement to Combat the Harmful Effects of Shell Companies, *Texas A&M Law Review*, Vol. 5, 2018.
- Van der Merwe, Th. (2020). Transparency International, U4 Anti-Corruption Helpdesk, 2020.
- Vasović, M. (2020). Stvarni vlasnik prihoda kao anti-abuzivna mera u srpskom poreskom zakonodavstvu, *Zbornik radova Pravnog fakulteta u Nišu*, broj. 88, 2020.
- Vermeulen, E., (2012). Beneficial ownership and control: a comparative study Disclosure, information and enforcement, *OECD Corporate Governance Working Papers*, Tilburg University, 2012.
- Ward, H. (2001). The OECD Guidelines for Multinational Enterprises and non-adhering countries Opportunities and Challenges of engagement, *International Institute for Environment and Development (IIED)*, 2001; <https://www.oecd.org/investment/investmentfordevelopment/33807204.pdf>
- Zoppi, V. (2015). Money Laundering: A New Perspective in Assessing the Effectiveness of the AML Regime, *The European Review of Organised Crime*, 2015.

*Legal Documents*

- AML Act: Anti-Money Laundering Act of the Duchy of Luxembourg: Act of 12 November 2004 on the fight against money laundering and terrorist financing; [https://www.cssf.lu/wp-content/uploads/L\\_121104\\_AML.pdf](https://www.cssf.lu/wp-content/uploads/L_121104_AML.pdf)
- Charter of Fundamental Rights of the European Union, *OJ C 326, 26.10.2012*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>
- Code pénal Luxembourg; <https://data.legilux.public.lu/filestore/eli/etat/leg/code/penal/20200320/fr/html/eli-etat-leg-code-penal-20200320-fr-html.html>
- Commission Delegated Regulation (EU) 2023/410 of 19 December 2022 amending Delegated Regulation (EU) 2016/1675 as regards adding the Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and the United Arab Emirates to Table I of the Annex to Delegated Regulation (EU) 2016/1675 and deleting Nicaragua, Pakistan and Zimbabwe; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023R0410>
- Council Directive 88/627/EEC of 12 December 1988 on information to be published when a major holding in a listed company is acquired or disposed of, *OJ L 348, 17.12.1988*; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31988L0627>
- Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering; <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31991L0308&from=FR>
- Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0097>
- Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0060>
- 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; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>
- 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, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.156.01.0043.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.156.01.0043.01.ENG)
- Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L1673>
- EU 1 AMLD - Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31991L0308>
- EU 2 AMLD - Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0097>
- EU 3 AMLD - Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0060>
- EU 4 AMLD - 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>
- EU 5 AMLD - 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L0843>
- EU 6 AMLD - Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32018L1673>
- FATF Roadmap - Council of the European Union, Interinstitutional File: 2016/0208 (COD), Brussels, 11 July 2017; <https://data.consilium.europa.eu/doc/document/ST-11189-2017-INIT/en/pdf>
- FATF (2019). FATF Report to the G20 Leaders' Summit, June 2019; <https://www.fatf-gafi.org/en/publications/Fatfgeneral/Report-g20-leaders-jun-2019.html>
- OECD (1961). OECD Model Tax Convention on Income and Capital, OECD Publishing, 1961;
- OECD (2006). OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, <https://www.oecd.org/daf/inv/corporateresponsibility/36885821.pdf>
- OECD (2011). OECD Guidelines for Multinational Enterprises, OECD Publishing, 2011; <https://www.oecd.org/daf/inv/mne/48004323.pdf>
- OECD (2018). OECD Due Diligence Guidance for Responsible Business Conduct, OECD Publishing; <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

- OECD (2019). OECD Guide for National Contact Points on Structures and Activities, OECD Publishing; <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>
- RBE Act Luxembourg – Act of 13 January 2019 establishing the Beneficial Owner Register; [https://www.cssf.lu/wp-content/uploads/L\\_130119\\_RBE\\_eng.pdf](https://www.cssf.lu/wp-content/uploads/L_130119_RBE_eng.pdf)
- RBE Declaration of Beneficial Owners, User's Guide; [https://www.lbr.lu/mjracs-rbe/jsp/webapp/static/mjracs/fr/mjracs-rbe/pdf/guide\\_declaration\\_electronique.pdf](https://www.lbr.lu/mjracs-rbe/jsp/webapp/static/mjracs/fr/mjracs-rbe/pdf/guide_declaration_electronique.pdf)
- RBE Declaration of Beneficial Owners, Explanatory Guide, 2020; [https://www.lbr.lu/mjracs/jsp/webapp/static/mjracs/en/mjracs-rbe/pdf/Guide\\_Explicatif\\_RBE.pdf?pageTitle=menu.item.geninfoguidebe](https://www.lbr.lu/mjracs/jsp/webapp/static/mjracs/en/mjracs-rbe/pdf/Guide_Explicatif_RBE.pdf?pageTitle=menu.item.geninfoguidebe)
- Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015R0847>
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, <https://eur-lex.europa.eu/eli/reg/2016/679/oj>
- CSSF Regulation No. 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing; [https://www.cssf.lu/wp-content/uploads/RCSF\\_No12-02eng.pdf](https://www.cssf.lu/wp-content/uploads/RCSF_No12-02eng.pdf)
- Revised EU Methodology for identifying high-risk third countries under Directive (EU) 2015/849, SWD(2020), European Commission, Brussels; [https://finance.ec.europa.eu/system/files/2020-05/200507-anti-money-laundering-terrorism-financing-action-plan-methodology\\_en.pdf](https://finance.ec.europa.eu/system/files/2020-05/200507-anti-money-laundering-terrorism-financing-action-plan-methodology_en.pdf)
- CSSF/Commission de Surveillance du Secteur Financier (2021). Frequently Asked Questions AML/CFT, Update March 2021; [https://www.cssf.lu/wp-content/uploads/FAQ\\_Persons\\_involved-in-AML\\_CFT\\_for\\_a\\_Luxembourg\\_Investment\\_Fund\\_or\\_Investment\\_Fund\\_Manager.pdf](https://www.cssf.lu/wp-content/uploads/FAQ_Persons_involved-in-AML_CFT_for_a_Luxembourg_Investment_Fund_or_Investment_Fund_Manager.pdf)
- United States-United Kingdom Income Tax Convention (1975); <https://www.irs.gov/pub/irs-trty/uk.pdf>
- Krivični zakonik (Criminal Code), *Služeni glasnik RS*, br. 85/2005, 88/2005-isp., 107/2005-isp., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019
- Zakon o agenciji za privredne registre (Act on the Agency for Business Registers), *Služeni glasnik RS*, br. 55/2004, 111/2009 i 99/2011
- Zakon o centralnoj evidenciji stvarnih vlasnika (Act on Central Registration of Beneficial Owners), *Služeni glasnik RS*, br. 41/2018, 91/2019 i 105/2021; <https://www.paragraf.rs/propisi/zakon-o-centralnoj-evidenciji-stvarnih-vlasnika-rs.html>
- Zakon o porezu na dobit pravnih lica (Corporate Income Tax Act), *Služeni glasnik RS*, br. 25/2001, 80/2002, 80/2002-dr. zakon, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014-dr. zakon, 142/2014, 91/2015-autentično tumačenje, 112/2015, 113/2017, 95/2018, 86/2019, 153/2020 i 118/2021; [https://www.paragraf.rs/propisi/zakon\\_o\\_porezu\\_na\\_dobit\\_pravnih\\_lica.html](https://www.paragraf.rs/propisi/zakon_o_porezu_na_dobit_pravnih_lica.html)
- Zakon o postupku registracije u agenciji za privredne registre (Act on the Registration Procedure in the Agency for Business Registers), *Služeni glasnik RS*, br. 99/2011, 83/2014, 31/2019 i 105/2021; [https://www.paragraf.rs/propisi/zakon\\_o\\_postupku\\_registracije\\_u\\_agenciji\\_za\\_privredne\\_registre.html](https://www.paragraf.rs/propisi/zakon_o_postupku_registracije_u_agenciji_za_privredne_registre.html)
- Zakon o privrednim društvima (Companies Act), *Služeni glasnik RS*, br. 36/2011, 99/2011, 83/2014-dr. zakon, 5/2015, 44/2018, 95/2018, 91/2019 i 109/2021
- Zakon o zaštiti podataka o ličnosti (Personal Data Protection Act), *Služeni glasnik RS*, br. 87/2018. [https://www.paragraf.rs/propisi/zakon\\_o\\_zastiti\\_podataka\\_o\\_licnosti.html](https://www.paragraf.rs/propisi/zakon_o_zastiti_podataka_o_licnosti.html)

### Legal Documents

- Case C-37/20, Luxembourg Business Registers, ECLI:EU:C:2022:912 <https://curia.europa.eu/juris/documents.jsf?num=C-37/20>
- Case C-601/20, Luxembourg Business Registers, ECLI:EU:C:2022:912

### Internet Sources

- BORIS: [https://ejustice.europa.eu/38590/EN/beneficial\\_ownership\\_registers\\_interconnection\\_system\\_boris](https://ejustice.europa.eu/38590/EN/beneficial_ownership_registers_interconnection_system_boris)
- Chambre de Commerce du Grand-Duché de Luxembourg: <https://www.cc.lu/>
- CJEU: Info Curia Case Law: <https://curia.europa.eu/juris/recherche.jsf?cid=17464182>
- CSSF Luxembourg: <https://www.cssf.lu/fr/> (last assessed on 27<sup>th</sup> December 2022)
- Chevalier & Sciales (2022): <https://www.cs-avocats.lu/corporate/european-court-of-justice-issues-clarification-on-luxembourg-business-registers-and-fundamental-rights-of-beneficial-owners/>
- European Court of Justice: <https://curia.europa.eu/>
- European Court of Justice Case monitoring Portal: <https://portal.ieu-monitoring.com/>
- ECJ press release: [https://curia.europa.eu/jcms/jcms/Jo2\\_7052/en/](https://curia.europa.eu/jcms/jcms/Jo2_7052/en/)

European Union legislation: <https://eur-lex.europa.eu/>  
Justice (2022): District Courts (Fr. *Tribunaux D'arrondissement*), <https://justice.public.lu/fr/organisation-justice/juridictions-judiciaires/tribunaux-arrondissement.html>  
LegiLux: <https://legilux.public.lu/>  
Lexology: <https://www.lexology.com/>  
Luxembourg District Court: <https://justice.public.lu/fr/>  
Luxembourg Business Registers website (LBR): <https://www.lbr.lu/> (assessed on 27<sup>th</sup> December 2022)  
Luxembourg RBE Register: <https://www.lbr.lu/mjrcs-rbe/jsp/webapp/static/mjrcs/en/mjrcs-rbe/legal.html?pageTitle=footer.legalaspect>

## **TRANSPARENTNOST INFORMACIJA O STVARNOM VLASNIKU U PRIVREDNIM REGISTRIMA I NJIHOV UTICAJ NA ZAŠTITU PRAVA NA PRIVATNOST IZ UGLA BORBE PROTIV PRANJA NOVCA**

*U ovom radu se ispituje suština standarda postavljenih zakonodavstvom Evropske unije, koji regulišu dve oblasti prava, koje su, iako međusobno suprotne, u praksi međusobno povezane, u smislu borbe protiv pranja novca i finansiranja terorizma. Otkrivanje i postavljanje na valjanom mestu linije koja razgraničava pravo na slobodan pristup informacijama i prava na zaštitu privatnosti ličnih podataka je od velike važnosti iz razloga što se neretko u praksi vrši kršenje osnovnog ljudskog prava, u svrhu ispunjenja postavljenog cilja. U ovom radu vrđi se analiza legitimnosti potpune transparentnosti ličnik podataka stvarnog vlasnika kao osnovnog mehanizma za sprečavanje zloupotrebe finansijskog sistema u svrhe pranja novca i finansiranja terorizma. Ovaj rad pokušava da objasni i poveže dva prethodno navedena prava, analizirajući ih iz ugla stvarnog vlasnika.*

*Ključne reči: zaštita prava na privatnost, pravo na privatnost podataka, zaštita podataka o ličnosti, APR, stvarni vlasnik, zakonski zastupnik, Evropski sud pravde.*