

## **Information report on the judgment of the Court of Justice of the European Union of 22 November 2022 in joined cases C-37/20 and C-601/20 and further availability of the information of the beneficial ownership<sup>1</sup>**

The Ministry of Justice, in cooperation with the Enterprise Register of the Republic of Latvia and the Ministry of Foreign Affairs, has prepared a report on the compliance of the regulation of access to the registered information of beneficial ownership to any person with the case-law of the Court of Justice of the European Union. The report has been coordinated with the Ministry of Finance and the Ministry of Economics.

The assessment sets out the analysis and conclusion of the judgment of the Court of Justice of the European Union of 22 November 2022 in joined cases C-37/20 and C601/20 *Luxembourg Business Registers*. An overview of the regulation of the accessibility to registered beneficial ownership information to any person and its objectives, as well as the impact of the aforementioned judgment on it and the subsequent availability of the registered information of beneficial ownership to any person is also provided, assessing the proportionality of the national regulation and the lawfulness of public access to the data of beneficial ownership.

### **Abbreviations used in the report**

**AML IV Directive** - 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 684/2012 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

**AML V Directive** - 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

**Beneficial owner** or **Beneficial ownership** – ultimate beneficial owner

**Charter** - Charter of Fundamental Rights of the European Union

**Constitution** – Constitution of the Republic of Latvia

**Convention** - European Convention for the Protection of Human Rights and Fundamental Freedoms

**Court of Justice** – Court of Justice of the European Union

**Judgment** - Judgment of the Court of Justice of 22 November 2022 in Joined Cases C-37/20 and C601/20 *Luxembourg Business Registers*<sup>2</sup>

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<sup>1</sup> Report was approved by the Cabinet of Ministers on June 13, 2023.

<sup>2</sup> Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62020CJ0037>

**Law on Sanctions** – Law on International Sanctions and National Sanctions of the Republic of Latvia

**Pact** - United Nations International Covenant on Civil and Political Rights

**Prevention Law** – Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing

**Register** – Register of Enterprises of the Republic of Latvia

**UBO** – ultimate beneficial owner

## 1. The judgment

Previously, the AML IV Directive<sup>3</sup> required Member States to ensure that beneficial ownership information is always available to any person or organisation that can demonstrate a legitimate interest. In addition, it is clarified that these persons should have access to at least information on the name, month and year of birth, nationality, country of residence of the beneficial owner and the nature and extent of the beneficial interest held.

The AML V Directive, on the other hand,<sup>4</sup> amended the AML IV Directive, stipulating that the information should be accessible to every member of the public, while maintaining the minimum amount of information to be accessed in the previous amount. The AML V Directive thus established full free access to beneficial ownership information, or UBO, without the need to prove a person's legitimate interest.

On 22 November 2022, the Court of Justice delivered its judgment in a case dealing with the issue of public access to UBO data. The Court of Justice assessed the merits of Article 1(15)(c) of the AML V Directive against the fundamental rights guaranteed by Articles 7 and 8 of the Charter, in so far as it amends point (c) of the first subparagraph of Article 30(5) of the AML IV Directive, or the provisions on universally available access to UBO data.

Article 7 of the Charter provides that everyone has the right to respect for his or her private and family life, home and communications. Article 8 thereof provides that everyone has the right to the protection of personal data concerning him or her; Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or any 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; compliance with these rules shall be subject to control by an independent authority.

Initially, the Judgment found that access to information on UBO by any member of the public constituted a serious interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter and that the restriction was assessed for compliance with the criteria laid down in

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<sup>3</sup> See. Point (c) of the first subparagraph of Article 30(5) and the second subparagraph of Article 30(5) of the AML IV Directive.

<sup>4</sup> See. Article 1(15)(c) of the AML V Directive

Article 52(1) of the Charter<sup>5</sup>.<sup>6</sup> A further analysis of the restrictions showed that the restrictions were imposed in accordance with the principle of legality and that the restrictions did not undermine the essence of the fundamental rights enshrined in Articles 7 and 8 of the Charter.<sup>7</sup>

The Judgment also acknowledges that, by providing access to information on UBO for every member of the public, the legislature intends to prevent money laundering and terrorist financing by creating an environment with greater transparency in which it is less likely to be used for those purposes, which may justify even serious interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter.<sup>8</sup>

In assessing the appropriateness, necessity and proportionality of the restrictions, the Judgment acknowledges that, although access to information on UBO by any member of the public is appropriate to promote an objective of general interest,<sup>9</sup> that measure is not strictly necessary to prevent money laundering and terrorist financing. In the light of the foregoing, the interference with the rights guaranteed by Articles 7 and 8 of the Charter resulting from extensive public access to information on UBO cannot be regarded as being limited to what is strictly necessary.<sup>10</sup>

On the other hand, in assessing the proportionality between the access of every member of the public to information on the UBO and the fundamental rights enshrined in Articles 7 and 8 of the Charter, the Court of Justice concluded:

- firstly, the fight against money laundering and terrorist financing falls primarily within the competence of public authorities and bodies such as credit or financial institutions, which, by virtue of their activities, are subject to specific obligations in this area;
- secondly, a comparison with the system provided for by the AML IV Directive, which, in addition to access by competent authorities and certain bodies, provided for access by any person or organisation capable of demonstrating a legitimate interest, to the system introduced by the AML V Directive, which provides for access by any member of the public to information on UBO, concludes that the AML V Directive system constitutes a significantly more serious infringement of the fundamental rights guaranteed by Articles 7 and 8 of the Charter. At the same time, it is pointed out that this additional gravity does not justify the potential benefits that could result from the latter system in terms of the fight against money laundering and terrorist financing.<sup>11</sup>

Thus, the Judgment held that Article 1(15)(c) of the AML V Directive is invalid, in so far as it amends point (c) of the first subparagraph of Article 30(5) of the AML IV Directive, as regards the continued availability of information on UBO to every member of the public.

In its judgment, the Court of Justice further stated that the abovementioned provision of the AML V Directive must be declared invalid on the ground that an assessment of the absolute

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<sup>5</sup> Article 52(1) of the Charter provides that any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. Having regard to the principle of proportionality, restrictions may be imposed only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

<sup>6</sup> See. See paragraphs 44 and 46 of the judgment.

<sup>7</sup> See. See paragraphs 49 and 54 of the judgment.

<sup>8</sup> See. See paragraph 58 of the judgment.

<sup>9</sup> See. See paragraph 67 of the judgment.

<sup>10</sup> See. See paragraphs 75 and 76 of the judgment.

<sup>11</sup> See. Paragraphs 83 to 85 of the judgment.

necessity of every member of the public in having access to information on the UBO is not sufficient for the purposes in question, namely to prevent money laundering and terrorist financing, and that there is a disproportionate interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter.

The findings made in the Judgment also apply to the Latvian national regulation on the availability of information on UBO. At the same time, it should be noted that, as a result of the Judgment, only those national provisions which have transposed the requirements laid down in Article 1(15)(c) of the AML V Directive must be regarded as incompatible with the case-law of the Court of Justice. It should also be pointed out that the Judgment concerns only the general availability of information, without prejudice to the availability of information about UBO to law enforcement agencies, as well as to subjects of the law, such as credit institutions, and also does not affect the obligation of legal entities to disclose their UBOs.

## **2. The national framework**

The procedures by which information regarding the UBO shall be ascertained, the procedures for the submission thereof in the Register, as well as the procedures for publication are specified in Sections 18.<sup>1</sup> to 18.<sup>3</sup> of the Prevention Law. Those provisions lay down obligations for natural persons who have reason to believe that they have become the UBO of a legal person, obligations for legal persons with regard to the disclosure of their UBO, and rules on the conduct of the Register upon receipt of the application in question. It should be noted that it follows from that legislation that the Register uses a risk-based approach when examining the information submitted to it concerning the UBO in order to ensure adequate, accurate and up-to-date information on the availability of the UBO in the central register.

It should be pointed out that the Judgment does not assess Section 18.<sup>1</sup> to 18.<sup>3</sup> of the Prevention Law, with the exception of the part on public access to UBO data, and therefore does not affect the obligation of legal persons to disclose their UBOs and the obligation to submit that information to the Register.

The Prevention Law,<sup>12</sup> among other things, sets out the legitimate purposes of every person's right to receive information about UBO. It is important to take into account the conclusions of the Judgment that ensuring public scrutiny is not a proportionate objective of restricting the fundamental rights guaranteed by Articles 7 and 8 of the Charter, since it is the responsibility of public authorities or other specifically designated entities. Thus, this report further focuses on the specific objective contained in the regulation of the Prevention Law, which is aimed at ensuring a safe business environment, - to promote trust in transactions carried out by legal entities and foreign entities, and in the financial system, and the business environment as a whole, to protect the rights of other persons and to ensure the availability of information about the UBO of counterparties – legal entities and foreign entities.

At the same time, it should be noted that according to the regulation of the Prevention Law, information about a UBO that has not reached the age of 18 at the time of issuing the information or has limited legal capacity is restricted access information and is not available to everyone.

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<sup>12</sup> See. Paragraph 1 of the Section 18.<sup>3</sup> of the Prevention Law.

It should also be emphasized that public access to information about UBO is necessary in order for every person to be able to comply with the requirements of the Law on Sanctions. In accordance with the second paragraph of Section 2 of the Law on Sanctions, all persons are obliged to comply with and enforce international and national sanctions. In certain cases, such as public procurement procedures as well as public-private partnership procedures, the legislator has imposed an obligation to verify, inter alia, the tenderer's UBO.

Unlike the prevention of money laundering and terrorism and proliferation financing, which, according to the findings of the Judgment, is primarily the task of the competent authorities,<sup>13</sup> all persons are obliged to comply with and enforce international and national sanctions.<sup>14</sup> In addition, Article 84 of the Criminal Law provides for criminal liability for violation of sanctions imposed by the United Nations, the European Union and other international organizations or for violation of national sanctions of the Republic of Latvia.

Access to information on UBO by every member of the public is therefore essential to ensure that sanctions are respected. Taking into account that sanctions are a foreign policy instrument which is used by states and international organisations in order to address threats to international peace, security and the rule of law, it shall be concluded that the fulfilment of the requirements of the Law on Sanctions and compliance with the national and international sanctions binding on Latvia is necessary in order to prevent threats also to the security of Latvia.

### **3. The proportionality and legality of the national rules in the light of the Judgement**

As indicated above, the need for the availability of UBO data in Latvia arises from the Prevention Law and the Law on Sanctions.

A similar provision to the right to respect for private and family life, home and communications, enshrined in Article 7 of the Charter, is contained in Article 96 of the Constitution. It protects everyone's right to respect for private life, home and correspondence, which includes the protection of personal data of natural persons. Similar rights are also contained in Article 8 of the Convention and Article 17 of the Pact.

However, neither the rights enshrined in Article 7 of the Charter, Article 8 of the Convention or Article 17 of the Pact, nor Article 96 of the Constitution are absolute. They may be restricted if the restriction is imposed by law, serves a legitimate purpose and is necessary in a democratic society. Article 52(1) of the Charter requires not only that all restrictions on fundamental rights must be 'laid down by law', but also that they must be implemented in strict compliance with the principle of proportionality. (..) In particular, it does not establish proportionality as a general principle of the European Union, but more specifically as an essential precondition for any restriction of fundamental rights.

The Constitutional Court of the Republic of Latvia has recognised<sup>15</sup> that in order to assess the proportionality of a restriction on a person's fundamental rights, it is necessary to find out: 1) whether the chosen means are suitable for achieving the legitimate objective; 2) whether there are

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<sup>13</sup> See. See paragraph 83 of the judgment.

<sup>14</sup> Section 2, Paragraph two of the Law on Sanctions.

<sup>15</sup> See, for example, paragraph 23 of the Judgment of the Constitutional Court of 30 March 2011 in Case No. 2010-60-01.

less restrictive (more sparing) means of the fundamental rights of persons; 3) whether the benefit that will be obtained by the society is greater than the damage caused to the rights and lawful interests of the individual. The European Court of Human Rights and the UN Human Rights Committee also apply similar criteria in their practice.<sup>16</sup>

Since the rules discussed above are different, including those with different objectives, the assessment of their proportionality and legality in the light of those set out in points 7 and 8 of the Charter must be carried out separately. Given that the Convention and the Pact, in opposition to the Charter and the Constitution, are considered to be the minimum standard, the assessment below is also applicable to the compliance of the regulation with the requirements of the Convention and the Pact.

### *3.1. On the assessment of the proportionality of the objective contained in the Prevention Law*

As indicated above, in the context of compliance with the Judgment, significant attention should be paid to the specific purpose of access to information on UBO contained in the provisions of the Prevention Law. Namely, the objective aimed at ensuring a safe business environment - to promote trust in transactions carried out by legal entities and foreign entities, and in the financial system, and in the business environment as a whole.

#### *Are the means chosen appropriate to achieve the legitimate aim pursued?*

It should be emphasized that money laundering, corruption and fraud often involve complex and opaque corporate ownership structures and are intended to make it difficult for third parties to track cash flows, to hide the persons benefiting from such a structure, and to conceal the true purpose of the transaction or the creation of a legal entity.

On the one hand, the purpose of UBO identification is to make sure that a person knows with whom a business relationship is actually established, thus reducing business risks, while on the other hand, it is a means of promoting trust in transactions carried out by legal entities, the financial system and the business environment as a whole, thereby protecting the rights of others. Therefore, truthful information about UBO, which has been verified by the Register prior to registration, is essential to ensure an open business environment.

The public availability of the UBO information ensures that not only the competent authorities and the subjects of the Prevention Law, but also any person can find out information about legal entities that have not indicated or have incorrectly indicated UBO of the legal entity. In certain cases, this in itself will discourage business relations with such legal entities and, accordingly, motivate legal entities to comply with the obligation to identify and disclose UBO. Thus, the disclosure of information about UBO is appropriate for achieving the legitimate objective of creating trust in the business environment, protecting the rights of others and ensuring the availability of information about the counterparty's – legal entity's and foreign entity's – UBO.

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<sup>16</sup> See general principles such as *Satakunnan Markkinaporssi Oy and Satamedia OY v. Finland* (application No.931/13), judgment of the Grand Chamber of the European Court of Human Rights of 27 June 2017; see general principles, e.g. also *N.K. v. the Netherlands* (application No.2324/2013), opinion of the UN Human Rights Committee of 18 July 2017 regarding the maintenance of the DNA database.

*Are there no less restrictive (more lenient) means of protecting the fundamental rights of individuals?*

A restriction of fundamental rights is necessary in the absence of other means which are equally effective and which, if chosen, would be less restrictive of the fundamental rights of individuals.<sup>17</sup>

In view of the above, it can be concluded that in Latvia everyone is provided with public access to information on UBO in order to achieve a wider range of legitimate objectives, not only to prevent money laundering and terrorism and proliferation financing.

If information on counterparties were not freely available, individuals would lose the desire to verify that information, which in turn would run counter to the essence of a secure business environment. Thus, in order to ensure a safe business environment in Latvia, it is necessary to create such access to information about UBO, which contributes to the full fulfilment of the duties of persons involved in the business environment by carrying out an inspection of their existing or potential cooperation partner. The legitimate objective cannot be achieved by a lesser restriction of the fundamental rights of individuals.

The requirement to indicate a legitimate interest in each request is not a more lenient solution by which the legitimate aim can be achieved with the same quality, as it provides for a wide margin of interpretation of the legitimate interest and of proceedings for refusal to provide information, and no less important circumstance in the business environment is the receipt of the information requested without undue delay, which would take longer compared to that, if such a request for information on the UBO were not to be specifically justified each time. Such obstacles will deter individuals from trying to find out UBO in their daily transactions.

In order to be able to unambiguously identify UBO, it is necessary to process its name, personal identity number. In addition, since in the context of money laundering and terrorism and proliferation financing it is very important to identify existing customer risks and their level when providing information on UBO, information on a person's nationality and country of permanent residence should also be issued. The grounds for data processing and availability are contained in Section 18.<sup>3</sup>(1) of the Prevention Law already mentioned above and the legitimate objectives contained therein.

Also no less important is the public availability of information about the way in which control over the company is exercised. Limiting the availability of the relevant information without reflecting the link with the UBO in question may lead to a misleading result, as it will not be clear through whom the UBO exercises control. The public availability of all information about UBO is essential in the context of the overall objective justifying the public availability of information on UBO. Processing (making publicly available) a smaller number of personal data about UBO, for example, making publicly available only the name of UBO, without specifying information on the way in which control over the company is exercised, would prevent the possibility of obtaining a scope of information about the UBO that would allow the legitimate objectives pursued to be achieved. In view of the above, all information held by the Register regarding UBO is information to which a person has access without the need to prove his or her legitimate interest.

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<sup>17</sup> Paragraph 19 of the Opinion of the Constitutional Court of 13 May 2005 in Case No 2004-18-0106 and paragraph 20.2 of the Judgment of 28 November 2014 in Case No 2014-09-01.

From this it is inferred that rules set in Section 18.<sup>3</sup> of the Prevention Law are necessary for the attainment of legitimate objectives, since that provision has already used all the most lenient means, the choice of which is the least restrictive of the fundamental rights of individuals.

*Does the benefit to society outweigh the damage to the rights and legitimate interests of the individual?*

In assessing whether a restriction complies with the principle of proportionality, it is necessary, above all, to assess the consequences of the means employed by the legislature, that is to say, whether the application of a rule of law does not cause greater damage to the rights and legitimate interests of the individual than is conferred on society. At the same time, it is necessary to assess the impact of such a provision on any person whose interests it offends.<sup>18</sup>

An assessment of the damage caused to natural persons in the event of the publication of information on UBO leads to the conclusion that involvement in commercial activities cannot in itself be regarded as such an essential part of private life. Persons, engaging in open economic activity, registering a merchant, cannot hope and trust that this is information that is not disclosed to other persons or should not come into the possession of other persons. Also, if the data of the participants are disclosed in the generally accessible register, then there is no special legal interest of the UBO not to be indicated in the UBO register. An interest in not revealing one's identity might rather be indicative of the use of a legal entity for illegal purposes.

Although the emphasis in the Judgment and in this explanation is placed on merchants – it is important that information on the UBO of the legal entity is publicly available, regardless of its legal form, because corruption, as the greatest threat to national security and democracy, is able to work equally well in both the business environment and the non-governmental sector.

Corruption and its devastating consequences are discussed not only in Europe but also in other parts of the world, concluding that kleptocracy<sup>19</sup> poses a threat to national interests and violates popular values. It hinders investment in the promotion of freedom and democracy, the eradication of poverty and the fight against international terrorism and crime.<sup>20</sup> Returning to the division of subjects whose UBOs information would or would not be available to, would contribute not only to the already high level of corruption, but also to the legal possibility for disloyal persons of the state to continue to undermine its (state's) foundations and democratic system.

Transparency of institutions at all levels would promote public confidence in public administration, moreover, reduce the risks of corruption both internal and external. Thus, it would be increasingly difficult, if not impossible, for politicians and other persons who may threaten the existence of the state to hide their connection with certain entities,<sup>21</sup> thereby reducing the possibilities of money laundering, unregulated lobbying, and other illegal activities.

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<sup>18</sup> Paragraph 3.1 of the Judgment of the Constitutional Court of 19 March 2002 in Case No. 2001-12-01.

<sup>19</sup> A form of government in which state power belongs to a small group of corrupt people.

<sup>20</sup> "CORRUPTION IN POST-COMMUNIST COUNTRIES" – PRESENTATION OF THE BOOK. Available in: [https://delna.lv/lv/2006/09/05/korupcija\\_postkomunisma\\_valstis\\_gramatas\\_prezentacija/](https://delna.lv/lv/2006/09/05/korupcija_postkomunisma_valstis_gramatas_prezentacija/)

<sup>21</sup> Direct or indirect participation/control arising from kinship relationships, authorizations, etc.

Creating a legitimate opportunity to find out what is behind each legal entity, which is just fiction, contributes not only to the legal business environment, but more importantly to preserve and strengthen democracy and the state system.

### *3.2. On the assessment of the proportionality of the objective included in the Law on Sanctions*

The purpose of the Law on Sanctions is to ensure peace, security and justice in accordance with the international obligations and national interests of Latvia by introducing international sanctions, determining national sanctions, or also applying the sanctions determined by a Member State of the European Union or the North Atlantic Treaty Organisation in the cases specified in this Law. The law on Sanctions applies to all persons, who are obliged to comply with and enforce international and national sanctions.

It should be reiterated that the Law on Sanctions stipulates that everyone has the obligation to make sure that the existing or intended counterparty – the relevant natural or legal person (or their beneficial owners) – has not been subject to international or national sanctions. Consequently, every person must conduct an examination of his or her potential counterparties. This means that information about UBO must be accessed by a very broad section of the public, which includes every member of the public. This also applies to transactions of alienation of capital shares and sanctions on the right of persons to establish legal entities and register business relations.

The Law on Sanctions imposes a number of prohibitions if the connection of existing or intended counterparties with the subject of sanctions is established, for example, a prohibition to cooperate with a legal entity that is subject to sanctions in the property of a natural person. In certain cases, such as public procurement procedures as well as public-private partnership procedures, the legislator has imposed an obligation to verify, inter alia, the tenderer's UBO. In order to ensure the fulfilment of the obligations laid down in the Law on Sanctions, access to UBO information is necessary.

It should be especially emphasized that the Law on Sanctions creates a general framework for the introduction of international sanctions in Latvia, while the attribution and scope of the prohibitions provided for in the Law on Sanctions to specific persons arises from the legal acts of the European Union that determine the restrictive measures of the European Union,<sup>22</sup> or the legal acts of Latvia regarding the imposition of national sanctions.<sup>23</sup> In other words, in order to properly comply with European Union legislation on restrictive measures against certain individuals and to ensure the effectiveness of sanctions, access to UBO information is necessary.

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<sup>22</sup> See, for example, Article 2 of Council Regulation (EU) No 269/2014 of 17 March 2014 *concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*.

<sup>23</sup> See, for example, Cabinet Regulation No. 419 of 25 July 2017, Regulations Regarding the Imposition of National Sanctions in Relation to Subjects Related to the Nuclear Programme and Political Regime Implemented by the Democratic People's Republic of Korea, and Cabinet Orders issued in accordance with these Regulations.

*Are the means chosen appropriate to achieve the legitimate aim pursued?*

The regulatory framework of Latvia in the field of compliance with sanctions provides for a decentralised system for the application of sanctions. This means that there is no single authority responsible for ensuring compliance with the law. Any member of the public shall be obliged not to cooperate with a person subject to sanctions, including a legal person controlled by a person subject to sanctions.

By imposing an obligation on any member of the public to ensure compliance with international and national sanctions, as well as in determining criminal liability for violation of restrictions, the State has a duty to provide the information necessary for the fulfilment of the requirements of the Law on Sanctions. Only full information about the structure of ownership and control of legal entities and UBO provides an opportunity to conduct research on counterparties and make a well-considered decision not to cooperate with a sanctioned person, as well as to ensure that financial and economic resources do not end up at the disposal of sanctioned persons.

Consequently, the disclosure of information on the UBO is appropriate to achieve the legitimate objective of ensuring that financial and economic resources do not fall into the hands of sanctioned persons, as well as to prevent other benefits, while ensuring that the State has made available to the private sector the information necessary to prevent the offence provided for in Article 84 of the Criminal Law.

*Are there no less restrictive (more lenient) means of protecting the fundamental rights of individuals?*

A restriction of fundamental rights is necessary in the absence of other means which are equally effective and which, if chosen, would be less restrictive of the fundamental rights of individuals.<sup>24</sup>

In view of the above, it can be concluded that in Latvia everyone is provided with free public access to information on UBO in order to achieve the objective specified in the Law on Sanctions.

It should be noted that in the context of compliance with the Law on Sanctions, the assessment of less restrictive (more sparing) means coincides with the assessment of the Prevention Law already described above.

If information on counterparties were not freely available, individuals would lose the desire to verify that information, which in turn would run counter to the nature of the sanctions. Thus, in order to ensure the purpose of determining sanctions, it is necessary to create such access to information about the UBO that contributes to the full fulfilment of the obligations of the persons involved by carrying out an inspection of their existing or potential cooperation partner. The legitimate objective cannot be achieved by a lesser restriction of the fundamental rights of individuals.

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<sup>24</sup> Paragraph 19 of the Opinion of the Constitutional Court of 13 May 2005 in Case No 2004-18-0106 and paragraph 20.2 of the Judgment of 28 November 2014 in Case No 2014-09-01.

The requirement to indicate a legitimate interest in each request is not a more lenient solution by which the legitimate aim can be achieved with the same quality, as it provides for a wide margin of interpretation of the legitimate interest and of proceedings for refusal to provide information, and no less important circumstance in the business environment is the receipt of the information requested without undue delay, which would take longer compared to that, if such a request for information on the UBO were not to be specifically justified each time. Such obstacles will deter individuals from trying to find out UBO in their daily transactions.

In addition, it should be pointed out that processing (making publicly available) a smaller number of personal data on UBOs, such as making only the name of UBO publicly available, without providing information on the way in which control over the company is exercised, would prevent the possibility of obtaining a scope of information about the UBO that would allow the legitimate objectives pursued to be achieved. In view of the above, all information held by the Register regarding UBO is information to which a person has access without the need to prove his or her legitimate interest. It has already been explained above that in accordance with the second paragraph of Section 2 of the Law on Sanctions, all persons are obliged to comply with and enforce international and national sanctions, regardless of the field of activity. In turn, violation of international and national sanctions is a criminal offense.

Consequently, it is necessary to ensure that every person has a real and effective opportunity to verify that the obligations of every person arising from the Law on Sanctions are fulfilled, including the identification of natural persons, in order to make sure that they are not subject to the restrictions laid down in the Law on Sanctions,<sup>25</sup> and to properly comply with the restrictions laid down in the relevant legal acts of the European Union.

*Does the benefit to society outweigh the damage to the rights and legitimate interests of the individual?*

The purpose of the Law on Sanctions is to ensure peace, security and the rule of law by creating a mechanism for the implementation of international and national sanctions in Latvia. The disclosure of information on UBO is an essential element in compliance with the sanctions binding on Latvia and achievement of the objective of the Law on Sanctions and the relevant legal acts of the European Union. As mentioned above, sanctions are an instrument to address threats to international peace, security and justice, therefore compliance with the requirements of the Law on Sanctions and compliance with national and international sanctions binding on Latvia is necessary in order to prevent threats also to the security of Latvia.

For these reasons, it is important to ensure that every person can obtain reliable and up-to-date information about, for example, the UBO of an existing or potential cooperation partner, so that each person can comply with the requirements of the Law on Sanctions and European Union legislation on restrictive measures in relation to specific persons. In particular, it is essential to ensure that the verification of UBO is feasible on a case-by-case basis and without undue delay, which could, for example, result from the burden of proof of a legitimate interest.

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<sup>25</sup> Amendments to the Law on the Enterprise Register of the Republic of Latvia annotation. Available in: <https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/3F57600E44951D01C225849000663DA0?OpenDocument>

In the event that circumvention or violation of sanctions has occurred due to the unavailability of information about the UBO, then the consequences are created not only for the participant of the legal transaction, but also for society as a whole, since in fact a favorable situation is created for the person subject to sanctions, who otherwise might not receive the relevant financial resources, goods or services.

Consequently, the availability of information about UBO to any person, without the need to justify his or her legitimate interest, is necessary for the protection of wider interests (public peace, security and justice) and thus proportionate to the restriction of the interests of individuals arising from the fact that information about UBO is available to everyone without the need to prove their legitimate interest.

#### **4. On the availability of the UBO information in the future**

In view of the above, it can be concluded that the restriction of Article 96 of the Constitution, which is caused by the disclosure of information on UBO to the public, is justified by legitimate purposes, is proportionate and conforms to Article 96 of the Constitution and ensures the right to information provided for in Article 100 of the Constitution.

In Latvia, free access to information on UBO is ensured in order to achieve a wider range of legitimate objectives than was assessed in the Judgment, so that the findings expressed in the Judgment would not be directly applicable to the legal situation in Latvia. In addition, the Register opened its public registers before the adoption of the AML V Directive. Easy access to information about UBO ensures a secure transaction environment in Latvia, as well as is necessary for compliance with the requirements specified in the Law on Sanctions.

An assessment of the national framework leads to the conclusion that there is no need to amend it. The task of the Enterprise Register referred to in Section 4, Clause 5.<sup>14</sup> of the Law on the Enterprise Register of the Republic of Latvia shall be related to the technical performance of compliance with the requirements of the Prevention Law and the Law on Sanctions. Thus, it is the provisions included in the Prevention Law and the Law on Sanctions that ensure the legal basis for the availability of UBO information, and making amendments to the Law on the Enterprise Register of the Republic of Latvia could lead to unjustified interpretations regarding new or different purposes of recording UBO information.

In the light of the foregoing, namely, after evaluating the Judgment and the Latvian national regulation, it must be concluded that there are no grounds for changing the previous approach by ensuring the availability of information on UBO to every member of the public without the need to prove his or her legitimate interest.

Minister of Justice

I. Lībiņa-Egnere