

Note to the attention of the CPR Expert Group
on the
collecting of data related to beneficial owners

DISCLAIMER

This information note was prepared by the Commission services and does not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

By [Judgement](#) dated 22 November 2022, the Court of Justice invalidated the provision¹ of the Anti-Money-Laundering Directive whereby Member States must ensure that the registers containing information on the beneficial ownership of corporate and other legal entities incorporated within their territory are accessible in all cases to any member of the general public. The effect of the Judgment is that the initial text of Article 30(5)(c) of Directive 2015/849 is retroactively revived and must be read as it existed before the amendment by Directive 2018/843, i.e. that the information on the beneficial ownership is accessible to any person or organisation that can demonstrate a legitimate interest². The other points of Article 30(5) of the Anti-Money-Laundering Directive were not affected by the Judgment therefore the information on the beneficial ownership can also be accessed, as per Article 30(5)(a), by the competent authorities without any restriction.

The Judgment raised concerns in some Member States in relation to their obligations³ to collect the information on the beneficial owners of the recipients of Union funding in accordance with Annex XVII⁴ of the CPR. A managing authority asked if Member States can still use the data on beneficial owners stored in the registers as referred to in the Anti-Money-Laundering Directive, and if they may store such data in their electronic systems set up under Article 72 of the CPR.

In response to such concerns, the Commission services would like to emphasise that under the terms of the CPR, the managing authority can directly obtain information on beneficial owners “by using the data

¹ Article 1(15)(c) of Directive 2018/843 amending Article 30(5)(c) of Directive 2015/849.

² Following the Judgment, Article 30(5) of Anti-Money-Laundering Directive should be read as follows: “5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:

(a) competent authorities and Financial Intelligence Units, without any restriction;
(b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;
(c) any person or organisation that can demonstrate a legitimate interest.

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

³ As per Article 69(2) and Article 72(1)(e) of Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 (Common Provisions Regulation, ‘CPR’). Regulations are binding in their entirety and directly applicable in all Member States pursuant to Article 288 TFEU.

⁴ Annex XVII (Data to be recorded and stored electronically on each operation), row 3: Information on all beneficial owners of the beneficiary, if any, as defined in Article 3(6) of Directive (EU) 2015/849, namely first name(s) and last names(s), dates(s) of birth and VAT registration number(s) or tax identification number(s); Member States may comply with this requirement by using the data stored in the registers as referred to in Article 30 of Directive (EU) 2015/849, provided a unique identification number is included; row 23b: information on beneficial owners of the contractor, as defined in Article 3(6) of Directive (EU) 2015/849, namely first name(s) and last names(s), dates(s) of birth and VAT registration number(s) or tax identification number(s) of these beneficial owners; Member States may comply with the requirement under point (b) by using the data stored in the registers as referred to in Article 30 of Directive (EU) 2015/849, provided a unique identification number is included therein.

stored in the registers as referred to in Article 30 of Directive (EU) 2015/849, provided a unique identification number is included” (Annex XVII CPR, rows 3 and 23b). Moreover, as the managing authorities have the legal obligation to collect the information on beneficial owners of the recipients of Union funding⁵, they are able to demonstrate a legitimate interest in the understanding of Article 30(5)(c) of the Anti-Money-Laundering Directive. Consequently, they can access the data stored in the registers⁶. Furthermore, depending on the institutional arrangements in the Member State⁷, programme authorities (in particular managing authorities) could be considered competent authorities under Article 30(5)(a) of the Anti-Money-Laundering Directive. Competent authorities have access to the registers in full and without the need to demonstrate a legitimate interest.

As public authorities, the processing of the personal data of the beneficial owner benefits from the presumption of legality under Article 6(1)(e) of GDPR when “processing is necessary for the performance of a task carried out in the public interest” and/or under Article 6(1)(c) of the GDPR when “processing is necessary for compliance with a legal obligation to which the controller is subject”.

Moreover, information on beneficial owners can be obtained directly from beneficiaries as part of their obligations defined in granting arrangements with managing authorities.

It is up to the managing authorities to organise their management and control systems to fulfill the obligation to collect information on the beneficial owners of the recipients of Union funding, ensuring the least possible administrative burden for beneficiaries and validation of any data not coming from central registers under the Anti-Money-Laundering Directive.

The managing authorities are therefore encouraged to contact the authorities in the Member States which handle access to the central registers on beneficial owners and to ensure access as appropriate and a continuous use of the data stored in such registers, in order to comply with their obligations under Articles 69(2), 72(1)(e) and Annex XVII of the CPR.

The Commission services will, as part of their supervision and control activities, require access to and will use data on beneficial owners registered in the electronic systems of the programme authorities.

⁵ As per Articles 69(2), 72(1)(e) and Annex XVII of the CPR.

⁶ Limitation applies under point (c) as to the personal data that are available, pursuant to the second subparagraph of Article 30(5).

⁷ The Directive does not contain a definition of a competent authority and could, depending on the Member State’s institutional set up, therefore be interpreted to include the programme authorities within the meaning of the CPR.