JUDGMENT OF THE COURT (Grand Chamber)

(Reference for a preliminary ruling – Processing of the use of the financial system for the purposes of money laundering or terrorist financing – Directive 2015/849 amending Directive 2005/60 – Directive 2015/849 – Articles 30 first subparagraph, point (c), of Directive 2015/849 – Access by any member of the general public to the information on beneficial ownership – Interpretation – Directive 2009/138/EC – Insurance and reinsurance – Solvency II – Directive 2009/65/EC – Collective investment in transferable securities – Directive 2014/65/EU – Markets in financial instruments)

In joined Cases C-37/20 and C-601/20,

THE REQUESTS for a preliminary ruling under Article 267 TFEU from the tribunal d'arrondissement de Luxembourg (Luxembourg District Court, Luxembourg) made by decisions of 19 January 2020 and 14 October 2020, received at the Court on 20 January 2020 and 19 November 2020 respectively, in the proceedings

WM (C-37/20),

Sovim SA (C-601/20)

Luxembourg Business Registers,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Arabadjiev, A. Prechal, K. Jürimäe, C. Lycourgos, E. Regan, M. Safjan, F.B. Sanchez, L. Bay Larsen, N. Piçarra, A. Prantl, A. Kumin and N. Jarukaitis, Presidents of Chambers,

T. Ware, S. Rodin (Rapporteur), J. Passer, J. Malenovský, L. Bitsias, M. Gavalec, Judges,

Registrar: L. Carrera-Blanco, Administrator,

having regard to the written procedure and further to the hearing on 19 October 2021,

after considering the observations submitted on behalf of:

– WM (C-37/20), represented by S. Lecaillon, avocat,

– Sovim SA (C-601/20), represented by S. Gerstenmaier, avocat,

– the Luxembourg Business Registers, represented by M. Dennewald and T. Uri, acting as Agents,

– the Italian Government, by M. Sugaroni, A. Pucciariello, F. Urbani, acting as Agents,

– the Cyprus Government, by E. Neofytou, acting as Agent,

– the Portuguese Government, by P.T. Cruz Vilaça, J. Ribeiro Tiago, acting as Agents,

– the European Parliament, by S. Ehrbar, G. Kristofersen, M. Martinez Iglesias, acting as Agents,

– the Council of the European Union, by S. Chabot, A. Jalinska, E. Sitbon, B. Driguez, acting as Agents,

– the European Commission, by H.-G. Berger, L. Haelvoet, L. Nicolaes, M. Kennedy, P. Mahl, T. Scharf and H. Tserepa-Lacombe, acting as Agents,

having heard the Opinion of the Advocate General at the sitting on 22 January 2022,

gives the following

Judgment

1 These requests for a preliminary ruling concern, in essence, the validity of Article 1(15)(c) of 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 (OJ 2018 L 156, p. 43, and OJ 2019 L 334, p. 155, Directive 2015/849 as amended by Directive 2018/843, Directive 2015/849 and Directive 2018/843 respectively, or, where it is not clear from the context that it is one or the other of those two directives, the AML Directives), read in conjunction with Article 30 first subparagraph, point (c), of Directive 2015/849 as amended by Directive 2018/843 (Article 30 first subparagraph, point (c), of Directive 2015/849 as amended), read also in conjunction with Directive 2009/138/EC of the European Parliament and of the Council and Commission Delegated Decision (EU) 2015/2450 of 2 December 2015 supplementing Directive 2009/138/EC of the European Parliament and of the Council and laying down implementing technical standards with regard to the presentation of information by insurance and reinsurance undertakings to the supervisory authorities in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ 2015 L 347, p. 132), Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ 2009 L 302, p. 32), Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on the provision of investment services and the performance of investment activities and on the provisions of general law and on the management of such, and repealing Directive 93/22/EC (Council Gold Plated Regulation) (OJ 2014 L 173, p. 1), the GDPR, 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) (OJ 2016 L 119, p. 1), the GDPR).

2 The requests have been lodged in proceedings between, on the one hand, WM (C-37/20) and Sovim SA (C-601/20), and, on the other hand, the Luxembourg Business Registers, concerning the refusal by the latter to provide the general public access to information concerning, first, WM's status as the beneficial owner of a real estate company and, secondly, Sovim's beneficial owners.

Legal framework

European Union law

Directive 2015/849 as amended, and Directive 2009/138/EC

Recitals 30, 31, 37, 38, 39 and 40 of Directive 2018/843 state:

'(30) … It is necessary to further increase the overall transparency of the economic and financial environment of the Union. … The promotion of improving standards and of increasing transparency would contribute to combating the financing of terrorism in a positive way, both by reducing the attractiveness of the Union as a place for committing financial crimes and, as regards many of its entities, by having a further deterrent effect for those who are willing to provide financial services to terrorist organisations. Finally, it would also contribute to the ability of the financial sector to properly fulfil its obligations with regard to the fight against all forms of criminal activity.

(31) In all cases, both with regard to companies and other legal entities, as well as trusts and similar legal arrangements, a fair balance should be sought in particular between the general public interest in the prevention of money laundering and terrorist financing and the fundamental rights of citizens, including the right to data protection. The data to be made available to the competent bodies should be of a sufficient [sic] quantity, be kept up to date and be made available to the competent bodies and to the relevant authorities in the Member States and to the public, in order to allow the public to be able to know the identity of the principal beneficial owners of companies and other legal entities and of trusts and similar legal arrangements and should enjoy convenient forms of access and entry in which the beneficial owners operate. …

(38) Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to provide for exemptions to the disclosure of information on the beneficial ownership and to the access to information on beneficial ownership in exceptional circumstances, where the beneficial owner would be subject to a disproportionate risk of fraud, kidnapping, blackmail, violence or intimidation. It should be possible for natural persons for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information on beneficial ownership.

(39) The GDPR applies to the processing of personal data under this Directive. As a consequence, natural persons whose personal data are held in national registries as beneficial owners should be informed about the rules relating to the processing of their personal data. Only the data of a sufficient [sic] quantity of personal data for the purpose of the fight against money laundering should be informed about their rights under the current Union legal data protection framework, … and the procedures applicable for exercising those rights. In addition, to protect the rights in question of the general public to access information on the beneficial ownership of legal entities and legal arrangements, the scope of the data made available by means of the national registries should be limited to personal identification data of the beneficial owners and their country of residence.

(40) Article 11 of Directive 2015/849 as amended provides:

'Member States shall ensure that the information held in the national registries mentioned in Article 30 and in national registries of trusts and other legal arrangements of a similar nature shall be made available to any person or organisation that can demonstrate a legitimate interest.'

Article 30 of Directive 2015/849 as amended provides:

'(1) … Member States shall ensure that companies and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.

… Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State …

In the version prior to the entry into force of Directive (EU) 2018/843, Article 30(5) of Directive 2015/849 was worded 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.

… Member States may provide for exemptions to the access referred to in points (b) and (c) of paragraph 5 on a case-by-case basis in exceptional circumstances, where the beneficial owner is subject to the risk of disproportionate administrative burdens, risks to personal data or risk of being subject to criminal offence, or where the beneficial owner is a minor or otherwise incapacitated.

… In exceptional circumstances to be laid down in national law, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, violence or intimidation or where the beneficial owner is a minor or otherwise incapacitated, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. It shall be possible to request the right of exemption laid down in this subparagraph if only that the information on the beneficial ownership is not accessible to third parties.

The rights to request exemption in accordance with this subparagraph shall not apply to obliged entities, within the framework of Chapter II, or to entities in charge of carrying out a business involving the receipt of cash from third parties, to the extent that those entities are located in a Member State.

… In exceptional circumstances to be laid down in national law, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, violence or intimidation or where the beneficial owner is a minor or otherwise incapacitated, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. It shall be possible to request the right of exemption laid down in this subparagraph if only that the information on the beneficial ownership is not accessible to third parties.

The rights to request exemption in accordance with this subparagraph shall not apply to obliged entities, within the framework of Chapter II, or to entities in charge of carrying out a business involving the receipt of cash from third parties, to the extent that those entities are located in a Member State.

(6) … 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, in accordance with a request to access information.'

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

… In exceptional circumstances to be laid down in national law, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, violence or intimidation or where the beneficial owner is a minor or otherwise incapacitated, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. It shall be possible to request the right of exemption laid down in this subparagraph if only that the information on the beneficial ownership is not accessible to third parties.

The rights to request exemption in accordance with this subparagraph shall not apply to obliged entities, within the framework of Chapter II, or to entities in charge of carrying out a business involving the receipt of cash from third parties, to the extent that those entities are located in a Member State.

(7) The competent authorities referred to in paragraph 1 shall be those public bodies with designated responsibilities for combating money laundering or terrorist financing, as well as the tax authorities, financial intelligence units, and bodies that have the duty to pursue investigations or have the ability to attach, seize or confiscate assets in accordance with national law, when they are competent to carry out investigations or to provide information to be used in investigations, as well as asset recovery offices, public prosecutors, where they are competent to carry out investigations in accordance with national law, and administrative bodies with a designated supervisory competence.

(8) Obliged entities shall be the following:

(a) credit institutions;

(b) financial institutions;

(c) the following natural or legal persons when acting in the exercise of their professional activities:

(1) auditors, external accountants and tax advisors;

(2) notaries and other independent legal professionals, when they participate, whether by acting on behalf of their client and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the buying and selling of real estate or business entities; …

(3) trust or company service providers;

(4) estate agents;

(5) other persons trading in goods, to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(6) providers of exchange services between virtual currencies and fiat currencies;

(7) providers of custodian wallets;

(8) persons who store or trade in works of art, when this is carried out by free ports, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(9) persons who trade in or, where applicable, act as intermediaries in the trade in works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(10) persons who store, trade in or act as intermediaries in the trade in works of art when this is carried out within free zones and warehouses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(11) providers of services of exchange between virtual currencies and fiat currencies;

(12) providers of custodian wallets;

(13) persons who trade in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked, provided that the obliged entities covered by points (a) to (c) of Article 2(1) of Directive 2013/36/EU are also subject to anti-money laundering and counter-terrorist financing obligations and are subject to effective implementation of those obligations;

(14) providers of services of exchange between virtual currencies and fiat currencies, providers of custodian wallets, persons who trade in goods or act as intermediaries in the trade in works of art, including when this is carried out by art galleries and auction houses, when they are established in free zones and warehouses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more.

(15) Except for recognised non-profit organisations, companies referred to in Article 29 of Directive 2013/34/EU are required to register additional information on their financial accounts in central registries in accordance with Directive 2013/34/EU, such as information on financial accounts of small companies and branches opened in a Member State other than that of their registered office. In order to avoid the risk of abuse through the provision of information on beneficial ownership of companies and other legal entities, information on beneficial ownership should be made available through central registries in accordance with EU law. The national bodies in charge of central registries should also be considered as obliged entities for the purpose of sharing the information on beneficial ownership of companies and other legal entities when they are performing customer due diligence in accordance with the provisions of this Directive. The access by obliged entities within the framework of customer due diligence should be a matter for those obliged entities in accordance with the provisions of Chapter II of this Directive. Member States should ensure that other obliged entities gain access to information on the grounds of their obligations in accordance with this Directive and with the provisions of Chapter II of Directive 2013/36/EU, Directive 2009/138/EC, Directive 2014/65/EU, Directive (EU) 2015/849, Directive 2009/65/EC, Directive 2011/61/EU, Directive 2014/59/EU and Directive 2014/92/EU as they apply to prudential supervision of credit institutions and investment firms, insurance and reinsurance undertakings and collective investment undertakings in relation to the exercise of their customer due diligence obligations under those legal acts.

(16) Enhanced transparency of the financial market should be ensured by allowing the access to information on beneficial ownership by entities, including by means of civil society organisations, and contributing to a better implementation of the relevant legislation on the fight against the misuse of the financial system for the purpose of money laundering or terrorist financing, and preventing crimes. Enhancing the scrutiny of the financial market should contribute to the fight against terrorist financing in a positive way. Providing a balanced and proportionate approach to the increasing technical arrangements should also contribute to the transparency and legal certainty that are necessary to protect the rights of third parties against fraudulent conveyance, misrepresentation and concealment. The proposal should also contribute to the provision of reliable and comparable data on the identity of beneficial owners of companies and other legal entities and of trusts and similar legal arrangements. The data made available should be made available to the competent authorities and to the relevant authorities in the Member States and to the public, in order to allow the public to be able to know the identity of the principal beneficial owners of companies and other legal entities and of trusts and similar legal arrangements and should enjoy convenient forms of access and entry in which the beneficial owners operate. …

(37) Confidence in financial markets from investors and the general public regards, in part, the existence of an accurate disclosure regime that provides transparency in the ownership structures of companies that are active on the markets. Member States should therefore allow access to information on their beneficial ownership regime to any part of the general public in order to allow third parties to be able to ascertain the identity of the beneficial owners of companies and other legal entities and of trusts and similar legal arrangements and should enjoy convenient forms of access and entry in which the beneficial owners operate. …

(38) Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to provide for exemptions to the disclosure of information on the beneficial ownership and to the access to information on beneficial ownership in exceptional circumstances, where the beneficial owner would be subject to a disproportionate risk of fraud, kidnapping, blackmail, violence or intimidation. It should be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information on beneficial ownership.

(39) The GDPR applies to the processing of personal data under this Directive. As a consequence, natural persons whose personal data are held in national registries as beneficial owners should be informed about the rules relating to the processing of their personal data. Only the data of a sufficient [sic] quantity of personal data for the purpose of the fight against money laundering should be informed about their rights under the current Union legal data protection framework, … and the procedures applicable for exercising those rights. In addition, to protect the rights in question of the general public to access information on the beneficial ownership of legal entities and legal arrangements, the scope of the data made available by means of the national registries should be limited to personal identification data of the beneficial owners and their country of residence.

(40) Article 11 of Directive 2015/849 as amended provides:

'Member States shall ensure that the information held in the national registries mentioned in Article 30 and in national registries of trusts and other legal arrangements of a similar nature shall be made available to any person or organisation that can demonstrate a legitimate interest.'

Article 30 of Directive 2015/849 as amended provides:

'(1) … Member States shall ensure that companies and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.

… Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State …

In the version prior to the entry into force of Directive (EU) 2018/843, Article 30(5) of Directive 2015/849 was worded 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 referred to in point (c) shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.

Member States may, under conditions to be determined in national law, provide for access to additional information enabling the identification of the beneficial owner. That additional information should include at least the date of birth of the beneficial owner in accordance with data protection rules.

… Member States may choose to make the information held in their national registries referred to in paragraph 5 available on the condition of online registration and the payment of a fee, which should not exceed the administrative costs of providing the information including costs of maintenance and development of the registry.

… In exceptional circumstances to be laid down in national law, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, violence or intimidation or where the beneficial owner is a minor or otherwise incapacitated, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. It shall be possible to request the right of exemption laid down in this subparagraph if only that the information on the beneficial ownership is not accessible to third parties.

The rights to request exemption in accordance with this subparagraph shall not apply to obliged entities, within the framework of Chapter II, or to entities in charge of carrying out a business involving the receipt of cash from third parties, to the extent that those entities are located in a Member State.

(6) … 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, in accordance with a request to access information.'

Article 1(15)(c) of Directive 2018/843 amended paragraph 5 of Article 30 of Directive 2015/849 as follows:

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(a) competent authorities and financial intelligence units, without any restriction;

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The persons 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.

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The rights to request exemption in accordance with this subparagraph shall not apply to obliged entities, within the framework of Chapter II, or to entities in charge of carrying out a business involving the receipt of cash from third parties, to the extent that those entities are located in a Member State.

(7) The competent authorities referred to in paragraph 1 shall be those public bodies with designated responsibilities for combating money laundering or terrorist financing, as well as the tax authorities, financial intelligence units, and bodies that have the duty to pursue investigations or have the ability to attach, seize or confiscate assets in accordance with national law, when they are competent to carry out investigations or to provide information to be used in investigations, as well as asset recovery offices, public prosecutors, where they are competent to carry out investigations in accordance with national law, and administrative bodies with a designated supervisory competence.

(8) Obliged entities shall be the following:

(a) credit institutions;

(b) financial institutions;

(c) the following natural or legal persons when acting in the exercise of their professional activities:

(1) auditors, external accountants and tax advisors;

(2) notaries and other independent legal professionals, when they participate, whether by acting on behalf of their client and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the buying and selling of real estate or business entities; …

(3) trust or company service providers;

(4) estate agents;

(5) other persons trading in goods, to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(6) providers of exchange services between virtual currencies and fiat currencies;

(7) providers of custodian wallets;

(8) persons who store or trade in works of art, when this is carried out by free ports, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(9) persons who trade in or, where applicable, act as intermediaries in the trade in works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(10) persons who store, trade in or act as intermediaries in the trade in works of art when this is carried out within free zones and warehouses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(11) providers of services of exchange between virtual currencies and fiat currencies;

(12) providers of custodian wallets;

(13) persons who trade in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked, provided that the obliged entities covered by points (a) to (c) of Article 2(1) of Directive 2013/36/EU are also subject to anti-money laundering and counter-terrorist financing obligations and are subject to effective implementation of those obligations;

(14) providers of services of exchange between virtual currencies and fiat currencies, providers of custodian wallets, persons who trade in goods or act as intermediaries in the trade in works of art, including when this is carried out by art galleries and auction houses, when they are established in free zones and warehouses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more.

(15) Except for recognised non-profit organisations, companies referred to in Article 29 of Directive 2013/34/EU are required to register additional information on their financial accounts in central registries in accordance with Directive 2013/34/EU, such as information on financial accounts of small companies and branches opened in a Member State other than that of their registered office. In order to avoid the risk of abuse through the provision of information on beneficial ownership of companies and other legal entities, information on beneficial ownership should be made available through central registries in accordance with EU law. The national bodies in charge of central registries should also be considered as obliged entities for the purpose of sharing the information on beneficial ownership of companies and other legal entities when they are performing customer due diligence in accordance with the provisions of this Directive. The access by obliged entities within the framework of customer due diligence should be a matter for those obliged entities in accordance with the provisions of Chapter II of this Directive. Member States should ensure that other obliged entities gain access to information on the grounds of their obligations in accordance with this Directive and with the provisions of Chapter II of Directive 2013/36/EU, Directive 2009/138/EC, Directive 2014/65/EU, Directive (EU) 2015/849, Directive 2009/65/EC, Directive 2011/61/EU, Directive 2014/59/EU and Directive 2014/92/EU as they apply to prudential supervision of credit institutions and investment firms, insurance and reinsurance undertakings and collective investment undertakings in relation to the exercise of their customer due diligence obligations under those legal acts.

(16) Enhanced transparency of the financial market should be ensured by allowing the access to information on beneficial ownership by entities, including by means of civil society organisations, and contributing to a better implementation of the relevant legislation on the fight against the misuse of the financial system for the purpose of money laundering or terrorist financing, and preventing crimes. Enhancing the scrutiny of the financial market should contribute to the fight against terrorist financing in a positive way. Providing a balanced and proportionate approach to the increasing technical arrangements should also contribute to the transparency and legal certainty that are necessary to protect the rights of third parties against fraudulent conveyance, misrepresentation and concealment. The proposal should also contribute to the provision of reliable and comparable data on the identity of beneficial owners of companies and other legal entities and of trusts and similar legal arrangements. The data made available should be made available to the competent authorities and to the relevant authorities in the Member States and to the public, in order to allow the public to be able to know the identity of the principal beneficial owners of companies and other legal entities and of trusts and similar legal arrangements and should enjoy convenient forms of access and entry in which the beneficial owners operate. …

(37) Confidence in financial markets from investors and the general public regards, in part, the existence of an accurate disclosure regime that provides transparency in the ownership structures of companies that are active on the markets. Member States should therefore allow access to information on their beneficial ownership regime to any part of the general public in order to allow third parties to be able to ascertain the identity of the beneficial owners of companies and other legal entities and of trusts and similar legal arrangements and should enjoy convenient forms of access and entry in which the beneficial owners operate. …

(38) Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to provide for exemptions to the disclosure of information on the beneficial ownership and to the access to information on beneficial ownership in exceptional circumstances, where the beneficial owner would be subject to a disproportionate risk of fraud, kidnapping, blackmail, violence or intimidation. It should be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information on beneficial ownership.

(39) The GDPR applies to the processing of personal data under this Directive. As a consequence, natural persons whose personal data are held in national registries as beneficial owners should be informed about the rules relating to the processing of their personal data. Only the data of a sufficient [sic] quantity of personal data for the purpose of the fight against money laundering should be informed about their rights under the current Union legal data protection framework, … and the procedures applicable for exercising those rights. In addition, to protect the rights in question of the general public to access information on the beneficial ownership of legal entities and legal arrangements, the scope of the data made available by means of the national registries should be limited to personal identification data of the beneficial owners and their country of residence.

(40) Article 11 of Directive 2015/849 as amended provides:

'Member States shall ensure that the information held in the national registries mentioned in Article 30 and in national registries of trusts and other legal arrangements of a similar nature shall be made available to any person or organisation that can demonstrate a legitimate interest.'

Article 30 of Directive 2015/849 as amended provides:

'(1) … Member States shall ensure that companies and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.

… Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State …

In the version prior to the entry into force of Directive (EU) 2018/843, Article 30(5) of Directive 2015/849 was worded 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.

… Member States may choose to make the information held in their national registries referred to in paragraph 5 available on the condition of online registration and the payment of a fee, which should not exceed the administrative costs of providing the information including costs of maintenance and development of the registry.

… In exceptional circumstances to be laid down in national law, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, violence or intimidation or where the beneficial owner is a minor or otherwise incapacitated, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. It shall be possible to request the right of exemption laid down in this subparagraph if only that the information on the beneficial ownership is not accessible to third parties.

The rights to request exemption in accordance with this subparagraph shall not apply to obliged entities, within the framework of Chapter II, or to entities in charge of carrying out a business involving the receipt of cash from third parties, to the extent that those entities are located in a Member State.

(6) … 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, in accordance with a request to access information.'

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

… In exceptional circumstances to be laid down in national law, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, violence or intimidation or where the beneficial owner is a minor or otherwise incapacitated, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. It shall be possible to request the right of exemption laid down in this subparagraph if only that the information on the beneficial ownership is not accessible to third parties.

The rights to request exemption in accordance with this subparagraph shall not apply to obliged entities, within the framework of Chapter II, or to entities in charge of carrying out a business involving the receipt of cash from third parties, to the extent that those entities are located in a Member State.

(7) The competent authorities referred to in paragraph 1 shall be those public bodies with designated responsibilities for combating money laundering or terrorist financing, as well as the tax authorities, financial intelligence units, and bodies that have the duty to pursue investigations or have the ability to attach, seize or confiscate assets in accordance with national law, when they are competent to carry out investigations or to provide information to be used in investigations, as well as asset recovery offices, public prosecutors, where they are competent to carry out investigations in accordance with national law, and administrative bodies with a designated supervisory competence.

(8) Obliged entities shall be the following:

(a) credit institutions;

(b) financial institutions;

(c) the following natural or legal persons when acting in the exercise of their professional activities:

(1) auditors, external accountants and tax advisors;

(2) notaries and other independent legal professionals, when they participate, whether by acting on behalf of their client and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the buying and selling of real estate or business entities; …

(3) trust or company service providers;

(4) estate agents;

(5) other persons trading in goods, to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(6) providers of exchange services between virtual currencies and fiat currencies;

(7) providers of custodian wallets;

(8) persons who store or trade in works of art, when this is carried out by free ports, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(9) persons who trade in or, where applicable, act as intermediaries in the trade in works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(10) persons who store, trade in or act as intermediaries in the trade in works of art when this is carried out within free zones and warehouses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more;

(11) providers of services of exchange between virtual currencies and fiat currencies;

(12) providers of custodian wallets;

(13) persons who trade in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked, provided that the obliged entities covered by points (a) to (c) of Article 2(1) of Directive 2013/36/EU are also subject to anti-money laundering and counter-terrorist financing obligations and are subject to effective implementation of those obligations;

(14) providers of services of exchange between virtual currencies and fiat currencies, providers of custodian wallets, persons who trade in goods or act as intermediaries in the trade in works of art, including when this is carried out by art galleries and auction houses, when they are established in free zones and warehouses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more.

(15) Except for recognised non-profit organisations, companies referred to in Article 29 of Directive 2013/34/EU are required to register additional information on their financial accounts in central registries in accordance with Directive 2013/34/EU, such as information on financial accounts of small companies and branches opened in a Member State other than that of their registered office. In order to avoid the risk of abuse through the provision of information on beneficial ownership of companies and other legal entities, information on beneficial ownership should be made available through central registries in accordance with EU law. The national bodies in charge of central registries should also be considered as obliged entities for the purpose of sharing the information on beneficial ownership of companies and other legal entities when they are performing customer due diligence in accordance with the provisions of this Directive. The access by obliged entities within the framework of customer due diligence should be a matter for those obliged entities in accordance with the provisions of Chapter II of this Directive. Member States should ensure that other obliged entities gain access to information on the grounds of their obligations in accordance with this Directive and with the provisions of Chapter II of Directive 2013/36/EU, Directive 2009/138/EC, Directive 2014/65/EU, Directive (EU) 2015/849, Directive 2009/65/EC, Directive 2011/61/EU, Directive 2014/59/EU and Directive 2014/92/EU as they apply to prudential supervision of credit institutions and investment firms, insurance and reinsurance undertakings and collective investment undertakings in relation to the exercise of their customer due diligence obligations under those legal acts.

(16) Enhanced transparency of the financial market should be ensured by allowing the access to information on beneficial ownership by entities, including by means of civil society organisations, and contributing to a better implementation of the relevant legislation on the fight against the misuse of the financial system for the purpose of money laundering or terrorist financing, and preventing crimes. Enhancing the scrutiny of the financial market should contribute to the fight against terrorist financing in a positive way. Providing a balanced and proportionate approach to the increasing technical arrangements should also contribute to the transparency and legal certainty that are necessary to protect the rights of third parties against fraudulent conveyance, misrepresentation and concealment. The proposal should also contribute to the provision of reliable and comparable data on the identity of beneficial owners of companies and other legal entities and of trusts and similar legal arrangements. The data made available should be made available to the competent authorities and to the relevant authorities in the Member States and to the public, in order to allow the public to be able to know the identity of the principal beneficial owners of companies and other legal entities and of trusts and similar legal arrangements and should enjoy convenient forms of access and entry in which the beneficial owners operate. …

(37) Confidence in financial markets from investors and the general public regards, in part, the existence of an accurate disclosure regime that provides transparency in the ownership structures of companies that are active on the markets. Member States should therefore allow access to information on their beneficial ownership regime to any part of the general public in order to allow third parties to be able to ascertain the identity of the beneficial owners of companies and other legal entities and of trusts and similar legal arrangements and should enjoy convenient forms of access and entry in which the beneficial owners operate. …

(38) Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to provide for exemptions to the disclosure of information on the beneficial ownership and to the access to information on beneficial ownership in exceptional circumstances, where the beneficial owner would be subject to a disproportionate risk of fraud, kidnapping, blackmail, violence or intimidation. It should be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information on beneficial ownership.

(39) The GDPR applies to the processing of personal data under this Directive. As a consequence, natural persons whose personal data are held in national registries as beneficial owners should be informed about the rules relating to the processing of their personal data. Only the data of a sufficient [sic] quantity of personal data for the purpose of the fight against money laundering should be informed about their rights under the current Union legal data protection framework, … and the procedures applicable for exercising those rights. In addition, to protect the rights in question of the general public to access information on the beneficial ownership of legal entities and legal arrangements, the scope of the data made available by means of the national registries should be limited to personal identification data of the beneficial owners and their country of residence.

(40) Article 11 of Directive 2015/849 as amended provides:

'Member States shall ensure that the information held in the national registries mentioned in Article 30 and in national registries of trusts and other legal arrangements of a similar nature shall be made available to any person or organisation that can demonstrate a legitimate interest.'

Article 30 of Directive 2015/849 as amended provides:

'(1) … Member States shall ensure that companies and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.

… Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State …

In the version prior to the entry into force of Directive (EU) 2018/843, Article 30(5) of Direct

Siochana and Others, C-140/20, EU:C:2022:258, paragraph 84).

73 Moreover, nor can the effects relied on and the reference made, in that context, to the explanations set out in recital 30 of Directive 2018/843 establish that the interference at issue is strictly necessary.

74 To the extent that that recital states that the general public's access to beneficial ownership information allows greater scrutiny of information by civil society, and that express reference is made in that regard to the press and to civil society organisations, it should be found that both the press and civil society organisations that are connected with the prevention and combating of money laundering and terrorist financing have a legitimate interest in accessing information on beneficial ownership. The same is true of the persons, also mentioned in that recital, who wish to know the identity of the beneficial owners of a company or other legal entity because they are likely to enter into transactions with them, or of the financial institutions and authorities involved in combating offences of money laundering or terrorist financing, in so far as those entities do not already have access to the information in question on the basis of points (a) and (b) of the first subparagraph of Article 30(5) of Directive 2015/849 as amended.

75 Moreover, although it is stated in recital 30 of Directive 2018/843 that the general public's access to information on beneficial ownership 'can contribute' to combating the misuse of corporate and other legal entities and that it 'would also help' criminal investigations, it must be found that such considerations are also not such as to demonstrate that that measure is strictly necessary to prevent money laundering and terrorist financing.

76 In the light of the foregoing, it cannot be considered that the interference with the rights guaranteed in Articles 7 and 8 of the Charter, which results from the general public's access to information on beneficial ownership, is limited to what is strictly necessary.

77 In the third place, as regards the factors put forward to establish that the interference at issue is proportionate, in that, in particular, the general public's access to information on beneficial ownership, provided for in Article 30(5) of Directive 2015/849 as amended, is based on a proper balance between, on the one hand, the objective of general interest pursued and, on the other, the fundamental rights at issue, and that there are sufficient safeguards against the risks of abuse, the following points must be made.

78 First of all, the Commission contends that, as is apparent from recital 34 of Directive 2018/843, the EU legislature took care to specify that the set of data made available to the public must be limited, clearly and exhaustively defined, and must be of a general nature, so as to minimise the potential prejudice to beneficial owners. It is in that context that, on the basis of Article 30(5) of Directive 2015/849 as amended, only data strictly necessary to identify the beneficial owners and the nature and extent of their interests would be accessible to the public.

79 Next, the Parliament, the Council and the Commission state that the principle that the general public should have access to information on beneficial ownership may be derogated from, since Article 30(9) of Directive 2015/849 as amended provides that in 'exceptional circumstances', 'Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis' where the general public's access to that information 'would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable'.

80 Lastly, both the Parliament and the Commission observe that, as is apparent from Article 30(5a) of Directive 2015/849 as amended, read in conjunction with recital 36 of Directive 2018/843, Member States may make the information on beneficial ownership available on condition of online registration in order to identify the person requesting that information. In addition, in accordance with recital 38 of Directive 2018/843, in order to prevent the abuse of the information on beneficial ownership, Member States might make information relating to the requesting person along with the legal basis for their request available to the beneficial owner.

81 In that regard, it should be noted that, as recalled in paragraph 51 above, the second subparagraph of Article 30(5) of Directive 2015/849 as amended provides that any member of the general public is to be permitted to access 'at least' the data referred to in that provision, and the third subparagraph of Article 30(5) adds that Member States may provide for access to 'additional information enabling the identification of the beneficial owner', which includes 'at least' the date of birth or the contact details of the beneficial owner concerned.

82 However, it is apparent from the use of the expression 'at least' that those provisions allow for data to be made available to the public which are not sufficiently defined and identifiable. Consequently, the substantive rules governing interference with the rights guaranteed in Articles 7 and 8 of the Charter do not meet the requirement of clarity and precision recalled in paragraph 65 above (see, by analogy, Opinion 1/15 *(EU-Canada PNR Agreement)* of 26 July 2017, EU:C:2017:592, paragraph 160).

83 Furthermore, as regards the balancing of the seriousness of that interference, identified in paragraphs 41 to 44 above, against the importance of the objective of general interest of preventing money laundering and terrorist financing, it must be held that although in view of its importance that objective is, as found in paragraph 59 above, capable of justifying even serious interferences with the fundamental rights enshrined in Articles 7 and 8 of the Charter, the fact remains that, first, combating money laundering and terrorist financing is as a priority a matter for the public authorities and for entities such as credit or financial institutions which, by reason of their activities, are subject to specific obligations in that regard.

84 Indeed, it is for that reason that points (a) and (b) of the first subparagraph of Article 30(5) of Directive 2015/849 as amended provide that information on beneficial ownership must be accessible, in all cases, to competent authorities and Financial Intelligence Units, without any restriction, as well as to obliged entities, within the framework of customer due diligence.

85 Secondly, in comparison with a regime such as that laid down in the version of Article 30(5) of Directive 2015/849 prior to the entry into force of Directive 2018/843 – which provided, in addition to access by the competent authorities and certain entities, for access by any person or organisation capable of demonstrating a legitimate interest – the regime introduced by Directive 2018/843, providing for the general public's access to information on beneficial ownership, amounts to a considerably more serious interference with the fundamental rights guaranteed in Articles 7 and 8 of the Charter, without that increased interference being capable of being offset by any benefits which might result from the latter regime as compared against the former regime, in terms of combating money laundering and terrorist financing (see, by analogy, judgment of 1 August 2022, *Vyriausioji tarnybinės etikos komisija*, C-184/20, EU:C:2022:601, paragraph 112).

86 In those circumstances, the optional provisions of Article 30(5a) and (9) of Directive 2015/849 as amended, which allow Member States to make information on beneficial ownership available on condition of online registration and to provide, in exceptional circumstances, for an exemption from access to that information by the general public, respectively, are not, in themselves, capable of demonstrating either a proper balance between the objective of general interest pursued and the fundamental rights enshrined in Articles 7 and 8 of the Charter, or the existence of sufficient safeguards enabling data subjects to protect their personal data effectively against the risks of abuse.

87 Moreover, the Commission's reference to the judgment of 9 March 2017, *Manni* (C-398/15, EU:C:2017:197), – concerning compulsory disclosure by companies, including of their representatives in legal proceedings, provided for in First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ 1968 L 65, p. 8), as amended by Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 (OJ 2003 L 221, p. 13) – is irrelevant in that context. Indeed, the compulsory disclosure provided for by that directive, on the one hand, and the general public's access to information on beneficial ownership, provided for by Directive 2015/849 as amended, on the other, differ both in their respective purposes and in their scope in terms of the personal data covered.

88 In the light of all the foregoing considerations, the answer to the first question referred in Case C-601/20 is that Article 1(15)(c) of Directive 2018/843 is invalid in so far as it amended point (c) of the first subparagraph of Article 30(5) of Directive 2015/849 in such a way that point (c), as thus amended, provides that Member States must ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory is accessible in all cases to any member of the general public.

The second and third questions referred in Case C-601/20 and the questions referred in Case C-37/20

89 The second question referred in Case C-601/20 and the questions referred in Case C-37/20 are based on the premiss that Article 30(5) of Directive 2015/849 as amended is valid, in so far as it provides for public access to information on beneficial ownership.

90 However, in view of the answer to the first question referred in Case C-601/20, there is no need to examine those questions.

91 Furthermore, in the light of that same answer, there is also no need to adjudicate on the third question referred in Case C-601/20.

Costs

92 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 1(15)(c) of 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, is invalid in so far as it amended point (c) of the first subparagraph of Article 30(5) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, in such a way that point (c) of the first subparagraph of Article 30(5), as thus amended, provides that Member States must ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory is accessible in all cases to any member of the general public.

[Signatures]

* Language of the case: French.