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Beneficial owners register is operational (again): TAR rejects appeals

The Register of beneficial owners (the '**Register**') is operational (again).

As you will recall, the Administrative Court of Lazio (TAR) by Order No. 8083 of 7 December 2023 suspended, as a precautionary measure, the MIMIT decree of 29 September 2023 and consequently the obligation to notify the beneficial owner to the Register.

The Administrative Court of Lazio (TAR) has now dismissed as unfounded the appeals filed by trust companies seeking the annulment of the MIMIT decree of 29 September 2023, which ordered the implementation of the beneficial ownership disclosure system, as well as the annulment of the other related ministerial decrees (see Administrative Court of Lazio, Section IV, Rulings Nos. 6837, 6839, 6840, 6841, 6844, 6845 of 9 April 2024).

a. Immediate obligations

Joint-stock companies, limited liability companies, limited partnerships limited by shares, cooperative companies, private legal entities, trustees of *trusts* or similar legal arrangements (including the "*mandati fiduciari*" - fiduciary agreements) that have not yet communicated the data relating to their beneficial owners to the Register must do so immediately.

b. Subsequent obligations

Any subsequent **change of** beneficial owner(s) must be notified within 30 days of the act giving rise to the change. In addition, the beneficial ownership information must be **confirmed** annually, within 12 months from the date of the first disclosure or the last disclosure of the change or confirmation. For undertakings with legal personality, the obligation to confirm the data may be fulfilled at the same time as the filing of the annual balance sheet.

The "*mandato fiduciario*" (fiduciary agreement)

In their appeals, the appellants complained, *inter alia*, of the unlawful inclusion of the "*mandato fiduciario*" (fiduciary agreement) amongst the "similar legal arrangements" to a *trust* and, consequently, of the obligation to disclose the data of beneficial owner(s) also in such cases.

The Administrative Court of Lazio (TAR) points out that such arrangements merely confer formal legal ownership of the assets within the scope of the mandate and the legal capacity to exercise rights normally belonging to the owner to an entity other than the owner himself (the "*società fiduciaria*").

Therefore, the "*società fiduciaria*", acting in its own name and without using the name of the "*fiduciante*", under a specific mandate without power of representation, appears to third parties as the sole owner, while the ultimate beneficial owner remains the "*fiduciante*". In this context, the Administrative Court of Lazio (TAR) has highlighted that these circumstances represent *the situation of opacity which the European legislation seeks to fight*, and that it is therefore correct to assume that the "*mandato fiduciario*" is a trust-like arrangement.

Access to the Register: the public and the "legitimate interest" (*i.e.*, significant and differentiated legal interest)

Regarding access to the Register by the "public", in light of the ruling of the Court of Justice of the European Union of 22 November 2022 ("**CJEU 2022**") and pending the legislative intervention necessary to fully implement the ruling, it was reasonable to consider that access to the data on the beneficial owner(s) of companies and

private legal entities should be limited only to persons with a significant and differentiated legal interest (cf. preamble to MIMIT Decree – “*Approvazione delle specifiche tecniche del formato elettronico della comunicazione unica d’impresa*”, 12 April 2023).

The TAR Lazio confirms this interpretation, clarifying that:

- CJEU 2022 merely declared the provision in Article 1(15)(c) of the AMLD V (Directive EU 2018/843) invalid insofar as it removed the reference to legitimate interest as a condition for public access to the register of beneficial owners (it did not therefore confirm the unlawfulness of any form of public access);
- CJEU 2022 held that public access "in any case" is not in line with the principle of proportionality, raising no objection to the provisions of the AMLD IV (Directive EU 2015/849), where public access is subject to the existence of a "legitimate interest" (translated by the Italian legislator as "significant and differentiated legal interest").

What does “legitimate interest” mean?

According to the Administrative Court of Lazio (TAR) , in order to correctly define the correct meaning of “legitimate interest”, one must carefully read the content of Recital (14) of the AMLD IV , which states that Member States should ensure that *other persons who are able to demonstrate a legitimate interest with respect to money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax crimes and fraud, are granted access to beneficial ownership information, in accordance with data protection rules* (in addition to competent authorities, FIUs and obliged parties).

“Legitimate interest” should therefore be considered to be an interest that is *consistent and homogeneous with the purposes under the anti-money laundering legislation* (see Ruling No. 6845/2024).

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