

INSIDE THIS ISSUE

PG. 2

Decision of the European Court of Justice (ECJ), dated 22 November 2022, *on the compatibility of public access to UBO information with the fundamental right to protection of private life and the right to protection of personal data*.

PG. 4

Decision No.113 of the Council of Ministers in Albania, dated 01.03.2023, *“On determining the minimum salary at the national level”*.



MARCH 2023 ISSUE

Muja Law brings you the Legal Bulletin. This publication is a collection of the most important legal and tax updates published by our law firm during March.

The purpose of this monthly issue is to help professionals and businesses have a clear understanding of the dynamics of Albanian and European legislation and easily navigate through recent legal changes frequently published by our law firm.



DECISION OF THE EUROPEAN COURT OF JUSTICE (ECJ), DATED 22 NOVEMBER 2022

ON THE COMPATIBILITY OF PUBLIC ACCESS TO UBO INFORMATION WITH THE FUNDAMENTAL RIGHT TO PROTECTION OF PRIVATE LIFE AND THE RIGHT TO PROTECTION OF PERSONAL DATA.

Recently the European Court of Justice has put a stop to a publicly accessible Ultimate Beneficiary Owner (UBO) register.

➤ Decision of ECJ

In accordance with the anti-money-laundering directive, a Luxembourg law adopted in 2019 established a Register of Beneficial Ownership and provides that a whole series of information on the beneficial owners of registered entities must be entered and retained in that register, *similar to the legal provisions of Albania in this regard*.

Some of that information is accessible to the general public, in particular through the Internet. That law also provides that a beneficial owner may request Luxembourg Business Registers (*LBR*), the administrator of the Register, to restrict access to such information in certain cases.

In that context, the tribunal d'arrondissement de Luxembourg (*Luxembourg District Court, Luxembourg*) was seised of two actions, brought by a Luxembourgish company and by the beneficial owner of such a company, respectively, which had previously unsuccessfully requested *LBR* to restrict the general public's access to information concerning them.

Since that court considered that the disclosure of such information is capable of entailing a disproportionate risk of interference with the fundamental rights of the beneficial owners concerned, it referred a series of questions to the Court of Justice for a preliminary ruling concerning the interpretation of certain provisions of the anti-money-laundering directive and the validity of those provisions in the light of the Charter of Fundamental Rights of the European Union (*'the Charter'*).

The Court, sitting as the Grand Chamber, holds that, in light of the Charter, the provision of the anti-money-laundering directive whereby Member States must ensure that the information on the beneficial ownership of corporate and other legal entities incorporated within their territory is accessible in all cases to any member of the general public is invalid.

According to the Court, the general public's access to information on beneficial ownership constitutes a serious interference with the fundamental rights to respect for private life and to the protection of personal data, enshrined in Articles 7 and 8 of the Charter, respectively.

Indeed, the information disclosed enables a potentially unlimited number of persons to find out about the material and financial situation of a beneficial owner. Furthermore, the potential consequences for the data subjects resulting from possible abuse of their personal data are exacerbated by the fact that, *once those data have been made available to the general public, they can not only be freely consulted, but also retained and disseminated.*





That said, the Court finds that, by the measure at issue, the EU legislature seeks to prevent money laundering and terrorist financing by creating, by means of increased transparency, an environment less likely to be used for those purposes. It holds that the legislature thereby pursues an objective of general interest capable of justifying even serious interferences with the fundamental rights enshrined in Articles 7 and 8 of the Charter, and that the general public's access to information on beneficial ownership is appropriate for contributing to the attainment of that objective.

The Court holds, however, that the interference entailed by that measure is neither limited to what is strictly necessary nor proportionate to the objective pursued. In addition to the fact that the provisions at issue allow for data to be made available to the public which are not sufficiently defined and identifiable, the regime introduced by the anti-money-laundering directive amounts to a considerably more serious interference with the fundamental rights guaranteed in Articles 7 and 8 of the Charter than the former regime (*which provided, as well as access by the competent authorities and certain entities, for access by any person or organization capable of demonstrating a legitimate interest*), without that increased interference being capable of being offset by any benefits which might result from the new regime as compared against the former regime, in terms of combating money laundering and terrorist financing.

In particular, the fact that it may be difficult to provide a detailed definition of the circumstances and conditions under which such a legitimate interest exists, relied upon by the Commission, is no reason for the EU legislature to provide for the general public to access the information in question. The Court adds that the optional provisions 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.

➤ Summary

The ECJ decision has declared the prescribed public accessibility to the UBO register invalid. The ECJ has found that the public access to UBO information constitutes a serious interference with the fundamental rights to respect private and family life and the right to protection of personal data, which is not limited to what is strictly necessary and disproportionate to the objective pursued.

A restriction of fundamental rights can be justified if the measure concerned pursues an objective of general interest and the measure is limited to what is strictly necessary and is not disproportionate.

Therefore, the ECJ has found that the restriction of fundamental rights due to the public accessibility of UBO information goes beyond what is necessary and proportionate in view of the objectives pursued. The public access to information in the UBO register makes it for instance possible to draft a profile, which can be used for purposes other than the objective of the Directive.

The fact that mandatory public accessibility was introduced because the European Commission found it difficult to determine what should be considered a "legitimate interest" in case of an alternative approach to allowing insight in UBO information is, according to the ECJ, insufficient to justify public accessibility.



The judgement of the ECJ may also have implications for other European regulations that provide for public disclosure of certain (personal) data. [What the scope of the judgement will be for those regulations is not yet clear at this time.](#)

➤ [Similarities with Albania](#)

Following numerous recommendations from the Committee of Experts on the Evaluation of Anti - Money Laundering Measures and the Financing of Terrorism - MONEYVAL- of the Council of Europe with regard to the establishment of a centralized register, the Albanian Parliament enacted Law 112/2020 “*On the Register of Beneficial Owners*” (the “*UBO Law*”), as amended.

UBO Law provides, among other, that the Register of Beneficiary Owners (“*RBO*”) consists of an electronic database held by the National Business Center (“*NBC*”) which [contains data on the beneficial owners of the reporting entities identified by UBO Law.](#)

In virtue of the law, the RBO makes available online to the public the following set of data regarding the beneficial owners: [name and surname, nationality, year and month of birth, date of determination of the individual as beneficial owner, the percentage of ownership and if the ownership is direct or indirect.](#)

The other data entered in the RBO are freely accessible only to the authorized persons of the reporting entity (exclusively in relation to the data provided with respect to that reporting entity) and to competent public authorities.

Other persons that require RBO data, which is not freely accessible, [must submit a written request to the NBC and prove that they have a legitimate interest in the required data.](#)

It is important to highlight the fact that UBO Law has been partly approximated with the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 “*On the prevention of the use of the financial system for the purposes of money laundering or terrorist financing*”, 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, as amended.

However, now, also in light of the most recent decision of the ECJ in this regard, it remains to be seen how the Albanian local legislation on ultimate beneficiary owners will be affected.

DECISION NO.113 OF THE COUNCIL OF MINISTERS IN ALBANIA, DATED 01.03.2023

[ON DETERMINING THE MINIMUM SALARY AT THE NATIONAL LEVEL.](#)

Recently, the Council of Ministers in Albania, on 01.03.2023, has approved the Decision No.113, “*On determining the minimum salary at the national level*”, (hereinafter referred to as the “*DCM 113*”).

❖ [DCM 113](#)





In virtue of the DCM 113, the basic minimum monthly salary in Albania, for employees, nationwide, which is mandatory to be applied by any person, legal or natural, local or foreign, is 40 000 (*forty thousand*) ALL.

DCM 113 provides that the basic minimum monthly salary is given for 174 working hours per month, performed during normal working hours.

Furthermore, DCM 113 provides that the basic minimum hourly salary shall be 229.9 (*two hundred and twenty-nine point nine*) ALL.

In virtue of DCM 113, permanent allowances are given on the basic salary.

Repeal of previous decisions

DCM 113 provides that Decision No. 604, dated 14.09.2022, of the Council of Ministers, "*On determining the minimum salary at the national level*", is repealed.

DCM 113 has entered into force after its publication in the Official Journal and has extended its financial effects since 1 April 2023.

DECISION NO.114 OF THE COUNCIL OF MINISTERS IN ALBANIA, DATED 01.03.2023

FOR THE USE OF THE CONTINGENCY FUND FOR THE FINANCIAL COMPENSATION OF THE INCREASE IN SOCIAL AND HEALTH INSURANCE CONTRIBUTIONS, FOR EVERY EMPLOYEE WITH A MINIMUM SALARY, DUE TO THE INCREASE OF SUCH SALARY AT THE NATIONAL LEVEL

❖ DCM 114

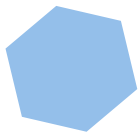
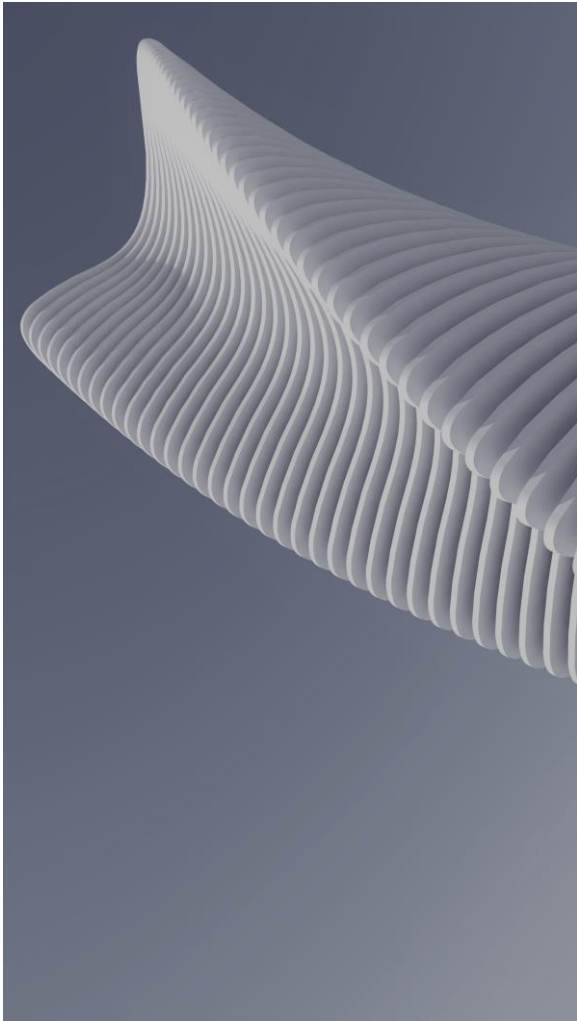
DCM 114 provides that subjects, which exercise their activity in the economic sectors of the nomenclature of economic activities in processing industry, agriculture, forestry and fishing, will benefit from a financial compensation for social and health contributions, calculated on the increase of the minimum salary from 34,000 (*thirty-four thousand*) ALL to 40,000 (*forty thousand*) ALL, for each employee with a minimum salary, for each month, for the contribution period April-December 2023.

Criteria and documentation for the financial compensation

DCM 114 provides that the financial compensation shall be calculated and be given based on the maximum number of employees with a minimum salary, appearing in the payroll declared in the tax authorities, for the month of December 2022, for subjects that exercise their activity in the above-mentioned sectors.

In virtue of DCM 114, the financial compensation shall be given every month, for the contribution period April-December 2023, from the regional employment office, where subjects have their primary address.

Financial compensation for period April-December 2023, shall be given for the subject's number of employees with minimum salary as declared in the month that requires compensation, but not more than the maximum number of employees with a minimum salary declared for the month of December 2022.





DCM 114 provides that subjects with the right to apply must meet the following criteria:

- a) shall not be subjects owned by the state;
- b) shall not be self-employed;
- c) shall not be in bankruptcy process;
- d) shall not have obligations towards tax authorities for mandatory health and social insurance, until the moment of application or at the time of application they must prove that:
 - i. they have concluded the relevant agreements for repayment of these obligations and are regular in their repayment;
 - ii. they have paid off the obligations, but still have to pay the fines.

The DCM provides that subjects must submit their requests electronically through the e-Albania portal, **no later than the 20th of the following month, from the expected month of declaration**, for the period that they demand compensation, otherwise they will lose compensation for that period.

Verification procedure for granting the financial compensation

DCM 114 provides that the relevant employment office, within 5 (five) working days from the date of the request, shall make the relevant verifications in the tax system on the data declared by the applicants.

The relevant employment office, within 10 (*ten*) days, after making the verifications, shall draw up the lists of beneficiaries, separated for each second-level bank, where the beneficiaries have a current bank account and shall send these lists to these banks.

The relevant employment office shall store and administer the relevant documentation in accordance with the applicable legislation.

Value of financial compensation

In virtue of DCM 114, financial compensation shall be given in the amount of social and health contributions, calculated on the increase of the minimum salary from 34 000 (*thirty-four thousand*) ALL to 40 000 (*forty thousand*) ALL, for each employee with minimum salary, for each month, for the contribution period April - December 2023.

The financial compensation shall be in the amount of 1,674 (*one thousand six hundred and seventy-four*) ALL/month for each employee.

Final provisions

Detailed rules for the application method and procedures, the method of compensation calculation, verification and appeal shall be determined by an instruction of the Minister of Finance and Economy.

The Ministry of Finance and Economy, the National Employment and Skills Agency and the General Directorate of Taxes are charged with the implementation of this decision.

DCM 114 has entered into force after its publication in the Official Journal.

ML
MUJA LAW

If you wish to know more on our publications, legal updates, tax updates, legal bulletins, or other articles, you may contact the following:

contact@mujalaw.com

Muja Law Firm
Rr. “Ibrahim Tukiqi”, Nr.2
1057 Tirana
Albania
Mob: +355 69 28 28 562
Web: www.mujalaw.com



Muja Law is a family-run law firm where we work hard for the success of our clients and to provide excellence in legal service. Our roots go back to 2001 when our Managing Partner, Krenare Muja (Sheqeraku), opened her law practice office in Tirana, Albania. Krenare’s son Eno joined her in 2014, and the other son Adi entered the practice in 2019. What started in Tirana as a small, family-run law office has grown and flourished in the community for the last 20 years. The law firm consists of various respected and talented lawyers who possess outstanding educational and community service backgrounds and have a wealth of experience in representing a diverse client base in various areas of the law.

The law firm is full-service and advises clients on all areas of civil, commercial and administrative law. With significant industry expertise, we strive to provide our clients with practical business driven advice that is clear and straight to the point, constantly up to date, not only with the frequent legislative changes in Albania, but also the developments of international legal practice and domestic case law. The law firm delivers services to clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. In our law firm, we also like to help our clients with mediation services, as an alternative dispute resolution method to their problems.

While we have grown over the past 20 years and become recognized as one of Albania’s leading law firms, we are grounded in the essence of “who” we are and “where” we started. *We understand the importance of family, hard-work, and dedication.*

Legal Bulletin is an electronic publication drafted, edited and provided by Muja Law to its clients, business partners, and other professionals interested in being informed on the latest monthly legal developments. The information contained in this publication is of a general nature and is not intended to address the circumstances of any particular individual or entity. This publication is not intended to be and should not be construed as providing legal advice. Therefore, no one should act on such information without appropriate professional advice after a thorough examination of the particular situation. Although every effort has been made to provide complete and accurate information, Muja Law makes no warranties, express or implied, or representations as to the accuracy of content on this document. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Muja Law assumes no liability or responsibility for any error or omissions in the information contained in this document. Also, feel free to consult the Legal Bulletin on the section “Library” of our website.

© 2023 Muja Law. All rights reserved.

This publication is copyrighted and is protected to the full extent of the law. Nevertheless, you are free to copy and redistribute it on the condition that full attribution is made to Muja Law. If you have not received this publication directly from us, you may obtain a copy of any past or future related publications from our marketing department (muja@mujalaw.com) or consult them in our website (www.mujalaw.com). To unsubscribe from future publications of Legal Bulletin, please send “Unsubscribe” by replying to our email accompanying this edition.