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# Luxembourg adapts its RCS and RBE legislations after CJEU ruling

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The Luxembourg Parliament recently enacted a law reforming the Trade and Companies Register (RCS) and the Register of Beneficial Owners (RBE) laws.

This reform is a direct response to the decision of the Court of Justice of the European Union which invalidated unrestricted public access to beneficial ownership information, on the grounds that such access violated privacy rights. Under the new framework, access to the RBE is now limited to national authorities, professionals subject to anti-money laundering and counter-

terrorism financing (AML/CTF) obligations, and those with a proven legitimate interest, such as journalists and non-profit organisations.

Additionally, the reform introduces administrative sanctions to ensure the reliability of the information registered in the RCS and RBE and streamlines declaration processes.

The Luxembourg Parliament has enacted a law amending the law of December 19, 2002 on the trade and companies register (RCS) and the law of January 13, 2019 on the register of beneficial owners (RBE) (the Law). This reform follows the decision by the Court of Justice of the European Union (CJEU), in its Luxembourg Business Registers judgment of November 22, 2022, that held that the provision of the Fifth Anti-MoneyLaundering Directive that introduced unrestricted public access to information on the beneficial owners of companies established in EU Member States is invalid. The CJUE found that this provision violated the privacy rights of the beneficial owners listed in these registers, necessitating a revision of the conditions of access to the RBE in Luxembourg. According to the Law, the RBE shall now be accessible to national authorities, professionals subject to AML/CTF obligations, and persons who demonstrate a legitimate interest in the fight against money laundering and terrorist financing (ML/TF) (professional journalists, associations, foundations, etc.).

The Law also grants the manager of the RCS and RBE (the LBR) the means to compel registered entities to comply with their legal obligations to file/declare and to update the information in these registers.

Finally, the Law simplifies the procedures for declarants at the RCS and RBE.

Below, you will find an overview of the main amendments brought about by the Law, whose entry into force is planned for the first day of the first month after its publication in the Luxembourg Official Gazette, with publication expected in the next few weeks.

## 1. Revised access to RBE data post CJEU decision

# 1.1. Access reserved for actors in the fight against ML/TF and for persons demonstrating a legitimate interest

The Law restricts access to the RBE to persons who “contribute” to the fight against ML/TF, or who can demonstrate a legitimate interest (Authorised Persons). These are the following persons:

- national authorities, in the exercise of their missions (National Authorities);
- professionals subject to AML/CTF obligations, as part of their AML/CTF due diligence measures towards their clients, including entities with which their clients may transact and who wish to prevent any link between such a transaction and ML/TF or a predicate offence (Professionals);
- national self-regulatory bodies, as part of their supervisory mission in the fight against ML/TF (SelfRegulatory Bodies);
- persons who demonstrate a legitimate interest in the fight against ML/TF (Persons Justifying a Legitimate Interest); and
- State services and public administrations as well as public institutions for which such access is provided by law (State Services and Public Administrations).

For Persons Justifying a Legitimate Interest, the Law provides an illustrative list, including:

- professional journalists established in Luxembourg or in one or more other EU Member State(s) (Professional Journalists);
- organisations, associations and foundations established in an EU Member State, provided they pursue a non-profit goal whose purpose is the prevention and fight against ML/TF (Organisations and Associations);
- persons who wish to know the identity of the beneficial owners of a company or an entity because they are likely to transact with them and

want to avoid any link between such transactions and ML/TF (Counterparties); and

- national authorities and administrations involved in the fight against ML/TF to the extent that they would not already have access to this information as such (National Authorities and Administrations).

The list is not exhaustive; other persons may also have access to the RBE provided they demonstrate a legitimate interest in the fight against ML/TF (Other Persons Justifying a Legitimate Interest).

## **1.2. The content and scope of accessible information varies according to the category of authorised person**

The table below outlines the authentication and traceability rules for accessing beneficial owner information, detailing the categories of authorised persons, the entities they can search, the information they can access, and the notification requirements towards the registered entity or beneficial owner.

Category of Authorised Person	Authentication and traceability rules	Entities they can search	Information they can access	Notification of the registered entity/beneficial owner
National Authorities	Strong authentication no longer required but access to the RBE files remains secure	All entities	Access to all the information relating to the beneficial owner: Last name; First name(s); Nationality(ies); Day, month and year of birth Place of birth; Country of residence; Accurate private/professional address; National/foreign identification number; and Nature and extent of the beneficial interests held	No
Professionals, Self-Regulatory Bodies, State Services and Public Administrations	Secure authentication required and access to RBE files traceable and retained for five years	All entities	All the information relating to the beneficial owner, except for the accurate private/professional address and the national/foreign identification number	No, except for searches made by State Services and Public Administrations
Professional Journalists, Organisations and Associations, National Authorities and Administrations				
Counterparties	Secure authentication required and access to RBE files traceable and retained for five years	Only entities likely to transact with the Counterparty		Yes
Other Persons Justifying a Legitimate Interest	Must follow strict rules when requesting access  Evaluation of the legitimacy of their interest by the LBR	Only entities that are the immediate subject of their research or investigations		Yes

## 2. Administrative sanctions for data reliability

To enhance the quality of information on legal entities in the Grand Duchy of Luxembourg contained in the RCS and RBE, the LBR will be empowered to conduct regular checks and impose sanctions on non-compliant entities. These sanctions range from public warnings to daily fines and administrative deregistration, with the possibility of reports to the State Prosecutor.

The table below details the measures and sanctions that the LBR may take.

	Date update request sent (T)	From T+1 month	From T+2 months	From T+6 months To T+9 months	From T+11 months	Absence of regularisation after administrative deregistration
Sanctions	N/A	Public warning = display on the LBR's website, in the entity's file	Mention of breaches on extracts and certificates	Daily fine ( <i>astreinte journalière</i> ) of EUR40	Administrative deregistration ( <i>radiation administrative</i> )	Reporting to the State Prosecutor
		The measures accumulate			Administrative deregistration does not entail dissolution of the company nor the loss of legal personality  Regularisation is possible after the deregistration of the entity but will result in an increase in filing/declaration fees  Once the file is regularised, the measures are removed, except for the fine, which remains due	The procedure may lead to administrative dissolution without liquidation or judicial dissolution
Recourse	N/A	Before the Administrative Court  Three-month deadline				

### 3. Simplification of RCS and RBE Procedures

The law introduces measures to simplify declaration procedures.

**RCS-RBE Gateway:** A gateway between the RCS and the RBE will facilitate the reuse of data for beneficial owner declarations.

**Automatic data updates:** The LBR will be able to automatically update information based on data from other national registers and will have access

to certain administrative records for cross-referencing.

**Mass declaration platform:** A new electronic platform will be created for declarants who need to make numerous declarations to the RBE.

**NACE code assignment:** The LBR will collaborate with STATEC for the assignment of NACE codes, which classify economic activities, streamlining the process for companies.

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