



## Press release

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### **Access to transparency register should be tied to stricter conditions – study: legitimate interest must be demonstrated**

Every company is affected by the reporting requirement: in Germany, one million limited liability companies (GmbHs) alone have to disclose information on ownership to the transparency register. In its ruling of November 2022, the European Court of Justice (ECJ) strengthened data protection for business owners. The general public must no longer have unlimited access to sensitive data of beneficial owners. According to the legal opinion obtained by the Foundation for Family Businesses and Politics, access should in future be subject to stricter requirements. “EU member states must not grant access without a legitimate interest being demonstrated,” says the legal opinion prepared by the legal scholars Prof. Ralf P. Schenke and Prof. Christoph Teichmann (both from the University of Würzburg). Conditions should be specified for this, similar to those for accessing the land register.

“From the perspective of family businesses, it is a success that the ECJ has put a halt to unrestricted public access to private company data,” says Prof. Rainer Kirchdörfer, member of the Executive Board of the Foundation for Family Businesses and Politics. The misguided model of the transparent business owner had given rise to security risks and competitive disadvantages, he continued. “If anyone can get hold of private data of business owners, this does not leave any options for those affected to protect themselves against misuse,” says Kirchdörfer. The legal opinion highlights that, when analysed in conjunction with other disclosure obligations to which companies are subject, outsiders obtain in-depth information on the company’s management and their private lives. “Protective mechanisms are required here,” continues Kirchdörfer. “The transparency register also means a lot of red tape for family businesses, which is why any tightening, as is currently being debated in parliament, would be completely unreasonable.”

The data of business owners would have to be protected from improper use. It was the duty of legislators to ensure that by putting procedural safeguards in place. The study’s authors argue as follows: “The vast majority of business owners are law-abiding and can expect that the data is only collected for specific purposes,” reads the legal opinion. Legislators must ensure that this principle is applied by imposing strict access conditions.

Under EU law, citizens holding an interest of more than 25 percent in a company must be reported as beneficial owners to the transparency register. Legislators intend to prevent money laundering and terrorism financing in this way. That government agencies and financial services providers have to have access to this data is not in dispute. But the ECJ has now determined that access to the register must no longer be granted to every citizen. In the court’s opinion, unlimited public access violates the fundamental rights of those concerned. The experts recommend that access should only be given if there is a legitimate interest. This would have to be ensured by way of procedural safeguards. In order to limit the misuse of private data, legitimate interest should be demonstrated by providing an



affidavit . That would give increased protection from misuse. There should also be a requirement for people to register online when getting access.

The ECJ ruling had made it clear that authorities could get information from the transparency register without any restrictions. Financial institutions would get access when meeting their due diligence obligations under the German Money Laundering Act. Credit institutions should, however, not use access to the register to request information without a valid reason. Journalists and non-governmental organisations would also have the right to view the data. But they would have to demonstrate that their research is connected to the fight against money laundering and terrorism financing. Special requirements would have to apply to access sought by private individuals.

The Foundation for Family Businesses and Politics is the specialist authority for all questions related to family companies and the central contact partner for political leaders and the media.

#### » Download Summary “Transparency Register and Data Protection”

The **Foundation for Family Businesses and Politics** assists family businesses in a variety of ways when it comes to representing their political interests. Their business environment is changing as never before. Globalisation, the shortage of skilled workers, digital transformation, the safety of individuals and businesses, public perception and the political framework are just some of the challenges they face.

#### **Further information:**

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