



•ALERT•

1 DECEMBER 2022

Update on Beneficial Owners' Register in Italy

On 9 June 2022, the Decree of the Ministry of Economy and Finance No. 55 dated 11 March 2022 (the "MEF Decree") came into force. Among other things, the MEF Decree makes provision for the reporting of data and information on the beneficial owners of Italian companies, foundations, associations and trusts to the Italian Companies' Register.

In order to implement the reporting obligations needed for anti-money laundering screening under Article 21 of Italian Legislative Decree No. 231/2007, the MEF Decree establishes the requirements in terms of reporting and updating the data and information concerning beneficial owners, which will be registered and stored in specific sections of the locally competent Companies' Register and be accessible by third parties (e.g. public authorities).

We understand that certain Companies' Registers have already dispatched generic reminders of these new obligations to local registered companies. However, the disclosure obligation will only be triggered by the publication in the Official Gazette of the Italian Republic of implementing measures issued by the Ministry of Economic Development confirming the "go-live" status of the system for the communication of the relevant beneficial owner data and information (the "Implementing Measures").

To date, the Implementing Measures – originally expected to be issued on 9 August 2022 – have not yet been published so the clock is not yet running for compliance with these disclosure obligations by Italian undertakings. Moreover, with a ruling of **22 November 2022** in two joined cases where preliminary rulings had been requested by the Circuit Court of Luxembourg, the **European Court of Justice** determined as invalid the provision introduced by the Fifth



Anti-Money Laundering Directive (Directive (EU) 2018/843 of 30 May 2018) pursuant to which Member States must ensure that information on the beneficial ownership of companies and other legal entities incorporated in their territory is accessible to the public in all instances. This could therefore also impact public access in Italy to data and information on beneficial owners, which is currently allowed unless the interested party objects for specific reasons, indicating the exceptional circumstances justifying the exclusion.

COMMUNICATION OF DATA AND INFORMATION ON BENEFICIAL OWNERS TO THE ITALIAN COMPANIES' REGISTER: HOW IT WORKS

- The MEF Decree requires the following individuals to comply with the beneficial owner reporting obligations:
 - ◊ directors of joint stock companies, limited liability companies, simplified limited liability companies, limited partnerships and cooperative companies (*società per azioni, società a responsabilità limitata, società a responsabilità limitata semplificata, società in accomandita per azioni e società cooperative*);
 - ◊ founders (if living) or legal representatives and directors of foundations (*fondazioni*) and associations (*associazioni riconosciute*);
 - ◊ trustees of trusts or similar legal institutions, (collectively, the "Reporting Individuals").

- Within 60 days from publication of the Implementing Measures, the Reporting Individuals must notify the relevant data and information concerning beneficial owners to the locally competent Companies' Register. Once this communication has been made, the Reporting Individuals are also required to notify:
 - ◊ any change in such data or information, within 30 days from completion of the act giving rise to the change; and
 - ◊ confirmation of the data and information already notified, on a yearly basis and within 1 year from the first notice or from the latest notice of change or confirmation. Companies may also confirm the beneficial ownership data and information when filing financial statements.
- Italian companies, foundations and associations established after publication of the Implementing Measures must make the disclosure within 30 days of their registration in the respective registers; trusts and similar legal institutions established after publication of the Implementing Measures must make the disclosure within 30 days of being established.
- Failure to provide the required beneficial ownership data and information leads to the application of monetary sanctions against the Reporting Individuals ranging from EUR 103 to a maximum of EUR 1,032.

NEXT STEPS

It is likely that the legal framework outlined so far will be reconsidered as regards public access to data and information on beneficial owners in light of the recent view taken by the Court of Justice. Therefore, pending publication of the Implementing Measures, which are awaited with interest, companies and others required to make disclosure under the MEF Decree should not be alarmed if they receive reminders from Companies' Registers: until the Implementing Measures are published, no disclosure obligation applies. However, Reporting Individuals should remain on the alert since they will then have to promptly fulfil their reporting obligations within the time limits and in the manner set forth by the law.

We will publish a further alert as soon as there is news on the implementation of these new requirements.

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