


Privacy Concerns Stall France's Move to Public Trust Register

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France's national register of trusts has been closed to the public just a month after being launched on a government website, illustrating the clash between tax transparency advocates and privacy advocates.

The site, <http://www.impots.gouv.fr>, granted public access to the register on June 30. The register was created by Law 2013-1117 of December 6, 2013, and implemented by Decree 2016-567, which took effect May 10, 2016. The register was intended to bring France in line with recent European Union efforts to create publicly available lists of beneficial ownership in the wake of the Panama Papers disclosures. The launch was announced July 5. (Prior coverage )

The decision to close the register to the public was handed down July 22 by a judge from the Conseil d'État, which provides legal counsel to the French government. The decision was based on a challenge from a French resident, an 89-year-old American woman who is a beneficiary of one of the trusts made public. The challenge was based on privacy rights guaranteed under the French Constitution. The case involves declared trusts that were originally created in the U.S., according to a Conseil d'État statement. The judge said the personal information divulged could lead the plaintiff to be pressured about her plans for her estate, which casts serious doubt about the legality of the decree, the judge held.

The public register provides information on trusts that have at least one owner, beneficiary, or administrator with a fiscal domicile in France, and trusts that own assets in France. About 16,000 trusts are listed in the registry. The Finance Ministry had attempted to control access by requiring that the investigator have a French taxpayer identification number, which would be logged by the government, according to French news sources. However, the registry has been seen as far more transparent than similar registries of insurance vehicles or other fiduciary vehicles similar in intent to trusts.

Making trust information available publicly would jeopardize the citizen's right to a private life without advancing the fight against tax evasion because the trusts in the public registry are already known to tax authorities, Stéphanie Aufénil, the plaintiff's lawyer, told Tax Analysts. Aufénil, a founding partner of Arkwood SCP in Paris, likened the register to publicly disclosing the contents of wills without consent. She said she hopes the register will be available only to those with a specific and legitimate need to know, such as tax officials.

The challenge will be reviewed before the end of the year by the Conseil Constitutionnel. If it is dismissed in favor of information being widely available to the public, the case is expected to be

brought before the European Court of Human Rights.

Trusts are not commonly used in France and are considered primarily a judicial technique favored by common law to manage funds for a specific person or purpose, according to the Conseil d'État statement. Trusts in France have been required to be declared to the government since 2011.