EU AFFAIRS NEWSLETTER

FEBIS

MONEY LAUNDERING: PARLIAMENT AND COUNCIL NEGOTIATORS AGREE ON CENTRAL REGISTERS

The ultimate owners of companies would have to be listed in central registers in EU countries, accessible to people with a "legitimate interest", such as investigative journalists and other concerned citizens, under a deal struck by Parliament and Council negotiators on a draft EU anti-money laundering directive on Tuesday. The rules would also require banks, auditors, lawyers, real estate agents and casinos, among others, to be more vigilant about suspicious transactions made by their clients.

"For years, criminals in Europe have used the anonymity of offshore companies and accounts to obscure their financial dealings. Creating registers of beneficial ownership will help to lift the veil of secrecy of offshore accounts and greatly aid the fight against money laundering and blatant tax evasion", said **Economic and Monetary Affairs Committee rapporteur Krišjānis Kariņš (EPP, LV**). "The new rules agreed today will provide much greater transparency of the shadowy business structures that are at the heart of money laundering schemes, as well as schemes used by businesses to avoid their tax responsibility", added Civil Liberties **Committee rapporteur Judith Sargentini** (Greens/EFA, NL).

The fourth anti-money laundering directive (AMLD) will for the first time oblige EU member states to maintain central registers listing information on the ultimate beneficial owners of corporate and other legal entities, as well as trusts. These central registers were not envisaged in the European Commission's initial proposal, but were included by MEPs during the negotiations. The aim is to enhance transparency, make dodgy deals harder to hide and fight money laundering and tax crime. The central registers would be accessible to the competent authorities and their financial intelligence units (without any restriction), to "obliged entities" (such as banks conducting their "customer due diligence" duties), and also to the public, whose access may be subject

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to online registration of the person and to the payment of a fee to cover administrative costs.

Any person or organisation who can demonstrate a "legitimate interest", such as investigative journalists and other concerned citizens, would also be able to access beneficial ownership information such as the beneficial owner's name, month and year of birth, nationality, residency and details on ownership. Any exemption to the access provided by member states would be possible only on a case-by-case basis in exceptional circumstances. MEPs also inserted several provisions in the amended AMLD text to protect personal data.

The deal also clarifies the draft rules on "politically-exposed persons", i.e. people at a higher than usual risk of corruption due to the political positions they hold, such as heads of state, members of government, supreme court judges, and members of parliaments, as well as their family members. Where there are high-risk business relationships with such persons, additional measures should be put in place, e.g. to establish the source of wealth and source of funds involved.

The deal still needs to be endorsed by EU member states' ambassadors (COREPER) and by Parliament's Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees, before being put to a vote by the full Parliament next year.

DATA PROTECTION: COUNCIL REACHES PARTIAL AGREEMENT BUT STILL NEEDS TO DISCUSS SEVERAL ISSUES

On 5Th December 2014, progress was made by justice ministers on the EU data protection framework. The Council reached a partial general approach on specific aspects of the draft regulation setting out a general EU framework for data protection. The partial general approach includes provisions which are crucial to the question of the public sector as well as provisions relating to specific data processing situations.

The Council also held a debate on the "one stop shop" mechanism on the basis of a proposal presented by the Italian Presidency. A majority of ministers endorsed the general architecture of the proposal and the Presidency concluded that further technical work will need to be done in the coming months.

Andrea Orlando, Italian Minister for Justice and President of the Council, said: "Today we have agreed on two of the most politically sensitive issues on data protection reform. We see this as an important result for the Presidency, and a decisive step towards achieving global agreement on this complex and important file". The Council reached a partial general approach on specific issues of the draft regulation setting out a general EU framework for data protection, on the understanding that:

– Nothing is agreed until everything is agreed;

– It is without prejudice to any horizontal questions;

– It does not mandate the presidency to engage in informal trilogues with the European Parliament on the text.

The partial general approach includes some articles which are crucial to the question of the public sector (Article 1, Article 6, paragraphs (2) and (3), Article 21) as well as chapter IX (provisions relating to specific data processing situations) and the related recitals.

The Council also held a debate on the "one stop shop" mechanism on the basis of a proposal presented by the Presidency. A majority of ministers endorsed the general architecture of the proposal and concluded that further technical work will need to be done in the coming months on the basis of these elements.

In October and December 2013 the Council already expressed its general support for the principle that, in important transnational cases, the regulation should establish a "one-stop-shop" mechanism in order to arrive at a single supervisory decision, which should be fast, ensure consistent application, provide legal certainty and reduce the administrative burden. This is an important factor to enhance the cost-efficiency of the data protection rules for international business, thus contributing to the growth of the digital economy.

Ministers also concluded that the experts should explore methods for enhancing the "proximity" between individuals and the decision-making supervisory authority by involving the local supervisory authorities in the decision-making process. Moreover, in December 2013 the Legal Service of the Council indicated that the model as it resulted from the technical work so far would confront data subjects with such a complicated system that it would be incompatible

with the right to an effective remedy.

JUSTICE AND FINANCE: EUROPEAN SMALL CLAIMS PROCEDURE AGREED UPON BY COUNCIL AND WILL LAUNCH NEGOTIATIONS WITH THE EP

The Council reached a general approach on the proposal for a regulation amending the European small claims regulation and the European order for payment regulation. That general approach constitutes the basis for negotiations with the European Parliament in order to agree on the final text of the regulation.

The objective of the proposed amending regulation is to make the European Small Claims Procedure more efficient, in particular by reflecting the technological progress made in the justice systems in the member states, and to make the procedure accessible in a larger number of cases, in particular also for businesses.

To that end, the agreed general approach includes the following amendments:

– The duplication of the threshold for a small claim from currently €2.000 to €4.000;

– The obligation of the member states to offer distance means of payment for the payment of court fees;

– An increase of the use of modern technologies for oral hearings and taking of evidence, for communications between the court and the parties, and the setup of a general framework that allows, under certain conditions, for the use of electronic service of documents;

– The minimisation of the translation requirement (and related costs) as regards the certificate necessary for the enforcement of a judgment given in the European Small Claims Procedure;

– The creation of "a bridge" between the European Small Claims Procedure and the European Order for Payment Procedure by allowing the claimant to use the European Small Claims Procedure when a statement of opposition has been lodged against a European order for payment. The European Small Claims Procedure is an important instrument for citizens and businesses improving access to justice by simplifying cross-border small claims litigation in civil and commercial matters and reducing costs. It was established by regulation 861/2007 and is applied since 1 January 2009.

The judgments delivered under this procedure are recognised and enforceable in the other member states without the need for a declaration of enforceability. The procedure is optional, offered as an alternative to the possibilities existing under the national laws of the member states.

2015 RE-FOCUSED COMMISSION WORK PROGRAMME

The Commission has proposed a revamped 2015 Work Programme, concentrating on key areas for the Juncker team and removing or withdrawing not less than 80 proposals which are considered less important or urgent. Extensive information on the Work Programme can be found on the EC web page at http://ec.europa.eu/priorities/work-programme/index_en.htm.

The European Commission is confident that this adopted Work Programme for 2015 – setting out the actions the Commission intends to take over the next 12 months is an agenda for change. The clear priorities, outlined by Commission Vice President for Better Regulation Frans Timmermans, include inter alia the announced Investment Plan to boost Europe's economy, the Digital Single Market Plan, launching European Energy Union, and putting forward a new, balanced European Agenda on Migration.

In order to better focus on the real priorities, the Commission has decided to "clear the decks" *and* thus looked at several proposals deciding whether they want to maintain, amend or withdraw them. The Commission's 2015 Work Programme sets out:

- 23 new initiatives proposed by the Juncker Commission, following the Political Guidelines presented to the European Parliament
- 80 existing proposals which the Commission proposes to withdraw or amend for political or technical reasons.
- The Work Programme presents focused actions where the Commission will deliver in 2015. In addition, in many areas, the Commission will also continue to work hard to ensure that existing policies and rules are fit for purpose, deliver concrete results on the ground and are properly implemented.

1. 23 New Initiatives to Make a Difference

The programme adopted today sets out the 23 initiatives the Commission is politically committed to delivering in 2015. The Commission notably committed to deliver in 2015:

- **An Investment Plan for Europe**: the legislative follow-up to the Plan announced last month, unlocking public and private investments in the real economy of at least € 315 billion over the next three years.
- **An Ambitious Digital Single Market Package**: creating the conditions for a vibrant digital economy and society by complementing the telecommunications regulatory environment, modernising copyright rules, simplifying rules for consumers making online and digital purchases, enhancing cyber-security and mainstreaming digitalisation.
- **The first steps towards a European Energy Union:** to ensure energy supply security, further integrate national energy markets, reduce European energy demand and decarbonise the energy mix.
- **A Fairer Approach to Taxation**: An Action Plan on efforts to combat tax evasion and tax fraud, including measures at EU level in order to move to a system on the basis of which the country where profits are generated is also the country of taxation; including automatic exchange of information on tax rulings and stabilising corporate tax bases.

- **A European Agenda on Migration:** developing a new approach on legal migration to make the EU an attractive destination for talent and skills and improving the management of migration into the EU through greater cooperation with third countries, solidarity among our Member States and fighting human trafficking.
- **Deeper Economic and Monetary Union**: Continued efforts to promote economic stability and attract investors to Europe.

2. **Assessing the feasibility of measures and withdrawing the less important ones**

In preparing the Work Programme, the Commission examined around 450 proposals that are currently awaiting decision by the European Parliament and the Council, and is proposing to withdraw or amend 80 of them. Some are proposed for withdrawal because they do not match the new Commission's priorities. But in many cases, the Commission remains strongly committed to the objectives sought – but proposals are of no use if they are simply sitting dormant on a negotiating table or if they will be so watered down in negotiations they can no longer achieve their original purpose. When that's the case, the Commission will propose new, better ways of achieving these objectives. The Commission will wait for the views of the European Parliament and the Council on these proposals before formalising the withdrawals.

3. **Cutting Red Tape and Removing Regulatory Burdens**

The 2015 Work Programme reflects the Commission's strengthened commitment to Better Regulation, building on the Regulatory Fitness Programme, which seeks to cut red tape and remove regulatory burdens, contributing to an environment conducive to investment. The College of Commissioners has identified a series of proposals and existing legislation, which will be reviewed and amended to make them work better for Europe's citizens and businesses. This also includes simplification efforts, for example of the Common Agricultural Policy.

This more focused 2015 work programme got a "**mixed response**" from the European Parliament on 16th December, and the EP will give its verdict on the Commission's 2015 Commission work programme in a resolution which will be put to the vote in January at the next plenary session in Strasbourg. The EPP welcomed the simplification exercise and the effort to "concentrate on implementation issues" and the ECR praised the approach putting the economy first. Meanwhile, the Socialist group would like some of the Commission's "kill list" of proposals not to be withdrawn but to be amended instead.

MEETING SUMMARY: 5TH EU CONFERENCE ON DATA PROTECTION – BRUSSELS- 09.12.2014

The conference kicked off with keynotes from Vera Jourova, EU Justice Commissioner and from Jan Albrecht MEP, rapporteur on the Data protection regulation who both called for a quick adoption of the regulation and wanted to put more pressure on the Council. It went on with panel discussions where some business representatives showed the importance of getting the data protection regulation right while representatives of the US FTC insisted on the need to keep good relationships with the US and find a common level playing field on data protection. Representatives from BEUC also exposed the consumers' expectations and another session insisted on the practicalities that data protection impact assessments will mean.

Keynotes from Vera Jourova, EU Justice Commissioner and Jan Albrecht MEP
Commissioner Jourova insisted on the need to preserve good negotiations with the US counterparts on the data protection issue. MEP Albrecht stressed it was the 5th annual data protection conference and that the Data Protection regulation had been discussed for 3 years now, so Europe cannot afford to wait longer. The EU needs to have partners having the same level of data protection and there is also a need of a legally certain and reliable pillar. He commented quickly on the state of negotiations of the data protection regulation, stating that the Council did not manage to close the deal on the whole draft, but agreed on the one stop shop principle. However, a compromise is needed on the one stop shop for data controllers but also with effective redress for citizens (including country of destination redress principle) so Data Protection authorities must coordinate together. On the consistency mechanism, he claimed that the EP hopes that next chapters will be dealt with rapidly, especially the chapter on rights and consent provisions where they would like the Council to get a general approach by March 2015.

Jekaterina Macuka – Latvian Ministry of justice, Latvian representative in art 29 Working Party
She reminded the audience that the understanding of privacy is changing each year. The Data Protection directive of 1995 was created at the time when there were no Facebook, no LinkedIn, Twitter and smartphones, so with these new challenges, new regulation is needed. There is also a need of a competitive approach and to reach something balanced. Latvia will have the next EU presidency from January 1st, 2015, and are optimistic they can conclude the Council general approach. Regulation should help controllers and data subjects. Data Protection Authorities should not concentrate on punishments and fines but protection and mechanism to make two parties live with it. The focus will also be on the right of data subjects (to object, to delete...)

Kelly Welsh, General Counsel, US Department of Commerce
He evoked the recent reviews and dangers on big data pointed out by the Obama administration, and thus protecting privacy rights and enabling big data is quite challenging but very promising. Big data will drive new disruptive business models, better energies with smart grids, better transports and better enablers for all consumers, and companies will be evaluated on how they leverage data. Economic growth will be driven by innovation and entrepreneurship and the public sector support including remaining supportive of open data initiatives. The US will soon hire their first Chief Data Officers in public administration.

But there are also new challenges around privacy and autonomy, such as in health care, where the need to find a balance between benefits and risks and to preserve the confidentiality of health record is key. 55% of adults consider their state of health and medication as very sensitive info whereas only 5% consider sensitive the media they consume. All this will challenge how we think data is sensitive, also for social media.

In the US, the protection of data is done under strong sector-specific laws. Education is another field where the benefits of big data are tremendous. The schools will receive next generation internet access and teachers training, with real time adaptation to students' level. But this also means important implications for privacy, including behavioral data, which can improve reading and learning pattern but can also be used to build consumer profile of students, though protected by children online privacy act; The California law restricts use of educational data by third parties;

In addition to policy, the US focuses on how to leverage technology to improve privacy protection. A Code of conduct is under development from telecoms and others on facial-recognition technologies and with differential privacy to minimize privacy risks. Can be done introducing random data in the datasets. Protecting the Safe Harbour is key because a fragmented approach will send a wrong approach to global digital economy.

Panel debate

This panel featured Kostas Rossoglou from BEUC (consumers' organization), Chris Sherwood from the Allegro group, Cameron Kerry from Sidley Austin LLP and Isabelle Vereecken from the Belgian Commission de la Protection de la Vie Private.

BEUC insisted on the purpose limitation principle, i.e. that the data collected for one purpose should be for this one only. Legitimate interests should only be the last resort and it is important to have strong and proportionate sanctions.

Chris Sherwood, Allegro group, reminded the audience that the directive 95/46 had been durable because it is principle- based and technology neutral. Though it needs adaptation because society has changed and the idea of a Data Protection regulation is good, but it needs to get it right. The problem is that the political approach based on defensive approach, vis a vis US internet companies. In practice this defensive look impedes the development of EU internet companies. The main problem is that the current text is a series of provisions that taken globally create reverse incentives: for example it promotes explicit consent while the regulation should be incentivizing anonymous approach on the internet. On article 10 on identification/pseudonymous data, what is the best legal basis to process pseudonymised data? What provisions are concerned? There should not be a blanket exemption but a list of the provisions that do not apply. He called to have a system-based approach looking at the regulation as a whole, otherwise if don't do this, EU will be making a historic mistake.

Cameron Kerry exposed first his background, where he had been the chief US Department of Commerce negotiator on Data protection for a while. He reiterated the need to preserve the benefit of economic growth and big data evolution with the right approach to privacy too. He backed up the emerging definition of secondary processing, at a context-based approach, with unambiguous consent rather than explicit. Data minimization is an obstacle to big data. Definition of profiling in art 20 potentially could be a brake to predictive analysis which are key to big data. He also made a plea to keep Safe Harbour and not damage the EU/US relationship. He also insisted on the need to look at competition and fairness laws

to reduce competition disruption rather than relaxing privacy laws and stressed that risk of de-anonymisation was bigger on mobile.

Isabelle Vereecken listed the points that are still discussed by the Council, including inter-alia:

- The One stop shop
- The Risk-based approach
- Pseudonymised data
- Trans border data flows
- Safe Harbour
- Sub processing activities: processors also needs to be compliant- many processors are now big companies, must be liable on data security. But now cloud computing and intervention of multiple actors a danger, sub processing activities have to be framed and sub processor have to be made liable.

Keynote from Viviane Reding MEP and former EU Justice Commissioner

Mrs Reding stated first that the right to privacy is a fundamental right and should remain as such. Big data requires big rights. What is the Council waiting for? Council only needed 6 months to decide on the data retention! In her eyes, the Data Protection reform is sine qua non to build Digital Single Market. Data belongs to the people, decision must be the decision of the people. Cutting costs and red tape for SMEs, the territoriality principle and the rules need to be enforced by any company. There is no time to lose on the Safe Harbour and umbrella agreement. Legislative action is needed in the Congress to grant EU citizens the same data protection rights as US citizens in the US. 11 of 13 recommendations on Safe Harbour have been agreed but the last 2 most problematic: concern national state security exemption. She said that negotiations on TTIP and TISA reports in 2015 will present opportunity to draw red lines.

Happy New Year 2015!

FEBIS– Federation of Business Information Services

Benefiting from the opening of markets within Europe and overseas, world-wide business has experienced substantial growth. As business grows so does the demand for business information, in particular, intelligence for cross-border business activities.

In 1973, leading European credit information agencies joined forces to form the Federation of Business Information Services FEBIS (initially known as FECRO), with its registered office in Frankfurt. Today, FEBIS has developed into a sizable organization comprising more than 60 full Members from all over the world involved in providing Business Information and Debt Collection services of National and International importance.

Supported by a combined workforce of more than 20,000 staff, FEBIS Members generate over 180 million Business Information and Consumer reports annually for over 500,000 organizations, providing these clients with invaluable business support. Aggregate sales turnover of FEBIS Members is in excess of €2.5 Billion.

As the industry association, FEBIS strives to look after common interests of its members. While monitoring new legislation like data protection laws and insolvency laws, FEBIS also oversees and the application of public sources and information.