TAX AUTHORITIES TO GAIN ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

On 8 November 2016, the Council agreed on a proposal granting access for tax authorities to information held by authorities responsible for the **prevention of money laundering**. The directive will require member states to enable access to information on the **beneficial ownership of companies**. It will apply as from **1 January 2018**.

The proposal is one of a number of measures set out by the Commission in July 2016, in the wake of the April 2016 Panama Papers revelations.

Tax authorities need greater access to information on the beneficial ownership of intermediary entities and other relevant customer due diligence information. The directive will enable them to access that information in monitoring the proper application of rules on the automatic exchange of tax information.

Where a financial account holder is an intermediary structure, financial institutions are required by directive 2014/107/EU to look through that entity and report its beneficial ownership. Applying that provision relies on information held by authorities responsible for the prevention of money laundering, pursuant to directive 2015/849/EU. Access to that information will ensure that tax authorities are better equipped to fulfil their monitoring obligations. It will thus help prevent tax evasion and tax fraud.

Agreement was reached at a meeting of the Economic and Financial Affairs Council, without discussion, and the European Parliament also backed it up. The directive requires unanimity within the Council, after consulting the Parliament.

July 2016 Commission communication on measures to enhance tax transparency

Directive 2014/107/EU on the mandatory automatic exchange of tax information

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EUROPEAN PARLIAMENT DISCUSSION ON THE INITIATIVE REPORT ON FUNDAMENTAL RIGHTS AND BIG DATA

On 8 November 2016, the LIBE Committee of the European Parliament held a first discussion on the own-initiative report from MEP Ana Gomes (Portugal, S&D) on fundamental rights implications of big data : privacy, data protection, non-discrimination, security and law enforcement. The draft report aims at giving a definition of big data (recital A) as "*the recurring accumulation of large amounts of data, including personal data, from a variety of sources, which are subject to automatic processing by computer algorithms and advanced data-processing techniques in order to generate certain correlations, trends and patterns* ", which could apply to credit reporting elements. Whilst underlying the benefits of big data for smart cities, e-health and other vertical developments, the draft report also stresses that "the marginalisation of the role of humans in these processes can trigger flawed decision-making procedures" (recital F) and raises some privacy and data protection concerns on big data usage.

More specifically, point 3 urges to consider non-discrimination and protection of fundamental rights for all data processing, including for anonymised or pseudonymised data : *" Points out that Union law for the protection of privacy and personal data, as well as the rights to equality and non-discrimination, are applicable to data processing* ***even when that processing is preceded by pseudonymisation and anonymisation techniques****, insofar as there are risks of re-identification, or, in any case, when use of non-personal data might impact on individuals' private lives or other rights and freedoms*"

Point 4 of the draft report calls for increased transparency of analytics and algorithms: " *takes the view that transparency, fairness, accountability and control over personal data are core values through which specific rights and obligations are derived, and which should guide the action of corporations, public authorities and other actors that sue data to frame their decision-making procedures;* ***emphasises the need for much greater transparency with regard to data processing and analytics by businesses***"

During the first exchange of views that took place on November 8 at LIBE Committee, the rapporteur MEP Gomes said she would welcome amendments to better grasp the whole picture and outlined that non-discrimination for automated decision making processes of big data was an important element to take into account, also in light of the implementation of the GDPR.

Shadow rapporteurs are MEP Axel Voss (EPP, Germany), MEP Sophia In't Veld (ALDE, NL), MEP Marie-Christine VERGIAT (GUE, France) and MEP Jan-Philipp ALBRECHT (Greens, Germany).
The next discussion on the issue has been set to 8th December, with a deadline for amendment on 15th December at 15.00 CET. FEBIS Regulatory Committee is monitoring the issue to prevent threats.

Link to the draft report by MEP Gomes

Link to the EP Procedure file

ECJ RULING QUALIFIES DYNAMIC IP ADDRESSES AS PERSONAL DATA

The ruling of the European Court of Justice in the case known commonly as "Breyer" may have serious implications ***as it clarifies the definition of personal data, which will make it more difficult for organizations to pseudonymize or anonymize personal data. In short, IP addresses may be personal data even though information may have to be sought from third parties to identify the subjects***. A further complication is how this ruling will stand once the GDPR comes into force in 2018.

EU data protection law only applies to the processing of personal data, which it defines as "any information relating to an identified or identifiable natural person." Anyone to whom EU data protection law applies needs to correctly distinguish the personal data that they process from any other information that they hold. It is important that this is done at present, but it will become essential after May 25, 2018, when the EU's new GDPR will apply.

The GDPR makes controllers accountable for the processing of personal data, requiring that they demonstrate compliance. Demonstrating compliance may mean appointing data protection officers, undertaking data protection impact assessments and implementing data protection by default and design. Controllers that fail to do so may be face fines of up to four percent of their annual turnover worldwide. They may also face actions for damages, which may be brought by way of class action and so prove even more expensive.

The judgment of the European Court of Justice in Breyer is particularly significant in this context. ***The CJEU was not considering pseudonymization directly, but rather the definition of personal data and whether or not a dynamic IP address could be personal data.***

These obligations of accountability and compliance may all be avoided if a controller can demonstrate that they are not, in fact, processing personal data. At present the Data Protection Directive 95/46 encourages controllers to anonymize personal data. Anonymization should mean " … irreversibly preventing the identification of the individual to whom data relates." Whist possible in theory, anonymization has proven impossible to perfect in practice. So the GDPR now suggests pseudonymization, which it defines as: " … the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person." The GDPR suggests that pseudonymization may ensure the security of data, the lawfulness of processing or enable research.

The Breyer case was referred to the CJEU by the German Courts and they referred two questions to the CJEU.

The first question asked of the court was ***whether a dynamic Internet Protocol address (IP address) can be personal data.*** An IP address is a sequence of numbers assigned by an internet service provider (ISP) to each computer that accesses the internet. Some internet users have static IP addresses that are permanently assigned, but most have dynamic IP addresses, which are temporarily assigned to each computer as it goes on-line and reassigned when it goes off-line. As a result, dynamic IP addresses cannot be used to directly identify the computer from which access had been sought. If one of the German federal institutions in question wanted to identify which

computer had been assigned a particular IP address, then it would have to request that information from the ISP that had originally assigned the IP address.

The CJEU observed that in the event of a cyberattack, German law appears to provide for website operators to contact the appropriate authorities, who might then take the steps necessary to obtain information from ISPs and bring criminal proceedings***. This observation led the CJEU to conclude that dynamic IP addresses are personal data if website operators have "legal means" enabling the identification of the person associated with the IP address with the help of additional information which that person's internet service provider has***.

The judgment in Breyer suggests that data will still be personal even if it requires legal means to make a person "identifiable." This suggests that the meaning of "identifiable" is very broad. It may prove difficult to construct " … technical and organisational measures" that go further than the "legal means" referred to in Breyer. If the CJEU judgment in Breyer applies to the GDPR, then pseudonymization may prove as difficult to perform as anonymization.

It is true that the GDPR does not yet apply and so was not directly considered in Breyer, but the definition of personal data in the new GDPR is largely the same as that in the old Directive 95/46. **The GDPR specifies some new factors that an identifier can contain such as name, location data, online identifier and genetic data**. It also clarifies that the data of dead or legal persons such as companies cannot be personal data. Otherwise old and new definitions are the same. Hence, it cannot be assumed that the CJEU will not apply Breyer to its interpretation of the GDPR after May 25, 2018. Where this leaves the concept of pseudonymization remains to be seen.

The second question asked of the CJEU was whether German law could permit the processing of personal data for the purposes of facilitating and charging for access to services after a connection had been terminated. The CJEU held that the objective of ensuring the general operability of services cannot justify the use of such data after those services have been accessed. However, the CJEU did suggest that those who provide internet services might have a legitimate interest in ensuring the continued functioning of their websites which goes beyond each specific use of their publicly accessible websites.

BENEFICIAL COMPANY OWNERS REGISTER IS VITAL TO COMBAT MONEY LAUNDERING, EUROPEAN PARLIAMENT SAYS

The EU needs a European register of beneficial owners of companies, consistent definition - and handling - of suspicious transactions and enforced transnational cooperation like the US Financial Investigation Unit, experts on anti-money laundering enforcement in Belgium and Germany told European Parliament's PANA Inquiry Committee on 14/11/2016.

Money laundering is not a fiscal issue, but a criminal one, MEPs were told by Philippe de Koster of the Belgian Financial Intelligence Unit, an independent administrative authority involved in the fight against money laundering and terrorist financing. There is always a crime behind money laundering and tax evasion, and under Belgium's

penal code, money laundering is considered as bad as the underlying crime, he said, calling for similar standards under EU law. **He also made a plea for greater coordination among Europe's financial intelligence Units**.

Giovanni Kessler, Director-General of the European Anti-Fraud Office (OLAF) called for a standardised, interconnected, easy-to-use registry of national bank accounts which would be available to all EU enforcement agencies. "Knowing bank accounts are traceable would have a powerful deterrent effect on individuals using them to pay bribes. Traceability would also increase detection rates of fraudulent activities and increase the possibility of control, " said Mr Kessler.

MEPs also heard about the links between companies set up by Mossack Fonseca -- the law firm at the heart of the scandal -- and Russian-speaking crime groups, extremist Islamic terrorist groups and illegal immigration. "The main point here is that we can link companies from the Panama Papers leaks not only with economic crimes, like money laundering or VAT carousels, but also with terrorism and Russian organised crime groups, said Simon Riondet of Europol, the EU's enforcement agency against terrorism and serious international crime.

Norbert Naulin, head of a North Rhine Westphalia special investigation unit set up to fight organised crime and tax fraud, defended its decision to buy information from an anonymous source on German banks and beneficial owners named in the Panama Papers by saying that international criminal systems could only be revealed by someone with insider knowledge. "No-one wakes up in the morning and decides to explain how it runs for altruistic reasons," he said.

IOSCO CONSULTATION ON CRA PRODUCTS

Early November 2016, the International Organisation of Securities Commission unveiled a consultation on other CRA products and their use by participants. The objective of the consultation is to analyse IOSCO's current understanding of these CRA products and services and how they differ from the traditional issuer-paid or subscriber-paid credit ratings. Examples of Other CRA Products and services include, inter alia: private ratings, confidential ratings, expected ratings, indicative ratings, prospective ratings, provisional ratings, preliminary ratings, credit default swap spreads, bond indices, portfolio assessment tools, and other tools.

The IOSCO is therefore asking all interested parties to comment on the following questions

- Are there additional Other CRA Products that you can identify?
- Are there other features of the six Other CRA Product groups that you believe should be added to the consultation report?
- Are there additional uses of the Other CRA Products that you can identify in addition to what is described in the consultation report?
- With respect to each of the six Other CRA Product groups identified in the consultation report, do you consider the Other CRA Product group to be covered by the Code of Conduct

BIG TECH AND E-COMMERCE ASSOCIATIONS CALL FOR AN EU BAN OF FORCED DATA LOCALISATION

In a letter sent to EU Commission, 20 of the most influent Brussels-based tech and e-commerce associations such as DigitalEurope, WFA, FENCA and EDIMA are asking for the removal of unjustified data localisation , arguing that these national requirements are a burden for all European SMEs and are acting as a deterrent for innovation and growth. They are of the opinion that data localisation should depend on what consumers want and not on a governmental mandate, and are urging the Commission to propose a Regulation of Free Flow of Data. Click here to access the letter.

EU COMMISSION NEW APPROACH TO BUSINESS INSOLVENCY IN EUROPE:

The European Commission has for the first time presented a set of European rules on business insolvency on 22/11/2016. This initiative will increase the opportunities for companies in financial difficulties to restructure early on so as to prevent bankruptcy and avoid laying off staff. It will ensure that entrepreneurs get a second chance at doing business after a bankruptcy. It will also lead to more effective and efficient insolvency procedures throughout the EU.

Commissioner for Justice, Consumers and Gender Equality, **Věra Jourová** said: "*Every year in the EU, 200,000 firms go bankrupt; which results in 1.7 million job losses. This could often be avoided if we had more efficient insolvency and restructuring procedures. It is high time to give entrepreneurs a second chance to restart a business through a full discharge of their debts within a maximum three years.*"

This initiative is a key deliverable under the Capital Markets Union Action Plan and the Single Market Strategy. It will contribute to removing important barriers to the development of capital markets in the EU by providing legal certainty to cross-border investors and companies operating across the EU. The new rules will help attract investors, create and preserve jobs, as well as help economies absorb economic shocks. Currently, too many viable companies in financial difficulties are steered towards liquidation rather than early restructuring and too few entrepreneurs get a second chance.

The proposal is also good news for financial stability since efficient restructuring procedures will prevent businesses from defaulting on their loans to the banks and will help addressing the issue of high levels of non-performing loans in parts of the EU banking sector. This is turn will allow banks to lend more to consumers and businesses.

The proposed Directive focuses on three key elements:

- Common principles on the **use of early restructuring frameworks**, which will help companies continue their activity and preserve jobs.

- Rules to allow **entrepreneurs to benefit from a second chance**, as they will be fully discharged of their debt after a maximum period of 3 years. Currently, half of Europeans say they would not start a business because of fear of failure.
- Targeted measures for Member States to **increase the efficiency of insolvency**, restructuring and discharge procedures. This will reduce the excessive length and costs of procedures in many Member States, which results in legal uncertainty for creditors and investors and low recovery rates of unpaid debts.

The new rules will observe the following key principles to ensure insolvency and restructuring frameworks are consistent and efficient throughout the EU:

- Companies in financial difficulties, especially SMEs, will have access to early warning tools to detect a deteriorating business situation and ensure restructuring at an early stage.
- Flexible preventive restructuring frameworks will simplify lengthy, complex and costly court proceedings. Where necessary, national courts must be involved to safeguard the interests of stakeholders.
- **The debtor will benefit from a time-limited "breathing space" of a maximum of four months from enforcement action in order to facilitate negotiations and successful restructuring**.
- **Dissenting minority creditors and shareholders will not be able to block restructuring plans but their legitimate interests will be safeguarded.**
- New financing will be specifically protected increasing the chances of a successful restructuring.
- Throughout the preventive restructuring procedures, workers will enjoy full labour law protection in accordance with the existing EU legislation.
- Training, specialisation of practitioners and courts, and the use of technology (e.g. online filing of claims, notifications to creditors) will improve the efficiency and length of insolvency, restructuring and second chance procedures.

For further details:

Proposal

Q&A

EU Factsheet

Country-specific factsheets

ESMA FINALISES GUIDELINES ON THE VALIDATION AND REVIEW OF CRAS' METHODOLOGIES

The European Securities and Markets Authority (ESMA) has published today its Final Report on Guidelines on the validation and review of Credit Rating Agencies' (CRAs) methodologies. The Guidelines will increase the quality of the quantitative measures used by requiring CRAs to review their methodologies:

- discriminatory power, meaning their ability to rank the rated entities in accordance to their future status (defaulted or not defaulted) at a predefined time horizon.

- predictive power, by comparing the expected behaviour of the credit ratings to the observed results; and

- historical robustness, through the assessment of other elements of the methodology such as the stability of the credit ratings assigned by the methodology.

ESMA acknowledges there are challenges in validating methodologies with limited quantitative evidence and in such cases requires CRAs to consider data enhancement techniques as well as techniques enabling them to perform quantitative measures for demonstrating the discriminatory power of their methodologies.. These Guidelines focus on quantitative measures as ESMA identified the industry requires more clarity in this area. However, ESMA believes that good a quality validation of methodologies strikes a balance between the application of quantitative and qualitative techniques. While stressing the importance of objectivity, which quantitative analysis brings to the process, validation should include both technique.

For more information, click here

EU COMMISSION START-UP AND SCALE-UP INITIATIVE

The Commission's Start-up and Scale-up Initiative aims to give Europe's many innovative entrepreneurs every opportunity to become world leading companies. It pulls together all the possibilities that the EU already offers and adds a new focus on venture capital investment, insolvency law and taxation. The European Commission is determined to change that and help start-ups deliver their full innovation and job creation potential. The Initiative brings together a range of existing and new actions to create a more coherent framework to allow start-ups to grow and do business across Europe, in particular:

- **Improved access to finance:** The Commission and the European Investment Bank Group are launching a **Pan-European Venture Capital Fund of Funds**. The EU will provide cornerstone investments of up to a maximum budget of €400 million and the fund manager(s) must raise at least three times as much from private sources, triggering a minimum of €1.6bn in venture capital funding. It will be managed by one or more professional and experienced fund managers ensuring a real market approach. This complements existing EU funding instruments such as the European Fund for Strategic Investments (EFSI), Europe's programme for small and medium-sized enterprises COSME and the EU's research and innovation funding programme Horizon 2020.

- **Second chance for entrepreneurs:** The Commission has tabled a legislative proposal on insolvency law. It will allow companies in financial difficulties to restructure early on so as to prevent bankruptcy and avoid laying off staff. It will also make it easier for honest entrepreneurs to benefit from a second chance without being penalised for not succeeding in previous business ventures, as they will be fully discharged of their debt after a maximum period of 3 years.

- **Simpler tax filings:** The Commission is also working on a range of taxation simplifications including the recent proposal for a Common Consolidated Corporate Tax Base (CCCTB), which proposes to support small

and innovative companies that want to expand their business across borders. Other initiatives include plans for a simplification of the EU VAT system and broadening the forthcoming guidance on best practice in Member States tax regimes for venture capital.

The Initiative also puts emphasis on helping navigate regulatory requirements, improving innovation support through reforms to Horizon 2020, and fostering ecosystems where start-ups can connect with potential partners such as investors, business partners, universities and research centres. The Startup Europe network will be reinforced to connect clusters and ecosystems across Europe. **In 2017, the Commission will put forward proposals for a Single Digital Gateway that provides easy online access to Single Market information, procedures, assistance and advice for citizens and businesses**. The Commission will adopt a set of measures to support the use of **Intellectual Property Rights** by SMEs and take action to support access by start-ups to the €2 trillion European **public procurement** market.

- Factsheet: Start-up access to finance – EU funding and venture capital investmentFactsheet: A Supportive IPR Framework for SMEs and start-ups
- Factsheet: Early restructuring and a second chance for entrepreneurs
- Start-up and Scale-up Initiative
-

EC TO PRESENT A COMMMUNICATION ON FREE DATA FLOW IN JANUARY

In an interview with journalists, Commissioner Andrus Anspi said that the EC will present a communication on free data flow in janaury 2017, which will presumably lead to a regulation on free data flow to be presented in june 2017. The Communication should trigger a public consultation on the still contentious issues of data ownership, data access, data localisation, data portability and liability.

CONSULTATIONS

Consultation title	Subject	Deadline	Web site
IOSCO consultation on other CRA products and their use by market participants	seeks further insight into how market participants use non-traditional, products or services offered by credit rating agencies (CRAs).	05/12/2016	Link to text : http://www.iosco.org/news/pdf/IOSCONEWS443.pdf

THE MEMBER STATES CORNER

This item intends to put in the spotlight some trends/initiatives happening on the regulatory or market front at national level, so that FEBIS members know better what happens in the other EU countries. Each month a particular item from an EU Member State will be picked up and presented, but we need your input to make it lively and accurate, so please send your national info to Stephanie so it can be put up in next FEBIS newsletters!

UK confirms that the ICO will be supporting the implementation of the GDPR

The UK government has now confirmed that the UK will be implementing the General Data Protection Regulation (GDPR). The Secretary of State Karen Bradley MP used her appearance before the Culture, Media and Sports Select Committee to say:

"We will be members of the EU in 2018 and therefore it would be expected and quite normal for us to opt into the GDPR and then look later at how best we might be able to help British business with data protection while maintaining high levels of protection for members of the public."

One of the key drivers for data protection change is the importance and continuing evolution of the digital economy in the UK and around the world. That is why both the ICO and UK government have pushed for reform of the EU law for several years. The digital economy is primarily built upon the collection and exchange of data, including large amounts of personal data – much of it sensitive. Growth in the digital economy requires public confidence in the protection of this information.

Citizens want the benefits of these digital services but they want privacy rights and strong protections too. Having sound, well-formulated and properly enforced data protection safeguards help mitigate risks and inspire public trust and confidence in how their information is handled by business, third sector organisations, the state and public service.

The major shift with the implementation of the GDPR will be in giving people greater control over their data. This has to be a good thing. Today's consumers understand that they need to share some of their personal data with organisations to get the best service. But they're right to expect organisations to then keep that information safe, be transparent about its use and for organisations to demonstrate their accountability for their compliance.

The ICO is committed to assisting businesses and public bodies to prepare to meet the requirements of the GDPR ahead of May 2018 and beyond.

As early as January 2016, the ICO met with organisations to better understand the challenges they will face to comply with the law, and we've already started to publish work to help with that, from their 12 steps to take towards compliance to the recent privacy notices code of practice which includes GDPR detail.

Within the next month, ICO will publish a revised timeline setting out what areas of guidance which will be prioritising over the next six months. Everything will be published on the ICO website, and we'll flag updates on twitter and through our e-newsletter.

In the meantime, anyone looking to get up to speed should start by reading the ICO overview to GDPR, which sets out the key themes of the regulation to help organisations understand the similarities with the existing UK Data Protection Act, and of course some of the new requirements.

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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.