



May 2018 EU affairs newsletter

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Money laundering

Money laundering and terrorist financing: new rules adopted

On 14 May 2018, the Council adopted a directive strengthening EU rules to prevent money laundering and terrorist financing. The directive sets out to close down criminal finance without hindering the normal functioning of payment systems. Amending directive 2015/849, it is part of an action plan launched after a spate of terrorist attacks in Europe in 2016. "These new rules respond to the need for increased security in Europe by further removing the means available to terrorists", said Vladislav Goranov, minister for finance of Bulgaria, which currently holds the Council presidency. "They will enable us to disrupt criminal networks without compromising fundamental rights and economic freedoms."

The directive was adopted at a meeting of the General Affairs Council, without discussion. This follows an agreement with the European Parliament reached in December 2017. The Parliament approved the agreed text on 19 April 2018.

The main changes to directive 2015/849 involve:

- broadening access to information on **beneficial ownership**, improving transparency in the ownership of companies and trusts;
- addressing risks linked to **prepaid cards and virtual currencies**;
- cooperation between **financial intelligence units**;
- improved checks on transactions involving **high-risk third countries**.

[May 2018 directive on strengthened rules to prevent money laundering and terrorist financing \(PE-CONS 72/17\)](#)

[December 2017 press release on trilogue agreement on money laundering and terrorist financing](#)

AI

CNIL publishes the English version of its report on ethical matters of algorithms and artificial intelligence

Numerous initiatives on the governance of artificial intelligence are currently being undertaken. In this context, this report aims at giving an overview of the main ethical matters which are raised, and to increase the collective awareness on these issues in civil society.).



In France, the report came as an answer to the Digital Republic Bill, which recently gave a unique assignment to the French Data Protection Authority (CNIL): leading a reflection on the ethical and societal matters raised by the rapid development of digital technologies. It was released in France on December 15th and contributed to Deputy Cédric Villani's mission (given by the Prime Minister) to examine France's strategy on AI.

The report outlines the following *2 founding principles*: loyalty, and continued attention and vigilance. Those principles could form part of a new generation of principles and human rights in the digital age: system-rights organising the dimension underpinning our digital world.

- **A principle of loyalty** applied to all sorts of algorithms, which takes into account not only their personal outcomes but their collective ones as well. In other words, an algorithm – *whatever it deals with personal data or not* – should be loyal towards its users, not only as consumers but also as citizens, or even as communities or as an entire society. The algorithm's criteria must not be completely at odds with certain key collective interests.
- **A principle of continued attention and vigilance**: its point is to organize the ongoing state of alert that our societies need to adopt as regards the complex and changing socio-technical objects that algorithmic systems represent. It applies to every single stakeholder (designers, businesses, end users) involved in "algorithmic chains". This represents a direct answer to some significant challenges the digital society is facing with AI, a technology that involve numerous players throughout its development, and whose outcomes are quite often unforeseeable and lead to excessive trust.

These principles begin to take shape through *6 policy recommendations* intended for both public authorities and civil society (companies, citizens, etc.):

1. Fostering education of all players involved in "algorithmic chains" (designers, professionals, citizens) in the subject of ethics;
2. Making algorithmic systems understandable by strengthening existing rights and organising mediation with users;
3. Improving the design of algorithmic systems in the interests of human freedom;
4. Setting up a national platform for auditing algorithms;
5. Increasing incentives for research on ethical AI and launching a participatory national worthy cause on a general interest research project;
6. Strengthening ethics within businesses.

The report beforehand sheds the light on *6 substantial ethical matters* associated with the use of algorithms and AI:

1. Autonomous machines: a threat to free will and responsibility?
2. Biases, discrimination and exclusion



3. Algorithmic profiling: personalization versus collective benefits
4. Preventing massive files while enhancing AI: seeking a new balance
5. Quality, quantity, relevance: the challenge of data curated for AI
6. Human identity before the challenge of artificial intelligence

You can click [here](#) to access the report in English.

E-privacy

Discussions to take place at Telecom Council on June 8

The Bulgarian presidency, which currently has the presidency of the Council of European Union until end June 2018, has issued a new working paper on the e-privacy regulation which examines the remaining issues and has also provided a briefing paper to be discussed at the next Telecom Council on June 8.

On article 16 on unsolicited and direct marketing communications, Following the extensive discussions and written comments of the Member States, the text of the provision on unsolicited and direct marketing was further streamlined. With regard to direct marketing to own customers, new text from the Council allows Member States to provide by law a maximum period of time within which the customers' contact details can be used for direct marketing purposes. Based on the Member States' comments, the “presenting” of direct marketing communications was deleted from the scope of the Article and corresponding recitals. Additionally, recital text provides clarification on the scope of the provision, explaining that displaying advertising to the general public on a website is not covered.

Delegations seem to generally support the provision. Some further work might still be needed with relation to the previous point. The Bulgarian Presidency is aiming to get to a working document on June 8 and might even try to get the negotiating mandate to start the trilogues discussions before handing it over to Austria. The Austrian Presidency does not seem to put a big spotlight on the e-privacy dossier but this might be changing in the coming weeks or months.



Free flow of data

New compromise amendments proposed

The rapporteur Anna Maria Corazza Bildt (PPE) has drafted a third version of her compromise amendments. New recital states that the free flow of data applies to the non-personal part of the mixed dataset whereas the RGPD would apply to the personal part.

Platforms -to-business

The Bulgarian presidency is leading the Council discussions

The Bulgarian Presidency has prepared [a working document](#) on this issue which was discussed at the Competitiveness Council on May 28th.

They are asking delegations if they share the Commission's assessment that it's necessary to improve platforms transparency and reliability, and also asking for their opinion on the graduated approach chosen by the Commission.

The new proposal published on 26 April 2018 aims at setting up new rules for the online platforms providing small businesses with a safety net in the digital economy. In particular it flags out increased transparency requirements for search engine ranking and paid-search advertising and listings, better dispute resolution system and setting up an Eu observatory on platforms.

The Competitiveness Council had its first debate on the draft regulation on platforms-to-business on 28th May 2018. All delegations welcome the broad objectives but some Member States want to ensure that innovation is not impeded and that a fair balance is struck. The Netherlands asked for clarification by the Commission on the impact for SMEs; Spain and Hungary are very supportive of the text. Germany is supportive but still examining the draft. Commissioner Ansip is pushing for the text to be adopted under the current mandate and is backed up by France, UK and Germany. Austria will be putting it as a priority item for its presidency, aiming at a common position adopted in November 2018.



Payments directive

EC ask the ECJ to fine Spain for failure to transpose the Payment Accounts Directive

The European Commission decided on 17th May to propose a lower financial sanction in the context of its referral of Spain to the Court of Justice of the EU for failure to notify measures for fully implementing the EU Payment Accounts Directive (Directive 2014/92/EU). This confirms the Commission's decision from October 2017, but takes into account the partial transposition of the Directive reached in the meantime.

The Commission will call on the Court to impose a daily penalty of € **48,919.20** for Spain from the day of the judgement until this Directive is fully enacted and in force in national law.

The EU rules on payment accounts are essential to ensure consumers benefit from transparent payment accounts in a competitive and inclusive market. The Directive gives all legal EU residents the right to a basic payment account for a reasonable fee, regardless the place of residence. It also improves the transparency of payment account fees and makes it easier to compare and switch. Member States' laws, regulations and administrative provisions necessary to comply with the Directive had to enter into force by 18 September 2016 and the Commission had to be informed immediately.

In case the transposition remains incomplete and the Court of Justice of the EU confirms the Commission's view, the daily penalty would have to be paid from the date of the judgment or a later date set by the Court until the transposition is complete. The final amount of the daily penalty will be decided by the Court, but this cannot exceed the Commission's proposal.

Background

By sending a letter of formal notice to the Spanish authorities in November 2016, the European Commission formally requested Spain to fully implement the EU Payment Accounts Directive ([Directive 2014/92/EU](#)). After receiving a reply from the Spanish authorities, the Commission decided to send a reasoned opinion to Spain in [April 2017](#). Then, the Commission decided to refer Spain to the Court in [October 2017](#).

To date, complete transposition has not been formally notified by the Spanish authorities, which leads the Commission to conclude that the EU Payment Accounts Directive is, at present, not transposed completely into their national law.

In practice, under Article 260(3) of Treaty on the Functioning of the EU ([TFEU](#)) if a Member State fails to transpose an EU Directive into national law within the required deadline, the Commission may call on the Court of Justice of the EU to impose financial sanctions. The penalties take into account:

- the seriousness of the infringement,
- the duration of the infringement,



- "n" factor (which varies between Member States and takes into account their Gross domestic product, GDP),
- a flat-rate amount, which for this infringement was set at €680 per day when the decision to refer the matter to the Court was taken,
- the deterrent effect reflected in the ability to pay of the Member State concerned.

Late Payments

Intrum publishes its 2018 European Payment Report

9,607 surveyed businesses around Europe have also reported that payment timings are going down. However, the average payment time is still well above the desirable 30 days that is stipulated as a maximum in the directive covering all nations in the European Union. In corporate (B2B) transactions the average time it takes to get paid amounts to 34 days, down from 37 days in 2017. What is alarming is that payments from the public sector still take longer — 40 days on average — despite the fact that the directive actually is mandatory for the public sector.

The findings, which are part of the European Payment Report 2018, released by the pan-European credit management firm Intrum, also show that fewer businesses report negative consequences of late payments.

“Clients still pay late, but businesses all over Europe seem to have become slightly more positive when it comes to their ability to handle the consequences of late payments. ***That said, 28 percent of the surveyed respondents experience hindering growth due to late or non-payments and 21 percent say that they are unable to hire new staff because their clients won’t pay them on time.*** This shows that we all need to continue to work for prompter payments as it shrinks small and medium-sized enterprises (SMEs) vulnerability. Payment within 30 days should, and will, eventually be the praxis of businesses all over Europe”, says Mikael Ericson, CEO of Intrum.

Click [here](#) for the press release and more information on the 2018 EPR.



Consultations

Title	Subject	Open until	link
EU consultation on public reporting by companies	Accounting and public reporting/Access to data	21 July 2018	at https://ec.europa.eu/info/consultations/finance-2018-companies-public-reporting_en



About 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 100 members from all over the world involved in providing Business Information and credit information services of national and International importance.

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.