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**AMLD | BO-Registers – Compromise Text and the *Sovim* jugdment**

As some of you know, I have been actively working on cases that highlight the importance of data protection in relation to beneficial ownership registers. My correspondence to the EU, *amicus briefs* to the CJEU and articles are available online.

Nobody should engage in Money Laundering.

At the same time, EU institutions **must consider** the implications of AML measures for individuals' fundamental rights to privacy, family life and data protection, **respect** the principles of necessity and data minimisation, and **consider** the number of people who may be impacted by the measures. In the EU, there are 448 million inhabitants and 31.5 million enterprises, which the draftsmen of the EU AML rules should not automatically suspect of engaging in money laundering activities.

In *Sovim* (and all previous data protection judgments)[1], the CJEU stressed the **strict application** of the concept of necessity (*'if it doesn't fit, you must acquit'*).

According to the Compromise Text published on 14 January 2024, investigative journalists, civil society organisations, NGOs and other persons would be issued with a 3 years' access pass[2] giving them unfettered[3] and anonymous[4] access to beneficial ownership data, whereby a person accredited with the register of a Member State should be given the same access in all EU Member States[5] (and so to all 31.5m enterprises). Such access would be granted without any real scrutiny of the applicant, but merely *"taking into account their function or occupation"*.[6]

It is difficult to see how a **blanket and generalised accreditation system** satisfies the principles of strict necessity and data minimisation, nor how it differs substantially from public access. It is **merely access by a smaller section of the public**.

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[1] See C-293/12; C-362/14 ; C-203/15; Opinion 1/2015; C-623/17; C-793/19; T-639/15; C-601/20. See also application no. 36345/16.
[2] Art. 12a (6) of the Compromise Text.
[3] "*…**shall be deemed to have a legitimate interest***", Art. 12(2) of the Compromise Text,
[4] "*Member States shall ensure that the information provided by central registers **does not lead to the identification of the individual consulting the register***". And "*Member States shall ensure that where beneficial owners file [subject]-request under Art. 15 of the [GDPR], they are provided with information on the **function or occupation** of the person*" that consulted the register – Art 12(5) of the Compromise Text.
[5] Art. 12a (3) of the Compromise Text.
[6] Art. 12(a) of the Compromise Text.

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As the name suggests, the text reflects a compromise amongst different EU institutions (Council, Commission and Parliament).

Public access to beneficial ownership information (since struck down by the CJEU in the *Sovim* case) was the result of another compromise, whereby research into internal documents of the EU (which was brought to the attention of the CJEU) shows **deep divisions** during the trialogue process back in 2016/2017, with:

- the European Parliament pushing repeatedly for public access;
- the European Council repeatedly deleting the reference to public access; and
- the Commission stated that "it could not accept" public access.

Five years later, history is repeating itself. Compromising between different possible approaches is fine. But compromising on fundamental rights is not. This point was canvassed by the UK Parliament in a report on investigatory powers of police authorities, which raises similar issues:

> *"**Privacy protections should form the backbone of the draft legislation, around which the exceptional powers are then built**. Whilst recent terrorist attacks have shown the importance of the work the Agencies do in protecting us, this cannot be used as an **excuse to ignore** such important underlying principles or unnecessarily override them. Privacy considerations must form an integral part of the legislation, **not merely an add-on**"*

Data protection is neither the backbone, nor an add-on to the Compromise Text. Rather, it is an exception to be upheld only *"in exceptional circumstances"*[7]. **This "access by default" system turns the whole Human Rights edifice enshrined in the EU Charter of Fundamental Rights on its head.**

It is noteworthy that when investigative journalists asked to access expenses' data of members of the European Parliament, MEPs went to court. The General Court sided with MEPs, stressing their individual rights to privacy, and denying the journalists' data request[8]. ***Do as I say, not as I do.*** 705 MEPs vs 31.5 million businesses and 448.4 million inhabitants.

Also, when I asked the European Commission as part of my advocacy work to provide me with information relating to internal documents, I was provided with heavily redacted information shown on the next page, coupled with all sorts of reasons why such information should not be made available. Whereas beneficial owners are not allowed to protect their legitimate interests enshrined in the fundamental Charter absent "exceptional circumstances". ***One rule for me, another one for thee***. 27 Commissioners versus 31.5m businesses and 448.4 inhabitants.

Broad-brushed legislation should not be allowed in an area that affects the fundamental rights of millions of businesses throughout the EU, including family businesses and businesses that provide services in sensitive areas, and I call on you to ensure that the compromise text is not put to a vote without a prior analysis of the proportionality and necessity of such extension, as well as its impact on fundamental rights and data protection.

Best regards,

9 March 2024

**Filippo Noseda**
Partner

[7] "*In exceptional circumstances, where the access to the register would expose the beneficial owner to disproportionate risk… Member States shall provide an exemption*" – Art. 13.

[8] T-639/15,

## Annex

Compare and contrast the "access by default" system proposed under the Compromise Text with the following real cases relating to access of data relating to the European Parliament and the European Commission, where privacy prevailed.

### Attempt to access Commission data

**Presidency steering note**

WPTQ meeting (Direct Taxation – DAC)
30 MARCH 2023 (MORNING SESSION ONLY)

**Ref: COMM 23/1165 and 23/1166**

**In response to a request of information dated 14 July 2022**

### Attempt to access MEP data

The Guardian

**Details of MEPs' €4,416-a-month expenses to remain secret, court rules**

**An obligation to publish spending records would undermine MEPs' privacy, says court**

MEPs during a voting session at the European parliament in Strasbourg, France. Photograph: Reuters

An EU court has rejected calls for greater transparency about MEPs' expenses, as it upheld a decision that politicians are not required to reveal how they spend public money intended for their offices.

In a blow to transparency campaigners, the Luxembourg-based general court upheld the decision of the European parliament that MEPs do not have to provide invoices and receipts for their constituency office costs, or provide the public with details of travel expenses.

It concluded that an obligation to publish spending records would undermine MEPs' privacy, concluding that campaigners had failed to prove publishing information was "appropriate and proportional".