

# CRS and beneficial ownership registers— *what serious newspapers and tabloids have in common*

Filippo Nosedà\*

## Abstract

In the first part of the article, the author provides an update on recent legal developments in this area, including renewed criticism from the European Union's data protection bodies and an internal debate between the EU's institutions. Unfortunately, the lack of public debate is an important factor in the seemingly unstoppable race towards total transparency. In the second part of this article, the author therefore asks himself why serious newspapers have not yet made the link between transparency and data protection. *Prima facie*, the question is puzzling. Leading newspapers have been pouring over the steady trickle of cases of hacking and data breaches that have taken place over the past few years. In addition, one cannot count the number of articles and editorials dedicated to the relationship between the individual and the State following the revelations by Edward Snowden. What if the answer was that (with few exceptions) leading newspapers might be acting like tabloids in this area, chasing headlines instead of informing the public of mounting data protection concerns and seeking to influence public opinion? This would be bad for journalism

and bad for democracy. This is the fourth of a series of articles written for *Trusts & Trustees* concerning the data protection implications of the Common Reporting Standard (CRS) and the European Union's (EU) public registers on beneficial ownership.<sup>1</sup>

## EU registers—Iceberg ahoy!

Ever since the French constitutional court struck down the French public register for trusts or breaching the fundamental right to respect for private life (this took place on 21 October 2016),<sup>2</sup> the EU's proposal to introduce public registers of beneficial ownership as part of the 4th and 5th EU Anti-Money Laundering Directives (AMLDs) has been thrown into disarray.

That all was not well with the EU's project became clear for everyone to see on 2 February 2017, when the European Data Protection Supervisor (EDPS) published a damning opinion<sup>3</sup> in which he decried the unclear objectives pursued by the AMLDs and, more generally, the invasive nature and lack of proportionality of the proposed registers.<sup>4</sup>

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1. Previous articles include, 'Trusts and Privacy: A New Battle Front' (2017) 23 *Trusts & Trustees* 301–310; 'Common Reporting Standard and EU Beneficial Ownership Registers: Inadequate Protection of Privacy and Data Protection' (2017) 23 *Trusts & Trustees* 404–409

2. *Re Helen S*, decision n 2016-591 QPC dated 21 October 2016 <<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2016-591-qpc/decision-n-2016-591-qpc-du-21-octobre-2016.148055.htm>> accessed 2 April 2017.

3. EDPS Opinion 1/2017; Opinion on a Commission Proposal amending Directive (EU) 2015/849 and Directive 2009/101/EC – Access to beneficial ownership information and data protection implications <[https://edps.europa.eu/sites/edp/files/publication/17-02-02\\_opinion\\_aml\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/17-02-02_opinion_aml_en.pdf)> accessed 2 April 2017.

4. 'We are concerned with the fact that the amendments also introduce other policy purposes -other than countering anti-money laundering and terrorism financing- that do not seem clearly identified'.

Processing personal data collected for one purpose for another, completely unrelated purpose infringes the data protection principle of purpose limitation and threatens the implementation of the principle of proportionality. The amendments, in particular, raise questions as to why certain forms of invasive personal data processing, acceptable in relation to anti-money laundering and fight against terrorism, are necessary out of those contexts and on whether they are proportionate.

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Oblivious of this criticism, on 28 February 2017 the European Parliament voted on an amended proposal which would enable EU citizens to access beneficial ownership registers without having to demonstrate a 'legitimate interest' in the information.<sup>5</sup>

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## 'A Titanic success'

The author has seen the minutes of a meeting between the European Commission, the European Parliament and the European Council dated 21 March 2017 in which:

'the Commission pointed to the need to avoid that the Directive be annulled by the ECJ should a case be brought to the court on grounds of non-respect of the data protection principles.'

In a strong worded note dated 17 March 2017, the Commission went further and stated that:

'The Commission cannot, at this stage, accept the amendments proposing wider transparency and access to the beneficial ownership registers without a prior analysis of the proportionality and necessity of such extension, as well as its impact on fundamental rights and data protection.'

Paraphrasing Boris Johnson's famous gaffe about the prospects of Brexit's being a 'Titanic success',<sup>6</sup> there is every indication that the EU's public registers are about to meet their iceberg.

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## Crazy reporting standard

Things on the Common Reporting Standard don't appear to be faring much better.

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After an incessant activist campaign in which we took a leading role,<sup>7</sup> on 23 January 2017 the UK tax authorities (HMRC) revised their guidance to acknowledge that the exchange of information on a generalized basis risks putting people's lives in danger. Thus, HMRC now accept that<sup>8</sup>:

'in some cases, the activities or background of the individual [subject to information exchange] may mean that supplying data to the other jurisdiction

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As far as proportionality is concerned, in fact, the amendments depart from the risk-based approach adopted by the current version of the AML Directive, on the basis that the higher risk for anti-money laundering, terrorism financing and associated predicate offences would not allow its timely detection and assessment.

They also remove existing safeguards that would have granted a certain degree of proportionality, for example, in setting the conditions for access to information on financial transactions by Financial Intelligence Units.

Last, and most importantly, the amendments significantly broaden access to beneficial ownership information by both competent authorities and the public, as a policy tool to facilitate and optimise enforcement of tax obligations. We see, in the way such solution is implemented, a lack of proportionality, with significant and unnecessary risks for the individual rights to privacy and data protection.'

5. See Press release 'Citizens should get access to data on firm owners to fight money laundering' <<http://www.europarl.europa.eu/news/en/news-room/20170227IPR64164/citizens-should-get-access-to-data-on-firm-owners-to-fight-money-laundering> (accessed 2 April 2017).

6. The UK's foreign secretary and former Mayor of London (a fervid supporter of the UK's withdrawal from the EU) famously claimed that Brexit would be a 'Titanic success'.

7. The author appeared as an expert before the Council of Europe's Consultative Data Protection Committee (T-PD) and the EU's art 29 Working Party, which was established under art 29 of the EU's Data Protection Directive.

8. <<https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/icim406010>>.

will place them at risk. The types of risks individuals face are numerous.

HMRC recognises that there may be cases where the threat to individuals as a result of their information being exchanged may warrant information being redacted from that transmitted.<sup>9</sup>

## And yet . . .

As if they were living on planet Europa rather than in Europe, the European Parliament, the Organisation for Economic Co-operation and Development (OECD) and politicians show complete disregard for the warnings raised by their own data protection bodies and instead appear hell-bent on introducing a system of total transparency, both in relation to bank accounts (through the CRS) and public registers.

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Thus, on 2 April 2017 Pascal Saint-Amans (Director of the OECD's Centre for Tax Policy and Administration), exclaimed triumphantly that<sup>9</sup>:

'The automatic exchange of information . . . no longer raises objections from anybody.'

It is noteworthy that this statement was made shortly after Mr Saint-Amans received a strongly worded letter from the EU's data protection authorities

(Article 29 Working Party) warning the OECD about the lack of data protection safeguards contained in the CRS<sup>10</sup> and the risks of legal challenges:

'The WP29 . . . recalls that the entire range of data protection principles . . . require full compliance.

Compliance with data protection principles is moreover important to reduce the risk of negative court decisions which may jeopardize the anti-evasion instruments at stake.

The WP 29 wishes to reiterate its strong concerns regarding the repercussions on fundamental rights of mechanisms entailing major data processing and exchange operations such as those envisaged by the CRS. WP29 recommends that the OECD . . . ensure that tax evasion is countered without hampering individuals' rights.'

This is not the first time that the EU data protection bodies issued stark warnings in relation to the compatibility of the CRS with existing privacy and data protection standards. On 8 July 2015 the EDPS issued a strongly worded opinion on the Swiss EU CRS Agreement dated 8 July 2015<sup>11</sup>:

'The exchange of information on a certain number of accounts on an annual basis confirms our view that the information exchange is independent of the detection of any actual risk of tax evasion, thus questioning the proportionality of the measure itself.

In the light of the considerations above . . . we consider that, during the negotiation phase, a number of corrections should have been made to the Agreement in order to better address data protection issues.'

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9. AFP News, 'Panama Papers Boost Tax Battle, but no Silver Bullet' – see <<https://sg.news.yahoo.com/panama-papers-boost-tax-battle-no-silver-bullet-042940985.html>> accessed 3 April 2017.

10. <[http://ec.europa.eu/newsroom/document.cfm?doc\\_id=42942](http://ec.europa.eu/newsroom/document.cfm?doc_id=42942)> accessed 3 April 2017.

11. Opinion 2/2015 of the EDPS on the EU–Switzerland agreement on the automatic exchange of tax information dated 8 July 2015 <[https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2017/17-02-02\\_Opinion\\_AML\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2017/17-02-02_Opinion_AML_EN.pdf)>. accessed 7 February 2017).

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## A case of ignorance?

As regards the European Parliament, it is possible that Members of the European Parliament (MEPs) are unaware of the warnings issued by the EU's own data protection bodies.

Indeed, the press release accompanying the latest proposal for wider access to registers shows a degree of suspicion towards asset holding structures generally<sup>12</sup>:

‘Complex company structures and shelf companies make it easy for people to hide money. Through a public register for companies and trusts, the European Parliament wants to shed light on these structures and thereby combat them.’

Be that as it may, unless the current proposal for public registers is watered down, a court challenge is inevitable, as plainly admitted by the European Commission in the note mentioned above:

‘The Commission pointed to the need to avoid that the Directive be annulled by the ECJ should a case be brought to the court on grounds of non-respect of the data protection principles.’

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## Or is it a case of playground bullying?

In the case of the OECD, justifications appear harder to find. The OECD has been totally immersed in the development of the CRS since 2009<sup>13</sup> and it represents a cornerstone of the OECD's activity in the tax field together with the Base Erosion and Profit Shifting (BEPS) project.

The problem with the OECD is that its project was developed between 2009 and 2013 when governments felt that they were justified in collecting massive quantities of data about their citizens with or without their consent.

This ended with the revelations of Edward Snowden in June 2013.<sup>14</sup>

Since then, data protection has moved to the forefront of people's minds, prompting the EU to overhaul the existing data protection rules and has also led to a number of ground-breaking decisions by the European Court of Justice which confirms that the pendulum has started to swing back towards greater protection of privacy and data protection.

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This change of direction was announced emphatically in the EU's press release accompanying the adoption of the EU's data protection reform on 14 April 2016<sup>15</sup>:

‘New EU data protection rules which aim to give citizens back control of their personal data and create a

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12. See n 4 above.

13. See the G-20 communiqué of 2 April 2009: ‘We, the Leaders of the Group of Twenty, met in London on 2 April 2009 . . . We have today also issued a Declaration, Strengthening the Financial System. In particular we agree . . . to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information’ —see <[https://www.imf.org/external/np/sec/pr/2009/pdf/g20\\_040209.pdf](https://www.imf.org/external/np/sec/pr/2009/pdf/g20_040209.pdf)> accessed 2 April 2017.

14. For a timeline of the revelations see <<https://www.theguardian.com/world/2013/jun/23/edward-snowden-nsa-files-timeline>> accessed 2 April 2017.

15. See <<http://www.europarl.europa.eu/news/en/news-room/20160407IPR21776/data-protection-reform-parliament-approves-new-rules-fit-for-the-digital-era>> accessed 2 April 2017.

high, uniform level of data protection across the EU fit for the digital era was given their final approval by MEPs on Thursday. The reform also sets minimum standards on use of data for policing and judicial purposes.

Parliament's vote ends more than four years of work on a complete overhaul of EU data protection rules. The reform will replace the current data protection directive, dating back to 1995 when the internet was still in its infancy, with a general regulation designed to give citizens more control over their own private information in a digitised world of smartphones, social media, internet banking and global transfers.

Citizens will be able to decide for themselves which personal information they want to share.'

The aftershocks of Edward Snowden's revelations were also felt in the jurisprudence of the European Court of Justice (ECJ), first in the *Facebook* decision dated 6 October 2015<sup>16</sup> and, more recently in the decision in the joined *Tele 2 Sverige* and *Tom Watson*<sup>17</sup> cases.

In the *Facebook* judgment, the ECJ issued a stark warning to EU governments that: –

'Legislation permitting the public authorities to have access on a generalised basis to the content of electronic communication must be regarded as compromising the essence of the fundamental right to respect of private life;

Legislation that authorises storage of all the personal data on a generalised basis, without any differentiation, limitation or exception is not limited to what is strictly necessary.'

In the joined *Tele 2 Sverige* and *Tom Watson* cases, the role of privacy and data protection in a democratic

society assumed a near philosophical dimension, with the Attorney General confirming the need to protect individuals from the State, which was also the argument brought by Apple in its legal fight against the FBI.<sup>18</sup> In the EU Attorney General's words: –

'In 1788, James Madison, one of the authors of the United States Constitution, wrote: 'If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

The retention of communications data enables 'the government to control the governed' by providing the competent authorities with a means of investigation that may prove useful in fighting serious crime . . . However, on the other hand, it is imperative to 'oblige [the government] to control itself, with respect to both the retention of data and access to the data retained, given the grave risks engendered by the existence of databases which encompass all communications made within the national territory.'

Given the highly public nature of these cases and the express warnings issued by a number of European data protection bodies, there can be no doubt that the OECD must be aware of the fundamental flows of the system it created.

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16. *Maximilian Schrems v Data Protection Commissioner, joined party: Digital Rights Ireland Ltd* (Case C362/14), judgment dated 6 October 2015—see <<http://curia.europa.eu/juris/document/document.jsf?docid=169195&doclang=en>> accessed 3 April 2017.

17. Joined cases C203/15 and C698/15, Judgment dated 21 December 2016 <<http://curia.europa.eu/juris/liste.jsf?num=C-203/15>> accessed 3 April 2017.

18. For a timeline of that case, see <<https://www.nytimes.com/news-event/apple-fbi-case>> accessed 3 April 2017.

Read in this light, Mr Saint-Amans' statement according to which 'the automatic exchange of information . . . no longer raises objections from anybody' appears as a last-ditched attempt to ram through the CRS in the hope that, once in force, nobody will challenge it.

No wonder, then, that even the exhortation issued by the group of experts appointed by the European Commission to supervise the implementation of the CRS ('AEFI Expert Group') that the implementation be pushed back by one year (ie 2018 instead of 2017)<sup>19</sup> to enable financial institutions to update their systems<sup>20</sup> and allow the EU to address privacy and data protection concerns<sup>21</sup> has fallen on deaf ears.

Worse still, the author is aware through his private practice that a number of jurisdictions who have started to raise concerns based on data protection have been threatened with black-listing. These tend to be smaller jurisdictions and are therefore under a great deal of pressure if they are seen to take on the OECD.

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## It is not a game!

Privacy and data protection are not a luxury. They are an integral part of any democratic society.

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The perils of excessive information on the working of a democracy have been immortalised in George Orwell's book '1984' and a recent report issued by the UK Parliament's Joint Human Rights Committee<sup>22</sup> reminded legislators of Europe's recent history:

'There are judges from Germany and countries of eastern Europe who had a rather different experience in the 20th century and who are more privacy-minded and less inclined to tolerate these powers than people are here.'

The EU's Attorney General remarks about men not being angels in the *Tele 2 Sverige* case mentioned above goes in the same direction.

Outside of the EU, people continue to be prosecuted and are forced to live in corrupted or totalitarian States, many of which appear on the list of CRS adopters. Recent anti-corruption protests in Romania and an enquiry launched by the European Commission on the rule of law in Poland show that the EU is not immune to these problems.

Interestingly, a comparison of the list of CRS adopters with the Corruption Perception Index published by Transparency International (a fervent supporter of

19. According to the OECD, 53 jurisdictions will first exchange by 2017, namely Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, United Kingdom. For a full list of commitments, see <<https://www.oecd.org/tax/transparency/AEOL-commitments.pdf>> accessed 3 April 2017. In the EU, the 2017 timeline is contained in Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (aka DAC2), <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0107&from=EN>> accessed 3 April 2017.

20. The Council and the Member States are urged to provide an achievable implementation timetable. Consideration should be given to a phased approach to implementation. This could be achieved by pushing back reporting by 1 year, with the reporting being made in 2018 in respect of both 2016 and 2017 data'—First Report of the Commission AEFI expert group on the implementation of Directive 2014/107/EU for automatic exchange of financial account information, March 2015 – see <[http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/tax\\_cooperation/mutual\\_assistance/financial\\_account/first\\_report\\_expert\\_group\\_automatic\\_exchange\\_financial\\_information.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/tax_cooperation/mutual_assistance/financial_account/first_report_expert_group_automatic_exchange_financial_information.pdf)> accessed 3 April 2017.

21. *ibid.*, 7ff. 'It is crucial to ensure that DAC2 is not in breach of data protection and privacy rules and does not bear the risk of being challenged before the CJEU. Prior to the implementation of DAC2, national Governments and EU Institutions alike should carefully consider the terms of the statement adopted by the Article 29 Working Party on 4 February 2015. Particular attention should be paid to the proportionality of data processing and retention, controllership and security measures, and onward transfers-related issues.

On many aspects, DAC2 may be compared with the Data Retention Directive which has recently been declared illegal by the CJEU. DAC2 must respect the principle of proportionality according to which any data transfer is only allowed in case it is appropriate and not redundant. . . .

The AEFI Group is concerned that information exchanged may happen to be irrelevant for taxation purposes in the receiving jurisdiction (home country) under domestic law and that reporting in such cases might be considered as being in breach of data protection law.'

22. See <<https://www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/104/104.pdf>> accessed 3 April 2017.

automatic exchange of information) shows the extent of the problem.

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According to the Corruption Perception Index (CPI), Belgium and New Zealand come on the top of 'clean' countries (at number 1 out of 176) whereas Somalia appears at the bottom (176/176).

Amongst Early Adopters, Mexico (123/176) stands out, but other countries do not appear to fare much better, eg India (79/176), Colombia (90/176), and

Bulgaria (75/176). To put things in perspective, Romania—which has been in the news following massive anti-corruption protests in February 2017<sup>23</sup>—is shown on 57th position (ie 57/176).

Looking at the list of so-called 'Late Adopters' (ie countries that will undertake first information exchange on 2018 with data from 2017, a couple of countries that are not exactly known for being stalwarts of good governance, nor as standard bearers of human rights stand out, namely China (79/176), Russia (131/176), and Turkey (75/176), as does Saudi Arabia (62/176), an autocratic monarchy involved in a dirty war in Yemen whose dubious arms' deals prompted a former UK Prime Minister to torpedo an investigation by the Serious Fraud Office based on 'national security reasons'.<sup>24</sup>

#### Early adopters (with CPI ranking)

Anguilla (N/A), Argentina (95/176), Barbados (31/176), Belgium (15/176), Bermuda (N/A), British Virgin Islands (N/A), Bulgaria (75/176), Cayman Islands (N/A), Colombia (90/176), Croatia (55/176), Curaçao (N/A), Cyprus (47/176), Czech Republic (47/176), Denmark (1/176), Estonia (22/176), Faroe Islands (N/A), Finland (3/176), France (23/176), Germany (10/176), Gibraltar (N/A), Greece (69/176), Greenland (N/A), Guernsey (N/A), Hungary (57/176), Iceland (14/176), India (79/176), Ireland (19/176), Isle of Man (N/A), Italy (47/176), Jersey (N/A), Korea (52/176), Latvia (44/176), Liechtenstein (N/A), Lithuania (38/176), Luxembourg (10/176), Malta (47/176), Mexico (123/176), Montserrat (N/A), Netherlands (8/176), Niue (N/A), Norway (6/176), Poland (29/176), Portugal (29/176), Romania (57/176), San Marino (N/A), Seychelles (N/A), Slovak Republic (54/176), Slovenia (31/176), South Africa (64/176), Spain (41/176), Sweden (4/176), Turks and Caicos Islands (N/A), United Kingdom (10/176).

#### Late adopters (with CPI ranking)

Andorra (N/A), Antigua and Barbuda (N/A), Aruba (N/A), Australia (13/176), Austria (17/176), The Bahamas (24/176), Bahrain (70/176), Belize (N/A), Brazil (79/176), Brunei Darussalam (41/176), Canada (9/176), Chile (24/176), China (79/176), Cook Islands (N/A), Costa Rica (41/176), Dominica (38/176), Ghana (70/176), Grenada (46/176), Hong Kong (15/176), Indonesia (90/176), Israel (64/176), Japan (20/176), Kuwait (75/176), Lebanon (136/176), Marshall Islands (N/A), Macao (N/A), Malaysia (55/176), Mauritius (50/176), Monaco (N/A), Nauru (N/A), New Zealand (1/176), Panama (87/176), Qatar (31/176), Russia (131/176), Saint Kitts and Nevis (N/A), Samoa (N/A), Saint Lucia (35/176), Saint Vincent and the Grenadines (35/176), Saudi Arabia (62/176), Singapore (7/176), Sint Maarten (N/A), Switzerland (5/176), Trinidad and Tobago (101/176), Turkey (75/176), United Arab Emirates (24/176), Uruguay (21/176), Vanuatu (N/A).

23. See eg <[www.bbc.co.uk/news/world-europe-38836322](http://www.bbc.co.uk/news/world-europe-38836322)> accessed 3 April 2017.

24. That Prime Minister was Tony Blair and his decision to stop the inquiry into the huge £43bn al-Yamamah arms' deal was later condemned by the Courts. Two years later, in 2010, BAE Systems plead guilty to charges of false accounting and making misleading statements in relation to the Saudi deal and smaller deals in the Czech Republic and elsewhere in central Europe—see <<http://www.independent.co.uk/news/uk/politics/court-condemns-blair-for-halting-saudi-arms-inquiry-807793.html>> and <<https://www.theguardian.com/world/2010/feb/05/bae-systems-arms-deal-corruption>> accessed 3 April 2017.

The UK, by the way, appears amongst the ‘cleanest’ countries (10/176), streets ahead of Brazil (79/176) whose president was impeached and removed from office on 31 August 2016, as the country was coming to terms with the huge Petrobras scandal.

## What about newspapers?

The CRS and the EU public registers have been triggered by a litany of huge private banking scandals. The list is almost too long to tell, but the antics of private bankers (from smuggling diamonds in toothpaste<sup>25</sup> to the peddling of offshore companies, trusts and foundations to circumvent reporting obligations) are well documented.<sup>26</sup>

Journalists have been very keen to cover everything from the UBS and HSBC scandals to the Panama Papers—which attracted widespread recognition thanks to the ground-braking work of the International Consortium of Investigative Journalists (ICIJ).<sup>27</sup>

Most serious newspapers have also been very keen to cover privacy and data protection issues, from Edward Snowden’s revelations (which were first reported on 7 June 2013 by *The Guardian*<sup>28</sup> and *The Washington Post*)<sup>29,30</sup> to the battle between Apple and

the FBI over access to the iPhone of the deceased San Bernardino terrorists.

In the UK, numerous columns and editorials have been written on the implications of the Investigative Powers Act (which *inter alia* provides a legal basis for the collection of meta-data by the intelligence services).

Prominent attention has also been given to the many high-profile cases of hacking and data breaches that dogged banks (eg SWIFT<sup>31</sup> and Tesco<sup>32</sup>), telecommunication companies (eg Yahoo!<sup>33</sup> and Talk Talk<sup>34</sup>), insurance companies (eg the US healthcare giant Anthem Inc<sup>35</sup>), government agencies (eg the Philippine electoral office,<sup>36</sup> the US personnel management office<sup>37</sup> and the Turkish passport office<sup>38</sup>), as well as tax authorities (eg in the UK<sup>39</sup> and Canada<sup>40</sup>).

The announcements, on 30 March 2017, that the US government is poised to roll back rules limiting access to consumer data and that Donald Trump is to sign legislation allowing Internet Service Providers to sell customers data lead to yet more editorials, eg in *The Guardian* and *The New York Times*.<sup>41</sup>

It is somewhat curious that serious newspapers who have been covering both the private banking scandals and the erosion of privacy seem unable to make the connection between data protection on the one hand, and the CRS and beneficial ownership registers on the other.

25. See <<https://www.ft.com/content/a1897486-0108-11de-8f6e-000077b07658>> accessed 3 April 2017.

26. See eg the so-called Levin Report in the US <<https://www.hsgac.senate.gov/download/report-psi-staff-report-tax-haven-banks-and-us-tax-compliance-july-17-2008>> accessed 3 April 2017.

27. See <<https://panamapapers.icij.org/>> accessed 3 April 2017.

28. See <<https://www.theguardian.com/world/video/2013/jun/09/nsa-whistleblower-edward-snowden-interview-video>>. For a timeline, see <<http://www.bbc.co.uk/news/world-us-canada-23768248>> both links accessed 3 April 2017.

29. See <[https://www.washingtonpost.com/politics/intelligence-leaders-push-back-on-leakers-media/2013/06/09/fff80160-d122-11e2-a73e-826d299ff459\\_story.html?utm\\_term=.cd9b53fcd787](https://www.washingtonpost.com/politics/intelligence-leaders-push-back-on-leakers-media/2013/06/09/fff80160-d122-11e2-a73e-826d299ff459_story.html?utm_term=.cd9b53fcd787)> accessed 3 April 2017.

30. For a timeline, see <<http://www.bbc.co.uk/news/world-us-canada-23768248>> accessed 3 April 2017.

31. Cyber criminals made away with \$81m in March 2016, see <<https://www.ft.com/content/db90621c-6f86-11e6-a0c9-1365ce54b926>> accessed 3 April 2016.

32. On 7 November 2016, Tesco Bank confirmed that money was stolen from 20,000 accounts—see <[www.bbc.co.uk/news/business-37891742](http://www.bbc.co.uk/news/business-37891742)> accessed 3 April 2017.

33. Between 500 m and 1 bn email accounts hacked in 2014—see <<http://www.bbc.co.uk/news/world-us-canada-38324527>> accessed 3 April 2017.

34. 21,000 accounts accessed in October 2015 by a 17 year old hacker—see <<http://www.bbc.co.uk/news/uk-37990246>> accessed 3 April 2017.

35. Theft of records concerning 78.8 m patients in February 2015, see <<https://www.theguardian.com/us-news/2015/feb/05/millions-of-customers-health-insurance-details-stolen-in-anthem-hack-attack>> accessed 3 April 2017.

36. Leak of data concerning 55 m voters—see <<https://www.theguardian.com/technology/2016/apr/11/philippine-electoral-records-breached-government-hack>> accessed 3 April 2017.

37. Cyber theft of sensitive data concerning 5.6 m federal employees—see <<https://www.theguardian.com/us-news/2015/feb/05/millions-of-customers-health-insurance-details-stolen-in-anthem-hack-attack>> accessed 3 April 2017.

38. Leak of information concerning 55 m voters—see <<http://www.telegraph.co.uk/news/2016/04/04/personal-details-of-50-million-turkish-citizens-leaked-online-ha/>> accessed 3 April 2017.

39. Loss of a DVD containing the data of 25m taxpayers—see <<https://www.theguardian.com/politics/2007/nov/21/immigrationpolicy.economy3>> accessed 3 April 2017.

40. Another case of a DVD containing taxpayers’ data lost—see *Canada Revenue Agency launching info line after loss of encrypted data DVD by private courier service* <<http://news.gc.ca/web/article-en.do?nid=1185809>> accessed 7 February 2017.

41. ‘Trump to Ease Market in Web User History’ *The Guardian* (30 March 2017); ‘A Battle for your Banking Data’ and ‘States take up Privacy Fight’ *The New York Times* (30 March 2017).

*It is somewhat curious that serious newspapers who have been covering both the private banking scandals and the erosion of privacy seem unable to make the connection between data protection on the one hand, and the CRS and beneficial ownership registers on the other*

The need to eradicate tax evasion is beyond doubt.

However, the failure of serious newspapers to consider the reasoned objections raised by the AEFI Expert Group and the all the European data protection authorities (EDPS, WP 29, Council of Europe's T-PD) raises serious questions about opinion makers.

Are the underlying issues simply too complicated for non-lawyers to understand? The skill and rigour of the ICIJ's work in sifting through the myriad of documents that make up the Panama Papers would suggest that the explanation is to be found elsewhere.

Perhaps the answer is disarmingly simple. Journalists need to sell newspapers and there is nothing like a good scandal to attract readers.

The tribulations of politicians, well-known business leaders and celebrities are clear winners in the battle

for public attention (the first headline on the ICIJ's website is a case in point).<sup>42</sup>

It is to be hoped that serious newspapers will reconsider their approach to the issue of privacy and data protection in relation to the CRS and public registers and decide to take a more active role in this fundamental debate.

If, by contrast, they decide to act like tabloids and chase headlines, the first reports into the effects of the new rules will take place when it will be too late (eg following a huge data breach, or perhaps a case of kidnapping; the question here is not *if*, but *when* this will happen).

It is encouraging that *The Economist* appears to have taken a more nuanced approach in a recent article which addressed both sides of the argument in favour and against transparency.<sup>43</sup> However, this is a rare example of balanced journalism in this area.

More has to be done and activist practitioners will have to continue fighting for a worthy cause by writing articles, lobbying governments, continuing to engage with journalists and—if all else fails—finding an appropriate case to bring before the courts.

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He advised several governments in relation to the introduction of foundations' laws and has recently advised a EU territory on their personal tax residence offering. In 2008, he represented STEP at a public hearing organised by the OECD's on high net worth individuals.

42. 'Leaders, Criminals, Celebrities' – see <<https://panamapapers.icij.org/>> accessed 3 April 2017.

43. 'Too Much Light? Arguments will Grow over Whether Fighting Financial Crime undermines the Right to Privacy' *The Economist*, *The World in 2017* see <<http://www.theworldin.com/article/12770/too-much-light?fsrc=scn/tw/wi/bl/ed/>> accessed 3 April 2017.