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1. Fifth Anti-Money Laundering Directive

On April 18 2018, one day before the final vote in a plenary session of the European Parliament, MEPs held a debate on the Fifth Anti-Money Laundering (AML) Directive. The Co-Rapporteurs Judith Sargentini (NL, Greens/EFA) and Krišjānis Kariņš (LV, EPP/CD), used this occasion to remark how important the adoption of the Directive is for European security.

The negotiations on the revision of the Fourth AML Directive started in July 2016, following the terrorist attacks in Paris and the Panama and Paradise Papers scandals, as was mentioned by Ms. Sargentini at the beginning of the debate. She underlined the importance of the registers of beneficial ownership, access to which is extended in the Fifth AML Directive. She also stressed the fact that many EU countries have not yet implemented the Fourth AML Directive, so the adoption of the Fifth might encourage them to implement both versions together.

Mr. Kariņš stated that the main aim of the Directive is to address the threats imposed by anonymity in those who handle large sums of money. Thanks to this legislation, it is hoped that financial transparency will increase, preventing the loss of billions of Euros which could be reinvested in EU infrastructure.

Some of the main changes in the revised Directive include:

- The extension of the Directive to cover all forms of tax advisory services, art dealers and **letting agents but only in relation to transactions for which the monthly rent is equivalent to or exceeds €10,000.**
- Public access to the registers of beneficial ownership of companies, and access to registers on beneficial ownership of trusts for those who can demonstrate a legitimate interest.
- Virtual currency exchange platforms and custodian wallet providers will have to comply with customer due diligence.
- Protection for whistleblowers who report money laundering (including the right to anonymity);
- Improved checks on transactions involving high-risk third countries.

On April 19, 2018 the Parliament voted for the adoption of the Fifth AML Directive by 574 votes to 13 and 60 abstentions. Subsequently it was adopted by the Council of the EU on May 14. The updated directive will enter into force three days after its publication in the Official Journal of the EU. Member States will then have 18 months to transpose the new rules into national law.

2. New Company Law Rules

On 25 April the Commission published proposed new company law rules to make it easier for companies to merge, divide or move within the Single Market. Under the new rules it will be possible to create a company fully online, including across borders, and to move, merge or divide a company across national borders within the EU provided that the operation is not artificial or abusive and that the interests of stakeholders (employees, shareholders, creditors) are protected. These rules are set out in proposals for two new directives: the Directive as regards the use of digital tools and processes in company law, and the Directive as regards cross-border conversions, mergers and divisions.

The proposals include:

- Common procedures at EU level on how a company can move from one EU country to another, merge or divide into two or more new entities across borders. Companies will be able to move their seat from one Member State to another following a simplified procedure. This will include safeguards against abusive arrangements to circumvent tax rules, undermine workers' rights or jeopardising creditors' or minority shareholders' interests.
- Companies will be able to register, set up new branches or file documents to the business register online in all Member States (currently 17 Member States provide a fully online procedure for registering companies). Savings for online

registration and filing under the new rules are estimated to be €42 – €84 million per year for EU companies. It is up to Member States to define the role of notaries.

It is already possible to search online for information from all EU business registers via the EU interconnection of business registers (BRIS). At the moment only a limited amount of company data is available free of charge, this will be extended by this proposal. The data available free-of-charge will include the company name, registered office, legal form, company registration number, legal status of the company, other names of the company, company website, object of the company, information on whether the company has any branches in another Member State and the names of those who can act on behalf of the company.

To make sure that companies move for genuine business reasons the departure Member State of the company will have to prohibit operations that constitute an artificial arrangement aimed at obtaining undue tax advantages or undermining the legal or contractual rights of employees, creditors or shareholders. In the case of a medium or large company an independent expert will provide the factual elements.

The proposals will now be submitted to the Council of the European Union and the European Parliament for consideration.

3. New Standards on Transparency and Fairness for Online Platforms

On 26 April the Commission published a proposal for a regulation to increase fairness and transparency for online platforms. This covers online platform intermediaries and online search engines that provide services to businesses or consumers in the EU. The idea is to ensure that businesses operating on online intermediation services and online search engines have greater legal certainty and clarity on what rules govern their relationships with these platforms and how to resolve potential disputes. Businesses will be made aware of the principles that affect their ranking position in online search results or on a particular platform. Online platform intermediaries are required to make their standard terms and conditions more transparent and easily available.

The proposal requires online platform intermediaries to establish internal complaints handling systems (for larger platforms) or through mediation (for smaller enterprises). The Commission also announced that it will set up a group of experts that, together with Commission officials, will form the EU Observatory of the online platform economy. It will monitor market trends and opportunities and the evolution of potentially harmful practices as well as the development of national policy and regulatory approaches.

4. Implementation of the General Data Protection Package

The General Data Protection Package includes the General Data Protection Regulation (GDPR) which becomes applicable across the EU on 25 May 2018, and the Data Protection Law Enforcement Directive which had to be transposed into national law by 6 May 2018. The GDPR sets a single set of rules for a uniform application of the rules for all citizens and businesses, leading to a harmonised level playing field and uniform protection of individuals and the Data Protection Law Enforcement Directive establishes a harmonised framework for the processing of personal data for law enforcement activities, both at domestic level or in the case of exchanges between the law enforcement authorities of the Member States.

On 15 May the Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament organised an interparliamentary committee meeting to exchange views and best practices concerning the implementation of the package. Much of the discussion focused on the GDPR and concerns about lack of readiness for its application across the EU. The meeting, chaired by Jan Albrecht MEP (DE, Greens/European Free Alliance), was attended by thirty five members of national parliaments as well as MEPs from all political groups. The purpose was to take stock of views of national parliaments and stakeholders on different issues posed by the new data protection framework at the eve of its application.

The meeting was divided into four discussion panels representing the institutional aspects; the impact on the private sector including SMEs; the GDPR and technological innovation and the implementation of the Police Data Directive. A recording of the event is available from the link shown below. In opening the meeting, Jan Albrecht welcomed the introduction of a modern, robust

legal framework across EU policies to strengthen the rights of individuals to data protection in one set of rules of uniform application. However, he expressed concern that several Member States will not meet the deadlines for the application of the rules. It is clear that the EU is setting the global standard for data protection, other parts of the world are now adopting similar requirements.

In presenting the institutional aspects, Andrea Jelinek, Head of the Austrian Data Protection Authority and Chair of the Article 29 Working Party, explained the work which has been done by the Austrian authorities in preparation for GDPR. Last year a roadmap was drawn up with other data protection authorities. There are new rules, which were adopted last year and will be in force as from 25 May, and a website at national level with a “white list” (setting out a list of when review is not needed) due to be published soon. The national authority has produced fourteen guidelines and the newly created Data Protection Board will establish guidelines and binding decisions.

Katarzyna Szymielewicz, of the Panoptikon Foundation and Vice-President of EDRi foresaw challenges about the transparency of the rules with legal battles likely, for example on profiling and data portability. Christine Hennion, a member of the French parliament explained that there will be some differences in the application of the Regulation which allows national authorities some leeway on specific issues, such as for example the age at which a minor can access data. The new regime will place more dependence on companies being responsible, for example asking users to sign up to new conditions. Questions raised in the subsequent debate included the cost of the system and need to understand artificial intelligence. Concern was expressed about the understanding of the rules by companies, particularly those which do not have large resources. Concern was also expressed about how quickly fines will be imposed, with requests for best practice examples and support for small companies. Penalties should not be applied immediately, warnings will be sent out by the data protection authorities.

In the second panel of the day, Luc Hendrickx, Director for Enterprise Policy and External Affairs (UEAPME), expressed concern about cost and uncertainty as well as the difficulties of implementing the Regulation. Although Article 30 of the GDPR provides an exemption for companies with less than 250 employees, unless the data processing is not occasional, on a strict interpretation of “occasional” this will not in practice exempt most SMEs. The consequences are not yet clear, UEAPME is calling for a “grace” period of one year in which only warnings (not fines) will be given. In some instances this request is also being made at national level.

In the following debate it was stressed by some speakers that there was no need for SMEs to panic, although there is a need to carry out an awareness campaign. Others pointed out that there has been data protection legislation at European level for more than twenty years, so that not all the requirements are new. However there was support for making it easier for small businesses with clear guidelines. This is the start of the process and support and evaluation will be important. The size of the risk in terms of data is more important than the size of the company. Jan Albrecht highlighted the need to make sure that the resources needed are available, and that sanctions should not be disproportionate.

Useful links

www.cepi.eu

European Parliament Resolution on the Fifth AML Directive

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0178+0+DOC+XML+V0//EN&language=EN#BKMD-5>

New Company Law Rules

http://europa.eu/rapid/press-release_IP-18-3508_en.htm

New Standards on Transparency and Fairness for Online Platforms

http://europa.eu/rapid/press-release_IP-18-3372_en.htm

LIBE Interparliamentary Committee Meeting on the General Data Protection Package

<http://www.europarl.europa.eu/committees/en/libe/events-nationalparl.html?id=20180419MNP00>