

Our ref: 60062.1

Your ref: Saisine CNIL n°23000220

CNIL

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Cc. CEPD

Beneficial Ownership Register (RBE)

Thank you for your email (reproduced in the annex for ease of reference) and for the CNIL's work in this matter.

I am glad that the French Minister of Finance has finally decided to follow the law.

Thank you also for your confirmation that the register is already been administered in accordance with the new directive (which has not been formally transposed).

Technically, this raises the following issues:

1. **EDPS by-passed by the European legislator**

The new directive has been adopted without proper consultation with the European Data Protection Supervisor (EDPS), who previously had raised concerns in relation to the mechanism of access to the registers (see in particular [paragraph 25](#) of his opinion on the original proposal published by the European Commission. For the details of my research, I would refer you to [this letter](#) addressed to the EDPS and the Commission.

Following the EDPS' advice in 2021, and notwithstanding his conclusions (as well as the Sovim judgment), in January 2024 the European Parliament unilaterally extended the definition of "legitimate interest" in order to provide "*immediate, unfiltered, direct and free access*" to large sectors of society (as set out in the [press release](#) from the European Parliament), which suggests the maintaining of a generalised access to the register, albeit to a smaller section of the public.

2. **Access to register – absence of appropriate safeguards**

Following a Freedom of Information request, the European Commission released the attached 'working document', which confirms that as regards the 'press' and 'civil society organisations', "*no definition exists today in EU law, and no harmonised approach exists across the EU to the exercise of the activity (which may or may not require a license).*"

I [understand](#) that, in France, the use of the title 'journalist' is not legally defined and there are no legal limitations to the use of the title, which is free, and that the profession of journalist is not subject to the supervision of a professional body. Journalism, in other words, is not a regulated profession.

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The exercise of the activity of journalism is not subject to a professional formation, nor to diploma, and there are no conditions or provisions concerning the profession fixed by regulation. As a result, the use of the title of journalist is free. I also understand that the professional identity card used in France is not a mandatory requirement (see the judgment from the Constitutional Council dated 10 June 2021, n. 444849, at [para 17](#): *"the exercise of the profession of journalist is not subject to the possession of a 'press card' and a substantial number of journalists carry out their profession without it"*).

In that case, the Minister for internal affairs had issued a decree to ensure public order in connection with demonstrations throughout France, which provided that *"a liaison officer may be appointed within the forces and a dedicated channel of communication set up throughout the demonstration with accredited journalists who hold a press card"*.

The national union of journalists and the Human Rights League had attached the decision on the basis that *"the introduction of this channel of communication, open only to accredited journalists holding a press card ... constitutes an unjustified breach of equality between journalists and an unjustified and disproportionate infringement of the freedom of the press and the freedom of communication, expression and information"*

The Constitutional Council agreed, ruling that the decree "disproportionately infringes the freedom of the press and the freedom of communication guaranteed by article 11 of the Declaration of the Rights of Man and of the Citizen of 1789".

In other words, the Court (supported by professional representatives) reinforced a wide approach to the definition of journalist to reflect constitutional freedoms. It is difficult to see how a different approach could be implemented in connection with the BO-Register.

Similar considerations apply to "civil society organisations" (absence of regulation).

3. **"Passporting" system - the big roundabout**

Even if one assumes that the Ministry of Finance applies (and professional representatives accept) a rigorous scrutiny of journalists and civil society organisations in relation to journalists and organisations based in France, [article 13\(3\)](#) of the new directive provides for a "passporting" system, so that anyone who was admitted to access the register in, say, Bulgaria or Greece, will have automatic access to the French register (*"Member States shall ensure that where access to...has already been verified by the central register of another Member State, the verification of the function or occupation of the applicant is satisfied by collecting proof of the legitimate interest issued by the central register of that other Member State"*).

This can easily lead to abuses by requesting parties who are not/poorly qualified and/or with intentions that are not linked to the objectives of the directive; and once information has been accessed, there is no appropriate safeguard to prevent the transfer of information to third parties (whether based within the EU or in a third countries) who has no links to the objective of the directive. Nor are there any safeguards (required by [article 46](#) GDPR) to protect information accessed by parties based outside the EU (the new rules invoke a derogation to [article 49](#) GDPR – see [preamble 43](#) of the new directive).

4. **Complaint**

Pour ces raisons, j'estime que ma plainte reste d'actualité et je compte sur la CNIL pour effectuer des enquêtes et exercer ses pouvoirs au titre de l'[article 58](#) du RGPD, au besoin en saisissant la justice selon la jurisprudence de la CJEU (voir [paragraphe 65](#) de l'arrêt dans l'affaire *Schrems*: « Où ladite autorité estime fondés les griefs, cette même autorité doit pouvoir ester en justice devant les juridictions nationales afin que ces dernières procèdent, si elles partagent les doutes de cette autorité quant à la validité de la décision de la Commission, à un renvoi préjudiciel aux fins de l'examen de la validité de cette décision »).

For these reasons, I believe that my complaint remains valid and I am relying on the CNIL to carry out investigations and exercise its powers under [Article 58](#) GDPR, if necessary by taking legal action in accordance with the case law of the European Court of Justice (see [paragraph 65](#) of the judgment in the Schrems case: "where the national supervisory authority considers that the objections advanced by the person who has lodged a complaint are well founded, that authority must be able to engage in legal proceedings before the national courts in order for them, if they share its doubts as to the validity of the Commission decision, to make a reference for a preliminary ruling to the CJEU").

France has a long tradition of defending data protection rights. The Constitutional Council struck down public registers [six years before the CJEU](#), leading the way in Europe and reminding everyone of the enduring importance of the right to privacy enshrined in Article 2 of the 1789 Declaration of the Rights of Man and of the Citizen, a subject I touched on in this [letter](#) published by the Financial Times

I can only hope that the work of the CNIL will once again show Europe the way forward.

Best regards,

Filippo Nosedà
Partner

Annex: Email from CNIL dated 21 Aug 2024 (translated)

From: [REDACTED] Céline [REDACTED]@cnil.fr>
Sent: Wednesday, August 21, 2024 10:25 AM
To: Filippo Noseda <Filippo.Noseda@Mishcon.com>
Cc: [REDACTED]@cnil.fr>
Subject: Saisine CNIL n°23000220 - Registre des Bénéficiaires Effectifs (RBE)

Dear Sir

We are following up your complaint to the Commission Nationale de l'Informatique et des Libertés (CNIL) against the Ministry of the Economy, Finance and Industrial and Digital Sovereignty concerning the register of beneficial owners (RBE).

As you have been informed, as part of the investigation into your complaint, the President of the CNIL gave formal notice to the Ministry to bring the processing relating to the register of beneficial owners into line with the judgment of the Court of Justice of the European Union (CJEU) of 22 November 2022 (WM and Sovim SA v Luxembourg Business Registers - joined cases C-37/20 and C-601/20).


In response, the Minister informed the CNIL that he had taken the necessary measures to bring the processing into compliance.

From a technical point of view, access to data relating to beneficial owners was restricted from 31 July 2024 to persons demonstrating a legitimate interest under the conditions of anti-money laundering directive 2024/1640 of 31 May 2024 relating to mechanisms to be put in place by Member States to prevent the use of the financial system for the purpose of money laundering or terrorist financing, adopted by the Council on 31 May 2024 and published in the Official Journal of the European Union on 19 June 2024.

On the legal front, work is underway to transpose the Sixth Money Laundering Directive. Provisions relating to the conditions of access to the RBE, drawing on the consequences of the CJEU ruling, have already been incorporated into the bill containing various provisions for adapting to European Union law (DDADUE), and others will be added as part of the more general transposition work.

In view of the above, I believe that the CNIL's action has provided an appropriate response to the situation you referred to it. I would therefore like to inform you of my decision to close your complaint against the company.

Yours faithfully

■ Céline [REDACTED]
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