

Mr. Charles Michel
President of the European Council

Mr. Didier Reynders
European Commissioner for Justice

Mr. Wojciech Wiewiórowski
European Data Protection Supervisor (EDPS)

Mishcon de Reya
Africa House
70 Kingsway
London WC2B 6AH
DX 37954 Kingsway
T: +44 20 3321 7000
www.mishcon.com

Cc. EDPB

London | Cambridge | Oxford | Hong Kong | Singapore

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Dear President, Commissioner and Supervisor

**Beneficial Ownership Registers
Sidelineing of EDPS – Implications for EU legislative process**

You are aware of my work around data protection.

I am currently focused on the rules contained in [Directive \(EU\) 2024/1640](#) that provide systematic access, to wide sections of society, to beneficial ownership information held on central registers concerning 31,5 million EU enterprises and countless other structures owned by some of Europe's 448m inhabitants¹.

The legislative history shows that the EDPS has been side-lined – not for the first time – and that other EU institutions passed controversial legislation thanks to a "deal" – not for the first time.

The concerns raised by the EDPS in relation to central registers have been upheld by the European Court of Justice in the *Sovim* Case. There is also a precedent concerning data access by journalists which is relevant here.

EU law expressly requires the consultation of the EDPS to ensure compliance of EU legislation with data protection principles.

In this case, the EDPS was not consulted following sweeping amendments tabled by the European Parliament, resulting in a substantial breach of the consultation process, and an unbalanced solution.

The purpose of this letter is to highlight the issue and raise concerns about the quality and legality of the current EU legislative process affecting personal data.

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¹ See Eurostat data [here](#) and [here](#).

1. **Legislative history shows internal conflicts and sidelining of EDPS**

The previous directive² was marred with problems from the outset, with the European Parliament requiring public access to central registers which the European Commission labelled as "unacceptable" and the European Council kept rejecting, as [our research](#) shows. The deadlock lasted almost two years and could only be broken by a political agreement³.

The original Commission proposal for the *new directive* was published on 11 July 2021⁴. The EDPS provided his [opinion](#) on 29 December 2021. The new proposal required public access to beneficial ownership information relating to legal arrangements, subject to the demonstration of a legitimate interest.

There was then almost a year hiatus, until the CJEU judgment in the *Sovim* Case invalidating the provisions of the previous directive requiring public access to beneficial ownership information relating to companies. This was on 22 November 2022.

On 28 March 2023, the European Parliament's ECON and LIBE committees approved a number of [substantial amendments](#) to the original proposal of the Commission (in particular to preamble 30 and article 12), with an announcement on the same day⁵ heralding automatic access to beneficial information held on central registers to wide sectors of society.

There followed a "trialogue" until the Council announced that a [deal](#) was struck on 18 January 2024. The final version of the Directive was adopted on 31 May 2024 and published in the official journal on 19 June 2024.

There was no additional involvement from the EDPS⁶.

This matters.

2. **Material breach of Article 42 of Regulation (EU) 2018/1725**

The EDPS's involvement in the legislative process of the EU is **not a footnote**.

It is an **integral part of the legislative process** to ensure compliance with data protection principles which reflect fundamental rights enshrined in the EU Charter. Article 42 of the EU Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions provides as follows:

***"Legislative consultation** – The Commission **shall**, following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the European Data Protection Supervisor where there is an impact on the protection*

² [Directive \(EU\) 2015/849](#).

³ The announcement has mysteriously vanished from the EU's website, but it can be read [here](#).

⁴ [COM/2021/423 final](#)

⁵ [Press Release](#), European Parliament (ECON), 28 March 2023.

⁶ This is confirmed in Recital 138 of the Directive.

of individuals' rights and freedoms with regard to the processing of personal data."

The CJEU's judgment in the *Sovim* Case confirmed the validity of the EDPS's concerns raised on several occasions, notably in 2017⁷ and 2021⁸.

In 2021, the EDPS summarised his findings as follows⁹:

"EDPS welcomes AML package but suggests improvements to protect individuals' personal data..."

[In relation to central registers], the EDPS invites the legislator to reassess the necessity and proportionality of the proposed access rights."

In the light of the CJEU's judgment in the *Sovim* Case and a plain reading of Article 42 ('**shall consult**') the EDPS's opinion should have been sought on the sweeping amendments made by the European Parliament to the Commission's Proposal, not least because those amendments substantially widened the scope of the Commission's proposal, as evidenced by the [diverging opening positions](#) (reproduced in the Annex) at the heart of the trilogue¹⁰.

3. **Why it matters**

The legislative history of the old directive and the one replacing it shows that in both cases there was a deadlock, with the European Parliament unilaterally pushing for wider access to beneficial ownership data, and the Commission and Council asking for restraint due to data protection concerns. In both cases, the deadlock could be broken by way of a political agreement.

Old directive *"On 20 December 2017, EU ambassadors confirmed the **political agreement** reached between the presidency and the European Parliament on strengthened EU rules."*¹¹.

New directive *"18 January 2024: Council and Parliament **strike deal** on stricter rules."*¹²

There was **no involvement** from the EDPS beyond the original proposals, nor was the assistance and expertise of the EDPB¹³ called upon.

⁷ [Opinion 1/2017](#) published on 2 February 2017.

⁸ [Opinion 12/2021](#) published on 22 September 2021.

⁹ [Press release](#) EDPS/2021/16, 24 September 2021

¹⁰ Council of the European Union, '*Information Note: AMLD - Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 - Initial positions of the three Institutions prior to commencement of trilogues*', 15 May 2023, 9358/23.

¹¹ [Press Release](#), European Council, 20 December 2017

¹² [Press Release](#), European Council, 18 January 2024.

¹³ See Art. 42(2) of Regulation (EU) 2018/1725: "*Where a [legislative] act is of particular importance for the protection of individuals' rights and freedoms with regard to the processing of personal data, the Commission may also consult the European Data Protection Board."*

In relation to access of personal data by journalists, the European Parliament successfully resisted a request in 2018, invoking MEPs' data protection rights¹⁴. In its judgment, the General Court held that the group of investigative journalists that had asked to see data relating to the personal expenses of MEPs had not demonstrated the necessity of their request.

There are therefore two clear precedents:

- ① the *Sovim* case generally; and
- ② the *MEPs' expenses* case in relation to access to personal data by journalists.

Of particular concern is the absence of definition of "press" and "civil society" and the fact that these sectors are largely unregulated, as acknowledged in a Working Document prepared by the European Council in January 2023 as part of the trialogue¹⁵, opening the door to potential abuses:

"There is no single definition of press nor of civil society organisation in the EU....and no harmonised approach exists across the EU to the exercise of the activity (which may or may not require a license)".

In the circumstances, the exclusion of the EDPS beyond the original proposal reflects very badly on the quality of the legislative process of the EU when it comes to data protection, and leaves the door open to legal challenges, as well as abuses.

4. **A broken legislative process**

The GDPR was introduced with the stated intention **"to give citizens back control of their personal data and create a high, uniform level of data protection across the EU"** (in the words of the European Parliament).

To give **institutional strength** to this principle, a new body was created (EDPB) and a new Regulation addressed to EU institutions required the consultation of the EDPS (mandatory) and the EDPB (voluntary) ahead of the introduction of any legislative act affecting the data protection rights of individuals.

In the case in hand, the **exclusion** of the EDPS shows that the legislative process in the EU is broken. And that notwithstanding its grandiloquent statements to protect the data of citizens, the EU pays lip service to the principles enshrined in the GDPR and the EU Charter of fundamental rights.

¹⁴ *Maria Psara and Others v European Parliament* (T-639/15 to T-666/15 and T-94/16)

¹⁵ European Council – *'Working document: AML. Commission services non-paper on access to information on beneficial ownership of legal entities and legal arrangements after the Court of Justice's judgement in joined cases C-37/20 and C-601/20'*, 20 October 2023, WK 13647/2023 INIT. This document was obtained following a freedom of information access request is referenced in this information note dated 18 January 2023, which is available [online](#).

I would ask you please to reflect on the content of this letter and ensure that the EDPS is involved in **every stage** of any legislative process that is likely to affect the data protection rights of individuals to ensure **substantive** compliance with Article 42 of Regulation (EU) 2018/1725.

Best regards,

Filippo Nosedà
Partner

Annex – Triologue - Opening Positions



	Commission Proposal	Council Mandate	EP Mandate
229	Article 12 Specific access rules to beneficial ownership registers for the public	Article 12 Specific access rules to beneficial ownership registers for the public	Article 12 Specific access rules to beneficial ownership registers for the <u>public persons having a legitimate interest</u>
234	2. Member States may choose to make beneficial ownership information held in their central registers available to the public on the condition of authentication using electronic identification means and relevant trust services as set out in Regulation (EU) 910/2014 of the European Parliament and of the Council ¹ and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register.	2. Member States may choose to make beneficial ownership information held in their <u>the interconnected</u> central registers referred to in Article 10 available to the public on the condition of authentication using electronic identification means and relevant trust services as set out in Regulation (EU) 910/2014 of the European Parliament and of the Council ¹ <u>and/or</u> the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register.	2. Member States may choose to make beneficial ownership information held in their central registers available to the public on the condition of authentication using electronic identification means and relevant trust services as set out in <u>At least persons that belong to any of the following groups shall be considered to have a legitimate interest in accessing the information on</u> <u>(a) persons acting for the purpose of journalism, reporting or any other form of expression in the media that are connected with, or that intend to carry out such activities related to, the prevention or combating of money laundering, its predicate offences or terrorist financing;</u> <u>(b) civil society organisations that are connected with, or that intend to carry out activities related to, the prevention and combating of money laundering, its predicate</u>



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	Commission Proposal	Council Mandate	EP Mandate
			<p><u>offences or terrorist financing:</u></p> <p>(c) <u>higher education institutions as defined in Article 2, point 19, of Regulation (EU) 910/2014/2021/817 of the European Parliament and of the Council⁺ and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register^{1a}, that carry out, or that intend to carry out, activities connected with to the prevention and combating of money laundering, or its predicate offences or terrorist financing;</u></p> <p><u>(d) persons who are likely to enter into transactions or business relationships with a corporate entity, legal entity or legal arrangement;</u></p> <p><u>(e) persons who are likely to perform a task or engage in a business relationship that requires them to assess whether a corporate entity, legal entity or legal arrangements, or its beneficial owner is subject to targeted financial sanctions;</u></p> <p><u>(f) financial institutions, external agents and service providers and authorities in so far as they are involved in the prevention or combating of money laundering, or its predicate offences or terrorist financing, and do not already have such access pursuant to Article 11.</u></p>

