

Prevention of the use of the financial system for the purposes of money laundering or terrorist financing: transparency of financial transactions and of corporate entities

2016/0208(COD) - 02/02/2017 - Document attached to the procedure

Opinion of the European Data Protection Supervisor on a Commission Proposal amending Directive (EU) 2015/849 and Directive 2009/101/EC - Access to beneficial ownership information and data protection implications.

As a reminder, the Commission proposal seeks to amend the anti-money laundering Directive and Directive 2009/101/EC in the fight against tax evasion, protection of investors and fight against abuses of the financial system. New amendments aim to bring the AML Directive up to speed with technical and financial innovation and new means to perform money laundering and terrorism financing.

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.

The EDPS was not consulted before the adoption of the proposal. Its opinion was subsequently requested by the Council, which adopted on 19 December 2016 a compromise text on the proposal.

After having reviewed the impact of the proposal on fundamental rights as regards the respect for privacy and data protection, the EDPS considered that the proposal should:

- ensure that any processing of personal data serve a legitimate, specific and well identified purpose and be linked to it by necessity and proportionality. The data controller performing personal data processing shall be identified and accountable for the compliance with data protection rules;
- ensure that any limitation on the exercise of the fundamental rights to privacy and data protection be provided for by law, respect their essence and, subject to the principle of proportionality, enacted only if necessary to achieve objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others;
- ensure a proper assessment of the proportionality of the policy measures proposed in relation to the purposes sought, as emergency-based measures that are acceptable to tackle the risk of terrorist attacks might result excessive when applied to prevent the risk of tax evasion;
- put into place safeguards that would have granted a certain degree of proportionality (for example, in setting the conditions for access to information on financial transactions by FIUs);
- design access to beneficial ownership information in compliance with the principle of proportionality, inter alia, ensuring access only to entities who are in charge of enforcing the law.