

# L PAPAPHILIPPOU & CO LLC

The Circle of Concerns

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ADVOCATES & LEGAL CONSULTANTS

Sitting in a seafront restaurant, sipping wine by the sea, three friends were attending their monthly after-work meeting. During previous dinner meetings, CEOs of major enterprises, operating both in Cyprus and globally, habitually exchanged stories of their day-to-day operations, leading occasionally to outbursts of laughter. Not on this occasion; only cautionary tales were on the menu.

**Mr. A**, head of a major Administrative Services Provider, noted that the ASP, apart from regularly performing the regular due diligence exercise on Anti-Money Laundering as well as on EU and UN Sanctions Control so as to proceed with reporting to the Unit for Combating Money Laundering (MOKAS) and the other Competent Authorities, it was facing a new challenge. Clients had already started querying the approaching implementation of the 4<sup>th</sup> EU AML Directive by means of the Prevention and Suppression of Money Laundering and Terrorist Financing (Amending) Law, currently being debated before the House.

**Mr. A**, having accessed the relevant material, during the May 2017 public consultation process, pinpointed the existence of provisions related to the creation of a Central Registry of Ultimate Beneficial Owners of companies and trusts alike, colloquially known as UBOs, with the ASPs being legally bound to provide the relevant details. The UBOs Central Registry will be, under the proposed provisions of the Amending Law, accessible only to the Police, MOKAS and competent authorities such as the Cyprus Bar Association, the Institute of Certified Public Accountants of Cyprus and the Cyprus Securities and Exchange Commission. However, under the proposed 5<sup>th</sup> EU AML Directive, the UBOs Central Registry, subject to certain conditions, will be openly accessible to the public. The clients, having read the Opinion of the European Data Protection Supervisor (EDPS) on this matter – which raised serious concerns as to a lack of proportionality, with significant and unnecessary risks for the individual rights to privacy and data protection – were alarmed about the safety of their family members and the protection of their legal rights (including that to privacy and personal data protection, safeguarded by



Articles 7 and 8 of the Charter of Fundamental Rights of the European Union). Accordingly, they enquired into the possibility of a preliminary reference from a Republic of Cyprus Court to the Court of Justice of the European Union, following the guidance provided by the French Supreme Constitutional Court (Conseil Constitutionnel) which had, on 21 October 2016, ruled that the French

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Public Register of Trusts was in breach of privacy rights.

*'I have something to add on the personal data protection issue'*, said **Mrs. E**, the CEO of a pioneer software company, nodding in agreement. *'As the General Data Protection Regulation, GDPR, enters into force on 25 May 2018, we had to take extensive and targeted steps. We cannot afford to jeopardise our reputation and be exposed to the risk of being fined up to €20 million or 4% of our annual global turnover, whichever is greater.'* Having sought legal consultation, the enterprise had appointed a Data Protection Officer, liaised with the Personal Data Protection Commissioner (the sole competent independent authority of the Republic of Cy-

prus), reviewed its internal processing procedures and external personal data transfers, reinforced its technical security systems, re-drafted all of its relevant documentation including its Privacy Policies and contracts, and held training seminars for its personnel and associates. *'Can I say something on this issue of security?'* **Mr. G**, the CEO of a major construction company intervened. *'I have strong indications that one of my main competitors has managed to steal banking transactions' related documentation and perfectly legal contracts with third parties—contractors, processing personal data without lawful*

*cause'*. **Mr. G** was concerned that the competitor was about to illegally utilise the data by transmitting it to public officials so as to exclude the construction company from public tenders, whilst, simultaneously, lodging a smear campaign in the press causing public distrust towards the company. Accordingly, he received legal advice and proceeded with the filing of complaints before the Police, under the Private Communications' Secrecy Protection Law of 1996, the Personal Data Protection Commissioner as well as the Central Bank of Cyprus, as the competent independent institutions of the Republic of Cyprus. The company was also considering filing a complaint before the Commissioner for Administration and Human Rights in the event that its legal rights were, subsequently, infringed by public officials.

The intertwined subject matters discussed during the round table dinner accurately represent the radical overhaul of the applicable regulatory framework

affecting the operations of each enterprise. It is up to each enterprise to rise to the occasion, take the appropriate preparatory steps in time so as to safeguard its rights as well as the legal rights of others affected by its operations. This will indeed be necessary if such cautionary tales are to be kept off the menu.

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## REFERENCE SOURCES:

1. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ('4<sup>th</sup> EU AML Directive')
2. Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 (2016/0208 (COD)) ('Proposed 5<sup>th</sup> EU AML Directive')
3. EDPS Opinion 1/2017 on a Commission Proposal amending Directive (EU) 2015/849 and Directive 2009/101/EC - Access to beneficial ownership information and data protection implications dated 2nd February 2017
4. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ('GDPR')



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