



Press release

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Study commissioned by the Foundation for Family Businesses: the transparency register and public country-by-country reporting violate Union law

Family businesses and their shareholders are subject to increasingly stronger social control through the continuously growing number of disclosure requirements. At the same time, many of these regulations infringe unjustifiably upon the data protection rights of family business owners. This is one key result of the first extensive study on the topic commissioned by the Foundation for Family Businesses.

According to that study, several of the disclosure requirements adopted by the European Union violate Union law. Neither the recently tightened transparency register nor the public country-by-country reporting now under discussion would survive legal action before the European Court of Justice. This is made clear in the analyses presented by the Würzburg legal scholars Prof. Dr. Ralf P. Schenke and Prof. Dr. Christoph Teichmann.

‘The European Commission overshot the mark when it comes to the duty of maximum data disclosure’, commented Prof. Rainer Kirchdörfer, Executive Board member of the Foundation for Family Businesses. ‘It would be better for European legislators to react now than to wait for a decision from the judges of the European Court of Justice. EU countries should deny their consent to public country-by-country reporting, which would considerably damage companies’ competitiveness.’

Kirchdörfer urges a change in thinking: ‘In the midst of general demands for higher standards of data protection, we now have an environment in which business owners are increasingly being treated with blanket suspicion and instructed to disclose information accordingly. By combining numerous publicly available sources of information, it is possible to gain an ever more precise picture of the private circumstances of business owners. If we do not reverse this trend, we risk gradually becoming a nanny state.’

Against this backdrop, the study’s authors speak of a paradigm change:

‘To date, transparency was always aimed at the state and served the purpose of controlling and disciplining the power exercised by the state. To demand transparency and disclosure from private individuals amounts to conscious or unconscious “fraudulent labelling”.’

The European Court of Justice sets the European Union strict limits when it comes to data protection law, limits that are exceeded by both the transparency register and public country-by-country reporting. In both cases, less intrusive methods of achieving



the same policy goals were not even taken into account. What is more, collecting data without a specific cause, i.e. where there is no increased risk of money laundering, contravenes the EU's own statutory requirements. Finally, necessary procedural safeguards are lacking, i.e. specific requirements for the EU Member States concerning the data protection standards which should be observed when implementing the disclosure obligations.

The transparency register, which took up its work fully in early 2018, enables individuals with a 'legitimate interest' to gain access to data about the beneficial owners of companies, foundations and trusts. Without waiting to ascertain the effects of this practice, the EU Council of Ministers decided in May 2018 to make the register freely accessible to anyone starting in 2020. As part of planned public country-by-country reporting, companies with offices in the EU are supposed to make sensitive business information freely available in the internet even though the disclosure of these country-specific data to the local tax authorities was already agreed at the global level.

Over 90 percent of all companies in Germany are family-owned. The purpose of the Foundation for Family Businesses, a non-profit organisation, is to preserve the country's family-business landscape. The foundation is the most important promoter of scientific research in this field and first port of call for politicians and the media in matters related to economic policy, legislation and taxation. It is supported by around 500 companies that are among the largest enterprises of their kind in Germany.

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