

**PROCEEDINGS AT HEARING
OF
MAY 7, 2021**

COMMISSIONER AUSTIN F. CULLEN

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May 7, 2021
(Via Videoconference)

(PROCEEDINGS COMMENCED AT 7:00 A.M.)

THE REGISTRAR: Good morning. The hearing is now resumed. Mr. Commissioner.

THE COMMISSIONER: Thank you, Madam Registrar.

Yes, Ms. Rose.

MS. ROSE: Thank you, Mr. Commissioner. Today we'll be hearing from Professor Maria Bergström, who is an expert in the area of EU law. I understand Professor Bergström will be affirmed.

**MARIA BERGSTRÖM, a
witness called for the
commission, affirmed.**

THE REGISTRAR: Please state your full name and spell your first name and last name for the record.

THE WITNESS: M-a-r-i-a B-e-r-g-s-t-ö-m.

MS. ROSE: Thank you, Madam Registrar.

Madam Registrar, if we could please have the witness's CV on the screen.

EXAMINATION BY MS. ROSE:

Q Professor Bergström, do you recognize this document as being your curriculum vitae?

A Yes, I do.

Q And you were trained in Sweden receiving an LLM

1 from Stockholm University in 1995 and a doctor
2 of laws from the European University Institute
3 in Florence 2003; is that right?

4 A Yes, that's correct.

5 Q You are currently an associate professor at
6 Uppsala University in Uppsala, Sweden. And I
7 apologize if I pronounce that incorrectly.

8 A That's perfect. Thank you.

9 Q And that's correct, you are an associate
10 professor?

11 A Yes, I am.

12 Q And I understand you had a brief stint in
13 private practice but otherwise have spent your
14 legal career in academia.

15 A Yes, I have.

16 Q And that career has been predominantly in Sweden
17 with some work in other countries in the
18 European Union?

19 A Yes, that's correct.

20 Q Your area of research and study is EU law; is
21 that right?

22 A Yes, that's my main field of expertise.

23 Q And within that field what is your primary
24 focus?

25 A At the moment I'm having some specialized

1 courses on EU criminal law, but I'm not by
2 training a criminal lawyer, but I am by training
3 an EU lawyer.

4 Q And you've also focused on anti-money laundering
5 data management, fundamental rights and other
6 related areas?

7 A Yes. Yes. That falls within the field that I'm
8 working in right now.

9 Q And you've published dozens of articles and book
10 chapters on the topic of anti-money laundering
11 regulation, EU criminal law and the FATF
12 process?

13 A Yes, that's correct.

14 Q You've also given many presentations and
15 speeches on that topic as well?

16 A Yes.

17 MS. ROSE: So, Mr. Commissioner, I'm going to ask
18 that we mark Professor Bergström's CV as the
19 next exhibit, and I believe that that's
20 exhibit 958.

21 THE COMMISSIONER: I think we're at 963, Ms. Rose.

22 MS. ROSE: Thank you.

23 THE REGISTRAR: Exhibit 963.

24 **EXHIBIT 963: Curriculum Vitae of Maria**
25 **Bergström**

1 MS. ROSE: Mr. Commissioner, I would also ask that we
2 begin today by marking three papers that have
3 been authored by Professor Bergström. We may
4 move interchangeably through these articles, so
5 I believe it might be most convenient to mark
6 them at the outset.

7 Madam Registrar, if you could please bring
8 up the article written by Professor Bergström
9 entitled "The Many Uses of Anti-Money Laundering
10 Regulation."

11 Q Professor Bergström, do you recognize this
12 article?

13 A Yes, I do.

14 Q And are you the author of this article?

15 A I am.

16 MS. ROSE: Okay. Mr. Commissioner, could we please
17 have this article marked as exhibit 964.

18 THE COMMISSIONER: Yes, very swell.

19 THE REGISTRAR: Exhibit 964.

20 **EXHIBIT 964: Bergström, M., The Many Uses of**
21 **Anti-Money Laundering Regulation - Over Time and**
22 **Into the Future (German Law Journal, Vol. 19**
23 **No. 5, October 2018)**

24 MS. ROSE: Madam Registrar, if we could next move to
25 the article entitled "Legal Perspectives on

1 Money Laundering."

2 Q Professor Bergström, do you recognize this
3 article?

4 A I do.

5 Q And are you the author of it?

6 A I am.

7 MS. ROSE: Okay. Mr. Commissioner, I would ask that
8 we have this article also marked as the next
9 exhibit, which now should be 965.

10 THE COMMISSIONER: Thank you, yes.

11 THE REGISTRAR: Exhibit 965.

12 **EXHIBIT 965: Bergström, M., Legal Perspectives**
13 **on Money Laundering (Research Handbook on**
14 **Transnational Crime, 2019)**

15 MS. ROSE: And next, Madam Registrar, if we could
16 please have up the paper entitled "Draft
17 Report." Okay.

18 Q Professor Bergström, do you recognize this
19 document?

20 A I do.

21 Q And could you just briefly tell us what this
22 document is.

23 A This is the first part of the report I've been
24 working on that I was able to present, so this
25 is the first part of it.

1 Q And you've provided this report for the
2 commission today?

3 A Yes, I have.

4 Q Okay. And I notice it still says it's in draft.
5 Can you just sort of tell us how finalized this
6 draft is at this time in your mind?

7 A Yes. In my mind it's still a draft, since it's
8 not -- it needs some minor adjustments before it
9 would be publishable in the normal sense, but
10 this is what I was able to provide at this time,
11 although I've had a lot of time at my hands.

12 Q And just so that I understand the adjustments
13 that you think would be necessary, just to this
14 portion of the report, appreciating that there
15 may be other portions to it, but to this portion
16 do you feel -- how do you feel about the
17 substance of the report as compared to some of
18 the fine tuning or proofing aspects?

19 A The most -- it's more in the proofing and some
20 minor adjustments when it comes to some of the
21 footnotes and maybe some discrepancies in the
22 way I use terminology in the different parts of
23 this part of the report.

24 Q So the content is something that you're willing
25 to stand by today?

1 A Yes. There might be a few minor updates that I
2 have not included here, but nothing that really
3 interferes with the material substance of the
4 content.

5 MS. ROSE: Okay. Thank you. On that basis,
6 Mr. Commissioner, I would ask that we mark this
7 draft report as exhibit 966.

8 THE COMMISSIONER: Yes, very well. 966.

9 THE REGISTRAR: Exhibit 966.

10 **EXHIBIT 966: Report on the European Union**
11 **Anti-Money Laundering Regulation - Draft, by**
12 **Maria Bergström**

13 MS. ROSE: Thank you. Madam Registrar, I don't need
14 this document on the screen right now. Thank
15 you. Or any of the documents for that matter.
16 If we could take those down. Thank you.

17 Q So, Professor Bergström, I'm just going to start
18 with a few questions about the legal structure
19 of the European Union. I'm hoping that you can
20 familiarize us in Canada with that structure.
21 So firstly, what are the sources of law for the
22 EU's anti-money laundering regulation?

23 A There is a number of different sources, both
24 binding and non-binding sources. There are a
25 number of directives that have been issued over

1 time and in various fields. Since EU
2 legislation is always based on what we call a
3 legal basis. It has to have an article in one
4 of the founding treaties that gives the EU
5 competence to legislate. So that's why we have
6 different types of pieces of legislation based
7 on different legal bases, since the EU only has
8 power to act or to legislate where the member
9 states have actually given the EU power. So
10 that's why it's very important that there's a
11 legal basis.

12 So there are a number of directives and
13 which are binding and a number of non-binding
14 documents also.

15 Q Perhaps you could just walk us through what you
16 see as being the important milestones in the
17 evolution of the anti-money laundering regime in
18 the European Union.

19 A Yes. Some of you might be familiar with the
20 Lisbon treaty that came into force in 2009 where
21 there was a big difference regarding the
22 competence of the EU when we said that EU got
23 its own criminal -- or power to legislate within
24 EU criminal law, including anti-money laundering
25 measures, but this is just the very last piece

1 of the puzzle, because anti-money laundering
2 legislation has been in place already since many
3 years back, like 30 years back or so within the
4 European Union and it started off as a way to
5 compensate when we took away the internal
6 borders between the member states and we had a
7 free flow of goods, persons capital, et cetera,
8 services. And when we allowed the internal
9 market to go ahead, there were also of course
10 great opportunities for criminal elements to use
11 this open market, and that's why we needed some
12 compensatory measures within the European Union
13 and that's how we should see the first
14 anti-money laundering directives from the early
15 90s, when there were a number of different
16 measures. This was one of the central pieces
17 but also other measures affecting the financial
18 field of law. And these were very much in tune
19 with also international measures, following very
20 closely mainly the FATF and their non-binding
21 guidelines that the European Union has followed
22 closely but also other type of international
23 measures given at that time.

24 So these were the first initial measures on
25 anti-money laundering, and they were mainly

1 administrative in character. They were
2 regulating in particular the behaviour of banks
3 and the likes and what they had to do in order
4 to also report to public authorities and the
5 banking industry or organizations who were very
6 much also participating in the development of
7 those rules, and many of the rules that have
8 been used for a long time within the banking
9 sector were also adopted to be the used in these
10 early pieces of legislation both on the European
11 level, I should say, and on the implemented
12 level on the member state level where the EU
13 directives needs to be transposed onto the
14 national member states level.

15 So these were the early days. And then
16 after 9/11 and as we all know other types of
17 incidents or happenings, there were greater
18 focus on terrorism financing, and after that
19 there were a lot of measures taken also on the
20 European Union level, not only concerning money
21 laundering but also other important central
22 measures and cooperation that now have been
23 expanded and more used also within the EU
24 criminal law field. But we moved on to risk
25 assessment and included also the financing of

1 terrorism as being covered by the administrative
2 law money laundering directives.

3 And then the third step or move, then, we
4 more recently had the fourth and the fifth
5 anti-money laundering directives, still
6 administrative in character. We're focusing
7 more on to -- of course to develop the previous
8 instruments, also still based on risk
9 assessments and so on, but where focus is also
10 more on other types, other parts of this
11 regulatory structure. And developing also
12 interoperability between agencies and data
13 systems but also a sharing of information
14 between authorities and law enforcement agencies
15 on various levels.

16 So after these three major steps, we had
17 also more or less at the same time as the last
18 ones the first anti-money laundering criminal
19 law directive. And it's not that we haven't had
20 such rules within the union previously, but they
21 have not been taken with qualified majority, but
22 have been measures under the structure previous
23 to the Lisbon treaty where there has been
24 unanimity and the court of justice has not been
25 given as much power, neither the commission, so

1 there is a shift in competence and power
2 within -- with all this first criminal law
3 directive which complements, then, the
4 administrative part. So these are the main --
5 then there are many other connected instruments
6 that interfere or that aid and help the
7 structure of how these rules are working, but
8 these are the main ones that I've focussed on at
9 least in my private publications.

10 Q Thank you. That's quite helpful. And using
11 that as a backdrop, I may just take you in more
12 detail to each of these measures. So first what
13 is the main body within the European Union that
14 promulgates directives or other regulations?

15 A Sorry. What was the question. Which body ...

16 Q What was the body that puts out the directives
17 within the European Union?

18 A Oh, okay. Yes, it's the EU lawmaker, and it's
19 not one single body within the European Union
20 that is the EU lawmaker. It depends a little
21 bit on which legal basis is used and which
22 field, but generally you can say that usually
23 it's the European Commission that puts forward a
24 proposal. It could be also a certain number of
25 member states in certain fields, but the major

1 rule is that European Commission puts a proposal
2 on the table and then it's the European
3 Parliament and the council that legislates. And
4 depending, then, on the subject area, it may be
5 a different council where, as you know, the
6 European Council is the highest political party
7 in Europe where it is representing the member
8 states, but in the law-making process, if there
9 is a piece on -- concerning agriculture, for
10 example, there would be the agriculture
11 ministers who take part in the council that
12 legislates. So for money laundering measures it
13 would be the ministers of justice from the
14 various member states and they would act with
15 qualified majority voting then in the council
16 and co-legislate with European Parliament. And
17 then there are other bodies involved like ECOSOC
18 committee and so on.

19 Q So if I understand it correctly, typically, or
20 in many cases, the European Commission would
21 propose a particular measure and then after some
22 negotiation that may or may not be adopted by
23 European Parliament. And what happens if a
24 measure is adopted by European Parliament?
25 What's the step after that?

1 A That's the final step. Usually there's a first
2 and second reading and there may be some
3 adjustments that needs to be discussed between
4 these three bodies and negotiated and the final
5 step is then that the European Parliament and
6 council agree to the last wording that will then
7 be the directive itself.

8 Q And once parliament has legislated, what is the
9 role of the member states?

10 A Oh, it depends what type of law or what type of
11 measure is being legislated. Because there are
12 three binding pieces of legal acts, decisions
13 used against certain bodies or certain
14 countries, but of general application we have
15 so-called regulations and directives, and within
16 this field we have so far at least mainly
17 directives and they are in a little bit
18 particular because they take effect after
19 publication, but then the usual working is that
20 member states have between one to three years in
21 order to implement them or transpose them,
22 because directives, they have a goal that's been
23 legislated. This will be the goal, but then the
24 member states can decide by themselves method
25 and how to implement those rules. And it may be

1 that a certain member state already have certain
2 rules or regulations in force already, so they
3 may not have to do much, whereas other member
4 states may not have anything similar to this and
5 they will be very, very busy then within this
6 time frame. The normal is of course that the
7 member states may have to introduce some new
8 pieces of legislation, so rules, regulations,
9 but not entirely, so -- and this is the
10 harmonizing measure that you try to make the
11 loss and provisions of the member states come
12 closer to each other by harmonizing rules then.
13 And instead of having, as we do regulation that
14 comes directly applicable at a certain date and
15 is used as -- what you say -- normal law, the
16 full application on the member state level. So
17 this is a kind of very different kind of legal
18 measure than -- that the European Union is still
19 using because it also gives of course the member
20 states some room to not put something completely
21 alien into their legal system but to be able to
22 work with what they have and make adjustments.

23 Q And does the EU have a role in monitoring member
24 states' compliance with directives or
25 determining whether member states have in fact

1 transposed the directive into national law?

2 A Yes. And that's the general -- that is usually
3 the role of the European Commission that has a
4 role as the guardian of the treaty. It would
5 normally say in the old textbooks of EU law. It
6 may depend a little bit on the policy field.
7 Today there are various field with specialized
8 agencies with specialized rules, but in general
9 it's the European Commission that has these
10 tasks and may even bring member states that is
11 not doing what it has promised to do or has not,
12 for example, implemented a certain directive in
13 time or not fully, take that member state to
14 court and bring so-called enforcement
15 proceedings. And this was also one of the
16 different things with when we had the first EU
17 criminal law directive, anti-money laundering
18 because this gave the commission full powers in
19 this field, whereas previously before the Lisbon
20 treaty, if they were same type of rules adopted
21 under the so-called third pillar, which was not
22 communitarized [sic], in legal language meant
23 that yes, the member states had to agree
24 unanimously to a certain measure, but it was not
25 such strong measures available for the European

1 Commission to bring those member states who did
2 not implement framework decisions, for example,
3 into the national laws to bring those member
4 states to court because they were simply
5 not within the powers of the European Commission
6 yet. The same with the court of justice. It
7 was only those member states who had agreed to
8 give, or grant the court of justice full powers
9 within this field of law that could bring, for
10 example, the national courts could ask for a
11 so-called preliminary reference to ask the court
12 of justice for help to interpret the certain
13 piece of -- or certain article of permission on
14 European law, which is a normal feature then in
15 general, on the general EU law. So this -- this
16 is different with the new EU criminal law
17 directive.

18 Q And so the powers that you've referred to of the
19 court of justice with respect to anti-money
20 laundering laws and regulations, when did the
21 court of justice retain those powers?

22 A Well, for the administrative law directives, the
23 court of justice has always had that, but after
24 Lisbon, there was a time period of five years
25 before the old framework decisions needed to be

1 implemented or communiterized [sic] during which
2 period the union could either legislate new --
3 propose a new legislative act and go on with
4 that or simply the old framework decision got
5 the same type of or became in legal effect
6 similar to normal directives. Because the old
7 framework decisions in type are very similar to
8 directives that need to be implemented but then
9 before five years up to Lisbon didn't have the
10 same effect on the member state level.

11 Q And that was 2009, the Lisbon treaty?

12 A Yes. And then five years after that for the old
13 framework decision.

14 Q And the Lisbon treaty is also known as the
15 Treaty on the Functioning of the European Union;
16 is that right?

17 A Yeah, that was one of the -- there was -- the
18 old treaties were renamed in a way and the old
19 EC treaty became the Treaty on Functioning of
20 the European Union, you can say, and the old EU
21 treaty is more similar in name as the one now.

22 Q Just so that we have the timeline for the
23 directives right, the third AML directive, that
24 was in around 2005; is that right?

25 A I believe so. I'm very bad with numbers and

1 remembering things, but I think you're correct.
2 We could check that out, look that up exactly
3 which year it was.

4 Q Well, we can refer to the articles if we need
5 to, but I'm just going to suggest some dates to
6 you, and you can tell me if they accord with
7 your recollection.

8 A Yes.

9 Q The fourth AML directive, do you have a
10 recollection on what that date was?

11 A I think it was adopted in 2015, but as I said, I
12 have a very bad memory, especially for dates and
13 names, but I think it was around that time. I
14 should have my report in front of me perhaps.

15 Q Sure.

16 A But I'm sure you're correct if you say so.

17 Q Well, I don't want you to take my word for it,
18 but I'm going to -- perhaps the more recent
19 directive might be more fresh in your memory.
20 Do you recall when the fifth AML directive was
21 adopted by European Parliament?

22 A I believe it was in 2018, but I need to
23 double-check exactly. Yeah. Is that in line
24 with your notes, Ms. Rose?

25 Q I'm not going to suggest a date to you. I

1 definitely want to make sure that you have the
2 opportunity to refresh your memory. So perhaps
3 is there a portion of your report that might
4 assist you in refreshing your memory on that?

5 A Oh, yes. They're all here.

6 Q Would you like us to bring up the draft report
7 for the commission, Professor Bergström?

8 A I'm not sure exactly which page would be
9 helpful.

10 Q Just give me a moment, I'll be able to answer
11 this.

12 A The fifth anti-money laundering directive it
13 says on page 23 in my version of the draft was
14 adopted on 14th May 2018.

15 Q Okay. Thank you. And that's the current
16 directive. There is not an AML --

17 A That's the fifth, yes, that's the fifth.

18 Q So we haven't moved on yet to the sixth?

19 A No. Some authors, though, call -- what I call
20 the criminal law directive, they call that the
21 sixth directive, but I would like to make a
22 distinction between the administrative law, the
23 directives of which we've had five different
24 ones and the criminal law directive. But I
25 noticed that some authors call that the six

1 directives, which may confuse us a bit.

2 Q And the criminal law directive, when was that
3 adopted?

4 A I believe that was adopted in the same year, but
5 I need to double-check that again.

6 Q I'm going to suggest to you that it was October
7 of 2018.

8 A Yes, that sounds very familiar. Thank you,
9 Ms. Rose.

10 Q Okay. All right. So that gives us a timeline
11 there. Thank you.

12 And just -- I asked you earlier about the
13 role of the European Commission in ensuring
14 compliance with the directives and as well the
15 regulation. What are the consequences for
16 non-compliance if the commission were to take a
17 member state to court to enforce? What might be
18 a penalty for non-compliance?

19 A It's maybe a penalty payment and a lump sum.
20 And it can be rather costly for the member
21 states, so costly that some commentators have
22 said they don't understand how the member states
23 could actually agree to this because almost
24 every member state, it happens to almost every
25 member state that are late at some point in time

1 due to various reasons. But you cannot be
2 excused. You have to pay then, and there are
3 elaborate ways to calculate them depending on
4 how long the infringement has been going on and
5 the severity of it, and then there is a way to
6 calculate then how much a certain member state
7 needs to pay in the end.

8 And these rules will also strengthen at some
9 change of the treaties that before the court had
10 to take the member state to court twice. First
11 to get the court to say that there had been
12 indeed an infringement and then a second time to
13 ask for the monetary compensation or this type
14 of penalty payments, whereas now it's enough to
15 take, for the court of justice to take the
16 member state to court once if there has been a
17 delay in implementation or transposition of the
18 rules. And usually the member states also
19 have -- are under an obligation to report to the
20 commission how they go on with their
21 implementation.

22 Q And you said that the penalties can be quite
23 costly. Could you give us a ballpark? Are we
24 talking of hundreds of thousands of euros or
25 what might be the ballpark for that type of

1 penalty?

2 A I should be able, but it may be confusing.

3 There was -- there was at some point, for

4 example, a case where Sweden was given such a

5 lump sum of penalty payment to pay when we had

6 not implemented the data retention directive.

7 That specific directive was later actually

8 announced by the court of justice, so I think

9 whatever penalty payment we did pay, we got back

10 in the end. I may be confusing the numbers

11 between the currencies, but I seem to recall --

12 I'm not a hundred percent certain, but it might

13 be something around 3 million euros, and that

14 was not a very long breach or not too severe for

15 that instance either because we had at the time

16 when the judgment fell, we had already

17 implemented this directive, so it was calculated

18 on the number of days that you have not

19 transposed those provisions.

20 Q Okay. And just to press you a little bit more

21 on dates, for the fifth AML directive, the one

22 that is currently in force, I'm just going to

23 suggest to you that the European Parliament

24 adopted and made that directive in force in June

25 2018 with 18 months for member states to

1 transpose and implement the directive taking us
2 to December 2020. Does that sound about right
3 to you?

4 A Yes, that's correct.

5 Q Okay. And so it's been, I guess, about six
6 months or five months since that deadline. Are
7 you aware of whether member states are mostly in
8 compliance or not?

9 A I checked not too recently, but at some point
10 when I did check there were I think around five
11 member states that had not yet transposed all
12 the provisions, but I need to double-check again
13 what the status is on that because I don't have
14 it in fresh -- I haven't checked it recently.

15 Q Okay. And how many member states are there in
16 the EU?

17 A 27.

18 Q Okay. So five out of 27?

19 A I believe so. That was some time ago, so there
20 might be improvements since.

21 MS. ROSE: Okay. So I'd first like, Madam Registrar,
22 if we could take the draft report onto the
23 screen again. If we could turn to page 13.

24 Q So, Professor Bergström, here you describe the
25 fourth AML directive as implementing a new EU

1 defer in addition of money laundering. Do you
2 see that there?

3 A Yes.

4 Q And could you perhaps just walk us through -- we
5 don't need to read every word, but what does
6 this new definition do and what is the purpose
7 behind it?

8 A It's -- in a way it provides the member states
9 with an EU definition of what should be covered
10 by money laundering or what should be meant by
11 it. And there's also -- there always is a
12 predicate offence that money then -- illegal
13 money comes from, so it's different -- it's an
14 unusual type of crime in that sense that it
15 needs some other criminal activity to become the
16 crime of money laundering. And you may say that
17 we do have a definition, then, since we have
18 this, but it's not -- it needs to be implemented
19 on the member state level and also it's not
20 fully corresponding with the definition provided
21 in the criminal law directive, so this is one of
22 the few issues. I haven't written it down yet,
23 but this is one of the few issues that we
24 might -- may need some improvements in the
25 legislative measures to be more fully harmonized

1 interpreted then on the national level, and this
2 is of course not very workable because hardly no
3 one knows all the 24 languages and neither the
4 national judges. So there may be problems both
5 on when member states are implementing or
6 transposing the EU rules but also afterwards
7 when their national courts are interpreting
8 them, the national provisions that have been
9 implemented on the basis of directives. But
10 then EU law explains that when interpreting
11 national laws, we should also interpret the
12 rules against the background of EU rules and
13 principles, general rules also.

14 So, for example, if this is transposed
15 within a criminal law act or whatever act it's
16 been transposed into it, we should also -- when
17 reading in Swedish, for example, then look at
18 also the phrasing of this directive in order to
19 interpret. And also of course like in any
20 jurisdiction why the rules on interpretation
21 that we need to follow also.

22 Q And in your view has this definition in fact led
23 to harmonization in anti-money laundering
24 efforts across the EU?

25 A I'm afraid I cannot answer that specific

1 question because I have not seen. There may be
2 in some of the reports, but I have not studied
3 it in detail if there is a problem of the
4 definition in itself or if it's more other parts
5 of the directive. I would pursue -- I would
6 guess -- and this has no scientific
7 [indiscernible] that it's not a definition in
8 itself most of the time that is the problem.
9 But perhaps how the criteria under the more
10 criminal law directive, how they are being
11 interpreted or used in connection with also
12 other type of crimes and other type of
13 procedures. But I shouldn't speak on that
14 really because it's just a guess.

15 Q Yes. And I certainly don't want to ask you to
16 guess. Perhaps I'll ask just a bit of a more
17 general question. From your experience in
18 analyzing anti-money laundering efforts in the
19 EU, do you see this definition as useful? Is it
20 hitting the right level of specificity or
21 breadth and does it -- you know, is it useful in
22 your view?

23 A I think it's useful to have a general
24 definition, but I think it's perhaps unlucky if
25 the EU measures themselves are not harmonized

1 between themselves, and there's no general
2 definition on the international level either, so
3 I think this could be improved, but this is what
4 we have to work with, and I'm sure it's in line
5 also with the FATF and other international
6 rules.

7 But for instance to give an example, there
8 has been problems beforehand in terms of what
9 the predicate offences can be and whereas it has
10 to be the conduct of somebody else doing
11 something before the money is being laundered,
12 for example, whereas in Sweden you could not
13 prosecute for self-laundering. I think this has
14 been corrected. But there may be minor things
15 that makes then it's more problematic when
16 dealing with trans-border issues that things
17 differ a little bit between the member states.
18 But not only definitions themselves but also
19 when it came comes to confiscation, freezing and
20 other type of connected measures that the EU I
21 know is working also on to harmonize to make
22 better, to make the rules more efficient. But I
23 think this is something that needs to be studied
24 more carefully. Yeah, the definition itself and
25 how good or problematic it is.

1 Q So you mentioned there's some discrepancies in
2 predicate offences for money laundering. So I
3 take it, then, that the EU does not set a list
4 of predicate offences that might lead to a money
5 laundering charge and that's left up to member
6 states?

7 A In Europe this is something that EU has been
8 regulating and every time the administrative
9 law -- or the EU rules have changed, it has been
10 expanded to include also other types of
11 predicate offences. So that is something that
12 EU is regulating, but still there may be
13 variations on national level that may not
14 completely harmonize because member states'
15 jurisdiction are built up in different ways and
16 also make their own definitions, and that's
17 supposed to work with the EU ones maybe
18 different. So the end result might not be as
19 harmonized as one may wish for or hope for,
20 perhaps.

21 Q And so now I'll refine my question a bit. Is it
22 the case that the EU sets a list of predicate
23 offences but the member states are free to add
24 additional predicate offences?

25 A No. This is something that I believe is fully

1 harmonized, that they cannot add or take away.
2 Quite often the directives are different. Some
3 are full harmonizing directives when everything
4 is completely set on an equal level, whereas
5 some types of directives are so-called minimal
6 directives when the member states are given more
7 leeway either to have exceptions on when the
8 directives are being adopted or that the
9 directives themselves gives the member states
10 possibilities to add exceptions or specific
11 rules when implementing or when applying.

12 But when it comes to this, I don't think
13 that it's so much variation allowed for the
14 member states because this is something that's
15 at the very core of EU action, so -- and it
16 comes also from the internal market where there
17 should be fewer -- fewer exceptions or fewer
18 exceptions to the main rules, although they are
19 possible in general.

20 Q What work has been done that you're aware of to
21 evaluate the effectiveness of the AML directives
22 as well as the criminal regulation as well?

23 A There was a report by the commission after the
24 third anti-money laundering, I believe,
25 directive, and there's been a thesis, PhD thesis

1 by a Dutch researcher, Melissa van den Broek,
2 specifically dealing with effectiveness and this
3 is also a part of the last reports and proposals
4 by the commission on the EU level to look into
5 what the problems now are, and it seems that the
6 main problems are not so much any longer that we
7 lack legislative rules on the EU level, but more
8 on the implementation and application level that
9 the rules are not being applied in a harmonized
10 way, in a similar way throughout the union.

11 So it seems that we've had a rapid
12 development with new directives for this 30-year
13 time with new type of provisions, new predicate
14 offences, new areas that have been covered by
15 these rules. And it seems that what's needed
16 now is not as much as before, new legislative
17 initiatives, but rather to work on what we now
18 have and to make sure that these rules are being
19 implemented correctly but also not with too many
20 variations so that it works smoothly then cross
21 borders.

22 Q And so you've mentioned there's some areas of
23 strength and some areas for improvement. Can
24 you say in your view how effective the
25 directives and regulation have been. In your

1 view have they had a strong impact, a minimal
2 impact on curtailing money laundering in the EU?

3 A I think you could say that they've had a strong
4 impact because there's been much awareness of
5 these rules, and there's a lot of work going on
6 by public entities and I think banks and other
7 entities covered by these laws are trying to
8 abide by the rules. At the same time we've had
9 a lot of cases, at least recently with a lot of
10 so-called scandals with big banks being involved
11 and being criticized. And those have also been
12 analyzed and discussed a little bit by the --
13 even the EU itself, the commission, the reports
14 that have been accompanying the -- some of the
15 policy reports recently. And it seems that it's
16 not so much that -- the problem is not so much
17 that we don't have the laws in place, but the
18 problem lies more on how they're being used and
19 perhaps supervised. Supervision may be the
20 problem rather than lack of effective loss.

21 On the other hand, I may just tell a small
22 anecdote. That many, many years ago when I was
23 starting working in this field, I had a
24 discussion with somebody from -- you're not just
25 working I must say specifically with anti-money

1 launders and we discussed effectiveness of
2 these type of rules when we have strict rules
3 for banks and other credit institutes and so on
4 and so forth. For example, you could not -- you
5 cannot go to a bank and just deposit certain
6 amounts of money without telling the bank where
7 it came from and so on. You have to be very
8 specific with these type of things. At the same
9 time if you're a criminal or if you're a
10 criminal network, you never go to the bank and
11 try to deposit these amounts of money. You
12 simply buy the bank, was the comment by this
13 official. So it's just an anecdote to show that
14 I think, yes, the EU is working very hard, and
15 it's identified as a very important field of law
16 to follow the money and so on. I do agree
17 that's important.

18 But as always, when it comes to trying to
19 combat different types of crimes, the law
20 authorities and law enforcement authorities are
21 always a step behind. And it shows also on the
22 type of provisions that the fifth money
23 laundering directive is introducing, which is
24 like the second anti-money laundering directive,
25 only a directive which makes changes to the

1 first, respectively the fourth directive, that
2 what the directive is focusing on is especially
3 problems connected with digitalization, sharing
4 of information and so on and so forth where we
5 are really battling in a way with what the
6 criminals can do and what lawmakers and law
7 enforcement authorities can do to prevent such
8 crimes. I think it's important, but there are
9 also major problems since developments are very,
10 very fast when it comes to digitization and
11 sharing of information and so on.

12 Q I to want to take you issues of data sharing and
13 that in a moment, but first I just wanted to ask
14 you, are there certain member states within the
15 EU that are doing a better job at curtailing
16 money laundering, and if so, are there any
17 features of those states' legal regime that are
18 in your view connected to there being more
19 effective? Before you answer, Madam Registrar,
20 if we could take the report down. It's been on
21 the screen for a while. That's my mistake.
22 Sorry.

23 A Yes. And I think -- I think the reports by the
24 FATF might be useful to study in that sense
25 because the EU reports or the EU focus on member

1 states is very much on whether the member states
2 have implemented the rules from the directives,
3 but then I'm not aware of -- doesn't mean it
4 doesn't exist, but I'm not aware of the same
5 kind of in-depth analysis from the EU side of
6 member states as the FATF are doing with the
7 country reports, when one country is checking
8 on, so to speak, on another country on various
9 different points. And I think it's just a
10 feeling I have from discussing with few people
11 working in this field but not on a scientific or
12 wider basis that national governments are
13 working very, very hard before they get analyzed
14 or checked upon by another member state within
15 the FATF regime. It may be that it's more in
16 depth, those type of analyses. And the result,
17 if you get a bad score in those reports, may be
18 very, very costly because if you don't fulfill
19 the requirements and get a bad point, so to
20 speak, it will be much more costly to trade with
21 those countries because there may be stricter
22 rules. This is the same within the European
23 Union regime, particularly against -- also
24 against third countries which are then judged
25 higher risk. So this is something European

1 Union is also working with. But perhaps not as
2 much within the European Union itself. But it
3 is being identified as a problem of course if
4 the criminal elements would be able to go to one
5 or several member states because the
6 requirements would be lower there, and that way
7 then entered the European Union and the internal
8 markets. So yes, it's one problem. But I could
9 not point out how much work is guided with this
10 in particular, but I think it's an important
11 point of course.

12 Q And you're referring of course to the FATF
13 mutual evaluation reports?

14 A Yes. Yes.

15 Q Yeah. And are there any member states of the EU
16 that stand out to you as having particularly
17 strong AML measures?

18 A This is something I have not -- there would
19 probably be perhaps also connected with which
20 countries have the main financial centres, but
21 this is nothing that I have any proof of or that
22 I have looked into in particular.

23 Q Okay. So I'm going to ask you a couple specific
24 questions about a couple areas. First on the
25 topic of beneficial ownership.

1 A Yes.

2 Q Could you tell us about the European Central
3 Platform.

4 A I believe that's something rather novel. I
5 haven't studied it in depth, but the idea is
6 with the changes of the fifth money laundering
7 directive that beneficial ownership and these
8 type of information should be uploaded
9 immediately, if I understood it correctly, to
10 this European platform and be able to be shared
11 instantly throughout European Union. So this
12 will help those needing this type of information
13 to get access to information also uploaded from
14 other member states. Now I don't hear you,
15 Ms. Rose.

16 Q I'm sorry. I was muted. I apologize.

17 MS. ROSE: Perhaps, Madam Registrar, there's one
18 other article that Professor Bergström has
19 authored, and it's entitled "Money Laundering."
20 It's a chapter in the *Research Handbook on EU*
21 *Criminal Law*. Perhaps we could have that on the
22 screen, please. Yes. And if we could turn to
23 page 346 of the document itself. I'm sorry, if
24 we could just zoom in a little. I believe there
25 was a reference on this page to -- yes. At the

1 top here. Sorry, Madam Registrar, if you could
2 just go to the top of the page. Yes.

3 Q And so Professor Bergström, do you see here
4 there's a line that says:

5 "Enhancing transparency, specific
6 provisions on beneficial ownership of
7 companies have been introduced and
8 information about beneficial ownership
9 will be stored in a central register ..."

10 Do you see that?

11 A No. Which line? Yes, okay. The second
12 paragraph. Yes.

13 Q Sorry, I should first establish. Do you
14 recognize this article?

15 A Yes, of course.

16 Q And this is a chapter that you authored?

17 A Yes.

18 Q Okay. And so you see that reference there? And
19 perhaps you could just expand upon that
20 reference for us.

21 A I'm not sure -- is this -- because this is an
22 old book chapter. Is this somewhere when I'm
23 discussing already the third money laundering
24 directive, or I thought it would be the fourth?

25 Q I believe you're referring to the AMLD4 in this

1 passage.

2 A Yeah, the fourth.

3 Q Yes. And so could you describe what this
4 central register accessible to competent
5 authorities, could you describe what that is for
6 us, please.

7 A I mean, the idea with beneficial ownership, and
8 that's being expanded to cover all types of
9 entities, even housing associations, for
10 example, is to have -- so that you should
11 identify who is behind a company. There should
12 be a physical person there that is being
13 registered in these type of registrar, and then
14 this has been developed, and this is from the
15 fourth directive, this has been developed in the
16 fifth directive also with transparency that has
17 become public, I believe, so that anyone should
18 be able to access this type of information, and
19 then there are different levels of what type of
20 information could be assessed by different types
21 of factors.

22 So, for example, national FIUs have more
23 access than anyone, but you could show perhaps a
24 specific interest in having information or
25 getting information. So I think this is

1 something that has been identified as a problem
2 or lack within the current -- the previous --
3 the previous situation or the previous rules,
4 but that has been expanded gradually. But I'm
5 not sure if -- what is exactly that you were
6 asking me to say, Ms. Rose, because I think I
7 lost it a little bit while I was discussing more
8 generally.

9 Q Yes. Yes. I was just curious about the sharing
10 of beneficial ownership information.

11 A M'mm-hmm.

12 Q And if we move to the next paragraph, which here
13 begins with the word "generally."

14 A Yes.

15 Q And about halfway through the paragraph you've
16 write that:

17 "FIUs have been given strengthened powers
18 to identify and follow suspicious
19 transfers of money."

20 Do you see that there?

21 A M'mm-hmm.

22 Q Sorry, I just need a yes or no for the
23 transcript purposes.

24 A Yes. Yes.

25 Q And you see here you've written:

1 "According to recital 58, member states
2 should in particular ensure that their
3 FIUs exchange freely, spontaneously or
4 upon request, with third-country FIUs."

5 Do you see that?

6 A M'mm-hmm.

7 Q I'm sorry, that's a yes?

8 A Yes. Yes, sorry. Yes.

9 Q And perhaps this standard of freely,
10 spontaneously or upon request, perhaps you could
11 just expand on what that means.

12 A Yes. This is -- the recitals of a directive is
13 not binding as much. They are used as a goal,
14 and they are used as additional information
15 against which the specific articles should be
16 interpreted. So this is not something that you
17 can require member states to do, and you
18 couldn't -- it's not a hard legal provision
19 either even if it was put in an article. So
20 this is something that should be -- what's the
21 word in English ...

22 Q Taken with a grain of salt, is that the right
23 expression?

24 A It should be -- sorry. My English is
25 disappearing. Encouraged. It should be

1 encouraged. But if you don't do it, I don't see
2 how anyone could take a member state to court
3 and so on for not doing it freely spontaneously
4 and so on, because at the end of the day every
5 member state and every member state authority of
6 course needs to work against or with their
7 internal rules on sharing of information and so
8 on, and there may be many problems in this
9 respect on what type of information you may
10 share. It might be even illegally or
11 unconstitutionally. So I don't foresee that
12 this particular recital can be used in any
13 particular way granting or giving the member
14 states a hard requirement or as ground for a
15 hard requirement for what they need to do. This
16 is something very political or rather nonlegal
17 in a way. When it comes to sharing of
18 information it needs to be much more
19 substantial.

20 Q Would you agree that it's perhaps something in
21 the spirit of the law but perhaps not the letter
22 of the law?

23 A Yes, yes, you can say that.

24 Q Okay. And if we turn back to the previous
25 paragraph, I just want to clarify. Again you've

1 used the phrase:

2 "According to recital 14 --"

3 A Yes.

4 Q "-- the need for accurate and up-to-date
5 information on the beneficial owner is a
6 key factor in tracing criminals ..."

7 A Yes.

8 Q So, again, that statement is a recital and not a
9 binding legal requirement upon member states?

10 A Yes. And it's being used, then, as interpretive
11 information, additional information in
12 interpreting other provisions, but this is
13 exactly what the fifth directive has stepped up
14 on or developed, so we have more -- more rules
15 on exactly this. So perhaps it may be -- I
16 don't know, but it could be that the political
17 situation wasn't ripe enough, so to speak, in
18 order to adopt specific provisions when the
19 fourth directive was adopted. This was
20 something that they saw as problematic already
21 at the time, but not anything they have been
22 adopting specific rules on.

23 And it may be also be a legislative avenue
24 to make smaller changes step by step than wait
25 for enough votes to have everything in place.

1 It may be better to start working on certain
2 provisions and then after a few years then make
3 revisions of the rules and add some things
4 depending also on the outcome of the work of the
5 previous rules. Because I think the European
6 Union has been rather active within this field
7 lately specifically.

8 MS. ROSE: Okay. And, Mr. Commissioner, I wonder if
9 we might have this article marked as the next
10 exhibit, which if I'm not mistaken would be
11 exhibit 967.

12 THE COMMISSIONER: Yes, very well, 967.

13 THE REGISTRAR: Exhibit 967.

14 **EXHIBIT 967: Bergström, M., Money Laundering**
15 **(Research Handbook on EU Criminal Law, 2016)**

16 MS. ROSE: Madam Registrar, perhaps we could turn to
17 the article which is now exhibit 964. I'm
18 hoping to go to the PDF page 16 of this article.
19 Okay. If we zoom in on the paragraph beginning
20 with the word "third." Thank you.

21 Q So I think this is the same topic, Professor
22 Bergström.

23 A Yes, it's exactly the same paragraph used in a
24 different publication that's been based on the
25 previous one.

1 Q And here you say that information about
2 beneficial ownership will be stored in a central
3 register, again accessible to competent
4 authorities, and others with a legitimate
5 interest. And you've provided a footnote here.

6 MS. ROSE: And if we go down to that footnote, Madam
7 Registrar, it's footnote 85.

8 Q And this is listed as article 30, and the
9 parentheses here makes me believe that it's
10 article 30 of AMLD4. Is that right?

11 A Yes. Yes, that's correct.

12 Q Okay. And I don't ask you for a pop quiz of
13 what article it is in AMLD5, but this is not a
14 recital. This is an article, and is this one
15 that has a legally binding effect?

16 A Yes.

17 Q Okay. And so member states are in fact required
18 to provide beneficial ownership of companies to
19 a central register; is that right?

20 A Yes, yes, that's correct.

21 Q Okay. And is there any more that you can share
22 with us about the makeup of that central
23 register?

24 A Not that I remember directly. I would need to
25 read the articles, the directives again to

1 refresh my memory. But as it says here, will be
2 amended I think at the time of publication of
3 this particular piece. There was just a
4 proposal for the fifth directive, but now that
5 it has been adopted, this is indeed something
6 that has changed and been developed a bit and
7 also that they would be the same articles.
8 There have been some additional articles added
9 with a fifth directive, but they have been
10 framed -- named, an article and a number and a
11 letter because it's the same -- the fifth
12 directive is only changing, making changes to
13 the fourth directive as the second one did to
14 the first in contrast to the third directive,
15 which was a completely new one, as was the
16 fourth one when it came. So that's why you can
17 rest assured that the numbering is still the
18 same, but some of the articles of the fourth
19 directives have been changed and some not.

20 MS. ROSE: Okay. I'm sorry to be bouncing between
21 documents here. But if we could turn to the
22 legal perspectives document, which I believe is
23 exhibit 965. And if we could turn to page 105
24 of the article itself. Yes. If we could just
25 scroll down a little bit. Madam Registrar,

1 beginning on the paragraph that starts with
2 "however."

3 Q So, Professor Bergström, you're familiar with
4 some of the concerns raised about the sharing of
5 information that you've just described that were
6 raised by the European Data Protection
7 Supervisor?

8 A Yes.

9 Q Okay. And you can refresh your memory by
10 looking at this last paragraph here, but perhaps
11 you could briefly explain to us what those
12 concerns are?

13 A Yes. Because the idea -- the proposal of the
14 fourth directive was to include also tax crime
15 as a predicative offence, and the problem that
16 the data protection agency saw that under
17 general data protection rules you are not
18 allowed to use data collected for one person's
19 purpose for a completely different purpose, and
20 this is something that a court of justice has
21 also been rather strict with in other types of
22 actions not involving anti-money laundering in
23 particular, but these are general data
24 protection rules, then.

25 So this, I think, is a very valid argument

1 and also the proposal was indeed changed to
2 exclude this. On the same hand it opens -- it
3 still opens for these type of transactions and I
4 wouldn't be surprised if this is not something
5 that might be challenged later on some way or
6 another, because I think it's very important
7 that the data that a public authority is
8 collecting for some purpose that is well defined
9 and stated in law, the limits, so that public
10 authorities cannot simply collect all sorts of
11 data, often also with the help of public
12 companies which are nowadays doing the actual
13 collection, not the member state authorities
14 themselves. So I think this is -- it's an
15 important point which might become problematic
16 in other cases also now when we are focusing
17 more and more on sharing of information and so
18 on between authorities. At the same time, we do
19 have in place already rules when public
20 authorities are supposed to share information,
21 and I understand also from law enforcement
22 officials that it may be very annoying, to use a
23 nonlegal term, but they know the tax authority
24 has a lot of information that is not -- that
25 they cannot access and use in legal proceedings

1 and so on. So this might be something that is
2 probably discussed but also very much
3 criticized. Not only from the data protection
4 agency or other types of authorities dealing
5 specifically with data protection.

6 Q And do I have it right that in the EU each
7 member state has its own data protection agency?

8 A Yes.

9 Q And then the EU itself has a data protection
10 supervisor?

11 A Yes. I think that's how it is built up. And
12 they have various fields of competence that are
13 working with them.

14 Q And, again, you said that -- do I have your
15 evidence that because of the concerns raised by
16 the data protection supervisor here, the
17 inclusion of tax evasion as a predicate crime
18 was removed?

19 A I cannot say that it was because of. They
20 brought it up, but you can see that it was
21 removed although some of the necessary rules in
22 order to use it is still there in the directive.
23 Although the more specific references to tax
24 crime was taken out. This was later changed,
25 though, so I think with the fifth directive it

1 is included as a predicative offence.

2 Q Yes. And what were the discussions with respect
3 to including it in the AMLD5? What discussions
4 are you aware of in terms of the concerns of the
5 data protection agencies and the data protection
6 supervisor?

7 A With the fifth directive?

8 Q Yes, with the AMLD5, yes.

9 A I'm not aware of any such criticism, but I need
10 to look into that more in detail if there has
11 been similar criticism raised or if the
12 criticism raised from the fourth directive were
13 perhaps taken into account later on. So I can't
14 answer that question. I need to look into it.

15 Q Okay.

16 A It's a good point.

17 MS. ROSE: Okay. And I believe in -- sorry, we can
18 take this document down now, Madam Registrar.
19 Thank you.

20 Q I believe it was AMLD4 that introduced
21 provisions dealing with gambling. Is that
22 right?

23 A I think so. I should know. I think so, yes.

24 Q Okay. I just wonder if you are familiar with
25 the reasons for including gambling in the AML

1 directive.

2 A I don't remember specifically reading it, but I
3 take for granted that it must be the amount of
4 money involved because there are limits to the
5 amounts. So any type of -- any type of entity
6 handling lots of amount of money would be
7 included. So it would be more surprising if it
8 was not included given that all types of shops
9 dealing with antiques, for example, and any type
10 of antiques is really -- are covered.

11 MS. ROSE: Okay. I may need another document up on
12 the screen, Madam Registrar. I think we're
13 referring to exhibit 967, which is the
14 chapter 16 on money laundering. So if we can
15 turn to page 352 of the page of the document
16 itself. If we can scroll down in the middle of
17 this top paragraph. I'm sorry. I asked you to
18 scroll down a bit too far.

19 Q In the middle of this paragraph, the top one
20 here, there is a phrase beginning about seven
21 lines up from the bottom beginning with the word
22 "however." Do you see that there, Professor
23 Bergström?

24 A No, I don't see "however." Is the line starting
25 with "however"?

1 Q It's in the middle of the paragraph. Yes.

2 Thank you, Madam Registrar.

3 A Oh, there. Yes, thank you. Yes.

4 Q You say:

5 "However, the shift towards the risk-based
6 approach entailed several major
7 consequences regarding the relationship
8 between private and public actors."

9 A Yes.

10 Q And here you're referring to the shift which you
11 previously mentioned about the shift in the AML
12 directives towards a more risk-based approach?

13 A M'mm-hmm.

14 Q And then you say:

15 "Inherent in this change is that the
16 policing tasks of private actors ... are
17 expanding."

18 A Yes.

19 Q And I wonder if you can just elaborate on that
20 point.

21 A Yes. Because with the risk-based approach in
22 the third anti-money laundering directive,
23 public actors -- sorry, private actors like
24 banks, but all types of entities really
25 afterwards when the directives field of

1 applicability has been expanded, it requires the
2 private actors to keep track of information to
3 know their customers, to collect information but
4 also to report on the customers, which may
5 breach obvious principles like banking
6 confidentiality or for lawyers client
7 confidentiality and so on. But this is supposed
8 to take precedence then. So you have very
9 far-reaching reporting obligations where you may
10 face or pay fines even if you don't adhere to
11 those rules. So not only are private entities
12 need to keep record and collect information for
13 the business purposes, we also demanded to keep
14 records and save and share information in
15 spying, in a way, on their customers, in knowing
16 their customers. Whereas some actors are very
17 happy with this because they phrase it like they
18 would like to be the good citizens and they
19 don't want to have criminals within their
20 systems or people taking advantage of their
21 systems and so on, other actors in areas are
22 more hesitant about taking on this task. And
23 it's demanding on private parties, I think, and
24 it's very costly also since everyone is nowadays
25 hiring money laundering officials to do this

1 type of task. It's complicated transactions, et
2 cetera.

3 So this is a real shift which we see rather
4 early within this field of law, but now it's
5 developing or it's moving also to other fields
6 of law. And data protection is one field, of
7 course, when it comes to electronic data kept by
8 public companies, tele-companies, service
9 providers, et cetera, which are supposed to
10 collect and share their information with public
11 enforcement agencies.

12 MS. ROSE: Okay. And, Madam Registrar, I think we
13 can take this document off the screen.

14 Q Just to clarify one of the previous lines of
15 questioning I had for you, Professor Bergström,
16 I'm going to suggest to you that the central
17 register where the beneficial ownership is
18 maintained is named the European Central
19 Platform?

20 A Yes.

21 Q Do you agree?

22 A Yes.

23 Q Okay. Now, I hope -- I was wondering if you
24 could bring us up to date a little bit. So
25 we've referred to AMLD4; we've referred to the

1 AMLD5. What are some of the key developments
2 since the issuance of the AMLD5?

3 A There's been a number of developments. I should
4 just take some notes out.

5 Q And perhaps would it be helpful if we referred
6 to your draft report perhaps?

7 A Yes. I have the headings there at least.

8 MS. ROSE: So, Madam Registrar, if we could pull up
9 the draft report at exhibit 966, and I believe
10 we can scroll to the last page. I apologize. I
11 supposed it's not the last page. Perhaps you
12 could go to the table of contents, Madam
13 Registrar. My apologies. You can scroll down
14 to the bottom there. Yes. Thank you. Under
15 "proposals for future reform."

16 A The future, yes. So --

17 Q Perhaps you could just walk us through those,
18 yes, thank you, Professor Bergström.

19 A Thank you, Ms. Rose. The first one says "the
20 European agenda for security," and it should
21 actually be called the EU security union
22 strategy. The European agenda for security was
23 the previous name for the time period for 2015
24 to 2020. The new strategy which is a political
25 document is called the European Union strategy

1 2020 to 2025. And this one is building upon
2 progress made under this previous agenda, and
3 also on President of the European Commission,
4 von der Leyen's political guidelines, and this
5 was presented on 24th of July 2020. And there
6 are -- it's built on priority actions on the EU
7 level with six pillars.

8 And of these -- I won't go into detail of
9 these ones, but I just would like to mention the
10 third strategic priority, which is then
11 organized crime, and there money laundering is
12 specifically addressed just as under the
13 previous agenda for security. So money
14 laundering is placed very central in the future
15 reform when it comes to potential challenges,
16 internal/external security and so on. Also in
17 the digital and physical world and so on. So
18 anti-money laundering is constantly getting more
19 focus and becoming more and more central in a
20 way despite that the fields of -- where it is
21 working or placed is changing.

22 So within the European Union from the
23 internal markets agenda, which is now fulfilled
24 more or less. We have an internal market for
25 free movement of goods, persons, services, et

1 cetera, but -- until the last year anyway. And
2 with the focus on the threats of terrorism and
3 terrorism financing, anti-money laundering was
4 still there and now with a new agenda for
5 security money laundering measures, anti-money
6 laundering measures are still [indiscernible]
7 rather central, I would say.

8 So on this third priority, then, it
9 specifically stated that within the European
10 Union there should be zero tolerance for illicit
11 money and they are emphasizing that the EU for
12 over 30 years has developed a solid regulatory
13 framework for preventing and combatting money
14 laundering and terrorism financing, and when
15 talking about this combatting and preventing the
16 administrative law directives are very much
17 focused on prevention, whereas this combatting,
18 in a way, is more in line with the criminal
19 measures. And of course it's overlapping. It's
20 not possible to draw a strict line there. But
21 administrative provisions are very much more
22 focused on prevention.

23 Anyway, it's also added that this has been
24 on the agenda for a long time, but it's added in
25 full respect of the need to protect personal

1 data. So this is also lifted up, in a way, as a
2 key area or key part when looking into these
3 measures. So there needs to be a balancing
4 between effectiveness and effective rules and
5 structures and procedures to work against
6 anti-money laundering but also the protection of
7 fundamental rights, including data protection.

8 Q Professor Bergström --

9 A Yes.

10 Q -- I see that you're referring to some notes
11 there. Are you referring to the text of the
12 agenda itself or what notes are you referring
13 to?

14 A It's my own notes but just key words taken from
15 the agenda and also the communication where the
16 agenda was presented. So it's not my own
17 analysis so much but -- well, in a way a little
18 bit, but I'm referring to the agenda.

19 Q And if we asked you to produce a set of those
20 notes, that would be okay with you?

21 A Oh, yes.

22 MS. ROSE: Okay. So I trust, Mr. Commissioner, you
23 have no concern with this witness referring to
24 these notes.

25 THE COMMISSIONER: No, I see them simply as an

1 aide-mémoire and perfectly proper for her to
2 refer to them.

3 MS. ROSE: Thank you.

4 Q And, sorry, Professor Bergström, please
5 continue. You were describing contents of the
6 third priority, I believe.

7 A Yes. And they say after, referring to full
8 respect of the need to protect personal data,
9 the commission -- the European Commission
10 emphasized that there's a growing consensus that
11 implementation of the current framework needs to
12 be significantly improved. Major divergences in
13 the way it is applied and serious weaknesses in
14 enforcement of the rules needs to be addressed.
15 But now I'm just paraphrasing what the
16 commission says.

17 Q Professor Bergström, what is the effect of --
18 what is the legal effect of the agenda? You
19 mentioned it's sort of a political document.

20 A Yes, it's a political document, and it shows the
21 willingness of the commission to act within this
22 area and it shows very clearly where -- on which
23 parts the commission will focus the next period,
24 the next five-year period, and it's also --
25 provides -- the commission does not want to be

1 seen as some agency or as not being able to
2 promise, to fulfill what it's promised or talks
3 about. So this also gives guidance on what will
4 come, and there will be -- this also provides
5 the framework for the legal initiatives it will
6 later take, both binding and non-binding. So it
7 shows -- a guidebook in a way or a map of these
8 years to come. It draws up what we can expect
9 for these five next years, since they are also
10 initiating legislative proposals.

11 Q Okay. So we've covered, I think, the agenda.

12 A Yes.

13 Q The next item on this list is the legislative
14 proposals for AML directives. Perhaps you could
15 tell us about that.

16 A Yeah. It's more -- it's European Commission
17 communication, what's better implementation
18 then. It was pronounced on 24th of July 2019.
19 And it was -- it was together the result of four
20 reports that has been presented. The reports
21 are dealing with super national risk assessment
22 and assessment on recent high-profile money
23 laundering cases in the financial sector, like
24 those big banks who have been in the media, and
25 the third one Financial Intelligence Units in

1 the interconnectional centre bank account
2 registers reports.

3 So this communication is summarizing in a
4 way the results of those reports and provides us
5 with guidance on what should be focused upon in
6 order to achieve, then, better implementation.
7 And this is -- can be read as focused now is not
8 so much on legislative -- amending the existing
9 legislative framework, but rather to work with
10 the framework now set in place and recently that
11 has -- it's supposed to have been transposed on
12 the national level, but to work with the
13 remaining problems and the remaining -- yes,
14 what we have to work with [indiscernible] in
15 order to make the system work. It was
16 pronounced in July 2019. And it also states
17 exactly what I said, so it's not only my
18 comment, that while in transposition and
19 entering the fourth and the fifth anti-money
20 laundering directive would address some of those
21 issues that have been identified in this report,
22 and the accompanying four reports, some of these
23 issues, some of those problems remain. Even if
24 those directives are fully implemented there may
25 be problems also with implementation of the

1 fourth directive, although we have already the
2 fifth one. Yes.

3 Q And moving to the 2020 action plan.

4 A Yes. So then on May -- on 7th of May 2020 the
5 commission adopted an action plan for a
6 comprehensive union policy preventing money
7 laundering and terrorism financing. And this
8 report or this action plan builds on six
9 pillars, which are aimed at improving the EU's
10 overall fight against money laundering and
11 terrorism financing as well as strengthening the
12 EU's global role in this area. According to the
13 commission, when combined these six pillars will
14 ensure that EU rules are more harmonized and
15 therefore more effective. So now it comes back
16 to the effectiveness issue again.

17 The rules will be better supervised and
18 there will be better coordination between member
19 state authorities. So again focused on exchange
20 of information and supervision because here are
21 the areas where the commission has identified
22 that there are still gaps and problems.

23 Q And in reference to those gaps and problems, I
24 think we've talked -- we've touched on the
25 topics that are listed under existing and

1 potential AML challenges here, but I wonder is
2 there anything you feel we should add to any of
3 these bullet points under that heading here?

4 A Yes. I could just mention to you briefly the
5 six pillars, how they phrased by the commission
6 and I should also underline that the commission
7 do not foresee legally binding measures within
8 all these areas, but it might be also
9 non-binding measures taken. I think it's about
10 half-half for these areas. But the first one is
11 effective application of EU rules where they
12 will continue to monitor the implementation.
13 That's the first one.

14 The second one is a single EU rule book.
15 And this I believe is not legally binding but
16 something that will guide the national
17 authorities in using the rules more or less. So
18 this might be something that has been requested
19 by the entities covered by these regulations.

20 And then the third one is EU level
21 supervision, which we have touched upon before.
22 Up until recently it's up to each member states
23 to individually supervise EU rules, and since
24 this is -- these rules are applying also to very
25 large legal entities like large banks, for

1 example, which are at present in many member
2 states and are very large. It may be very
3 difficult for single member states to supervise
4 those. And it says here in this action plan
5 that in the first quarter of 2021, the
6 commission will propose to set up an EU level
7 supervisor, and we are still waiting for the
8 specific proposal. I've tried to find out, but
9 I haven't found any concrete proposal as yet,
10 but I believe the commission is working hard on
11 that.

12 And then the fourth one is a coordination
13 and support mechanism for member state Financial
14 Intelligence Units, and I believe the idea is
15 that the commission will provide or will
16 propose, at least, establish an EU mechanism to
17 help further coordinate and support the work of
18 these bodies. Now they work on a very
19 horizontal level and not so much a hierarchical
20 level with the central -- with the European
21 Commission.

22 And then the fifth point is enforcing EU
23 level criminal law provisions and information
24 exchange. So this is more on the criminal law
25 side, then, and not the administrative side.

1 And here it's mentioned that the private sector
2 can also play a role in fighting money
3 laundering and terrorism financing, as they
4 already do. And the commission will issue
5 guidance on the role of public-private
6 partnerships to clarify and enhance data
7 sharing. So, again, we're coming back to the
8 sharing of information and the collective
9 problems there.

10 And the sixth point is the EU's global role.
11 And here they are simply stating that EU is
12 actively involved with the Financial Action Task
13 Force and on the world stage in shaping
14 international standards in the fight against
15 money laundering and terrorism financing. I
16 mean, the EU is not part of FATF, but all its
17 member states and the commission, I believe,
18 have observed it at its meetings and I would
19 rather see it as the EU is implementing directly
20 any rules taken by the FATF than that the EU is
21 so much influencing it, but that's simply my own
22 comment and not what they say. So this is the
23 six pillars that this action plan is building
24 upon. And it's interesting also that there were
25 six -- I believe there was six finance ministers

1 who recently proposed or encouraged the
2 commission to propose a central European agency
3 for anti-money laundering or a central
4 anti-money laundering authority, and those six
5 finance ministers were followed by -- this paper
6 can be found on the internet, actually. It was
7 proposed in November 2019, and it was the
8 finance ministers of France, Germany, Italy,
9 Latvia, the Netherlands and Spain, and they
10 published a joint paper that was called "Towards
11 a European Supervisory Mechanism for Money
12 Laundering and Financing Terrorism."

13 And then following that on 5th December
14 2019, in the conclusions of the ECOFIN meeting
15 the finance ministers of all EU member states
16 invited the commission to explore conferring
17 certain responsibilities and powers for
18 anti-money laundering supervision to a union
19 body with an independent structure and direct
20 powers within certain obliged entities chosen by
21 the EU body in accordance with a risk-based
22 approach and asked the commission to present
23 legislative proposals in that regard in parallel
24 efforts to achieve a higher level or
25 harmonization through anti-money laundering

1 regulation. So this is also being proposed,
2 then, by the member state finance ministers. So
3 everyone is waiting now for the proposal by the
4 commission.

5 I mean, so far the European Banking
6 Authority has been given a wider mandate, but
7 since their field of competence is more limited
8 than what the anti-money laundering directives
9 are covering, because otherwise they would be
10 very natural agency to propose to take over such
11 anti-money laundering supervisory tasks, but
12 that would -- in that case that would need its
13 mandate to be broadened because it's mainly
14 supervising the banks and not all other areas.
15 So it's -- well, that's what we need to wait
16 for.

17 So it's quite a complicated regulatory --
18 or supervisory structure for how it works in
19 practice. With national Financial Intelligence
20 Units getting information from the private
21 sector and then sharing information with other
22 member states and the private sector then or the
23 obliged entities, to use the terminology of the
24 directives, to use customer due diligence
25 measures then to -- against their customers or

1 to supervise -- well, not supervise, but to keep
2 track of their customers. And then they make
3 the risk assessment for when there are higher
4 risks for certain -- in relation to certain
5 third countries, for example, but also in
6 relation to certain situations, more risky
7 situations, where there would be -- they would
8 need to use more enhanced customer due diligence
9 measures and then this entire system then needs
10 to also be supervised by anti-money laundering
11 supervisor, which -- so up until now have been
12 only on the member state level, but -- and with
13 the European Banking Authority somehow --
14 somehow setting some guidelines and helping to
15 coordinate those national units. But I believe
16 we will get a proposal and then we'll see what
17 the member states, of course, and the European
18 Parliament in the legislative process, what they
19 will say about this later on. So I'm sure there
20 will be a debate. But these are the next
21 measures proposed by -- for future reform
22 anyway.

23 So there's quite a lot going on. No so much
24 on the legislative side, then, but more to fill
25 the gaps where problems have been identified and

1 very much it's related to the specific
2 several-level system of the European Union, not
3 only with the directives having to be
4 implemented but also how national authorities
5 work in relation to European authorities and
6 sharing of information at various levels and
7 between authorities in various member states.
8 Which of course puts issues of fundamental
9 rights at its core, I think, as a lawyer.
10 Because obviously when we're sharing information
11 there needs to be some safeguards and limits,
12 proportionality and so on and so forth in
13 what -- not only with whom you can share but
14 also for what purposes it can be used, depending
15 then on for what purpose it has been collected.
16 And this is -- it's very important also for the
17 European Union to get this right in relation to
18 the customers, to its citizens and people, then,
19 who would be collected -- information about them
20 would be collected in such data systems.

21 Q So in reference to the proposed central
22 authority, could you advise which -- how this
23 discussion came about. Are there certain
24 entities that are in support of a central
25 authority and others there are opposed to it?

1 A I think there's always people opposing
2 everything the European Union does. There's
3 always political groups and certain parties,
4 people, who dislike to give any more power to
5 the European Union. They would basically argue
6 that this is something we should take decisions
7 about and decide about on the national level, so
8 close as possible to citizens. On the other
9 hand, there has been rather political consensus
10 also from the European Parliament that
11 traditionally parliaments are more hesitant to
12 incorporation between countries and over borders
13 that its citizens are worried about the growing
14 number of criminal activity within the European
15 Union and not only traditional crimes, organized
16 crimes but also white collar crimes, and I think
17 in particular smaller member states do
18 understand that it's very difficult for them to
19 supervise and to work on these issues alone.
20 Some countries may be also a little bit naive in
21 thinking that we don't have any anti-money
22 launderers [sic] within our borders, we don't
23 have any such problems, and then when cases pop
24 up, they are proven wrong because even smaller
25 member states can be used for money laundering

1 purposes, and it's not so easy to bring them to
2 justice or to collect information about them if
3 they're hiding behind certain entities or
4 designing their operations rather cleverly in
5 order to sidestep or avoid the laws enforced.
6 So I think there's growing consensus also
7 towards that this needs to be battled against
8 and that it's also closely connected with a
9 sound financial system and that if we let
10 criminals take advantage of free movement and
11 use the financial systems for criminal purposes,
12 it affects the entire financial systems and also
13 for reputational risks. If you cannot promise
14 very high standard of protection within your
15 jurisdiction, people with money would simply
16 invest somewhere else because there's too many
17 risks.

18 And also in my own research, now a long
19 time ago, back when I was interviewing various
20 people working within -- on the national level
21 in certain member states, they also gave me the
22 idea or they mentioned that it's not so much the
23 European Union structure and fees and so on
24 they're worried about when it comes to illegal
25 transactions or if they not follow the rules

1 properly, but the naming and shaming and the
2 risk of not gaining investments, having to adopt
3 higher, more demanding rules in order to -- will
4 increase the transaction costs and would be
5 very, very problematic.

6 So it would be much worse to get bad report
7 under the FATF rules than to get a fine by the
8 commission, even if the commission fine would be
9 very large. So it's a complicated field, the
10 field of anti-money laundering, because it
11 covers so many various aspects.

12 Q So in my last question, Professor Bergström,
13 I'll just ask if you had a magic wand are there
14 certain things that you would like to see in a
15 central AML authority, there are certain
16 features that you might like to see if you could
17 have your desires?

18 A I think it will be very important that it's
19 closely connected within member state
20 jurisdictions. Since we have 27 member states
21 and they're very diverse with different kind of
22 developed financial systems and different types
23 of problems, I think it wouldn't be successful
24 if it didn't fully understand the type of
25 problems faced by the different member states

1 and the different regions. Of course large
2 financial centres of the world at least in
3 Europe face completely different problems than
4 more rural or less populated areas. Although
5 they may be used equally much or even more by
6 criminals within these systems, since the
7 commission has also identified that particularly
8 small or medium-sized firms, which may have
9 problems to get the funding are a potential --
10 special potential risk for -- to be used by
11 money launderers.

12 So I think a central -- if we would have a
13 central authority, I think it's very important,
14 not only to look at the big financial centres
15 and where you would perhaps most obviously look
16 at regulation and implementation, but at all
17 fields. Because money launderers so easily move
18 their actions and businesses, so to speak. It's
19 so easy, I think, for them to just move to
20 another field or to other areas. Or to simply
21 buy a bank, like as that person said.

22 So I think it needs to focus on the whole
23 picture, in a way, and that it might not be the
24 most obvious entities or areas that might be
25 most challenged or open for risks. So work with

1 the national levels and regional levels.

2 MS. ROSE: Okay. Thank you very much, Professor
3 Bergström. Mr. Commissioner, those are all my
4 questions. And I wonder if now might be an
5 appropriate time for the morning break.

6 THE COMMISSIONER: Yes. I think that's a good idea.
7 We'll take 15 minutes. Thank you.

8 THE REGISTRAR: This hearing is adjourned for a
9 15-minute recess until 9:15 a.m.

10 **(WITNESS STOOD DOWN)**

11 **(PROCEEDINGS ADJOURNED AT 9:00 A.M.)**

12 **(PROCEEDINGS RECONVENED AT 9:14 A.M.)**

13 **MARIA BERGSTRÖM, a**
14 **witness for the**
15 **commission, recalled.**

16 THE REGISTRAR: Thank you for waiting. The hearing
17 is resumed. Mr. Commissioner.

18 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
19 I'll call now on Ms. Stratton on behalf of the
20 province, who has been allocated 10 minutes.

21 MS. STRATTON: Thank you, Mr. Commissioner.

22 **EXAMINATION BY MS. STRATTON:**

23 Q Professor Bergström, can you hear me okay?

24 A Yes, I can.

25 Q Great. I just have a few questions for you

1 about the European Central Platform. If I
2 recall your evidence correctly you said that's a
3 European-wide corporate beneficial ownership
4 registry; is that right?

5 A Yes. But I must admit that I'm not very
6 familiar with the exact workings of it and the
7 more details of it. But from what I've written
8 in my various papers.

9 Q Thank you. I do have a few questions just about
10 something you've written in your paper and if
11 you don't know the answer, that's completely
12 fine.

13 MS. STRATTON: Madam Registrar, could we pull up
14 exhibit 965 and go to page 104.

15 Q So you'll see there in the first paragraph the
16 second sentence you've written:

17 "Information about beneficial ownership
18 will be stored in a central register
19 accessible to competent authorities, FIUs,
20 entities required to take CDD measures,
21 and other persons with a legitimate
22 interest."

23 And I was just wondering what each of those or
24 who each of those refer to. So first of all
25 what do you mean by competent authorities? Is

1 that law enforcement?

2 A Let me see now. Yes, I guess it must be -- I've
3 taken this from -- I don't know what it says in
4 point -- in footnote 45, but I presume it's from
5 the directive.

6 Q Okay.

7 A And competent authorities must be national
8 authorities who are not FIUs then, but somehow
9 with a specific task under the directors.

10 Q Okay. And footnote 45 --

11 A Yes.

12 Q -- has a citation to chapter 3, article 30.

13 A Yes.

14 Q So are you saying is this a direct quote from
15 that article?

16 A I would presume so because I certainly didn't
17 make it up, so I think I must have taken it from
18 article 30, and there might be more guidance in
19 the articles or in the preamble what may -- what
20 may be meant by competent authorities, but I
21 would need to look at the directive in order to
22 specifically answer or give examples of what it
23 may refer to, actually.

24 Q Okay. No problem.

25 A It's a good question. It's a good question.

1 Q And you told the commission that there's
2 different levels of access that I think you said
3 with the fifth AML directive there's public
4 access but --

5 A Yes.

6 Q -- FIUs for example have access to a greater
7 level of detail; is that right?

8 A Yes. Because they pointed out already with the
9 legitimate interests, you could say.

10 Q Do you know other than FIUs are there any other
11 entities that have greater access such as law
12 enforcement, for example?

13 A It's probably the same article, and I'm not sure
14 whether that article has been -- has been
15 amended by the fifth directive, but I do know
16 that it may be a problem when it says other
17 persons with a legitimate interest because
18 that's something that may be differently
19 constructed in the various member states, so it
20 may be that a similar person or a comparable
21 person in a different member state may have a
22 legitimate interest under that member state's
23 framework than a similar person in another
24 member state. And this is something harmonized
25 by the directive.

1 Q Okay. So do I understand your evidence the
2 other persons with a legitimate interest, that's
3 something that's broad in this article so that
4 each member state can define that in their
5 own way?

6 A No, because it's not defined by -- as far as I
7 know it's not defined by the directive, so it
8 may -- I need to double-check that, but I think
9 that's something that may be problematic later
10 on.

11 MS. STRATTON: Okay. Thank you. Those are all my
12 questions for you. Thank you very much.

13 THE WITNESS: Yeah. Sorry for not being able to
14 answer. They were good questions. They were
15 good questions. Thank you.

16 MS. STRATTON: Thank you.

17 THE COMMISSIONER: Thank you, Ms. Stratton. I'll
18 turn down now to Mr. Duong for the British
19 Columbia Lottery Corporation, who had been
20 allocated 10 minutes.

21 MR. DUONG: Thank you, Commissioner. I have no
22 questions for the witness.

23 THE COMMISSIONER: Thank you, Mr. Duong.

24 I'll now turn to Ms. Magonet on behalf of
25 the British Columbia Civil Liberties

1 Association.

2 MS. MAGONET: Thank you, Mr. Commissioner.

3 **EXAMINATION BY MS. MAGONET:**

4 Q Professor Bergström, can you hear me?

5 A Yes, I can, Ms. Magonet.

6 Q Great. Thank you. I only have a few questions
7 for you. My first question is about one of your
8 articles.

9 MS. MAGONET: And if I could ask Madam Registrar to
10 please pull it up. I believe it is exhibit 967
11 entitled "Chapter 16, Money Laundering."
12 Brilliant. And, Madam Registrar, if you could
13 please go to page 12 of this article -- well, of
14 the PDF. And if you could scroll down a little
15 bit further. Yes. Actually, it might be better
16 to go to page 13. It's just the bottom of
17 page 12, the beginning of page 13. Thank you.

18 Q Professor Bergström, in this article here you
19 referred to some criticism made by the Meijers
20 Committee -- I'm sure I'm mispronouncing that --
21 about the potential discriminatory impact of
22 AML -- or the fourth AML directive in terms of
23 the customer due diligence roles, and I was
24 wondering if you could speak a bit to this
25 concern the committee had.

1 A And I must admit that when I read this again in
2 my paper, I made a note to look up what this
3 criticism was about because I did not recall it
4 myself. And I thought -- I wrote it -- I
5 included it in the report and I thought I better
6 check or take it out because I was curious
7 myself, but could not remember what I read about
8 this. So I'm very sorry I cannot answer that
9 specific question. I need to look at it again
10 because it also struck me as -- I remember I
11 wrote that the criticism didn't -- didn't lead
12 to any changes, but I cannot recall now what
13 more specifically the criticism was about than
14 what it says. I'm sorry about that.

15 Q That's no problem. If I were to suggest to you
16 that the criticism -- my understanding is that
17 the criticism was about discriminating based on
18 a customer's nation of origin in terms of
19 whether they could open or maintain a
20 financial -- an account at a financial
21 institution. Would that refresh your memory?
22 If you don't feel comfortable speaking to it,
23 that's also completely fine.

24 A Yes. No, it doesn't ring any bells because I
25 read that it was discriminatory, but it

1 didn't -- I didn't specify in what sense, and I
2 cannot -- I must admit I cannot recall now. I
3 need to look at this reference again in order to
4 know what it was about. I'm sorry about that.

5 Q No problem. Madam Registrar, if you could
6 please take this document down. I have just one
7 other question for you, Professor Bergström.

8 MS. MAGONET: And, Madam Registrar, I'll ask for your
9 assistance again. This question relates to -- I
10 believe it's exhibit 965, chapter 8, "Legal
11 Perspectives on Money Laundering." And, Madam
12 Registrar, if you could please go to page 9 of
13 the PDF. Brilliant.

14 Q So earlier, Professor Bergström, Ms. Rose was
15 asking you some questions about concerns that
16 the data protection agency had with regards to
17 potential amendments to the fourth AML
18 directive, and you spoke to some of those
19 concerns, but in this part of your paper it's my
20 understanding that the data protection agency
21 also had concerns about broadened access to
22 beneficial ownership information, and I was
23 wondering if you could speak to that a bit.

24 A Where in this -- where do I write about it?

25 Q Yes. It's just in the first paragraph on this

1 page.

2 A Yes.

3 Q And you can definitely take time to read that.

4 A Right. When it comes to limits of data
5 protection, there's always -- there's always
6 need to make a proportionality assessment,
7 whether the infringement or the limits of the
8 protective rule could be legitimate in relation
9 to the aim. So here it could -- they would
10 probably then accept that they might be all
11 right to make limits and to share it but that
12 with such a wide access both to the competent
13 authorities and the public, it would not be in
14 line with the proportionality, but that the aim
15 of ensuring access or transparency, it could
16 probably be reached without making it so broad,
17 making the access so broad. That's how I
18 understand it. Did that answer your question?

19 Q Yes. That's perfect. Thank you, Professor
20 Bergström.

21 MS. MAGONET: Mr. Commissioner, those are my
22 questions.

23 THE COMMISSIONER: Thank you, Ms. Magonet. Just
24 before we move on to Mr. Rauch-Davis, the
25 reference in your question on PDF page 13 of

1 exhibit 967 did refer to indirect discrimination
2 by country of origin. Is that -- is that what
3 you were referring to when you were asking that
4 question?

5 MS. MAGONET: Yes, it was.

6 THE COMMISSIONER: So unless I misunderstood your
7 question, I think within that paragraph the
8 answer is embedded. If we can just return to
9 that, Madam Registrar. I think that was exhibit
10 967. And it was PDF page 13.

11 THE REGISTRAR: Yes, I am on that page now.

12 THE COMMISSIONER: Okay, thank you. The paragraph
13 reads:

14 "... does not seem to take into account
15 the criticism made by the Meijers
16 Committee regarding the potential the text
17 provides for indirect discrimination in
18 relation to the application of CDD and the
19 use of the risk factor related to country
20 of origin of the client."

21 Is that what you were driving at, Ms. Magonet?

22 MS. MAGONET: Yes, it was, Mr. Commissioner.

23 THE COMMISSIONER: All right. Thank you.

24 MS. MAGONET: Thank you.

25 THE WITNESS: Thank you.

1 THE COMMISSIONER: And I'm sorry, did you have any
2 other questions arising out of that?

3 MS. MAGONET: I do not.

4 THE COMMISSIONER: Thank you. I'll then turn to
5 Mr. Rauch-Davis on behalf of Transparency
6 International Coalition, who has been allocated
7 10 minutes.

8 MR. RAUCH-DAVIS: Thank you. Madam Registrar, can we
9 please pull up exhibit 965 at page 104.

10 **EXAMINATION BY MR. RAUCH-DAVIS:**

11 Q Professor Bergström, my friend Ms. Stratton for
12 the Province just asked you a few questions
13 about this and I just have a point of
14 clarification that I'd like to get. Just to the
15 top of the page. Under the paragraph that
16 begins "third, in order to enhance
17 transparency." That second sentence --

18 A Yes.

19 Q "Information about beneficial will be stored in
20 a central register," and then it lists who has
21 access to that. I take it this article was
22 written by yourself under the --

23 A Yes.

24 Q -- fourth AML directive; right?

25 A Yes, that's correct.

1 Q So this was prior to the implementation of the
2 fifth directive --

3 A Yes.

4 Q Which now allows access to the general public;
5 right?

6 A Exactly.

7 Q Do you know what information the general public
8 has access to? I understand your evidence that
9 you're not familiar with the exact mechanics of
10 the central registry, but I wonder if you do
11 know.

12 A It's -- I think -- I believe it's only actually
13 the ownership.

14 Q If I suggest to you the public --

15 A For -- such as companies, so that just the
16 insertion on the legal ownership of each
17 company.

18 Q You think that -- I take it you're not sure of
19 that.

20 A Yes, yes, that's what I think. I need to look
21 into detail, but that's how I understood it
22 without looking more into depth of it.

23 Q You're not familiar --

24 A It might be -- there might be more -- but I need
25 to look at the directives provisions in detail.

1 MR. RAUCH-DAVIS: Okay. Thank you. I appreciate
2 that. Those are my questions. Thank you.

3 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.

4 Anything arising, Ms. Magonet?

5 MS. MAGONET: Nothing, thank you, Mr. Commissioner.

6 THE COMMISSIONER: Ms. Stratton?

7 MS. STRATTON: No thank you, Mr. Commissioner.

8 THE COMMISSIONER: And Ms. Rose?

9 MS. ROSE: No, thank you, Mr. Commissioner.

10 THE COMMISSIONER: Thank you. Thank you very much,
11 Professor Bergström. It was very helpful to
12 hear from you on the complexities of attempting
13 to establish harmony within a regime as
14 complicated as the European Union. Certainly
15 we've heard evidence that even within the
16 relatively small jurisdiction of British
17 Columbia, finding harmony between and among
18 agencies and with competing values is a very
19 difficult process, much less considering the
20 task of finding harmony in an organization with
21 27 different countries and 24 different
22 languages. So it has been helpful for us to
23 hear from you as to the challenges faced by the
24 European Union community with respect to money
25 laundering. So thank you very much for your

1 assistance. And you're now excused from further
2 testimony.

3 **(WITNESS EXCUSED)**

4 THE COMMISSIONER: Ms. Rose, I think we're over to
5 Monday now. Can you help me with the time.

6 MS. ROSE: Yes, I believe we are beginning at our
7 normal time of 9:30 a.m., Mr. Commissioner.

8 THE COMMISSIONER: All right. Thank you.

9 THE WITNESS: Thank you very much, Mr. Commissioner
10 and Ms. Rose. And thank you in particular,
11 Mr. Commissioner, for helping me clearing out
12 the question from Ms. Magonet. And thank you
13 for your patience and listening so early in the
14 morning. Thank you very much.

15 THE COMMISSIONER: Thank you.

16 THE REGISTRAR: The hearing is now adjourned until
17 May 10th, 2021, at 9:30 a.m. Thank you.

18 **(PROCEEDINGS ADJOURNED AT 9:33 A.M. TO MAY 10, 2021)**

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