



## Personal data recorded in the Mercantile Registry and “the right to be forgotten”, a difficult equilibrium

*In its Judgment of 9 March 2017 the ECJ considers that an equilibrium must be found between this right and other legal obligations*

### Background

In year 2007, the sole director of an Italian building company sued the Chamber of Commerce of Lecce. He considered that the properties that his company had built were not selling because in the companies' register it was still noted that he had been the sole director and liquidator of another company which was declared insolvent in 1992 and liquidated in 2005. The court of first instance upheld that claim and obliged the Chamber of Commerce to anonymize the data linking the plaintiff to the liquidated company, and to pay compensation for the damage suffered. The Chamber of Commerce brought an appeal against this judgment and the Italian Supreme Court decided to refer various questions to the European Court of Justice. In essence, the court requested the ECJ whether European Law on protection of privacy opposes to the fact that any person may have access for an unlimited period of time to the data related to individuals that are recorded in the Mercantile Registry.

### Public registry and privacy

The European Court recalls that the purpose of making certain data public in the Mercantile Registry aims to protect the interests of third parties in relation to companies. Given that companies only respond towards third parties with their own assets, some situations may appear where having the personal data of its representatives may be of interest even years

after the company had been liquidated (for instance, if personal liabilities have to be sought). According to the European Court, this interference in the right of privacy is not disproportionate because (i) in the Mercantile Registry only a limited number of personal data are recorded (its identity and the functions in the company) (ii) the persons whose data are recorded are persons who choose to participate in trade through a company.

### Case-by-case analysis

However, the European Court does not exclude that, in special situations, legitimate reasons may justify that access to personal data recorded in the registry may be limited once a sufficiently long period of time after the liquidation of the company has expired. In these cases, only third parties justifying a specific interest in the consultation should be allowed to this data. In the opinion of the court the limitation of access to personal data shall have to be done case by case and shall be for each Member State to decide whether it wants to establish such a limitation or not.

In this particular case, the European Court understands that the reasons raised by the Italian director were not sufficient to justify a limitation on the access by third parties to the personal data recorded in the Mercantile Registry.