

## REPORT FOR THE HEARING

in Case E-1/24\*

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*), in the case of

**TC,**

concerning the interpretation of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

### **I Introduction**

1. By letter of 20 December 2023, registered at the Court on 3 January 2024, the Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*) requested an advisory opinion in the case pending before it concerning TC.

2. The case before the Administrative Court concerns an appeal brought by TC against the decisions of the Board of Appeal for Administrative Matters (*Beschwerdekommision für Verwaltungsangelegenheiten*) (“the VBK”), by which the VBK refused the appeals brought against the decision of 11 May 2023 of the Register of Beneficial Owners Commission (*Verzeichnis der wirtschaftlich berechtigten Personen-Kommision*) (“the VwbP Commission”) and the order of 15 May 2023 of the Office of Justice, Foundation Supervision and Anti-Money Laundering Division, (*Amt für Justiz, Abteilung Stiftungsaufsicht und Geldwäschereiprävention*) (“the Office of Justice”), regarding TC’s requests for disclosure of information about herself and other natural persons held on the central register of beneficial ownership.

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\* Language of the request: German. Translations of national provisions are unofficial and based on those contained in the documents of the case.

## II Legal background

### *EEA law*

3. Article 3 of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) reads:

*The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.*

*They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.*

*Moreover, they shall facilitate cooperation within the framework of this Agreement.*

4. Article 103 EEA reads:

*1. If a decision of the EEA Joint Committee can be binding on a Contracting Party only after the fulfilment of constitutional requirements, the decision shall, if a date is contained therein, enter into force on that date, provided that the Contracting Party concerned has notified the other Contracting Parties by that date that the constitutional requirements have been fulfilled.*

*In the absence of such a notification by that date, the decision shall enter into force on the first day of the second month following the last notification.*

*2. If upon the expiry of a period of six months after the decision of the EEA Joint Committee such a notification has not taken place, the decision of the EEA Joint Committee shall be applied provisionally pending the fulfilment of the constitutional requirements unless a Contracting Party notifies that such a provisional application cannot take place. In the latter case, or if a Contracting Party notifies the non-ratification of a decision of the EEA Joint Committee, the suspension provided for in Article 102 (5) shall take effect one month after such a notification but in no event earlier than the date on which the corresponding EC act is implemented in the Community.*

5. Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice reads, in extract:

*The EFTA Court shall have jurisdiction to give advisory opinions on the interpretation of the EEA Agreement.*

*Where such a question is raised before any court or tribunal in an EFTA State, that court or tribunal may, if it considers it necessary to enable it to give judgment, request the EFTA Court to give such an opinion.*

...

6. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73) (“Directive 2015/849”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 249/2018 of 5 December 2018 (OJ 2021 L 337, p. 42). Directive 2015/849 was added as point 23b of Annex IX (Financial services) to the EEA Agreement. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 25 June 2019 and the decision entered into force on 1 August 2019.

7. Recitals 12, 13, 14 and 46 of Directive 2015/849 read:

*(12) There is a need to identify any natural person who exercises ownership or control over a legal entity. In order to ensure effective transparency, Member States should ensure that the widest possible range of legal entities incorporated or created by any other mechanism in their territory is covered. While finding a specified percentage shareholding or ownership interest does not automatically result in finding the beneficial owner, it should be one evidential factor among others to be taken into account. Member States should be able, however, to decide that a lower percentage may be an indication of ownership or control.*

*(13) Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and obliged entities should look for the natural person(s) who ultimately exercises control through ownership or through other means of the legal entity that is the customer. Control through other means may, inter alia, include the criteria of control used for the purpose of preparing consolidated financial statements, such as through a shareholders’ agreement, the exercise of dominant influence or the power to appoint senior management. There may be cases where no natural person is identifiable who ultimately owns or exerts control over a legal entity. In such exceptional cases, obliged entities, having exhausted all other means of identification, and provided there are no grounds for suspicion, may consider the senior managing official(s) to be the beneficial owner(s).*

*(14) The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that entities incorporated within their territory in accordance with national law obtain and hold adequate, accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership. With a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that beneficial ownership information is stored in a central*

*register located outside the company, in full compliance with Union law. Member States can, for that purpose, use a central database which collects beneficial ownership information, or the business register, or another central register. Member States may decide that obliged entities are responsible for filling in the register. Member States should make sure that in all cases that information is made available to competent authorities and FIUs and is provided to obliged entities when the latter take customer due diligence measures. Member States should also ensure that other persons who are able to demonstrate a legitimate interest with respect to money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax crimes and fraud, are granted access to beneficial ownership information, in accordance with data protection rules. The persons who are able to demonstrate a legitimate interest should have access to information on the nature and extent of the beneficial interest held consisting of its approximate weight.*

...

*(46) The rights of access to data by the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to any information related to a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Exceptions to and restrictions of that right in accordance with Article 13 of Directive 95/46/EC and, where relevant, Article 20 of Regulation (EC) No 45/2001, may therefore be justified. The data subject has the right to request that a supervisory authority referred to in Article 28 of Directive 95/46/EC or, where applicable, the European Data Protection Supervisor, check the lawfulness of the processing and has the right to seek a judicial remedy referred to in Article 22 of that Directive. The supervisory authority referred to in Article 28 of Directive 95/46/EC may also act on an ex-officio basis. Without prejudice to the restrictions to the right to access, the supervisory authority should be able to inform the data subject that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question.*

8. Article 3 of Directive 2015/849 reads, in extract:

*For the purposes of this Directive, the following definitions apply:*

...

*(6) 'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:*

*(a) in the case of corporate entities:*

- (i) *the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.*

*A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council;*

- (ii) *if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;*

*(b) in the case of trusts:*

- (i) *the settlor;*
- (ii) *the trustee(s);*
- (iii) *the protector, if any;*
- (iv) *the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;*
- (v) *any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;*

*(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b);*

...

9. Article 30 of Directive 2015/849 reads, in extract:

*1. Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.*

*Member States shall ensure that those entities are required to provide, in addition to information about their legal owner, information on the beneficial owner to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter II.*

...

*5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:*

*(a) competent authorities and FIUs, without any restriction;*

*(b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;*

*(c) any person or organisation that can demonstrate a legitimate interest.*

*The persons or organisations referred to in point (c) shall access at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.*

*For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and may be subject to online registration and to the payment of a fee. The fees charged for obtaining the information shall not exceed the administrative costs thereof.*

...

10. Article 31(3) and (4) of Directive 2015/849 reads:

*3. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.*

*4. Member States shall require that the information referred to in paragraph 1 is held in a central register when the trust generates tax consequences. The central register shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the parties to the trust concerned. It may*

*also allow timely access by obliged entities, within the framework of customer due diligence in accordance with Chapter II. Member States shall notify to the Commission the characteristics of those national mechanisms.*

11. Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ 2018 L 156, p. 43) (“Directive 2018/843”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 63/2020 of 30 April 2020 (OJ 2023 L 72, p. 29). Directive 2018/843 was added to point 23b of Annex IX (Financial services) to the EEA Agreement. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements have not yet been fulfilled by Norway and the decision has not entered into force.

12. Recitals 4, 25, and 27 to 36 of Directive 2018/843 read:

*(4) While there have been significant improvements in the adoption and implementation of Financial Action Task Force (FATF) standards and the endorsement of the work of the Organisation for Economic Cooperation and Development on transparency by Member States in recent years, the need to further increase the overall transparency of the economic and financial environment of the Union is clear. The prevention of money laundering and of terrorist financing cannot be effective unless the environment is hostile to criminals seeking shelter for their finances through non-transparent structures. The integrity of the Union financial system is dependent on the transparency of corporate and other legal entities, trusts and similar legal arrangements. This Directive aims not only to detect and investigate money laundering, but also to prevent it from occurring. Enhancing transparency could be a powerful deterrent.*

...

*(25) Member States are currently required to ensure that corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership. The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise be able to hide their identity behind a corporate structure. The globally interconnected financial system makes it possible to hide and move funds around the world, and money launderers and terrorist financiers as well as other criminals have increasingly made use of that possibility.*

...

*(27) Rules that apply to trusts and similar legal arrangements with respect to access to information relating to their beneficial ownership should be*

*comparable to the corresponding rules that apply to corporate and other legal entities. Due to the wide range of types of trusts that currently exists in the Union, as well as an even greater variety of similar legal arrangements, the decision on whether or not a trust or a similar legal arrangement is comparably similar to corporate and other legal entities should be taken by Member States. The aim of the national law transposing those provisions should be to prevent the use of trusts or similar legal arrangements for the purposes of money laundering, terrorist financing or associated predicate offences.*

*(28) With a view to the different characteristics of trusts and similar legal arrangements, Member States should be able, under national law and in accordance with data protection rules, to determine the level of transparency with regard to trusts and similar legal arrangements that are not comparable to corporate and other legal entities. The risks of money laundering and terrorist financing involved can differ, based on the characteristics of the type of trust or similar legal arrangement and the understanding of those risks can evolve over time, for instance as a result of the national and supranational risk assessments. For that reason, it should be possible for Member States to provide for wider access to information on beneficial ownership of trusts and similar legal arrangements, if such access constitutes a necessary and proportionate measure with the legitimate aim of preventing the use of the financial system for the purposes of money laundering or terrorist financing. When determining the level of transparency of the beneficial ownership information of such trusts or similar legal arrangements, Member States should have due regard to the protection of fundamental rights of individuals, in particular the right to privacy and protection of personal data. Access to beneficial ownership information of trusts and similar legal arrangements should be granted to any person that can demonstrate a legitimate interest. Access should also be granted to any person that files a written request in relation to a trust or similar legal arrangement which holds or owns a controlling interest in any corporate or other legal entity incorporated outside the Union, through direct or indirect ownership, including through bearer shareholdings, or through control via other means. The criteria and conditions granting access to requests for beneficial ownership information of trusts and similar legal arrangements should be sufficiently precise and in line with the aims of this Directive. It should be possible for Member States to refuse a written request where there are reasonable grounds to suspect that the written request is not in line with the objectives of this Directive.*

*(29) In order to ensure legal certainty and a level playing field, it is essential to clearly set out which legal arrangements established across the Union should be considered similar to trusts by effect of their functions or structure. Therefore, each Member State should be required to identify the trusts, if recognised by national law, and similar legal arrangements that may be set up pursuant to its national legal framework or custom and which have structure or functions similar to trusts, such as enabling a separation or disconnection between the legal and the beneficial ownership of assets. Thereafter, Member States should*



*notify to the Commission the categories, description of the characteristics, names and where applicable legal basis of those trusts and similar legal arrangements in view of their publication in the Official Journal of the European Union in order to enable their identification by other Member States. It should be taken into account that trusts and similar legal arrangements may have different legal characteristics throughout the Union. Where the characteristics of the trust or similar legal arrangement are comparable in structure or functions to the characteristics of corporate and other legal entities, public access to beneficial ownership information would contribute to combating the misuse of trusts and similar legal arrangements, similar to the way public access can contribute to the prevention of the misuse of corporate and other legal entities for the purposes of money laundering and terrorist financing.*

*(30) Public access to beneficial ownership information allows greater scrutiny of information by civil society, including by the press or civil society organisations, and contributes to preserving trust in the integrity of business transactions and of the financial system. It can contribute to combating the misuse of corporate and other legal entities and legal arrangements for the purposes of money laundering or terrorist financing, both by helping investigations and through reputational effects, given that anyone who could enter into transactions is aware of the identity of the beneficial owners. It also facilitates the timely and efficient availability of information for financial institutions as well as authorities, including authorities of third countries, involved in combating such offences. The access to that information would also help investigations on money laundering, associated predicate offences and terrorist financing.*

*(31) Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This is particularly true for corporate governance systems that are characterised by concentrated ownership, such as the one in the Union. On the one hand, large investors with significant voting and cash-flow rights may encourage long-term growth and firm performance. On the other hand, however, controlling beneficial owners with large voting blocks may have incentives to divert corporate assets and opportunities for personal gain at the expense of minority investors. The potential increase in confidence in financial markets should be regarded as a positive side effect and not the purpose of increasing transparency, which is to create an environment less likely to be used for the purposes of money laundering and terrorist financing.*

*(32) Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of corporate and other legal entities as well as certain types of trusts and similar legal arrangements. Member States should therefore allow access to beneficial*

*ownership information in a sufficiently coherent and coordinated way, by establishing clear rules of access by the public, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of corporate and other legal entities as well as of certain types of trusts and similar legal arrangements.*

*(33) Member States should therefore allow access to beneficial ownership information on corporate and other legal entities in a sufficiently coherent and coordinated way, through the central registers in which beneficial ownership information is set out, by establishing a clear rule of public access, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of corporate and other legal entities. It is essential to also establish a coherent legal framework that ensures better access to information relating to beneficial ownership of trusts and similar legal arrangements, once they are registered within the Union. Rules that apply to trusts and similar legal arrangements with respect to access to information relating to their beneficial ownership should be comparable to the corresponding rules that apply to corporate and other legal entities.*

*(34) In all cases, both with regard to corporate and other legal entities, as well as trusts and similar legal arrangements, a fair balance should be sought in particular between the general public interest in the prevention of money laundering and terrorist financing and the data subjects' fundamental rights. The set of data to be made available to the public should be limited, clearly and exhaustively defined, and should be of a general nature, so as to minimise the potential prejudice to the beneficial owners. At the same time, information made accessible to the public should not significantly differ from the data currently collected. In order to limit the interference with the right to respect for their private life in general and to protection of their personal data in particular, that information should relate essentially to the status of beneficial owners of corporate and other legal entities and of trusts and similar legal arrangements and should strictly concern the sphere of economic activity in which the beneficial owners operate. In cases where the senior managing official has been identified as the beneficial owner only ex officio and not through ownership interest held or control exercised by other means, this should be clearly visible in the registers. With regard to information on beneficial owners, Member States can provide for information on nationality to be included in the central register particularly for non-native beneficial owners. In order to facilitate registry procedures and as the vast majority of beneficial owners will be nationals of the state maintaining the central register, Member States may presume a beneficial owner to be of their own nationality where no entry to the contrary is made.*

*(35) The enhanced public scrutiny will contribute to preventing the misuse of legal entities and legal arrangements, including tax avoidance. Therefore, it is essential that the information on beneficial ownership remains available through the national registers and through the system of interconnection of registers for*

*a minimum of five years after the grounds for registering beneficial ownership information of the trust or similar legal arrangement have ceased to exist. However, Member States should be able to provide by law for the processing of the information on beneficial ownership, including personal data for other purposes if such processing meets an objective of public interest and constitutes a necessary and proportionate measure in a democratic society to the legitimate aim pursued.*

*(36) Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to provide for exemptions to the disclosure through the registers of beneficial ownership information and to access to such information, in exceptional circumstances, where that information would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. It should also be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information in the register.*

13. Article 1 of Directive 2018/843 reads, in extract:

*Directive (EU) 2015/849 is amended as follows:*

...

*(15) Article 30 is amended as follows:*

...

*(c) paragraph 5 is replaced by the following:*

*‘5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:*

- (a) competent authorities and FIUs, without any restriction;*
- (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;*
- (c) any member of the general public.*

*The persons referred to in point (c) shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.*

*Member States may, under conditions to be determined in national law, provide for access to additional information enabling the identification of the beneficial owner. That additional information shall include at least the date of birth or contact details in accordance with data protection rules.’;*

...

*(16) Article 31 is amended as follows:*

...

*(d) paragraph 4 is replaced by the following:*

*‘4. Member States shall ensure that the information on the beneficial ownership of a trust or a similar legal arrangement is accessible in all cases to:*

- (a) competent authorities and FIUs, without any restriction;*
- (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;*
- (c) any natural or legal person that can demonstrate a legitimate interest;*
- (d) any natural or legal person that files a written request in relation to a trust or similar legal arrangement which holds or owns a controlling interest in any corporate or other legal entity other than those referred to in Article 30(1), through direct or indirect ownership, including through bearer shareholdings, or through control via other means.*

*The information accessible to natural or legal persons referred to in points (c) and (d) of the first subparagraph shall consist of the name, the month and year of birth and the country of residence and nationality of the beneficial owner, as well as nature and extent of beneficial interest held.*

*Member States may, under conditions to be determined in national law, provide for access of additional information enabling the identification of the beneficial owner. That additional information shall include at least the date of birth or contact details, in accordance with data protection rules. Member States may allow for wider access to the information held in the register in accordance with their national law.*

*Competent authorities granted access to the central register referred to in paragraph 3a shall be public authorities with designated responsibilities for*

*combating money laundering or terrorist financing, as well as tax authorities, supervisors of obliged entities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing, and seizing or freezing and confiscating criminal assets.’;*

...

#### *National law*

14. According to the request from the Administrative Court, the Act of 3 December 2020 on the Register of Beneficial Owners of Legal Entities (*Gesetz vom 03. Dezember 2020 über das Verzeichnis der wirtschaftlich berechtigten Personen von Rechtsträgern*) (LGBI. 2021 No 33) (“the VwbPG”) serves to implement Articles 30 and 31 of Directive 2015/849.

15. Chapter IV. C. of the VwbPG governs the disclosure of data. Article 17 thereof, entitled “Disclosure of data to third parties”, reads, in extract:

- 1) *Domestic and foreign persons and organisations may for a fee request from the Office of Justice that the data of unattached legal entities specified in Annex 1 entered in the Register be disclosed.*
- 2) *The application referred to in paragraph 1 shall be submitted to the Office of Justice. It shall contain the following information and documents:*

*a) information on the applicant:*

*1. in the case of natural persons: surname, first name and address;*

*2. in the case of legal entities and organisations: firm name, name or designation and address, purpose and domicile as well as the surname and first name of the natural person authorised to represent it; the power of representation must be proven;*

*b) firm name or name of the unattached legal entity specified in Annex 1 whose data are to be disclosed; and*

*c) a statement that the data from the Register are required for the prevention of money laundering, predicate offences to money laundering and terrorist financing.*

...

- 4) *Domestic and foreign persons and organisations may for a fee request from the Office of Justice in relation to legal entities that cannot be deemed unattached legal entities specified in Annex 1 that the data entered in the*

*Register be disclosed. This shall not apply to the data of founders and protectors who do not exercise control of a non-unattached legal entity specified in Annex 1. This shall be without prejudice to Articles 13, 15 and 16.*

5) *The application referred to in paragraph 4 shall be submitted to the Office of Justice. It shall contain the following information and documents:*

a) *information on the applicant:*

1. *in the case of natural persons: surname, first name and address;*

2. *in the case of legal entities and organisations: firm name, name or designation and address, purpose and domicile as well as the surname and first name of the natural person authorised to represent it; the power of representation must be proven;*

b) *firm name or name of the legal entity whose data are to be disclosed;*

c) *information on the intended use of the information requested; and*

d) *proof of a legitimate interest as specified in paragraph 6 or of a controlling interest as specified in paragraph 7.*

...

10) *The Office for Justice shall forward the application referred to in paragraph 4, including the associated documents referred to in paragraphs 5 and 8, to the VwbP Commission for a decision.*

### **III Facts and procedure**

16. By letter of 1 March 2023 and supplementary letter of 30 March 2023, TC requested the Office of Justice to disclose to her the full data of all (independent and dependent) legal entities in relation to which the appellant herself and/or her father VC and/or her brother BC and/or Mr NN are registered as beneficial owner(s).

17. By letter of 26 April 2023, the Office of Justice forwarded the request for disclosure to the VwbP Commission, which decides in first instance on requests for disclosure concerning non-unattached legal entities.

18. By decision of 11 May 2023, the VwbP Commission rejected the request for disclosure. It explained that by virtue of statutory requirements, the request for disclosure cannot succeed as it must identify by firm name or name the specific legal entities whose data is to be disclosed (Article 17 of the VwbPG).

19. By order of 15 May 2023, the Office of Justice ruled on the request for disclosure, to the extent that it concerns unattached legal entities, as follows: (i) Disclosure of the data is refused and (ii) The applicant shall pay the costs of the procedure consisting in a decision fee of CHF 10.00.

20. This decision was reasoned on the basis that, in her request, TC – contrary to Article 17(2)(b) of the VwbPG – had not specified a firm name or a name of an unattached legal entity whose data was to be disclosed. From the circumstance that, pursuant to Article 30(5) of Directive 2015/849, persons or organisations shall be permitted to access the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held it could not be concluded that an applicant also had the right to the naming of the firm name or name of all the legal entities in which this or other persons had a beneficial interest.

21. By decisions of 2 August 2023 in cases VBK 2023/46 and 2023/47, the VBK refused the appeals brought against the decision of the VwbP Commission of 11 May 2023 and of the order of the Office of Justice of 15 May 2023. Against these decisions, TC brought an appeal to the Administrative Court.

22. Against this background, the Administrative Court decided to refer the following question to the Court:

**Must Directive (EU) 2015/849, as amended by Directive (EU) 2018/843, be interpreted as meaning that it precludes a national provision according to which the request of a domestic or foreign person or organisation for disclosure of the data entered in the register of beneficial owners on legal entities must include the naming of the firm name or name of the legal entity whose data are to be disclosed?**

#### **IV Written observations**

23. Pursuant to Article 20 of the Statute of the Court and Article 90(1) of the Rules of Procedure, written observations have been received from:

- TC, represented by Alexander Amann, acting as advocate;
- the Liechtenstein Government, represented by Dr. Andrea Entner-Koch, Romina Schobel and Dr. Claudia Bösch, acting as Agents;
- the Norwegian Government, represented by Lisa-Mari Moen Jünge and Bojana Stankovic, acting as Agents;
- the EFTA Surveillance Authority (“ESA”), represented by Claire Simpson, Michael Sánchez Rydelski and Melpo-Menie Joséphidès, acting as Agents; and

- the European Commission (“the Commission”), represented by Julie Samnadda and Gregor von Rintelen, acting as Agents.

## **V Proposed answers submitted**

*TC*

24. TC submits that the question referred should be answered as follows:

*Directive (EU) 2015/849, as amended by Directive (EU) 2018/843 must be interpreted as meaning that it precludes a national provision according to which the request of a domestic or foreign person or organisation for disclosure of the data entered in the register of beneficial owners on legal entities must include the naming of the firm name or name of the legal entity whose data are to be disclosed.*

*The Liechtenstein Government*

25. The Liechtenstein Government primarily submits that the question referred should be considered inadmissible.

26. If, however, the question is admissible, the Liechtenstein Government submits that the question should be answered as follows:

*Directive (EU) 2015/849 must be interpreted as meaning that it does not preclude a national provision according to which the request of a domestic or foreign person or organisation for disclosure of the data entered in the register of beneficial owners on legal entities must include the naming of the firm name or name of the legal entity whose data are to be disclosed.*

*The Norwegian Government*

27. The Norwegian Government submits that the question referred should be answered as follows:

*Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing does not preclude a national provision according to which the request of a domestic or foreign person or organisation for disclosure of the data entered in the register of beneficial owners on legal entities must include the naming of the firm name or name of the legal entity whose data are to be disclosed. It is for the EEA States to decide whether the national regime shall enable access to information on beneficial ownership upon providing names of expected or alleged owners, provided that the arrangement respects the general principles of EEA law and otherwise is in accordance with data protection rules within the EEA.*



ESA

28. ESA submits that the question referred should be answered as follows:

*Directive (EU) 2015/849 must be interpreted as not precluding a national provision according to which the request of a person or organisation for disclosure of the data entered in the register of beneficial owners on legal entities must include the name of the firm or legal entity in respect of which the data are sought.*

*The Commission*

29. The Commission submits that the question referred should be answered as follows:

*Article 30(5)(c) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC does not preclude national legislation which requires a person that demonstrates a legitimate interest connected to the fight against money laundering and terrorist financing to specify the name of the corporate or other legal entity when requesting access to information on beneficial ownership held in the central register.*

Michael Reiersen  
Judge-Rapporteur