REPORT FOR THE HEARING

in Case E-7/24

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

AA,

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 15 March 2024, registered at the Court on 26 April 2024, the Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*) requested an advisory opinion in the case pending before it concerning AA.

2. The case before the Administrative Court concerns an appeal brought by AA against the decision of the Board of Appeal for Administrative Matters (*Beschwerdekommission für Verwaltungsangelegenheiten*) ("the VBK"), by which the VBK refused the appeal brought against the decision of 27 April 2023 of the Register of Beneficial Owners Commission (*Verzeichnis wirtschaftlich berechtigten Personen-Kommission*) ("the VwbP Commission"), regarding AA's request for disclosure of data on the beneficial ownership of the BB Foundation from the register of beneficial owners of legal entities.

II LEGAL BACKGROUND

EEA law

3. 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.

4. Recitals 1, 11 and 14 of Directive 2015/849 read:

> *(1) Flows of illicit money can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorism financing and organised crime remain significant problems which should be addressed at Union level. In addition to further developing the criminal law approach at Union level, targeted and proportionate prevention of the use of the financial system for the purposes of money laundering and terrorist financing is indispensable and can produce complementary results.*
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> *(11) It is important expressly to highlight that 'tax crimes' relating to direct and indirect taxes are included in the broad definition of 'criminal activity' in this Directive, in line with the revised FATF Recommendations. Given that different tax offences may be designated in each Member State as constituting 'criminal activity' punishable by means of the sanctions as referred to in point (4)(f) of Article 3 of this Directive, national law definitions of tax crimes may diverge. While no harmonisation of the definitions of tax crimes in Member States' national law is sought, Member States should allow, to the greatest extent possible under their national law, the exchange of information or the provision of assistance between EU Financial Intelligence Units (FIUs).*
>
> *(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.

5. Article 1 of Directive 2015/849 reads, in extract:

1. This Directive aims to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing.

...

3. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;

(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;

(c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).

...

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

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

...

(4) 'criminal activity' means any kind of criminal involvement in the commission of the following serious crimes:

(a) acts set out in Articles 1 to 4 of Framework Decision 2002/475/JHA;

(b) any of the offences referred in Article 3(1)(a) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

(c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA;

(d) fraud affecting the Union's financial interests, where it is at least serious, as defined in Article 1(1) and Article 2(1) of the Convention on the protection of the European Communities' financial interests;

(e) corruption;

(f) all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;

...

7. Article 30 of Directive 2015/849 reads:

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.

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

3. Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State, for example a commercial register, companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council, or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The information on beneficial ownership contained in that database may be collected in accordance with national systems.

4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current.

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.

6. The central register referred to in paragraph 3 shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the entity concerned. It shall also allow timely access by obliged entities when taking customer due diligence measures.

7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of other Member States in a timely manner.

8. Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.

9. Member States may provide for an exemption to the access referred to in points (b) and (c) of paragraph 5 to all or part of the information on the beneficial ownership on a case-by-case basis in exceptional circumstances, where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable. Exemptions granted pursuant to this paragraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.

10. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring the safe and efficient interconnection of the central registers referred to in paragraph 3 via the European central platform established by Article 4a(1) of Directive 2009/101/EC. Where appropriate, that report shall be accompanied by a legislative proposal.

8. Article 31 of Directive 2015/849 reads:

1. Member States shall require that trustees of any express trust governed under their law obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

(a) the settlor;

(b) the trustee(s);

(c) the protector (if any);

(d) the beneficiaries or class of beneficiaries; and

(e) any other natural person exercising effective control over the trust.

2. Member States shall ensure that trustees disclose their status and provide the information referred to in paragraph 1 to obliged entities in a timely manner where, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the thresholds set out in points (b), (c) and (d) of Article 11.

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.

5. Member States shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and up-to-date.

6. Member States shall ensure that obliged entities do not rely exclusively on the central register referred to in paragraph 4 to fulfil their customer due

diligence requirements as laid down in Chapter II. Those requirements shall be fulfilled by using a risk-based approach.

7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 4 to the competent authorities and to the FIUs of other Member States in a timely manner.

8. Member States shall ensure that the measures provided for in this Article apply to other types of legal arrangements having a structure or functions similar to trusts.

9. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring safe and efficient interconnection of the central registers. Where appropriate, that report shall be accompanied by a legislative proposal.

9. 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 were fulfilled by 27 June 2024 and the decision entered into force on 1 August 2024.

10. Recitals 4, 25, 30, 32, 36, 38, 41 and 42 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 financers as well as other criminals have increasingly made use of that possibility.

...

(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.

...

(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.

...

(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.

…

(38) Regulation (EU) 2016/679 of the European Parliament and of the Council applies to the processing of personal data under this Directive. As a consequence, natural persons whose personal data are held in national registers as beneficial owners should be informed accordingly. Furthermore, only personal data that is up to date and corresponds to the actual beneficial owners should be made available and the beneficiaries should be informed about their rights under the current Union legal data protection framework, as set out in Regulation (EU) 2016/679 and Directive (EU) 2016/680 of the European Parliament and of the Council, and the procedures applicable for exercising those rights. In addition, to prevent the abuse of the information contained in the registers and to balance out the rights of beneficial owners, Member States might find it appropriate to consider making information relating to the requesting person along with the legal basis for their request available to the beneficial owner.

…

(41) Access to information and the definition of legitimate interest should be governed by the law of the Member State where the trustee of a trust or person holding an equivalent position in a similar legal arrangement is established or resides. Where the trustee of the trust or person holding equivalent position in similar legal arrangement is not established or does not reside in any Member State, access to information and the definition of legitimate interest should be governed by the law of the Member State where the beneficial ownership information of the trust or similar legal arrangement is registered in accordance with the provisions of this Directive.

(42) Member States should define legitimate interest, both as a general concept and as a criterion for accessing beneficial ownership information in their national law. In particular, those definitions should not restrict the concept of legitimate interest to cases of pending administrative or legal proceedings, and should enable to take into account the preventive work in the field of anti-money laundering, counter terrorist financing and associate predicate offences undertaken by non-governmental organisations and investigative journalists, where appropriate. Once the interconnection of Member States' beneficial ownership registers is in place, both national and cross-border access to each Member State's register should be granted based on the definition of legitimate interest of the Member State where the information relating to the beneficial

ownership of the trust or similar legal arrangement has been registered in accordance with the provisions of this Directive, by virtue of a decision taken by the relevant authorities of that Member State. In relation to Member States' beneficial ownership registers, it should also be possible for Member States to establish appeal mechanisms against decisions which grant or deny access to beneficial ownership information. With a view to ensuring coherent and efficient registration and information exchange, Member States should ensure that their authority in charge of the register set up for the beneficial ownership information of trusts and similar legal arrangements cooperates with its counterparts in other Member States, sharing information concerning trusts and similar legal arrangements governed by the law of one Member State and administered in another Member State.

11. 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.';

...

12. Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 ("Directive 2024/1640") is under scrutiny for incorporation into the EEA Agreement by Iceland, Liechtenstein and Norway.

13. Recital 50 of Directive 2024/1640 reads:

> *(50) In order to avoid divergent approaches towards the implementation of the concept of legitimate interest for the purpose of accessing beneficial ownership information, the procedures for the recognition of such a legitimate interest should be harmonised. This should include common templates for the application and recognition of legitimate interest, which would facilitate mutual recognition by central registers across the Union. To that end, implementing powers should be conferred on the Commission to set out harmonised templates and procedures.*

14. Article 13 of Directive 2024/1640, entitled "Procedure for the verification and mutual recognition of a legitimate interest to access beneficial ownership information", reads:

> *1. Member States shall ensure that entities in charge of the central registers as referred to in Article 10 take measures to verify the existence of the legitimate interest referred to in Article 12 on the basis of documents, information and data obtained from the natural or legal person seeking access to the central register ('applicant') and, where necessary, information available to them pursuant to Article 12(3).*
>
> *2. The existence of a legitimate interest to access beneficial ownership information shall be determined by taking into consideration:*
>
> *(a) the function or occupation of the applicant; and*
>
> *(b) with the exception of persons referred to in Article 12(2), first subparagraph, points (a) and (b), the connection with the specific legal entities or legal arrangements whose information is being sought.*
>
> *3. Member States shall ensure that where access to information is requested by a person whose legitimate interest in accessing beneficial ownership information under one of the categories set out in Article 12(2), first subparagraph, has already been verified by the central register of another Member State, the verification of the condition laid down in paragraph 2, point (a), of this Article is satisfied by collecting proof of the legitimate interest issued by the central register of that other Member State.*

Member States may apply the procedure set out in the first subparagraph of this paragraph to the additional categories identified by other Member States pursuant to Article 12(2), second subparagraph.

4. Member States shall ensure that entities in charge of central registers verify the identity of applicants whenever they access the registers. To that end, Member States shall ensure that sufficient processes are available for the verification of the identity of the applicant, including by allowing the use of electronic identification means and relevant qualified trust services as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council.

5. For the purposes of paragraph 2, point (a), Member States shall ensure that central registers have mechanisms in place to allow repeated access to persons with a legitimate interest to access beneficial ownership information without the need to assess their function or occupation whenever accessing the information.

6. From 10 November 2026, Member States shall ensure that the entities in charge of central registers conduct the verification referred to in paragraph 1 and provide a response to the applicant within 12 working days.

By way of derogation from the first subparagraph, in the case of a sudden high number of requests for accessing beneficial ownership information pursuant to this Article, the deadline for providing a response to the applicant may be extended by 12 working days. If, after the extension has lapsed, the number of incoming requests continues to be high, that deadline may be extended by additional 12 working days.

Member States shall notify the Commission of any extension as referred to in the second subparagraph in a timely manner.

Where entities in charge of central registers decide to grant access to beneficial ownership information, they shall issue a certificate granting access for 3 years. Entities in charge of central registers shall respond to any subsequent request to access beneficial ownership information by the same person within 7 working days.

7. Member States shall ensure that entities in charge of central registers shall only refuse a request to access beneficial ownership information on one of the following grounds:

(a) the applicant has not provided the necessary information or documents pursuant to paragraph 1;

(b) a legitimate interest to access beneficial ownership information has not been demonstrated;

(c) where on the basis of information in its possession, the entity in charge of the central register has a reasonable concern that the information will not be used for the purposes for which it was requested or that the information will be used for purposes that are not connected to the prevention of money laundering, its predicate offences or terrorist financing;

(d) one or more of the situations referred to in Article 15 applies;

(e) in the cases referred to in paragraph 3, the legitimate interest to access beneficial ownership information granted by the central register of another Member State does not extend to the purposes for which the information is sought;

(f) where the applicant is in a third country and responding to the request to access information would not comply with the provisions of Chapter V of Regulation (EU) 2016/679.

Member States shall ensure that entities in charge of central registers consider requesting additional information or documents from the applicant prior to refusing a request for access on the grounds listed in points (a), (b), (c) and (e) of the first subparagraph. Where entities in charge of central registers request additional information, the deadline for providing a response shall be extended by 7 working days.

8. Where entities in charge of central registers refuse to provide access to information pursuant to paragraph 7, Member States shall require that they inform the applicant of the reasons for refusal and of their right of redress. The entity in charge of the central register shall document the steps taken to assess the request and to obtain additional information pursuant to paragraph 7, second subparagraph.

Member States shall ensure that entities in charge of central registers are able to revoke access where any of the grounds listed in paragraph 7 arise or become known to the entity in charge of the central register after such access has been granted, including, where relevant, on the basis of revocation by a central register in another Member State.

9. Member States shall ensure that they have in place judicial or administrative remedies for challenging the refusal or revocation of access pursuant to paragraph 7.

10. Member States shall ensure that entities in charge of central registers are able to repeat the verification of the function or occupation identified under paragraph 2, point (a), from time-to-time and in any case not earlier than 12 months after granting access, unless the entity in charge of the central register has reasonable grounds to believe that the legitimate interest no longer exists.

11. Member States shall require persons who have been granted access pursuant to this Article to notify the entity in charge of the central register of changes that may trigger the cessation of a valid legitimate interest, including changes concerning their function or occupation.

12. Member States may choose to make beneficial ownership information held in their central registers available to the applicants upon payment of a fee, which shall be limited to what is strictly necessary to cover the costs of ensuring the quality of the information held in those registers and of making the information available. Those fees shall be established in such a way so as not to undermine the effective access to the information held in the central registers.

15. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ("Regulation 2016/679") (OJ 2016 L 119, p. 1) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 154/2018 of 6 July 2018 (OJ 2018 L 183, p. 23) and is referred to at point 5e of Annex XI (Electronic communication, audiovisual services and information society). Constitutional requirements were indicated by Liechtenstein. They were fulfilled on 19 July 2018 and the decision entered into force on 20 July 2018.

16. Article 45 of Regulation 2016/679, entitled "Transfers on the basis of an adequacy decision", reads:

1. A transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection. Such a transfer shall not require any specific authorisation.

2. When assessing the adequacy of the level of protection, the Commission shall, in particular, take account of the following elements:

(a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of personal data to another third country or international organisation which are complied with in that country or international organisation, case-law, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data are being transferred;

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with the data protection rules, including adequate enforcement powers, for assisting and advising the data subjects in exercising their rights and for cooperation with the supervisory authorities of the Member States; and

(c) the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

3. The Commission, after assessing the adequacy of the level of protection, may decide, by means of implementing act, that a third country, a territory or one or more specified sectors within a third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2 of this Article. The implementing act shall provide for a mechanism for a periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation. The implementing act shall specify its territorial and sectoral application and, where applicable, identify the supervisory authority or authorities referred to in point (b) of paragraph 2 of this Article. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 93(2).

4. The Commission shall, on an ongoing basis, monitor developments in third countries and international organisations that could affect the functioning of decisions adopted pursuant to paragraph 3 of this Article and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC.

5. The Commission shall, where available information reveals, in particular following the review referred to in paragraph 3 of this Article, that a third country, a territory or one or more specified sectors within a third country, or an international organisation no longer ensures an adequate level of protection within the meaning of paragraph 2 of this Article, to the extent necessary, repeal, amend or suspend the decision referred to in paragraph 3 of this Article by means of implementing acts without retro-active effect. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 93(3).

6. The Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation giving rise to the decision made pursuant to paragraph 5.

7. A decision pursuant to paragraph 5 of this Article is without prejudice to transfers of personal data to the third country, a territory or one or more specified sectors within that third country, or the international organisation in question pursuant to Articles 46 to 49.

8. The Commission shall publish in the Official Journal of the European Union and on its website a list of the third countries, territories and specified sectors within a third country and international organisations for which it has decided that an adequate level of protection is or is no longer ensured.

9. Decisions adopted by the Commission on the basis of Article 25(6) of Directive 95/46/EC shall remain in force until amended, replaced or repealed by a Commission Decision adopted in accordance with paragraph 3 or 5 of this Article.

17. Article 46 of Regulation 2016/679, entitled "Transfers subject to appropriate safeguards", reads:

1. In the absence of a decision pursuant to Article 45(3), a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.

2. The appropriate safeguards referred to in paragraph 1 may be provided for, without requiring any specific authorisation from a supervisory authority, by:

(a) a legally binding and enforceable instrument between public authorities or bodies;

(b) binding corporate rules in accordance with Article 47;

(c) standard data protection clauses adopted by the Commission in accordance with the examination procedure referred to in Article 93(2);

(d) standard data protection clauses adopted by a supervisory authority and approved by the Commission pursuant to the examination procedure referred to in Article 93(2);

(e) an approved code of conduct pursuant to Article 40 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights; or

(f) an approved certification mechanism pursuant to Article 42 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights.

3. Subject to the authorisation from the competent supervisory authority, the appropriate safeguards referred to in paragraph 1 may also be provided for, in particular, by:

(a) contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation; or

(b) provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

4. The supervisory authority shall apply the consistency mechanism referred to in Article 63 in the cases referred to in paragraph 3 of this Article.

5. Authorisations by a Member State or supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid until amended, replaced or repealed, if necessary, by that supervisory authority. Decisions adopted by the Commission on the basis of Article 26(4) of Directive 95/46/EC shall remain in force until amended, replaced or repealed, if necessary, by a Commission Decision adopted in accordance with paragraph 2 of this Article.

18. Article 49 of Regulation 2016/679, entitled "Derogations for specific situations", reads:

1. In the absence of an adequacy decision pursuant to Article 45(3), or of appropriate safeguards pursuant to Article 46, including binding corporate rules, a transfer or a set of transfers of personal data to a third country or an international organisation shall take place only on one of the following conditions:

(a) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;

(b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request;

(c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person;

(d) the transfer is necessary for important reasons of public interest;

(e) the transfer is necessary for the establishment, exercise or defence of legal claims;

(f) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent;

(g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by Union or Member State law for consultation are fulfilled in the particular case.

Where a transfer could not be based on a provision in Article 45 or 46, including the provisions on binding corporate rules, and none of the derogations for a specific situation referred to in the first subparagraph of this paragraph is applicable, a transfer to a third country or an international organisation may take place only if the transfer is not repetitive, concerns only a limited number of data subjects, is necessary for the purposes of compelling legitimate interests pursued by the controller which are not overridden by the interests or rights and freedoms of the data subject, and the controller has assessed all the circumstances surrounding the data transfer and has on the basis of that assessment provided suitable safeguards with regard to the protection of personal data. The controller shall inform the supervisory authority of the transfer. The controller shall, in addition to providing the information referred to in Articles 13 and 14, inform the data subject of the transfer and on the compelling legitimate interests pursued.

2. A transfer pursuant to point (g) of the first subparagraph of paragraph 1 shall not involve the entirety of the personal data or entire categories of the personal data contained in the register. Where the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

3. Points (a), (b) and (c) of the first subparagraph of paragraph 1 and the second subparagraph thereof shall not apply to activities carried out by public authorities in the exercise of their public powers.

4. The public interest referred to in point (d) of the first subparagraph of paragraph 1 shall be recognised in Union law or in the law of the Member State to which the controller is subject.

5. In the absence of an adequacy decision, Union or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of personal data to a third country or an international organisation. Member States shall notify such provisions to the Commission.

6. The controller or processor shall document the assessment as well as the suitable safeguards referred to in the second subparagraph of paragraph 1 of this Article in the records referred to in Article 30.

National law

19. 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*) (LGBl. 2021 No 33) ("the VwbPG") serves to implement Articles 30 and 31 of Directive 2015/849.

20. The referring court further explains that, for the purpose of combatting money laundering, predicate offences to money laundering and terrorist financing, the VwbPG regulates, in particular, the disclosure of data (Article 1(1)(c) of the VwbPG). The following disclosure situations are distinguished: disclosure of data to domestic authorities by retrieval procedure (Article 13 of the VwbPG), disclosure of data to foreign authorities in the context of mutual assistance (Article 14 of the VwbPG), disclosure of data to banks and financial institutions (Article 15 of the VwbPG), disclosure of data to domestic persons subject to due diligence obligations (Article 16 of the VwbPG) and disclosure of data to third parties (Article 17 of the VwbPG).

21. Article 17 of the VwbPG, 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 exclude 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

22. By email of 13 January 2023 and supplementary letter of 6 February 2023, AA requested the Liechtenstein Office of Justice, Foundation Supervision and Anti-Money

Laundering Division (*Amt für Justiz, Abteilung Stiftungsaufsicht und Geldwäschereiprävention*) ("the Office of Justice") to disclose to him the data on the beneficial owners of the BB Foundation from the register of beneficial owners of legal entities. By letter of 2 March 2023, the BB Foundation expressed its opposition to the disclosure requested, as in its view a legitimate interest did not exist.

23. By letter of 8 March 2023, the Office of Justice forwarded the request for disclosure of 13 January/6 February 2023 to the VwbP Commission for a decision.

24. By decision of 27 April 2023, the VwbP Commission rejected the request for disclosure. It explained that a legitimate interest in the disclosure of the data within the meaning of Article 17(6) of the VwbPG had not been sufficiently demonstrated.

25. AA brought an appeal against this decision to the VBK, which by decision of 2 August 2023 refused the appeal. Against this decision, AA brought an appeal to the Administrative Court.

26. Against this background, the Administrative Court decided to refer the following questions to the Court:

> **1. Must Article 1(1) of Directive (EU) 2015/849 and point (c) of the first subparagraph of Article 30(5) of Directive (EU) 2015/849 in the original version be interpreted as meaning that an inspection of the register of beneficial owners by a private person whose only connection with money laundering, terrorist financing and associated predicate offences consists in the fact that their financial interests were harmed by a predicate offence is not necessary and thus not proportionate in order to combat money laundering, predicate offences to money laundering and terrorist financing?**
>
> **2. If Question 1 is answered in the negative: Must point (c) of the first subparagraph of Article 30(5) of Directive (EU) 2015/849 in the original version be interpreted as meaning that a private person whose only connection with money laundering, terrorist financing and associated predicate offences consists in the fact that their financial interests were harmed by a predicate offence does not have a legitimate interest in inspecting the register of beneficial owners?**
>
> **3. If Question 2 is answered in the negative: Must point (c) of the first subparagraph of Article 30(5) of Directive (EU) 2015/849 in the original version be interpreted as meaning that a substantiation of a legitimate interest is necessary but also sufficient?**

27. By decision of the Court of 15 July 2024, the Court decided to join Cases E-1/24 and E-7/24 for the purposes of the decision which closes the proceedings.

IV WRITTEN OBSERVATIONS

28. 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:

- the Liechtenstein Government, represented by Dr. Andrea Entner-Koch, Romina Schobel and Dr. Claudia Bösch, 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

The Liechtenstein Government

29. The Liechtenstein Government submits that the questions referred should be answered as follows:

> *Question 1 and 2*
>
> *A person whose connection with money laundering, terrorist financing and associated predicate offences consists in the fact that they claim that their financial interests were harmed by a predicate offence does not per se have a legitimate interest to access beneficial ownership information. They are, however, not excluded from the right to access beneficial ownership information if they can plausibly demonstrate that the requested information will be used within the framework of combating of money laundering, terrorist financing and associated predicate offences. In this case, a legitimate interest may be assumed.*
>
> *Question 3*
>
> *Point (c) of the first subparagraph of Article 30(5) of Directive (EU) 2015/849 in its original version must be interpreted as meaning that a substantiation of a legitimate interest is necessary but also sufficient.*

ESA

30. ESA submits that the questions referred should be answered as follows:

> *1. Directive (EU) 2015/849 must be interpreted as meaning that, where a private person has been harmed by a predicate offence to money laundering, whether they may access beneficial ownership information under point (c) of the first subparagraph of Article 30(5) of that Directive must be determined on the basis*

of whether they can demonstrate a legitimate interest. The fact that such a person:

- may also be able to make a complaint about the relevant conduct to the national competent authorities; or

- is not habitually active in the field of combatting money laundering or its predicate offences

cannot justify the automatic conclusion that they do not have a legitimate interest within the meaning of point (c) of the first subparagraph of Article 30(5) of that Directive.

2. Point (c) of the first subparagraph of Article 30(5) of Directive (EU) 2015/849 must be interpreted as meaning that EEA States may require the existence of a legitimate interest to be substantiated in some way; certainty is not required.

The Commission

31. The Commission submits that the questions referred should be answered as follows:

First and Second Questions: 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 is to be interpreted as meaning that private persons whose only connection with money laundering, terrorist financing and associated predicate offences consist in the fact that their financial interests were harmed by a predicate offence can invoke a legitimate interest in inspecting the register of beneficial owners.

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 is to be interpreted to the effect that a substantiation of a legitimate interest is both necessary and sufficient in order to access information contained in the beneficial ownership register.

Michael Reiertsen
Judge-Rapporteur