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**ORIGINAL**

**IN THE EFTA COURT**

**WRITTEN OBSERVATIONS**

submitted, pursuant to Article 20 of the Statute of the EFTA Court, by

**THE EFTA SURVEILLANCE AUTHORITY**

represented by  
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**IN CASE E-1/24**

**TC**

in which the Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*) requests the EFTA Court to give an advisory opinion, pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, on the interpretation of certain provisions, relating to the disclosure of beneficial owner information, of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843.

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## 1 INTRODUCTION/THE FACTS OF THE CASE

1. The Authority refers to the Request for an advisory opinion (“**the Request**”) for the factual background. In short, the case concerns Ms TC (“**the Appellant**”), who requested disclosure from the relevant Liechtenstein authorities of the full data of all legal entities in which she and certain other named individuals were registered as beneficial owners.
2. The request was refused on the basis that it failed to specify, as required by Liechtenstein national law, the names of the legal entities in relation to which the beneficial ownership information was sought. The Appellant appeals before the Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*) (“**the Referring Court**”).<sup>1</sup> The Referring Court asks whether the requirement under national law to name the relevant entity the subject of any beneficial ownership request is precluded by Directive (EU) 2015/849 (“**the Fourth Anti-Money Laundering Directive**” or “**AMLD IV**”),<sup>2</sup> as amended by Directive (EU) 2018/843 (“**the Fifth Anti-Money Laundering Directive**” or “**AMLD V**”).<sup>3</sup>

## 2 EEA LAW

3. Recitals 12, 13, 14 and 46 of AMLD IV are relevant. Recitals 4, 27, 28, 30 and 33 of AMLD V are also of interest.
4. Article 3(6) of AMLD IV defines “*beneficial owner*.”

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<sup>1</sup> Request, p.2.

<sup>2</sup> 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 - AMLD IV, incorporated into the EEA Agreement by EEA Joint Committee Decision No 249/2018, OJ L 337, 23.9.2021, p.42, with entry into force on 1 August 2019.

<sup>3</sup> 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, incorporated into the EEA Agreement by EEA Joint Committee Decision No 63/2020, OJ L 72, 9.3.2023, p.29, constitutional requirements indicated, entry into force pending.

5. Article 30(5) of AMLD IV, as adapted, provides (emphasis added):

*“Contracting Parties shall ensure that the information on the beneficial ownership is accessible in all cases to:*

- (a) competent authorities and FIUs,<sup>4</sup> 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 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. Article 1(15)(c) of AMLD V, as adapted, provided that Article 30(5) of AMLD IV was to be replaced by the following (emphasis added):

*“5. Contracting Parties 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 or organisations referred to in point (c) shall 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.*

*Contracting Parties 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.”*

7. In **Joined Cases C-37/20 and C-601/20 WM and Sovim SA v Luxembourg Business Registers**<sup>5</sup> the CJEU annulled Article 1(15)(c) of AMLD V, in so far as it amended point (c) of the first subparagraph of Article 30(5) of AMLD IV in such a

<sup>4</sup> Financial Intelligence Units: see Recital 11 to AMLD IV.

<sup>5</sup> Judgment of the Grand Chamber of the CJEU of 22 November 2022 in Joined Cases C-37/20 and C-601/20 *WM and Sovim SA v Luxembourg Business Registers*, EU:C:2022:912 (“**Luxembourg Business Registers**”).

way that it required Member States to ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory was to be accessible in all cases to any member of the general public.

8. Accordingly, Article 30(5)(c) of AMLD IV continues to provide that information on beneficial ownership shall be available to **“any person or organisation that can demonstrate a legitimate interest.”**

### 3 NATIONAL LAW

9. The Act of 3 December 2020 on the Register of Beneficial Owners of Legal Entities (**“the VwbPG”**)<sup>6</sup> implements Articles 30 and 31 of Directive (EU) 2015/849.<sup>7</sup>

10. Article 17 thereof (*“Disclosure of data to third parties”*) provides (emphasis added):

*“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.*

*3) [...]*

*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*

<sup>6</sup> Gesetz vom 03. Dezember 2020 über das Verzeichnis der wirtschaftlich berechtigten Personen von Rechtsträgern (VwbPG)), Liechtenstein Legal Gazette (LGBI.) 2021 No 33.

<sup>7</sup> Request, pp.2-4.

*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.

6) – 9) [...]

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.”

## 4 THE QUESTION REFERRED

11. Against this background, the Referring Court has asked the following question:

*“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?”*

## 5 LEGAL ANALYSIS

### 5.1 ADMISSIBILITY

12. The question of the Referring Court relates to AMLD IV, as amended by AMLD V. The Authority observes that AMLD V, while incorporated into the EEA Agreement, has not yet entered into force (see footnote 3 above).

13. The Request indicates that, “[s]hortly after the implementation of Article 30 and Article 31 of the Fourth Money Laundering Directive by way of the VwEG the requirements of the Fifth Money Laundering Directive (Directive (EU) 2018/843) in relation to Article 30 and Article 31 had to be incorporated into Liechtenstein law.”<sup>8</sup>
14. It appears that the VwbPG is intended to implement the amendments made by AMLD V, notwithstanding that it has not yet entered into force as a matter of EEA law.<sup>9</sup>
15. In light of the above factors, the Authority submits that the relevant question to be answered is whether AMLD IV, as interpreted, precludes national provisions of the type set out in the Request. The Authority refers to certain provisions of AMLD V in its answer, given that: (i) before its entry into force in the EEA Agreement, EFTA States must, under Article 3 EEA, refrain from taking measures which could compromise the objectives of that directive; and (ii) such provisions may shed light on or confirm the interpretation of the provisions of AMLD IV. Nevertheless, only the provisions of AMLD IV are currently in force in the EEA Agreement.

## **5.2 DOES AMLD IV REQUIRE ACCESS TO BENEFICIAL OWNERSHIP INFORMATION WHERE THE NAME OF THE FIRM OR ENTITY IS NOT KNOWN OR SPECIFIED?**

16. The question of the Referring Court asks whether AMLD IV permits EEA States to require the person requesting beneficial ownership information to specify the name(s) of the entity(ies) in respect of which such information is sought. In essence, it asks whether States can require beneficial ownership access requests to be about “*who*” is the beneficial owner of a *particular named entity* (‘*who*’ owns *what*), rather than allowing requests about in “*what*” or which entity a *particular named person* has a beneficial ownership interest (‘*what*’ is owned by *whom*).
17. The answer to such a question is not immediately apparent from the text of AMLD IV. In such a case, it is settled case-law that the interpretation of a provision of EEA

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<sup>8</sup> Request, p.4.

<sup>9</sup> Request, pp. 2, 6.

law requires account to be taken not only of its wording, but also of its context, and the objectives and purpose pursued by the act of which it forms part. The legislative history may reveal elements relevant to its interpretation. Where the wording of a provision is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness.<sup>10</sup>

18. Applying such an approach, the Authority considers five points which are relevant to the interpretation of Article 30(5) of AMLD IV and to the Appellant's right of access to information.

19. First, the wording of Article 30(5) of AMLD IV does not specify what information must be included in a request for access to beneficial ownership information.<sup>11</sup>

20. Article 30(5), first subparagraph, (c) provides simply that a person such as the Appellant must demonstrate "*a legitimate interest*."<sup>12</sup> If this can be established, the EEA State must give access to "*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*." This list of minimum disclosure requirements also does not indicate *what* must be included in an access request.

21. Article 31 of AMLD IV is a similar provision, which relates to beneficial ownership of trusts. Paragraph (3) thereof requires EEA States to grant access to such beneficial ownership information to competent authorities and FIUs. Again, there is no indication of whether an access request must specify the name of the trust whose beneficial ownership information is sought.

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<sup>10</sup> See judgment of 24 January 2024, **Case E-2/23 A Ltd v the Financial Market Authority (Finanzmarktaufsicht)**, para. 43 and the case-law cited.

<sup>11</sup> As observed by Advocate General Pitruzzella in **C-37/20 and C-601/20 Luxembourg Business Registers**, EU:C:2022:43, at para. 93 (emphasis added): "*the provisions of Article 30 of Directive 2015/849 leave national legislatures with a degree of latitude in deciding how the general public should access the information on beneficial ownership and what procedures must be followed*."

<sup>12</sup> It is unclear from facts of the Request (p.5) whether the Appellant will be able to establish such an interest in the present case. For the purposes of the analysis however, the Authority proceeds on the basis that a legitimate interest can be shown, and that the 'live' question is therefore whether the details provided in the information request are sufficient (i.e. the question asked by the Referring Court). It is also unclear from the Request (pp. 1, 5) whether the Appellant is formally empowered to act on behalf of the other individuals referred to in p.1 thereof. If she is not so empowered, the national authorities would need to take this into consideration *inter alia* in deciding whether she has a legitimate interest in seeking the information.



22. Second, the recitals to AMLD IV however indicate that a key aim of the Directive is to ensure the *identification of the beneficial owner* of a given entity, in order to trace criminals who might otherwise hide their identity behind a corporate or legal structure.<sup>13</sup> Recital 12 refers to the “need to **identify any natural person** who exercises ownership or control over a legal entity”, and to “**finding the beneficial owner**.”<sup>14</sup> Recital 13 refers similarly to “[i]**dentification and verification of beneficial owners**”, and to the situation “where no natural person is **identifiable**”, in which (exceptional) case, “having exhausted all other **means of identification**”, obliged entities may consider the senior managing official(s) to be the beneficial owner(s). This emphasis on identification of *the beneficial owner* tends to suggest that the intention behind the Directive is to establish ‘who owns *what*’,<sup>15</sup> rather than ‘*what* is owned by *whom*’, and that, accordingly, a request for access to beneficial ownership information must also be framed in terms of asking ‘who’ is the beneficial owner behind a particular (and therefore named) entity.

23. Third, while AMLD V is not (yet) in force in the EEA Agreement, the Authority observes that Article 31(4) of AMLD IV, as amended by AMLD V, provides support for this interpretation (emphasis added):

*“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)-(c)]*

*(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.*

*[...]”*

<sup>13</sup> Recital 14. See also Recital 4 to AMLD V (emphasis added), “...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**.”

<sup>14</sup> See similarly Recital 30 to AMLD V, “[...] anyone who could enter into transactions is **aware of the identity of the beneficial owners**” (emphasis added).

<sup>15</sup> See similarly Recital 33 to AMLD V (emphasis added): “Member States should therefore allow access to **beneficial ownership information on** corporate and other legal entities ... so that third parties are able to ascertain, through the Union, **who are the beneficial owners of** corporate and other legal entities.”

24. This wording (“*in relation to **a trust***”) suggests that the request must be made in relation to a **specific trust** or similar structure:<sup>16</sup> in other words, the request must name or identify a particular trust entity. The related Recital 28 of AMLD V is in the same terms: “[a]ccess should also be granted to any person that files a written request in relation to **a trust** or similar legal arrangement [...]”.<sup>17</sup>

25. Fourth, while it does not specifically address the question in the present case, the judgment of the CJEU in **C-37/20 and C-601/20 Luxembourg Business Registers** places emphasis, in the context of any access request under point (c) of the first subparagraph of Article 30(5), on protecting the rights of the beneficial owners:

*“In that regard, it should be noted that **since the data referred to in Article 30(5) include information on identified individuals**, namely the beneficial owners of corporate and other legal entities incorporated within the Member States’ territory, the **access of any member of the general public to those data** affects the fundamental right to respect for private life, guaranteed in Article 7 of the Charter [...]”*<sup>18</sup>

26. This suggests that it is envisaged that what will usually be disclosed is information relating to the “who” (who is the beneficial owner, ‘*who owns what*’), rather than ‘in which entity’ the interest is held (‘*what is owned by whom*’). If it were envisaged that the access request would ‘reveal’ or identify an entity which was previously not known or not in the public domain, one would have expected to see *dicta* reflecting the rights of the entity in which the beneficial ownership interest is held.

27. Finally, the Authority notes that, under the third subparagraph of Article 30(5) of AMLD IV, “access to the information on beneficial ownership shall be in accordance with data protection rules.” Article 41 thereof provides, “[t]he processing of personal

<sup>16</sup> Other language versions of the provision are in similar terms. For example, the French version provides (emphasis added): “à toute personne physique ou morale qui introduit une demande écrite portant sur **une fiducie/un trust ou une construction juridique similaire** [...]”.

<sup>17</sup> The Authority observes that the rules on access to beneficial ownership information in relation to trusts and similar arrangements are intended to be comparable to the corresponding rules applying to corporate and other legal entities: Recital 27 to AMLD V.

<sup>18</sup> Paragraph 38 of the judgment (emphasis added). See similarly paragraphs 41 (“*in so far as the information made available ... relates to the identity of the beneficial owner*”) and 43 (“*the potential consequences for the data subjects*”) of the judgment and Recital 34 to AMLD V, which provides that when granting access to beneficial ownership information, the data set should be limited “so as to minimise the potential prejudice to the beneficial owners.”

*data under this Directive is subject to Directive 95/46/EC, as transposed into national law [...].”*

28. Thus, the access rules, and processing of personal data under AMLD IV are subject to, and operate in accordance with, the provisions of the General Data Protection Regulation (“**GDPR**”).<sup>19</sup>

29. The Authority observes that the Appellant may, *independently of any type of access request provided for in AMLD IV*, make a data subject request under Article 15 GDPR (this right is also reflected in Recital 46 to AMLD IV). This would entitle her to obtain confirmation from the relevant Liechtenstein authority whether or not they are processing any personal data concerning her (such as her name), and the related information set out in Article 15(1) of that Regulation. This would (provided e.g. she is not herself the subject of a suspicious transaction report<sup>20</sup>) potentially entitle her to at least some of the information currently sought from Liechtenstein under the national provisions implementing Article 30 and Article 31 of AMLD IV. The Authority observes that the Appellant is seeking information about certain other named individuals.<sup>21</sup> It is unclear whether she is formally acting on their behalf, and therefore whether or not such information might also be available under the GDPR.

30. In light of the above:

- (i) the provisions and general scheme of AMLD IV, as considered above, do not clearly require EEA States to provide access to beneficial ownership information where the name of the firm or entity is not specified;
- (ii) rather, the focus of AMLD IV appears to be on identifying the beneficial owners ‘behind’ a given legal entity;

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<sup>19</sup> 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), incorporated into the EEA Agreement by EEA Joint Committee Decision No 154/2018, OJ L 183, 19.7.2018, p.23, with entry into force on 20.07.2018.

<sup>20</sup> See Recital 46 to AMLD IV.

<sup>21</sup> Request, p.1.

- (iii) in such a case, while EEA States are *not prevented* from providing access to beneficial ownership information where the name of the firm or entity is not specified, there is no requirement for them to do so;
- (iv) under the GDPR, an alternative route exists for individuals to access information (personal data) processed by national authorities about them, which route is recognised by the provisions of AMLD IV (Article 30(5) second subparagraph and Article 41).

31. Accordingly, the Authority concludes that the relevant provisions of AMLD IV 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 beneficial owner data are sought.

## 6 CONCLUSION

Accordingly, the Authority respectfully requests the Court to answer the question referred 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.**

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