



EUROPEAN COMMISSION

Brussels, 1<sup>st</sup> July 2024  
sj.a(2024)5319526

**TO THE PRESIDENT AND MEMBERS OF THE EFTA COURT**

**WRITTEN OBSERVATIONS**

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

**EUROPEAN COMMISSION**

represented by Gregor von Rintelen, legal adviser, and Julie Samnadda, member of its Legal Service, with a postal address for service in Brussels at the Legal Service, Greffe Contentieux, BERL 1/169, 200 Rue de la Loi B-1049 Brussels.

**in Case E-7/24**

concerning an application submitted pursuant to 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 in the case of

**Mr AA**

**Appellant**

v

**Office of Justice**

**Defendant**

requesting an advisory opinion regarding 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, 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.

## 1. INTRODUCTION

1. This request for an advisory opinion (Request) by the Administrative Court of Liechtenstein (the Requesting Court) seeks an interpretation of Article 30 of the 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, (Directive 2015/849). However, Directive 2015/849 has been amended by Directive (EU) 2018/843 but that (later) directive has not yet been incorporated into EEA law<sup>1</sup>.
2. Pending incorporation in the EEA legal order, the provisions of the amending Directive 2018/843 have already been introduced by Liechtenstein in its national law. In pending Case E-1/24, the Commission addressed the effect in the EEA legal order of the as yet unincorporated Directive 2018/843.
3. However, since the observations submitted by the Commission in case E-1/24, on 23 May 2024, the Court has ruled on the possibility for this Court to interpret EEA law in situations where the relevant measure has not yet incorporated in the EEA legal order in Joined Cases C-E-13/22 and E-1/23 (*Joined Cases C-E-13/22 and E-1/23*)<sup>(2)</sup>. The Court considers that questions concerning the interpretation of EEA law referred by a national court enjoy a presumption of relevance, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for this Court to determine *C-E-13/22 and E-1/23* paragraphs 61, 65 and 67. As the jurisdiction of the Court is confined to considering and interpreting provisions of EEA law only, it is for the national courts to assess the precise scope of that reference to EEA law in national law.
4. In order to give the national courts or tribunals a useful answer, the Court may, in the spirit of cooperation, provide them with all the guidance that it deems necessary. Thus, it is incumbent on the Court to give as complete and as useful a reply as possible and it does not preclude the Court from providing the requesting courts

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(<sup>1</sup>) [Publications Office \(efta.int\)](https://www.efta.int/eea-lex/32018L0843)

<https://www.efta.int/sites/default/files/documents/legal-texts/eea/other-legal-documents/list-of-constitutional-requirements/list-of-constitutional-requirements.pdf>

(<sup>2</sup>) <https://eftacourt.int/cases/e-1322/> and <https://eftacourt.int/cases/e-1-23-elva-dogg-sverrisdottir-and-olafur-viggo-sigurdsson-v-islandsbanki-hf/>

with all the elements of interpretation of EEA law which may be of assistance in adjudicating in the cases pending before them.

5. Although the Requesting Court has only asked about Directive 2015/849, in the light of this Court's judgment in *Cases E-13/22 and E-1/23*, the Commission will also, where necessary, refer to Directive 2018/843 as that directive also forms part of the "elements of interpretation of EEA law which may be of assistance in adjudicating in the cases pending before the national court".
6. The recent judgments *Cases E-13/22 and E-1/23* also make redundant the observations of the Commission in pending Case E-1/24 on the effect in the EEA legal order of the as yet unincorporated Directive 2018/843.
7. That said, as the Commission submitted in Case E-1/24, in any event, the text of the relevant provision on which an advisory opinion is sought - Article 30(5) (c) - is now the same under both Directive 2015/849 and Directive 2018/843 following the judgment of the Grand Chamber in Joined Cases C-37/20 (WM) and C-601/20 (*Sovim*)<sup>3</sup>. This has been acknowledged by the Requesting Court. Access to information on beneficial ownership of legal entities by the public is conditional upon the demonstration of a legitimate interest.

## 2. THE RELEVANT LAW

### 2.1. EEA Law

#### Relevant recitals of Directive 2015/849

*(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*

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<sup>(3)</sup> Judgment of 22 November 2022 <https://curia.europa.eu/juris/liste.jsf?num=C-37/20&language=en>; for more details see points 28 to 33 below.

*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.*

Directive 2015/ 849 provides:

#### *Article 30*

*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 [<sup>31\)</sup>](#), 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 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.*

*For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules.. [...]*

#### Relevant recitals of Directive 2018/843

*(4) [...]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.*

*(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.*

*(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.*

## **2.1. National Law**

8. The relevant provisions of national law are set out at length in the Request for an Advisory Opinion and Article 17 of 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* ('VwbPG')) entitled "Disclosure of data to third parties"

## **3. FACTS AND PROCEDURE**

9. This is an administrative appeal to the Requesting Court by a natural person, Mr AA, against a refusal by the competent authority, the Office of Justice, to provide Mr AA with information about beneficial owners of the BB Foundation from the register of beneficial owners of legal entities.
10. By email of 13 January 2023 and supplementary letter of 6 February 2023, the appellant, a Russian resident, made a request to the Office of Justice for disclosure of data on the beneficial owners of the BB foundation. The BB foundation was consulted and was of the opinion that there is no legitimate interest that would motivate such a disclosure. The appellant's request was forwarded to the VwbP Commission<sup>4</sup> (the register of beneficial ownership), which decides on requests for disclosure.

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<sup>(4)</sup> Verzeichnis wirtschaftlich berechtigten Personen

11. This request was denied in April 2023 on the grounds that no legitimate interest existed to the sufficient extent, pursuant to Article 17 of the Act of 3 December 2020 on the Register of Beneficial Owners of Legal Entities ('VwbPG').
12. An appeal to the Board of Appeal for Administrative Measures was also refused in August 2023. An appeal was subsequently made to the Administrative Court which has made the Request.
13. In his appeal, the appellant, Mr AA, argues that he has credibly demonstrated that the BB Foundation has been used for the commission of offences which constitute predicate offences to money laundering, and that disclosure therefore is necessary so that persons affected by the predicate offences can follow up on the law enforcement. The appellant, Mr AA, argues that he is pursuing a civil case against offender CC, but that he needs to know if other people are involved in the offences in order to pursue criminal prosecution; the fact that CC may be the beneficial owner of BB Foundation may be an essential insight in Mr AA's view.
14. In the light of the arguments before it, the Requesting Court decided to seek an opinion on the following questions:

*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?*

#### 4. LEGAL ARGUMENT

15. In essence, the Requesting Court is asking whether Article 30 (5) (c) Directive 2015/849 is to be interpreted as precluding a refusal to access to personal data held on the beneficial register where the natural person requesting access seeks to know the identities of the natural persons that hold beneficial ownership in a legal entity in order to trigger a criminal investigation in circumstances where that natural person avers that its financial interests have been harmed by a predicate offence. According to the Request, access to the information has been refused by the national competent authority on the basis that this does not constitute a legitimate interest.

##### Article 30 of Directive 2015/849

16. Article 30 of Directive 2015/849 requires Member States to maintain and provide access to information on the beneficial ownership of corporate and other legal entities, which must be held in a central register.
17. The principal obligation with respect to beneficial ownership is provided for in Article 30(1) and is addressed to “*corporate and other legal entities incorporated within their territory [which] are required to obtain and hold adequate, accurate and current information on their beneficial ownership*,” Recital 14 of Directive 2015/849 also states that “[t]he 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.”
18. Article 30(5) of Directive 2018/649 requires information to be made available to three categories of persons.
19. Under (a), competent authorities and Financial Intelligence Units may access information “*without any restriction*”. Access by competent authorities is subject to a different, broader access regime which grants them unrestricted access to information in the beneficial register. Such unrestricted access is necessary for the purposes of carrying out their investigative, prosecutorial or analytical functions.



20. Under (b), obliged entities may access information “*within the framework of customer due diligence in accordance with Chapter II*’.”
21. The third category in (c) concerns persons (whether natural or legal) or organisations that can demonstrate a legitimate interest which is the case under consideration both in the present case and Case E-1/24. This provision should be read in the light of Recital 14 of Directive 2015/849 which states that the “*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.*”
22. There are two separate limbs to the obligation in Article 30 (5) (c).
23. The first limb is the notion of “legitimate interest” which is the subject of the First and Second Questions. The second limb is how the notion of “legitimate interest” is substantiated and this is the subject of the Third Question.
24. The notion of “legitimate interest” is not defined in Directive 2015/849. However, Recital 42 of Directive 2018/843 calls upon Member States to: “*define legitimate interest, both as a general concept and as a criterion for accessing beneficial ownership information in their national law.*”
25. Next, Recital 42 of that Directive goes on to state that “*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*”.
26. Article 30(5) provides that persons or organisations in point (c) that show a legitimate interest shall be able 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 the extent of the beneficial interest held.*’
27. This presupposes that information on the beneficial owner, including their identity, would only then be disclosed on the basis of:

- (a) the demonstration of a legitimate interest related to the objective of the directive;  
and
- (b) a request for access which names or identifies the corporate or other legal entity;

### **First and Second Questions**

28. By its First and Second Questions, which the Commission suggests should be dealt with together, the Requesting Court in essence seeks confirmation for its view that private persons who claim to be the victim of a predicate offence cannot invoke a legitimate interest in order to support or otherwise trigger a criminal investigation. The First Question focuses on the question of the necessity of access to beneficial ownership information, while the Second Question focuses on the connection i.e. the role, of such private parties in combatting money laundering, terrorist financing and its associate predicate offences.
29. It follows from the reasoning of the Court in *Sovim* that the legitimate interest which must be demonstrated by a person or organisation seeking information should be by strict reference to the fight against money laundering, terrorist financing and its associate predicate offences.
30. The judgment of *Sovim* sheds light on the application of Article 30(5) (c) of Directive 2015/849 insofar as the Court regretted its amendment towards a regime of unlimited access of the general public. The goal of ensuring transparency should not be understood as allowing the broad availability of and access to information concerning individuals or corporate structures with the scope which was struck down in *Sovim*.
31. Nevertheless, this balance between restricted access and transparency for persons or organisations in the third category is met by the requirement to “demonstrate a legitimate interest”.

32. The Requesting Court takes the view that inspection by a private person i.e. a natural person who claims to be the victim of a predicate offence is never necessary and thus never proportionate in order to combat money laundering, predicate offences to money laundering and terrorist financing. In the view of the Requesting Court, a more moderate instrument would always be available, namely that of a criminal complaint to the competent prosecuting authorities.
33. As recital 14 of Directive 2015/849 explains, also persons or organisations other than those referred to in Article 30(5)(a) or (b) of that Directive should be able to demonstrate a legitimate interest with respect notably to the predicate offences associated with money laundering or terrorist financing. Recital 42 of Directive 2018/843 explains in that context that the definition of legitimate interest to be adopted by the Member States should not restrict the concept of legitimate interest to cases of pending administrative or legal proceedings.
34. In the view of the Commission, those recitals emphasise that the mere reliance on the competent prosecuting authorities, while being a less intrusive means into the right of privacy of the beneficial owner, does not secure the attainment of the objective of preventing money laundering, terrorist financing and its predicate offences in an equally effective manner as when granting the alleged victim or victim of a predicate offence access to beneficial ownership information.
35. With respect to the alleged missing connection or role of private persons who claim to be the victim of a predicate offence, the Commission would like to draw to the Court's attention Directive 2012/29/EU<sup>5</sup>. That Directive, which is based on Article 82(2) TFEU, establishes for the European Union minimum standards on the rights, support and protection of victims of crime. According to that Directive, victims of crime shall enjoy in particular the right to a review of a decision not to prosecute pursuant to its Article 11. That Directive is not relevant for EFTA states. Consequently, redress available to victims is governed by the national law of the EFTA state concerned.
36. The Commission therefore submits that there may be a legitimate interest within the meaning of Article 30(5) (c) of Directive where a private person makes a request

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<sup>5</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

for access to information held in the beneficial ownership registers for the purposes of obtaining information on the beneficial owners of a named corporate or other legal entity where that person considers that its financial interests are harmed by an associate predicate offence connected to the fight against money laundering and terrorist financing. Recital 42 of Directive 2018/843 emphasises that a legitimate interest does not require pending proceedings of any nature.

37. The Requesting Court opines that access by private persons that allege that they are victims of an associate predicate offence cannot be regarded as having a legitimate interest for the purpose of fulfilling Article 30 (5) (c) of Directive 2015/849. It supports this view by noting that not every person or organisation can access beneficial ownership information, and that the legitimate interest required to this end describes the connection that the person or organisation has to have with the area of combating money laundering and terrorist financing, which must be distinguished from the purpose of the disclosure.
38. The Requesting Court does not elaborate on the distinction it draws between the ‘connection to the combating of money laundering, its predicate offences and terrorist financing’ and the ‘purpose of the disclosure’. However, the Commission is of the view that this distinction is not supported by either the text of Directive 2015/849 or the interpretation of the Court of Justice in *Sovim*. In reinstating Article 30 (5) (c), the Court of Justice has recognised that individual members of the public i.e. private persons may in certain circumstances benefit from the transparency that the beneficial register is meant to foster and gain access to information on beneficial ownership.
39. The approach of the Requesting Court would unduly limit the scope of Article 30 (5) (c) of Directive 2015/849 and would not “*enable[s] citizens to participate more closely in the decision-making process and guarantee[s] that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system*”. Alleged victims of perpetrators of money laundering including associate predicate offences, terrorist financing would be denied a source of information which may enable the prosecution of money laundering, its predicate offences and terrorist financing.
40. The interpretation of the Requesting Court would have the following consequences.

41. First, the interpretation provided by the Requesting Court would restrict the concept of “legitimate interest” to persons who in their professional activity have the task of combating money laundering, its predicate offences or terrorist financing. Taken to its limit, this approach may result in a situation where only access by authorities competent for combating money laundering, its predicate offences or terrorist financing can be regarded as necessary and proportionate to that aim. While the Requesting Court accepts that persons such as journalists and civil society (organisations) may also have a legitimate interest in the light of Recital 42 of Directive 2018/843, it is unclear what criterion would be used in this case to delimit the distinction between a “connection” and “a purpose of disclosure”, as it could result in a finding that only access by competent authorities, which are formally tasked with combating money laundering, its predicate offences and terrorist financing, would be necessary and proportionate.
42. Second, the conclusion of the Requesting Court that access by alleged victims can never be considered necessary nor proportionate does not reflect the intention of the Union legislator as expressed in recital 42 of Directive 2018/843, cited by the Requesting Court and which states that “*those definitions [i.e. of legitimate interest as a concept and as criterion to access information in beneficial ownership registers] 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.*”
43. It is clear from the above that the Union legislator considered access in the context of possible (emphasis added) administrative or legal, whether civil or criminal proceedings, as a possible ground of legitimate interest.
44. As to what constitutes a predicate offence, the Commission would offer the following remarks. First of all, this is not defined although the term appears in a number of places in Directive 2015/849 notably in Recital 14 which states that: “*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 addition, the definition of the term

“criminal activity” in Article 3 point 4 of Directive 2015/849 includes inter alia corruption, all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States.

45. Therefore, the Commission is of the view that the text of Article 30(5) (c) itself as interpreted by the Court of Justice in *Sovim* is consistent with the intention of the Union legislator, as reflected in certain recitals, to include certain natural or legal persons that are not in the primary business of combatting money laundering, terrorist financing or its associate predicate offences but who can still be among those who can have a legitimate interest provided that this is demonstrated. This is especially the case with natural persons, whether victims, alleged victims, or claimants, defendants, in the context of proceedings of whatever nature, whether civil or criminal and irrespective of whether such proceedings have yet begun or an investigation opened.
46. Therefore, the Commission proposes to reply to the First and the Second Questions asked by the Requesting Court in the negative, in the sense that while it is for the Requesting Court to rule on the specific case having regard to all the relevant circumstances, point (c) of the first subparagraph of Article 30(5) of Directive (EU) 2015/849 cannot 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 cannot avail themselves of having a legitimate interest in inspecting the register of beneficial owners.

### Third Question

47. By its Third Question, the Requesting Court would like to know how exactly the legitimate interest in question should be demonstrated. The Commission shares the view of the Requesting Court that it cannot suffice if the private person simply claims to be the victim of a predicate offence.
48. Indeed, as the Requesting Court notes, such an approach would render the limiting criterion of “*demonstrate[ing]*” meaningless as anybody could make such a claim and no evidence of a legitimate interest would need to be produced. The Commission also shares the view of the Requesting Court that the standard of “full

conviction” cannot apply. As the Requesting Court notes, neither the beneficial ownership register authority nor the private person can produce evidence to this standard.

49. In the absence of a uniform approach to the demonstration of a legitimate interest even in the most recent directive, Directive 2018/849, EEA States should have a discretion or flexibility as to the manner in which substantiation should be provided. This discretion also applies to the level and standard of proof required for substantiation in accordance with national procedural law that applies to predicate offences whilst ensuring the effectiveness of EEA law.
50. First and foremost, applications for access should be current and not historic and relevant limitation periods for predicate offences should apply. This means that all persons or organisations as the case may be should, at the very least, be required to specify a period which applies to the alleged activity.
51. Second, the particular predicate offence should be specified otherwise this may lead to a fishing expedition. A reference to harm to financial interests without further elaboration of the predicate offence in question would appear insufficient. As the predicate offences referred to in Recital 14 of Directive 2015/849 appear rather broad e.g. corruption, tax crimes, this should not be too onerous.
52. Third, documentary evidence, if available, should be adduced or alternatively, a statement of reasons. If the private person would like to trigger an investigation (as opposed to where there is already a finding or ruling which concerns relevant activity pertaining to a predicate offence), then it may be appropriate to ask for specific reasons.
53. Therefore, the Commission proposes to reply to the Third Question of the Requesting Court in the positive, that a substantiation of a legitimate interest is both necessary and sufficient to access information contained in beneficial ownership registers.

#### Data Protection

54. Finally, the present case concerns a request for access to personal data held on the beneficial register in Liechtenstein. The private person requesting access is a Russian resident and therefore a transfer of data would be necessary outside the

jurisdiction if it is proposed to grant access to the data. The rules on transfers of personal data to third countries are laid down in Chapter V of the 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).

55. The present situation would appear to qualify as one of the specific situations for which derogations are made from the need to have an adequacy decision (Art. 45) or appropriate safeguards (Article 46) in place).

56. Article 49(1)(g) reads as follows:

*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:*

[...]

*(g) 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.*

57. Article 49(2) also provides:

*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.*

58. It follows that Chapter V of the General Data Protection Regulation does not constitute an obstacle, as long as “the conditions laid down by Union or Member State law for consultation are fulfilled in the particular case”, which would be satisfied if the conditions of Article 30 (5) (c) are met.



## 5. CONCLUSION

59. The Commission respectfully proposes that the questions of the Administrative Court of the Principality of Liechtenstein 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.*

Julie SAMNADDA

Gregor VON RINTELEN

Agents of the Commission