

EFTA Court

1 rue du Fort Thüngen

L-1499 Luxembourg

Vaduz, 26 March 2024

To the President and Members of the EFTA Court

Written Observations

submitted, pursuant to Article 20 of the Statute and Article 97 of the Rules of Procedure of the EFTA Court, by the

Government of the Principality of Liechtenstein

represented by Dr. Andrea Entner-Koch, Director of the EEA Coordination Unit (*Leiterin der Stabsstelle EWR der Regierung des Fürstentums Liechtenstein*), Romina Schobel, Deputy Director of the EEA Coordination Unit (*Stellvertretende Leiterin der Stabsstelle EWR der Regierung des Fürstentums Liechtenstein*) and Dr. Claudia Bösch, Legal Officer of the EEA Coordination Unit (*Juristische Mitarbeiterin der Stabsstelle EWR der Regierung des Fürstentums Liechtenstein*), acting as agents of the Government of the Principality of Liechtenstein,

in Case E-1/24

TC

in which the Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*; hereinafter referred to as the 'Administrative Court') has requested 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.

The Government of the Principality of Liechtenstein (hereinafter referred to as the 'Liechtenstein Government') has the honour to submit the following observations:

I. Question referred to the EFTA Court

The Administrative Court has stayed its proceedings in order to refer the following question to the EFTA Court:

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

II. Factual background of the case

1. As regards the facts of the case at hand, the Liechtenstein Government would like to refer to the summary of the facts provided by the Administrative Court in its request for an advisory opinion.

III. Legal framework

2. As regards the legal framework applicable to the case at hand, the Liechtenstein Government would like to refer to the summary of the legal framework relevant to answer the question referred for a preliminary ruling as laid down by the Administrative Court in the request for an advisory opinion.

3. In its following Written Observations, the Liechtenstein Government will refer to the following legal acts:

Surveillance and Court Agreement

4. The Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter referred to as 'Surveillance and Court Agreement')¹ lays down the tasks and competences of the EFTA Surveillance Authority and the EFTA Court.
5. With regard to the case at hand, Article 34 of the Surveillance and Court Agreement must be considered relevant.

Directive (EU) 2015/849 ('AMLD IV')

6. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC² (hereinafter referred to as 'AMLD IV') was incorporated into Annex IX of the EEA Agreement by Decision of the EEA Joint Committee No 249/2018 of 5 December 2018³, which entered into force on 1 August 2019.
7. The case at hand concerns Article 30 AMLD IV, in particular Article 30(5)(c) AMLD IV, which governs beneficial ownership information and the access to this information.⁴
8. Recitals 4, 12 and 14 AMLD IV are relevant. The Liechtenstein Government considers these recitals further in its analysis of the questions referred below.

¹ OJ L 344, 31.1.1994, p. 3.

² OJ L 141, 5.6.2015, p. 73.

³ OJ L 337, 23.9.2021, p. 42.

⁴ See Paragraph 14 of these Written Observations.

Directive (EU) 2018/843 amending Directive (EU) 2015/849 ('AMLD V')

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 Directives⁵ 2009/138/EC and 2013/36/EU (hereinafter referred to as 'AMLD V') was incorporated into Annex IX of the EEA Agreement by Decision of the EEA Joint Committee No 63/2020 of 30 April 2020⁶.
10. Liechtenstein, Norway and Iceland all notified constitutional requirements under Article 103 of the EEA Agreement.
11. Whereas Iceland and Liechtenstein lifted their constitutional requirements on 11 February and on 31 May 2021, the notification from Norway of fulfilment of constitutional requirements is still pending.⁷
12. Hence, the Decision of the EEA Joint Committee No 63/2020 has not yet entered into force, as the entry into force of the Decision is still pending on the notification from Norway of fulfilment of constitutional requirements.
13. However, in order to illustrate and reinforce the provisions of AMLD IV⁸, the Liechtenstein Government will also take into account the wording of the relevant provisions and the recitals of AMLD V, namely Articles 30 and 31 AMLD V. Further relevant are Recitals 29, 30 and 34 AMLD V.
14. Article 30(5)(c) AMLD V, which provides that Member States must ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory is accessible in all cases to any member of the

⁵ OJ L 156, 19.6.2018, p. 43.

⁶ OJ L 72, 9.3.2023, p. 29.

⁷ See <https://www.efta.int/eea-lex/32018L0843>.

⁸ We refer to Paragraphs 19-26 of our Written Observation in which the Liechtenstein Government proposes to reformulate the question referred to the EFTA Court by the Administrative Court.

general public, has been declared invalid by the European Court of Justice.⁹

15. Thus, the European Court of Justice concluded that Article 30(5)(c) AMLD IV remains valid, in so far as it provides for public access to information on beneficial ownership.¹⁰

16. Accordingly, for the sake of completeness, the Liechtenstein Government notes that, in light of the case law of the European Court of Justice, the same result is achieved when answering the question referred to the EFTA Court by the Administrative Court under AMLD IV and AMLD V.

Proposal for a Directive repealing Directive (EU) 2015/849 ('AMLD VI')

17. On 20 July 2021, the European Commission published the Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (hereinafter referred to as 'AMLD VI').¹¹

18. AMLD VI repeals AMLD IV and consequently AMLD V.

19. On 12 February 2024, the European Parliament and the Council reached an agreement on the final compromise text.¹² In the following Written Observations, the Liechtenstein Government will refer to this final compromise text as AMLD VI, namely Articles 11 and 12 AMLD VI.

20. Recitals 31 and 34 of AMLD VI are relevant. The Liechtenstein Government considers these recitals further in its analysis of the questions referred below.

⁹ Judgement of the European Court of Justice of 22 November 2022, *WM v Luxembourg Business Registers and Sovim SA v Luxembourg Business Registers*, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912, recital 88.

¹⁰ European Court of Justice, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912, recital 89.

¹¹ COM(2021) 423 final.

¹² Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849, Confirmation of the final compromise text with a view to agreement, [2021/0250 \(COD\)](#).

IV. Legal analysis

21. Pursuant to Article 34 of the Surveillance and Court Agreement, which governs the scope of jurisdiction of the EFTA Court, the EFTA Court shall have jurisdiction to give advisory opinions on the interpretation of *'the EEA Agreement'*.
22. The question of the Administrative Court concerns *'Directive (EU) 2015/849, as amended by Directive (EU) 2018/843'*.
23. Hence, the Administrative Court asks the EFTA Court for an interpretation of AMLD V.
24. AMLD V has, however, not yet entered into force in the EEA Agreement due to pending constitutional requirements.
25. Accordingly, AMLD V does not yet constitute *EEA Acquis*.
26. It follows from the above that the question referred to the EFTA Court by the Administrative Court does not concern the interpretation of the EEA Agreement.
27. Consequently, the Liechtenstein Government considers that the question is inadmissible and kindly advises the EFTA Court to dismiss the request for an advisory opinion.
28. Should the EFTA Court nonetheless intend to give some guidance on the question referred by the Administrative Court, the Liechtenstein Government considers that the question must be re-interpreted as follows:

'Must Directive (EU) 2015/849 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?'
29. In response thereto, the Liechtenstein Government would like to submit the following observations *in eventu*:

30. Pursuant to Article 30(1) AMLD IV, EEA States shall ensure that entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership.¹³
31. According to Article 30(3) AMLD IV, EEA States shall ensure that the information¹⁴ referred to in Article 30(1) AMLD IV is held in a central register in each EEA State.
32. Article 30(5) AMLD IV governs the accessibility of the information held in these central registers and distinguishes between three categories of persons requesting access.
33. Whereas national authorities and Financial Intelligence Units ('FIUs') shall have access to the register without any restriction, obliged entities shall have access when they take customer due diligence measures within the framework of Chapter II of AMLD IV.
34. Any person or organisation, which does not fall under the first or the second category, has to demonstrate a legitimate interest to receive access to the register. Recital 14 of AMLD IV clarifies that this legitimate interest must relate *'to money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax crimes and fraud'*.
35. Accordingly, AMLD IV foresees a system of differentiated levels of access to the register¹⁵ depending on the role and obligations of the requesting person.
36. In this context, the Liechtenstein Government refers to the case law of the European Court of Justice¹⁶, which clarifies that an unrestricted access to beneficial ownership information of the general public as provided for in Article 30(5)(c) AMLD V and thus

¹³ Under Article 3(6) AMLD IV, beneficial owner means any natural person who ultimately owns or controls the customer (hereinafter referred to as 'the legal entity') and/or the natural person on whose behalf a transaction or activity is being conducted. Recital 12 states that *'it is necessary to identify any natural person who exercises ownership or control over a legal entity'*.

¹⁴ Under AMLD IV, AMLD V and AMLD VI, the set of data made available to the public must be limited, clearly and exhaustively defined and of a general nature, even if the requirements for public access are fulfilled in a specific case (see Recital 34 AMLD V).

¹⁵ See also the explanations of the Commission in the explanatory memorandum to the Proposal for a Directive of the European Parliament and of the Council 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 Directive 2009/101/EC.

¹⁶ European Court of Justice, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912.

without demonstrating a legitimate interest is contrary to the fundamental rights to private life and personal data protection.

37. This distinction between the differentiated levels of access becomes even more evident under AMLD VI, where the access by competent authorities, self-regulatory bodies and obliged entities and for the public is governed in different provisions foreseeing different access rights.
38. Article 11 AMLD VI governs the *‘access to beneficial owner registers by competent authorities, self-regulatory bodies and obliged entities’*, foreseeing a far-reaching right of access (*‘immediate, unfiltered, direct and free access’*).
39. Pursuant to Article 12 AMLD VI (*‘specific access rules to beneficial ownership registers for persons with legitimate interest’*), *‘a natural or legal person that can demonstrate a legitimate interest in relation to the prevention and combating of money laundering, its predicate offences and terrorist financing’* is granted access to beneficial ownership information *‘on a case-by-case basis’*.
40. Hence, it is for the national competent authorities to assess on a case-by-case basis whether access can be granted or not.¹⁷ In order for a legitimate interest to be asserted in the first place and for the competent national authorities to be able to verify a legitimate interest, it is necessary that the person requesting access names and identifies the legal entity whose beneficial ownership information is to be disclosed.
41. It is not possible for competent authorities to establish a sufficient link between a legal entity and a relevant criminal conduct (i.e. money laundering, associated predicate offences to money laundering or terrorist financing), without the applicant naming or specifying details of the legal entity whose data is to be disclosed. Solely if this link can be sufficiently established, a legitimate interest can be assumed and the disclosure of beneficial ownership data of the concerned legal entity can be justified.

¹⁷ Recital 34 of AMLD VI.

42. It results clearly from this that the mere mentioning of the name of a potential beneficial owner, without naming or specifying the legal entity whose data is to be disclosed, cannot sufficiently establish such a link.
43. This interpretation is supported by AMLD VI, which clarifies that the legitimate interest must be linked to the relevant legal entity whose beneficial ownership information is to be disclosed.¹⁸
44. As to the concrete question whether a request for disclosure must include the naming of the firm name or name of the legal entity whose data are to be disclosed, the Liechtenstein Government refers to the wording of Article 30 (5) AMLD IV, according to which '*Member States shall ensure that the information on the beneficial ownership is accessible*' to the persons and entities explicitly listed provided that the requirements therefore are fulfilled.
45. Additionally, Article 30(5)(c) AMLD IV governs that '*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.*'
46. It follows from this that AMLD IV does not provide persons or organisations that can demonstrate a legitimate interest with the possibility to receive access to the name or further details of the legal entity itself, but solely provides for the possibility to access beneficial ownership information under certain circumstances.
47. Consequently, the Beneficial Ownership Register Interconnection System ('BORIS')¹⁹, the tool for linking national central registers containing information on the beneficial

¹⁸ This results *e contrario* from Recital 31 AMLD VI, which states that legitimate interest to access beneficial ownership information should be presumed for certain categories of the public (see Article 12(2) AMLD VI), namely persons acting for the purposes of journalism and civil society organizations as well as non-governmental organizations, academics and investigative journalists, who all contribute to the fight against money laundering. Hence they '*should be able to access information on legal entities and legal arrangements without demonstrating a link with those entities or arrangements*' (Recital 31 AMLD VI). Any other member of the public, however, shall demonstrate a legitimate interest which must be linked to the relevant legal entity whose beneficial ownership information is to be disclosed.

¹⁹ See https://e-justice.europa.eu/38590/EN/beneficial_ownership_registers_interconnection_system_boris.

owners of companies and other legal entities established under AMLD V, provides under specific circumstances for the possibility to search for a legal entity and access information on their beneficial owner(s). The relevant information is supplied by the national registers.

48. Under BORIS, only ‘authorised users’, thus national authorities and FIUs, are able to search for information by name of a beneficial owner without naming a legal entity whose data is to be disclosed. In all other cases, BORIS only allows for a search by the name of the legal entity name or the entity registration number.
49. The Liechtenstein Government considers that if BORIS, which is solely a tool for linking national registers allows only national authorities and FIUs to search for information by name of a beneficial owner without naming a legal entity whose data is to be disclosed, AMLD IV must be interpreted as meaning that it does not preclude a national provision according to which the request for disclosure must include the name of the legal entity whose data are to be disclosed.
50. In light of these considerations, the Liechtenstein Government is convinced that it results clearly from the wording of AMLD IV that a request for disclosure of beneficial ownership information according to AMLD IV must be linked to the relevant legal entity and must therefore necessarily include the name of the legal entity whose beneficial ownership information is to be disclosed.
51. This interpretation is also in line with the objectives that the public access to beneficial ownership information is intended to fulfil:²⁰
52. *‘The need for accurate and up-to-date information on the beneficial owner is a key*

²⁰ According to the settled case law of the EFTA Court and the European Court of Justice, besides the wording of a legal act, also the context in which it occurs and its objectives must be considered. See *inter alia* Judgment of the EFTA Court of 26 July 2011, *Arnulf Clauder*, E-4/11, paragraphs 33 ff; Judgment of the EFTA Court of 25 February 2021, *SMA SA und Société Mutuelle d’Assurance du Bâtiment et des Travaux Publics v Finanzmarktaufsicht Liechtenstein*, E-5/20, paragraph 45; Judgment of the European Court of Justice of 6 September 2018, *Salzburger Gebietskrankenkasse and Bundesminister für Arbeit, Soziales und Konsumentenschutz v Alpenrind GmbH and Others*, C-527/16, ECLI:EU:C:2018:669, paragraph 88; Judgment of the European Court of Justice of 21 September 2017, *European Commission v Federal Republic of Germany*, C-616/15, ECLI:EU:C:2017:721, paragraph 43.

*factor in tracing criminals who might otherwise hide their identity behind a corporate structure.*²¹

53. The public access to beneficial ownership information contributes 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 in investigations and by ensuring that anyone who could enter into transactions is aware of the identity of the beneficial owners.²²
54. In light of the case law of the European Court of Justice, the Liechtenstein Government considers that it is not the target of the European Legislator to allow for a general and unlimited access to beneficial ownership information for the general public.²³
55. Rather, it is the target of the European Legislator to ease access for certain categories of members of the public, whose ability to access the registers is of vital importance for them to undertake their functions and exert public scrutiny.²⁴
56. Whereas national authorities and FIUs shall have access to the register without any restriction, the European Legislator and the European Court of Justice have both held very clearly that the right to access for the general public is subject to further requirements and is dependent *inter alia* on a legitimate interest linked to the relevant legal entity.²⁵
57. Consequently, the European Legislator and the European Court of Justice both

²¹ See Recital 14 of AMLD IV; see also Article 1(1) and Recital 4 of AMLD IV and the Opinion of Advocate General Pitruzzella delivered on 20 January 2022, *WM v Luxembourg Business Registers and Sovim SA v Luxembourg Business Registers*, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:43, paragraph 51.

²² See Recital 30 of AMLD V and the Opinion of Advocate General Pitruzzella in Joined Cases C-37/20 and C-601/20, paragraph 141.

²³ European Court of Justice, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912. See also Recitals 29 and 30 of AMLD V and the Proposal for a Directive of the European Parliament and of the Council 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 Directive 2009/101/EC, [COM\(2016\) 450 final](#), page 16.

²⁴ See Recital 30 of AMLD V and the Proposal for a Directive of the European Parliament and of the Council 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 Directive 2009/101/EC, [COM\(2016\) 450 final](#), page 16; European Court of Justice, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912..

²⁵ European Court of Justice, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912.

distinguish between the general public, who has to demonstrate a legitimate interest to access information, and certain categories of members of the public, who shall be deemed to have a legitimate interest, in particular national authorities and FIUs.

58. Under AMLD VI, the legitimate interest to access beneficial ownership information should be presumed for certain categories of the public who contribute to the fight against money laundering (e.g. non-governmental organisations, academics and investigative journalist as well as competent authorities of third countries).²⁶ Other members of the general public need to demonstrate that the requested data is used for the prevention and combating of money laundering in order to limit interferences with the right to private life and personal data protection.²⁷
59. It results from this that a mere claim of a suspicion of money laundering and a potential financial loss by a member of the general public cannot be sufficient to demonstrate a legitimate interest. Any other interpretation would lead to a situation where a member of the general public could access beneficial ownership information by simply reporting a suspicion of money laundering ('fishing expedition'). This would generate party rights in a way not provided for by the rule of law and thus misuse the money laundering prevention system for personal benefits.
60. In case of potential violations of criminal law, the persons concerned must report the issue to the competent law enforcement authorities. Such cases are subject to criminal proceedings. However, it is clearly not the role of a member of the general public to conduct money laundering investigations.
61. Competent authorities of third countries have a legitimate interest to access beneficial ownership information. Thereby, it is ensured that in the case of a suspicion of money laundering or a predicate offence, foreign law enforcement authorities are in the position to get access to beneficial ownership information. This enables effective cross-

²⁶ See Recitals 31 and 33 of AMLD VI. See also the European Court of Justice, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912, recital 74.

²⁷ See the European Court of Justice, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912, in particular recitals 38 and 77.

border investigations and is in line with the objectives of the beneficial ownership register.

62. In light of these considerations, the Liechtenstein Government concludes that the objective of Article 30(5) AMLD IV is to prevent the misuse of legal entities by identifying and, under certain conditions, exposing the beneficial owners behind them.

63. It is, however, not the objective of Article 30(5) AMLD IV to provide the general public with information on legal entities included in the national registers.

V. Conclusion

64. In light of the above considerations, the Liechtenstein Government considers that the question referred to the EFTA Court by the Administrative Court is to be considered inadmissible.

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

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