

EFTA Court

1 rue du Fort Thüngen

L-1499 Luxembourg

Vaduz, 2 July 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, Senior 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-7/24

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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. Questions referred to the EFTA Court

The Administrative Court has stayed its proceedings in order to refer the following questions to the EFTA 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?

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. In its following written observations, the Liechtenstein Government will refer to the following legal acts relevant to answer the questions referred for an advisory opinion:

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

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/EC¹ (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 2018², which entered into force on 1 August 2019.
4. 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.

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

5. 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

¹ OJ L 141, 5.6.2015, p. 73.

² OJ L 337, 23.9.2021, p. 42.

2009/138/EC and 2013/36/EU³ (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 2020⁴.

6. The facts of the case at hand occurred at a point in time, where the entry into force of Decision of the EEA Joint Committee No 63/2020 was pending on the notification from Norway of fulfilment of constitutional requirements.⁵
7. However, in order to illustrate and reinforce the interpretation of AMLD IV, the Liechtenstein Government will also take into account the wording of the relevant provisions and recitals of AMLD V.
8. Furthermore, as has been highlighted by the Administrative Court in its request for an advisory opinion, Article 30(5)(c) AMLD V, which provides that information on the beneficial ownership of companies and of other legal entities must be made accessible in all cases to any member of the general public, has been declared invalid by the Court of Justice of the European Union (hereinafter referred to as 'European Court of Justice').⁶
9. Thus, the European Court of Justice concluded that Article 30(5)(c) AMLD IV in any case remains valid, in so far as it provides for public access to information on beneficial ownership.⁷
10. For the sake of completeness, the Liechtenstein Government notes that Article 31(4)(c) AMLD V could be taken into account when interpreting Article 30(5)(c) AMLD IV.

Directive (EU) 2024/1640 repealing Directive (EU) 2015/849 ('AMLD VI')

11. On 19 June 2024, Directive (EU) 2024/1640 of the European Parliament and of the

³ OJ L 156, 19.6.2018, p. 43.

⁴ OJ L 72, 9.3.2023, p. 29.

⁵ As Norway has notified fulfilment of constitutional requirements as the last of the three EEA EFTA States on 27 June 2024, the Decision of the EEA Joint Committee No 63/2020 will enter into force in the EEA Agreement on 1 August 2024.

⁶ Judgment of the European Court of Justice of 22 November 2022, *WM / Sovim SA v Luxembourg Business Registers*, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912, paragraph 88.

⁷ European Court of Justice, Joined Cases C-37/20 and C-601/20, paragraph 89.

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) 2015/849⁸ (hereinafter referred to as 'AMLD VI') was published in the Official Journal of the European Union.

12. In order to illustrate and reinforce the interpretation of AMLD IV, the Liechtenstein Government will also take into account the wording of the relevant provisions and recitals of AMLD VI.

IV. Legal analysis

Preliminary remarks to the first and second question

13. With its first question referred to the EFTA Court, the Administrative Court seeks to know whether Article 1(1) and Article 30(5)(c) AMLD IV must be interpreted as meaning that access to the register of beneficial owners by a 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 necessary and thus proportionate in order to combat money laundering, predicate offences to money laundering and terrorist financing.
14. With its second question, the Administrative Court asks whether a 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 has a legitimate interest in inspecting the register of beneficial owners.
15. In the view of the Liechtenstein Government, these questions are necessarily interlinked and must hence be answered jointly for the following reasons:
16. Both the European Legislator and the European Court of Justice held that due to the fact that the right of the public to access beneficial ownership information interferes

⁸ OJ L, 2024/1640, 19.6.2024.

with the protection of personal data of the individuals concerned,⁹ access to beneficial ownership information may only be granted if it is provided for by law and if it is appropriate and proportionate. Furthermore, it must be limited to what is strictly necessary.¹⁰

17. In accordance with this, AMLD IV does not allow for a general and unlimited access to beneficial ownership information for the general public, but requires that the person requesting access to the register must demonstrate a 'legitimate interest'.¹¹
18. This legitimate interest must necessarily refer to the combating of money laundering, predicate offences to money laundering and terrorist financing.¹²
19. The assessment, whether the access to beneficial ownership information is necessary and thus proportionate in order to combat money laundering, predicate offences to money laundering and terrorist financing is thus part of the assessment whether the person requesting access has a legitimate interest.
20. It follows from this that insofar a person can demonstrate a legitimate interest to access beneficial ownership information, their access to beneficial ownership information is to be considered necessary and thus proportionate.

First and second question

21. As regards the concrete answers to the first and the second questions referred to the EFTA Court by the Administrative Court, the Liechtenstein Government would like to emphasize the following:
22. 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

⁹ See Article 30(5)(c) second subparagraph and Recital 14 AMLD IV, Recital 36 and 38 AMLD V and the Judgement of the European Court of Justice in Joined Cases C-37/20 and C-601/20, *inter alia* paragraph 39.

¹⁰ European Court of Justice, Joined Cases C-37/20 and C-601/20, paragraph 78.

¹¹ If a legitimate interest can be demonstrated, the person may 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. See the Written Observations by the Liechtenstein Government in Case E-1/24.

¹² See the European Court of Justice, Joined Cases C-37/20 and C-601/20, paragraph 67 and the Written Observations by the European Commission in the EFTA Court Case E-1/24, *TC*, recital 36.

structure.¹³

23. To enhance transparency and prevent the use of the financial system for the purposes of money laundering and terrorist financing, this information must be made available to competent authorities and Financial Intelligence Units (hereinafter referred to as 'FIUs'), to obliged entities when they take customer due diligence measures and to other persons who are able to demonstrate a legitimate interest with respect to money laundering, predicate offences to money laundering and terrorist financing.¹⁴
24. Article 30(5) AMLD IV¹⁵ governs the accessibility of the information held in central registers and distinguishes between the categories of persons requesting access mentioned.¹⁶
25. Whereas national authorities and 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 AMLD IV.
26. To ensure compliance with the fundamental rights to private life and personal data protection of the individuals concerned, the right to access beneficial ownership information of any person or organisation, which does not fall under the first or the second category, requires that the person requesting access to the register must demonstrate a legitimate interest with respect to money laundering, predicate offences to money laundering or terrorist financing.¹⁷
27. However, AMLD IV does not provide for a definition of the term 'legitimate interest'.
28. Hence, it is for the EEA States to define the term 'legitimate interest' in their national law.¹⁸

¹³ Recital 14 AMLD IV.

¹⁴ Recital 14 AMLD IV.

¹⁵ As stated above, Article 31(4) AMLD V should also be considered.

¹⁶ The Liechtenstein Government has explained this distinction in detail in its Written Observations in EFTA Court Case E-1/24, *TC*.

¹⁷ See also the Written Observations by the European Commission in the EFTA Court Case E-1/24, *TC*, paragraph 33.

¹⁸ See recital 42 AMLD V and recital 50 AMLD VI.

29. When defining the term ‘legitimate interest’, a balance must be found between the fundamental rights to private life and personal data protection of the individuals concerned and the aim of the AMLD IV and with it also the aim of the identification and disclosure of beneficial ownership information, which is the prevention of the use of the financial system for the purposes of money laundering and terrorist financing.¹⁹
30. Whether or not a person who claims to have been the victim of a predicate offence to money laundering has a legitimate interest is consequently not clear when considering only the wording of AMLD IV.
31. However, the wording of AMLD VI as well as the Judgement of the European Court of Justice in the Joined Cases C-37/20 and C-601/20 provide some further guidance on this question:
32. Under AMLD VI, the European Legislator established that only specific categories of the ‘public’, namely investigative journalists, non-governmental organisations and persons who wish to know the identity of the beneficial owners of a company or other legal entity because they are likely to enter into transactions with them, shall be deemed to have a legitimate interest *ex lege*.
33. Members of the general public, who do not fall under any of those specific categories, need to demonstrate their legitimate interest on a case-by-case basis.
34. In its judgement in Joined Cases C-37/20 and 601/20, the European Court of Justice also distinguishes between the different categories of the ‘public’, stating that both press and civil society organisations have a legitimate interest in accessing information on beneficial ownership, as they are connected with the prevention and combating of money laundering and terrorist financing.²⁰
35. In the case at hand, the person applying for disclosure claims to have been the victim of a predicate offence to money laundering and hence does not fall under any of these categories of the ‘public’ that have a legitimate interest *ex lege*.

¹⁹ European Court of Justice, Joined Cases C-37/20 and C-601/20, paragraph 55 ff; Recital 14 AMLD IV.

²⁰ European Court of Justice, Joined Cases C-37/20 and C-601/20, paragraph 74.

36. Therefore, it cannot be presumed that a person who claims to have been the victim of a predicate offence to money laundering automatically has a legitimate interest to access beneficial ownership information.
37. However – as will be explained in detail below –, it can also not be presumed that a person who claims to have been the victim of a predicate offence to money laundering automatically does not have a legitimate interest.
38. Rather, it must be assessed by the national competent authority taking into account all circumstances of the individual case whether a person who claims to have been the victim of a predicate offence to money laundering has a legitimate interest to access beneficial ownership information.
39. From the aim of AMLD IV, its wording as well as the Judgement of the European Court of Justice in Joined Cases C-37/20 and C-601/20, the Liechtenstein Government concludes that the national competent authority has to consider *inter alia* that access to the register is restricted to persons who have a legitimate interest with respect to money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax crimes and fraud.²¹ Thereby it is ensured that the access to beneficial ownership information for the general public may only be granted if it is strictly necessary, appropriate and proportionate.
40. Accordingly, the procedure for verifying the legitimate interest of a person who claims to be the victim of a predicate offence to money laundering can be summarised as follows:
41. The verification of the existence of a legitimate interest by the national competent authority has to include an assessment of whether it is plausibly demonstrated by the person who claims to be the victim of a predicate offence that they qualify as the victim of said offence and that the requested beneficial ownership information will be used within the framework of the combating of money laundering, predicate offences to money laundering and terrorist financing.

²¹ Recital 14 AMLD IV.

42. In case this can be plausibly demonstrated, beneficial ownership data may be disclosed, given that the additional application requirements (which is in particular the mentioning of the name of the legal entity concerned)²² are met.
43. As elaborated earlier, a general exclusion of a person claiming to be a victim of a predicate offence from the right to disclosure of beneficial ownership information cannot be derived from the relevant provisions and recitals of AMLD IV.
44. Consequently, in the view of the Liechtenstein Government, automatically denying such a person the right to receive beneficial ownership information and assuming that the access to such data is never necessary in order to combat money laundering, predicate offences to money laundering and terrorist financing, must be considered excessive.
45. Certainly, combating money laundering and terrorist financing is first and foremost a matter for the public authorities and for entities such as credit or financial institutions which, by reason of their activities, are subject to specific obligations in that regard.²³
46. However, there may be cases where the victim of a predicate offence cannot be denied a certain control function in the public interest to clarify the aforementioned criminal offence, for example as a private or subsidiary prosecutor.
47. Furthermore, there may also be cases, where a victim of a predicate offence legitimately has no trust in the prosecuting authorities of a state where the predicate offence took place and there is no functioning corporation with other states.²⁴ In such cases, the victim of a predicate offence may use the beneficial ownership information to investigate the crimes in the concerned state or assist the prosecuting authorities of another state with such information.
48. Consequently, the victim of a predicate offence may be connected to the combating of money laundering, predicate offences to money laundering and terrorist financing not

²² See the Written Observations of the Liechtenstein Government, the EFTA Surveillance Authority, the European Commission and the Norwegian Government in the EFTA Court Case E-1/24, *TC*.

²³ European Court of Justice, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912, recital 83.

²⁴ This will apply for instance in case of the absence of a rule of law in the concerned state.

only due to their status as a victim, but also due to the fact that the data will actually be used in this regard. In such cases, a legitimate interest may be assumed.

49. However, in case the status as a victim of a predicate offence is the only connecting factor, and hence the use of the requested data for the combating of money laundering, predicate offences to money laundering and terrorist financing cannot be plausibly demonstrated, a legitimate interest in the disclosure cannot be assumed and the disclosure has to be denied.

50. In light of the foregoing considerations, the Liechtenstein Government concludes that 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 have a legitimate interest to access beneficial ownership information, if they can plausibly demonstrate that the requested beneficial ownership information will be used within the framework of combating of money laundering, predicate offences to money laundering and terrorist financing. In this case, a legitimate interest may be assumed.

51. Following from this, it is up for the national competent authorities in the EEA States to assess on a case-by-case basis, taking into account all circumstances of the individual case, whether a person who claims that their financial interests were harmed by a predicate offence to money laundering has a legitimate interest in receiving beneficial ownership information.

Third question

52. With its third question referred to the EFTA Court, the Administrative Court asks whether Article 30(5)(c) AMLD IV must be interpreted as meaning that a substantiation of a legitimate interest is necessary but also sufficient.

53. Hence, the Administrative Court seeks to know what standard of proof applies to the demonstration of a legitimate interest.

54. As has been established above, AMLD IV does not contain a uniform definition of the

term 'legitimate interest' and accordingly neither for the standard of proof.

55. Consequently, it is for the EEA States to determine in their national law which standard of proof must be applied by competent authorities when assessing whether the person requesting beneficial ownership information has a legitimate interest taking into account the principle of effectiveness and equivalence.
56. The Liechtenstein Government considers that due to the fundamental rights to private life and personal data protection of the individuals concerned, access to beneficial ownership information for the general public may only be granted if it is strictly necessary, appropriate and proportionate.
57. In accordance with this, the mere claim of a legitimate interest cannot be considered sufficient.
58. This becomes evident under Article 13 AMLD VI,²⁵ according to which Member States shall ensure that entities in charge of the beneficial ownership registers take measures to verify the existence of the legitimate interest on the basis of documents, information and data obtained from the natural or legal person seeking access to the central register.
59. The standard of proof required to claim a legitimate interest may, however, not be overstretched, as the national competent authority will not be able to verify with absolute certainty that a legitimate interest exists.
60. Likewise, for the supposed victim of a predicate offence to money laundering, it will not be possible to provide evidence to the standard that would be required for the national competent authority to verify with absolute certainty that they are the victim of a predicate offence to money laundering and that they will use the requested data for the combating of money laundering, predicate offences to money laundering and terrorist financing.

²⁵ Article 13 AMLD VI governs the 'Procedure for the verification and mutual recognition of a legitimate interest to access beneficial ownership information'.

61. Hence, the mere substantiation in the sense of plausibly demonstrating (*"Glaubhaftmachung"*) must suffice as standard of proof for the claim of a legitimate interest.

V. Conclusion

Following the above observations, the Liechtenstein Government considers that the questions referred to the EFTA Court for an advisory opinion 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.

On behalf of the Liechtenstein Government


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