JUDGMENT OF THE COURT

22 December 2020

(Directive (EU) 2015/849 – Anti-money laundering – Information on beneficial ownership – Prevention of the use of the financial system for the purpose of money laundering and terrorist financing – Adequate, accurate and current information – Data minimisation)

In Case E-10/19,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Princely Court of Appeal (*Fürstliches Obergericht*), in a case pending before it between

Bergbahn Aktiengesellschaft Kitzbühel

and

Meleda Anstalt,

concerning the interpretation of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, 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,

THE COURT,

composed of: Páll Hreinsson, President, Per Christiansen (Judge-Rapporteur) and Bernd Hammermann, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

– Bergbahn Aktiengesellschaft Kitzbühel, ("Bergbahn"), represented by Dr Christian F. Zangerle, advocate;

– Meleda Anstalt, (“Meleda”), represented by Florian Zechberger, advocate;

– the Liechtenstein Government, represented by Dr Andrea Entner-Koch, Dr Ralph Wanger and Hansjörg Lingg, acting as Agents;

– the Austrian Government, represented by Dr Albert Posch and Dr Julia Schmoll, acting as Agents;

– the EFTA Surveillance Authority (“ESA”), represented by Ingibjörg Ólöf Vilhjálmsdóttir, Michael Sánchez Rydelski and Carsten Zatschler, acting as Agents; and

– the European Commission (“the Commission”), represented by Tibor Scharf and Lóránt Havas, acting as Agents;

having received responses to Measures of Organization of Procedure from Bergbahn, represented by Dr Christian F. Zangerle; the Liechtenstein Government represented by Dr Andrea Entner-Koch; the Norwegian Government, represented by Janne Tysnes Kaasin and Hanne Bjurstrøm Jahren, acting as Agents; ESA, represented by Ingibjörg Ólöf Vilhjálmsdóttir, Michael Sánchez Rydelski and Carsten Zatschler; and the Commission, represented by Tibor Scharf and Lóránt Havas;

gives the following

Judgment

I Legal background

EEA law

1 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73) (“the Directive” or “the Fourth Anti-Money Laundering Directive”) was incorporated into the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) by Decision of the EEA Joint Committee No 249/2018 of 5 December 2018, inserting it as point 23b of Annex IX (Financial services). Constitutional requirements were indicated by Norway, Iceland and Liechtenstein. They were fulfilled by 25 June 2019, and the decision entered into force on 1 August 2019.

2 Recital 4 of the Directive reads:

> *Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union in that field should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora. Union action should continue to take particular account of the FATF Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. With a view to reinforcing the efficacy of the fight against money laundering and terrorist financing, the relevant Union legal acts should, where appropriate, be aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the 'revised FATF Recommendations').*

3 Recital 13 of the Directive reads:

> *Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and obliged entities should look for the natural person(s) who ultimately exercises control through ownership or through other means of the legal entity that is the customer. Control through other means may, inter alia, include the criteria of control used for the purpose of preparing consolidated financial statements, such as through a shareholders' agreement, the exercise of dominant influence or the power to appoint senior management. There may be cases where no natural person is identifiable who ultimately owns or exerts control over a legal entity. In such exceptional cases, obliged entities, having exhausted all other means of identification, and provided there are no grounds for suspicion, may consider the senior managing official(s) to be the beneficial owner(s).*

4 Recital 14 of the Directive reads, in extract:

> *The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that entities incorporated within their territory in accordance with national law obtain and hold adequate, accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership. With a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law. Member States can, for that purpose, use a*

central database which collects beneficial ownership information, or the business register, or another central register. ...

5 Recital 22 of the Directive reads:

The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a holistic, risk-based approach should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision-making in order to target the risks of money laundering and terrorist financing facing the Union and those operating within it more effectively.

6 Article 1(1) of the Directive reads:

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

7 Article 2(1) of the Directive reads:

This Directive shall apply to the following obliged entities:

(1) credit institutions;

(2) financial institutions;

(3) the following natural or legal persons acting in the exercise of their professional activities:

(a) auditors, external accountants and tax advisors;

(b) notaries and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the:

(i) buying and selling of real property or business entities;

(ii) managing of client money, securities or other assets;

(iii) opening or management of bank, savings or securities accounts;

(iv) organisation of contributions necessary for the creation, operation or management of companies;

(v) creation, operation or management of trusts, companies,

foundations, or similar structures;

(c) trust or company service providers not already covered under point (a) or (b);

(d) estate agents;

(e) other persons trading in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(f) providers of gambling services.

8 Article 3(6) of the Directive reads:

'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with

the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council;

(ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;

(b) in the case of trusts:

(i) the settlor;

(ii) the trustee(s);

(iii) the protector, if any;

(iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b);

9 Article 13(1) of the Directive reads:

Customer due diligence measures shall comprise:

(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;

(b) identifying the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts, companies, foundations and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;

(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;

(d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds and ensuring that the documents, data or information held are kept up-to-date.

When performing the measures referred to in points (a) and (b) of the first subparagraph, obliged entities shall also verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person.

10 Article 30 of the Directive reads, in extract:

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.

…

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

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

5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:

(a) competent authorities and FIUs, without any restriction;

(b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;

(c) any person or organisation that can demonstrate a legitimate interest.

The persons or organisations referred to in point (c) shall access at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.

For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and may be subject to online registration and to the payment of a fee. The fees charged for obtaining the information shall not exceed the administrative costs thereof.

…

11 Article 31(1) of the Directive reads:

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

(a) the settlor;

(b) the trustee(s);

(c) the protector (if any);

(d) the beneficiaries or class of beneficiaries; and

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

12 Article 43 of the Directive reads:

The processing of personal data on the basis of this Directive for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 shall be considered to be a matter of public interest under Directive 95/46/EC.

13 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) ("GDPR") (OJ 2016 L 119, p. 1) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 154/2018 of 6 July 2018 (OJ 2018

L 183, p. 23) and is referred to at point 5e of Annex XI (Electronic communication, audiovisual services and information society). Constitutional requirements were indicated by Liechtenstein. They were fulfilled on 19 July 2018 and the decision entered into force on 20 July 2018.

14 Point (c) of Article 5(1) of the GDPR reads:

> *Personal data shall be:*
>
> *...*
>
> *(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');*

15 Point (c) of Article 6(1) of the GDPR reads:

> *Processing shall be lawful only if and to the extent that at least one of the following applies:*
>
> *...*
>
> *(c) processing is necessary for compliance with a legal obligation to which the controller is subject;*

16 Article 6(3) of the GDPR reads:

> *The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:*
>
> *(a) Union law; or*
>
> *(b) Member State law to which the controller is subject.*
>
> *The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX. The Union or the Member State law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.*

National law

17 Pursuant to Article 12 of the Liechtenstein Lawyers' Act (*Rechtsanwaltsgesetz*; LR 173.510), lawyers are required to exercise honesty and integrity in their conduct and to maintain the honour and good repute of their profession. This includes an obligation to always provide accurate and clear information. Pursuant to Article 46 of the Liechtenstein Lawyers' Act, a lawyer commits a disciplinary offence if he infringes the obligations of his profession or by his professional conduct compromises the honour or good repute of the profession.

18 Article 180a(1) of the Liechtenstein Persons and Companies Act (*Personen- und Gesellschaftsrecht*; LR 216.0) provides that at least one member of the administration of a legal person who is authorised to manage and represent that person must be a national of an EEA State, a person treated as equivalent under an international treaty or a legal person and must hold an authorisation under the Liechtenstein Trustee Act. In this connection, according to Article 180a(2) of the Liechtenstein Persons and Companies Act, persons holding a licence or other authorisation under the Act on the Supervision of Persons Specified in Article 180a of the Persons and Companies Act (*Gesetz betreffend die Aufsicht über Personen nach Art. 180a des Personen- und Gesellschaftsrechts*, LR 173.550) shall be regarded as equivalent. According to Article 180a(3) of the Liechtenstein Persons and Companies Act, legal persons are exempted from the requirements under Article 180a(1) if they are required to have a managing director under specialised legal provisions or are supervised by a competent authority.

19 Pursuant to Article 20(1) of the Liechtenstein Trustee Act (*Treuhändergesetz*; LR 173.520), trustees and trust companies shall conduct their business in a diligent, honest and professional manner in accordance with professional standards in the best interests of their clients and conduct themselves in a manner that safeguards the good repute of the profession. According to Articles 35 and 37 of the Liechtenstein Trustee Act, a person acting as a trustee or in the capacity of the actual manager of a trust company who culpably infringes professional standards commits a disciplinary offence for which the disciplinary penalties comprise a written reprimand, a fine of up to CHF 50 000, a ban of up to one year on practising as a trustee or a permanent ban on practising as a trustee.

II Facts and procedure

20 Bergbahn is a registered public limited company (*Aktiengesellschaft*) under Austrian law with a registered office in Kitzbühel, Austria.

21 Meleda is an establishment (*Anstalt*) under Liechtenstein law with a registered office in Liechtenstein. Its board members are the lawyer (*Rechtsanwalt*) Mag. iur. Stefan Mätzler and Ibex Trust AG. Meleda has a holding of 31.85 per cent in Bergbahn.

22 Mr Mätzler is a lawyer admitted to the bar under the Liechtenstein Lawyers' Act and registered in the roll of Liechtenstein lawyers with a registered office in Ruggell, Liechtenstein. In addition, he has been authorised by the Liechtenstein Financial Market Authority to exercise activities specified in Article 180a of the Liechtenstein Persons and Companies Act.

23 Ibex Trust AG is a public limited company under Liechtenstein law with a registered office in Liechtenstein, which has been granted a limited authorisation to practise as a trust company by the Liechtenstein Financial Market Authority under Article 14 of the Liechtenstein Trustee Act.

24 By letters of 22 and 28 February 2018 and 5 March 2018, making reference to the obligations pursuant to the anti-money laundering legislation applicable in Austria, Bergbahn requested Meleda to disclose its beneficial owners.

25 By letter of 30 April 2018, Meleda responded that no natural person exercised direct or indirect control over Meleda, had a direct or indirect holding of more than 50 percent, or satisfied the alternative criteria under the Austrian Beneficial Owners Register Act. For that reason, Meleda asked Bergbahn to enter the board member Mr Mätzler in the Austrian Beneficial Owners Register making reference to the rule applicable in the event that a beneficial owner cannot be established.

26 Bergbahn was not satisfied with that response and brought an action before the Princely Court (*Fürstliches Landgericht*) in Vaduz, Liechtenstein, on 16 May 2018 requesting that Meleda be ordered to provide and produce to Bergbahn information and proof concerning its beneficial owner(s).

27 By judgment of 27 March 2019, the Princely Court dismissed the action. It reasoned that Meleda had already fulfilled its obligations by the letter of 30 April 2018.

28 Bergbahn appealed against this judgment to the Princely Court of Appeal and seeks to have its claim granted in full.

29 Both the Princely Court and the Princely Court of Appeal have held that Austrian law is applicable in the court proceedings.

30 In the context of the hearing held before the Princely Court of Appeal on 19 November 2019, the parties were informed of the intention to stay the appeal proceedings and to request an advisory opinion from the Court on the interpretation of Article 30(1) of the Directive pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. The parties were given the opportunity to comment on the proposed request and the proposed questions.

31 On 5 December 2019, the Princely Court of Appeal referred the following questions to the Court:

How must Article 30(1) of Directive (EU) 2015/849 be interpreted?

I.

1. *How must the provision that incorporated and other legal entities are required to obtain adequate information on their beneficial ownership be interpreted? Does it suffice, as a rule, that the obliged entity is notified of who the beneficial owner is or must, in addition, also the underlying documents with evidential value (articles of association, etc.) be produced?*
2. *In the event that mere provision of information does not suffice but, as a rule, also the underlying documents (articles of association, etc.) must be produced: Is this situation in any way altered where the beneficial owner is a legal person with a registered office in an EEA State and, thus, is also subject to the provisions of Directive (EU) 2015/849? Does the mere provision of information suffice at least in this case?*
3. *If Question 2 is answered in the negative: Is this situation in any way altered where the board of the beneficial owner is a lawyer, notary or a (business) trustee, who under national law, is under an obligation, subject to the threat of a severe penalty or, potentially, withdrawal of the authority to practice in the case of non-compliance, to provide complete and accurate information and to whom the national legal order accords particular confidence?*
4. *If Question 3 is also answered in the negative and thus an obligation to produce the underlying documents (articles of association, etc.) exists in every case:*

   a) What is the minimum extent of documents to be produced having regard to the principle of data minimisation specified in Article 5(1)(c) of Regulation (EU) 2016/679 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)?

   b) How must the non-existence of indirect ownership or the non-existence of ultimate control by a natural person within the meaning of Article 3(6)(b)(v) and Article 3(6)(c) of Directive (EU) 2015/849 be proven (in light of the maxim that there is no obligation to prove negative circumstances - "negativa non sunt probanda")?

II. Regardless of the answers given to the questions set out in section I:

1. *How must the entity obliged to obtain appropriate information pursuant to Article 30(1) of Directive 2015/849 proceed where the beneficial owner refuses to provide information and/or - depending on the answers given to the questions set out in section I – to produce the underlying documents or does not provide*

accurate and current information: Is the obliged entity then obliged at their own risk and expense to bring legal action against the beneficial owner for provision of information or, if available, to bring a similar legal action provided for under national law or can it be satisfied with the information provided to it by the beneficial owner or the refusal to disclose information? Must in this case, if need be, Article 3(6)(a)(ii) of Directive (EU) 2015/849 be applied mutatis mutandis, which refers to "having exhausted all possibilities", in other words, must the necessary exhaustion of all possibilities be understood as including the bringing of legal action at one's own risk and expense?

2. *If the previous question is answered in the affirmative (i.e. that an obligation to bring legal action exists): Must then, if needs be, Article 3(6)(a)(ii) of this Directive be applied mutatis mutandis, so that an obligation to bring legal action at one's own risk and expense exists where there are grounds for suspicion or there is any doubt (even if only the slightest) in relation to the information provided?*

32 On 28 April 2020, the Court sent a request for clarification to the referring court, asking it to explain whether the questions referred concerned a legal entity's obligation to obtain and hold information about its beneficial owner, and/or a beneficial owner's obligation to provide such information to the legal entities it owns. The referring court answered on 12 May 2020, stating that the questions concerned a legal entity's obligation to obtain and hold information about its beneficial owner.

33 On 30 April 2020, the Court informed the parties in the main proceedings and other interested parties that, in light of the exceptional public health situation resulting from the outbreak of COVID-19, it intended to dispense with the oral hearing. The parties in the main proceedings and other interested parties were given until 8 May 2020 to request an oral hearing. None of the parties requested an oral hearing.

34 On 18 May 2020 the Court decided under Article 97(4) of the Rules of Procedure to dispense with the oral hearing in the present case. By that decision, the Court also decided to issue Measures of Organization of Procedure to invite interested parties to supplement the written procedure in the absence of an oral hearing. The parties were invited as follows:

1. *If necessary please summarise briefly the position in your written submissions.*

2. *Please address concisely the arguments set out in the other written observations submitted to the Court.*

3. *Please provide your views, if necessary, on the referring Court's reply of 12 May 2020 and whether it affects your assessment of the referred questions.*

35 The deadline to respond to the Measures of Organization of Procedure expired on 15 June 2020. The Court received replies from Bergbahn, the Liechtenstein Government, the Norwegian Government, ESA and the Commission.

III Answer of the Court

Observations submitted to the Court

Bergbahn

36 Bergbahn submits that, in light of the recitals to the Directive and in particular recital 14, legal entities must determine the identity of their beneficial owners and take adequate measures to verify their identity and to understand the ownership and control structure.

37 It follows from the EU law objectives and their transposition in national law that the information on a beneficial owner must be sufficient to make a full and correct notification of its beneficial owners to the competent register authority. Therefore, the mere provision of information will be inadequate. This cannot be remedied by the fact that the person providing the information is accorded a particular status under national law.

38 Bergbahn further argues that Question II.1 and 2 must be assessed in light of the sanctions imposed on legal entities in the event of breaches of the obligations under the Directive. The notification of incorrect data as a result of the provision of inadequate information on the part of an owner can result in financial consequences for the legal entity subject to an obligation to report.

39 According to Bergbahn, the provisions allowing an obliged legal entity, in the absence of a direct or indirect beneficial owner, to report the natural persons holding senior managing positions in the legal entity must always be interpreted strictly. These must be applied only as a last resort, in other words, after having exhausted all possible means and provided there are no grounds for suspicion. To depart from this principle would undermine the Directive's purpose and objectives.

40 Bergbahn submits that if a trust or a similar corporate structure, such as an establishment (*Anstalt*) without rights for the founders, exists, the relevant documents must be inspected. It is for the legal entity to fulfil this obligation to verify and to inspect the relevant documents. A different approach is neither provided for in the applicable Austrian law nor compatible with the purpose of the Directive.

Meleda

41 In relation to Question I.1, Meleda argues that a comprehensive documentation obligation cannot be presumed under Article 30 of the Directive. The Directive's requirements on legal entities are less extensive than those on obliged entities defined in Article 2. Meleda

observes that obliged entities are subject to a comprehensive catalogue of due diligence obligations under Chapter II of the Directive.

42 Unlike in the requirements for obliged entities, the Directive does not address in what form the "information" on the beneficial interests under Article 30(1) is to be obtained and documented. Therefore, a file note recording the information and details obtained from the beneficial owner must be sufficient.

43 Meleda submits that, according to recital 12 of the Directive, the legal entities obliged to identify their beneficial owner should include the widest possible range of legal entities and cover all areas and sectors of economic life, whether or not they are at risk of misuse. Meleda argues that the Directive was not intended to impose on such legal entities comprehensive obligations to clarify sometimes complex corporate law constellations. Rather, it is intended to impose on the legal entities an obligation to ascertain, using reasonable efforts, their ownership structure and to document this.

44 If a legal entity must obtain documents with evidential value, Meleda submits that an exception must be made in the application of point (ii) of Article 3(6)(a) of the Directive. An obligation to provide evidential documents when no natural person is a beneficial owner within the meaning of the Directive would be an excessive and impermissible interference in the private sphere.

45 As regards Question I.2, Meleda submits that the EEA States have mutual trust in the transposition and implementation of the Directive. According to Article 58 of the Directive, competent authorities shall cooperate closely in order to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases. Legal entities are subject to sanctions under Article 58(3). Therefore, the exchanged information must be qualified as trustworthy.

46 With regard to Question I.3, Meleda argues that the written information provided by a lawyer or a professional trustee must be regarded as documents with evidential value. The obligation to maintain honour and dignity, and exercising integrity and respectability in their conduct, applies both in Liechtenstein and Austria. A lawyer is under an obligation to make accurate statements. Similarly, trustworthiness is a requirement for authorisation to practise as a professional trustee. Infringement of this obligation is subject to disciplinary sanctions.

47 In relation to Question I.4.a), Meleda argues that, in light of the GDPR and the principle of data minimisation, it is appropriate to limit the extent of the documents to be provided to a minimum. It is necessary to distinguish the extensive clarification and documentation obligations on the obliged entity from those of all legal entities. Legal entities are ultimately not subject to the restrictions of Article 41(2) to (4) of the Directive. If legal entities were also required to provide evidence documentation, a similar restriction on the use of data should apply.

48 In relation to Question I.4.b), Meleda maintains that, in order to prove that no natural person exercises control over the entity, the entire corporate documentation would have to be provided. Meleda argues that even the legal entity will not be able to rely on this documentation being complete and authentic. Given the generally accepted principle of *negativa non sunt probanda* and the GDPR (data minimisation), this cannot in any way be presupposed. Therefore, the legal entity must rely on the information provided by the owning entity.

49 With regard to Question II.1, Meleda argues that obliged entities must, as a last resort, terminate their business relationship with their customers if they cannot meet the due diligence obligation under point (b) of Article 13(1) of the Directive. Taking legal action to obtain the information is not provided for in the Directive. Therefore, there is no obligation to bring legal actions pursuant to point (ii) of Article 3(6)(a) of the Directive.

50 In relation to Question II.2, Meleda submits that the obligation set out in point (ii) of Article 3(6)(a) to exhaust all possible means and document the actions taken is directed exclusively at obliged entities. Meleda contends, relying on the final sentence of recital 13 of the Directive, that the existence of grounds for suspicion has consequences only for obliged entities.

The Liechtenstein Government

51 In relation to Question I.1, the Liechtenstein Government submits that Article 30(1) of the Directive solely ensures that the legal entity takes steps and measures to obtain adequate, accurate and current information on their beneficial ownership. There is no obligation imposed on any other third party such as the beneficial owner(s).

52 The Liechtenstein Government submits that the Directive does not specify the notion of "adequate information". Further, the Directive does not stipulate the scope of information on beneficial ownership that the legal entity must procure, nor does it address the issue of whether underlying documents are necessary for such information to be adequate.

53 The Liechtenstein Government argues that the notion of "adequate information" has to be interpreted so as to effectively achieve the aims defined in the Directive. Having regard to recitals 12 and 14 and Article 1(1) of the Directive, the Liechtenstein Government submits that the Directive aims to prevent the use of the financial system for the purposes of money laundering and terrorist financing. To identify any natural person who exercises ownership or control over a legal entity aims to generate effective transparency. This information is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure.

54 The Liechtenstein Government submits that the information that a legal entity must hold on its beneficial owner(s) must be appropriate and suitable in order to identify the natural person in question. The information listed in Article 30(5) should effectively ensure the

identification of any natural person who is a beneficial owner of a legal entity and will be sufficient in order to effectively ensure the aims of the Directive.

55 The Liechtenstein Government notes that Article 30(1) of the Directive does not preclude the possibility that, in certain circumstances, the legal entity would have to provide documents with evidential value in order to meet its obligations. This would be for the referring court to assess.

56 As regards Questions I.2 and 3, the Liechtenstein Government considers that the mere provision of information is sufficient. Article 30(1) of the Directive is silent on the need for written evidence. This does not change where the owner is a legal person with a registered office in an EEA State or where the person has a qualified profession such as lawyer, notary or business trustee.

57 In relation to Question I.4, the Liechtenstein Government notes that neither the Directive nor the GDPR provides for an interpretation that exceeds their wording. Derogations and limitations in relation to the protection of data must apply only in so far as is strictly necessary (reference is made to the judgment in *Satamedia*, C-73/07, EU:C:2008:727). It follows from point (c) of Article 5(1) of the GDPR that if the legal entity has an obligation to procure documents with evidential value in order to appropriately identify its beneficial owner(s), it is for the competent court to ensure compliance with the principle of data minimisation.

58 In relation to Question II, the Liechtenstein Government observes that the Directive does not prescribe any measures that a legal entity must take if a beneficial owner refuses to provide information on its beneficial ownership. Therefore, there is no obligation for a legal entity to bring legal action against the beneficial owner for provision of information.

59 The Liechtenstein Government considers that Question II.1 must be answered in the negative. It is therefore unnecessary to answer Question II.2. For the sake of completeness, the Liechtenstein Government adds that the mere existence of cause for suspicion or doubts does not as such trigger the necessity to initiate legal action. Point (ii) of Article 3(6)(a) of the Directive only allows conclusions from its wording insofar as the legal entity has to exhaust all possible means to identify its beneficial owner(s). There is, however, no specific indication in the Directive on how to interpret the notion of “possible means”.

The Austrian Government

60 The Austrian Government answers Questions I.1, 2 and 3 together, and submits that the obligation pursuant to Article 30(1) of the Directive to obtain and hold “adequate” information on beneficial ownership comprises the need to identify and verify the beneficial owner. In order to determine the identity of the beneficial owner, legal entities must undertake appropriate research and take all necessary measures to verify the beneficial owner’s identity (reference is made to recitals 12 and 13 of the Directive). The

identity of the beneficial owner can only be verified based on the relevant supporting documents.

61 According to the Austrian Government, the legal entity can only fulfil its obligations if it receives sufficient information and documents from its beneficial owner. Consequently, the owning legal entity or beneficial owner is under an active obligation to cooperate (it refers also to recital 13 of the Directive). In particular, in a case characterised by complex control and participation structures, the legal entity depends on the assistance of its parent unit.

62 The Austrian Government notes that Article 30(1) of the Directive makes no exception or distinction for entities whose registered office is in the EEA. Consequently, the obligation under Article 30(1) on legal entities to identify their beneficial owner applies to all legal entities regardless of whether the legal entity has links to the EEA or a third country.

63 The Austrian Government contends that, in a situation where the board of the beneficial owner is a lawyer or notary, the respective lawyer or notary cannot be seen as an independent third party. Therefore, merely relying on the information provided by a lawyer or notary is not sufficient to meet the obligation under Article 30(1) of the Directive.

64 The Austrian Government notes that while Article 25 of the Directive permits obliged entities to rely on third parties to meet the customer due diligence requirements (reference is made in this regard to Article 26 and point (b) of Article 2(3) of the Directive), the ultimate responsibility for meeting the customer due diligence requirements remains with the obliged entity. The Austrian Government assumes that the same applies under Article 30. For that reason, the mere provision of information from a lawyer, notary or a trustee is not enough.

65 In relation to Question I.4.b), the Austrian Government maintains that, to meet the requirements stipulated in Article 30(1) of the Directive, the legal entity must obtain relevant evidence of the beneficial owner or the ownership and control structure. The non-existence of indirect ownership or the non-existence of ultimate control by a natural person must be verified by the legal entity to fulfil its obligation under Article 30(1).

66 As regards Question II, the Austrian Government considers that where ultimately there is no natural person who owns or exerts control over a legal entity, having exhausted all other means of identification, and provided there are no grounds for suspicion, the senior managing official(s) may be considered the beneficial owner(s) (reference is made to point (ii) of Article 3(6)(a) and recital 13 of the Directive). However, not being able to identify and verify the beneficial owners puts the legal entity at risk as it may be unable to carry out transactions or establish a business relationship (reference is made to Article 14(4) of the Directive).

ESA

67 ESA submits that the purpose and aim of the Directive and of the Fifth Anti-Money Laundering Directive is to establish an effective system to prevent money laundering and terrorist financing, and to enable access to accurate and current information on beneficial owners (reference is made to recitals 12, 13 and 14 and Article 1 of the Directive).

68 ESA clarifies that the dispute in question is between a legal entity (that is Bergbahn) and one of its shareholders (that is Meleda), but not between an "obliged entity", as defined in Article 2(1) of the Directive, and a customer. Further, ESA observes that Liechtenstein law apparently distinguishes between two types of *Anstalt* and that the distinction seems to have implications for how beneficial owners are determined under the Directive. Point (a) of Article 3(6) applies to normal corporate regimes, whilst points (b) and (c) of Article 3(6) apply to trusts and trust-like entities. It is not clear from the information in the request which type of *Anstalt* Meleda is.

69 ESA notes that the Directive does not prescribe which information or documents a corporate entity needs to obtain. However, recital 14 provides that legal entities should 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". ESA submits that it is for the national legal order to specify what documents should be required.

70 According to ESA, the Directive does not distinguish between national or cross-border cases, and it does not treat entities differently, regardless of where they are registered in the EEA. Additionally, the Directive does not distinguish between beneficial owners based on their status or on whether they are subject to professional obligations, with the exception of professional privilege as provided for in recital 9 and Article 14(4) of the Directive.

71 As regards Question I.4.b), the notion of beneficial owner in the case of an *Anstalt* goes beyond any notion of "control" and encompasses all the persons listed in point (b) of Article 3(6) of the Directive (reference is made to point (c) of Article 3(6)). In the absence of "any other natural person exercising ultimate control" over the entity in question within the meaning of point (v) of Article 3(6)(b), no obligation to hold any information arises by virtue of Article 30(1) of the Directive, so that also no obligation of proof arises.

72 In relation to Question I.4.a), ESA submits that the Directive does not set out a minimum or maximum standard for data collection. However, there are standards in the Directive setting out to what extent such documents must be produced, such as recital 14, which provides that legal entities must obtain information and documents that goes beyond basic information. The minimum extent of documents to be produced on beneficial ownership, in the context of the obligation in Article 30(1) of the Directive, is always subject to a case-by-case assessment and the circumstances at hand.

73 ESA argues that the GDPR does not protect personal data of natural persons when producing and retaining such data is part of regulatory requirements provided for in other legislation. This has been taken into account in the Directive. The Directive stays within the limits of rules on data protection, as provided for in the GDPR's predecessor. Most notably, inter alia, recital 43 asserts that the Directive is in full compliance with data protection rules and that processing of personal data should be permitted for the purposes of the Directive. Article 7(1) of the Directive provides that data protection concerns shall be identified and assessed by Member States when risk assessments are made. The third subparagraph of Article 30(5) of the Directive provides that access to information shall be in accordance with data protection rules. Further, Article 43 provides that the processing of personal data on the basis of the Directive for the purposes referred to in Article 1(1) shall be considered to be a matter of public interest under the data protection rules.

74 In relation to Question II, ESA submits that it is not point (a) of Article 3(6), but point (b) of Article 3(6) which is to be applied in the present case, which concerns an *Anstalt*. ESA notes that, although point (ii) of Article 3(6)(a) of the Directive refers to the "exhaustion of all possible means", the Directive does not contain any provisions that would require or preclude a corporate entity from bringing legal proceedings against its shareholders to obtain information.

The Commission

75 The Commission notes that the objective of the Directive is to ensure the integrity, stability and reputation of the EU financial system. Enabling the holding and accessing of accurate and up-to-date information on the beneficial owners is a key factor in establishing effective tools to trace criminals who might otherwise hide their identity behind a corporate structure. When assessing the questions of the referring court, these objectives must be taken into account.

76 With regard to Questions I.1, 2 and 3, the Commission argues that information obtained by obliged entities must be of a standard that allows for the identification of the beneficial owner. This standard is applied in all situations falling under the Directive irrespective of nationality or profession.

77 The Commission argues that the Directive sets out an obligation for obliged entities, in the course of customer due diligence, to obtain data and documents that may enable them to effectively verify the accuracy of information provided by their customers. In respect of the identification of the beneficial owner, the Directive imposes a stringent and high standard, indicating that the process must be conducted "so that the obliged entity is satisfied that it knows who the beneficial owner is" in accordance with point (b) of Article 13(1) of the Directive. The Commission points out that neither of the parties to the main proceedings is an obliged entity under the Directive.

78 With regard to the obligations on "corporate and other legal entities", the Commission submits that, according to the first subparagraph of Article 30(1) of the Directive, such entities are required to obtain and hold adequate, accurate and current information on their beneficial ownership. This obligation applies to legal entities irrespective of their position held in other corporate or legal entities.

79 In particular with respect to Questions I.2 and 3, the Commission argues that the Directive does not distinguish between internal and cross-border cases and places upon obliged entities identical obligations irrespective of the nature, origin, purpose, place of establishment or operation of their customers and their beneficial owners. The fact that a legal entity is based in one jurisdiction or another, or that it is subject to certain strict rules by reasons of affiliation to a certain profession does not have a bearing on its obligations to provide accurate and current information about its beneficial owner. A distinction based on nationality or professional affiliation would be contrary to the prohibition of discrimination. Recitals 65 and 66 of the Directive clarify that the Directive should be applied in that discrimination-free manner. It would risk defeating the purpose of the Directive to establish rankings or ratings among beneficial owners.

80 In relation to Question I.4.a), the Commission submits that point (c) of Article 5(1) of the GDPR does not protect information from legal persons. In order to be lawful, the processing of the personal data must be necessary for complying with the legal obligation laid down in Article 30(1) of the Directive. The Commission argues that Article 30(1) of the Directive can be considered as a ground for processing within the meaning of point (c) of Article 6(1) of the GDPR. The obligation to obtain and hold information on the beneficial owners is justified in view of ensuring the integrity of the financial system and to establish effective tools to prevent and combat money laundering and terrorist financing (reference is made to Joined Cases E-26/15 and E-27/15 *Criminal Proceedings against B* [2016] EFTA Ct. Rep. 740, paragraph 92).

81 The Commission submits that national legislation which enables corporate entities or other legal arrangements to obtain and hold the necessary beneficial ownership information would appear, in principle, to be proportionate.

82 In relation to Question I.4.b), the Commission submits that the rules set out in Article 3(6) of the Directive should not be interpreted as holding anyone accountable for proving negative facts or circumstances. If a natural person effectively exercises ultimate control by means of direct or indirect ownership or by other means, the identity of that person must be made known to obliged entities. Where no such person exists, the obligation to identify the person also cannot exist.

83 As regards Question II, the Commission notes that the Directive puts the obligation on the EEA States to create the legal framework enabling national authorities to enforce the obligations following from the Directive. The Commission therefore submits that the

question of whether the enforcement of obligations under the Directive would necessitate any particular action is outside of the scope of the Directive. In any event, such question would require a case-by-case analysis.

84 With respect to point (ii) of Article 3(6)(a) of the Directive, the Commission indicates that this provision refers to a particular and identified circumstance, namely the designation of a beneficial owner of a legal entity on the sole basis of holding a position of senior manager. Therefore, the suggestion of a mutatis mutandis application of the rule cannot be supported.

Responses to the Measures of Organization of Procedure

85 Bergbahn points out that the legal entity can only satisfy the obligation to obtain and hold adequate information on its beneficial owner(s) if it obtains sufficient information and documents that are precise, current and have evidential value. Such evidence is publicly accessible excerpts from registers and private documents (e.g. articles of association, deed of trust and syndicate agreements). Bergbahn agrees with the Austrian Government that the mere provision of information does not suffice, in particular where no beneficial owner is identified. The non-existence of beneficial ownership structures must be proven. A different interpretation would create an opportunity to circumvent the obligation, contrary to the objectives pursued by the Directive. Bergbahn argues that a refusal to provide documents establishes grounds for suspicion as to the non-existence of beneficial ownership.

86 The Liechtenstein Government underlines that it is the Directive, and not the Fifth Anti-Money Laundering Directive, that is applicable in the present case.

87 The Norwegian Government agrees with the Liechtenstein Government that the second subparagraph of Article 30(5) identifies the minimum information legal entities must obtain on their beneficial ownership. While the Directive does not specify what effort a legal entity must make to obtain such information, the obligation must be interpreted in light of the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the Financial Action Task Force ("FATF") in February 2012 (the "FATF Recommendations"), which is referred to in recital 4 of the Directive. The FATF Recommendations require legal entities to take "reasonable measures" to acquire information on beneficial ownership. This does, however, not require entities to bring legal action against their owners. The Norwegian Government argues that, in order to fulfil the aims of the Directive, it must be possible to verify the information on beneficial ownership which requires some level of documentation.

88 ESA agrees with the written observations from the Commission and Liechtenstein Government. ESA disagrees with Bergbahn and the Austrian Government, in as much as they argue that the Directive requires the legal entity to verify the beneficial owner, as the Directive does not contain any requirements for legal entities to obtain any specific underlying documents as long as they can be reasonably satisfied that the information

obtained is adequate, accurate and current. Further, ESA submits that point (ii) of Article 3(6)(a) is only relevant for obliged entities carrying out customer due diligence.

89 The Commission supports the arguments submitted by Bergbahn and the Austrian Government and submits that verification of the identity of the beneficial owner is implied by the use of the word "accurate" in Article 30(1) of the Directive. A legal entity must be certain about who its beneficial owners are. This includes taking adequate measures to understand the ownership and control structure. Given the significant negative consequences and risks which a legal entity or arrangement faces when it is unable to identify its own beneficial owner, it must be possible for that entity to use all lawful means at its disposal in order to obtain relevant information. The Commission submits that Meleda cannot justifiably claim to be in any of the situations covered by the exception contained in Article 3.

Findings of the Court

Introductory remarks

90 The Court observes that the Fourth Anti-Money Laundering Directive was the relevant directive at the material time in the present case. It may be added that, in the EU, the Fifth Anti-Money Laundering Directive is currently in effect, while this directive has not yet been included in the EEA Agreement and therefore is not of relevance to the Court in the present case.

91 According to Article 1(1), the Directive aims to prevent the use of the financial system for the purposes of money laundering and terrorist financing. As expressed in recital 14, transparency is necessary in order to stop criminals from hiding their identity behind a corporate structure and to prevent the misuse of legal entities. The identification of beneficial owners is fundamental to effectively combat money laundering. Therefore, as expressed in recital 22, the Directive provides for "a holistic, risk-based approach" in order to ensure the Directive's aims.

92 Different obligations are placed on corporate and other legal entities ("legal entities") and obliged entities under the Directive. Credit institutions, financial institutions and other legal and natural persons, referred to in Article 2(1) of the Directive as "obliged entities", are required to satisfy extensive obligations. When carrying out customer due diligence in accordance with Article 13, an obliged entity must, inter alia, verify the identity of its customers and its owners, assess the purpose of and monitor the business relationship, as well as keep records of its actions in this regard.

93 The Directive obliges legal entities to know the identity of the person or persons who own or control it. Therefore, in accordance with Article 30(1) of the Directive, legal entities are required to "obtain and hold adequate, accurate and current information on their beneficial ownership". A similar obligation in Article 31 is placed on trusts, foundations and other

entities similar to trusts. Accordingly, the obligations on legal entities under the Directive are not as extensive as those on obliged entities in the context of customer due diligence.

94 As pointed out by ESA, it is not clear from the request whether Meleda is the type of *Anstalt* under Liechtenstein law which qualifies as a corporate entity under point (a) of Article 3(6) of the Directive, or a trust or establishment similar to trusts under points (b) or (c) of Article 3(6). In any event, the classification of Meleda is not relevant to answer the questions referred, as the interpretation of obligations under Article 30(1) of the Directive corresponds to a similar obligation under Article 31(1).

95 It should be noted that the dispute in the main proceedings is not between an obliged entity and a legal entity. It is between a legal entity and its owner. The Court notes that Meleda is subject to a similar obligation under the Directive to identify its beneficial ownership under Article 30(1) or 31(1).

96 In general, the Directive provides for a minimum level of harmonisation. In particular, Article 5 of the Directive allows EEA States to adopt provisions which seek to strengthen the combating of money laundering or terrorist financing (see *Criminal Proceedings against B*, cited above, paragraph 107). This applies to all the provisions of the Directive (compare the judgment in *Safe Interenvíos*, C-235/14, EU:C:2016:154, paragraphs 78 and 79).

97 It is in the light of these introductory remarks that the Court must answer the questions referred.

Question I.1

98 By this question, the referring court essentially asks whether, under Article 30(1) of the Directive, legal entities must confirm information on beneficial ownership by requesting underlying documentation.

99 According to Article 3(6) of the Directive, a beneficial owner is any natural person who owns or controls the legal entity. Ownership or control can be through direct or indirect ownership or through other means. If, after having exhausted all possible means and provided there are no grounds for suspicion, no beneficial owner can be identified, or if there is any doubt that the person identified is the beneficial owner, point (ii) of Article 3(6)(a) provides that a natural person who holds the position of senior managing official can be considered the beneficial owner. Therefore, in the context of the Directive, there must be a natural person who ultimately owns or controls a legal entity.

100 Article 30 of the Directive is silent as to what constitutes “adequate, accurate and current” information and does not specify what efforts a legal entity must take to obtain such information on its beneficial owner.

101 In order to combat money laundering and terrorist financing effectively, an EEA State must be able to obtain the information necessary to identify and pursue possible infringements which take place in its territory or which involve persons established on that territory (see *Criminal Proceedings against B*, cited above, paragraph 95 and case law cited). Information on beneficial ownership must be stored in a national register in accordance with Article 30(3) of the Directive. As expressed in recital 14, the beneficial ownership register has been established to enhance transparency. Therefore, Article 30(4) of the Directive requires that the information in the register must be adequate, accurate and current.

102 Transparency in the ownership of companies is at the core of mitigating the risk of financial crime. Identifying the beneficial owner is a central obligation under the Directive, which, as indicated in recital 13, extends to verification of beneficial ownership information. In order to properly fulfil the purpose, the information received by the legal entity must be adequate, accurate and current. This requires that the information received must be assessed and may require that the information be confirmed.

103 Therefore, a legal entity must seek to confirm the identity of its beneficial owner in case of doubt as to the veracity of the information received. This can be done by requiring underlying documentation such as shareholders agreements or articles of association, examination of trusted sources such as public registers, collection of additional information or examination of the issue in other appropriate ways. The more prominent the doubt or suspicion, the more extensive the measures that the legal entity must pursue.

104 That does not imply that the legal entity must always undertake extensive examinations of who their beneficial owner is or require the underlying corporate documents. In many cases, the legal entity may not be in doubt as to the identity of its beneficial owner. As submitted by ESA, as long as the legal entity can be reasonably satisfied that the information obtained is adequate, accurate and current, it must be able to rely on the information received from its owner. However, when there is doubt as to the identity of the beneficial owner, the legal entity must be required to undertake further examination.

105 As mentioned in recital 4, the Directive should, where appropriate, be aligned with the FATF Recommendations. The Directive, like its predecessors, was adopted in order to apply the recommendations of FATF (compare the judgment in *El Dakkak and Intercontinental*, C-17/16, EU:C:2017:341, paragraph 32 and case law cited). According to FATF Recommendation 24 and point 8(b) of its Interpretative Note, legal entities should be required to take “reasonable measures” to obtain information on their beneficial owner. This is understood as measures proportionate to the level of risk or complexity induced by the ownership structure of the company or the nature of the controlling shareholders.

106 Accordingly, a legal entity must take reasonable measures to obtain information on its beneficial owner. What measures are reasonable must be decided on a case-by-case basis.

Measures should be proportionate, in particular, to the level of money laundering or terrorist financing risk involved, the complexity of the company ownership structure or the nature of the controlling shareholders. The use of complex business structures such as trusts and private investment vehicles is a factor that may increase the risks of money laundering and terrorist financing, particularly where the identity of the ultimate beneficial owner may be unclear. This will heighten the obligation of the legal entity to confirm the identity of the beneficial owner.

107 As mentioned in recital 22 of the Directive, the risks for money laundering and terrorist financing may vary between cases. The risks associated with beneficial ownership of legal entities are presumed to be lower than those associated with establishing a customer relationship and executing financial transactions. The obligations under the Directive incumbent on obliged entities are therefore stricter. Accordingly, the threshold for reasonable and proportionate measures will not necessarily be as strict for legal entities under Article 30 as for obliged entities under Article 13.

108 Generally, legal entities are likely to receive adequate, accurate and current information from their beneficial owner which may be relied upon and transmitted to the national register. However, if the legal entity has any doubt as to the accuracy or validity of the information received, the legal entity is required to take reasonable measures to confirm the identity of its beneficial owner. The more serious the doubt is, the more the legal entity must seek to confirm the beneficial ownership, for example by requiring underlying documentation.

109 In light of the above, the Court finds that the answer to Question I.1 is that Article 30(1) of the Directive must be interpreted as requiring a legal entity to take reasonable measures to seek to confirm the identity of its beneficial owner, such as requiring underlying documentation, when the circumstances of a situation present it with doubts as to the accuracy of the information received.

Questions I.2 and 3

110 By these questions, the referring court essentially asks whether it is relevant that the beneficial owner is a legal person with a registered office in an EEA State, and that its board members are subject to special professional requirements.

111 Since, according to the Directive, a beneficial owner must be a natural person, the beneficial owner cannot, as such, have a registered office in the EEA or board members. While it would be possible to answer Questions I.2 and 3 on this basis alone, the Court will nevertheless, in the spirit of cooperation with the referring court, provide guidance on the relevance of an owning entity having a registered office in the EEA and of the profession of board members of such owning entities.

112 As pointed out by the Liechtenstein Government, the Austrian Government, ESA and the Commission, the Directive does not distinguish between cases within an EEA State and cross-border cases. The obligations under the Directive are identical irrespective of the nature, origin, place of establishment or operation of the legal entity and the beneficial owner. Similarly, the Directive does not distinguish between beneficial owners on the basis of their status or whether they are subject to professional obligations, or between legal entities on the basis of the profession of their board members.

113 Accordingly, the Court finds that the answer to Questions I.2 and 3 must be that the obligation of a legal entity under Article 30(1) of the Directive is not altered by the fact that the owner of that legal entity is a legal person with a registered office in an EEA State nor by the profession of its board members.

Question I.4.a)

114 By this question, the referring court essentially asks whether and to what extent the principle of data minimisation specified in point (c) of Article 5(1) of the GDPR has a bearing on the minimum extent of documents to be produced pursuant to Article 30(1) of the Directive.

115 The Court observes that personal data can be lawfully processed in accordance with point (c) of Article 6(1) of the GDPR when it is necessary to fulfil a legal obligation. Additionally, under Article 6(3) of the GDPR, the legal obligation must be proportionate to the legitimate aim pursued. The principle of data minimisation set out in point (c) of Article 5(1) of the GDPR provides that information must be adequate, relevant and limited to what is necessary.

116 Obtaining and holding information on beneficial ownership in accordance with the obligations set out in the Directive constitutes data processing for the purpose of fulfilling a legal obligation and therefore is permitted in accordance with point (c) of Article 6(1) of the GDPR.

117 Article 43 of the Directive is clear on the point that the processing of personal data on the basis of the Directive, for the purposes referred to in Article 1, shall be considered to be a matter of public interest under data protection rules. The prevention and combating of money laundering and terrorist financing constitute legitimate aims, capable of justifying a restriction on the fundamental freedoms (see *Criminal Proceedings against B*, cited above, paragraph 92).

118 In light of the above, the Court finds that the answer to Question I.4.a) must be that it is for the referring court to ascertain to what extent the information on beneficial ownership processed is in line with the principle of data minimisation in point (c) of Article 5(1) of the GDPR by being adequate, relevant and limited to what is necessary to identify and, if needed, confirm the identity of the beneficial owner.

Question I.4.b)

119 By this question, the referring court essentially asks how the non-existence of indirect ownership or the non-existence of ultimate control by a natural person within the meaning of point (v) of Article 3(6)(b) and point (c) of Article 3(6) of the Directive must be proven.

120 Article 3(6) establishes who is considered to be a beneficial owner under the Directive. That provision envisages that there must be a natural person who owns or controls a legal entity within the scope of the Directive. As regards trusts, legal entities such as foundations and legal arrangements similar to trusts, if there is a person exercising ultimate control by means of direct or indirect ownership or by other means, such as the persons specifically listed in point (v) of Article 3(6)(b) and point (c) of Article 3(6), beyond those listed in points (i) to (iv) of Article 3(6)(b), the identity of that person must be made known to the legal entity. Where no such person exists, the obligation to identify that person also cannot exist. However, this does not preclude the possibility that, in certain situations, the provision of underlying documentation may be required in order to substantiate an assertion that no such person exists.

121 Accordingly, the Court finds that the answer to Question I.4.b) must be that point (v) of Article 3(6)(b) and point (c) of Article 3(6) of the Directive cannot be interpreted as obliging anyone to prove the non-existence of indirect ownership or ultimate control by a natural person.

Question II.1 and 2

122 By these questions, the referring court essentially asks whether a legal entity is required to bring a legal action to exhaust all possibilities to obtain appropriate information for the purposes of Article 30(1) of the Directive as to the identity of its beneficial owner, in particular in situations where no beneficial owner can be identified or an owning entity refuses to provide information.

123 As stated in the Court’s answer to Question I.1, a legal entity is required to take reasonable measures to obtain information on its beneficial owner. However, the Directive does not require a legal entity to bring legal proceedings against its owning entity to obtain information. As submitted by the Commission, the question of enforcement of obligations of national law implementing the Directive is outside the scope of the Directive. That view is shared by the Liechtenstein Government, the Norwegian Government and ESA.

124 Therefore, the Court finds that the answer to Question II.1 must be that the Directive does not require a legal entity to bring legal proceedings against its owning entity to obtain information on a beneficial owner.

125 In light of the Court’s answer to Question II.1, there is no need to answer Question II.2.

IV Costs

126 The costs incurred by the Liechtenstein Government, the Norwegian Government, the Austrian Government, ESA and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Princely Court of Appeal hereby gives the following Advisory Opinion:

1. **Article 30(1) 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 must be interpreted as requiring a legal entity to take reasonable measures to seek to confirm the identity of its beneficial owner, such as requiring underlying documentation, when the circumstances of a situation present it with doubts as to the accuracy of the information received.**
2. **The obligation of a legal entity under Article 30(1) of Directive (EU) 2015/849 is not altered by the fact that the owning entity is a legal person with a registered office in an EEA State nor by the profession of its board members.**
3. **It is for the referring court to ascertain to what extent the information on beneficial ownership processed is in line with the principle of data minimisation in point (c) of Article 5(1) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data by being adequate, relevant and limited to what is necessary to identify the beneficial owner and, if needed, to confirm the identity of the beneficial owner.**
4. **Point (v) of Article 3(6)(b) and point (c) of Article 3(6) of Directive (EU) 2015/849 cannot be interpreted as obliging anyone to prove the non-existence of indirect ownership or ultimate control by a natural person.**

5. **Directive (EU) 2015/849 does not require a legal entity to bring legal proceedings against its owning entity to obtain information on a beneficial owner.**

Páll Hreinsson Per Christiansen Bernd Hammermann

Delivered in open court in Luxembourg on 22 December 2020.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President