JUDGMENT OF THE COURT

16 December 2025[*]

(*Labour law – Regulation (EU) 2016/679 – Article 38 – Dismissal of data protection officer*)

In Case E-5/25,

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 Supreme Court (*Fürstlicher Oberster Gerichtshof*), in the case between

Rainer Silbernagl

and

University of Liechtenstein,

THE COURT,

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

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- Rainer Silbernagl ("the applicant"), represented by Nicolas Reithner and Dr Sabrina Tschofen, advocates;

- the University of Liechtenstein ("the defendant"), represented by Dr Paul Meier, advocate;

[*] Language of the request: German. Translations of national provisions are unofficial.

- the Liechtenstein Government, represented by Dr Andrea Entner-Koch and Dr Claudia Bösch, acting as Agents;

- the EFTA Surveillance Authority ("ESA"), represented by Johanne Førde, Ewa Gromnicka, Daniel Vasbeck and Melpo-Menie Joséphidès, acting as Agents; and

- the European Commission ("the Commission"), represented by Antonios Bouchagiar and Herke Kranenborg, acting as Agents,

having heard oral argument on behalf of the applicant, represented by Dr Sabrina Tschofen; the defendant, represented by Dr Paul Meier; the Liechtenstein Government, represented by Dr Andrea Entner-Koch; ESA, represented by Johanne Førde; and the Commission, represented by Antonios Bouchagiar, at the hearing on 30 September 2025,

gives the following

J U D G M E N T

I INTRODUCTION

1 The present request for an advisory opinion concerns the interpretation of Article 38(3) of 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). The primary issue is whether data protection officers may be dismissed for reasons unrelated to the performance of their tasks.

2 The request has been submitted in proceedings between the applicant and the defendant, in which the applicant seeks a declaration that his contractual relationship as data protection officer remains in force.

II LEGAL BACKGROUND

EEA law

3 Article 3 of the Agreement on the European Economic Area ("the EEA Agreement" or "EEA") reads:

> *The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.*

They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.

Moreover, they shall facilitate cooperation within the framework of this Agreement.

4 The GDPR 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) to the EEA Agreement. Constitutional requirements were indicated by Liechtenstein and fulfilled on 19 July 2018. The decision entered into force on 20 July 2018, rendering the GDPR effective in Liechtenstein as part of its domestic legal order, without the need for implementing legislation.

5 Recitals 10 and 97 of the GDPR read:

(10) In order to ensure a consistent and high level of protection of natural persons and to remove the obstacles to flows of personal data within the Union, the level of protection of the rights and freedoms of natural persons with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union. Regarding the processing of personal data for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Member States should be allowed to maintain or introduce national provisions to further specify the application of the rules of this Regulation. In conjunction with the general and horizontal law on data protection implementing Directive 95/46/EC, Member States have several sector-specific laws in areas that need more specific provisions. This Regulation also provides a margin of manoeuvre for Member States to specify its rules, including for the processing of special categories of personal data ('sensitive data'). To that extent, this Regulation does not exclude Member State law that sets out the circumstances for specific processing situations, including determining more precisely the conditions under which the processing of personal data is lawful.

(97) Where the processing is carried out by a public authority, except for courts or independent judicial authorities when acting in their judicial capacity, where, in the private sector, processing is carried out by a controller whose core activities consist of processing operations that require regular and systematic monitoring of the data subjects on a large scale, or where the core activities of the controller or the processor consist of processing on a large scale of special categories of personal data and data relating to criminal convictions and offences, a person with expert knowledge of data protection law and practices should assist the controller or

processor to monitor internal compliance with this Regulation. In the private sector, the core activities of a controller relate to its primary activities and do not relate to the processing of personal data as ancillary activities. The necessary level of expert knowledge should be determined in particular according to the data processing operations carried out and the protection required for the personal data processed by the controller or the processor. Such data protection officers, whether or not they are an employee of the controller, should be in a position to perform their duties and tasks in an independent manner.

6 Article 37 of the GDPR, entitled "Designation of the data protection officer", reads:

1. The controller and the processor shall designate a data protection officer in any case where:

(a) the processing is carried out by a public authority or body, except for courts acting in their judicial capacity;

(b) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or

(c) the core activities of the controller or the processor consist of processing on a large scale of special categories of data pursuant to Article 9 and personal data relating to criminal convictions and offences referred to in Article 10.

2. A group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment.

3. Where the controller or the processor is a public authority or body, a single data protection officer may be designated for several such authorities or bodies, taking account of their organisational structure and size.

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may or, where required by Union or Member State law shall, designate a data protection officer. The data protection officer may act for such associations and other bodies representing controllers or processors.

5. The data protection officer shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 39.

6. The data protection officer may be a staff member of the controller or processor, or fulfil the tasks on the basis of a service contract.

7. The controller or the processor shall publish the contact details of the data protection officer and communicate them to the supervisory authority.

7 Article 38 of the GDPR, entitled "Position of the data protection officer", reads:

1. The controller and the processor shall ensure that the data protection officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.

2. The controller and processor shall support the data protection officer in performing the tasks referred to in Article 39 by providing resources necessary to carry out those tasks and access to personal data and processing operations, and to maintain his or her expert knowledge.

3. The controller and processor shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. He or she shall not be dismissed or penalised by the controller or the processor for performing his tasks. The data protection officer shall directly report to the highest management level of the controller or the processor.

4. Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation.

5. The data protection officer shall be bound by secrecy or confidentiality concerning the performance of his or her tasks, in accordance with Union or Member State law.

6. The data protection officer may fulfil other tasks and duties. The controller or processor shall ensure that any such tasks and duties do not result in a conflict of interests.

8 Article 39 of the GDPR, entitled "Tasks of the data protection officer", reads:

1. The data protection officer shall have at least the following tasks:

(a) to inform and advise the controller or the processor and the employees who carry out processing of their obligations pursuant to this Regulation and to other Union or Member State data protection provisions;

(b) to monitor compliance with this Regulation, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;

(c) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 35;

(d) to cooperate with the supervisory authority;

(e) to act as the contact point for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 36, and to consult, where appropriate, with regard to any other matter.

2. The data protection officer shall in the performance of his or her tasks have due regard to the risk associated with processing operations, taking into account the nature, scope, context and purposes of processing.

9 Article 82(1) of the GDPR, entitled "Right to compensation and liability", reads:

Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.

National law

10 According to the request, the Act of 4 October 2018 on Data Protection (*Datenschutzgesetz, DSG*) ("Data Protection Act") adapts the GDPR to the Liechtenstein legal order.

11 Article 7 of the Data Protection Act reads, in extract:

(3) The public body shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. The data protection officer shall directly report to the management of the public body. The data protection officer shall not be dismissed or penalised by the public body for performing the data protection officer's tasks.

(4) The dismissal of the data protection officer shall be permitted only by applying Article 24 of the State Employee Act mutatis mutandis.

12 For employees covered by the Act of 24 April 2018 on the Employment Contracts of State Employees (*Staatspersonalgesetz, StPG*) ("State Employee Act"), Article 21 governs the termination of both fixed-term employment contracts and employment contracts of

indefinite duration, specifying the required form and the applicable notice periods. The provision reads, in extract:

> *(1) Fixed-term employment contracts and employment contracts of indefinite duration may be terminated by either party in writing. Termination by the Government shall be effected by way of an order.*
>
> *(2) The employment relationship may be terminated:*
>
> *(a) during the probationary period, without giving reasons, at the end of a week and subject to a notice period of seven days;*
>
> *(b) after the end of the probationary period, at the end of a month, subject to a period of notice of:*
>
> *1. two months in the first year of service;*
>
> *2. three months from the second year of service.*
>
> *...*

13 Article 22 of the State Employee Act reads, in extract:

> *(1) The Government may terminate an employment relationship after the end of the probationary period for objectively sufficient reasons. Such reasons include, in particular:*
>
> *(a) violation of important statutory or employment obligations;*
>
> *(b) deficiencies in performance or conduct;*
>
> *(c) lack of personal or professional suitability to perform the agreed or assigned work;*
>
> *(d) unwillingness to perform the agreed work or any other reasonable work;*
>
> *(e) significant operational or economic reasons, in particular where financial resources are withdrawn, if the person concerned cannot be offered any other reasonable work;*
>
> *(f) a statutory or contractual employment requirement ceases to be fulfilled;*
>
> *(g) inability to perform duties due to illness or accident; this shall be without prejudice to Article 25.*

...

14 Article 24 of the State Employee Act reads, in extract:

> *(1) The employment relationship may at any time be terminated without notice by either party to the contract with just cause; such termination shall be effected in writing, stating the reasons for the termination. Termination by the Government shall be effected by way of an order.*
>
> *(2) Just cause shall be defined, in particular, as any circumstance in the presence of which continuation of the employment relationship can, on good faith grounds, no longer be reasonably expected.*
>
> *(3) If the termination without notice proves to be wrongful or without justification, then the person concerned shall be entitled to compensation for what they would have earned if the employment relationship had been terminated with due notice. If reinstatement is not effected, then compensation in accordance with Article 23(1) shall be paid.*
>
> ...

15 Section 1173a of the Liechtenstein Civil Code (*Allgemeines bürgerliches Gesetzbuch*) of 1 June 1811 (ABGB; LR No 210.0) regulates employment contracts.

16 Article 45 of Section 1173a of the Civil Code, entitled "Termination by notice in general", reads:

> *1) An employment relationship of indefinite duration may be terminated by either party.*
>
> *2) The party giving notice must provide written reasons for the termination if the other party requests this.*

17 The notice period required for terminating an employment contract during the probationary period is governed by Article 45b of Section 1173a of the Civil Code, which reads, in extract:

> *1) The employment relationship may be terminated at any time during the probationary period at the end of a working week with a notice period of seven days; the probationary period shall be the first month of an employment relationship.*
>
> ...

18 The notice period required for terminating an employment contract after the end of the probationary period is governed by Article 45c of Section 1173a of the Civil Code, which reads, in extract:

> *1) The employment relationship may be terminated in the first year of service with a period of notice of one month, in the second up to and including the ninth year of service with a period of notice of two months, and thereafter with a period of notice of three months, such notice to expire at the end of a month.*
>
> ...

19 Article 53 of Section 1173a of the Civil Code provides that an employment contract may be terminated without notice for just cause. The provision reads:

> *1) Both the employer and the employee may terminate the employment relationship at any time without notice for just cause; they must provide written reasons for the termination of the contract without notice if the other party so requests.*
>
> *2) Just cause shall be defined, in particular, as any circumstance in the presence of which the person terminating can, on good faith grounds, no longer be reasonably expected to continue the employment relationship.*
>
> *3) The court shall decide on the presence of such circumstances at its own discretion, but may in no case recognise the employee's inability to perform his work through no fault of his own as just cause.*

20 Article 56 of Section 1173a of the Civil Code, which governs cases of unjustified dismissal, reads, in extract:

> *1) If the employer dismisses the employee without notice and without just cause, the employee shall be entitled to compensation for what he would have earned if the employment relationship had been terminated in compliance with the notice period or through expiry of the specified contractual term.*
>
> ...

III FACTS AND PROCEDURE

21 On 15 October 2019, the applicant signed an employment contract with the defendant to serve as a data protection officer with a work volume of 50 per cent for an indefinite duration. According to the employment contract, the employment relationship could be

terminated by either party to the contract on giving a period of four months' notice. It was also recorded in the contract that more detailed rules were set out in the Rules on Employment and Remuneration for the University of Liechtenstein (*Dienst- und Besoldungsordnung*).

22 On 16 October 2019, the applicant signed a supplementary contract with the defendant to be employed as a postdoctoral researcher with a work volume of 30 per cent for a fixed term until 30 June 2021. In this connection the parties determined that the stipulations under the main contract of 15 October 2019 and the provisions of the Rules on Employment and Remuneration applied *mutatis mutandis*.

23 On 7 December 2020, the Rules on Employment and Remuneration were amended to include the following provisions:

> *Article 53(10): Employment as a postdoctoral researcher cannot be combined with any other university employment.*
>
> *Article 54a(9): Employment as a research assistant cannot be combined with any other university employment.*

24 On 27 January 2021, the defendant terminated the employment relationship with the applicant with effect from 31 May 2021 in accordance with the agreed notice period. Upon the applicant's request, the defendant stated that the termination was due to the incompatibility between the roles as data protection officer and postdoctoral researcher under the revised Rules on Employment and Remuneration, and that further reasons for the termination did not exist.

25 On 11 May 2021, the applicant challenged the termination before the Princely Court of Liechtenstein, seeking a declaration that his employment contract as data protection officer remained in force, or alternatively, compensation. He argued that, under Article 38(3) of the GDPR and Article 7(4) of the Data Protection Act, a data protection officer may only be dismissed for just cause. Moreover, the alleged incompatibility would, in any event, have ceased by 30 June 2021, when the fixed-term academic post was due to end. The defendant rejected the claim, arguing that the termination was unrelated to the applicant's data protection officer functions and complied with general labour law.

26 By judgment of 19 July 2023, the Princely Court dismissed the applicant's claims. His appeal against that judgment was later rejected by the Princely Court of Appeal on 14 December 2023.

27 By judgment of 3 May 2024, however, the Princely Supreme Court overturned the lower court decisions, declaring that the contractual relationship between the applicant and the defendant concerning a 50 per cent appointment as data protection officer remained in force. The Supreme Court held, in essence, that, under Article 7(4) of the Data Protection

Act, a data protection officer may only be dismissed in accordance with Article 24 of the State Employee Act, and thus only with just cause, which had not been asserted by the defendant. In order to safeguard the independence of the data protection officer, the Supreme Court held that a dismissal not meeting the statutory requirements does not terminate the employment relationship, since mere financial compensation would otherwise allow employers to remove data protection officers at will.

28 By judgment of 2 September 2024, the Constitutional Court of Liechtenstein set aside the Supreme Court's ruling and remitted the case to the Supreme Court for a new decision. The Constitutional Court held, in essence, that the final sentence of Article 7(3) of the Data Protection Act must be interpreted to mean that protection against dismissal applies only where the dismissal is based solely on the correct exercise of the data protection function. Terminations unrelated to the exercise of the function of data protection officer may therefore be effected without just cause, in accordance with general labour law. The Constitutional Court further held that interpreting the Data Protection Act as rendering all unlawful dismissals void would be disproportionate, as it would entail protection for an indefinite duration which would be alien to Liechtenstein law.

29 Against this background, the Supreme Court decided to refer the following questions to the Court:

1. *Must the second sentence of Article 38(3) of the GDPR be interpreted as meaning that it precludes a national provision such as, in the present case, Article 7(4) of the Data Protection Act, according to which a data protection officer employed by a public body may only be dismissed by the public body with just cause, in particular, where circumstances exist in the presence of which continuation of the employment relationship can, on good faith grounds, no longer be reasonably expected, even if the data protection officer precisely does not perform his function or does not perform it correctly?*

2. *Must the second sentence of Article 38(3) of the GDPR as worded in German be interpreted as meaning that the term 'dismissed' includes also an (ordinary) termination of the employment contract by the employer of the data protection officer if, as a result, the employment contract basis and thus the factual possibility of exercising the activity of data protection officer ceases to exist?*

3. *Does the protective purpose of the second sentence of Article 38(3) of the GDPR, that is to say, safeguarding the functional independence of the data protection officer, require an interpretation of this provision and corresponding national rules serving the same protective purpose, such as Article 7(3) and (4) of the Data Protection Act, to mean that a dismissal which is effected contrary to these rules entails that the dismissal is void and*

that the employment relationship between the employer and data protection officer as such remains intact?

30 Reference is made to the written observations published on the Court's website for a fuller account of the arguments and proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

IV ANSWER OF THE COURT

Questions 1 and 2

31 By its first question, the referring court essentially asks whether a national provision according to which a data protection officer employed by a public body may only be dismissed with just cause, even if the data protection officer does not perform his function correctly, is in accordance with Article 38(3) of the GDPR. By its second question, the referring court enquires whether the second sentence of Article 38(3) of the GDPR also covers an (ordinary) termination of the employment contract of the data protection officer if, as a result, the possibility of exercising the activity of a data protection officer ceases.

32 In the request, it is explained that the provision of national law at issue in the main proceedings, namely Article 7 of the Data Protection Act, has been the subject of diverging interpretations by Liechtenstein courts. On the one hand, it has been interpreted as requiring just cause within the meaning of Article 24 of the State Employee Act even if the dismissal is not related to the performance of the data protection officer's tasks and, on the other, as imposing such a requirement only for dismissals related to the incorrect performance of those tasks. It is in the light of those judicial decisions that the referring court seeks guidance on the compatibility of those interpretations with EEA law.

33 In order to answer the questions referred, the Court observes that it must be examined whether the protection offered to data protection officers under the second sentence of Article 38(3) of the GDPR applies exclusively to dismissals related to the performance of their tasks, and, if so, whether that provision must be interpreted as precluding a national rule under which data protection officers employed by public bodies may be dismissed only for just cause, even where the dismissal is not related to the performance of their tasks.

34 The Court recalls that the interpretation of a provision of EEA law requires account to be taken not only of its wording but of its context and the objectives of the legislation of which it forms part. The legislative history of a provision of EEA law may also reveal elements relevant to its interpretation. Where a provision is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness (see the judgment of 7 May 2025 in *TC and AA*, Joined Cases E-1/24 and E-7/24, paragraph 92 and case law cited).

35 The GDPR does not define the terms ‘dismissed’, ‘penalised’ and ‘for performing his [or her] tasks’ featuring in the second sentence of Article 38(3). In accordance with the meaning which those words have in everyday language, however, the prohibition of the dismissal, by a controller or processor, of a data protection officer or of the imposition, by a controller or processor, of a penalty on him or her, must mean that that data protection officer must be protected against any decision terminating his or her duties, by which he or she would be placed at a disadvantage or which would constitute a penalty (compare the judgment of 22 June 2022 in *Leistritz*, C-534/20, EU:C:2022:495, paragraphs 20 to 21, and the judgment of 9 February 2023 in *X-FAB Dresden*, C-453/21, EU:C:2023:79, paragraph 21).

36 A measure terminating a data protection officer’s employment contract taken by his or her employer and terminating the employment relationship existing between that officer and that employer and, therefore, also terminating the function of data protection officer in the undertaking concerned may constitute such a decision (compare the judgment in *Leistritz*, C-534/20, cited above, paragraph 22).

37 Article 38(3) of the GDPR imposes a limit which consists in prohibiting the dismissal of a data protection officer on a ground relating to the performance of his or her tasks, which include, in particular, under Article 39(1)(b) of the GDPR, monitoring compliance with EEA or national law on data protection and with the policies of the controller or processor concerning the protection of personal data (compare the judgments in *Leistritz*, C-534/20, cited above, paragraph 25, and *X-FAB Dresden*, C-453/21, cited above, paragraph 24).

38 With regard to the objective pursued by the second sentence of Article 38(3) of the GDPR, it should be emphasised that recital 97 of that regulation states that data protection officers, whether or not they are employees of the controller, should be in a position to perform their duties and tasks in an independent manner. In that regard, such independence must necessarily enable them to carry out those tasks in accordance with the objective of the GDPR, which seeks, inter alia, as is apparent from recital 10 thereof, to ensure a high level of protection of natural persons within the EEA and, to that end, to ensure a consistent and homogeneous application of the rules for the protection of the fundamental rights and freedoms of such natural persons with regard to the processing of personal data throughout the EEA (compare the judgments in *Leistritz*, C-534/20, cited above, paragraph 26, and *X-FAB Dresden*, C-453/21, cited above, paragraph 25).

39 The objective of ensuring the functional independence of the data protection officer, as it follows from the second sentence of Article 38(3) of the GDPR, is also apparent from the first and third sentences of that provision, which require that that data protection officer is not to receive any instructions regarding the exercise of those tasks and is to report directly to the highest level of management of the controller or processor, and from Article 38(5), which provides that, with regard to that exercise, that data protection officer is to be bound by secrecy or confidentiality. Accordingly, the second sentence of Article 38(3) must be

regarded as seeking essentially to preserve the functional independence of the data protection officer and, therefore, to ensure that the provisions of the GDPR are effective (compare the judgments in *Leistritz*, C-534/20, cited above, paragraphs 27 and 28, and *X-FAB Dresden*, C-453/21, cited above, paragraphs 26 and 27).

40 That interpretation is supported by the context of Article 38(3) of the GDPR and, in particular, by the legal basis on which the EU legislature adopted the GDPR (compare the judgments in *Leistritz*, C-534/20, cited above, paragraph 29, and *X-FAB Dresden*, C-453/21, cited above, paragraph 28).

41 As is apparent from the preamble to the GDPR, that regulation was adopted on the basis of Article 16(2) of the Treaty on the Functioning of the European Union, which provides, in particular, that the European Parliament and the Council of the European Union are, by means of regulations, acting in accordance with the ordinary legislative procedure, to lay down the rules relating, first, to the protection of natural persons with regard to the processing of personal data by the EU institutions, bodies, offices or agencies and by the Member States when carrying out activities which fall within the scope of EU law and, second, to the free movement of such data (compare the judgments in *Leistritz*, C-534/20, cited above, paragraph 30, and *X-FAB Dresden*, C-453/21, cited above, paragraph 29).

42 In that regard, the laying down of rules on protection against the dismissal of a data protection officer employed by a controller or by a processor falls within the scope of the protection of natural persons with regard to the processing of personal data solely inasmuch as such rules are intended to preserve the functional independence of the latter, in accordance with the second sentence of Article 38(3) of the GDPR (compare the judgments in *Leistritz*, C-534/20, cited above, paragraph 31, and *X-FAB Dresden*, C-453/21, cited above, paragraph 30).

43 It follows that each EEA State may lay down more protective specific provisions on the dismissal of the data protection officer, in so far as those provisions are compatible with EEA law and, in particular, with the provisions of the GDPR, particularly the second sentence of Article 38(3) thereof (compare, to that effect, the judgments in *Leistritz*, C-534/20, cited above, paragraph 34, and *X-FAB Dresden*, C-453/21, cited above, paragraph 31).

44 Importantly, such increased protection cannot undermine the achievement of the objectives of the GDPR. That would be the case if it prevented any dismissal, by a controller or by a processor, of a data protection officer who no longer possesses the professional qualities required to perform his or her tasks, in accordance with Article 37(5) of the GDPR, or who does not fulfil those tasks in accordance with the provisions of that regulation (compare the judgments in *Leistritz*, C-534/20, cited above, paragraph 35, and *X-FAB Dresden*, C-453/21, cited above, paragraph 32).

45 It follows that both of the interpretations adopted by the Liechtenstein courts in the present case are, in principle, compatible with the second sentence of Article 38(3) of the GDPR. Given that the interpretation of the national law provisions at issue in the main proceedings is a matter of national law, it is for the Liechtenstein courts to determine their correct interpretation.

46 Nevertheless, national courts must verify that any dismissal was not based on a ground related to the data protection officer's performance of his or her tasks in accordance with the provisions of the GDPR, in order to safeguard the minimum protection against dismissal guaranteed by the second sentence of Article 38(3) of the GDPR. The Court recalls that national courts are bound by the duty of loyalty under Article 3 EEA to provide legal protection for the rights that individuals derive from the EEA Agreement and to ensure that those rights are fully effective (see the judgment of 5 June 2025 in *Dartride*, E-25/24, paragraph 29 and case law cited).

47 As emphasised by ESA and the Commission, national legislation allowing termination of employment for any reason with due notice carries an inherent risk of circumvention. Such circumvention may occur, for example, where data protection officers are dismissed on seemingly lawful grounds, while the actual reason relates to the performance of their tasks.

48 Furthermore, having regard to the applicant's argument that it may be difficult for a data protection officer to prove that the dismissal was based on the performance of his or her tasks, the Court notes that it is for the national legal order of each EEA State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of procedural autonomy, on condition, however, that those rules are not, in situations covered by EEA law, less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EEA law (principle of effectiveness). EEA law requires, in addition to observance of the principles of equivalence and effectiveness, that national legislation does not undermine the right to effective judicial protection (see the judgment of 20 November 2024 in *Kristjánsdóttir*, E-3/24, paragraph 53 and case law cited, and compare the judgment of 4 October 2024 in *Patērētāju tiesību aizsardzības centrs*, C-507/23, EU:C:2024:854, paragraph 31 and case law cited).

49 In light of the foregoing, the answer to the first question is that the second sentence of Article 38(3) of the GDPR must be interpreted as not precluding a national provision according to which a public body may terminate the employment contract of its data protection officer even without requiring just cause, provided that the termination is not due to the data protection officer performing his or her tasks, nor a national provision according to which a public body may terminate said employment contract only with just cause, provided that such legislation does not undermine the achievement of the objectives of that regulation.

50 The answer to the second question is that the second sentence of Article 38(3) of the GDPR must be interpreted as meaning that the term "dismissed" includes, but is not limited to, the termination of the employment contract by the employer of the data protection officer.

Question 3

51 By its third question, the referring court essentially asks whether Article 38(3) of the GDPR requires that any dismissal in breach of that provision must be regarded as void.

52 The Court observes that Article 38(3) of the GDPR does not prescribe the legal consequences of a breach of its second sentence. Pursuant to Article 82(1) of the GDPR, any person who has suffered material or non-material damage as a result of an infringement of that regulation has the right to receive compensation from the controller or processor for the damage suffered. That provision, however, does not lay down rules for assessing the damages payable under that right to compensation (compare the judgment in *Patērētāju tiesību aizsardzības centrs*, C-507/23, cited above, paragraph 32 and case law cited).

53 The Court recalls that, under the principle of sincere cooperation in Article 3 EEA, EEA States are required to nullify the unlawful consequences of a breach of EEA law. National courts are therefore obliged, as far as possible, to interpret and apply the relevant provisions of domestic law so as to eliminate such consequences (see the judgment of 21 May 2025 in *Greenpeace*, E-18/24, paragraphs 103 to 106 and case law cited).

54 Since the GDPR does not lay down rules governing the consequences of breaches of the protection against dismissal enshrined in Article 38(3), it falls, at the outset, to the referring court to apply the national rules on unlawful dismissal, provided that the principles of equivalence and effectiveness of EEA law are respected (see, to that effect, the judgment in *Kristjánsdóttir*, E-3/24, cited above, paragraph 53 and case law cited, and compare the judgment in *Patērētāju tiesību aizsardzības centrs*, C-507/23, cited above, paragraphs 31 and 32 and case law cited).

55 The Court observes, in this respect, that invalidating the unlawful dismissal of a data protection officer would constitute an effective means of achieving that result. However, it cannot, for example, be excluded that compensation may suffice as an appropriate remedy. To that end, it is settled case law that a form of compensation provided for by the applicable national law may be regarded as compatible with the GDPR only in so far as that form of compensation is in line with the principles of equivalence and effectiveness of EEA law, which presupposes, inter alia, that it is capable of ensuring that compensation for the damage suffered is full and effective (compare the judgment of 4 September 2025 in *Quirin Privatbank*, C-655/23, EU:C:2025:655, paragraph 81 and case law cited, and the judgment in *Patērētāju tiesību aizsardzības centrs*, C-507/23, cited above, paragraph 34).

56 In light of the foregoing, the answer to the third question is that the second sentence of Article 38(3) of the GDPR must be interpreted as meaning that national courts are required,

as far as possible, to interpret and apply the relevant provisions of national law in such a way that it is possible to nullify the unlawful consequences of a breach of that provision. It is nevertheless for the domestic legal system of each EEA State to determine the legal consequences of a termination of the employment contract of a data protection officer by the controller in breach of that provision, provided that the principles of equivalence and effectiveness are observed.

V COSTS

57 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

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

1. **The second sentence of Article 38(3) of 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 must be interpreted as not precluding a national provision according to which a public body may terminate the employment contract of its data protection officer without requiring just cause, provided that the termination is not due to the data protection officer performing his tasks, nor a national provision according to which a public body may terminate said employment contract only with just cause, provided that such legislation does not undermine the achievement of the objectives of that regulation.**

2. **The second sentence of Article 38(3) of Regulation (EU) 2016/679 must be interpreted as meaning that the term "dismissed" includes, but is not limited to, the termination of the employment contract by the employer of the data protection officer.**

3. **The second sentence of Article 38(3) of Regulation (EU) 2016/679 must be interpreted as meaning that national courts are required, as far as possible, to interpret and apply the relevant provisions of national law in such a way that it is possible to nullify the unlawful consequences of a breach of that provision. It is nevertheless for the domestic legal system of each EEA State to determine the legal consequences of a termination of the employment contract of a data protection officer by the controller in breach of that provision, provided that the principles of equivalence and effectiveness are observed.**

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 16 December 2025.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President