

3. In so far as no obstacle within the meaning of Questions 1 and 2 arises under EU law: Is the penalty normally imposed in Finland in the form of daily fines for crossing the Finnish border without carrying a valid travel document compatible with the principle of proportionality that follows from Article 27(2) of Directive 2004/38/EC?

- (<sup>1</sup>) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) (OJ 2004 L 158, p. 77).
- (<sup>2</sup>) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1).

**Request for a preliminary ruling from the Tribunal d'arrondissement (Luxembourg) lodged on  
24 January 2020 — WM v Luxembourg Business Registers**

(Case C-37/20)

(2020/C 103/22)

*Language of the case: French*

**Referring court**

Tribunal d'arrondissement

**Parties to the main proceedings**

*Applicant:* WM

*Defendant:* Luxembourg Business Registers

**Questions referred**

Question 1: concerning the concept of 'exceptional circumstances'

- 1(a) Can Article 30(9) 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, (<sup>1</sup>) as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU, (<sup>2</sup>) in so far as it makes the limiting of access to information concerning beneficial owners conditional upon 'exceptional circumstances to be laid down in national law', be interpreted as allowing national law to define the concept of 'exceptional circumstances' solely as being equivalent to 'disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation', concepts now constituting a condition for applying the limitation of access through the wording of Article 30(9) cited above?
- 1(b) In the event that Question 1(a) is answered in the negative and in a situation where the transposing national law has not defined the concept of 'exceptional circumstances' other than by a reference to the ineffective concepts of 'disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation', must Article 30(9) cited above be interpreted as allowing a national court to disregard the condition of 'exceptional circumstances', or must it make up for the national legislature's failure by using its own authority to determine the scope of the concept of 'exceptional circumstances'? In the latter situation, since, according to the wording of Article 30(9) cited above, that is a condition whose content is to be determined by national law, is it possible for the Court of Justice of the European Union to give guidance to the national court in its task? In the event of the latter question being answered in the affirmative, what guidelines should the national court follow in determining the content of the concept of 'exceptional circumstances'?

Question 2: concerning the concept of 'risk'

- 2(a) Must Article 30(9) 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, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU, in so far as it makes the limiting of access to information concerning beneficial owners conditional upon '*disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation*', be interpreted as referring to a group of eight cases, the first of which corresponds to a general risk subject to the disproportionality requirement and the other seven correspond to specific risks not subject to the disproportionality requirement, or as referring to a group of seven cases, each of which corresponds to a specific risk subject to the disproportionality requirement?
- 2(b) Must Article 30(9) 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, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU, in so far as it makes the limiting of access to information concerning beneficial owners conditional upon a '*risk*', be interpreted as limiting the assessment of the existence and extent of that risk solely to the relationship which the beneficial owner has with the legal entity with regard to which he seeks specifically to have access limited in respect of information concerning his status as beneficial owner or as involving taking into account the relationship which the beneficial owner concerned has with other legal entities? If it is necessary to take into account relationships with other legal entities, is it necessary to take into account only the status as beneficial owner in relation to other legal entities or is it necessary to take into account any relationship whatsoever with other legal entities? If it is necessary to take into account any relationship whatsoever with other legal entities, is the assessment of the existence and extent of the risk affected by the nature of that relationship?
- 2(c) Must Article 30(9) 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, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU, in so far as it makes the limiting of access to information concerning beneficial owners conditional upon a '*risk*', be interpreted as meaning that protection resulting from limitation of access may not be enjoyed where that information, and other evidence provided by the beneficial owner to justify the existence and extent of the '*risk*' incurred, are easily available to third parties through other information channels?

Question 3: concerning the concept of 'disproportionate' risk

- 3/ What divergent interests must be taken into consideration in the context of applying Article 30(9) 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, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU, in so far as it makes the limiting of access to information concerning a beneficial owner conditional upon a '*disproportionate*' risk?

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<sup>(1)</sup> 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).

<sup>(2)</sup> OJ 2018 L 156, p. 43.