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the global coalition against corruption

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Court of Justice of the European Union
Cour de Justice de l'Union Européenne
L – 2925 Luxembourg

Case C-317/21 *G-FINANCE SARL and DV v Luxembourg Business Registers*

A. Amicus curiae submission from Transparency International

1. Transparency International ("**TI**") has prepared this submission in relation to Case C-317/21 *G-FINANCE SARL and DV ("G-FINANCE and DV") v Luxembourg Business Registers*, pending before the Court of Justice ("**Court**"), which concerns a request for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union referred by the Tribunal d'arrondissement of Luxembourg.
2. The case concerns the interpretation and the validity of provisions of the Directive (EU) 2018/843 of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU ("5th AML Directive"), in light of the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union and raised before the Tribunal d'arrondissement during a case concerning the refusal of Luxembourg Business Registers to grant the request made by G-FINANCE and DV, a public limited company established in Luxembourg and its beneficial owner, to limit access to information concerning the beneficial owner.

B. Transparency International's interest in the case

1. TI is not a party to Case C-317/21 and acknowledges that under the Court's Statute and Rules of Procedure this amicus curiae intervention is not formally admissible to the proceedings. TI has nevertheless decided to submit this amicus curiae intervention to the Court's attention in a spirit of constructive collaboration, as TI believes that the case is significant to the development of beneficial ownership transparency in the European Union. TI presents itself as an amicus curiae in this matter and hopes that it can inform

the Court's deliberation, given the *erga omnes* nature of the forthcoming judgment in such an important, consequential case.

2. TI is an independent, non-governmental, not-for-profit and global movement leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, TI works to raise awareness of the damaging effects of corruption and it engages with partners in government, business and civil society to develop and implement effective measures to tackle corruption. TI's mission is to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society. Through its advocacy, campaigning and research, TI works to expose the systems and networks that enable corruption to thrive, demanding greater transparency and integrity in all areas of public life. For more information, please visit www.transparency.org.

3. An important objective of TI's work is to tackle money laundering, which includes advancing beneficial ownership transparency in the European Union. TI provides expertise on beneficial ownership laws and practices to governments and EU institutions, playing a neutral role and addressing only the legal issues.

4. Accordingly, TI has drafted the present brief independently of the parties to the case at hand, with the aim that its arguments may be of assistance to the Court in its decision.

5. In this amicus curiae, TI will outline a number of arguments to help the Court address all of the questions that have been referred for a preliminary ruling by the Tribunal d'arrondissement of Luxembourg.

C. Transparency International's position concerning the conformity of the provisions of the 5th AML Directive with Article 5(4) TEU

1. The Tribunal d'arrondissement of Luxembourg referred the question for a preliminary ruling on whether Article 1(15)(c) of the 5th AML Directive, in so far as it grants a right of access to information on the beneficial owners of companies and other legal entities to "any member of the general public", is invalid because it infringes the principle of proportionality as set out, in particular, in Article 5(4) TEU.

2. The 5th AML Directive provides that Member States shall make information on beneficial owners accessible to the general public. More specifically, Article 1(15)(c) provides that Member States shall ensure that information on beneficial ownership is accessible in all cases to: (a) competent authorities, without any restriction; (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II; **(c) any member of the general public**.

3. **Members of the general public** shall be permitted to access at least the **name**, the **month** and **year** of **birth**, the **country** of **residence** and the **nationality** of the beneficial owner as well as the **nature** and **extent** of the **beneficial** interest **held**. Member States may also provide for access to additional information enabling the identification of the beneficial owner.

4. These transparency requirements are based on public policy objectives specifically outlined in the 5th AML Directive. Particularly, the EU legislator has considered that granting access to beneficial ownership information to members of the general public allows greater scrutiny of the information by civil society, including civil society organisations and journalists, which can contribute in the fight against the misuse of legal entities for the purposes of money laundering or terrorist financing, and preserve trust in the integrity of business transactions and the financial system, both by helping in investigations and through reputational effects, given that anyone who could enter into transactions is aware of the identity of the beneficial owners (Recital 30 of the 5th AML Directive).

5. However, G-FINANCE and DV argue that it has not been shown how granting the public unrestricted access to the data contained in the Register of Beneficial Owners helps to achieve anti-money laundering objectives, and that, on the contrary, such access represents a serious and disproportionate interference in the private lives of beneficial owners.

6. The EU rules on access to beneficial ownership information under the 5th AML Directive have been thoroughly analysed by the EU legislator to ensure the right to respect for private and family life (Article 7 of the Charter) and the right to the protection of personal data (Article 8 of the Charter) and to find a proper balance between the need to ensure protection of privacy and personal data and the need for more transparency in financial and economic activities.

7. The principle of transparency is one of the fundamental principles of the European Union, enshrined in Articles 1 and 10 of the Treaty on European Union and in Article 15 of the Treaty on the Functioning of the European Union. The transparency principle enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (see for example Case C-41/00 *Interporc v Commission*, para 39, and Case C-28/08 *Commission v Bavarian Lager*, para 54). While traditionally the principle for example enabled public control over the use of public funds by the administration (see to that effect Case C-465/00 *Österreichischer Rundfunk and Others*, para 81), it progressively became clear that it also needs to apply to corporate and other legal entities, trusts and similar legal arrangements, since the integrity of the EU financial system is dependent on their transparency (Recital 4 of the 5th AML Directive).

8. In addition, it is worth recalling that the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced against other fundamental rights, and it may be limited, provided that the limitations comply with the requirements laid down in Article 52(1) of the Charter. This also applies to the right to respect for private life enshrined in Article 7 of the Charter.

9. Therefore, to be lawful, limitations may be placed on the exercise of those rights only on the condition that (i) they are provided for by law, (ii) they respect the essence of the rights and freedoms at issue, and (iii) subject to the principle of proportionality, they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

10. As the Court holds consistently in its case law, "the principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued [citations omitted]" (See for example Case C-189/01 *H. Jippes and Others* and Case C-331/88 *Fedesa and Others*).

11. The Directive provides for limitations that are accessible and foreseeable, which was not contested by the applicants of the underlying case.

12. These limitations also respect the essence of the rights at issue. The purpose of the right to the protection of personal data is not an end in itself but a means to protect the private sphere of individuals. The Directive does not encroach upon the right to respect for one's private sphere, or private and family life, to such an extent that it would disrespect the essence of the right protected under Articles 7 and 8 of the EU Charter.

13. The measure also meets an objective of general interest. The fight against serious crime, as confirmed by the case law of the Court, indeed constitutes an objective of general interest, which may justify interference with the fundamental rights to privacy and data protection guaranteed by Articles 7 and 8 of the Charter (Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland and Seitlinger and Others*). However, the objective of fighting money laundering and terrorist financing, and the necessary and proportionate interference it causes, must be properly balanced with the right to privacy and personal data of individuals. (Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland and Seitlinger and Others*).

14. The last question to be answered in the test used in the *Fedesa* case is whether there is a choice between several appropriate measures, whether the Directive opted for the least onerous one, and whether the disadvantages caused are disproportionate to the aims pursued.

15. The 5th AML Directive is the latest main legal instrument of the development of the EU acquis to counter money laundering, a phenomenon that damages "the integrity, stability and reputation of the financial sector, and threaten[s] the internal market of the Union as well as international development" (Recital 1 of the 5th AML Directive). During the last three decades, the European Parliament and the Council have applied different measures in previous AML Directives, and the Member States have sought to keep up

with the technical and legal developments and consequently with any new challenges related to illicit financial flows.

16. The main novelty in the measure at hand is that the Directive makes beneficial ownership information accessible to any member of the general public. This policy change is in part an admission that the competent authorities, financial intelligence units and obliged entities have largely failed to effectively detect, prevent, investigate and prosecute money laundering (see European Parliament resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing) and therefore more actors need to become involved in order to attain the highly important objective of fighting money laundering and terrorist financing. In part, it also points to a recognition that the general public, including the press and non-governmental organisations (public and social watchdogs, see *Magyar Helsinki Bizottság v. Hungary* [GC], no 18030/11, paras 165-166), businesses and anybody who wishes to act as a watchdog has the right to take part in the prevention and detection of criminal offences. As the ECtHR pointed out in the *Magyar Helsinki Bizottság* case, "given the important role played by the Internet in enhancing the public's access to news and facilitating the dissemination of information (see *Delfi AS v. Estonia* [GC], no 64569/09, para 133, ECHR 2015), the function of bloggers and popular users of social media may be also assimilated to that of 'public watchdogs' in so far as the protection afforded by Article 10 is concerned".

17. Article 13 of the UN Convention against Corruption, to which all EU Member States and the EU itself are parties, requires that "[e]ach State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the
active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption. This participation should be strengthened by such measures as: [...] Ensuring that the public has effective access to information". Opening up beneficial ownership information to any member of the general public is in line with the above international law obligation.

18. In light of the above, it is worth noting that the EU has set up public access to beneficial ownership registers while considering the need to find the fair balance between **the general public interest in the prevention of money laundering and terrorist financing and the fundamental rights** of the individuals concerned, taking into account the need to limit the data available to the public in order to minimise the prejudice to the beneficial owner.

19. In this respect, TI believes that while **legal persons** are **needed to operate complex businesses, collect capital, and limit risks and the liability** of individuals, **they have not been created as a tool to hide ownership.** On the contrary, it is legitimate to expect transparency around ultimate beneficiaries. Individuals, if they want, could trade

in their own name and therefore avoid the public reporting obligations that come with legal structures.

20. For example, the Register of Enterprises of the Republic of Latvia on its websites provides an explanation of the relationship between legal persons and their beneficial owners. The Register notes that the **legal person is a legal fiction, followed in each case by the natural persons who organise, manage or control it**, so in general, there cannot be a situation where the true beneficiary may not be identified. **Consequently, Latvian law does not provide for a possibility of submitting during registration that a legal person does not have a genuine beneficial owner**. A legal person is understood to be a mere vehicle, while the true beneficiary is always the natural person who owns it, who operates it, in whose interest the particular legal person is established, or whose direct or indirect control over the legal person is exercised. Legal systems maintain the important legal fiction of legal persons to make business more efficient and competitive, notably through personal liability protection and easier access to capital.

21. The Financial Action Task Force[1] Guidance on Transparency and Beneficial Ownership (October 2014) notes that **while corporate vehicles fulfil an essential and legitimate role in the global economy, under certain conditions they might be misused for illicit purposes**, including money laundering, bribery, insider dealing, tax fraud or terrorist financing, because legal entities are often an attractive way to disguise and convert the proceeds of crime before introducing them into the financial system. The FATF guidance stresses that countries should take measures to prevent the misuse of legal persons for money laundering and terrorist financing by ensuring that legal persons are sufficiently transparent. As a fundamental principle, the FATF guidance mentions that **countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons**. While there is **no doubt that legal persons are an important building block of modern legal systems, they might be subject to rules aimed at minimising their misuse**.

22. As Advocate General Kokott observed in her recent opinion, **while legal persons can also rely on Article 7 of the Charter**, in the context of justifying an interference with Article 7 of the Charter, **different standards may be applied to legal persons than to natural persons** (Joined Cases C-245/19 and C-246/19 *État luxembourgeois (Droit de recours contre une demande d'information en matière fiscale)*, para 90).

23. Advocate General Kokott added, with reference to the case law of the ECtHR, that for example purely financial information warrants less protection than intimate data. **Basic transparency information regarding the beneficial owner undoubtedly deserves a lesser standard of protection compared to the data category described by the ECtHR as "sensitive"**, i.e. personal data revealing racial origin, political opinions, religious or other beliefs, and information on an individual's health or sex life, or on any

[1] "**FATF**", an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing.

criminal convictions (see Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS no 108), Article 6 – Special categories of data).

24. In the decision referred to by Advocate General Kokott, the ECtHR found that the transmission of banking data to the authorities of another state under a bilateral agreement pursued a legitimate aim, as the measure served to protect the country's economic well-being. The **ECtHR considered that as the banking sector was an economic branch of great importance** to the respondent State **the measure could validly be considered conducive to protecting the country's economic well-being** (see the judgment of the ECtHR in the case of *G.S.B. v. Switzerland (2015)*, paras 92-98). A **similar situation also occurs with respect to the transparency requirements of beneficial ownership**. The Member States have committed to enable the meaningful identification of beneficial owners precisely to preserve the well-being of their economic and financial environment (see in this regard Recital 4 of the 5th AML Directive).

25. Moreover, **public beneficial ownership registers are important for increasing countries' economic well-being**, as they can stimulate their economic attractiveness. For instance, businesses find it useful to know the beneficial owners of companies that they are dealing with so as to manage risk and potential liability better.

26. To ensure that the right to privacy of individuals is respected, any requirements to disclose the beneficial ownership of companies should strike a balance between privacy and the public interest. All relevant information concerning the legal entity should be disclosed, while **personal information, such as the home address or identification number of the beneficial owner, should not generally be made available to the public, the only exception being where more information may be needed to identify an individual in cases of homonymy.** The law should make clear what personal data is collected and how it is used, shared and secured. In the Netherlands, for example, the citizen service number, tax identification number, date of birth, country of birth and residential address of the beneficial owner are not available to the public (A New Global Standard on Beneficial Ownership Transparency, Transparency International, 2021).

27. To minimise the potential prejudice to beneficial owners, the Directive provides that members of the general public can access only a limited set of data of a general nature that is clearly and exhaustively defined. Also, in order to limit interference with the right to respect for their private life and the right to protection of their personal data, the information should relate to the status of beneficial owners of corporate and other legal entities and of trusts and similar legal arrangements and should strictly concern the sphere of economic activity in which the beneficial owners operate (Recital 34 of the 5th AML Directive).

28. TI believes that the **amount of information required to be published is proportionate to the objectives pursued**. **Only part of the information collected by authorities is, in fact, put in the public domain**.

29. Furthermore, it should also be taken into consideration that, with the purpose of ensuring a proportionate and fair balance and guaranteeing the rights to private life and personal data protection, the EU legislator has introduced safeguards to the disclosure of, and access to, beneficial ownership information through the registers, in particular to redact information from the public domain on a case-by-case basis when public access to beneficial ownership information could put individuals at risk. In fact, the Directive stipulates that, when access by members of the general public to information on beneficial ownership would expose the beneficial owner to disproportionate risk, Member States could provide for exemptions to disclosure of information through beneficial ownership registers, specifically when such information would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. Member States may provide for an exemption from public access to all or part of the information on beneficial ownership on a case-by-case basis.

30. In addition, Member States shall ensure that these exemptions are granted upon detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. A Member State that grants exemptions shall publish annual statistical data on the number of exemptions granted and the reasons stated and shall report the data to the Commission. Furthermore, Member States might also require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information in the register. Transparency International believes that given these safeguards and limitations, **public beneficial ownership registers represent an option that is both effective and least intrusive**. They constitute not only a means of achieving the objectives of the public interest but also a necessary and proportionate measure to the legitimate aim of transparency and accountability. They also fall within the limit set out by the Court in Case C-491/01 *The Queen v Secretary of State for Health ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd* [2002] ECR I-11453 [123], which states that "the Community legislature must be allowed a broad discretion in an area [...], which entails political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. Consequently, the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue."

31. It is also worth noting that the possibility of granting access to any member of the public has been progressively introduced by the EU institutions to remedy the inadequacy of the system that did not provide for it. In fact, concerning the EU Anti-Money Laundering

legislative framework, the EU has progressively introduced substantial amendments to better equip the Union to prevent the financial system from being used for money laundering and for funding terrorist activities. Initially, information on the beneficial ownership of companies and trusts was accessible to competent authorities and obliged entities in view of facilitating the performance of their "customer due diligence obligations". In 2016, the Commission itself in putting forward the proposal to amend the Fourth Anti-Money Laundering Directive recognised that the Panama Papers, which exposed how complex ownership structures had been used to hide income and how offshore assets were often linked to criminal activities and tax obligations, demonstrated the need for enhanced transparency on the ultimate beneficial ownership of certain legal entities, and proposed also to provide public access to certain beneficial ownership information without the need to prove a legitimate interest to access the information.

32. Since it was introduced, public access has proved to be an effective tool in exposing illicit financial activity, and it has showed that openness makes it harder to hide criminal activities. TI has documented a list of cases where data from public beneficial ownership registers may have helped to uncover potential wrongdoing or launch investigations. For instance, in the case of Luxembourg, **beneficial ownership disclosure to the public has proven to be very effective**. Within a few months after the Register of Beneficial Owners was made available to the public, investigative journalists were able to find companies connected to the former head of Lebanon's central bank, who is under investigation for money laundering. Also, more recently, as part of the Open Lux project, it was revealed that politically exposed persons from Brazil and Venezuela, who have been under investigation by authorities for several years, were the beneficial owners of companies registered in Luxembourg. Authorities confirmed that this information was previously not known to them despite years of investigation, because Luxembourg previously did not record relevant information.

33. Thanks to public access to beneficial ownership information, civil society can play a dual role. On the one hand, as users of beneficial ownership data, civil actors can identify and expose conflicts of interest, potential corruption, tax evasion or other wrongdoing. In this respect, as an illustrative example, consider TI Czech Republic, which was able to detect a conflict of interest involving the then Czech prime minister by using information from public beneficial ownership registers in other countries. On the other hand, civil society can also play a role as advocates for improved transparency frameworks so that beneficial ownership data serve as a useful tool against financial crime. In this regard, as an illustrative example, consider Global Witness in the UK, which undertook an extensive review of the People with Significant Control (PSC) register and identified several inconsistencies in the data. The review prompted the UK government to propose changes to the register (A New Global Standard on Beneficial Ownership Transparency Response to FATF Consultation, Transparency International, 2021). For more examples, please refer to Annex 1, which contains a list of documents previously drafted by TI on the subject. Public authorities have the responsibility for investigating money laundering

and terrorist financing cases, while **public access is necessary for efficient prevention and detection of criminal acts**. Acting as strong deterrents, public registers can create an additional layer of protection for societies. Even if the Court should find that the broad access to the Beneficial Ownership Register granted to any member of the general public was contrary to Articles 7 and 8 of the EU Charter, it would not be possible to deny access to the information without assessing whether such a refusal by the authorities to provide non-governmental organisations with access to certain information containing personal data held by the State would not be contrary to the case law of the ECtHR (see for example judgments of the ECtHR in the following cases: *Centre for Democracy and the Rule of Law v. Ukraine* (no 10090/16), *Magyar Helsinki Bizottság v. Hungary* [GC], (no 18030/11), and *Youth Initiative for Human Rights v. Serbia* (no 48135/06).

34. **Public access to beneficial ownership information can lead to more investigations by public authorities**. This has been well demonstrated by the Panama Papers: since beneficial ownership information about companies created by Mossack Fonseca became public in April 2016, more than US$1.2bn [€1.11bn] has been recouped in 22 countries and investigations have been able to start in more than 82 countries, according to the International Consortium of Investigative Journalists.

D. Transparency International's position concerning the conformity of the provisions of the 5th AML Directive with Article 16 of the Charter and with the general principle of European law of protection of business secrecy

1. The referring court pointed out in relation to the alleged infringement of the freedom to conduct a business that "[t]he question referred for a preliminary ruling relating to the alleged infringement of the right to conduct a business therefore actually concerns the principle of proportionality referred to previously."
2. In the preceding paragraphs, TI has examined the principle of proportionality in the pertinent case and the same arguments apply to the questions of proportionality both in the alleged infringement of the freedom to conduct a business and in the allegedly unwarranted restriction of the right to personal data protection and the right to private life. Even though the claimants allege infringement of Article 16 concerning only the accessibility or confidentiality of beneficial ownership information, the above applied test would bring the same result to information regarding natural and legal persons. Moreover, the Charter provides weaker protection to the freedom to conduct a business and as the Grand Chamber of the Court held in Case C-283/11 *Sky Österreich GmbH v Österreichischer Rundfunk*, ECLI:EU:C:2013:28, para 46: "On the basis of that case-law and in the light of the wording of Article 16 of the Charter, […] the freedom to conduct a business *may be subject to a broad range of interventions* on the part of public authorities which may limit the exercise of economic activity in the public interest." (emphasis added)

3. Further to this, G-FINANCE and DV claim violation of Article 16 only in the context of business secrecy. Therefore the two questions of freedom to conduct a business and business secrecy will be analysed together.

4. The notion of business secrets is defined by the case law of the Court as follows: “Business secrets are information of which not only disclosure to the public but also mere transmission to a person other than the one that provided the information may seriously harm the latter's interests” (Case T-353/94 *Postbank v Commission* [2006] EU:T:1996:119, para 87). The applicants argue that “the disclosure of data relating to the beneficial owners of companies and therefore data relating to shareholders jeopardises *business secrecy*” (emphasis added), consequently such disclosure may seriously harm the interests of the beneficial owners.

5. Such a position can hardly be reconciled with the rationale of the Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, which was not challenged by the applicants, but which the Directive makes clear that it serves, among others, the purposes of ensuring “minimum equivalent protection for both shareholders and creditors of public limited liability companies” and “protection of third parties”, making it “possible for any interested person to acquaint oneself with the basic particulars of the company” (Recitals 3-5) through a broad range of obligations of disclosures, publications and access to company information.

6. The Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure also gives an explanation of business information (trade secrets) as follows: “Businesses and non-commercial research institutions invest in acquiring, developing and applying know-how and information which is the currency of the knowledge economy and provides a competitive advantage. This investment in generating and applying intellectual capital is a determining factor as regards their competitiveness and innovation-related performance in the market and therefore their returns on investment, which is the underlying motivation for business research and development” (Recital 1).

7. The opaque ownership structure of legal persons can be a competitive advantage and understood as a business secret, but it also carries the risk of undermining Articles 81 and 82 of the Treaty establishing the European Community because hidden beneficial owners may engage more easily in activities prohibited as incompatible with the common market. In many cases competitors, investors, creditors, the media and consumer protection organisations are first to detect the signs of prevention, restriction or distortion of competition within the common market, and with the help of beneficial ownership information they can trigger regulatory procedures, provided that any member of the general public has access to it. If only the competent authorities, financial intelligence units and obliged entities within the scope of the anti-money laundering directive(s) continued to have access to beneficial ownership information, it would be a

disservice to the cause of fair competition as those entities with very few exceptions do not have the relevant authority.

8. To sum up, TI believes that beneficial ownership information does not qualify as a business secret and in the event that the Court should find, contrary to this view, that it does, then on balance the public interest in fair competition within the common market and the prevention of tax evasion, money laundering and terrorism financing will still outweigh the restriction of the freedom to conduct a business and to do so in secrecy.

E. Transparency International's position concerning the conformity of provisions of the 5th AML Directive with Articles 20 and 21 of the Charter

1. As the settled case law of the Court shows, "equality before the law, set out in Article 20 of the Charter, is a general principle of EU law which requires that comparable situations should not be treated differently and that different situations should not be treated in the same way, unless such different treatment is objectively justified" (*NE v Bezirkshauptmannschaft Hartberg-Fürstenfeld* (C-205/20), (Grand Chamber), ECLI:EU:C:2022:168, para 54). The 5th AML Directive in its Recital 28 states in detail how "Member States should be able, under national law and in accordance with data protection rules, to determine the level of transparency with regard to trusts and similar legal arrangements that are not comparable to corporate and other legal entities" and elaborates that "the risks of money laundering and terrorist financing involved can differ, based on the characteristics of the type of trust or similar legal arrangement and the understanding of those risks can evolve over time, for instance as a result of the national and supranational risk assessments". Based on this, the lawmaker has drawn the conclusion that this is a "different situation" and has therefore treated it in a different way. For this reason, the applicants' claim that there is a violation of the principle of equality before the law does not seem to be well-founded.

2. Notwithstanding the above point, Transparency International shares the statement of the applicants "[s]ince trusts could also be used for the purposes of money laundering or terrorist financing, the difference in treatment as regards access to the registers is not justified" and disagrees with the 5th AML Directive's approach. However, TI comes to a conclusion diametrically opposed to the applicants' position: the beneficial ownership information of companies and other legal entities, on the one hand, and trusts and legal arrangements with a structure or functions similar to those of trusts, on the other hand, has to be accessible to the general public. There is no legitimate legal purpose that can exclusively be solved with opaque trusts, and the majority of Member States do not even have trusts or similar legal arrangements governed by their laws (Report from the Commission to the European Parliament and the Council assessing whether Member States have duly identified and made subject to the obligations of Directive (EU) 2015/849 all trusts and similar legal arrangements governed under their laws CR). TI believes that what we have laid out above concerning the principle of proportionality is also applicable to trusts and similar legal arrangements.

3. Article 21 of the Charter cannot be applied to legal persons as they do not have "sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation". The applicants did not claim discrimination based on nationality (Article 21, paragraph (2)).

F. Conclusion

In light of the above, TI hopes that the Court will rule that, even if the contested measure under the 5th AML Directive potentially interferes with the fundamental rights to private life and to the protection of privacy and personal data, granting public access to a limited set of information on beneficial owners is a necessary and proportionate measure that it has showed to be crucial to ensure more transparency in financial and economic activities and help in preventing and fighting money laundering and terrorist financing.

Respectfully submitted,

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Transparency International	Transparency International

Annex

Please find below a list of Transparency International's reports on beneficial ownership and the benefits of public access:

1. A New Global Standard on Beneficial Ownership Transparency, Transparency International, 2021. In particular, see Annex 2 which includes a list of cases where data from public beneficial ownership registers may have helped to uncover potential wrongdoing or launch investigations.
2. Access denied? Availability and accessibility of beneficial ownership data in the European Union, Adriana Fraiha Granjo and Maíra Martini, Transparency International, 2021.
3. Who is behind the wheel? Fixing the global standards on company ownership, Maíra Martini, Transparency International, 2019.