



## INFORMATION NOTE

A request from the Board of Appeal for Administrative Matters of the Principality of Liechtenstein (Beschwerdekommision für Verwaltungsangelegenheiten des Fürstentums Liechtenstein) was lodged on 6 February 2025, requesting the EFTA Court give an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. This request was registered as Case E-1/25 - *Valair AG v Amt für Volkswirtschaft (Amt für Hochbau und Raumplanung (AHR))* on 6 February 2025.

In the request for an advisory opinion, the Board of Appeal for Administrative Matters of the Principality of Liechtenstein sent the following questions to the EFTA Court;

1. *Does it follow from Article 4 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community or any other EEA provision that the competent licensing authority of a Member State may not impose any further conditions?*
2. *If the first question is answered with “no”: Is a provision according to which air operator certificates (AOC) and operating licences for flights carrying passengers, cargo and/or mail for remuneration and/or hire are only issued or granted if the intended activities are actually also possible on the basis of the infrastructure existing in Liechtenstein precluded by the objective of establishing an internal aviation market and/or other principles of EEA law?*
3. *If the second question is answered with “no”: Is Article 9(3) of the Liechtenstein Aviation Act which de facto excludes the issue or granting of air operator certificates (AOC) and operating licences for flights carrying passengers for remuneration and/or hire using fixed-wing aircraft due to the absence of an infrastructure in Liechtenstein, in the sense of airports or airfields, compatible with Article 36 of the EEA Agreement (freedom to provide services)?*

On 28 February 2025, in accordance with Article 20 of the Statute and Article 90(1) of the Rules of Procedure of the EFTA Court, the Governments of the EFTA States, the EFTA Surveillance Authority, the Union (which includes the Governments of the EU States), the European Commission and the parties to the dispute were invited to submit written observations to the Court on the referred questions within a two month deadline.

The Court received and registered written observations from:

Valair AG

The Government of Liechtenstein

The EFTA Surveillance Authority

The European Commission

The submitted suggested answers to the questions posed by the referring Court are as follows:

**Valair AG**

1. It follows from Article 4 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community or any other EEA provision that the competent licensing authority of a Member State may not impose any further conditions. Therefore questions 2 and 3 didn't have to be addressed.

2. If the first question is answered with no:

A provision according to which air operator certificates (AOC) and operating licences for flights carrying passengers, cargo and/or mail for remuneration and/or hire are only issued or granted if the intended activities are actually also possible on the basis of the infrastructure existing in Liechtenstein are precluded by the objective of establishing an internal aviation market and other principles of EEA law.

3. If the second question is answered with no:

Article 9 (3) of the Liechtenstein Aviation Act de facto excludes the issue or granting of air operator certificates (AOC) and operating licences for flights carrying passengers for remuneration and/or hire using fixed-wing aircraft due to the absence of an infrastructure in Liechtenstein, in the sense of airports or airfields, is not compatible with Article 36 of the EEA Agreement (freedom to provide services).

### **The Government of Liechtenstein**

1. The condition that the necessary infrastructure for air transport services is actually in place may be required by Liechtenstein, as this is the only way for the regulatory framework to function efficiently as intended by the Contracting Parties to the EEA Agreement. The existence of relevant infrastructure is thus no 'further condition' but rather an integral component of the aviation framework itself. Consequently, any attempt to apply the Regulation in a context where the infrastructure is absent would undermine the regulation's objectives.
2. A provision according to which operating licences for flights carrying passengers, cargo and/or mail for remuneration and/or hire are issued or granted only if the intended activities are actually possible on the basis of the infrastructure existing in Liechtenstein is not precluded by the objective of establishing an internal aviation market and/or other principles of EEA law.
3. Article 9(3) of the Liechtenstein Aviation Act, which de facto excludes the issuing or granting of operating licences for flights carrying passengers for remuneration and/or hire using fixed-wing aircraft due to the lack of an infrastructure in Liechtenstein, in the sense of airports or airfields, is compatible with Article 36 of the EEA Agreement (freedom to provide Services).

## **The EFTA Surveillance Authority**

1. The conditions for granting an operating licence set out in Article 4 of Regulation (EC) No 1008/2008, as incorporated into the EEA Agreement, are exhaustive. The competent licensing authority may not impose any further conditions.
2. In a situation, such as in the present case, where the Joint Committee Decision does not include an adaptation, an EFTA State cannot unilaterally decide to implement Regulation (EC) No 1008/2008 in a manner that would require an adaptation. Furthermore, a bilateral international agreement, such as the Exchange of Notes between Switzerland and Liechtenstein on cooperation between the Swiss and Liechtenstein authorities in the field of civil aviation, cannot affect the obligation of an EEA State to comply with EEA law.
3. Where a matter is regulated in a harmonised manner at EEA level, in this case by Article 4 of Regulation (EC) No 1008/2008, a national measure which concerns such a harmonised matter must be assessed in the light of the provisions of the harmonising measure and not those of primary EEA law.

## **The European Commission**

Article 4 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24th September 2008 on common rules for the operation of air services in the Community should be interpreted as containing an exhaustive list of the conditions for the grant of an operating licence. The competent licensing authority is accordingly precluded from imposing additional conditions such as those at issue in the present proceedings.

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The public hearing of the Court in Case E-1/25 - Valair AG v Amt für Volkswirtschaft (*Amt für Hochbau und Raumplanung (AHR)*), has been set for: **Wednesday 4 June at 9:30am** at the EFTA Court (1 rue du Fort Thüngen, L-1499, Luxembourg). The hearing will also be livestreamed on the Court's website, [here](#).

Luxembourg, 12 May 2025

Ólafur Jóhannes Einarsson

Registrar