



REPORT FOR THE HEARING

in Case E-12/22

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 Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*), in the case of

Dr Maximilian Maier,

concerning the interpretation of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

I Introduction

1. By letter of 26 September 2022, registered at the Court on 30 September 2022, the Administrative Court of the Principality of Liechtenstein made a request for 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 (“SCA”), in the case pending before it concerning Dr Maximilian Maier, *Rechtsanwalt*.
2. Dr Maier is an Austrian national, resides in Austria, and is an Austrian lawyer. Dr Maier was entered by the Chamber of Lawyers (*Liechtensteinische Rechtsanwaltskammer*) in the register of European lawyers established in Liechtenstein. The case referred concerns the eligibility of Dr Maier to assume the legal aid mandates of other Liechtenstein lawyers, including acting as a substitute. It is disputed whether the Chamber of Lawyers’ order, made on the basis of Article 62(2)(c) of the Lawyers Act of 8 November 2013 (*Rechtsanwaltsgesetz*), Liechtenstein State Gazette (*Liechtensteinisches Landesgesetzblatt*) 2013 No 415 (“the Lawyers Act”), prohibiting Dr Maier from assuming a mandate in the context of legal aid or assuming such mandates as a substitute, is lawful.
3. The Administrative Court requests an advisory opinion on the scope of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (“Directive 98/5/EC” or “the Directive”), and, specifically, whether the Directive precludes a national provision such as Article 62(2)(c) of the Lawyers Act.

II Legal background

EEA law

4. Article 4 of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) reads:

Within the scope of application of this Agreement, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

5. Article 28 EEA reads:

1. Freedom of movement for workers shall be secured among EC Member States and EFTA States.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of EC Member States and EFTA States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of EC Member States and EFTA States for this purpose;

(c) to stay in the territory of an EC Member State or an EFTA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of an EC Member State or an EFTA State after having been employed there.

4. The provisions of this Article shall not apply to employment in the public service.

5. Annex V contains specific provisions on the free movement of workers.

6. Article 31 EEA reads:

1. Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these

States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.

2. Annexes VIII to XI contain specific provisions on the right of establishment.

7. Article 33 EEA reads:

The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

8. Article 36 EEA reads:

1. Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended.

2. Annexes IX to XI contain specific provisions on the freedom to provide services.

9. Article 37 EEA reads:

Services shall be considered to be 'services' within the meaning of this Agreement where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

'Services' shall in particular include:

- (a) activities of an industrial character;*
- (b) activities of a commercial character;*
- (c) activities of craftsmen;*

(d) activities of the professions.

Without prejudice to the provisions of Chapter 2, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

10. Directive 98/5/EC (OJ 1998 L 77, p. 36) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 85/2002 of 25 June 2002 (OJ 2002 L 266, p. 50) and was inserted as point 2a of Annex VII (Mutual recognition of professional qualifications) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. Constitutional requirements were fulfilled by Iceland by 23 December 2002, and by Liechtenstein by 9 January 2003. The decision entered into force on 1 March 2003.

11. Recital 1 of the Directive reads:

Whereas, pursuant to Article 7a of the Treaty, the internal market is to comprise an area without internal frontiers; whereas, pursuant to Article 3(c) of the Treaty, the abolition, as between Member States, of obstacles to freedom of movement for persons and services constitutes one of the objectives of the Community; whereas, for nationals of the Member States, this means among other things the possibility of practising a profession, whether in a self-employed or a salaried capacity, in a Member State other than that in which they obtained their professional qualifications;

12. Recital 6 of the Directive reads:

Whereas action is also justified at Community level because only a few Member States already permit in their territory the pursuit of activities of lawyers, otherwise than by way of provision of services, by lawyers from other Member States practising under their home-country professional titles; whereas, however, in the Member States where this possibility exists, the practical details concerning, for example, the area of activity and the obligation to register with the competent authorities differ considerably; whereas such a diversity of situations leads to inequalities and distortions in competition between lawyers from the Member States and constitutes an obstacle to freedom of movement; whereas only a directive laying down the conditions governing practice of the profession, otherwise than by way of provision of services, by lawyers practising under their home-country professional titles is capable of resolving these difficulties and of affording the same opportunities to lawyers and consumers of legal services in all Member States;

13. Recital 9 of the Directive reads:

Whereas lawyers who are not integrated into the profession in the host Member State should practise in that State under their home-country professional titles so as to ensure that consumers are properly informed and to distinguish between such lawyers and lawyers from the host Member State practising under the professional title used there;

14. Recital 10 of the Directive reads:

Whereas lawyers covered by this Directive should be permitted to give legal advice in particular on the law of their home Member States, on Community law, on international law and on the law of the host Member State; whereas this is already allowed as regards the provision of services under Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services; whereas, however, provision should be made, as in Directive 77/249/EEC, for the option of excluding from the activities of lawyers practising under their home-country professional titles in the United Kingdom and Ireland the preparation of certain formal documents in the conveyancing and probate spheres; whereas this Directive in no way affects the provisions under which, in every Member State, certain activities are reserved for professions other than the legal profession; whereas the provision in Directive 77/249/EEC concerning the possibility of the host Member State to require a lawyer practising under his home-country professional title to work in conjunction with a local lawyer when representing or defending a client in legal proceedings should also be incorporated in this Directive; whereas that requirement must be interpreted in the light of the case law of the Court of Justice of the European Communities, in particular its judgment of 25 February 1988 in Case 427/85, Commission v. Germany;

15. Article 1(1) of the Directive, entitled “Object, scope and definitions”, reads:

The purpose of this Directive is to facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained.

16. Article 2 of the Directive, entitled “Right to practise under the home-country professional title”, reads:

Any lawyer shall be entitled to pursue on a permanent basis, in any other Member State under his home-country professional title, the activities specified in Article 5.

Integration into the profession of lawyer in the host Member State shall be subject to Article 10.

17. Paragraphs 1 and 2 of Article 3 of the Directive, entitled “Registration with the competent authority”, read:

1. A lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification shall register with the competent authority in that State.

2. The competent authority in the host Member State shall register the lawyer upon presentation of a certificate attesting to his registration with the competent authority in the home Member State. It may require that, when presented by the competent authority of the home Member State, the certificate be not more than three months old. It shall inform the competent authority in the home Member State of the registration.

18. Article 4 of the Directive, entitled “Practice under the home-country professional title”, reads:

1. A lawyer practising in a host Member State under his home-country professional title shall do so under that title, which must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State.

2. For the purpose of applying paragraph 1, a host Member State may require a lawyer practising under his home-country professional title to indicate the professional body of which he is a member in his home Member State or the judicial authority before which he is entitled to practise pursuant to the laws of his home Member State. A host Member State may also require a lawyer practising under his home-country professional title to include a reference to his registration with the competent authority in that State.

19. Article 5 of the Directive, entitled “Area of activity”, reads:

1. Subject to paragraphs 2 and 3, a lawyer practising under his home-country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, inter alia, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. He shall in any event comply with the rules of procedure applicable in the national courts.

2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.

3. For the pursuit of activities relating to the representation or defence of a client in legal proceedings and insofar as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State, the latter may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an 'avoué' practising before it.

Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.

20. Article 6 of the Directive, entitled "Rules of professional conduct applicable", reads:

1. Irrespective of the rules of professional conduct to which he is subject in his home Member State, a lawyer practising under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the host Member State in respect of all the activities he pursues in its territory.

2. Lawyers practising under their home-country professional titles shall be granted appropriate representation in the professional associations of the host Member State. Such representation shall involve at least the right to vote in elections to those associations' governing bodies.

3. The host Member State may require a lawyer practising under his home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that State lays down for professional activities pursued in its territory. Nevertheless, a lawyer practising under his home-country professional title shall be exempted from that requirement if he can prove that he is covered by insurance taken out or a guarantee provided in accordance with the rules of his home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the competent authority in the host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the home Member State.

21. Article 10 of the Directive, entitled "Like treatment as a lawyer of the host Member State", reads:

1. A lawyer practising under his home-country professional title who has effectively and regularly pursued for a period of at least three years an activity in the host Member State in the law of that State including Community

law shall, with a view to gaining admission to the profession of lawyer in the host Member State, be exempted from the conditions set out in Article 4(1)(b) of Directive 89/48/EEC, 'Effective and regular pursuit' means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

It shall be for the lawyer concerned to furnish the competent authority in the host Member State with proof of such effective regular pursuit for a period of at least three years of an activity in the law of the host Member State. To that end:

(a) the lawyer shall provide the competent authority in the host Member State with any relevant information and documentation, notably on the number of matters he has dealt with and their nature;

(b) the competent authority of the host Member State may verify the effective and regular nature of the activity pursued and may, if need be, request the lawyer to provide, orally or in writing, clarification of or further details on the information and documentation mentioned in point (a).

Reasons shall be given for a decision by the competent authority in the host Member State not to grant an exemption where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

2. A lawyer practising under his home-country professional title in a host Member State may, at any time, apply to have his diploma recognised in accordance with Directive 89/48/EEC with a view to gaining admission to the profession of lawyer in the host Member State and practising it under the professional title corresponding to the profession in that Member State.

3. A lawyer practising under his home-country professional title who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years but for a lesser period in the law of that Member State may obtain from the competent authority of that State admission to the profession of lawyer in the host Member State and the right to practise it under the professional title corresponding to the profession in that Member State, without having to meet the conditions referred to in Article 4(1)(b) of Directive 89/48/EEC, under the conditions and in accordance with the procedures set out below:

(a) The competent authority of the host Member State shall take into account the effective and regular professional activity pursued during the abovementioned period and any knowledge and professional experience of the law of the host Member State, and any attendance at lectures or

seminars on the law of the host Member State, including the rules regulating professional practice and conduct.

(b) The lawyer shall provide the competent authority of the host Member State with any relevant information and documentation, in particular on the matters he has dealt with. Assessment of the lawyer's effective and regular activity in the host Member State and assessment of his capacity to continue the activity he has pursued there shall be carried out by means of an interview with the competent authority of the host Member State in order to verify the regular and effective nature of the activity pursued.

Reasons shall be given for a decision by the competent authority in the host Member State not to grant authorisation where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

4. The competent authority of the host Member State may, by reasoned decision subject to appeal under domestic law, refuse to allow the lawyer the benefit of the provisions of this Article if it considers that this would be against public policy, in a particular because of disciplinary proceedings, complaints or incidents of any kind.

5. The representatives of the competent authority entrusted with consideration of the application shall preserve the confidentiality of any information received.

6. A lawyer who gains admission to the profession of lawyer in the host Member State in accordance with paragraphs 1, 2 and 3 shall be entitled to use his home-country professional title, expressed in the official language or one of the official languages of his home Member State, alongside the professional title corresponding to the profession of lawyer in the host Member State.

European Convention on Human Rights

22. Article 6 of the European Convention on Human Rights (“ECHR”), entitled “Right to fair trial” reads, in extract:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

3. *Everyone charged with a criminal offence has the following minimum rights:*

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

...

*National law*¹

23. Article 1 of the Lawyers Act, entitled “Object and purpose”, reads, in extract:

1) The present Act shall regulate the admission to the lawyer’s profession as well as the practice of the lawyer’s profession in Liechtenstein.

2) It shall in particular transpose:

...

b) the Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (EEA compendium of laws: Annex VII - 2a.01);

...

24. Article 3 of the Lawyers Act, entitled “Requirements to practise the lawyer’s profession”, reads, in extract:

1) No person shall be allowed to practise the lawyer’s profession, unless such person meets the requirements listed in paragraph 2 and has been entered in the register of Liechtenstein lawyers (register of lawyers).

2) The requirements pursuant to paragraph 1 shall be:

...

c) Liechtenstein citizenship or citizenship of another State that is a party to the Agreement on the European Economic Area (EEA) or a State deemed to be equivalent thereto under international treaties;

¹ All translations of national law are unofficial.

d) the successful taking of the bar exam (Rechtsanwaltsprüfung) or the aptitude test, or the exercise of an effective and regular activity for three years as provided for in Art. 74 et seqq.;

...

4) The documents as provided for in Annex VII of the Directive 2005/36/EC shall be equivalent to the evidence provided for in paragraph 2.

25. Article 21 of the Lawyers Act, entitled “Substitution”, reads:

1) If lawyers are prevented from performing their function, they may be substituted by another lawyer. In this process, their statutory liability shall be maintained.

2) If lawyers are permanently prevented from performing their function or if they are absent for a longer period of time, the Chamber of Lawyers shall be informed of the substitution, and the Chamber of Lawyers shall also inform the courts and administrative agencies thereof.

26. Article 28 of the Lawyers Act, entitled “Appointment of a lawyer”, reads:

1) If the court has decided to provide a lawyer, or if the grant of legal aid implicates any such provision, the party concerned shall be entitled to the appointment of a lawyer by the Chamber of Lawyers.

2) The board of the Chamber of Lawyers shall rely on fixed rules for the appointment; these shall ensure that the assignment of lawyers with membership in the Chamber of Lawyers to cases, and the distribution of their workload, is made as equally as possible.

27. Article 29 of the Lawyers Act, entitled “Acceptance of the case and grounds for refusal”, reads:

1) Lawyers appointed in accordance with Art. 28 shall accept the representation or defence of a party in line with the decision on their appointment and act in this regard with the same care as a freely chosen lawyer.

2) They shall have the right to refuse the acceptance of the case for important reasons or to demand the early dismissal as a lawyer appointed pursuant to Art. 28. Important reasons shall include in particular:

a) a conflict of interests;

b) a serious breakdown of the relationship of trust, if any such breakdown is asserted both by the party and by the appointed lawyer.

3) The board of the Chamber of Lawyers shall decide whether any of the important reasons set out in paragraph 2 applies.

28. Chapter III of the Lawyers Act deals with the establishment of lawyers from the EEA in Liechtenstein. Article 59 of the Lawyers Act, entitled “Basic principle”, reads:

1) Nationals of a State which is a party to the Agreement on the European Economic Area (EEA) who are authorised in their home State to practise the lawyer’s profession under any of the professional titles listed in the Annex to this Act, may establish themselves on domestic territory to practise the lawyer’s profession, provided that they are entered in the register of established European lawyers (established European lawyers) upon application.

2) Apart from the rules of ethical conduct applicable in the home State, the established European lawyer shall, with regard to all activities that he or she exercises on domestic territory, be subject to the same rules of professional and ethical conduct as the domestic lawyers.

3) Nationals from other States may also establish themselves on domestic territory for the purposes of paragraphs 1 and 2 to practise the lawyer’s profession, provided that an international treaty to this effect has been entered into with these States. Art. 65 shall be excepted from this.

29. Article 60 of the Lawyers Act, entitled “Entry in the register of established European lawyers”, reads:

1) The Chamber of Lawyers shall decide on the application for entry in the register of the established European lawyers. The applicant shall furnish evidence of the following:

a) a certificate to the effect that he or she is a member of this profession, issued by the authority competent in the home State. The Chamber of Lawyers may demand that the certificate should not be older than three months upon its submission;

b) the fulfilment of the requirements referred to in Art. 3 paragraph 2 subparagraphs a to c, f and g.

2) The application and the documents to be attached thereto shall, insofar as they originate from the applicant, be filed in German. The other documents shall be submitted with an officially certified translation, if they are worded in a language other than German.

3) The Chamber of Lawyers shall conduct the necessary enquiries and, if the entry is to be refused, it shall hear the applicant beforehand.

4) *The applicant shall receive a certificate evidencing that the entry has been made.*

30. Article 62 of the Lawyers Act, entitled “Professional status”, reads:

1) *Except as provided otherwise, the established European lawyer shall be authorised to engage in the same professional activities as any lawyer entered in the register of lawyers.*

2) *An established European lawyer shall have the status of a lawyer entered in the register of lawyers. However, he or she is not authorised:*

(a) to be elected as an officer of the Chamber of Lawyers;

(b) to train trainee lawyers;

(c) to be appointed as a legal aid lawyer, legal aid defence counsel or ex officio defence counsel.

31. Article 63 of the Lawyers Act, entitled “Domestic lawyer acting in conjunction with the established European lawyer (*Einvernehmensrechtsanwalt*)”, reads:

1) *In proceedings in which the party must be represented by a lawyer or in which a defence counsel is mandatory, an established European lawyer may act as representative or defence counsel of a party only in conjunction with a lawyer entered in the register of lawyers (*Einvernehmensrechtsanwalt* - domestic lawyer acting in conjunction with the established European lawyer). That lawyer must ensure that the established European lawyer will observe the requirements of proper administration of justice in the course of the representation or defence. Unless agreed otherwise by the parties involved, no contractual relationship shall be established between the domestic lawyer acting in conjunction with the established European lawyer and the party.*

2) *Proof of work in conjunction with each other shall be furnished to the court or the administrative agency in writing when the first procedural act is taken. The court or the administrative agency shall be informed of any revocation of the work in conjunction in writing. It shall have effect only for the future. Procedural acts for which no evidence of work in conjunction has been furnished at the time when such acts are taken shall not be deemed to have been taken by a lawyer. The domestic lawyer acting in conjunction with the established European lawyer shall inform the Chamber of Lawyers in writing both of the fact that work in conjunction has been established and of the fact that such work in conjunction may have been revoked.*

III Facts and procedure

32. Dr Maier is an Austrian national residing in Austria. He is a lawyer entered in the register of lawyers in Vorarlberg, Austria.

33. On 8 May 2021, Dr Maier requested to be entered in the register of established European lawyers in Liechtenstein. On 7 June 2021, Dr Maier was registered by the Chamber of Lawyers in that register. Dr Maier has a law office within Liechtenstein.

34. On 5 April 2022, following a dispute between Dr Maier and the Chamber of Lawyers, in particular whether he was authorised to assume the mandates of other Liechtenstein lawyers in the context of legal aid, the Chamber of Lawyers ordered, on the basis of Article 62(2)(c) of the Lawyers Act, that Dr Maier as an established European lawyer is not authorised to accept mandates in the context of legal aid or to assume such mandates as a substitute.

35. Dr Maier appealed the Chamber of Lawyers' order to the Liechtenstein Government. In its decision dated 29 June 2022, the Liechtenstein Government dismissed Dr Maier's appeal. Dr Maier brought an appeal against that decision to the Administrative Court.

36. According to the referring court, pursuant to Liechtenstein procedural law the courts may grant legal aid to any individual who is unable to pay the costs of the proceedings, whether they are civil, criminal, administrative or constitutional law proceedings, and provide them with a lawyer as legal aid (legal aid lawyer, legal aid defence counsel, ex officio defence counsel). The costs of the legal aid lawyer (notably their fee) are, at least temporarily, assumed by the State and paid directly to the legal aid lawyer.

37. According to the referring court, Liechtenstein law distinguishes between acting as a lawyer's representative and his substitute. A lawyer's representative is an agent of the lawyer. He does not act independently. Furthermore, the lawyer is required to duly select, instruct and monitor the representative. In contrast, the substitute replaces rather than represents the lawyer. Consequently, the substitute acts independently. The substituted lawyer is only responsible for the proper selection of a substitute. The assignment of legal aid mandates by the courts, that is to say appointment as a legal aid lawyer, legal aid defence counsel or ex officio defence counsel, can be financially attractive as the lawyer appointed is paid by Liechtenstein, even though the tariff is fixed. Acting as a substitute for a lawyer appointed by the court as a legal aid lawyer can also be financially attractive if the substituted lawyer and his substitute reach an appropriate financial agreement.

38. In this respect, according to the referring court, the prohibition in Article 62(2)(c) of the Lawyers Act hinders European lawyers established in Liechtenstein from freely pursuing their profession and does not appear to be based on the Directive. Therefore, the referring court questions whether the freedoms guaranteed by the EEA Agreement

and the Directive can be restricted beyond the Directive's wording in Article 62(2)(c) of the Lawyers Act for public interest reasons.

39. On 23 September 2022, the Administrative Court decided in a closed session to stay proceedings and to request an Advisory Opinion from the Court. The request, dated 26 September 2022, was registered at the Court on 30 September 2022. The Administrative Court has submitted the following question to the Court:

Is a national provision, according to which a lawyer, who normally practises his profession in a Member State other than the one in which he obtained his qualification, is not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or public defender, compatible with Directive 98/5/EC?

IV Written observations

40. Pursuant to Article 20 of the Statute of the Court and Article 90(1) of the Rules of Procedure, written observations have been received from:

- the applicant in the main proceedings, Dr Maximilian Maier;
- the Liechtenstein Government, represented by Dr Andrea Entner-Koch, Romina Schobel, and Alissa Ender, acting as Agents;
- the Austrian Government, represented by Dr Albert Posch, Dr Julia Schmoll, and Dr Elizaveta Samoilova, acting as Agents;
- the EFTA Surveillance Authority ("ESA"), represented by Marte Brathovde, Erlend Møinichen Leonhardsen, Michael Sánchez Rydelski, and Melpo-Menie Joséphidès, acting as Agents;
- the European Commission ("the Commission"), represented by Lorna Armati and Mislav Mataija, acting as Agents.

V Proposed answers submitted

Dr Maier

41. Dr Maier proposes that the question referred should be answered as follows:

A national measure according to which a lawyer, who normally practices his profession in a Member State other than the one in which he obtained his qualification, is not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or ex officio defence counsel, is not compatible with Directive 98/5/EC.

The Liechtenstein Government

42. The Liechtenstein Government considers that the question referred should be answered as follows:

The national provision according to which a lawyer, who normally practices the profession in a Member State other than the one in which the qualification is obtained, shall not be authorised to be appointed as legal aid lawyer, legal aid defence council or ex officio defence council, is compliant with Directive 98/5/EC and EEA law.

The Austrian Government

43. The Austrian Government proposes that the question referred be answered as follows:

Directive 98/5/EC and Article 31 of the EEA Agreement must be interpreted as not precluding a national provision which bars European lawyers who have not yet achieved full equality with lawyers of the host Member State from being eligible to be appointed as legal aid representatives.

ESA

44. ESA requests the Court to answer the question referred as follows:

Directive 98/5/EC must be interpreted as precluding a national provision, according to which a lawyer, who normally practices their profession in an EEA State other than the one in which they obtained their qualifications, is not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or public defender.

The Commission

45. The Commission proposes that the question referred should be answered as follows:

In the circumstances of the present case, Directive 98/5 must be interpreted as precluding a national provision such as the one under examination, which provides that a lawyer practising his profession in an EEA State other than that in which he obtained his qualification may not be appointed, as part of judicial assistance, to act for a party to whom legal aid has been granted.

Bernd Hammermann
Judge-Rapporteur