

EFTA COURT

Action brought on 29 July 2015 by the EFTA Surveillance Authority against the Principality of Liechtenstein

(Case E-19/15)

An action against the Principality of Liechtenstein was brought before the EFTA Court on 29 July 2015 by the EFTA Surveillance Authority, represented by Markus Schneider, Clémence Perrin and Marlene Lie Hakkebo, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, B-1040 Brussels.

The EFTA Surveillance Authority requests the EFTA Court to:

- 1. Declare that the Principality of Liechtenstein has breached its obligations arising from Articles 9, 10, 13 and 16 of the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market), as adapted to the EEA Agreement by Protocol 1 thereto, and, to the extent that establishments and the provisions of cross-border services fall outside the scope of that Act, its obligations arising from Articles 31 and 36 of the EEA Agreement:**
 - (a) by maintaining in force Article 7 of the Liechtenstein Trade Act which sets up a prior authorisation scheme for undertakings intending to establish themselves in Liechtenstein; and,**
 - (b) by maintaining in force Article 8(1) of the Liechtenstein Trade Act in so far as it imposes conditions that are not clear and unambiguous for granting prior authorisation for undertakings intending to establish themselves in Liechtenstein (namely the obligation to have the necessary personnel and the obligation to have an adequate command of the German language); and,**
 - (c) by failing to ensure that requirements which are equivalent or essentially comparable as regards their purpose to which the service provider is already subject in another EEA State or in the same EEA State in the procedure for prior authorisation for undertakings wishing to establish themselves in Liechtenstein are not duplicated and that the procedure and formalities concerning the authorisation scheme under the Trade Act is clearly laid down; and,**
 - (d) by maintaining in force Article 21 of the Liechtenstein Trade Act which sets up a prior authorisation scheme for undertakings wishing to provide cross-border services in Liechtenstein; and**

2. Order the Principality of Liechtenstein to bear the costs of the proceedings.

Legal and factual background and pleas in law adduced in support:

- The application concerns the requirements under the Act of 22 June 2006 on trade and commerce (the “Trade Act”) – namely Articles 7 and 21 – for undertakings wishing to establish themselves or to provide cross-border services in Liechtenstein to be approved by the national authorities prior to the establishment or the provision of cross-border services.
- The EFTA Surveillance Authority submits *inter alia* that such requirements amount to authorisation schemes that cannot be justified under Article 9 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (the “Services Directive”), in the case of establishments, and Article 16 of the Services Directive in the case of provisions of cross-border services.
- The EFTA Surveillance Authority submits that also Article 21 of the Liechtenstein Trade Act, which requires undertakings wishing to provide cross-border services in Liechtenstein to notify the Liechtenstein authorities in writing before doing so, and to annually renew such a notification, amounts to an authorisation scheme breaching Article 16 of the Services Directive.
- According to the submissions by the EFTA Surveillance Authority, Liechtenstein claims that, in principle, its prior authorisation schemes are in line with the Services Directive since they can be justified under its Articles 9 and 16 or, alternatively, Article 33 of the EEA Agreement (or overriding reasons relating to public interest developed under this Article).