



## JUDGMENT OF THE COURT

5 December 2001

*(Failure by a Contracting Party to fulfil its obligations - Council Directive 87/344/EEC on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance)*

In Case E-5/01,

**EFTA Surveillance Authority**, represented by Peter Dyrberg, Director, Legal and Executive Affairs, acting as Agent, 74 Rue de Trèves, Brussels,

*applicant,*

v

**The Principality of Liechtenstein**, represented by Christop Büchel, Director, and Beatrice Hilti, Deputy Director, EEA Coordination Unit, acting as Agents, FL-9490, Vaduz,

*defendant,*

APPLICATION for a declaration that, by failing to adopt, within the time-limit prescribed, the national provisions necessary to comply with Articles 3(1), 4, 6 and 7, read in conjunction with Article 2, of the Act referred to in point 6 of Annex IX to the EEA Agreement, i.e. Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance, as adapted by way of Protocol 1 to the EEA Agreement, the Principality of Liechtenstein has failed to fulfil its obligations under Article 10 of the Directive and Article 7 of the EEA Agreement.

THE COURT,

composed of: Thór Vilhjálmsson (Judge-Rapporteur), President, Carl Baudenbacher and Per Tresselt, Judges,

Registrar: Lucien Dedichen

having regard to the application and written pleadings of the parties

gives the following

**Judgment**

- 1 By application lodged at the Court Registry on 27 April 2001, the EFTA Surveillance Authority submitted, pursuant to the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter the “ESA/Court Agreement”), an application for declaration that, by failing to adopt within the time-limit prescribed, the national provisions necessary to comply with Articles 3(1), 4, 6 and 7 of the Act referred to in point 6 of Annex IX to the EEA Agreement, i.e. Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance (1987 OJ L 185, p. 77, hereinafter the “Directive”), as adapted by way of Protocol 1 to the EEA Agreement, the Principality of Liechtenstein has failed to fulfil its obligations under Article 10 of the Directive and Article 7 EEA.
- 2 In its application, the EFTA Surveillance Authority refers specifically to Articles 3 (1), 4, 5 and 7 of the Directive, and submits that the Principality of Liechtenstein has failed to implement those provisions within the prescribed time-limit. It also submits that it follows from Article 10 of the Directive, as adapted, that the Principality of Liechtenstein was to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 1 May 1995, and to inform the EFTA Surveillance Authority forthwith of the measures taken to that end.
- 3 The EFTA Surveillance Authority argues that the failure to do so amounts to a violation of Article 10 of the Directive and Article 7 EEA.
- 4 The EFTA Surveillance Authority and the Government of Liechtenstein have consented to the oral procedure being dispensed with.

## Facts and procedure

- 5 By letter of 7 August 1995, the Government of Liechtenstein notified the EFTA Surveillance Authority of the national measures considered to ensure partial implementation of the Directive. Reference was made to the *Personen- und Geschellschaftsrecht vom 20 Januar 1926 LGBL. 1926 Nr. 4* (Persons and Companies Act of 20 January 1926). It was also stated that further notification of implementing measures was envisaged. By letter of 10 January 1997, the Government of Liechtenstein notified the EFTA Surveillance Authority of further measures considered to ensure partial implementation of the Directive, namely, the *Gesetz vom 6. Dezember 1995 betreffend die Aufsicht über Versicherungsunternehmen LGBL. 1996 Nr. 23* (Act of 6 December 1995 on the Supervision of Insurance Undertakings) and the *Verordnung vom 1. Oktober 1996 zum Gesetz betreffend die Aufsicht über Versicherungsunternehmen LGBL. 1996 Nr. 41* (Ordinance of 1 October 1996 concerning the Supervision of Insurance Undertakings). Again, it was stated that further notification of implementing measures was envisaged.
- 6 In the absence of any further notifications from the Government of Liechtenstein regarding implementing measures, on 9 April 1997 the EFTA Surveillance Authority decided to initiate proceedings under Article 31 of the ESA/Court Agreement. On 21 April 1997, a letter of formal notice was sent to the Government of Liechtenstein, stating that the Principality of Liechtenstein had failed to take the measures necessary to comply with the Directive, and inviting the Government of Liechtenstein to submit its observations on the matter within two months of receipt.
- 7 By letter of 7 July 1997, the Government of Liechtenstein informed the EFTA Surveillance Authority that a full implementation of the Directive was planned for the autumn of 1997, when the Insurance Contract Act would be adopted. By letter of 27 November 1997, the Government of Liechtenstein informed the EFTA Surveillance Authority that the Insurance Contract Act was expected to be adopted in March 1998, and to enter into force in the summer of 1998.
- 8 In the absence of any subsequent information from the Government of Liechtenstein regarding the implementation of the Directive, on 15 April 1998 the EFTA Surveillance Authority delivered a reasoned opinion in which it concluded that, by failing to take the measures necessary to comply with Articles 3 (1), 4, 6 and 7, read in conjunction with Article 2 of the Directive, the Principality of Liechtenstein had failed to fulfil its obligations under Article 10 of the Directive and Article 7 EEA. The Government of Liechtenstein was requested to take the measures necessary to comply with the reasoned opinion within two months following notification thereof. That time-limit for compliance expired on 15 June 1998.
- 9 By letter of 19 June 1998, the Government of Liechtenstein provided its observations on the reasoned opinion, and stated that the Insurance Contract Act, by which the aforementioned provisions of the Directive would be implemented,

was expected to be adopted in the beginning of 1999. By letter of 15 February 1999, the Government of Liechtenstein again informed the EFTA Surveillance Authority that the necessary measures would enter into force in the fourth quarter of 1999. Lastly, by a letter of 18 May 2000, the Government of Liechtenstein informed the EFTA Surveillance Authority that the Insurance Contract Act was expected to be adopted in the autumn of 2000, and to enter into force by the end of 2000 at the latest.

- 10 Since the EFTA Surveillance Authority has received no further information that would allow it to conclude that the Principality of Liechtenstein has taken the measures necessary to ensure compliance with the Directive, the present application was brought before the Court.

### **Law**

- 11 The application of the EFTA Surveillance Authority is based on one plea of law, viz. that, by failing to adopt, within the prescribed time-limit, the national measures necessary to comply with Articles 3(1), 4, 6 and 7 of the Directive, the Principality of Liechtenstein has failed to fulfil its obligations under Article 10 of the Directive and Article 7 EEA.
- 12 The time-limit for the Principality of Liechtenstein to take the measures necessary to comply with the Directive expired on 1 May 1995. In the light of that, and the above description of the facts and procedure, the EFTA Surveillance Authority asks the EFTA Court to grant the application and to order the Principality of Liechtenstein to bear the costs of the proceedings.
- 13 In its statement of defence, the Government of Liechtenstein describes the reasons for the delay in adopting the Insurance Contract Act, which, in its submission, would bring about the full implementation in Liechtenstein of the Directive. It does not, however, dispute the order sought by the EFTA Surveillance Authority. As to costs, the Government of Liechtenstein asks that the Court order each party to bear its own costs of the proceedings.
- 14 The Court notes that the Principality of Liechtenstein was obliged to adopt national provisions necessary to comply with the Directive not later than 1 May 1995. On 15 June 1998, the date on which the time-limit given in the reasoned opinion of the EFTA Surveillance Authority expired, the Principality of Liechtenstein had still not adopted national measures necessary to comply with the reasoned opinion.
- 15 The Court notes that Article 3 EEA imposes upon the Contracting Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EEA Agreement (see Judgment of the EFTA Court in Case E-10/97 *EFTA Surveillance Authority v Norway* [1998] EFTA Court Report 134, at paragraph 15).

- 16 Furthermore, the Contracting Parties are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee (see Judgment of the EFTA Court in Case E-7/97 *EFTA Surveillance Authority v Norway* [1998] EFTA Court Report 62, at paragraph 17).
- 17 It must therefore be held that, by failing to adopt, within the time-limit prescribed, the national provisions necessary to comply with Articles 3(1), 4, 6 and 7, read in conjunction with Article 2, of the Act referred to in point 6 of Annex IX to the EEA Agreement, i.e. Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance, as adapted by way of Protocol 1 to the EEA Agreement, the Principality of Liechtenstein has failed to fulfil its obligations under Article 10 of the Directive and Article 7 EEA.

### Costs

- 18 Under Article 66(2) of the Rules of Procedure, the unsuccessful party is to be ordered to bear the costs if they have been applied for in the successful party's pleadings. The EFTA Surveillance Authority has asked for the Principality of Liechtenstein to be ordered to bear the costs. Since the latter has been unsuccessful in its defence, it must be ordered to bear the costs.

On those grounds,

### THE COURT

hereby:

**1. Declares that, that, by failing to adopt, within the time-limit prescribed, the national provisions necessary to comply with Articles 3(1), 4, 6 and 7, read in conjunction with Article 2, of the Act referred to in point 6 of Annex IX to the EEA Agreement, i.e. Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance, as adapted by way of Protocol 1 to the EEA Agreement, the Principality of Liechtenstein has failed to fulfil its obligations under Article 10 of the Directive and Article 7 EEA.**

**2. Orders the Principality of Liechtenstein to bear the costs of the proceedings.**

Thór Vilhjálmsson

Carl Baudenbacher

Per Tresselt

Delivered in open court in Luxembourg on 5 December 2001.

Lucien Dedichen  
Registrar

Thór Vilhjálmsson  
President