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Judgment in Case E-19/15
EFTA Surveillance Authority* v *Principality of Liechtenstein

LIECHTENSTEIN AUTHORISATION SCHEMES FOR SERVICES NOT COMPATIBLE WITH EEA LAW

In a judgment delivered today, the Court decided a dispute between the EFTA Surveillance Authority ("ESA") and the Principality of Liechtenstein concerning the compatibility with EEA law of provisions in the Liechtenstein Trade Act setting up prior authorisation schemes for establishment and cross-border services.

ESA alleged, first, that Liechtenstein has breached Article 9 of Directive 2006/123/EC on services in the internal market ("the Directive") by maintaining in force a prior authorisation scheme for establishment. Second, several of the conditions and rules applying to that authorisation scheme are in breach of Articles 10 and 13 of the Directive. Third, Liechtenstein has breached Article 16 of the Directive by making the provision of cross-border services subject to a prior authorisation scheme. Fourth, the authorisation schemes for establishment and cross-border services are in breach of Articles 31 and 36 EEA, to the extent that they apply to services not covered by the Directive.

It was not disputed that Liechtenstein had in force an authorisation scheme for establishment. However, under Article 9 of the Directive, such an authorisation scheme may not be maintained unless it is non-discriminatory, justified by an overriding reason relating to the public interest, and satisfies the principle of proportionality. The Court held that the protection of service recipients and the fight against fraud and tax evasion, overriding reasons invoked by Liechtenstein, are capable of justifying the authorisation scheme. However, the scheme is not proportionate, as it appears that a subsequent inspection system could be equally effective. The authorisation scheme is therefore in breach of Article 9 of the Directive.

The second plea was not contested by Liechtenstein. The Court concluded that the requirements in the Trade Act to have the "necessary personnel" and an "adequate command" of the German language in order to obtain an authorisation for establishment, are not clear and unambiguous, as required by Article 10(2)(d) of the Directive. Moreover, the absence of a safeguard in the Trade Act against duplicating requirements and controls that a service provider has already fulfilled in another EEA State, constitutes a breach of Article 10(3) of the Directive. Similarly, the lack of clarity in the Trade Act on the authorisation procedure constitutes a breach of Article 13 of the Directive.

As for the third plea, the Court noted that the authorisation scheme for cross-border services amounts to a requirement which, under Article 16 of the Directive, cannot be imposed unless it is non-discriminatory, justified for reasons of public policy, public security, public health or the protection of the environment, and also proportionate. Irrespective of whether the protection of service recipients and the prevention of social dumping can justify the requirement, as argued by Liechtenstein, the Court found that the requirement fails to meet the proportionality test. It

appears that less restrictive measures could have been adopted in order to achieve the objectives sought. The requirement is therefore in breach of Article 16.

As for the final plea, it was undisputed that the authorisation schemes at issue constitute restrictions on the freedom of establishment and the freedom to provide services. Referring to its assessment under the first and third plea, the Court concluded that the justifications put forward by Liechtenstein do not satisfy a proportionality test under Article 33 EEA. The authorisation schemes are therefore in breach of Articles 31 and 36 EEA to the extent that they apply to services not covered by the Directive.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.