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Judgment in Case E-3/15 *Liechtensteinische Gesellschaft für Umweltschutz v Gemeinde Vaduz*

RIGHT OF CHALLENGE AGAINST ENVIRONMENTAL IMPACT ASSESSMENTS

In a judgment delivered today, the Court answered the questions referred to it by the State Court of the Principality of Liechtenstein (*Staatsgerichtshof des Fürstentums Liechtenstein*) on the interpretation of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (“the Directive”).

In November 2013, following an environmental impact assessment (“EIA”), the Liechtenstein Government found a project by the Municipality of Vaduz to expand a landfill site compatible with environmental law. However, certain matters relating to the assessment of the project’s environmental effects were reserved to subsequent authorisation procedures. Under those procedures, non-governmental organisations promoting environmental protection (“environmental NGOs”) have no access to judicial review. One such environmental NGO, *Liechtensteinische Gesellschaft für Umweltschutz*, challenged the Government’s decision insofar as it reserved matters to subsequent authorisation procedures. The State Court decided to refer to the Court questions concerning the applicability and effect of the Directive in national law, the interpretation of Article 11 of the Directive on the right to challenge the substantive or procedural legality of EIA decisions, and the legal consequences in case of an infringement of the right of challenge.

The Court noted that the Directive was made part of the EEA Agreement with effect from 8 December 2012. The deadline for implementation expired on the same date. Liechtenstein was therefore under an obligation to implement the Directive into its national legal system and to apply it to the EIA procedure at issue.

The Court reiterated its case law to the effect that EEA law does not require that individuals and economic operators can rely directly on non-implemented EEA rules before national courts. Liechtenstein has however chosen to apply EEA law in its internal legal order without any additional national implementation if certain conditions are fulfilled. It depends on Liechtenstein law whether a provision of a directive can be applied directly in case of a conflict with national law. Article 3 EEA requires the EEA States to take all measures necessary, regardless of the form and method of implementation, to ensure that a directive which has been implemented prevails over conflicting national law and to guarantee the application and effectiveness of the directive. In any case, it is inherent in the objectives of the EEA Agreement that national courts are bound to interpret national law as far as possible in conformity with EEA law.

The Court noted that Article 11 of the Directive aims at ensuring the public concerned, including environmental NGOs, wide access to justice with a view to contributing to preserving, protecting and improving the quality of the environment and protecting human health. Although the EEA States have a margin of discretion to choose at what stage an EIA decision may be

challenged, the measures adopted must not render it practically impossible or excessively difficult to exercise the rights conferred by the Directive. Reserving the resolution of crucial environmental issues such as those set out in Article 5(3) of the Directive to subsequent procedures, under which there is no access to judicial review for environmental NGOs, cannot be reconciled with Article 11 of the Directive, as it would deprive them of their right of challenge.

Finally, in the case of an infringement of the right of challenge, the Court held that in the absence of EEA rules on remedies in a certain field, and subject to the principles of equivalence and effectiveness, it is for the domestic legal order of each EEA State to designate the courts and tribunals having jurisdiction and to lay down the procedural rules governing actions for safeguarding rights of individuals and economic operators under EEA law.

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.