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Judgment in Case E-6/13 *Metacom AG v Rechtsanwälte Zipper & Collegen*

NOTIFICATION REQUIREMENT FOR EUROPEAN LAWYERS IN LIECHTENSTEIN. SELF-REPRESENTATION

In a judgment delivered today, the EFTA Court gave judgment on questions referred to it by Fürstliche Landgericht des Fürstentums Liechtenstein (Princely Court of the Principality of Liechtenstein) regarding the interpretation of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of the freedom to provide services (“the Directive”).

The parties to the case before the national court are Metacom AG, a company registered in Liechtenstein (“the plaintiff”), and Rechtsanwälte Zipper & Collegen, a firm of lawyers based in Germany (“the defendant”). As the plaintiff withdrew the action, it was in principle regarded as the unsuccessful party. However, the defendant’s application for compensation for costs was denied, *inter alia* on the basis that it had failed to comply with Article 59 of the Liechtenstein Lawyers Act. Pursuant to that provision, lawyers established in other EEA States are required to notify the Liechtenstein Chamber of Lawyers of their intention to provide cross-border legal services in Liechtenstein before commencing that activity, and to attach certain documentation to such a notification. If a European lawyer does not meet these requirements, he cannot claim lawyers’ fees in accordance with the scale of fees provided for in Liechtenstein.

The Princely Court decided to make a request to the Court for an Advisory Opinion. It wanted to know whether a national rule such as Article 59 of the Lawyers Act is compatible with the Directive, in particular Article 7(1) thereof. As a preliminary question, the Princely Court asked whether a lawyer bringing proceedings in an EEA State other than the one in which he is established can rely on the provisions of the Directive when he is representing himself, rather than being engaged to provide legal services by a client.

The Court noted that where lawyers are representing themselves in legal proceedings, the provider and the recipient of the service are the same person. However, this does not alter the fact that the service provided is a service normally provided for remuneration. Consequently, a lawyer bringing proceedings in his own name in an EEA State other than the one in which he is established may rely on the freedom to provide services and the Directive if he is acting in a professional capacity, and if the national legal order of the host State allows a lawyer to act on his own behalf in the capacity as a lawyer in legal proceedings.

Concerning the notification requirement, the Court noted that Article 7(1) of the Directive permits the competent authority of the host EEA State to request the person providing the services to establish his qualification as a lawyer in his home EEA State. However, the Court found that a national rule such as the one in Liechtenstein, goes beyond what a host State is permitted to request pursuant to Article 7(1) of the Directive. This rule requires that a lawyer established in another EEA State is required in all circumstances, and on his own motion, not only to provide documentation to establish his qualifications as a lawyer, but also to notify the competent authorities of the host State prior to providing services in that State, and to renew the notification yearly.

As such a rule is liable to hinder or render less attractive the provision of cross-border services, it also infringes Article 36(1) EEA on the freedom to provide services. Furthermore, the Court found that such a rule cannot be justified. It is not proportionate to the legitimate objective to ensure that a person is a qualified lawyer currently entitled to practise in another EEA State. That objective is already taken

into account in Article 7(1) of the Directive. It cannot therefore be used to justify verification measures that go beyond what is permitted under that Article.

The national court had also asked about the consequences with regard to remuneration of legal services under national law of non-compliance with a notification requirement such as that in Article 59 of the Liechtenstein Lawyers Act. The Court's reply was that a failure to comply with such a rule cannot be a relevant consideration as regards the possibility of claiming legal fees relating to the cross-border provision of services by a lawyer.

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.