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Judgment in Case E-9/14 *Proceedings concerning Otto Kaufmann AG*

NO OBLIGATION TO RECORD CRIMINAL CONVICTIONS OF LEGAL PERSONS

In a judgment delivered today, the Court answered a question referred to it by *Fürstliches Landgericht des Fürstentums Liechtenstein* (Princely Court of Liechtenstein) on the requirements of EEA law as regards the recording of convictions of legal persons.

Otto Kaufmann AG, a Liechtenstein company, was convicted in January 2014 for a failure to transfer contributions to an occupational pension scheme. The judgment was sent for registration onto the criminal record. A designated judge of the Princely Court maintains the Liechtenstein criminal record. However, the public prosecutor's office opposed the entry of the conviction on the basis that Otto Kaufmann AG is not a natural person.

The Princely Court requested an advisory opinion from the Court on whether EEA law, in particular the provisions on the freedom to provide services and freedom of establishment (Articles 31 and 36 EEA) and/or individual acts of secondary law such as Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2006/123/EC on services in the internal market, require that where legal persons are convicted by a criminal court, those convictions must also be clearly recorded, for example in a criminal record.

The Court first assessed the admissibility of the request. The Court found that the Princely Court was performing a judicial function within the meaning of Article 34 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice in proceedings concerning entries of convictions on the Liechtenstein criminal record. Furthermore, although the convicted legal person is a Liechtenstein company, an interpretation of EEA law is useful since the national law at issue is capable of producing effects which are not confined to one EEA State. The request was therefore deemed to be admissible.

As to the substance of the case, the Court noted that an obligation to record convictions of legal persons does not follow from Articles 31 or 36 EEA. Neither do Directives 2004/18/EC or 2006/123/EC require an EEA State to enter sanctions imposed by courts on legal persons into the criminal record. The directives may nonetheless require an EEA State to provide information upon request from another EEA State, about convictions relevant to the competence and professional reliability of legal persons. The framework for the maintenance and handling of such information is a matter for national 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.