

ORIGINAL

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21 day of December 2022

EFTA Court
1 rue du Fort Thüngen
L-1499 Luxembourg

Vaduz, 21 December 2022

To the President and Members of the EFTA Court

Written Observations

submitted, pursuant to Article 20 of the Statute and Article 97 of the Rules of Procedure of the EFTA Court, by the

Government of the Principality of Liechtenstein

represented by Dr. Andrea Entner-Koch, Director of the EEA Coordination Unit (*Leiterin der Stabsstelle EWR der Regierung des Fürstentums Liechtenstein*), Romina Schobel, Deputy Director of the EEA Coordination Unit (*stellvertretende Leiterin der Stabsstelle EWR der Regierung des Fürstentums Liechtenstein*) and Alissa Ender, Legal Officer at the EEA Coordination Unit (*Juristische Mitarbeiterin der Stabsstelle EWR der Regierung des Fürstentums Liechtenstein*), acting as agents of the Government of the Principality of Liechtenstein,

in Case E-12/22

Maximilian Maier

in which the Administrative Court (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*, hereinafter referred to as 'Administrative Court') has requested the EFTA Court to give an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

The Government of the Principality of Liechtenstein (hereinafter referred to as the 'Liechtenstein Government') has the honour to submit the following observations:

I. Question referred to the EFTA Court

The Administrative Court has stayed its proceedings in order to refer the following question to the EFTA Court:

Is a national provision, according to which a lawyer, who normally practices his profession in a Member State other than the one in which he obtained his qualification, is not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or public defender, compatible with Directive 98/5/EC?

II. Factual background of the case

2. With regard to the facts of the present case, the Liechtenstein Government wishes to refer to the summary of the facts provided by the Administrative Court in its request for an opinion.
3. The Liechtenstein Government wishes to emphasize that the appellant is an Austrian lawyer registered in the Register of lawyers in Vorarlberg, Austria. At his request the Liechtenstein Bar Association (*Liechtensteinische Rechtsanwaltskammer*) entered him in the register of European lawyers established in Liechtenstein.
4. Therefore, the appellant in the case at hand carries out his professional activities in Liechtenstein as a lawyer practising under his home-country professional title (hereinafter referred to as 'European lawyer') and is subject to Directive 98/5/EC.¹

¹ Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p. 36).

5. **III. Legal framework**

6. The Liechtenstein Government considers it appropriate to briefly outline the legal framework relevant to answer to questions referred for a preliminary ruling.

A) EEA Law

7. Directive 98/5/EC enables lawyers who qualify in one EEA State to practise on a permanent basis in another under their home country professional title. The Directive applies to EEA nationals authorised to practise under the professional title of 'lawyer'.

8. Directive 98/5/EC was considered EEA relevant and was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 85/2002 of 25 June 2002.² The Regulation was inserted in Annex VII of the EEA Agreement concerning the Recognition of Professional Qualifications.

9. Recitals 1 and 9 of Directive 98/5/EC are relevant. The Liechtenstein Government will consider these recitals further in its analysis of the questions referred below.

10. Article 1 of Directive 98/5/EC concerns the object, scope and definitions of the Directive. Article 1(1) of the Directive provides that:

The purpose of this Directive is to facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained.

11. The Court of Justice has established that Article 3 of the Directive is a fully harmonised provision concerning the registration with the competent authority:

1. A lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification shall register with the competent authority in that State.

2. The competent authority in the host Member State shall register the lawyer upon presentation of a certificate attesting to his registration with the competent authority in the home Member State. It may require that, when presented by the competent authority of the home Member State, the certificate be not more than three months old. It shall inform the competent authority in the home Member State of the registration.

² OJ L 266, 3.10.2002, p.50.

3. For the purpose of applying paragraph 1:

— in the United Kingdom and Ireland, lawyers practising under a professional title other than those used in the United Kingdom or Ireland shall register either with the authority responsible for the profession of barrister or advocate or with the authority responsible for the profession of solicitor,

— in the United Kingdom, the authority responsible for a barrister from Ireland shall be that responsible for the profession of barrister or advocate, and the authority responsible for a solicitor from Ireland shall be that responsible for the profession of solicitor,

— in Ireland, the authority responsible for a barrister or an advocate from the United Kingdom shall be that responsible for the profession of barrister, and the authority responsible for a solicitor from the United Kingdom shall be that responsible for the profession of solicitor.

4. Where the relevant competent authority in a host Member State publishes the names of lawyers registered with it, it shall also publish the names of lawyers registered pursuant to this Directive.

12. Article 4 of the Directive concerns the practice under the home-country professional title and provides:

1. A lawyer practising in a host Member State under his home-country professional title shall do so under that title, which must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State.

2. For the purpose of applying paragraph 1, a host Member State may require a lawyer practising under his home-country professional title to indicate the professional body of which he is a member in his home Member State or the judicial authority before which he is entitled to practise pursuant to the laws of his home Member State. A host Member State may also require a lawyer practising under his home-country professional title to include a reference to his registration with the competent authority in that State.

13. Article 5 of the Directive concerns the areas of activity of European lawyers and provides:

1. Subject to paragraphs 2 and 3, a lawyer practising under his home-country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, *inter alia*, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. He shall in any event comply with the rules of procedure applicable in the national courts.

2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for

creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.

3. For the pursuit of activities relating to the representation or defence of a client in legal proceedings and insofar as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State, the latter may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an 'avoué' practising before it.

Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.

14. Article 10 of the Directive stipulates that a lawyer who gains admission to the profession of lawyer in the host EEA State shall be treated as a lawyer of the host EEA State.

1. A lawyer practising under his home-country professional title who has effectively and regularly pursued for a period of at least three years an activity in the host Member State in the law of that State including Community law shall, with a view to gaining admission to the profession of lawyer in the host Member State, be exempted from the conditions set out in Article 4(1)(b) of Directive 89/48/EEC, 'Effective and regular pursuit' means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

It shall be for the lawyer concerned to furnish the competent authority in the host Member State with proof of such effective regular pursuit for a period of at least three years of an activity in the law of the host Member State. To that end:

(a) the lawyer shall provide the competent authority in the host Member State with any relevant information and documentation, notably on the number of matters he has dealt with and their nature;

(b) the competent authority of the host Member State may verify the effective and regular nature of the activity pursued and may, if need be, request the lawyer to provide, orally or in writing, clarification of or further details on the information and documentation mentioned in point (a).

Reasons shall be given for a decision by the competent authority in the host Member State not to grant an exemption where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

2. A lawyer practising under his home-country professional title in a host Member State may, at any time, apply to have his diploma recognised in accordance with Directive 89/48/EEC with a view to gaining admission to the profession of lawyer in the host

Member State and practising it under the professional title corresponding to the profession in that Member State.

3. A lawyer practising under his home-country professional title who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years but for a lesser period in the law of that Member State may obtain from the competent authority of that State admission to the profession of lawyer in the host Member State and the right to practise it under the professional title corresponding to the profession in that Member State, without having to meet the conditions referred to in Article 4(1)(b) of Directive 89/48/EEC, under the conditions and in accordance with the procedures set out below:

(a) The competent authority of the host Member State shall take into account the effective and regular professional activity pursued during the abovementioned period and any knowledge and professional experience of the law of the host Member State, and any attendance at lectures or seminars on the law of the host Member State, including the rules regulating professional practice and conduct.

(b) The lawyer shall provide the competent authority of the host Member State with any relevant information and documentation, in particular on the matters he has dealt with. Assessment of the lawyer's effective and regular activity in the host Member State and assessment of his capacity to continue the activity he has pursued there shall be carried out by means of an interview with the competent authority of the host Member State in order to verify the regular and effective nature of the activity pursued.

Reasons shall be given for a decision by the competent authority in the host Member State not to grant authorisation where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

4. The competent authority of the host Member State may, by reasoned decision subject to appeal under domestic law, refuse to allow the lawyer the benefit of the provisions of this Article if it considers that this would be against public policy, in a particular because of disciplinary proceedings, complaints or incidents of any kind.

5. The representatives of the competent authority entrusted with consideration of the application shall preserve the confidentiality of any information received.

6. A lawyer who gains admission to the profession of lawyer in the host Member State in accordance with paragraphs 1, 2 and 3 shall be entitled to use his home-country professional title, expressed in the official language or one of the official languages of his home Member State, alongside the professional title corresponding to the profession of lawyer in the host Member State.

B) Liechtenstein national law

15. The Lawyer's Act³ regulates the admission to the profession of lawyer and the practice

³ Rechtsanwaltsgesetz (RAG) vom 8. November 2013, LR-Nr. 173.510, as last amended.

of the profession of lawyer in Liechtenstein and transposes *inter alia* Directive 98/5/EC. The Lawyer's Act is therefore the relevant national legal text.

16. Nationals of an EEA State who are authorised in their home State to practise as a lawyer under any of the professional titles listed in the Annex of Lawyer's Act may establish themselves on Liechtenstein territory to practise as a lawyer, provided that they are entered in the register of established European lawyers.

17. Article 28 of the Lawyer's Act concerns the appointment of a lawyer and provides:

1) If the court has decided to provide a lawyer, or if the grant of legal aid implicates any such provision, the party concerned shall be entitled to the appointment of a lawyer by the Chamber of Lawyers.

2) The board of the Chamber of Lawyers shall rely on fixed rules for the appointment; these shall ensure that the assignment of lawyers with membership in the Chamber of Lawyers to cases, and the distribution of their workload, is made as equally as possible.

18. Article 29 of the Lawyer's Act concerns the acceptance of the case and grounds for refusal and provides:

1) Lawyers appointed in accordance with Art. 28 shall accept the representation or defence of a party in line with the decision on their appointment and act in this regard with the same care as a freely chosen lawyer.

2) They shall have the right to refuse the acceptance of the case for important reasons or to demand the early dismissal as a lawyer appointed pursuant to Art. 28. Important reasons shall include in particular:

a) a conflict of interests;

b) a serious breakdown of the relationship of trust, if any such breakdown is asserted both by the party and by the appointed lawyer.

3) The board of the Chamber of Lawyers shall decide whether any of the important reasons set out in paragraph 2 applies.

19. Article 59 of the Lawyer's Act concerns establishment under the professional title used in the home State and provides:

1) Nationals of a State which is a party to the Agreement on the European Economic Area (EEA) who are authorised in their home State to practise the lawyer's profession under any of the professional titles listed in the Annex to this Act may establish themselves on domestic territory to practise the lawyer's profession, provided that they are entered in the register of established European lawyers (established European lawyers) upon application.

2) Apart from the rules of ethical conduct applicable in the home State, the established European lawyer shall, with regard to all activities that he or she exercises on domestic territory, be subject to the same rules of professional and ethical conduct as the domestic lawyers.

3) Nationals from other States may also establish themselves on domestic territory for the purposes of paragraphs 1 and 2 to practise the lawyer's profession, provided that an international treaty to this effect has been entered into with these States. Art. 65 shall be excepted from this.

20. Article 60 of the Lawyer's Act provides:

1) The Chamber of Lawyers shall decide on the application for entry in the register of the established European lawyers. The applicant shall furnish evidence of the following:

a) a certificate to the effect that he or she is a member of this profession, issued by the authority competent in the home State. The Chamber of Lawyers may demand that the certificate should not be older than three months upon its submission;

b) the fulfilment of the requirements referred to in Art. 3 paragraph 2 subparagraphs a to c, f and g.

2) The application and the documents to be attached thereto shall, insofar as they originate from the applicant, be filed in German. The other documents shall be submitted with an officially certified translation, if they are worded in a language other than German.

3) The Chamber of Lawyers shall conduct the necessary enquiries and, if the entry is to be refused, it shall hear the applicant beforehand.

4) The applicant shall receive a certificate evidencing that the entry has been made.

21. Except as provided otherwise, the established European lawyer shall be authorised to engage in the same professional activities as any lawyer entered in the register of lawyers. Accordingly, Article 62 of the Lawyer's Act provides:

1) Except as provided otherwise, the established European lawyer shall be authorised to engage in the same professional activities as any lawyer entered in the register of lawyers.

2) An established European lawyer shall have the status of a lawyer entered in the register of lawyers. However, he or she shall not be authorised:

a) to be elected as an officer of the Chamber of Lawyers;

b) to train trainee lawyers;

c) to be appointed as legal aid lawyer, legal aid defence counsel or ex officio defence counsel.

IV. Legal analysis of the referred question

Preliminary remarks

22. The objective of Directive 98/5/EC is to tackle and remove obstacles to freedom of movement for persons and services.⁴ According to Article 1 of the Directive the purpose of that Directive is to facilitate the practice of the profession of lawyer on a permanent basis in an EEA State other than that in which the professional qualification was obtained.⁵
23. There are various possibilities for lawyers to exercise their freedom of movement within the EEA.
24. Lawyers have the possibility to pursue their professional activity under their home-country professional title. In cases like these, the lawyers either provide their service as a lawyer according to Council Directive 77/249/EEC⁶ or practice the profession of lawyer on a permanent basis according to Directive 98/5/EC in another EEA State.
25. Furthermore, lawyers, who wish to transfer the main focus of their activities to another EEA State, also have the possibility to become integrated into the profession in the host EEA State and pursue the profession under the title of the host EEA State (hereinafter referred to as ‘integrated lawyer’). This can be done either by passing an aptitude test as provided for in Directive 2005/36/EC⁷ or after a certain period of professional practice in the host EEA State under their home-country professional title according to Directive 98/5/EC.
26. In line with the considerations above it is apparent that the EU legislator makes a clear distinction between the various models of integration – be it either between providing a service or being established as a lawyer or between lawyers who pursue their activity

⁴ Recital 1 of Directive 98/5/EC.

⁵ Judgment of the Court of Justice in Case C-58/13, *Requests for a preliminary ruling from the Consiglio Nazionale Forense*, ECLI:EU:C:2014:2088, recital 53; Article 1 of Directive 98/5/EC.

⁶ Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17).

⁷ Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.09.2005, p. 22).

as European lawyers or as lawyers of the host EEA State. Based on the model of integration for access to the profession of a lawyer the rights and obligations associated therewith also differ.

27. As a matter of fact, even the wording of the Directive itself refers in Article 10 to the *“treatment as a lawyer of the host Member State”*. Therefore, European lawyers and lawyers of the host EEA State do not have to be equated. Accordingly, also the rights and obligations granted to the lawyer depend on the level of integration. Thus, with the admission to pursue the profession of lawyer as a lawyer of the host EEA State,⁸ the respective lawyer is granted the same rights and obligations as lawyers of the host EEA State.
28. On a side note, the Liechtenstein Government wants to draw attention to the specificity of the Liechtenstein market. In Liechtenstein, 234 lawyers⁹ are registered in the register for lawyers and 67 European lawyers¹⁰ are registered in the register for European lawyers. Therefore, in proportion to the size of the market¹¹ and the lawyers registered in Liechtenstein, the percentage of European lawyers registered in Liechtenstein is one of the highest in the EEA.

Observations to the question referred for an advisory opinion

29. With its question the Administrative Court enquires whether the national provision according to which a lawyer, who normally practices the profession in a Member State other than the one in which the qualification is obtained, shall not be authorised to be appointed as legal aid lawyer, legal aid defence council or ex officio defence council, is EEA-compliant. Specifically, the Administrative Court asks whether Article 62(2)(c) of the Lawyer’s Act is compatible with Directive 98/5/EC.

⁸ Be it either by passing an aptitude test as provided for in Directive 2005/36/EC or after a certain period of professional practice in the host EEA State under their home-country professional title according to Directive 98/5/EC.

⁹ https://www.rak.li/application/files/4016/6998/3677/01_12_2022_Liste_Rechtsanwaelte.pdf.

¹⁰ https://www.rak.li/application/files/4216/6998/3687/01_12_2022_Liste_niedergelassene_europaeische_Rechtsanwaelte.pdf.

¹¹ Especially considering that Liechtenstein has a population of around 39 000 inhabitants and that Liechtenstein is one of the smallest countries in Europe and the world with 160m².

30. As previously established, the lawyer in the case at hand carries out his professional activities as a lawyer practising under his home-country professional title. Therefore, according to the Directive, he is in principle permitted to carry out the same professional activities as a lawyer practising under the relevant professional title used in the host EEA State.
31. However, according to Article 5 of the Directive the professional activities can be restricted. As for example, Article 5(3) of the Directive explicitly allows national legislators to require European lawyers to work in conjunction with an integrated lawyer. Additionally, national legislators may lay down specific rules for access to supreme courts.
32. Because, unlike Article 3 of the Directive, Article 5 is not fully harmonised, as can be deduced from the scope of action given to the national legislators by this Article, EEA States may introduce or maintain further provisions concerning the professional activities carried out by European lawyers.
33. Moreover, Article 5 does not govern exclusively the pursuit of the professional activities of a lawyer practising under his home-country professional title. According to settled case law of the European Court of Justice (hereinafter referred to as 'Court of Justice'), for the assessment of whether a provision of EU law is exclusive, the wording, context and the objectives of the legislation of which it forms part, have to be considered. The wording of Article 5 of the Directive already indicates that the provision is not exclusive. In addition, taking into account the system for integration of lawyers and the distinction the European legislator makes in this regard, it becomes clear, that Article 5 of the Directive does not govern exclusively the pursuit of the professional activities of a lawyer practising under his home-country professional title.
34. This allows EEA States to maintain or adopt provisions on issues not specifically regulated by the Directive. Hence, they can set higher standards than those set in the Directive.

35. Moreover, the Liechtenstein Government would like to highlight that legal aid and especially the manner legal aid is structured and implemented is not regulated at European level.
36. Although, the European legislator has adopted legal acts concerning the access to legal aid, like for example Council Directive 2002/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes¹² and Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings¹³, these acts only concern the access and do not regulate the legal structure of legal aid. Furthermore, these acts have not been incorporated into the EEA Agreement due to their lack of EEA relevance.
37. It is therefore for the EEA States to decide how to structure legal aid, who to appoint as legal aid lawyer, legal aid defence counsel or *ex officio* defence counsel and for the EEA States to adopt the respective provisions.
38. Accordingly, by adopting the provision of Article 62(2)(c) Lawyer's Act, Liechtenstein made use of this scope of action with regard to legal aid and the partial harmonisation of Article 5 and introduced a rule providing that the established European lawyer shall not be authorised to be appointed as legal aid lawyer, legal aid defence counsel or *ex officio* defence counsel.
39. It goes without saying that such national provisions have to be in line with the principles of equivalence¹⁴ and effectiveness¹⁵. In this regard, it is also important to recall that Directive 98/5/EC, aiming at facilitating the practice of the profession of lawyer on a permanent basis in an EEA State other than that in which the professional

¹² Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ 26, 31.1.2003, p. 41).

¹³ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ 297, 4.11.2016, p. 1).

¹⁴ According to the principle of equivalence the national implementation provisions regarding anonymity shall not be less favourable than those provisions governing similar domestic situations.

¹⁵ The principle of effectiveness states that the national implementation shall not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law.

qualification was obtained, must be interpreted, in particular, in the light of Article 31 of the EEA Agreement. Accordingly, national rules restricting the freedom of establishment without objective justification are precluded.

40. As is evident from the well-established case-law of the Court of Justice and the EFTA-Court, national measures which are liable to restrict or make the exercise of fundamental freedoms guaranteed by the EEA Agreement less attractive may be permitted, provided that they serve overriding reasons in the public interest, are appropriate for attaining their objective and do not go beyond what is necessary in order to attain that objective.¹⁶
41. The protection of consumers, in particular recipients of legal services provided by persons involved in the administration of justice and the proper administration of justice are objectives which are regarded as overriding reasons in the public interest capable of justifying a restriction on the freedom to provide services.¹⁷
42. To ensure the **proper administration of justice**, especially considering that legal aid is mostly granted for difficult factual and legal situations, the EEA State has to be able to guarantee that the lawyer is well versed and has in-depth knowledge of Liechtenstein law.
43. The legal aid system has to comply with the fundamental right of access to justice and fair trial. It is the State's obligation to warrant this access to justice and fair trial and therefore ensure that the fundamental right of the individual is safeguarded and the effective use of it is ensured.
44. Therefore, if legal aid is granted by the national court, the Liechtenstein Bar Association appoints a legal aid lawyer who is registered with the Liechtenstein Bar

¹⁶ Judgment of the Court of Justice in Case C-99/16, *Request for a preliminary ruling from the Tribunal de grande instance de Lyon*, ECLI:EU:C:2017:391, recital 31.

¹⁷ Judgment of the Court of Justice in Case C-99/16, recital 34; Judgment of the Court of Justice in Case C-739/19, *Request for a preliminary ruling from the Supreme Court (Ireland)*, ECLI:EU:C:2021:185, recital 22; Judgment of the Court of Justice in Cases C-94/04 and C-202/04, *References for a preliminary ruling: Corte d'appello di Torino (C-94/04) and Tribunale di Roma (C-202/04) – Italy*, ECLI:EU:C:2006:758, recital 64.

Association, integrated into the Liechtenstein legal system and has in-depth knowledge of Liechtenstein law. This process ensures adequate representation.

45. According to the Lawyer's Act such an appointed legal aid lawyer can only be refused respectively the early dismissal as a lawyer can only be demanded, if there is a conflict of interest or a serious breakdown of the relationship of trust.¹⁸
46. In this regard, the Liechtenstein Government wants to emphasize, that the Directive requires European lawyers to work in conjunction with lawyers of the host EEA State in court proceedings for which representation by a lawyer is mandatory. Therefore, the Directive – again – clearly distinguishes between European lawyers and lawyers of the host EEA State. This is particularly relevant in relation to legal aid, as firstly legal aid is mostly granted for difficult factual and legal situations and secondly refusal of an appointed legal aid lawyer is only permitted under very specific circumstances, leading to a quasi-mandatory representation.
47. In conclusion, the legal aid system set up prevents undue and unnecessary delays, *inter alia*, due to the fact that no case by case examination is needed, as the precise knowledge of national law and the quality of service can be assumed and the proper administration of justice as well as access to justice and the right to a fair trial are guaranteed.
48. Furthermore, the fact that European lawyers are not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or *ex officio* defence counsel serves **the protection of consumers**, in particular recipients of legal services.
49. Regarding the protection of consumers, the specific features of the market in question and especially the asymmetry of information between 'client-consumers' and lawyers due to the high level of technical knowledge have to be factored in.¹⁹

¹⁸ Article 29 Lawyer's Act.

¹⁹ Judgment of the Court of Justice in Cases C-94/04 and C-202/04, *References for a preliminary ruling: Corte d'appello di Torino (C-94/04) and Tribunale di Roma (C-202/04) – Italy*, recital 68

50. The Directive itself ensures the protection of consumers and the proper information of consumers by obliging lawyers who are not integrated into the profession in the host EEA State to practice under their home-country professional title.²⁰ This allows consumers to distinguish between integrated lawyers and European lawyers and to consciously choose their legal representative. Therefore, the consumer is aware that the professional to whom they entrust the defence of their interests has not obtained his qualification in that EEA State and might not have the knowledge, which is adequate to deal with the case.²¹
51. In cases where the consumer cannot actively choose between a European lawyer and an integrated lawyer, consumer protection requires a legal framework that protects the concerned consumer. In the area of legal aid, this is ensured by the system set up in Liechtenstein.
52. Whether the measures taken are appropriate for attaining the objectives and do not go beyond what is necessary in order to attain that objective is for the national court to decide.
53. However, the Liechtenstein Government refers to its statements above regarding the appropriateness of the measures to attain the objective of consumer protection and the proper administration of justice.
54. Regarding the proportionality, the Liechtenstein Government refers to its statements in paragraph 46 regarding undue delay and underlines that any additional steps would be detrimental for the access to justice.
55. Additionally, the Liechtenstein Government underlines that the European legislator itself distinguishes between different integration models for access to the profession of a lawyer in an EEA State other than that in which the qualification was obtained.²²

²⁰ Recital 9 and Article 4 of Directive 98/5/EC.

²¹ Judgment of the Court of Justice in the Case C-506/04 *Graham J. Wilson v Ordre des avocats du barreau de Luxembourg*, ECLI:EU:C:2006:587, recital 72.

²² See also observations made in paragraph 23-27.

Based on the model of integration for access to the profession of a lawyer the rights and obligations associated therewith also differ.

56. With the admission to pursue the profession of lawyer as a lawyer of the host EEA State,²³ the respective lawyer is granted the same rights and obligations as lawyers of the host EEA State and therefore can be appointed as a legal aid lawyer, legal aid defence counsel or *ex officio* defence counsel.
57. To conclude, a national provision, according to which European lawyers are not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or *ex officio* defence counsel is compatible with Directive 98/5/EC and Article 31 of the EEA Agreement, as it ensures consumer protection and the proper administration of justice and is proportionate.

V. Conclusion

58. Following the observations above, the Liechtenstein Government considers that the question referred to the EFTA Court for an advisory opinion should be answered as follows:

The national provision according to which a lawyer, who normally practices the profession in a Member State other than the one in which the qualification is obtained, shall not be authorised to be appointed as legal aid lawyer, legal aid defence council or ex officio defence council, is compliant with Directive 98/5/EC and EEA law.

On behalf of the Liechtenstein Government


Dr. Andrea Entner-Koch
Director
EEA Coordination Unit


Romina Schobel
Deputy Director
EEA Coordination Unit


Alissa Ender
Legal Officer
EEA Coordination Unit

²³ Be it either by passing an aptitude test as provided for in Directive 2005/36/EC or after a certain period of professional practice in the host EEA State under their home-country professional title according to Directive 98/5/EC.



EEA COORDINATION UNIT
PRINCIPALITY OF LIECHTENSTEIN

21
21
E-12/22-08
day of December 2022 1/1

EFTA Court
Mr Ólafur Jóhannes Einarsson
Registrar
1 rue du Fort Thüngen
1499 Luxembourg
Luxembourg

Your letter

Reference
933.5

Contact
ENAN/SCRD/ENAL

Vaduz
21 December 2022
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Case E-12/22 - Request for an Advisory Opinion in the case of Maximilian Maier

Dear Registrar,

In accordance with Article 20 of the Statute of the EFTA Court, I have the honour to submit the written observations of the Government of the Principality of Liechtenstein in the above-mentioned case.

In addition, you will find enclosed the powers of attorney for Dr. Andrea Entner-Koch, Romina Schobel and Alissa Ender granted by the Government of the Principality of Liechtenstein.

Yours faithfully,

Dr. Andrea Entner-Koch
Director

Enclosures: mentioned