

# AMANN PARTNERS

Lawyers - Attorneys at law

Via DHL

EFTA Court

1, Rue Fort Thüngen

1499 Luxembourg

Gamprin-Bendern, 21.12.2022

MAM

## **EFTA Case E-12/22-3 Maximilian Maier – Written observations**

To the Judges of the EFTA Court,

1. The Administrative Court of the Principality of Liechtenstein decided, in a closed session on 23.9.2022, to stay proceedings in the administrative appeal proceedings, case number VGH 2022/050 (applicant: Lawyer Dr Maximilian Maier), pending before it and to request an advisory opinion from the EFTA Court pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter “SCA”).
2. In a letter dated 21.10.2022 the EFTA Court requested that the applicant submit written observations to the Court by 21.12.2022. The applicant submits the following

### OBSERVATIONS

within the deadline:

#### **Preliminary remarks**

- **EFTA Court E-1/07 *Criminal proceedings against A* – infringement of the freedom to provide services**

The Liechtenstein legal order does not prescribe in any procedural laws a so-called “mandatory representation by a lawyer”<sup>1</sup> for the representation of parties before courts and authorities. As an EEA-lawyer, the applicant’s activity as a representative before the Liechtenstein courts and authorities is not limited by domestic legal rules on the amounts in dispute and/or the matters in dispute.

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<sup>1</sup> The EFTA Court uses the technical term “*Anwaltszwang*” (mandatory representation by a lawyer) in E-1/07. However, the applicant uses this term to mean that domestic procedural orders may require a party appearing before a court or, in certain cases, an authority to be represented by a domestic lawyer.

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The EFTA Court has already stated in the judgment in E-1/07 that the Establishment Directive<sup>2</sup> explicitly states in Article 5(3) that host Member States “*may*” limit the freedom to provide services of EEA-lawyers by requiring them to work in conjunction with a domestic lawyer, **so long as the host Member State reserves the representation or defence of clients in certain fields of law for domestic lawyers.**

In Liechtenstein there are no laws that explicitly require the involvement of a domestic lawyer acting in conjunction with an EEA-lawyer for representation before the courts or authorities. The only legal norm from which domestic legal literature could derive a mandatory obligation to involve a domestic lawyer acting in conjunction with an EEA-lawyer, is § 24 together with § 26 of the Code of Criminal Procedure (CCP) (*Strafprozedurordnung* - CCP) (for example, for arrests and crimes).

The aforementioned legal norms do not prescribe the mandatory involvement of a domestic lawyer acting in conjunction with an EEA-lawyer and the applicant maintains that EEA-lawyers may be included in the groups of people listed in § 24 CCP. Therefore, the applicant is also capable of appearing, without having to act in conjunction with a domestic lawyer, in all fields of criminal law (see further point 3.2).

The aforementioned legal norms do not specifically provide for a so-called “mandatory representation by a lawyer” (“*Anwaltszwang*”), and a domestic interpretation that pursuant to § 24 and § 26 CCP the applicant is not capable of appearing unless he acts in conjunction with a domestic lawyer would violate both the Establishment Directive and the applicant’s domestic constitutional rights (e.g. principle of legality, professional freedom etc.).

### Summary:

Insofar as the applicant would not be appointed as a legal aid lawyer on the basis of Article 62(2)(c) of the Lawyers Act [*Rechtsanwaltsgesetz*]<sup>3</sup> (hereinafter “RAG”), even though he may represent clients before all courts and authorities, according to the domestic rules of procedure, this would not be compatible with the Establishment Directive, the fundamental freedoms guaranteed by the EEA Agreement and the jurisprudence of the EFTA Court (E-1/07 *Criminal proceedings against A*).

The legal provision in Liechtenstein which provides in point (c) of Article 62 RAG that an EEA-lawyer may not be appointed as a legal aid lawyer or legal aid defence counsel, even though the national rules of procedure provide that EEA-lawyers should also be fully capable of appearing, is not compatible with the possibility provided for in the Establishment Directive of EEA-lawyers acting in conjunction with a domestic lawyer, and is therefore unlawful.

In other words, if the prohibition set out in point (c) of Article 62 RAG on the appointment of EEA-lawyers as officials of the State under the rule of law, were to exclude the applicant from providing legal aid, even though he fulfils all the public law requirements for the provision of services, such a prohibition would not only be unlawful but also arbitrary.

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<sup>2</sup> 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.

<sup>3</sup> Lawyers Act of 8 November 2013 LGBL 2013/415.

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- The Liechtenstein Bar Association, by order of 05.04.2022 (point 1) based on Article 62(2)(c) RAG, prohibited the applicant from performing two professional services in the host Member State:

### 1. The applicant may not be appointed as a legal aid lawyer by domestic courts

The applicant may not be appointed as a legal aid lawyer in the context of his professional activity as an established European lawyer (hereinafter “EEA-lawyer”) in the Principality of Liechtenstein, even though the applicant is fully capable of appearing<sup>4</sup> in the Principality of Liechtenstein and acting as a representative before the courts and authorities in all areas of law.

### 2. Prohibition of substituting for a domestic lawyer who has been appointed as a legal aid lawyer

In the context of his professional activity as an EEA-lawyer in the Principality of Liechtenstein, the applicant may also not assume legal aid mandates as a substitute for other domestic lawyers, who have been appointed as legal aid lawyers by the Liechtenstein Bar Association, even though the applicant is fully capable of appearing in the Principality of Liechtenstein and acting as a representative before the courts and authorities in all areas of law.

The question in dispute here, which the Administrative Court of Liechtenstein submitted to the EFTA Court in its letter of 26.09.2022, is limited to the part of the Liechtenstein Bar Association’s order of 05.04.2022 that prohibits the applicant from being appointed as an independent legal aid lawyer in the Principality of Liechtenstein.

The Liechtenstein Bar Association’s prohibition, which impinged even further and more arbitrarily on the applicant’s fundamental freedoms, as guaranteed by the EEA Agreement, by also preventing the applicant from assuming legal mandates as a substitute for domestic lawyers (despite his capability of appearing before all courts and authorities), was not referred to the Court as a question. At this point it should be noted that (any future) legal norms in the host Member State, which may impinge on the applicant’s fundamental rights and freedoms, will have to be judged against an increased “principle of legality”.

### 1. Summary of the legally relevant facts of the case

3. The applicant was entered in the Register of Established European lawyers by the order of 7 June 2021 on the basis of his request dated 08.05.2021.
4. The applicant’s Liechtenstein law office is located in 9497 Gamprin-Bendern, Industriegasse 16. In addition, Dr Maximilian Maier is also entered in the Voralberg Register of Lawyers.

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<sup>4</sup> The technical term “capable of appearing” [“*postulationsfähig*”] has here the following meaning: capable of appearing means the **capability of a person to perform legal tasks before a court**. The capability of appearing provides the procedural measures with legal form.

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5. Since his entry in the registers the applicant has represented clients in civil and criminal proceedings before courts and authorities in both countries. The applicant is fully capable of appearing, without any limitations, before all courts and authorities. As an independent lawyer the applicant is required to pay social security contributions in the Principality of Liechtenstein.
6. At the beginning of December 2021, a number of telephone calls and correspondence took place between the managing director of the Liechtenstein Bar Association, Ms Diana Hilti, and Dr Maximilian Maier, regarding the operation of Article 62 of the Lawyers Act (hereinafter "RAG"). These telephone calls led to a letter from the managing director dated 16 December 2021, in which she informed the applicant in writing that:

*"As I already informed you over the telephone, Article 62(z)(c) RAG provides that **an established lawyer is not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or ex officio defence counsel**. On the basis of this legal rule, which has been enshrined in the Liechtenstein Lawyer's Act since 1992 and which is based on the Establishment Directive 98/5, established European lawyers are excluded from legal aid mandates. Logically this entails that established European lawyers may also not act as substitutes as this would constitute a circumvention of Article 62 RAG. It is therefore not permissible for lawyer Alexander Amann, or any other Liechtenstein lawyer, to ask you to assume a legal aid or an ex officio defence counsel mandate as a substitute."*

7. It is important to note that legal aid mandates issued by the Liechtenstein Bar Association in Liechtenstein are remunerated according to the rates for Liechtenstein lawyers which can make them (on occasion) financially attractive.
8. In an email dated 03.01.2022 the applicant expressed his views on the letter of 16.12.2021 and stated that he was not in agreement with the Bar Association's legal opinion of 16.12.2021 (Appendix A). The applicant requested that the Liechtenstein Bar Association issue an order<sup>5</sup>.
9. On 05.04.2022 the Liechtenstein Bar Association issued a declaratory ruling, signed on behalf of the Board by Dr Manuel Walser, regarding legal aid mandates (Appendix B) and prohibited, on the basis of Article 62(2)(c) RAG, the applicant
  - as an EEA-lawyer from being appointed as a legal aid lawyer;
  - as an EEA-lawyer from executing legal aid mandates as a substitute for a domestic lawyer to whom such mandates had been allocated.
10. On 20.04.2022, the applicant brought an appeal against the Liechtenstein Bar Association's declaratory ruling before the Government of the Principality of Liechtenstein.
11. By Government decision dated 28.06.2022 (Appendix C) the legal opinion of the Liechtenstein Bar Association was confirmed. The Government also raised a number of arguments in its reasoning to demonstrate that Article 62(2)(c) RAG is justifiable on the grounds of public interest and that the Establishment Directive does not represent a "complete harmonisation".
12. On the basis of the negative decision of the Liechtenstein Government the applicant had no other option, despite the clear legal situation, than to bring an appeal before the Administrative Court of the Principality of Liechtenstein (Appendix D).
13. In a letter to the EFTA Court dated 26.09.2022 the Administrative Court of the Principality of Liechtenstein requested an Advisory Opinion of the EFTA Court on the following question:

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<sup>5</sup> An order is a decision that may be challenged before the public law courts.

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**“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 ex officio defence counsel, compatible with Directive 98/5/EC?”**

14. In a letter dated 21.10.2022 the applicant was invited by the EFTA Court to submit written observations by 21.12.2022.

### 2. Observations

15. On the basis of the formulation of the question submitted by the Administrative Court, the applicant assumes hereinafter that the Administrative Court recognised the unlawfulness of the Liechtenstein Bar Association’s order of 05.04.2022 on all points and the decision of the Government confirming that order, which prohibited the applicant from accepting legal aid mandates as a substitute for domestic lawyers. As the applicant tried to explain right from the start to the managing director and the Board of the Liechtenstein Bar Association, it does not make sense in legal terms to claim that the applicant may not accept domestic legal aid mandates as a substitute, as this constitutes a circumvention of Article 62(2)(c) RAG since the applicant is fully capable of appearing before all domestic courts and authorities. The unconstitutionality of this approach is left aside at this point.
16. Since the applicant is fully capable of appearing in all areas of the Liechtenstein legal system, the fact that he acts as a substitute in a legal matter cannot be made dependent on whether a legal aid mandate is involved or not. Such an argumentation is a legal nullity.
17. If one leaves aside for a moment the grave unlawfulness outlined above, also according to the EEA Agreement, of the approach of the Liechtenstein Bar Association and of the order issued by it, the only legal question that arises is whether point (c) of Article 62 RAG (“*Professional status*”) violates the fundamental freedoms guaranteed by the Agreement on the European Area (hereinafter “EEA”) and Directive 98/5/EC<sup>6</sup> (hereinafter the “*Establishment Directive*”), since point (c) of Article 62 RAG provides that an EEA-lawyer may not be appointed as a legal aid lawyer, legal aid defence counsel or ex officio defence counsel. This is based on the fact that Article 5 of the Establishment Directive specifically provides for the possibility of appointing a domestic lawyer acting in conjunction with an EEA-lawyer.
18. In the area of the fundamental freedoms EEA law and EU law are largely identical.<sup>7</sup> Articles 36 and 37 EEA reproduce word for word Articles 56 and 57 TFEU.
20. The Establishment Directive lays down more detailed rules with respect to the provision of services in the host Member State by lawyers. As stated in the Directive’s preamble, it contains measures intended to facilitate the regular pursuit of the profession of a lawyer in a different

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<sup>6</sup> 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.

<sup>7</sup> Baudenbacher, Fundamental freedoms and fundamental rights in EEA law, Kley/Vallender (edition), LPS Volume 52, p. 795.

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Member State. The Establishment Directive must be interpreted in the light of the general principles enshrined in the EEA Agreement governing the freedom to provide services.<sup>8</sup>

21. The freedom to provide services not only prohibits open or disguised discrimination, it also prohibits limitations and any indistinctly applicable measures. A limitation of the scope of application of the freedom to provide services in line with the jurisprudence in *Keck* was rejected by the ECJ in C-384/93.<sup>9</sup>
22. The freedom to provide services is one of the fundamental principles of the EEA Agreement. It may be restricted only by rules **justified by** overriding requirements relating to the **public interest** and **applicable to all persons and businesses** operating in the territory of the State where the service is provided. Furthermore, the rules must be **suitable** for securing the attainment of the objective which they pursue and not go beyond **what is necessary** in order to attain it.<sup>10</sup>

### 2.1 Re infringement of the fundamental freedoms guaranteed by Article 36 EEA and breach of the Establishment Directive

23. Article 36(1) EEA prohibits any restrictions on the freedom to provide services. The objective of this provision is to liberalise all remunerated activities that do not fall within the scope of the freedom of movement for goods, capital or persons.<sup>11</sup>
24. Directive 98/5/EC sets out detailed rules regarding the practice of the profession of lawyer on a permanent basis in a host Member State. The Directive must be interpreted in the light of the **general principles** enshrined in the EEA Agreement **governing the freedom to provide services**.<sup>12</sup>
25. Insofar as Article 62(2)(c) RAG provides that the applicant as an EEA-lawyer may not be appointed as a legal aid lawyer, the Liechtenstein provisions on professional practice as a lawyer exclude the applicant, unlike domestic lawyers, from providing paid services, thus these legal norms violate the freedom to provide services and the freedom of establishment under the EEA Agreement as well as the jurisprudence developed by the European Court of Justice and the EFTA Court. In Liechtenstein legal aid mandates are remunerated in accordance with the Act on the Rates for Lawyers and Legal Agents [*Gesetz über den Tarif für Rechtsanwälte und Rechtsagenten*].<sup>13</sup> In the event that an acquittal is achieved in a criminal case – which the applicant has achieved in a number of past cases – a claim against the Principality of Liechtenstein arises for the reimbursement of costs for the legal services. This is therefore a remunerated service that the applicant, unlike domestic lawyers, is excluded, on improper grounds, from delivering.

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<sup>8</sup> EFTA Court E-1/07, paragraph 28.

<sup>9</sup> Baudenbacher, *Fundamental freedoms and fundamental rights in EEA law*, Kley/Vallender (edition), LPS Volume 52, p. 826.

<sup>10</sup> EFTA Court E-1/07, paragraph 27, inter alia; Case C-55/94 *Gebhard*; Case C-19/92 *Krause and Others*.

<sup>11</sup> Compare, by analogy, joined cases 286/82 and 26/83 *Luisi and Carbone*, ECR 1984, p. 377, paragraph 10, and the more recent case of C-221/11 *Demirkan*, judgment of 24 September 2013, paragraph 34.

<sup>12</sup> Compare case E-1/07 *Criminal proceedings against A*, EFTA Court Report 2007, 246, paragraph 28.

<sup>13</sup> Act of 16 December 1987 on the Rates for Lawyers and Legal Agents, LGBL 1988/9.

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26. Insofar as Article 62(2)(c) RAG provides that the applicant may not be appointed as a legal aid lawyer this represents a direct infringement of the freedom to provide services as guaranteed by Articles 36 and 37 of the EEA Agreement and a direct violation of the Establishment Directive.

### 2.2 Re Existence of public interest that would justify the infringement and the compatible interpretation of the Right of Establishment Directive

27. Article 5(3) of the Establishment Directive entitled “Area of activity” states the following:

“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 practicing under the professional title of that State**, the latter **may require** lawyers practicing under their home-country professional titles **to work in conjunction with a lawyer who practices before the judicial authority in question** and who would, where necessary, be answerable to that authority or with an ‘*avoué*’ practicing 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.”

28. The Liechtenstein Government stated the following in its intervention regarding the applicant’s freedom to provide services (Appendix C – Government Decision of 29.09.2022, p. 10):

**“The applicant is correct insofar as the only exceptional case provided for by Article 5 of Directive 98/5 is that a domestic lawyer acting in conjunction may be required.**

*However, the applicant overlooks the fact that Article 5 does not represent a complete harmonisation and that the Member States remain competent to adopt national measures.*

[...]

*An established European lawyer comes to Liechtenstein with the professional training and experience obtained in his country of origin. He is qualified and authorized to practice as a lawyer in his country of origin, however, he is not yet familiar with Liechtenstein law. In this respect he does not have the same wealth of experience as a lawyer qualified in Liechtenstein law. [...]*

29. In the abovementioned legal provision of the Establishment Directive the European legislator expressly provided which measures host Member States may adopt, in line with public interest in ensuring the smooth operation of the justice system, to avoid these measures impinging on the fundamental freedoms guaranteed by the EEA Agreement in a disproportionate manner.

30. If the Liechtenstein legislator holds the view that on the grounds of public interest in ensuring the smooth operation of the justice system it seems advisable to reserve certain areas of Liechtenstein Law for domestic lawyers, it may in the context of the usual legislative procedure issue laws /requirements that require an EEA-lawyer to act in conjunction with a domestic lawyer in certain areas. However, such laws may not lead to EEA-lawyers not being able to be appointed as legal aid lawyers in these areas, if such EEA-lawyers are fully capable of appearing in these areas acting in conjunction with a domestic lawyer; otherwise there would once again be an infringement of the Establishment Directive.

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31. In its judgment in E-1/07 the EFTA Court (principles of primacy and direct effect – conforming interpretation) has already stated that the scope for limiting the legal position of EEA-lawyers as guaranteed by the fundamental freedoms, by requiring that they act in conjunction with a domestic lawyer, is exhaustive, thus, on the basis of this judgment, the way in which the government (Appendix B) has dealt with the applicant is incomprehensible:

“Article 5 of the Directive enables the EEA States to require lawyers from other EEA States representing a client in legal proceedings to work in conjunction with a national lawyer. **The scope of this exemption from the main rule of the Directive, as interpreted in light of the general principles of the EEA Agreement referred to in paragraph 27 above, is limited to circumstances where considerations relating to public interest justify the obligation for a lawyer to work in conjunction with a national lawyer. Such considerations do not exist in court proceedings for which representation by a lawyer is not mandatory** (see for comparison Cases 427/85 *Commission v Germany*, at paragraph 14 and 294/89 *Commission v France*, at paragraph 19). [...]”<sup>14</sup>

32. Host Member States “may” require EEA-lawyers representing clients before courts and authorities to act in conjunction with a domestic lawyer. The Principality of Liechtenstein has not availed itself of this possibility of requiring EEA-lawyers to act in conjunction with a domestic lawyer in any area of law.

33. It is an infringement of the fundamental freedoms guaranteed by the EEA Agreement and the Establishment Directive for the applicant to be arbitrarily excluded from being assigned legal aid mandates on the basis of Article 62(2)(c) RAG.

34. Furthermore, it is paradoxical if a host Member State accepts the ability of EEA-lawyers to appear in many areas of its legal system, i.e. this host Member State does not deem it necessary, in the interest of ensuring the smooth operation of the justice system, to issue procedural rules requiring EEA-lawyers to act in conjunction with a domestic lawyer; however, when it comes to assigning very lucrative legal aid mandates (also to EEA-lawyers) then this host Member State invokes a separate set of rules and only allows domestic lawyers to assume legal aid mandates while totally excluding EEA-lawyers from assuming such mandates.

### 35. Conclusion

The applicant’s exclusion from being assigned legal aid mandates on the basis of Article 62(2)(c) RAG is not in the public interest and infringes the limitation expressly provided for in the Establishment Directive of EEA-lawyers acting in conjunction with a domestic lawyer. Article 62(2)(c) represents an unlawful act on the part of the host Member State.

**Re the interpretation of § 24(2) of the CCP in the light of the Establishment Directive and EFTA Court case E-1/07**

36. § 24(2) of the Liechtenstein CCP reads:

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<sup>14</sup> EFTA Court case E-1/07, paragraph 30.



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*“Any person of full legal capacity may be a defence counsel; however, in the **cases regulated in § 26(3)** and in appeal proceedings, the defence counsel must be a lawyer who is **entered in the list of lawyers**<sup>15</sup> or is **otherwise legally** or by licence issued by the Government **authorized to practice in the Principality of Liechtenstein**. [...]”*

37. § 26(3) of the Liechtenstein CCP reads:

*“The accused (defendant) shall have a defence counsel for the duration of pre-trial detention and for the trial before the criminal tribunal. If neither the accused (defendant) himself nor his legal representative choose a defence counsel for him in these cases and if he is not provided with a defence counsel in terms of para. (2), either, he shall be provided with a defence counsel ex officio and in the case of detention no later than before the first detention hearing is held; the defendant shall bear the costs of such defence counsel unless the requirements for providing a legal aid defence counsel in terms of para. (2) apply. Para. (2) last sentence shall apply mutatis mutandis. [...]”*

38. As the abovementioned legal provisions expressly state, in Liechtenstein an established European lawyer may appear before the courts in criminal cases without having to act in conjunction with a domestic lawyer.<sup>16</sup>

39. In legal literature in Liechtenstein it is generally accepted that the reference in § 24(2) CCP to the situations in § 26(3) CCP (for example, representation for arrests and crimes etc.) is limited to domestic lawyers who are entered in the register of lawyers.<sup>17</sup>

40. The applicant maintains that this cannot be inferred from the wording of § 24(2) CCP as word-for-word this provision expressly states that **“in the cases regulated in § 26(3) [...] the defence counsel must be a lawyer** who is entered in the list of lawyers or **is otherwise legally [...] authorized to practice in the Principality of Liechtenstein.”**

41. According to the applicant’s interpretation, an established European lawyer is “a lawyer who is otherwise legally authorized to practice in the Principality of Liechtenstein”. Thus, according to the applicant’s interpretation established European lawyers are also covered by the wording of § 24(2) together with § 26(3) CCP. Hence, the applicant is fully capable of appearing in all criminal law proceedings without having to act in conjunction with a domestic lawyer; and the legal norms referred to do not limit the applicant’s fundamental freedoms.

42. Thus, according to the applicant’s legal interpretation, EEA-lawyers are fully capable of appearing in criminal cases in Liechtenstein and may also represent clients before the courts in the cases covered by § 26(3) CCP.

43. As the applicant is also fully capable of appearing in all criminal cases, there are no grounds on which the applicant may not be appointed as a legal aid lawyer. Article 62(2)(c) RAG breaches

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<sup>15</sup> Giesinger, Handbook on Liechtenstein Criminal Law [HB Liechtensteinisches Strafrecht] (2021), p. 149.

<sup>16</sup> Giesinger, Handbook on Liechtenstein Criminal Law [HB Liechtensteinisches Strafrecht] (2021), p. 149.

<sup>17</sup> Inter alia, Giesinger, Handbook on Liechtenstein Criminal Law [HB Liechtensteinisches Strafrecht] (2021).

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the applicant's freedom to provide services as guaranteed by the EEA Agreement, without providing any objective legal justification.

44. The applicant's legal interpretation is that the procedural rules in the Principality of Liechtenstein do not provide for any limitation, as regards representation before the courts, between lawyers who are entered in the register of lawyers and EEA-lawyers.
45. Should the Court reach a different interpretation of the law as regards the capability of EEA-lawyers appearing in the area of criminal law, this should not prevent EEA-lawyers from also assuming legal aid mandates in this field, as provided for in the Establishment Directive, when they act in conjunction with a domestic lawyer. In his letter of 03.01.2022 (Appendix A) the applicant notified the Bar Association of the domestic lawyer with whom he usually acted in conjunction. Since the applicant is fully capable of appearing in criminal cases before the Liechtenstein courts acting in conjunction with a domestic lawyer, there are no grounds as to why the applicant might not also be appointed as a legal aid lawyer in such cases.
46. Moreover, it can be assumed that not all legal aid mandates relate to crimes or arrests and that the applicant is fully entitled to represent clients before the Liechtenstein courts, and to accept legal aid mandates, in such areas without acting in conjunction with a domestic lawyer.

### Conclusion

It is paradoxical to place EEA-lawyers on an equal procedural footing with their domestic colleagues, whereby pursuant to the domestic procedural rules EEA-lawyers are recognised as being fully capable of appearing in all areas of the legal system, but nevertheless to exclude EEA-lawyers from being able to assume legal aid mandates, this is rendered even more absurd by the applicant being informed that EEA-lawyers are not sufficiently "integrated".

The applicant respectfully requests the EFTA Court to provide *orbiter* its opinion on the conformity with EEA law of §§ 24 together with § 26 CCP, as a contrary interpretation would seriously impinge on the applicant's fundamental freedoms.

### 3. Response to the question submitted

On the basis of the abovementioned grounds the applicant maintains that the question submitted to the EFTA Court by the Administrative Court of the Principality of Liechtenstein should be answered as follows:

*A national measure 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 ex officio defence counsel, is not compatible with Directive 98/5/EC.*

Yours faithfully

## **AMMAN PARTNERS**

Dr Maximilian Maier

Appendices referred to

Five copies (Article 54(3) of the Rules of Procedure of the EFTA Court)