



JUDGMENT OF THE COURT

16 October 2025*

(Air transport – Regulation (EC) No 1008/2008 – The conditions for the issue of an operating licence – Articles 3 and 4 – Harmonisation)

In Case E-1/25,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Liechtenstein Board of Appeal for Administrative Matters (*Beschwerdekommision für Verwaltungsangelegenheiten*), in the case between

Valair AG

and

Amt für Volkswirtschaft (Amt für Hochbau und Raumplanung (AHR)),

THE COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Michael Reiertsen and Martin Ospelt (ad hoc), Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- Valair AG (“Valair”) represented by Dr Thomas Wiedl and Vivianne Auer, advocates;
- the Liechtenstein Government, represented by Dr Andrea Entner-Koch and Samuel Barwart, acting as Agents;

* Language of the request: German. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- the EFTA Surveillance Authority (“ESA”), represented by Kyrre Isaksen, Daniel Vasbeck, and Melpo-Menie Joséphidès, acting as Agents; and
- the European Commission (“the Commission”), represented by Beata Sasinowska and Nicola Yerrell, acting as Agents,

having heard oral arguments of Valair, represented by Dr Thomas Wiedl and Vivianne Auer; the Liechtenstein Government, represented by Dr Andrea Entner-Koch and Samuel Barwart; ESA, represented by Kyrre Isaksen; and the Commission, represented by Beata Sasinowska, at the hearing on 4 June 2025,

gives the following

JUDGMENT

I INTRODUCTION

- 1 The present request for an advisory opinion concerns the interpretation and application of Article 4 of Regulation No 1008/2008 on common rules for the operation of air services in the Community, which sets out the conditions for granting an operating licence. The primary matter in the case at hand is whether an EEA State may refuse to grant such a licence on the ground that appropriate infrastructure is lacking within its territory.

II LEGAL BACKGROUND

EEA law

- 2 Article 7(a) of the Agreement on the European Economic Area (“EEA” or “the EEA Agreement”) reads:

Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows:

(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;

- 3 Article 36 EEA reads:

1. Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended.

2. Annexes IX to XI contain specific provisions on the freedom to provide services.

4 Article 38 EEA reads:

Freedom to provide services in the field of transport shall be governed by the provisions of Chapter 6.

5 Article 47(2) EEA reads:

Annex XIII contains specific provisions on all modes of transport.

6 Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ 2008 L 293, p. 3) (“Regulation 1008/2008” or “the Regulation”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 90/2011 of 19 July 2011 (OJ 2011 L 262, p. 62) (“JCD No 90/2011”), and is referred to at point 64a in Annex XIII (Transport) to the EEA Agreement. The decision entered into force on 20 July 2011.

7 Recitals 2, 5, 16 and 18 of Regulation 1008/2008 read:

(2) In order to ensure a more efficient and consistent application of Community legislation for the internal aviation market a series of adjustments to the current legal framework is required.

(5) To ensure consistent monitoring of the compliance with the requirements of the operating licences of all Community air carriers, licensing authorities should carry out regular assessments of the air carriers' financial situation. Therefore, the latter should provide sufficient information on their financial situation, especially in the first two years of their existence as these are particularly critical for the survival of an air carrier on the market. In order to avoid a distortion of competition arising from the different application of the rules at national level, it is necessary to reinforce the financial oversight of all Community air carriers by Member States.

(16) Customers should be able to compare effectively the prices for air services of different airlines. Therefore the final price to be paid by the customer for air services originating in the Community should at all times be indicated, inclusive of all taxes, charges and fees. Community air carriers are also encouraged to indicate the final price for their air services from third countries to the Community.

(18) Since the objective of this Regulation, namely more homogeneous application of Community legislation with regard to the internal aviation market cannot be sufficiently achieved by the Member States because of the international character of air transport, and can therefore be better achieved at

Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

- 8 Article 1(1) of Regulation 1008/2008, entitled “Subject matter”, reads:

This Regulation regulates the licensing of Community air carriers, the right of Community air carriers to operate intra-Community air services and the pricing of intra-Community air services.

- 9 Article 2 of Regulation 1008/2008, entitled “Definitions”, reads, in extract:

For the purposes of this Regulation:

(1) ‘operating licence’ means an authorisation granted by the competent licensing authority to an undertaking, permitting it to provide air services as stated in the operating licence;

...

(8) ‘air operator certificate (AOC)’ means a certificate delivered to an undertaking confirming that the operator has the professional ability and organisation to ensure the safety of operations specified in the certificate, as provided in the relevant provisions of Community or national law, as applicable;

...

(10) ‘air carrier’ means an undertaking with a valid operating licence or equivalent;

(11) ‘Community air carrier’ means an air carrier with a valid operating licence granted by a competent licensing authority in accordance with Chapter II;

...

(26) ‘principal place of business’ means the head office or registered office of a Community air carrier in the Member State within which the principal financial functions and operational control, including continued airworthiness management, of the Community air carrier are exercised.

- 10 Article 3(1) of Regulation 1008/2008, entitled “Operating licence”, reads:

No undertaking established in the Community shall be permitted to carry by air passengers, mail and/or cargo for remuneration and/or hire unless it has been granted the appropriate operating licence.

An undertaking meeting the requirements of this Chapter shall be entitled to receive an operating licence.

- 11 Article 4 of Regulation 1008/2008, entitled “Conditions for granting an operating licence”, reads:

An undertaking shall be granted an operating licence by the competent licensing authority of a Member State provided that:

- (a) its principal place of business is located in that Member State;*
- (b) it holds a valid AOC issued in accordance with Regulation (EU) 2018/1139 of the European Parliament and of the Council either by a national authority of a Member State, by several national authorities of Member States acting jointly in accordance with Article 62(5) of that Regulation or by the European Union Aviation Safety Agency;*
- (c) it has one or more aircraft at its disposal through ownership or a dry lease agreement;*
- (d) its main occupation is to operate air services in isolation or combined with any other commercial operation of aircraft or the repair and maintenance of aircraft;*
- (e) its company structure allows the competent licensing authority to implement the provisions of this Chapter;*
- (f) Member States and/or nationals of Member States own more than 50 % of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Community is a party;*
- (g) it meets the financial conditions specified in Article 5;*
- (h) it complies with the insurance requirements specified in Article 11 and in Regulation (EC) No 785/2004; and*
- (i) it complies with the provisions on good repute as specified in Article 7.*

- 12 Article 6 of Regulation 1008/2008, entitled “Air operator certificate”, reads:

1. The granting and validity of an operating licence shall be dependent on the possession of a valid AOC specifying the activities covered by that operating licence.

2. *Any modification to the AOC of a Community air carrier shall be reflected, where appropriate, in its operating licence.*

13 Article 8 of Regulation 1008/2008, entitled “Validity of an operating licence”, reads, in extract:

1. *An operating licence shall be valid as long as the Community air carrier complies with the requirements of this Chapter.*

...

14 Article 1 of JCD No 90/2011 reads, in extract:

...

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) *In Article 4(f) the words ‘, except as provided for in an agreement with a third country to which the Community is a party;’ shall be replaced by the following:*

“. However, operating licenses with legal effects in the entire EEA can be granted on the basis of exceptions to this requirement provided for in agreements with third countries to which the Community or one or more EFTA States are parties, provided the EEA Joint Committee adopts a decision to that effect.”;

...

National law

15 The Act of 15 May 2002 on aviation (“Aviation Act 2002”) (*Gesetz vom 15. Mai 2002 über die Luftfahrt*) regulated civil aviation and served to transpose and implement the regulations applicable to civil aviation within the European Economic Area, in particular Annex XIII, Chapter VI, to the EEA Agreement. The Liechtenstein Aviation Act 2002 has been replaced by the new Aviation Act, which entered into force on 1 June 2024 (“Aviation Act 2024”) (*Luftfahrtgesetz (LFG) vom 11. April 2024*) (LGBL 2024 No 224).

16 Article 1 of the Aviation Act 2024, entitled “Subject and purpose”, reads, in extract:

1) This Act regulates civil aviation and serves in particular to implement:

a) the agreements with Switzerland applicable in accordance with Article 2;

b) the legislation applicable under points (ii) to (vi) of Chapter VI of Annex XIII to the EEA Agreement, in particular:

1. Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community;

...

17 Article 2 of the Aviation Act 2024, entitled “Applicable law”, reads:

Unless otherwise provided in this Act, the following shall apply to civil aviation:

a) the provisions of the Exchange of Notes of 27 January 2003 between Switzerland and Liechtenstein concerning cooperation between the Swiss and Liechtenstein authorities in the field of civil aviation (Exchange of Notes) and the administrative agreements based thereon;

b) the Swiss aviation legislation applicable as a result of the Exchange of Notes.

18 Title II of the Aviation Act 2024 deals with organisation and implementation. Article 5(4) provides that the Swiss Federal Office of Civil Aviation (BAZL) is responsible for assessing whether the requirements for the granting of an air operator certificate (AOC) and operating licence are met (points (a) and (b) respectively). This is mirrored by points (a) and (b) of Article 11(2) of the Aviation Act which provide that the Office of Building Construction and Spatial Planning (AHR) shall delegate this assessment to BAZL.

19 Article 9(1) of the Aviation Act 2024 reads, in extract:

The AHR is the national authority responsible for implementing aviation legislation. In particular, it is responsible for:

(a) issuing air operator certificates (AOC);

(b) granting operating licences (BB) for flights carrying passengers, cargo, and/or mail for remuneration and/or hire;

(c) fulfilling the tasks, in accordance with the Exchange of Notes, as the coordination centre between the competent Liechtenstein and Swiss authorities in the enforcement of the law applicable pursuant to Article 2;

(d) representing Liechtenstein in international working groups and committees;

(e) granting authorisations for unmanned aircraft as well as special authorisations in relation to geographical zones referred to in Article 15 of Implementing Regulation (EU) 2019/947;

(f) granting authorisations (Diplomatic Clearances) for the landing of foreign military and other state aircraft within the territory of the Principality of Liechtenstein;

(g) *submitting opinions to the government chancellery in the context of issuing event permits with a connection to aviation law;*

(h) *providing administrative support to the safety investigation authority in the event of a safety investigation pursuant to Article 13;*

(i) *concluding administrative agreements in the field of civil aviation;*

...

20 Article 9(3) of the Aviation Act 2024 reads:

Air operator certificates (AOC) and operating licences for flights carrying passengers, cargo and/or mail for remuneration and/or hire are only issued or granted if the intended activities are actually also possible on the basis of the infrastructure existing in Liechtenstein.

III FACTS AND PROCEDURE

21 Valair is a public limited company under Liechtenstein law, registered in the Liechtenstein commercial register since 2017 with its headquarters in Balzers, Liechtenstein. It maintains not only its statutory seat, but also its administrative, financial and managerial functions in Liechtenstein.

22 On 11 January 2022, Valair applied to the Office of Construction and Infrastructure (*Amt für Bau und Infrastruktur* (ABI); now the Office of Building Construction and Spatial Planning (*Amt für Hochbau und Raumplanung* (AHR)) to extend its existing operating licence for helicopters to fixed-wing aircraft.

23 By decision of 10 February 2022, the application was rejected by the Office of Construction and Infrastructure. This was principally on the grounds that the consent of the Liechtenstein authorities, in accordance with Section II of the Exchange of Notes between Switzerland and Liechtenstein of 27 January 2003 on cooperation in the field of civil aviation (“Exchange of Notes”), could not be given to authorise the application for the granting of an operating licence for fixed-wing aircraft. For that, the Swiss Federal Office of Civil Aviation (*Bundesamt für Zivilluftfahrt* (BAZL)) was competent.

24 Valair lodged an appeal on 3 March 2022, in which it was claimed that pursuant to Article 6 of the Aviation Act 2002, the Liechtenstein authorities were competent.

25 The Liechtenstein Government rejected the appeal on 20 September 2022. On 6 October 2022, Valair lodged an appeal against this Government decision with the Administrative Court (*Verwaltungsgerichtshof*). It requested the Administrative Court to amend the Government decision under challenge so as to order the Office of Construction and Infrastructure to authorise the extension of the operating licence to fixed-wing aircraft.

26 By judgment of 3 March 2023, the Administrative Court upheld the appeal and set aside without replacement both the Government decision of 20 September 2022 and the

decision of the Office of Construction and Infrastructure of 10 February 2022. This was on the grounds that, pursuant to the applicable Aviation Act 2002, operating licences had to be granted, not by BAZL but, by a Liechtenstein authority, specifically, the Office of Economic Affairs (*Amt für Volkswirtschaft* (AVW)). Accordingly, the Office of Economic Affairs was required to reach a decision on Valair's application of 11 January 2022 for the extension of the operating licence to fixed-wing aircraft.

- 27 By letter of 28 April 2023, Valair notified the Office of Economic Affairs of both the ruling of the Administrative Court and of the pending procedure with BAZL and again applied for the extension of the operating licence to fixed-wing aircraft.
- 28 By decision of 12 December 2023, the Office of Economic Affairs rejected Valair's applications of 11 January 2022 and 24 April 2023.
- 29 According to the Office of Economic Affairs, although the Aviation Act 2002 did not define requirements for operating licences, it was obvious to the legislature that operating licences for air carriers established in Liechtenstein can only be obtained subject to the requirement that the operations envisaged are possible on the basis of existing infrastructure in Liechtenstein. Although the legislature had omitted this fundamental requirement for the granting of an operating licence in the Aviation Act 2002, this did not mean that it did not apply in the assessment of the applications at issue.
- 30 Furthermore, the Office of Economic Affairs considered that the applicable principle of territoriality can be derived from public law. In addition, the connection to domestic territory necessary for official authorisations follows from the fundamental legal requirements for the introduction of an official authorisation. Its introduction serves the prevention of danger. A public interest for the introduction of an official authorisation for a commercial activity which takes place purely abroad is not evident. Consequently, these would be impermissible. As the applicant did not intend to operate fixed-wing aircraft in Liechtenstein, the type of operation intended by Valair did not have the necessary domestic connection required on the basis of the principle of territoriality for the grant of an operating licence in accordance with the Aviation Act 2002.
- 31 Lastly, the Office of Economic Affairs took the view that by virtue of the Exchange of Notes, the relevant provisions of the Swiss Aviation Act requiring the existence of a suitable airfield for the requested operations also applied to the granting of operating licences under the Aviation Act 2002.
- 32 Valair appealed against this decision to the Liechtenstein Government. Due to a change of competence in the Aviation Act 2024, the Board of Appeal became competent for the appeal on 10 July 2024. Valair maintains that: (i) under Regulation (EEC) No 2407/92, the State which is competent for the operating licence is also competent for the issue of air operator certificates ("AOC") or amendments thereto; (ii) an undertaking which meets the requirements laid down by Regulation (EEC) No 2407/92 is entitled to receive an operating licence; (iii) those requirements do not include the existence of an airfield on the domestic territory; (iv) competence for the granting of the operating

licence and/or extension of the AOC lies with the State in which the principal place of business of the undertaking and, if any, its registered office are located (in this case, Liechtenstein) rather than the State in which the operations are to be carried out; and (v) any other interpretation would render it practically impossible for commercial operators to offer flights using fixed-wing aircraft and thereby directly affect access to the market in services in other EEA States.

33 In its request for an advisory opinion, the Board of Appeal states that certain doubts exist as to whether the conditions laid down in Article 4 of Regulation 1008/2008 for the grant of an operating licence are exhaustive, or whether a competent licensing authority may impose additional requirements such as that contained in Article 9(3) of the Aviation Act 2024 which requires the intended operations to be possible on the basis of the infrastructure existing in Liechtenstein.

34 Against this background, on 30 January 2025, the Board of Appeal requested an advisory opinion from the Court. The request, dated 18 December 2024, was registered at the Court on 6 February 2025. The Board of Appeal has referred the following questions to the Court:

1. *Does it follow from Article 4 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community or any other EEA provision that the competent licensing authority of a Member State may not impose any further conditions?*
2. *If the first question is answered with “no”: Is a provision according to which air operator certificates (AOC) and operating licences for flights carrying passengers, cargo and/or mail for remuneration and/or hire are only issued or granted if the intended activities are actually also possible on the basis of the infrastructure existing in Liechtenstein precluded by the objective of establishing an internal aviation market and/or other principles of EEA law?*
3. *If the second question is answered with “no”: Is Article 9(3) of the Liechtenstein Aviation Act which de facto excludes the issue or granting of air operator certificates (AOC) and operating licences for flights carrying passengers for remuneration and/or hire using fixed-wing aircraft due to the absence of an infrastructure in Liechtenstein, in the sense of airports or airfields, compatible with Article 36 of the EEA Agreement (freedom to provide services)?*

35 Reference is made to the written observations published on the Court’s website for a fuller account of the arguments and proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

IV ANSWER OF THE COURT

- 36 By its first question, the referring body asks, in essence, whether Article 4 of Regulation 1008/2008, or any other provision of EEA law, precludes the competent licensing authority of an EEA State from imposing conditions for granting an operating licence under that regulation beyond those listed in Article 4 itself. By its second and third questions, the referring body seeks to ascertain, in essence, whether a national provision according to which air operator certificates (“AOC”) and operating licences for operating air services are only issued if the intended activities may be undertaken in the EEA State concerned on the basis of existent infrastructure is compatible with the objective of establishing an internal aviation market and/or other principles of EEA law, as well as Article 36 EEA. The Court considers it appropriate to answer these questions together.
- 37 Article 38 EEA provides that freedom to provide services in the field of transport shall be governed by the provisions of Chapter 6 thereof. Article 47(2) EEA further stipulates that Annex XIII contains specific provisions on all modes of transport, into which Regulation 1008/2008 has been incorporated. The freedom to provide services in the field of transport is therefore governed, in the main part of the EEA Agreement, by a special legal regime (compare the judgment of 18 March 2014 in *International Jet Management*, C-628/11, EU:C:2014:171, paragraph 36).
- 38 In order to serve a route between airports in two different States, an airline must have an international air traffic right, that is to say, authorisation to serve that route. Each State designates the airlines established on its territory which it authorises to serve a route between that territory and the territory of another State. The number of authorisations that can be granted by each State to service an international air route is traditionally determined by a bilateral international agreement between the two States concerned. Those traffic rights therefore constitute, a priori, a legal barrier to entry to an international air route (compare the judgment of 13 May 2015 in *Niki Luftfahrt v Commission*, T-162/10, EU:T:2015:283, paragraph 270).
- 39 Those legal barriers were lifted within the European Economic Area by the incorporation into the EEA Agreement of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access of Community air carriers to intra-Community air routes (OJ 1993 L 240, p. 8), which has since been repealed and replaced by Regulation 1008/2008 (compare the judgment in *Niki Luftfahrt v Commission*, T-162/10, cited above, paragraph 271). Recitals 2, 5, 16 and 18 of Regulation 1008/2008 state that the Regulation’s objective is to achieve a more efficient, consistent and homogenous application of EEA legislation for the internal aviation market in order to avoid a distortion of competition arising from the different application of the rules at national level. In this regard, air carriers operating flights in the territory of the EEA operate on the basis of licences issued by the EEA States under Regulation 1008/2008.
- 40 Article 1(1) of Regulation 1008/2008 states that the Regulation regulates the licensing of air carriers within the EEA, as well as the right of such air carriers to operate intra-EEA air services and the pricing of intra-EEA air services. In accordance with

Article 15 of Regulation 1008/2008, air carriers in possession of a valid operating licence issued by the competent authority of the EEA State in which they have their principal establishment are to be entitled to operate intra-EEA air services and EEA States are not to subject the operating of those services by such a carrier to any permit or authorisation (compare the judgment in *Niki Luftfahrt v Commission*, T-162/10, cited above, paragraph 272).

- 41 Article 3(1) of the Regulation provides that an operating licence constitutes an essential prerequisite for carrying out activities under the Regulation. In accordance with the second subparagraph of Article 3(1), an undertaking meeting the requirements of Chapter II of the Regulation is entitled to receive an operating licence (compare the judgment in *International Jet Management*, C-628/11, cited above, paragraphs 42 and 43).
- 42 Article 4 of the Regulation sets out the conditions for granting an operating licence. This article prescribes that an undertaking shall be granted an operating licence by the competent licensing authority of an EEA State provided that all of the conditions set out in points (a) to (i) are fulfilled. Conversely, Article 3(2) provides that the competent licensing authority shall not grant operating licences or maintain them in force where any of the requirements of Chapter II are not complied with. It follows that an operator who satisfies the requirements set out by Regulation 1008/2008 shall receive a licence and may carry on the activities covered by that licence.
- 43 Accordingly, it follows clearly from the wording of Articles 3 and 4 of the Regulation that the conditions for the granting of an operating licence are prescribed in full by the Regulation, and the licensing authority is accordingly bound to grant a licence if an undertaking complies with those conditions.
- 44 A single adaptation concerning Article 4 of Regulation 1008/2008 was introduced by JCD No 90/2011 when the Regulation was incorporated into Annex XIII to the EEA Agreement. This adaptation concerned the ownership and control requirements in Article 4(f). JCD No 90/2011 allows an EEA State the possibility to grant an operating licence where the requirement of ownership and control is not met, provided that (i) this exception is provided for in an agreement entered into between the EU or one or more EFTA State(s), on the one hand, and a third country, on the other hand, and (ii) the EEA Joint Committee adopts a decision to that effect.
- 45 However, this adaptation does not confer any additional discretion upon EEA States with respect to whether an undertaking should be granted an operating licence by the competent licensing authority of an EEA State provided that all of the conditions set out in points (a) to (i) of Article 4 of the Regulation are fulfilled.
- 46 Moreover, Chapter II of the Regulation contains no reference to any additional elements that may be taken into account by the competent authority, or any discretion that may be exercised in this regard. As noted by the Commission, this is in contrast to other provisions of the Regulation, which expressly allow for discretion on the part of EEA States in specific areas, such as Article 19 concerning traffic distribution rules, and

Article 13(4), which permits the competent authority to attach conditions to an approval of a wet leasing aircraft registered in a third country.

- 47 According to settled case law, where a matter is regulated in a harmonised manner at EEA level, any national measure relating thereto must be assessed in the light of the provisions of that harmonising measure (see the judgment of 16 July 2012 in *ESA v Norway*, E-9/11, paragraph 72 and case law cited; and compare the judgments of 13 December 2001 in *DaimlerChrysler*, C-324/99, EU:C:2001:682, paragraph 32 and case law cited; and of 27 February 2019 in *Associação Peço a Palavra and Others*, C-563/17, EU:C:2019:144, paragraph 49 and case law cited).
- 48 In that regard, it must be held that, in respect of the conditions for the granting of an operating licence, Articles 3 and 4 of Regulation 1008/2008 amount to exhaustive harmonisation. Therefore, an EEA State may not purport to add any further conditions to those listed in Article 4.
- 49 This exhaustive harmonisation guarantees that an air carrier obtains its operating licence in compliance with the common rules, in particular those concerning safety, and must therefore be recognised by the authorities of the other EEA States (compare the judgment in *International Jet Management*, C-628/11, cited above, paragraph 48).
- 50 As observed by the Commission, Articles 3 and 4 of Regulation 1008/2008 do not lay down any conditions requiring an adequate airport or infrastructure within the territory of the competent licensing authority. Furthermore, Regulation 1008/2008 does not impose on airlines any obligation to provide services to or from the EEA State in which they were issued an operating licence.
- 51 It appears, subject to the verification of the referring body, that the contested national measure requiring the intended operations to be possible on the basis of the infrastructure existing in Liechtenstein, was partially enacted in order to avoid strategic decisions by undertakings to establish themselves in Liechtenstein without actually commencing aviation operations within the country. The Court observes, in this respect, that in accordance with Article 4(a) of Regulation 1008/2008, only the authority of the EEA State in whose territory the EEA air carrier has its principal place of business within the meaning of Article 2(26) is competent to verify whether the conditions of issue provided for under that provision are satisfied (compare the judgment in *International Jet Management*, C-628/11, cited above, paragraphs 64 to 66 and case law cited).
- 52 Under Article 2(26) of Regulation 1008/2008, the “principal place of business” is defined as the head office or registered office of an EEA air carrier in the EEA State within which the principal financial functions and operational control, including continued airworthiness management, of the air carrier are exercised. Thus, for a given legal entity, that regulation permits the establishment of only one principal place of business and, consequently, the issuing of only one licence by the authorities of the EEA State on the territory of which that principal place of business is located.

- 53 While it is true that, in practice, the concept of principal place of business often corresponds to that of a registered office and that a change of registered office can be made relatively quickly, it must be recalled that Article 2(26) of Regulation 1008/2008 contains other details, in particular in relation to the fact that continued airworthiness management must be carried out from the location of the principal place of business, that is to say, in the present case, in Liechtenstein. That consideration is supported by Article 5 (on the financial conditions for granting an operating licence), Article 7 (on proof of good repute) and Article 8 (on the validity of an operating licence) of Regulation 1008/2008. Those provisions create reciprocal regulatory obligations between airlines holding a Liechtenstein licence and the Liechtenstein authorities, and thus a specific, stable link between them (compare the judgment of 17 February 2021 in *Ryanair v Commission*, T-238/20, EU:T:2021:91, paragraph 42).
- 54 As the Commission noted in response to a question from the bench, the fact that the Regulation links the competent national authority to the principal place of business ensures effective oversight, in order to ensure accountability for safety compliance and effective monitoring.
- 55 Furthermore, as regards the Liechtenstein Government's argument that a duty to grant such a licence would require the development of comprehensive administrative structures in Liechtenstein which would be disproportionate, the Court notes that Regulation 1008/2008 does not exclude a possible transfer of the oversight tasks undertaken by a competent authority to another EEA State's counterpart subject to the acceptance by the latter.
- 56 The Liechtenstein Government has maintained that Liechtenstein's aviation infrastructure has unique characteristics, which distinguish it from any other EEA State. In particular, the Liechtenstein Government notes that no infrastructure exists – nor will likely ever exist – that would facilitate the take-off and/or landing of fixed-wing aircraft, i.e. a runway, on Liechtenstein territory. Liechtenstein's geography offers little to no space for corresponding infrastructure, a combined result of the small size of the country and its mountainous terrain. According to the Liechtenstein Government, the complete absence of, and geographical improbability of the future establishment of, such facilities underscores the uniqueness of Liechtenstein's aviation infrastructure, setting it apart from all other EEA States.
- 57 The Liechtenstein Government states that these characteristics have been taken into account in several decisions of the EEA Joint Committee incorporating other regulations and directives relating to aviation. The Liechtenstein Government argues that this reflects a general understanding that the planned activity of any undertaking seeking an operating licence must be practically feasible on the basis of the existing infrastructure in an EEA State and that Regulation 1008/2008 should be read in light of these characteristics.
- 58 The Court observes, however, that no adaptation linked to the national infrastructure or geographical situation of Liechtenstein was included in JCD No 90/2011. By contrast, as noted in the request, Joint Committee Decision No 69/2009 of 29 May 2009, which

incorporated Regulation (EC) No 300/2008 on common rules in the field of civil aviation security into Annex XIII, included an express adaptation to the effect that the measures laid down in that regulation would not apply to the existing civil aviation infrastructure in Liechtenstein. This was explicitly linked to the specific situation of Liechtenstein, and in particular, its geography and infrastructure.

- 59 As noted by Valair, and as supported by the Commission, the existence of this adaptation to Regulation No 300/2008 merely serves to reinforce the absence of a parallel adaptation in the context of Regulation 1008/2008.
- 60 The request observes that Article 7(a) EEA provides that an act corresponding to an EU regulation, referred to in the Annexes to the EEA Agreement or a decision of the EEA Joint Committee, shall as such be made part of the internal legal order of an EFTA State.
- 61 The Court notes that it is by referring to the relevant provisions of the regulation concerned that it may be determined whether they prohibit, require or allow EEA States to adopt certain measures supplementing that regulation (compare the judgment of 30 May 2024 in *Expedia Inc.*, C-663/22, EU:C:2024:433, paragraph 42 and case law cited). As concluded above, the issue of an operating licence is exhaustively harmonised by Regulation 1008/2008. Accordingly, maintaining or adopting conditions for granting an operating licence other than those expressly provided for in Article 4 of the Regulation must therefore be regarded as incompatible with that provision.
- 62 On the basis of the foregoing, the reply to the questions referred is that Article 4 of Regulation 1008/2008 must be interpreted as meaning that it establishes an exhaustive list of conditions for the grant of an operating licence, and the competent licensing authority is accordingly precluded from imposing additional conditions under that Regulation beyond those listed in Article 4 itself.

V COSTS

- 63 Since these proceedings are a step in the proceedings pending before the national body, any decision on costs for the parties to those proceedings is a matter for that body. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the questions referred to it by the Liechtenstein Board of Appeal for Administrative Matters hereby gives the following Advisory Opinion:

Article 4 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community must be interpreted as meaning that it establishes an exhaustive list of conditions for the grant of an operating licence, and the competent licensing authority is accordingly precluded from imposing additional conditions under that Regulation beyond those listed in Article 4 itself.

Páll Hreinsson

Michael Reiertsen

Martin Ospelt

Delivered in open court in Luxembourg on 16 October 2025.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President