JUDGMENT OF THE COURT
10 May 2016

(Failure by an EEA/EFTA State to fulfil its obligations – Prior authorisation schemes for establishment and cross-border services – Directive 2006/123/EC – Article 31 EEA – Article 36 EEA – Justification – Proportionality)

In Case E-19/15,

EFTA Surveillance Authority, represented by Markus Schneider, Deputy Director, Clémence Perrin, Senior Officer, and Marlene Lie Hakkeboe, Temporary Officer, Department of Legal & Executive Affairs, acting as Agents,

applicant,

v

The Principality of Liechtenstein, represented by Dr Andrea Entner-Koch, Director, and Thomas Bischof, Deputy Director, EEA Coordination Unit, acting as Agents,

defendant,

APPLICATION for a declaration that by maintaining in force national rules on prior authorisation schemes for undertakings willing to establish themselves and/or to provide cross-border services in Liechtenstein, the Principality of Liechtenstein has breached its obligations arising from Articles 9, 10, 13 and 16 of the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market), as adapted to the EEA Agreement under its Protocol 1, and, to the extent that establishment and the provision of cross-border services fall outside the scope of that act, its obligations arising from Articles 31 and 36 of the EEA Agreement,

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen (Judge-Rapporteur) and Páll Hreinsson, Judges,

Registrar: Gunnar Selvik,

having regard to the written pleadings of the applicant, and the written observations of the European Commission, represented by Hélène Tserepa Lacombe and Luigi Malferrari, Members of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of the applicant, represented by Markus Schneider and Clémence Perrin; the defendant, represented by Dr Andrea Entner-Koch and Thomas Bischof; the Norwegian Government, represented by Torje Sunde, Advocate, Office of the Attorney General (Civil Affairs), acting as Agent; and the European Commission, represented by Hélène Tserepa Lacombe and Luigi Malferrari, at the hearing on 2 March 2016,

gives the following

Judgment

I Introduction

1 By an application lodged at the Court Registry on 29 July 2015, the EFTA Surveillance Authority ("ESA") brought an action under the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA"), seeking a declaration that the Principality of Liechtenstein has breached its obligations arising from Articles 9, 10, 13 and 16 of the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market) (OJ 2006 L 376, p. 36) ("the Directive"), as adapted to the EEA Agreement under its Protocol 1, and, to the extent that establishment and the provision of cross-border services fall outside the scope of the Directive, its obligations arising from Articles 31 and 36 of the EEA Agreement ("EEA"); (a) by maintaining in force Article 7 of the Liechtenstein Trade Act which sets up a prior authorisation scheme for undertakings wishing to establish themselves in Liechtenstein; and, (b) by maintaining in force Article 8(1) of the Liechtenstein Trade Act in so far as it imposes conditions that are not clear and unambiguous for granting prior authorisation for undertakings wishing to establish themselves in Liechtenstein (namely the obligation to have the necessary personnel and the obligation to have an adequate command of the German language); and, (c) by failing to ensure that requirements, which are equivalent or essentially comparable as regards their purpose to which the service provider is already subject in another EEA State or in the same EEA State, in the procedure for prior authorisation for undertakings intending to establish themselves in Liechtenstein are not duplicated and that the procedure and formalities concerning the authorisation scheme under the Trade Act are clearly laid down; and, (d) by maintaining in force Article 21 of the Liechtenstein Trade Act which sets up a prior authorisation scheme for undertakings intending to provide cross-border services in Liechtenstein.

II Relevant law

EEA law

2 Article 31(1) EEA reads:

Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.

3 Article 33 EEA reads:

The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

4 Article 36(1) EEA reads:

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.

5 Article 39 EEA reads:

The provisions of Articles 30 and 32 to 34 shall apply to the matters covered by this Chapter.

6 The Directive is referred to at point 1 of Annex X to the EEA Agreement (Services in general), following the adoption of Joint Committee Decision No 45/2009 (OJ 2009 L 162, p. 23), which entered into force on 1 May 2010. The time limit for the EEA/EFTA States to implement the Directive expired on the same date.

7 Recitals 2, 5, 39, 41 to 43 and 54 of the Directive read:

> *(2) A competitive market in services is essential in order to promote economic growth and create jobs in the European Union. At present numerous barriers within the internal market prevent providers, particularly small and medium-sized enterprises (SMEs), from extending*

their operations beyond their national borders and from taking full advantage of the internal market. This weakens the worldwide competitiveness of European Union providers. A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and information for consumers would give consumers wider choice and better services at lower prices.

…

(5) It is therefore necessary to remove barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States and to guarantee recipients and providers the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being established there, it is necessary to enable providers to develop their service activities within the internal market either by becoming established in a Member State or by making use of the free movement of services. Providers should be able to choose between those two freedoms, depending on their strategy for growth in each Member State.

…

(39) The concept of 'authorisation scheme' should cover, inter alia, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession or entered in a register, roll or database, to be officially appointed to a body or to obtain a card attesting to membership of a particular profession. Authorisation may be granted not only by a formal decision but also by an implicit decision arising, for example, from the silence of the competent authority or from the fact that the interested party must await acknowledgement of receipt of a declaration in order to commence the activity in question or for the latter to become lawful.

…

(41) The concept of 'public policy', as interpreted by the Court of Justice, covers the protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society and may include, in particular, issues relating to human dignity, the protection of minors and vulnerable adults and animal welfare. Similarly, the concept of public security includes issues of public safety.

(42) The rules relating to administrative procedures should not aim at harmonising administrative procedures but at removing overly burdensome authorisation schemes, procedures and formalities that hinder the freedom of establishment and the creation of new service undertakings therefrom.

(43) One of the fundamental difficulties faced, in particular by SMEs, in accessing service activities and exercising them is the complexity, length and legal uncertainty of administrative procedures. For this reason, following the example of certain modernising and good administrative practice initiatives undertaken at Community and national level, it is necessary to establish principles of administrative simplification, inter alia through the limitation of the obligation of prior authorisation to cases in which it is essential and the introduction of the principle of tacit authorisation by the competent authorities after a certain period of time elapsed. Such modernising action, while maintaining the requirements on transparency and the updating of information relating to operators, is intended to eliminate the delays, costs and dissuasive effects which arise, for example, from unnecessary or excessively complex and burdensome procedures, the duplication of procedures, the 'red tape' involved in submitting documents, the arbitrary use of powers by the competent authorities, indeterminate or excessively long periods before a response is given, the limited duration of validity of authorisations granted and disproportionate fees and penalties. Such practices have particularly significant dissuasive effects on providers wishing to develop their activities in other Member States and require coordinated modernisation within an enlarged internal market of twenty-five Member States.

...

(54) The possibility of gaining access to a service activity should be made subject to authorisation by the competent authorities only if that decision satisfies the criteria of non-discrimination, necessity and proportionality. That means, in particular, that authorisation schemes should be permissible only where an a posteriori inspection would not be effective because of the impossibility of ascertaining the defects of the services concerned a posteriori, due account being taken of the risks and dangers which could arise in the absence of a prior inspection. ...

8 Article 3(3) of the Directive reads:

Member States shall apply the provisions of this Directive in compliance with the rules of the Treaty on the right of establishment and the free movement of services.

9 Article 4 of the Directive reads:

Definitions

For the purposes of this Directive, the following definitions shall apply:

…

6) 'authorisation scheme' means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;

7) 'requirement' means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive;

8) 'overriding reasons relating to the public interest' means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;

10 Article 9(1) of the Directive reads:

Authorisation schemes

1. Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

(a) the authorisation scheme does not discriminate against the provider in question;

(b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;

(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.

11 Article 10(1) to (5) of the Directive reads:

Conditions for the granting of authorisation

1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

(a) non-discriminatory;

(b) justified by an overriding reason relating to the public interest;

(c) proportionate to that public interest objective;

(d) clear and unambiguous;

(e) objective;

(f) made public in advance;

(g) transparent and accessible.

3. The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State. The liaison points referred to in Article 28(2) and the provider shall assist the competent authority by providing any necessary information regarding those requirements.

4. The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest.

5. The authorisation shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for authorisation have been met.

12 Article 13(1) to (4) of the Directive reads:

Authorisation procedures

1. Authorisation procedures and formalities shall be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.

2. Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures.

3. Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and made public in advance. The period shall run only from the time when all documentation has been submitted. When justified by the complexity of the issue, the time period may be extended once, by the competent authority, for a limited time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired.

4. Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place, where justified by overriding reasons relating to the public interest, including a legitimate interest of third parties.

13 Article 16(1) to (3) of the Directive reads in extract:

Freedom to provide services

1. Member States shall respect the right of providers to provide services in a Member State other than that in which they are established.

The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

Member States shall not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the following principles:

(a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established;

(b) necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;

(c) proportionality: the requirement must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.

2. Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing any of the following requirements:

…

(b) an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;

…

3. The Member State to which the provider moves shall not be prevented from imposing requirements with regard to the provision of a service activity, where they are justified for reasons of public policy, public security, public health or the protection of the environment and in accordance with paragraph 1. Nor shall that Member State be prevented from applying, in accordance with Community law, its rules on employment conditions, including those laid down in collective agreements.

National law

14 Article 2 of the Act of 22 June 2006 on Trade and Commerce (*Gewerbegesetz*, LR 930.1) ("the Trade Act") reads:

1. Subject to the provisions of Article 3, this act applies to all commercially pursued and not legally prohibited activities.

2. An activity is regarded as commercially pursued if it is pursued on a self-employed and regular basis and with the intention to gain a profit or other economic benefit, regardless of the purpose for which that profit is used.

3. For the purposes of this act, an activity is pursued on a self-employed basis if it is pursued at one's own risk and for one's own account.

15 Article 7 of the Trade Act reads:

1. Subject to the provisions of Articles 20 to 23, a person wishing to pursue an economic activity within the meaning of Article 2 requires an authorisation from the Office of Economic Affairs (trade authorisation).

2. The trade authorisation is personal and non-transferable.

3. The Government may establish by ordinance exemptions from the obligation to obtain authorisation for the pursuit of a simple profession.

16 Article 8(1) of the Trade Act reads:

The trade authorisation will be granted if the applicant:

(a) is capable of acting;

(b) is reliable (Article 9);

(c) is a national of an EEA Member State or of Switzerland or is a third country national with an uninterrupted domicile in the country of 12 years or more and which is maintained continuously;

(d) is qualified for the pursuit of a qualified profession (Article 10);

(e) has business premises on the national territory and the necessary personnel at his disposal (Article 11);

(f) has indicated a domestic address for service; this can be, in particular, the address of the business premises on the national territory or of a representative appointed according to the provisions of company law;

(g) has an adequate command of the German language.

17 Article 16(1) to (3) of the Trade Act reads:

1. The trade authorisation will be granted when the applicant fulfils the requirements specified in Articles 8 to 14.

2. In special circumstances, the trade authorisation may be granted for a limited duration and include obligations and conditions.

3. The economic activity applied for may only be pursued after the trade authorisation has been issued.

18 Article 21 of the Trade Act reads in extract:

1. Service providers shall notify in writing to the Office of Economic Affairs using an official form the first provision of services in Liechtenstein.

2. The notification shall be renewed annually if the service provider intends to provide services temporarily or occasionally in Liechtenstein during the year in question.

3. When first notifying the service provision the service provider shall submit the following documents:

(a) a certificate confirming

1. that the service provider lawfully pursues the activity in question in the State of establishment;

2. that the service provider is not prohibited, not even temporarily, from pursuing that activity at the time the certificate is submitted;

(b) a proof of professional qualification;

(c) a proof of nationality;

…

4. The service may only be provided after the Office of Economic Affairs has confirmed that the correct notification has been submitted. If no confirmation is issued within seven working days from receipt of the notification, the confirmation shall be deemed granted.

19 Article 29b of the Trade Act reads:

Any person not complying with the notification requirement specified in Article 21 may be excluded by the Office of Economic Affairs from cross-border service provision for a period not exceeding one year.

20 Article 4 of the Act of 20 October 2010 on the provision of services (*Gesetz über die Erbringung von Dienstleistungen*, LR 930.4) ("the Services Act") reads:

The provisions of this act only apply to the extent that special legislation does not make other provision.

21 Article 11 of the Services Act reads:

Procedure for granting an authorisation

1. Unless special legislation makes other provision, the competent authority shall decide by order on an application for an authorisation within six weeks. The period may be extended reasonably by the authority once if this is necessary because of the difficulty of the matter. The extension must be reasoned and communicated to the parties of the proceedings before the expiry of the deadline for the decision.

2. The period within which a decision must be taken referred to in paragraph 1 begins to run once the complete application has been received. The applicant shall be informed, in the relevant case, of the incompleteness of the application and of the resulting legal consequences.

3. The authorisation of an application shall be considered granted if the competent authority does not take a decision within the period established in paragraph 1 or the special legislation.

4. The competent authority shall confirm immediately in writing the grant of an authorisation under paragraph 3. This confirmation shall be sent to the parties of the proceedings. Each party shall have the right, within four weeks of receipt of this confirmation, to request an order stating that an authorisation has been issued in accordance with paragraph 3.

22 Article 13 of the Services Act reads:

Exemption from requirements and controls

For the purposes of granting an authorisation, a service provider shall be exempted from requirements and controls if he has been granted an authorisation in Liechtenstein or another EEA State conditional on requirements and controls that are equivalent to those of the procedure in question or that are comparable as regards their purpose.

III Facts and pre-litigation procedure

23 In December 2010, the Liechtenstein Government notified to ESA the national measures to ensure implementation of the Directive. ESA informed Liechtenstein that it had undertaken an own initiative case to examine whether the Trade Act complied with the requirements set out in the Directive, in particular as regards the authorisation schemes contained in that act.

24 In February 2012, ESA sent a letter to Liechtenstein requesting information on the interpretation of the Trade Act and its compliance with the Directive. Liechtenstein responded to that letter in May 2012. Further exchanges of information and views on the matter also took place during 2012 and 2013.

25 On 3 July 2013, ESA issued a letter of formal notice, concluding that several provisions of the Trade Act were in breach of the Directive. In particular, ESA considered that Articles 7 and 21 of the Trade Act amounted to authorisation schemes for companies wishing to establish themselves or to provide cross-border services for Liechtenstein. The provisions did not satisfy the requirements specified in Articles 9 and 16 of the Directive. The authorisation schemes were also in breach of Articles 31 and 36 EEA to the extent that the Trade Act applies beyond the scope of the Directive. In any event, ESA argued that certain requirements were in breach of Article 10(2)(d), Article 10(3) and Article 13(1) of the Directive.

26 On 2 October 2013, Liechtenstein responded to the letter of formal notice, stating that the authorisation schemes for establishment and cross-border services were as such compatible with the Directive and Articles 31 and 36 EEA. On the other hand, Liechtenstein accepted the conclusions of ESA with regard to the breach of Article

10(2)(d), Article 10(3) and Article 13(1) of the Directive. A proposal to Parliament accommodating ESA's concerns would be presented. No time frame for those amendments was mentioned.

27 On 24 April 2014, ESA delivered a reasoned opinion to Liechtenstein, maintaining the conclusion set out in its letter of formal notice. Pursuant to the second paragraph of Article 31 SCA, ESA required Liechtenstein to take the necessary measures to comply with the reasoned opinion within two months following the notification. Upon request, ESA extended this deadline to 19 August 2014. On 19 August 2014, Liechtenstein replied to the reasoned opinion, maintaining the conclusions set out in its response to the letter of formal notice. On 3 June 2015, ESA decided to bring the matter before the Court pursuant to the second paragraph of Article 31 SCA.

IV Procedure and forms of order sought

28 ESA lodged the present application at the Court Registry on 29 July 2015. ESA requests the Court to:

1. *Declare that the Principality of Liechtenstein has breached its obligations arising from Articles 9, 10, 13 and 16 of the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market), as adapted to the EEA Agreement by Protocol 1 thereto, and, to the extent that establishments and the provisions of cross-border services fall outside the scope of that Act, its obligations arising from Articles 31 and 36 of the EEA Agreement:*

   (a) by maintaining in force Article 7 of the Liechtenstein Trade Act which sets up a prior authorisation scheme for undertakings willing to establish themselves in Liechtenstein; and,

   (b) by maintaining in force Article 8(1) of the Liechtenstein Trade Act in so far as it imposes conditions that are not clear and unambiguous for granting prior authorisation for undertakings willing to establish themselves in Liechtenstein (namely the obligation to have the necessary personnel and the obligation to have an adequate command of the German language); and,

   (c) by failing to ensure that requirements, which are equivalent or essentially comparable as regard their purpose to which the service provider is already subject in another EEA State or in the same EEA State, in the procedure for prior authorisation for undertakings intending to establish themselves in Liechtenstein are not duplicated and that the procedure and formalities concerning the authorisation scheme under the Trade Act are clearly laid down; and,

(d) by maintaining in force Article 21 of the Liechtenstein Trade Act which sets up a prior authorisation scheme for undertakings intending to provide cross-border services in Liechtenstein; and

2. *Order the Principality of Liechtenstein to bear the costs of the proceedings.*

29 The application was served on Liechtenstein on 5 August 2015. Liechtenstein did not lodge a defence within the time limit of 5 October 2015. A subsequent request for an extension of that time limit was not granted. However, ESA waived its right under Article 90 of the Rules of Procedure ("RoP") to apply for a judgment by default.

30 On 20 December 2015, the European Commission ("the Commission") submitted written observations. The Commission concludes that ESA's application should be granted, and that Liechtenstein should be ordered to pay the costs.

31 Liechtenstein presented oral argument at the hearing on 2 March 2016 and requested the Court to declare that by maintaining in force Articles 7 and 21 of the Trade Act, Liechtenstein has not breached its obligations arising from Articles 9, 10, 13 and 16 of the Directive and Articles 31 and 36 EEA. Liechtenstein requested the Court to order each party to bear its own costs.

32 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

V Assessment

Introductory remarks

33 The objectives of the Directive are the elimination of barriers to the freedom of establishment for service providers in EEA States and to the free provision of services between EEA States (see recital 116 of the Directive). In this regard, a fundamental difficulty faced by undertakings, in particular small and medium enterprises, in accessing service activities and exercising them is the complexity, length and legal uncertainty of administrative procedures. Delays, costs and dissuasive effects resulting from unnecessary or excessively complex and burdensome national procedures, the paperwork involved in submitting documents and the arbitrary use of powers by the competent authorities should be eliminated by administrative simplification. Therefore, the Directive aims at removing overly burdensome authorisation schemes, procedures and formalities. Moreover, the Directive intends to limit the obligation of prior authorisation to cases in which it is essential (see recitals 42 and 43 of the Directive).

34 As regards the freedom of establishment, pursuant to Article 9 of the Directive, EEA States shall not make access to a service activity or the exercise thereof

subject to an authorisation scheme unless the scheme is non-discriminatory, justified by an overriding reason relating to the public interest and its objective cannot be attained through a less restrictive measure. As regards the freedom to provide services, pursuant to Article 16 of the Directive, EEA States may not impose an obligation on the provider to obtain an authorisation from the competent authorities, unless such requirement is non-discriminatory, is justified by reasons of public policy, public security, public health or the protection of the environment, and is proportionate.

35 In the present case, Article 7 of the Trade Act requires undertakings intending to establish themselves in Liechtenstein to obtain a prior authorisation from the Office of Economic Affairs. In addition, Article 21 of the Trade Act requires undertakings to notify in writing to the Office of Economic Affairs their intention to provide cross-border services in Liechtenstein. According to information provided at the oral hearing, it appears that in Article 6 of the Posted Workers Act of 15 March 2000 (*Gesetz vom 15. März 2000 über die Entsendung von Arbeitnehmern*, LR 823.21) Liechtenstein also has a provision requiring prior notification before any posted work may be performed.

36 ESA's application consists of four pleas. ESA alleges, first, that Liechtenstein has breached Article 9 of the Directive by maintaining in force a prior authorisation scheme for establishment. Second, several of the conditions and rules applying to that authorisation scheme are in breach of Articles 10 and 13 of the Directive pertaining to the conditions for the granting of authorisations and the authorisation procedures. Third, Liechtenstein has breached Article 16 of the Directive by making the provision of cross-border services subject to a notification procedure that amounts to an authorisation scheme. Fourth, these administrative procedures for establishment and cross-border services are in breach of Articles 31 and 36 EEA, to the extent that they apply to services not covered by the Directive.

First plea – breach of Article 9 of the Directive – freedom of establishment and authorisation schemes

Pleas and observations submitted to the Court

37 ESA submits that Article 7 of the Trade Act, whereby in order to establish itself in Liechtenstein an undertaking has to obtain a prior authorisation from the Office of Economic Affairs, amounts to an authorisation scheme within the meaning of Article 4(6) of the Directive.

38 ESA observes that, according to Article 9(1) of the Directive, EEA States shall not impose an authorisation scheme unless it is non-discriminatory, justified by an overriding reason in the public interest, and proportionate. In ESA's view, while the authorisation scheme at issue is non-discriminatory, it is neither justified nor proportionate.

39 According to ESA, the authorisation scheme at issue cannot be justified by any of the three public interest objectives put forward by Liechtenstein during the pre-

litigation procedure, namely, the protection of service recipients including consumers, the fight against fraud and tax evasion, and legal certainty.

40 ESA acknowledges that, pursuant to Article 4(8) of the Directive, the protection of service recipients is an overriding reason in the public interest. However, the authorisation scheme at stake does not satisfy the proportionality test laid down in Article 9(1)(c) of the Directive. Liechtenstein's argument that all services may pose a risk to safety, life or health cannot justify that *any* undertaking willing to establish itself in Liechtenstein has to obtain a prior authorisation, irrespective of the services it provides. Less restrictive measures were available. For instance, prior authorisations could have been required for certain services only, such as electrical and building services where fatal work accidents may occur. *A posteriori* inspections would be sufficient for other services.

41 As regards the fight against fraud and tax evasion, ESA does not dispute that this may constitute an overriding reason relating to the public interest within the meaning of Article 4(8) of the Directive. However, less restrictive measures could have been adopted. Liechtenstein could have targeted specific areas or professions where fraud or tax evasion have been detected instead of a blanket measure covering all services under the Trade Act. Moreover, tax filings and financial statements could allow for more efficient detection of fraud or tax evasion than a prior authorisation scheme.

42 ESA does not exclude the possibility that legal certainty could constitute an overriding reason in the public interest within the meaning of Article 4(8) of the Directive. However, Liechtenstein has failed to demonstrate that the principle does, in fact, amount to an overriding reason in the public interest. In any event, the authorisation scheme at issue is not appropriate to achieve legal certainty. Nor is it proportionate, since there would not be a lack of legal certainty for undertakings if they were required simply to notify their intention to establish themselves in Liechtenstein and undergo on-site inspections.

43 Consequently, ESA, supported by the Commission, submits that, by maintaining in force Article 7 of the Trade Act, Liechtenstein has infringed its obligations under Article 9(1) of the Directive.

44 Liechtenstein has not submitted written pleadings. However, at the hearing, Liechtenstein argued that, although Article 7 of the Trade Act amounts to an authorisation scheme within the meaning of Article 4(6) of the Directive, it fulfils the three conditions set out in Article 9(1) of the Directive and it may thus be imposed upon service providers. The prevention of tax evasion and the protection of service recipients including consumers may justify the authorisation scheme. As regards proportionality, Liechtenstein contends, in particular, that *a posteriori* inspections would not be genuinely effective, since although certain services pose a higher risk to safety, life or health, no service may be considered as wholly without risk.

Findings of the Court

45 Liechtenstein does not dispute that Article 7 of the Trade Act amounts to an authorisation scheme within the meaning of Article 4(6) of the Directive. Pursuant to that article, any procedure under which a services provider is required to obtain from a competent authority a formal decision concerning access to a service activity constitutes an authorisation scheme. Article 7 of the Trade Act provides that an undertaking has to obtain an authorisation prior to establishing itself in Liechtenstein. Consequently, that provision must be regarded as an authorisation scheme within the meaning of the Directive.

46 It follows from recital 43 of the Directive that the obligation of prior authorisation should be limited to cases in which it is essential. According to Article 9(1) of the Directive, EEA States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following three conditions are satisfied: (a) the scheme does not discriminate against the provider in question, (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest, and (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an *a posteriori* inspection would take place too late to be genuinely effective. These conditions apply cumulatively. Since ESA has acknowledged in its written pleadings that the scheme is non-discriminatory, the dispute concerns only the conditions in points (b) and (c) of Article 9(1).

47 Liechtenstein has sought to justify the authorisation scheme pursuant to Article 9(1)(b) of the Directive by referring to the protection of service recipients and the fight against fraud and tax evasion. The concept of overriding reasons relating to the public interest is defined in Article 4(8). The definition covers reasons recognised as such in the case law of the Court of Justice of the European Union ("ECJ"), including, in particular, the protection of service recipients and combating fraud.

48 The list of overriding reasons in Article 4(8) of the Directive is not exhaustive. It is settled case law that the objectives of ensuring the effectiveness of fiscal supervision, the need to safeguard the cohesion of the national tax system, preserving the allocation of powers of taxation between the EEA States, and preventing tax avoidance, constitute overriding requirements in the general interest, capable of justifying a restriction on the exercise of fundamental freedoms guaranteed by the EEA Agreement (see Joined Cases E-3/13 and E-20/13 *Olsen and Others* [2014] EFTA Ct. Rep. 400, paragraph 221). Accordingly, the reasons invoked by Liechtenstein are capable of justifying the authorisation scheme.

49 However, the authorisation scheme must also satisfy a test of proportionality. Reasons invoked by an EEA State as justification for a restriction on one of the fundamental freedoms must be accompanied by an analysis of the appropriateness and proportionality of the restrictive measure, and precise evidence enabling its arguments to be substantiated (see Case E-12/10 *ESA* v *Iceland* [2011] EFTA Ct. Rep. 117, paragraph 57). Measures aiming at preventing tax evasion are

permissible only if they target purely artificial contrivances to circumvent tax law. A general presumption of tax avoidance or evasion is not sufficient to justify a measure that adversely affects the objectives of the fundamental freedoms (compare the judgment in *K*, C-322/11, EU:C:2013:716, paragraph 60, and the case law cited).

50 Liechtenstein has stated that a risk to safety, life and health cannot be excluded in relation to any service. In its view, an *a posteriori* inspection would therefore be too late to be effective in ensuring protection. However, the argument that a risk cannot be excluded is too broad and too general to constitute evidence of proportionality. Allowing an EEA State to lay down and enforce a prior authorisation scheme for the provision of all services on the sole ground that the possibility cannot be excluded that a service might pose a risk to safety, life or health would effectively undermine the aim of the Directive to limit the obligation to obtain prior authorisation to cases in which it is essential. Prior authorisation must be the exception rather than the rule.

51 Liechtenstein has acknowledged that it is not in a position to give ESA concrete examples which show that prior controls are more efficient than ex-post controls. Nonetheless, it is of the firm opinion that precisely the lack of concrete examples demonstrates that the prior authorisation scheme works well in practice. The Court notes, however, that the claim that a restrictive measure is justified and proportionate must be supported by reasonable and appropriate evidence. The absence of concrete examples cannot constitute such evidence. The Liechtenstein statement must effectively be seen as an admission of the fact that the prior authorisation scheme cannot be justified.

52 As pointed out by ESA, it would seem that an *a posteriori* inspection system could be equally effective with a view to protecting service recipients and combating fraud and tax evasion. Alternatively, the prior authorisation scheme could be limited to specific sectors or businesses where it has been established by experience or objective risk assessments that a need for the protection of service recipients exists, or where fraud or tax evasion have been observed**.**

53 During the pre-litigation procedure, Liechtenstein argued that legal certainty may, in principle, justify restrictions on fundamental freedoms. This argument was reiterated at the hearing upon a question from the bench. However, it is the removal of barriers to the freedom of establishment between EEA States that guarantees legal certainty, whereas administrative procedures may create legal uncertainty (see recitals 5 and 43 of the Directive). In the present context, the principle of legal certainty is intended to shield commercial activity against undue restrictions and cannot therefore be invoked to justify a restriction.

54 The Court finds that Liechtenstein has failed to demonstrate that the prior authorisation scheme at issue is proportionate as required under Article 9(1)(c) of the Directive. ESA’s first plea is therefore well-founded.

Second plea – Breach of Articles 10 and 13 of the Directive – freedom of establishment, conditions for the granting of authorisation and authorisation procedures

Pleas and observations submitted to the Court

55 ESA, which is supported by the Commission, submits that certain conditions imposed by the prior authorisation scheme for establishment are in breach of the Directive. In particular, the obligations set out in Article 8(1)(e) and (g) of the Trade Act requiring an applicant to have the necessary personnel and an adequate command of the German language in order to obtain an authorisation are contrary to Article 10(1) read in conjunction with Article 10(2)(d) of the Directive as they are not clear and unambiguous.

56 In response to the argument by Liechtenstein that these requirements are practised liberally, ESA contends that this is still insufficient to ensure compliance with the Directive. Even if a national measure is not enforced, this does not constitute an appropriate way to remedy a breach of EEA law.

57 Furthermore, ESA notes that the Trade Act does not contain any provision similar to Article 13 of the Services Act, under which the holder of an authorisation issued by an EEA State whose controls are equivalent to those exercised by Liechtenstein is exempted from controls in Liechtenstein. By failing to insert a provision of that kind in the Trade Act, Liechtenstein has infringed Article 10(3) of the Directive, which provides that the conditions for granting authorisation cannot duplicate equivalent requirements to which the provider is already subject in another EEA State.

58 Finally, ESA submits that, since, unlike the Services Act, the Trade Act does not expressly lay down the time-frame and the procedure for the assessment of applications, it infringes Article 13(1) of the Directive, which requires authorisation procedures and formalities to be, in particular, clear and made public in advance.

59 During the pre-litigation phase and at the oral hearing, Liechtenstein has not disputed ESA's conclusions under the second plea and assured ESA that it would amend the Trade Act accordingly. However, ESA notes that to date Liechtenstein has not adopted such amendments. Nor has it provided ESA with a time frame for the adoption of the necessary amendments.

Findings of the Court

60 Article 8 of the Trade Act specifies certain conditions for the granting of an application. In particular, it follows from points (e) and (g) of Article 8(1) that an applicant must have the necessary personnel and an adequate command of the German language. The terms "necessary personnel" and "adequate command" may give rise to varying interpretations. Therefore, the Court agrees with ESA that those conditions constitute infringements of Article 10(2)(d) of the Directive,

which requires the criteria for authorisation schemes to be clear and unambiguous. Whether or not these requirements are practised liberally is of no consequence. Mere administrative practices may by their nature be altered at the whim of the authorities and lack the appropriate publicity. This creates legal uncertainty (compare the judgment in *Commission* v *Italy*, 145/82, EU:C:1983:75, paragraph 10).

61 Pursuant to Article 10(3) of the Directive, the conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another EEA State or in the same EEA State. Liechtenstein has implemented this provision in Article 13 of the Services Act. According to that provision a service provider is exempted from any requirements and controls in Liechtenstein if he has been granted an authorisation in another EEA State whose requirements and controls are equivalent to those exercised by Liechtenstein. However, the Trade Act does not contain any provision similar to Article 13 of the Services Act nor does it refer to that provision.

62 The need to ensure that EEA law is applied requires EEA States not only to bring their legislation in line with EEA law but also to adopt rules of law capable of creating a situation which is sufficiently precise, clear and transparent to allow individuals to know the full extent of their rights (see Case E-2/11 *STX and Others* [2012] EFTA Ct. Rep. 4, paragraph 32). The Court thus finds that even if Article 13 of the Services Act is applicable to situations covered by Article 7 of the Trade Act, there is a lack of clarity in Liechtenstein law with regard to the obligation in Article 10(3) of the Directive, in that applicants for authorisation may not be aware of the former provision. Such lack of clarity entails that the obligation in Article 10(3) of the Directive has not been properly implemented into national law.

63 Article 13(1) of the Directive requires authorisation procedures and formalities to be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially. Article 11 of the Services Act lays down the time-frame and authorisation procedure. However, the Trade Act does not contain any provision similar to Article 11 of the Services Act. Nor does it make reference to that provision. Regardless of whether Article 11 of the Services Act applies to authorisations granted pursuant to Article 7 of the Trade Act, the Court finds that, due to the lack of an explicit link between Article 11 of the Services Act and the Trade Act, the latter fails to satisfy the requirement for clarity laid down in Article 13(1) of the Directive.

64 ESA’s second plea is therefore also well-founded.

Third plea – breach of Article 16 of the Directive – freedom to provide services

Pleas and observations submitted to the Court

65 ESA submits that Article 21 of the Trade Act amounts to an authorisation scheme within the meaning of Article 4(6) of the Directive.

66 Such an authorisation scheme may be imposed only if it is justified by a reason listed in Article 16(3) of the Directive. This list is exhaustive, since on that point the Directive has achieved full harmonisation. Therefore, the reasons put forward by Liechtenstein, namely the high intensity of cross-border services in Liechtenstein, the protection of service recipients including consumers and the prevention of social dumping, cannot justify an authorisation scheme such as that contained in Article 21 of the Trade Act, since none of those reasons are listed in Article 16(3) of the Directive. In any event, ESA contends that Article 21 of the Trade Act fails to meet the proportionality test of Article 16(1)(c).

67 During the pre-litigation phase and at the oral hearing, Liechtenstein has not disputed that Article 21 of the Trade Act amounts to an authorisation scheme within the meaning of Article 4(6) of the Directive. Nor has Liechtenstein disputed that Article 21 of the Trade Act is prohibited unless it is justified pursuant to Article 16(1) and (3) of the Directive.

68 However, Liechtenstein submits that an authorisation scheme such as the one at stake may be justified not only on the four grounds expressly set out in Article 16(3) of the Directive, but also on other overriding reasons in the public interest as identified in case law, such as the protection of service recipients including consumers, as well as the prevention of social dumping. Liechtenstein adds that the proportionality test under Article 16(1)(c) of the Directive is satisfied and refers to its high intensity of cross-border services.

69 At the hearing, the Norwegian Government submitted that the list of grounds in Article 16(3) of the Directive is not exhaustive. EEA States may only be precluded from invoking justification grounds guaranteed by primary EEA law where secondary law has fully harmonised such grounds. This has not been achieved by the Directive. The Norwegian Government also refers to the recent judgment in *Commission* v *Hungary* (C-179/14, EU:C:2016:108), which is to be read as a sign that the ECJ views with scepticism the position of the Commission, and in the present case of ESA, namely that the grounds in Article 16(3) are exhaustive.

70 The Commission shares ESA's view that Article 21 of the Trade Act constitutes an authorisation scheme within the meaning of Article 4(6) of the Directive. In a situation where a service provider physically crosses the Liechtenstein border in order to provide services there, EEA States may only justify an authorisation scheme by one of the four reasons expressly mentioned in Article 16(3) of the Directive. In the present case, Liechtenstein has not established that the measure at stake may be justified by any of these reasons, nor, in any event, that it is proportionate. In a situation where the service provider does not physically cross

the Liechtenstein border, Article 16(3) of the Directive cannot be invoked, as it applies only to the EEA State "to which the provider moves".

Findings of the Court

71 Article 21 of the Trade Act obliges service providers to notify in writing to the Office of Economic Affairs their intention to provide services in Liechtenstein. Article 21(4) of the Trade Act specifies that the service may only be provided after the Office of Economic Affairs has confirmed that the correct notification has been submitted or on the expiry of a period of seven working days following receipt of the notification.

72 ESA submits that Article 21 of the Trade Act constitutes an authorisation scheme within the meaning of Article 4(6) of the Directive. The Commission concurs, and Liechtenstein does not dispute that qualification.

73 The Court notes that Article 16 of the Directive makes reference to requirements, not to authorisation schemes. Article 4(7) defines a requirement as any obligation, prohibition, condition or limit provided for, *inter alia*, in the laws of an EEA State. Consequently, the authorisation scheme, whether express or implied, provided for in Article 21 of the Trade Act must be regarded also as a requirement within the meaning of the Directive.

74 Article 16(1) of the Directive provides that EEA States shall not demand compliance with any requirements which do not respect the principles of non-discrimination, necessity and proportionality. Article 16(2) draws up a list of requirements which EEA States may not impose on service providers established in another EEA State. Among these is the obligation to obtain an authorisation from their competent authorities. Finally, pursuant to Article 16(3), requirements imposed by the EEA State to which the service provider moves may be justified by reasons of public policy, public security, public health or the protection of the environment where the conditions of Article 16(1) are fulfilled. It is settled case law that justification on public policy grounds can only be accepted in the case of a genuine and sufficiently serious threat affecting one of the fundamental interests of society (see Case E-10/04 *Piazza* [2005] EFTA Ct. Rep. 76, paragraph 42). This is also expressed in recital 41 of the Preamble of the Directive.

75 Liechtenstein has sought to justify the obligation imposed on a service provider under Article 21 of the Trade Act by invoking the protection of service recipients including consumers, and the prevention of social dumping. Since the whole territory of Liechtenstein is a border area and cross-border services are frequent, *a posteriori* inspections would, according to Liechtenstein, not work.

76 However, the Court finds that, in order to assess whether Article 21 of the Trade Act complies with Article 16 of the Directive, no distinction may be made between border areas and other territorial areas. Moreover, neither the protection of service recipients nor the prevention of social dumping is an objective listed as a ground for justification in Article 16(1)(b) and Article 16(3) of the Directive.

77 Irrespective of whether a requirement imposed on a service provider that is prohibited under Article 16(2) of the Directive can be justified, the restrictive measure needs to be proportionate. As is the case with the authorisation scheme for establishment in Liechtenstein, the requirement governing the provision of services applies indistinctly to all cross-border provision of services. Liechtenstein has failed to demonstrate that the protection of service recipients and the prevention of social dumping require that *a priori* controls be imposed on the provision of all services, whether or not they pose any risk to the safety, life or health of service recipients and whether or not they are particularly exposed to social dumping. The Court also refers to the findings above under the first plea.

78 As argued by ESA, it seems that less restrictive measures could have been adopted in order to achieve the objectives sought, for example the implementation of a system of targeted *a posteriori* controls and appropriate penalties.

79 Consequently, independently of the question whether the grounds of justification put forward by Liechtenstein are applicable, a requirement such as that laid down in Article 21 of the Trade Act would not satisfy the proportionality test (compare the ECJ judgment in *Commission* v *Hungary*, cited above, paragraph 116).

80 Consequently, ESA's third plea is well-founded.

Fourth plea – breach of Articles 31 and 36 EEA – on the right of establishment and freedom to provide services

Pleas and observations submitted to the Court

81 ESA notes that the Trade Act covers services that fall outside the scope of the Directive. The Trade Act must therefore be analysed also under Articles 31 and 36 EEA to the extent that it applies to instances of establishment and provision of cross-border services not covered by the Directive.

82 In this connection, ESA submits that Article 7 of the Trade Act, in so far as it applies to services not covered by the Directive, constitutes a restriction on the freedom of establishment guaranteed by Article 31 EEA. Moreover, ESA contends that Article 21 of the Trade Act, in so far as it applies to services not covered by the Directive, amounts to a restriction on the freedom to provide services enshrined in Article 36 EEA. ESA refers to its arguments under the first and third pleas and contends that Liechtenstein has failed to demonstrate that the measures at stake are justified by one of the public interest objectives listed in Article 33 EEA or by an overriding reason in the public interest and that, in any event, they are not proportionate.

83 At the hearing, Liechtenstein referred to its arguments under the first and third pleas.

Findings of the Court

84 Articles 2 and 3 of the Trade Act appear to cover services that do not fall within the scope of the Directive as defined in its Article 2. Therefore, in so far as the authorisation schemes laid down by the Trade Act apply to services outside the scope of the Directive, it is necessary to assess their compatibility with Articles 31 and 36 EEA.

85 Article 31 EEA prohibits restrictions on the freedom of establishment of nationals of an EEA State in the territory of any other EEA State. Similarly, Article 36 EEA prohibits restrictions on the freedom of nationals of an EEA State established in an EEA State to provide services to recipients in another EEA State. All measures which prohibit, impede or render less attractive the exercise of those freedoms must be regarded as restrictions (see, as regards establishment, Case E-17/14 *ESA* v *Liechtenstein*, judgment of 31 March 2015, not yet reported, paragraph 38, and, as regards services, Case E-2/11 *STX and Others*, cited above, paragraph 75). It is settled case law that prior authorisation schemes amount to a restriction on the freedom to provide services (compare the ECJ judgment in *Commission* v *Belgium*, C-355/98, EU:C:2000:1143, paragraph 35).

86 It is undisputed that the authorisation schemes under Articles 7 and 21 of the Trade Act constitute restrictions on the freedom of establishment and the freedom to provide services. Restrictions on the freedom of establishment and the freedom to provide services are permissible only as derogations expressly provided for in Article 33 EEA, read, in the case of services, in conjunction with Article 39 EEA, or if justified by overriding reasons in the public interest as recognised in case law. However, even then the application of a derogation must be able to secure the attainment of the objective which it pursues and must not go beyond what is necessary to attain that objective (see Case E-7/14 *ESA* v *Norway* [2014] EFTA Ct. Rep. 840, paragraph 35).

87 Under its assessment of the first and third pleas, the Court has concluded that the authorisation schemes fail to satisfy the proportionality tests under Article 9(1)(c) and Article 16(1)(c) of the Directive. The same applies to a proportionality test under Article 33 EEA.

88 ESA's fourth plea is therefore well-founded.

VI Costs

89 Under Article 66(2) RoP, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. ESA has requested that Liechtenstein be ordered to pay the costs. Since Liechtenstein has been unsuccessful, and none of the exceptions in Article 66(3) RoP apply, it must therefore be ordered to pay the costs. The costs incurred by the Norwegian Government and the Commission are not recoverable.

On those grounds,

THE COURT

hereby:

1. Declares that the Principality of Liechtenstein has breached its obligations arising from Articles 9, 10, 13 and 16 of the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market), as adapted to the EEA Agreement under its Protocol 1:

(a) by maintaining in force Article 7 of the Liechtenstein Trade Act which sets up a prior authorisation scheme for undertakings intending to establish themselves in Liechtenstein;

(b) by maintaining in force Article 8(1) of the Liechtenstein Trade Act in so far as it imposes conditions that are not clear and unambiguous for granting prior authorisation for undertakings wishing to establish themselves in Liechtenstein, namely the conditions to have the necessary personnel and to have an adequate command of the German language;

(c) by failing to ensure that the conditions for the prior authorisation laid down by the Liechtenstein Trade Act do not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the service provider is already subject in another EEA State;

(d) by failing to ensure that the procedure and formalities concerning the prior authorisation under the Liechtenstein Trade Act are clearly laid down; and,

(e) by maintaining in force Article 21 of the Liechtenstein Trade Act which requires undertakings to notify in advance their intention to provide cross-border services in Liechtenstein.

2. Declares that, to the extent that the services covered by the Liechtenstein Trade Act fall outside the scope of the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market), as adapted to the EEA Agreement under its Protocol 1, the Principality of

Liechtenstein has breached its obligations arising from Articles 31 and 36 of the EEA Agreement:

(a) by maintaining in force Article 7 of the Liechtenstein Trade Act; and,

(b) by maintaining in force Article 21 of the Liechtenstein Trade Act.

3. Orders the Principality of Liechtenstein to bear the costs of the proceedings.

Carl Baudenbacher Per Christiansen Páll Hreinsson

Delivered in open court in Luxembourg on 10 May 2016.

Gunnar Selvik
Registrar

Carl Baudenbacher
President