

Case No: 48084
Event No: 298266
Dec. No.: 385/04/COL

**EFTA Surveillance Authority Decision
of 15 December 2004
regarding a State guarantee in favour of Liechtensteinische Landesbank
(Liechtenstein)**

THE EFTA SURVEILLANCE AUTHORITY

HAVING REGARD TO the Agreement on the European Economic Area¹, in particular to Articles 61 to 63 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular to Article 24 thereof and Article 1 in Part I and Article 18 in Part II of Protocol 3 thereof,

HAVING REGARD TO the Procedural and Substantive Rules in the Field of State Aid³, and in particular Chapter 17 thereof,

WHEREAS:

A. Facts

1. Procedure

In connection with the introduction of new State Aid Guidelines on guarantees on 12 April 2000, the Authority invited the Government of Liechtenstein by letter dated 3 July 2000 (Doc. No 00-4765-D), to submit information on all guarantees and guarantee schemes which should have been notified in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement and regarding all State guarantees which might constitute existing aid.

¹ Hereinafter referred to as the 'EEA Agreement'.

² Hereinafter referred to as the 'Surveillance and Court Agreement'.

³ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 994 L 231, EEA Supplements 3.9.1994, No 32, last amended by the Authority's Decision No 371/04/COL of 15 December 2004, not yet published, hereinafter referred to as the 'Authority's State Aid Guidelines'.

The letter stated that information should be provided in particular with respect to the State guarantee to the Liechtensteinische Landesbank (hereinafter LLB). The State guarantee laid down in Article 5 of the Law concerning Liechtensteinische Landesbank ("*Gesetz über die Liechtensteinische Landesbank*", hereinafter LLBG) was originally reported to the Authority by letter of 4 December 1995.

In a reminder letter of 24 November 2000 (Doc. No 00-8505-D) the Authority explicitly asked for information on the State guarantee to LLB.

In its reply by letter dated 6 December 2000 (Doc. No 00-9016-A), Liechtenstein referred the Authority to the information submitted in 1995 and informed it that the total amount covered by Article 5 LLBG amounted to approximately CHF 3.6 billion in 1999.

By letter of 8 May 2001 (Doc. No 01-3466-D), the Authority initiated a review according to Article 62 (1) of the EEA Agreement and Article 1 (1) of Protocol 3 to the Surveillance and Court Agreement. The Government of Liechtenstein was requested to submit comments on this matter and to provide the Authority with all information necessary to carry out an assessment of the State guarantee under the EEA State aid rules. Liechtenstein was further asked to submit information on the implementation of Directive No 94/19/EC on deposit-guarantee schemes.

By letter dated 29 June 2001 (Doc. No 01-5380-A), Liechtenstein submitted information on the implementation of Directive No 94/19/EC and stated that it was not exempted from participating in the obligatory deposit guarantee scheme. As regards the State guarantee, Liechtenstein stressed that LLB has a stated capital of 190 million CHF. Liechtenstein argued that due to the financial situation of LLB Article 5 LLBG does not give LLB a preferential position in attracting saving deposits or more favourable funding terms.

By letter dated 11 March 2004 (Event No 256909), the Authority informed the Liechtenstein authorities about its initial view concerning the State guarantee and gave them the possibility to comment. A meeting between representatives of the Liechtenstein coordination unit, representatives of LLB and representatives of the Authority's Competition and State Aid Directorate took place in Liechtenstein on 26 October 2004.

By letter dated 3 November 2004 (Event No 297858) the Authority, under Article 17 (2) in Part II of Protocol 3 to the Surveillance and Court Agreement, informed the Liechtenstein authorities of its preliminary view with regard to the State guarantee and gave the Liechtenstein authorities the possibility to comment.

By letter dated 2 December 2004 (Event No 301554), the Liechtenstein authorities commented upon the Authority's letters of 11 March 2004 and 3 November 2004.

2. Description of the State guarantee

LLB is acting as an universal bank (in the meaning of a full-service bank) in Liechtenstein and abroad. It is organised as an "Aktiengesellschaft" (public limited liability company) according to Liechtenstein law. The Principality of Liechtenstein holds 67% of LLB's shares.

LLB was founded in 1861 as the first bank in the Principality of Liechtenstein. In 1993 LLB was transformed into a public limited liability company. The prerequisites for transforming LLB were laid down in Article 1 LLBG of 21 October 1992 which entered into force on 4 January 1993.

Article 5 LLBG contains a State guarantee for certain of LLB's activities. According to that article, the Principality of Liechtenstein is liable for savings deposits ("Spareinlagen") and medium-term deposit certificates ("Kassenobligationen") of the Liechtensteinische Landesbank, to the extent that LLB's own resources are insufficient. Article 5 LLBG reads:

"Staatsgarantie

Das Land Liechtenstein haftet für die Sparguthaben bei der Landesbank und die Kassenobligationen der Landesbank, soweit ihre Mittel nicht ausreichen."

It follows from that provision that LLB's customers have a direct claim against the Principality of Liechtenstein for their saving deposits and medium term notes in case LLB's assets are not sufficient to satisfy the creditors. The guarantee, according to Article 5 LLBG, is open-ended in terms of the amount and of the duration of the guarantee. LLB does not pay any premium for the guarantee. The State guarantee according to Article 5 LLBG, has not been altered since 1993.

LLB is the only bank in Liechtenstein with a State guarantee on saving deposits and medium term deposit certificates. The guarantee is mentioned on LLB's homepage⁴. As to the saving deposits, the State guarantee is listed as one of the advantages of the LLB saving deposit offer⁵. The State guarantee is likewise mentioned in the offer for the medium term notes⁶. The guarantee is further referred to in LLB's annual reports, sometimes in the context of the higher security the bank is able to offer. The 1998 Annual Report states that the LLB equity, "supplemented by a State guarantee offers LLB customers a high security"⁷. In the Annual Report 2002, LLB explains that "its customers increasingly opt for the security offered by the state guarantee"⁸. LLB

⁴ <http://www.llb.li/llb2003.nsf/>: "Wir verfügen über eine Staatsgarantie auf Spargelder und Kassenobligationen"

⁵ <http://www.llb.li/llb2003.nsf/web/5K9O3P?OpenDocument>: "Sparverbindungen-Die wichtigsten Vorteile und Unterschiede von Sparverbindungen zu Privatkonten wie dem D-Konto oder dem Kontokorrentkonto sind: Ein höherer Zinssatz oder Vorzugszins, die Garantie des Staates..." (emphasis added).

⁶ <http://www.llb.li/llb2003.nsf/web/5KAT5C?OpenDocument>: "Die LLB-Kassenobligationen verfügen über eine Staatsgarantie".

⁷ Page 16 Annual Report 1998: "Das Eigenkapital liegt damit weit über dem gesetzlich geforderten Wert und bietet LLB Kundinnen und Kunden, ergänzt um eine Staatsgarantie, eine sehr hohe Sicherheit" (emphasis added). Likewise it is stated on page 17 of the Annual Report that in turbulent times there is an increasing demand for simple bank products with limited risks. LLB can with its products (partially secured by a State guarantee) and thanks to its conservative policy make a respective offer. "Die turbulenten Ereignisse auf den Finanzmärkten erhöhten die Unsicherheit in der Schweizer Bankenlandschaft erheblich. In diesem Umfeld verstärkte sich die Nachfrage nach einfachen Bankprodukten und -dienstleistungen mit überschaubaren Risiken. Die Landesbank kann mit ihren Produkten (teilweise abgesichert durch die Staatsgarantie) und dank ihrer konservativen Politik in der Vermögensverwaltung und Anlageberatung ein entsprechendes Angebot bereitstellen." (emphasis added).

⁸ Annual Report 2002 online, <http://gb2002en.llb.li/>: "Traditional values in savings business -

addresses clients to make deposits for medium term notes both in Swiss Francs and in Euro⁹. Saving deposits are only offered in Swiss Francs.

On the basis of information submitted by the Liechtenstein authorities, LLB is covered by the general obligations to take part in the deposit guarantee scheme established pursuant to the Banking Act and the Ordinance to the Banking Act as amended in 2000 for the implementation of the Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantees¹⁰.

3. Comments by the Liechtenstein authorities

In its letter of 2 December 2004, the Liechtenstein authorities stress that LLB is not represented in the territory of any other EEA Member States and focuses strongly on the Liechtenstein territory. The authorities further underline that the saving deposits are only offered in Swiss Francs and not in any other currency.

The Liechtenstein authorities are of the opinion that the State guarantee for saving deposits and medium term notes is in conformity with Article 61 (1) of the EEA Agreement since the guarantee fulfils the cumulative conditions of Chapter 17.3 of the Authority's Guidelines. In this respect, the authorities state that LLB is not exposed to any financial difficulties and would be in a position to borrow money on market conditions, without the intervention of the State. Regarding the criterion in the Authority's Guidelines that the State guarantee has to be limited to a maximum of 80% of the financial obligations, the Liechtenstein authorities refer to the fact that LLB takes part in the deposit guarantee scheme to implement Directive 94/19/EC on deposit guarantees. Assuming that LLB held a total amount of CHF 2870 Mio in the form of saving deposits, the share of saving deposits covered by the guarantee – after deducting the savings covered by the deposit guarantee scheme – amounts to CHF 1936 Mio, corresponding to 67,45% of the total saving deposits. If one applied the same logic to the medium term notes, an amount of only 71,37% would be covered by the State guarantee.

The Liechtenstein authorities further argue that LLB has to fulfil certain exclusive duties, which are only applicable to LLB and correlate to the State guarantee. The Liechtenstein authorities reason that LLB renders the above mentioned services in exchange for the guarantee, for which no premium is paid. In this respect, the Liechtenstein authorities mention statutory obligations which concern duties bearing financial risks for LLB (e.g. if LLB is nominated by a Court to act as a legal trustee) as well as duties resulting from the potential activity by LLB as a National Bank. Due to the Currency Union with Switzerland, the latter duties are not performed at present. LLB would be obliged by law to execute these tasks, if the currency union with Switzerland were to be dissolved.

The massive growth in savings deposits reflects the situation with Swiss Franc interest rates: they have not been at such low levels for decades. There can be no better guarantor of soundness and continuity than our prudent business policy, which we have followed continuously for over 140 years. Add to this the statutory guarantee provided by the Principality of Liechtenstein for all savings deposits and bank medium-term notes, and it is not surprising that our customers are again opting for the security offered by the state guarantee (emphasis added).

⁹ See LLB webpage <http://www.llb.li/llb2003.nsf/web/5KAT5C?OpenDocument> "Die Titel sind in Beträgen von CHF-EUR 1000 oder einem Vielfachen davon erhältlich".

¹⁰ Implemented into Annex IX to the EEA Agreement by Joint Committee decision No 18/94 (OJ No L 325, 17.12.1994, p.70 and EEA Supplement No. 50, 17.12.1994, p. 52) e.i.f. 1.7.1995.

The Liechtenstein authorities further state that so far no guarantee case has yet occurred and that LLB does not need to borrow money on the capital market.

II. Appreciation

1. General provisions relevant for the assessment of State guarantees

Article 61(1) of the EEA Agreement provides that:

"Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement."

Chapter 17 of the Authority's State Aid Guidelines outlines the Authority's approach to State aid granted in the form of guarantees. Usually, State guarantees are associated with a loan or other financial obligations to be contracted by a borrower with a lender. The State guarantee enables the borrower to obtain better financial terms for a loan than those normally available on the financial markets. State guarantees might facilitate the creation of new businesses and enable certain undertakings to raise money in order to pursue new activities. According to point 17.2.1. of the Authority's Guidelines, State guarantees generally fall within the scope of Article 61 (1) of the EEA Agreement, provided that trade between Contracting Parties is affected and no market premium is paid.

According to point 17.2.1.(3) of the Guidelines the Authority also regards

"as aid in the form of a guarantee the more favourable funding terms obtained by enterprises whose legal form rules out bankruptcy or other insolvency problems or provides an explicit State guarantee or coverage of losses by the State."

Article 5 LLBG provides for an explicit guarantee in favour of LLB. According to point 17.2 (2) of the Authority's Guidelines, it is not relevant whether payments have ever been made by the State under a guarantee. The aid is considered to be granted at the moment when the guarantee is given, not the moment when the guarantee is invoked, the former being the relevant moment for assessing the guarantee in relation to the State aid rules. It is therefore irrelevant that so far not a single guarantee case for LLB has arisen.

The LLBG of 1993, which regulates the legal personality of LLB and its business activities, explicitly stipulates in Article 5 that the Principality of Liechtenstein is liable for the saving deposits and the medium-term notes to the extent that LLB's assets are not sufficient. This explicit guarantee must be considered to fulfil the conditions of point 17.2.1 of the Guidelines.

2. State resources

According to point 17.2.1 (2) of the Authority's State Aid Guidelines, the carrying of risk by the State should normally be remunerated by an appropriate premium. The Guidelines stipulate that where the State foregoes such a premium, "*there is a (.....) drain on the resources of the State*". The view of the Authority is therefore that the State guarantee involves State resources within the meaning of Article 61(1) of the EEA Agreement. As stated above, it is not relevant whether the Principality has ever undertaken payments under the State guarantee.

3. Advantage – favouring of certain undertakings

In order to constitute State aid in the meaning of Article 61(1) of the EEA Agreement, a measure must favour certain undertakings or the production of certain goods.

Point 17.2.1 of the Authority's Guidelines stipulates that a guarantee enables the borrower to obtain better financial terms for a loan than those normally available on the market or better funding terms. This constitutes an advantage within the meaning of Article 61(1) of the EEA Agreement.

In the letter dated 29 June 2001, the Liechtenstein authorities state that due to LLB's strong financial situation Article 5 LLBG does not give LLB a preferential position in attracting saving deposits or more favourable funding. In their letter of 2 December 2004, the Liechtenstein authorities likewise point out that LLB does not need to borrow money from the market and would not receive any better funding terms than those resulting from its excellent financial standing. The Authority does not accept this as a relevant argument. It cannot be excluded that a need for funding might arise in the future. In those circumstances the fact that certain of LLB's liabilities are covered by a State guarantee, is a positive factor for a creditor's decision to provide LLB with (additional) financial funds when he assesses the overall financial situation of LLB. Of 12.177.459.000 CHF liabilities, almost 30 % concern saving deposits and medium term notes (2.878.364.000 CHF saving deposits and 685.621.000 CHF medium term notes)¹¹, which are secured by the State guarantee.

In any event, the guarantee for the saving deposits and the medium term notes is advantageous for the possibility of LLB attracting funding and further business. Somewhat different from the 'classical' situation in which the State guarantees a loan of an undertaking in need of funding, the State guarantee in question backs up saving deposits and medium term notes of LLB customers, in other words, it secures loans which are given to LLB as part of its normal business activities to offer banking services. It should be mentioned that Chapter 17 covers all forms of guarantees, irrespective of their legal basis and the transaction covered (see point 17.1 (1) of the Authority's State Aid Guidelines).

The State guarantee provides a very effective protection for the creditors of LLB because it significantly reduces or even eliminates the risk of entering into business with LLB for the activities covered by the guarantee. This has consequences for the decision whether creditors, in this case (mainly private) customers, are willing to deal

¹¹ Financial Report LLB 2003, p. 10, consolidated balance sheet as at 31 December, 2003.

with LLB for saving deposits and medium term notes instead of choosing a competitor. It should be noted that in the financial services sector in some lines of business even small differences in conditions can in fact be decisive for the choice of the potential customers. In the Annual Report 1993, LLB states that the primary purpose of this State guarantee is to provide "small investors" with an additional degree of security.

The guarantee consequently gives LLB an advantage in attracting customers for saving deposits and medium term notes. LLB does not pay any remuneration for the guarantee. In this respect, reference is made to point 17.2.1(2) of the Authority's State Aid Guidelines which reads:

"The benefit of a State guarantee is that the risk associated with the guarantee is carried by the State. This carrying of a risk by the State should normally be remunerated by an appropriate premium. Where the State foregoes such a premium, there is both a benefit for the undertaking and a drain of resources of the State...."

It follows from the above that LLB enjoys an advantage as it pays no premium for the risk assumed by the State through the guarantee.

Further to the argument of the Liechtenstein authorities that the guarantee does not provide LLB with any advantage, the Authority notes that the State guarantee in favour of LLB does not fulfil the cumulative conditions laid down in point 17.4 (3) of the Authority's State Aid Guidelines according to which a guarantee might escape from being classified as State aid:

The guarantee is not limited to a specific financial transaction or given for a fixed amount (point 17.4 (3) (c) of the Authority's Guidelines).

Moreover, there is no stipulation that the State guarantee only covers 80% of each financial obligation (i.e. of the individual saving deposit and the medium term liabilities). In this respect it cannot be maintained that the fact that parts of LLB's liabilities are covered by the deposit scheme to implement Directive 94/19/EC and that LLB participates in such a scheme, suffices to fulfil the condition as stipulated in point 17.4 (3) of the Authority's Guidelines. Firstly, it should be noted that the Directive is just providing a *minimum harmonisation* of 20 000 Euro (see Article 7 of the Directive) of the aggregate deposits of each depositor. While it might be that with the figures provided by the Liechtenstein authorities in theory this could cover at least 20% of the financial obligation, this is by no means certain and depends on the amount of the single deposit. Secondly, as can be seen from point 17.3 (4)-(5) of the Guidelines, the rationale for the 80% requirement is to provide an incentive for the creditor, in this case the depositor, to properly assess the risks resulting from their lending operations. This incentive is lacking with a full guarantee.

The State guarantee in Article 5 LLBG is further open-ended and provided without any realistic risk assessment and without the payment of a premium as required according to point 17.4 (3)(d) of the Guidelines. The Authority further notes that the scheme does not contain any revision clause (point 17.4 (3)(e) of the Guidelines). The Authority therefore considers that the conditions of point 17.4 (3) of the Authority's Guidelines are not fulfilled.

As to the argument by the Liechtenstein authorities that the lack of a premium correlates with special obligations carried by LLB, it should be pointed out that for none of the special duties carried by LLB, the risks associated to these or the possible costs resulting therefrom have been quantified by the Liechtenstein authorities. With regard to the possible costs resulting from its obligation to act as a National Bank, the Authority considers this argument as irrelevant as the situation has not yet arisen and it is not foreseeable whether it will arise in the future. Regarding the other duties mentioned, the Authority does not have any elements at its disposal to quantify the risks and costs associated with such duties and to weigh them against the value of an unlimited guarantee. It is also doubtful whether the possible costs related to the mentioned duties would justify a guarantee which is unlimited in time and amount.

While the State Aid Guidelines stipulate that failure to comply with any of the conditions does not mean that such a guarantee is automatically regarded as State aid, the Authority notes that the guarantee in favour of LLB misses the majority of the conditions in point 17.4 (3) of the Authority's Guidelines on State guarantees. In particular an open-ended guarantee which is granted for continuously fluctuating amounts, to a non-limited number of operations and not limited in time, does not fulfil the conditions which would have enabled the Authority to consider that the guarantee did not constitute State aid. As the guarantee in question is unlimited in amount as well as in duration, the market value of the guarantee cannot be quantified and a correct premium cannot be calculated, which is in contradiction with the Authority's State Aid Guidelines¹².

It should further be noted that LLB itself points to the existence of the State guarantee in informing potential customers about the LLB products on its webpage. As to the saving deposits, the State guarantee is listed as one of the advantages of the LLB saving deposit offer. The State guarantee is likewise mentioned in the offer for the medium term notes. In some of LLB's annual reports¹³, the guarantee is mentioned in relation to a higher security which LLB offers its customers. E.g. in the Annual Report 2002, LLB explains that "*its customers increasingly opt for the security offered by the state guarantee*".

This advantage is also selective as it is conferred only on one bank, namely on LLB.

4. Distortion of competition and effect on trade

The guarantee strengthens LLB's position with regard to other competitors for an activity which is subject to trade between the Contracting Parties. Within the sector of financial services, there is strong competition between the financial institutions of different EEA States. The State guarantee for deposits in LLB constitutes an *additional* security for the clients/depositors compared to the general deposit guarantee schemes offered by other banks in the EEA¹⁴.

¹² With regard to guarantees which are neither limited in duration and amount and for which no market premium is paid, see Commission proposal for appropriate measures in State aid E 8/2002 – Austria, E10/2000 – Germany with regard to the so-called 'Gewährträgerhaftung' and Commission proposal for appropriate measures in State aid E50/2001 – France CDC IXIS.

¹³ See above, fn 4 seq.

¹⁴ It is therefore not relevant that LLB takes part in the deposit guarantee scheme established in Liechtenstein to implement Directive 94/19/EC.

The State guarantee reinforces LLB's position in relation to its competitors. The State guarantee may give LLB an advantage in attracting deposits from clients not only from Liechtenstein and Switzerland, but also from other EEA countries. As for medium term notes, clients are explicitly offered the possibility to make deposits both in Euro and Swiss francs. But also for saving deposits the existence of a State guarantee might attract customers from outside Liechtenstein, regardless of to whether these are offered only in Swiss Francs.

In this respect, it is not relevant that LLB is not presented by a branch or subsidiary outside Liechtenstein, as the application of Article 61(1) EEA Agreement does not require that the aid beneficiary be engaged in cross-border activities¹⁵. It should however be noted that LLB group's activities show revenues from activities outside Liechtenstein¹⁶. The opinion of the Authority is, therefore, that the guarantee distorts or threatens to distort competition and affects trade between Contracting Parties.

In light of the preceding considerations and the submitted information, the Authority is of the view that the State guarantee according to Article 5 LLBG constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

5. Compatibility

Concerning the question of compatibility of the State guarantee with the EEA Agreement, the Authority observes the following: According to point 17.5 (2) of the Authority's State aid Guidelines the Authority will examine the compatibility of State guarantees with the EEA Agreement according to the same rules as are applied to aid measures taking other forms. The exceptions laid down in Article 61(2) of the EEA Agreement are not applicable to the State guarantee since it does not fulfil the objectives enumerated in this paragraph. The State guarantee can, furthermore, not be seen to meet the conditions provided for in Article 61(3) of the EEA Agreement, in particular none of the Authority's Guidelines covering horizontal, regional and sectoral aid apply to the present State guarantee. Furthermore, no justification can be seen for the State guarantee under Article 59(2) of the EEA Agreement.

The Authority therefore concludes that the State guarantee is not compatible with the functioning of the EEA Agreement.

6. Existing aid

Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement¹⁷ states:

“The EFTA Surveillance Authority shall, in co-operation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.”

¹⁵ See e.g. C-278/92, C-279/92 and C-280/92 *Kingdom of Spain v Commission of the European Communities* [1994] ECR 4103.

¹⁶ Financial Report 2003, p. 24 results for activities shown for LLB in western Europe.

¹⁷ Amended by the EFTA States in December 2001. The amendments entered into force 28 August 2003.

Existing aid within the meaning of Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement includes, according to Article 1 (b) in Part II, all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA State, i.e. aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement.

Article 5 LLBG existed before the entry into force of the EEA Agreement in Liechtenstein. The State guarantee given to LLB by virtue of Article 5 LLBG must therefore be considered as existing aid within the meaning of Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement.

7. Recommendation of appropriate measures

According to Section V in Part II of Protocol 3 to the Surveillance and Court Agreement concerning the procedure regarding existing aid schemes, the EFTA Surveillance Authority should obtain from the EFTA State concerned all necessary information for the review (Article 17(1) in Part II Protocol 3 Surveillance and Court Agreement). The aid given to LLB constitutes an aid scheme in that it is not linked to a specific project and granted for an indefinite time and amount (see Article 1 d) in Part I of Protocol 3 to the Surveillance and Court Agreement). The Authority asked for such information and initiated the review with its letter of 8 May 2001. The Liechtenstein authorities have been given further opportunities to provide information and comment on the matter by letter from the Authority dated 11 March 2004 and the meeting with the Liechtenstein coordination unit on 26 October 2004.

With the letter dated 3 November 2004, the Authority gave Liechtenstein a preliminary view on the State guarantee and invited comments pursuant to Article 17 (2) in Part II of Protocol 3 to the Surveillance and Court Agreement. The Liechtenstein authorities commented by letter dated 2 December 2004. The cooperation procedure according to Article 1(1) in Part I and Article 17 in Part II of Protocol 3 to the Surveillance Court Agreement, was thereby finalised.

The submission by the Liechtenstein authorities has not altered the view of the Authority that the State guarantee in favour of LLB constitutes State aid within the meaning of Article 61(1) of the EEA Agreement, and that the aid is not compatible with the functioning of the EEA Agreement.

As pointed out previously, since the State guarantee in question is unlimited in amount as well as in duration, the market value of the guarantees cannot be quantified and a correct premium cannot be calculated. Against this background, the Authority cannot recommend any other measure than the abolishment of the State guarantee. Given that the Authority expressed its doubts already in May 2001, the Authority considers that any incompatible aid resulting from Article 5 LLBG should be abolished with effect from 1 August 2005.

HAS ADOPTED THIS DECISION:

1. Pursuant to Article 1(1) in Part I and Article 18 in Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority proposes to the Principality of Liechtenstein the following appropriate measures:
 - a. The Principality of Liechtenstein shall take any legislative, administrative and other measures necessary to eliminate any incompatible aid resulting from Article 5 LLBG. Any such aid should be abolished with effect from 1 August 2005.
 - b. The Principality of Liechtenstein shall communicate to the Authority the relevant measures it will take to discontinue the aid as soon as possible and in any event not later than 21 March 2005.
2. The Authority asks the Principality of Liechtenstein to accept this proposal for appropriate measures, pursuant to Article 19 (1) in Part II of Protocol 3 of the Surveillance and Court Agreement, and to respond no later than 21 March 2005.

Done at Brussels, 15 December 2004

For the EFTA Surveillance Authority


Hannes Hafstein
President


Einar M. Bull
College Member