

## EFTA SURVEILLANCE AUTHORITY DECISION

of 20 June 2018

closing an own initiative case arising from an alleged failure by Liechtenstein to comply with Articles 16, 17(1)(c), 17(2) and Article 16 in conjunction with Article 7(1)(c) of Directive 2004/38/EC by maintaining in force national provisions restricting the right of permanent residence

### THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

On 23 February 2015, the EFTA Surveillance Authority (“the Authority”) opened a case against Liechtenstein on the implementation of the right to permanent residence in Liechtenstein under the Free Movement and Residence Directive 2004/38/EC<sup>1</sup> (“Directive 2004/38/EC”).

On 2 March 2015, the Authority sent a pre-Article 31 letter to the Liechtenstein Government (Doc No 743666). Therein, the Authority expressed its concerns regarding the relevant provisions implementing the right of permanent residence in Liechtenstein according to Directive 2004/38/EC.

In particular, the Authority took the preliminary view that Liechtenstein had failed to fulfil its obligations under Articles 16, 17(1)(c), 17(2) and Article 16 in conjunction with Article 7(1)(c) of Directive 2004/38/EC for the following reasons:

First, by requiring EEA nationals and their third-country national family members who have acquired the right to permanent residence under Directive 2004/38/EC, to apply for the issuance of a permanent residence permit, which under Article 24(2) of the PFZG<sup>2</sup> entitles the person concerned to reside in Liechtenstein indefinitely, by providing that this

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<sup>1</sup> Act referred to at point 3 of Annex VIII to the EEA Agreement (*Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC*), as adapted to the EEA Agreement by Protocol I thereto.

<sup>2</sup> Act of 20 November 2009 on the right of EEA and Swiss citizens to free movement and residence (*Gesetz vom 20. November 2009 über die Freizügigkeit von EWR- und Schweizer Staatsangehörigen, Personenfreizügigkeitsgesetz, PFZG, LR 152.2*, as last amended).

permit also expires in cases other than those foreseen in Article 16(4) of Directive 2004/38/EC and by subjecting the permanent residents to the additional requirements, such as the requirements in Article 26 of the PFZG.

Second, by limiting in Article 45(5) of the PFZG the entitlement of the family members of EEA nationals to the right of permanent residence by allowing them to stay abroad only up to three months per year before continuity of residence is affected and by restricting their permitted absences for the important reasons provided for in Article 16(3) of Directive 2004/38/EC.

Third, by not providing for the right of permanent residence for EEA nationals in the situations covered by Article 17(1)(c) of Directive 2004/38/EC.

Fourth, by not providing for the exceptions to the conditions as to the length of residence and employment laid down in Articles 17(1)(a) and 17(1)(b) of Directive 2004/38/EC in cases where the spouse of the worker or self-employed person has Liechtenstein nationality, as provided for in Article 17(2) of the Directive.

Fifth, by restricting students from enjoying their right of permanent residence in Liechtenstein after five years of residence, *i. e.* by requiring them to hold a residence permit issued on another basis to make use of their right of permanent residence.

The case was discussed at the package meeting in Liechtenstein in 2015<sup>3</sup>.

On 11 May 2015, after an extension of the time limit by one month, the Liechtenstein Government replied to the Authority's pre-Article 31 letter (ref. 9421.2-Anh.V-RL 2004/38/EG, Doc No 757020) and agreed to make amendments to the legislation as concerns the following issues:

*First*, to abolish the requirement for EEA nationals and their third-country national family members, who have acquired the right to permanent residence under Directive 2004/38/EC, to apply for the issuance of a permanent residence permit in order to constitute their right to permanent residence, *second*, to limit the reasons for the expiry of permanent residence permits, *third*, to increase the period during which family members of EEA nationals can stay abroad before the continuity of their residence is affected, *fourth*, to ensure that EEA nationals in situations covered by Article 17(1)(c) of Directive 2004/38/EC can enjoy the right of permanent residence, and *fifth*, to implement exceptions to the conditions as to the length of residence and employment laid down in Articles 17(1)(a) and 17(1)(b) of Directive 2004/38/EC in the situation referred to in Article 17(2) of the Directive.

Regarding the outstanding issues, the Authority and the Liechtenstein Government engaged in a lengthy correspondence<sup>4</sup>. Those issues were also discussed at the package meetings in Liechtenstein in 2016 and 2017<sup>5</sup>.

By letter of 5 August 2016 (Case No 67929, ref. 9421.1-Art. 28, Doc No 814201), the Liechtenstein Government informed the Authority about the entry into force of the

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<sup>3</sup> See the follow-up letter to the package meeting, Doc No 755552.

<sup>4</sup> See Doc No: 760175, 763022, 764152, 764153, 770359, 771415, 772909, 772910, 774590, 776188, 776189, 816686, 817764, 822679, 825812, 826975, 827185, 877248 and 877249.

<sup>5</sup> See follow-up letters to the package meetings of 2016 (Doc No 803234) and 2017 (Doc No 856558).

amendments to the PFZG and the PFZV<sup>6</sup> solving most of the issues addressed in the pre-Article 31 letter<sup>7</sup>.

In particular, as concerns the issue of requiring EEA nationals and their third-country national family members who have acquired the right to permanent residence under Directive 2004/38/EC, to apply for the issuance of a permanent residence permit in order to constitute their right to permanent residence, the words “*auf Gesuch hin*” (upon application) were deleted in Article 24(1) of the PFZG.

Further, in order to ensure clarity, Article 44(1) of the PFZG was also amended in the way that the right of a family member is dependent not on the fact that the EEA national at issue has acquired a permanent residence permit, but rather on the fact that he has acquired the *right* of permanent residence.

As regards the issue of limiting the reasons for the expiry of permanent residence permits, a new paragraph 1a) was added to Article 51 of the PFZG stipulating that some of the “*Erlöschensgründe*” (reasons for expiry) mentioned in Article 51(1) of the PFZG should not apply to permanent residence permits.

As regards the issue of increasing the period during which family members of EEA nationals can stay abroad before the continuity of their residence is affected, the words “*drei Monaten*” (three months) were replaced by the words “*sechs Monaten*” (six months) in Article 45(5) of the PFZG.

As regards the issue of ensuring that EEA nationals in situations covered by Article 17(1)(c) of Directive 2004/38/EC can enjoy the right of permanent residence, a new paragraph d) was added to Article 25(1) of the PFZG stipulating that EEA nationals who, after three years of continuous employment and residence in Liechtenstein, work in an employed or self-employed capacity in another EEA Member State, while retaining their place of residence in Liechtenstein, to which they return, as a rule, each day or at least once a week, have the right to acquire a permanent residence permit.

As regards the issue of implementing Article 17(2) of Directive 2004/38/EC concerning the exceptions to the conditions as to the length of residence and employment provided for in Articles 17(1)(a) and 17(1)(b) of the Directive, the words “*besitzt oder*” (possess or) were added in Article 25(2) of the PFZG.

As regards the issue relating to students’ right of permanent residence in Liechtenstein after five years of residence, Article 15 of the PFZV was amended in the way to ensure that students would earn periods towards the five-year mark while studying.

As regards the issue concerning the deadline for issuing a document which certifies the right of permanent residence, Article 34(2)(a) of the PFZG was amended, introducing a deadline of two weeks in this respect.

By letter of 1 March 2018 (ref. 9421.2-Anh. V, Doc No 900434), the Liechtenstein Government confirmed that the proposed and agreed amendments to the PFZG concerning

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<sup>6</sup> Ordinance of 15 December 2009 on the right of EEA and Swiss citizens to free movement and residence (*Verordnung vom 15. Dezember 2009 über die Freizügigkeit für EWR- und Schweizer Staatsangehörige, Personenfreizügigkeitsverordnung, PFZV, LR 152.211, as last amended*).

<sup>7</sup> The PFZG (Liechtenstein Law Gazette 2016 No 239) and the PFZV (Liechtenstein Law Gazette 2016 No 219).

the outstanding issues of limiting the reasons for expiry of permanent residence permits and abolishing the obligation to hand over permanent residence permits<sup>8</sup> entered into force on 1 March 2018 and attached the respective legal texts.

In particular, as to the obligation to hand over residence permits to the national authorities in case of transferring the residence to another country, a new paragraph 4a) was added to Article 7 of the PFZG, introducing an exemption to this requirement for permanent residents.

Following receipt of the information referred to above it appears that the national provisions in question have been amended and that the current legal framework concerning the implementation of the right to permanent residence in Liechtenstein complies with the requirements laid down in Articles 16, 17(1)(c), 17(2) and Article 16 in conjunction with Article 7(1)(c) of Directive 2004/38/EC.

There are, therefore, no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

The complaint case arising from an alleged failure by Liechtenstein to comply with Articles 16, 17 (1)(c), 17(2) and Article 16 in conjunction with Article (7)(1)(c) of Directive 2004/38/EC, is hereby closed.

For the EFTA Surveillance Authority

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*This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.*

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<sup>8</sup> Liechtenstein Law Gazette 2018 No 17.