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REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning Liechtenstein's failure to comply with its obligations under Article 5(2) and (3) of Directive 98/5/EC

1 Introduction

This reasoned opinion concerns Liechtenstein's breach of Article 5(2) and 5(3) of Directive 98/5 on the facilitation of the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained ("the Directive"), as interpreted by the EFTA Court in its advisory opinion in Case E-12/22 *Maximilian Maier*.¹

The question that the Administrative Court of Liechtenstein referred for an advisory opinion was whether a national provision, such as the one in Article 62(2)(c) of the Liechtenstein Lawyers Act, is compatible with the Directive.

According to Article 62(2)(c) of the Liechtenstein Lawyers Act, a lawyer, who normally practices his or her profession in an EEA State other than the one in which he or she obtained his or her qualification, is not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or public defender.

The EFTA Court held that Directive 98/5/EC must be interpreted as precluding a national provision which prohibits a lawyer from being appointed as a legal aid lawyer, legal aid defence counsel or public defender if he or she practises the profession on a permanent basis under the lawyer's home-country professional title in a host EEA State other than the one in which he or she obtained the qualification. The Court found that such a prohibition goes beyond the exhaustive list of exceptions provided for in Article 5(2) and 5(3) of the Directive.

On 14 November 2023, the EFTA Surveillance Authority ("the Authority") opened an own initiative case regarding the follow-up to the EFTA Court's judgment. In addition, it addressed Article 62(2) letters (a) and (b) of the Liechtenstein Lawyers Act, which the Authority deems to be covered by the conclusions of the EFTA Court.

On 15 November 2023, the Authority sent a request for information to Liechtenstein aiming to understand whether the Liechtenstein Government intended to amend its national legislation in accordance with the judgment of the EFTA Court (Doc No 1413469). The deadline to reply was 19 January 2024. On 15 January 2024, the Liechtenstein Government acknowledged (Doc No 1429623) the findings of the EFTA Court in the judgment. It communicated to the Authority that the relevant national provision (the whole Article 62(2) of the Liechtenstein Lawyers Act, i.e. letters (a), (b) and (c)) would be amended but possibly not separately, since there were plans for a general review of the Lawyers Act, which would require more time.

The case was subsequently discussed at the package meeting in Vaduz on 12-13 March 2024, where no more precise information was provided to the Authority. On 20 March 2024 the Authority sent a follow-up letter to the Liechtenstein Package meeting (Doc No 1443888) inviting Liechtenstein to put forward more detailed information on the timelines for the review of the Lawyers Act. On 20 December 2024, the Liechtenstein Government replied (Doc No 1508114) by stating that, due to upcoming elections, more concrete information on how and when the EFTA Court judgment would be implemented could not be provided at that stage.

Therefore, a letter of formal notice was issued on 2 April 2025 (Doc No 1510567) concluding that Liechtenstein has failed to comply with its obligations under Article 5(2) and (3) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained by maintaining in force exceptions in Article 62(2) of the Liechtenstein Lawyers Act which go beyond the exceptions set out in

¹ Judgment of the EFTA Court of 19 October 2023 in Case E-12/22 *Maximilian Maier*.

Article 5(2) and (3) of that Directive. That conclusion comprised the whole Article 62(2) of the Liechtenstein Lawyers Act, i.e. letters (a), (b) and (c).

The case was subsequently discussed at the package meeting in Liechtenstein on 7-9 April 2025 (see follow-up letter Doc No 1530499). The Liechtenstein Government explained that it still has the same view as expressed during last years' package meeting, that all points (a-c) of Article 62(2) of the Liechtenstein Lawyers Act would be deleted during the revision of that Act.

Moreover, the Liechtenstein Government explained that the delay in implementation of the judgment was also related to the recent elections in Liechtenstein. It was the plan of the new Government (appointed on 10 April 2025) that this deletion would be done together with other amendments of the Lawyers' Act. It would not be a complete revision of the Act, but rather several technical amendments throughout the Act. The Government reiterated that a draft proposal should be sent for public consultation still before the summer 2025. A date of entry into force of the new legislation could realistically be expected in autumn 2026. Since all the changes in the Act are considered to be of technical nature, no delays of political nature were to be expected.

The Liechtenstein Government replied to the letter of formal notice by letter dated 2 June 2025 (Doc No 1540230) by stating in essence that it was planned to completely repeal Article 62(2) of the Liechtenstein Lawyers Act. The preparation of the bill for public consultation was about to be finalised. The plan was still to publish the bill for public consultation in summer 2025, which would be open for public consultation for three months. However, the preparatory process for the amendments of national legislation in Liechtenstein would take about two years.

No further information has been brought forward to the Authority since. According to the information available to the Authority at the time of the reasoned opinion, the bill has not yet been published for public consultation.

2 Relevant national law

Article 62 of the Lawyers Act, entitled "Professional status", reads:

"1) Except as provided otherwise, the established European lawyer shall be authorised to engage in the same professional activities as any lawyer entered in the register of lawyers.

2) An established European lawyer shall have the status of a lawyer entered in the register of lawyers. However, he or she is not authorised:

(a) to be elected as an officer of the Chamber of Lawyers;

(b) to train trainee lawyers;

(c) to be appointed as a legal aid lawyer, legal aid defence counsel or ex officio defence counsel.

[...]"

3 Relevant EEA law

Directive 98/5² was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 85/2002 of 25 June 2002 (OJ 2002 L 266, p. 50) and was inserted as point 2a of Annex VII (Mutual recognition of professional qualifications) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. The requirements were fulfilled by 9 January 2003.

The decision entered into force on 1 March 2003.

Article 2 of the Directive, entitled “*Right to practise under the home-country professional title*”, reads:

“Any lawyer shall be entitled to pursue on a permanent basis, in any other Member State under his home-country professional title, the activities specified in Article 5. [...]”

Article 5 of the Directive, entitled “*Area of activity*”, reads:

“1. Subject to paragraphs 2 and 3, a lawyer practising under his home-country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, inter alia, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. He shall in any event comply with the rules of procedure applicable in the national courts.

2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.

3. For the pursuit of activities relating to the representation or defence of a client in legal proceedings and insofar as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State, the latter may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an ‘avoué’ practising before it. Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.

4 The Authority’s Assessment

As the EFTA Court stated, one of the Directive’s objectives is to lay down the conditions governing the practice of the profession by lawyers practising under their home-country professional title, so as, *first*, to put an end to the diversity of national situations in that field

² Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, OJ 1998 L 77, p. 36.

and the resulting inequalities and obstacles to freedom of movement and, *second*, to afford the same opportunities to lawyers and consumers of legal services in all EEA States.³

Pursuant to Articles 2 and 5 of the Directive, any lawyer shall be entitled to pursue on a permanent basis, in any other EEA State, under the lawyer's home-country professional title, the same professional activities as a lawyer practising under the relevant professional title in the host EEA State. The lawyer shall in any event comply with the rules applicable in the national courts. The provisions are intended, in particular, to facilitate practice as a self-employed lawyer, and to affirm the right, subject to certain exceptions, for any lawyer to pursue on a permanent basis, in any other EEA State, under the lawyer's home-country professional title, the same professional activities as a lawyer practising under the relevant professional title of the host EEA State.⁴

Article 5(1) of the Directive allows EEA States to provide for certain *exceptions* from this right, which are specified exhaustively in Article 5(2) and 5(3) of the Directive. In particular, under Article 5(2), EEA States may exclude the preparation of deeds for obtaining title to administer estates of deceased persons and creating or transferring interests in land from the activities European lawyers are entitled to undertake. Under Article 5(3), EEA States may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question for the pursuit of activities relating to the representation or defence of a client in legal proceedings and insofar as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State.⁵ All other professional activities of lawyers practising under the domestic professional title fall within the scope of application of Article 5(1) of the Directive.

Article 5 of Directive 98/5 is implemented in Article 62 of the Liechtenstein Lawyers Act. However, Article 62 of the Liechtenstein Lawyers Act contains more exceptions to the right to practice by foreign lawyers in Liechtenstein than Article 5 of the Directive foresees. The EFTA Court found, in particular, that Article 62(2)(c) of the Lawyers Act, which precludes European lawyers from being appointed as legal aid lawyers in Liechtenstein without exception, despite the fact that acting as legal aid lawyer is part of the professional activities of lawyers practicing under the domestic professional title, does not correspond to the situations referred to in Article 5(2) or 5(3) of the Directive.⁶

Furthermore, as the provisions of Article 5(2) and 5(3) of the Directive were confirmed by the EFTA Court to be exhaustive limitations,⁷ it is the Authority's view that the exceptions set out in Article 62(2) letters (a) and (b) of the Liechtenstein Lawyers Act also go beyond what Article 5 of the Directive allows. Consequently, Article 62(2), letters (a), (b) and (c), of the Liechtenstein Lawyers Act is therefore in breach of Article 5(2) and (3) of the Directive.

The Liechtenstein Government was informed about this assessment in a letter of formal notice dated 2 April 2025 (Doc No 1510567).

The Liechtenstein Government does not dispute the Authority's assessment (see correspondence referred to under point 1 of this reasoned opinion).

The EFTA Court handed down its judgment in Case E-12/22 *Maximilian Maier* on 19 October 2023. According to the Authority's information, Liechtenstein has yet to remove the restriction of Article 62(2) of the Liechtenstein Lawyers Act.

³ Judgment in Case E-12/22, *Maximilian Maier*, paragraph 28.

⁴ *Ibid.*, paragraph 29.

⁵ *Ibid.*, paragraph 34.

⁶ *Ibid.*, paragraph 35.

⁷ *Ibid.*, paragraph 39.

It is settled case-law that EEA States cannot plead internal circumstances or practical difficulties to justify their non-compliance with the obligations and time-limits arising from EEA law.⁸

As more than two years have now passed since the judgment of the EFTA Court clarifying the nature and content of Article 5(2) and (3) of Directive 98/5, the Authority considers that the Liechtenstein Government has had sufficient time to take the measures necessary to comply with its obligations under Article 5(2) and (3) of Directive 98/5/EC.

FOR THESE REASONS,

THE EFTA SURVEILLANCE AUTHORITY,

pursuant to the first paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and after having given Liechtenstein the opportunity of submitting its observations,

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that Liechtenstein is failing to comply with its obligations under Article 5(2) and (3) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained by maintaining in force exceptions in Article 62(2) of the Liechtenstein Lawyers Act which go beyond the exceptions set out in Article 5(2) and (3) of that Directive.

Pursuant to 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, the EFTA Surveillance Authority requires Liechtenstein to take the measures necessary to comply with this reasoned opinion within *two months* of its receipt.

Done at Brussels,

For the EFTA Surveillance Authority,

Arne Røksund
President

Árni Páll Árnason
College Member

Nuscha Wieczorek
Responsible College Member

Melpo-Menie Joséphidès
Countersigning as Director,
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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.

⁸ See in this regard, inter alia, CJEU Cases C-316/06 *Commission v Ireland*, ECLI:EU:C:2008:487, paragraph 31; C-89/03 *Commission v Luxembourg*, ECLI:EU:C:2003:542, paragraph 5; C-140/00 *Commission v United Kingdom*, ECLI:EU:C:2002:653, paragraph 60; and C-52/91 *Commission v Netherlands*, ECLI:EU:C:1993:225, paragraph 36.