

Case

E-32/15

EFTA Surveillance Authority



The Principality of Liechtenstein

*(Failure by an EFTA State to fulfil its obligations – Failure to implement –
Directive 2006/126/EC – Directive 2011/94/EU – Directive 2012/36/EU)*

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Judgment of the Court, 29 July 2016

Summary of the Judgment

- 1 Article 3 EEA imposes upon the EFTA States the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EEA Agreement. Under Article 7 EEA, the EFTA States are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee. An obligation to implement the Directives also follows from Article 16 of Directive 2006/126/EC, Article 2 of Directive 2011/94/EU and Article 2 of Directive 2012/36/EU.
- 2 The question of whether an EFTA State has failed to fulfil its obligations must be determined by reference to the situation in that State as it stood at the end of the period laid down in the reasoned opinion. It is undisputed that Liechtenstein had not adopted the measures necessary to implement the Directives by the expiry of the time limits given in the reasoned opinions.
- 3 Liechtenstein failed to fulfil its obligations under the Acts referred to at point 24f of Annex XIII to the EEA Agreement (Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licenses (recast), Commission Directive 2011/94/EU of 28 November 2011 amending directive 2006/126/EC and Commission Directive 2012/36/EU of 19 November 2012 amending Directive 2006/126/EC), as adapted to the Agreement under its Protocol 1, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Acts within the times prescribed.

Judgment of the Court

29 July 2016

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Directive 2006/126/EC – Directive 2011/94/EU – Directive 2012/36/EU)

In Case E-32/15,

EFTA Surveillance Authority, represented by Carsten Zatschler, Øyvind Bø and Marlene Lie Hakkebo, members of its Department of Legal & Executive Affairs, acting as Agents,
– *applicant*,

The Principality of Liechtenstein, represented by Dr Andrea Entner-Koch, Director, and Nadja Rossettini-Lambrecht, Senior Legal Officer, EEA Coordination Unit, acting as Agents,
– *defendant*,

APPLICATION for a declaration that the Principality of Liechtenstein has failed to fulfil its obligations under the Acts referred to at point 24f of Annex XIII to the Agreement on the European Economic Area (Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (recast), Commission Directive 2011/94/EU of 28 November 2011 amending Directive 2006/126/EC and Commission Directive 2012/36/EU of 19 November 2012 amending Directive 2006/126/EC), as adapted to the Agreement by way of Protocol 1 thereto, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Acts within the time prescribed, or in any event by failing to inform the EFTA Surveillance Authority thereof,

The Court

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

Registrar: Gunnar Selvik,

having regard to the written pleadings of the parties,

having decided to dispense with the oral procedure,

gives the following

Judgment

I INTRODUCTION

- 1 By an application lodged at the Court Registry on 17 December 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 from the Court that the Principality of Liechtenstein has failed to fulfil its obligations under the Acts referred to at point 24f of Annex XIII to the Agreement on the European Economic Area (“EEA” or “EEA Agreement”), that is Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (recast) (OJ 2006 L 403, p. 18), Commission Directive 2011/94/EU of 28 November 2011 amending Directive 2006/126/EC (OJ 2011 L 314, p. 31) and Commission Directive 2012/36/EU of 19 November 2012 amending Directive 2006/126/EC (OJ 2012 L 321, p. 54) (“the Directives” or “the Acts” or respectively “Directive 2006/126/EC”, “Directive 2011/94/EU” and “Directive 2012/36/EU”), as adapted to the Agreement under

its Protocol 1, and under Article 7 of the Agreement, by failing to adopt or in any event to inform ESA of the measures necessary to implement the Acts within the times prescribed.

II LAW

2 Article 3 EEA reads:

The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.

They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.

...

3 Article 7 EEA reads:

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

...

(b) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.

4 Article 31 SCA reads:

If the EFTA Surveillance Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement or of this Agreement, it shall, unless otherwise provided for in this Agreement, deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the EFTA Surveillance Authority, the latter may bring the matter before the EFTA Court.

- 5 EEA Joint Committee Decisions No 29/2008 of 14 March 2008 (OJ 2008 L 182, p. 21 and EEA Supplement 2008 No 42, p. 13) (“Decision 29/2008”), No 110/2012 of 15 June 2012 (OJ 2012 L 270, p. 33 and EEA Supplement 2012 No 56, p. 33) (“Decision 110/2012”) and No 143/2013 of 15 July 2013 (OJ 2013 L 345, p. 12 and EEA Supplement 2013 No 72, p. 18) (“Decision 143/2013”) amended Annex XIII (Transport) to the EEA Agreement by adding the respective Directives to point 24f of the Annex.
- 6 As regards Directive 2006/126/EC, constitutional requirements were indicated by Norway for the purposes of Article 103 EEA. By February 2009, Norway had notified that the constitutional requirements had been fulfilled. Consequently, Decision 29/2008 entered into force on 1 April 2009. As regards Directives 2011/94/EU and 2012/36/EU, no constitutional requirements were indicated. Consequently, Decision 110/2012 entered into force on 16 June 2012, and Decision 143/2013 entered into force on 16 July 2013.
- 7 Pursuant to Article 16 of Directive 2006/126/EC, the EEA States were required to adopt and publish, no later than 19 January 2011, the laws, regulations and administrative provisions necessary to comply with a number of the obligations arising under that directive and to apply those provisions as of 19 January 2013.
- 8 Pursuant to Article 2 of Directive 2011/94/EU, the EEA States were required to adopt and publish, no later than 30 June 2012, the laws, regulations and administrative provisions necessary to comply with that directive, and to apply those provisions from 19 January 2013.
- 9 Pursuant to Article 2 of Directive 2012/36/EU, the EEA States were required to bring into force the laws, regulations and administrative

provisions necessary to comply with that directive no later than 31 December 2013.

III FACTS AND PRE-LITIGATION PROCEDURE

DIRECTIVES 2006/126/EC AND 2011/94/EU

- 10 On 20 February 2013, following correspondence with Liechtenstein authorities, ESA issued two letters of formal notice concluding that Liechtenstein had failed to fulfil its obligations under Directives 2006/126/EC and 2011/94/EU and Article 7 EEA by failing to adopt the national measures necessary to implement the Acts, or in any event to inform ESA thereof.
- 11 By two separate letters of 17 April 2013, Liechtenstein replied to the letters of formal notice. In its observations, Liechtenstein confirmed that the measures necessary to implement the two Acts had not yet been adopted. Liechtenstein contended that due to a delay of implementation of the Acts in Switzerland, the transposition of the Acts would also need to be delayed in Liechtenstein, as the two legal orders were closely interlinked in the field of driving licenses. Liechtenstein considered a national transposition of the Acts independently from Switzerland to be impossible, as the production of the driving licence blanks and the subsequent issuance of driving licences would be tightly linked to the Swiss driving licence registry. Implementation of the Acts in Liechtenstein independently from Switzerland would be impractical and result in substantial financial expenditure, which Liechtenstein considered to be disproportionate in light of the small number of driving licences issued annually. Lastly, Liechtenstein stated that it would apply the same time plan as Switzerland, which foresaw that the legislative measures implementing the Acts would enter into force early 2016.

- 12 On 18 February 2015, ESA delivered two reasoned opinions, maintaining the conclusions set out in its letters of formal notice. ESA stated that the EFTA States could not rely on provisions, practices or situations prevailing in their domestic legal order to justify a failure to observe obligations arising under EEA law. Neither could it rely on financial difficulties in order to justify non-compliance with obligations and time-limits laid down in directives. Pursuant to the second paragraph of Article 31 SCA, ESA required Liechtenstein to take the measures necessary to comply with the reasoned opinions within two months following the notifications, that is, no later than 18 April 2015.
- 13 On 17 April 2015, Liechtenstein responded to the reasoned opinions by two separate letters, acknowledging that it had not yet adopted the necessary measures to implement the Acts. Liechtenstein also reiterated the arguments referred to in its letters of 17 April 2013.
- 14 Since Liechtenstein had not complied with the reasoned opinions by the deadline set therein, ESA decided to bring the matter before the Court pursuant to the second paragraph of Article 31 SCA.

DIRECTIVE 2012/36/EU

- 15 On 18 February 2015, ESA issued a letter of formal notice to Liechtenstein concluding that Liechtenstein had also failed to fulfil its obligations under Directive 2012/36/EU and Article 7 EEA by failing to adopt the national measures necessary to implement the Act, or in any event, to inform ESA thereof.
- 16 By a letter of 17 April 2015, Liechtenstein confirmed that it had not yet adopted the measures necessary to implement the Act. Liechtenstein pointed out that it was dependent on Directive 2006/126/EC on driving licences being transposed in Switzerland. Liechtenstein further reiterated the arguments referred to in its

replies to the letters of formal notice and reasoned opinions concerning Directives 2006/126/EC and 2011/94/EU.

- 17 On 24 June 2015, ESA delivered a reasoned opinion, 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 measures necessary to comply with the reasoned opinion within two months following the notification, that is, no later than 24 August 2015.
- 18 By a letter of 28 August 2015, Liechtenstein replied to the reasoned opinion, stating that it had not yet adopted the necessary measures to implement the Act.
- 19 Since Liechtenstein had not complied with the reasoned opinion by the deadline set therein, 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

- 20 ESA lodged the present application at the Court Registry on 17 December 2015. Liechtenstein's statement of defence was registered at the Court on 4 March 2016. By letter of 14 March 2016, ESA waived its right to submit a reply and consented to dispense with the oral procedure should the Court wish to do so. By letter of 18 March 2016, Liechtenstein also consented to dispense with the oral procedure.
- 21 The applicant, ESA, requests the Court to:
 1. *Declare that the Principality of Liechtenstein has failed to fulfil its obligations under the Acts referred to at point 24f of Annex XIII to the Agreement on the European Economic Area:*
 - *Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, and*

- *Commission Directive 2011/94/EU of 28 November 2011 amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences*
- *Commission Directive 2012/36/EU of 19 November 2012 amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences,*

as adapted to the Agreement by way of Protocol 1 thereto, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Acts within the time prescribed, or in any event by failing to inform the EFTA Surveillance Authority thereof; and

2. *order the Principality of Liechtenstein to bear the costs of these proceedings.*

- 22 The defendant, Liechtenstein, submits that the facts of the case as set out in the application are correct and undisputed. Liechtenstein does not dispute the declaration sought by ESA, but requests the Court to order each party to bear its own costs of the proceedings.
- 23 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided pursuant to Article 41(2) of the Rules of Procedure (“RoP”) to dispense with the oral procedure.

V FINDINGS OF THE COURT

- 24 Article 3 EEA imposes upon the EFTA States the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EEA Agreement (see, *inter alia*, Case E-23/15 *ESA v Liechtenstein*, judgment of 1 February 2016, not yet reported, paragraph 16 and case law cited).

- 25 Under Article 7 EEA, the EFTA States are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee. An obligation to implement the Directives also follows from Article 16 of Directive 2006/126/EC, Article 2 of Directive 2011/94/EU and Article 2 of Directive 2012/36/EU. The Court points out that the lack of direct legal effect of acts referred to in decisions from the EEA Joint Committee, makes timely implementation crucial for the proper functioning of the EEA Agreement also in Liechtenstein. The EFTA States find themselves under an obligation of result in that regard (see, *inter alia*, *ESA v Liechtenstein*, cited above, paragraph 17 and case law cited).
- 26 Decision 29/2008 entered into force on 1 April 2009, Decision 110/2012 entered into force on 16 June 2012 and Decision 143/2013 entered into force on 16 July 2013. The time limit for the EFTA States to adopt and apply the necessary measures to implement the first two Directives expired on 19 January 2013. The time limit to adopt the necessary measures to comply with Directive 2012/36/EU expired on 31 December 2013.
- 27 The question whether an EFTA State has failed to fulfil its obligations must be determined by reference to the situation as it stood at the end of the period laid down in the reasoned opinion (see, *inter alia*, *ESA v Liechtenstein*, cited above, paragraph 19 and case law cited). It is undisputed that Liechtenstein had not adopted the measures necessary to implement the Directives by the expiry of the time limits given in the reasoned opinions, that is on 18 April 2015 for Directives 2006/126/EC and 2011/94/EU and on 24 August 2015 for Directive 2012/36/EU.
- 28 Since Liechtenstein did not implement the Directives within the time limits prescribed, there is no need to examine the alternative form of order sought against Liechtenstein for failing to notify ESA of the measures implementing the Directives.

29 It must therefore be held that the Principality of Liechtenstein has failed to fulfil its obligations under the Acts referred to at point 24f of Annex XIII to the EEA Agreement (Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (recast), Commission Directive 2011/94/EU of 28 November 2011 amending Directive 2006/126/EC and Commission Directive 2012/36/EU of 19 November 2012 amending Directive 2006/126/EC), as adapted to the EEA Agreement under its Protocol 1, and under Article 7 EEA, by failing to adopt the measures necessary to implement the Acts within the time prescribed.

VI COSTS

30 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. Since ESA has requested that Liechtenstein be ordered to pay the costs, and the latter has been unsuccessful, and none of the exceptions in Article 66(3) apply, Liechtenstein must therefore be ordered to pay the costs.

On those grounds,

The Court

hereby:

- 1. Declares that, the Principality of Liechtenstein has failed to fulfil its obligations under the Acts referred to at point 24f of Annex XIII to the Agreement on the European Economic Area (Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (recast), Commission Directive 2011/94/EU of 28 November 2011 amending Directive 2006/126/EC and Commission Directive 2012/36/EU of 19 November 2012 amending Directive 2006/126/EC), as adapted to the Agreement under its Protocol 1, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Acts within the times prescribed.**
- 2. 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
29 July 2016.*

Birgir Hrafn Búason
Acting Registrar

Páll Hreinsson
Acting President