



JUDGMENT OF THE COURT

27 November 2013*

(Lawyers' freedom to provide cross-border services – Directive 77/249/EEC – Self-representation – Notification requirement in national law – Consequences of failure to notify)

In Case E-6/13,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Fürstliche Landgericht des Fürstentums Liechtenstein (Princely Court of the Principality of Liechtenstein), in the case of

Metacom AG

and

Rechtsanwälte Zipper & Collegen

concerning the interpretation of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of the freedom to provide services,

THE COURT,

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

Registrar: Gunnar Selvik,

having considered the written observations submitted on behalf of:

- the Liechtenstein Government, represented by Dr Andrea Entner-Koch, Director, and Thomas Bischof, Deputy Director, EEA Coordination Unit, acting as Agents;

* Language of the request: German.

- the EFTA Surveillance Authority (“ESA”), represented by Xavier Lewis, Director, and Markus Schneider, Deputy Director, Department of Legal & Executive Affairs, acting as Agents; and
- the European Commission (“the Commission”), represented by Hans Stovlbaek and Nicola Yerrell, Members of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of the Liechtenstein Government, represented by Dr Andrea Entner-Koch; ESA, represented by Markus Schneider; and the Commission, represented by Nicola Yerrell, at the hearing on 2 October 2013,

gives the following

Judgment

I Legal background

EEA law

1 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.

2 Pursuant to the first paragraph of Article 37 EEA, “services shall be considered services within the meaning of this Agreement where they are normally provided for remuneration”.

3 Pursuant to Article 39 EEA, the provisions of, *inter alia*, Article 30 EEA shall apply to the matters covered by Chapter 3 (services) of the Agreement. Pursuant to Article 30 EEA, the Contracting Parties shall take the necessary measures, contained in Annex VII to the Agreement, to make it easier for persons to take up and pursue activities as workers and self-employed persons.

4 Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17) (“the Directive”) is referred to at point 2 of Annex VII to the EEA Agreement (mutual recognition of professional qualifications).

5 Article 1 of the Directive reads:

1. This Directive shall apply, within the limits and under the conditions laid down herein, to the activities of lawyers pursued by way of provision of services. ...

2. "Lawyer" means any person entitled to pursue his professional activities under one of the following designations: ... Germany: Rechtsanwalt.

6 Article 2 of the Directive reads:

Each Member State shall recognize as a lawyer for the purpose of pursuing the activities specified in Article 1 (1) any person listed in paragraph 2 of that Article.

7 Article 3 of the Directive reads:

A person referred to in Article 1 shall adopt the professional title used in the Member State from which he comes, expressed in the language or one of the languages, of that State, with an indication of the professional organization by which he is authorized to practise or the court of law before which he is entitled to practise pursuant to the laws of that State.

8 Article 4 of the Directive reads:

1. Activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each host Member State under the conditions laid down for lawyers established in that State, with the exception of any conditions requiring residence, or registration with a professional organization, in that State.

2. A lawyer pursuing these activities shall observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes.

9 Article 5 of the Directive reads:

For the pursuit of activities relating to the representation of a client in legal proceedings, a Member State may require lawyers to whom Article 1 applies:

– to be introduced, in accordance with local rules or customs, to the presiding judge and, where appropriate, to the President of the relevant Bar in the host Member State;

– 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" or "procuratore" practising before it.

10 Article 7 of the Directive reads:

1. The competent authority of the host Member State may request the person providing the services to establish his qualifications as a lawyer.

2. In the event of non-compliance with the obligations referred to in Article 4 and in force in the host Member State, the competent authority of the latter shall determine in accordance with its own rules and procedures the consequences of such non-compliance, and to this end may obtain any appropriate professional information concerning the person providing services. It shall notify the competent authority of the Member State from which the person comes of any decision taken. Such exchanges shall not affect the confidential nature of the information supplied.

National law

11 Pursuant to Article 55(1) of the Lawyers Act (*Rechtsanwaltsgesetz*, LGBl 1993 No 41, as amended), nationals of an EEA State who are entitled to engage in professional activity as a lawyer in their home State using one of the designations listed in the annex to the Act shall be authorised to engage in activity as a lawyer in Liechtenstein on a temporary cross-border basis (otherwise known as “European lawyers engaging in the provision of services”).

12 However, pursuant to Article 59 of the Lawyers Act, such authorisation is subject to the following requirements:

(1) A European lawyer engaging in the provision of services shall be supervised by the chamber of lawyers.

(2) Prior to the exercise of an activity in Liechtenstein, a European lawyer engaging in the provision of services shall notify the head of the chamber of lawyers of his intention to do so and submit the following evidence:

(a) A certificate evidencing the fact that the service provider lawfully exercises the relevant activity in his home State and that, on the date the certificate is submitted, he is not prohibited, not even on a temporary basis, from the exercise of that activity;

(b) evidence of his nationality; and

(c) that he is covered by professional indemnity insurance within the meaning of Article 25.

(3) The chamber of lawyers shall confirm receipt of the notification without delay. On request, evidence of the notification shall be provided to the courts or administrative authorities.

(3a) Notification shall be renewed once every year if the European lawyer engaging in the provision of services intends in the year in question to provide services in Liechtenstein on a temporary or occasional

basis. Furthermore, it shall be renewed immediately, if – with respect to the situation certified – a substantive change has occurred.

(4) It shall be the responsibility of the head of the chamber of lawyers

(a) to advise and instruct a European lawyer engaging in the provision of services on matters concerning the professional obligations of a lawyer;

(b) to supervise the discharge of the obligations to which such persons are subject;

(c) to prohibit the exercise of the provision of services and, where appropriate, notify the courts or administrative authorities of that fact if the requirements set out in paragraph 2 above are not satisfied or cease to be satisfied;

(d) to notify the competent authority of the home State of decisions taken in respect of that person.

- 13 Under Liechtenstein law, the payment of legal fees and expenses is regulated by the Lawyers' Fees Act (*Gesetz über den Tarif für Rechtsanwälte und Rechtsagenten, LGBl 1988 No 9*) and by the Lawyers' Fees Regulation (*Verordnung über die Tarifansätze der Entlohnung für Rechtsanwälte und Rechtsagenten, LGBl 1992 No 69*). Failure on the part of a European lawyer engaged in the provision of services to provide notification in the host State has the consequence that the lawyer concerned may not claim lawyers' fees in accordance with the scale of fees provided for in Liechtenstein.

II Facts and procedure before the national court

- 14 The case before the national court concerns a claim for a declaratory judgment that a debt does not exist (*Aberkennungsklage*). The parties to the case are Metacom AG, a company registered in Liechtenstein ("the plaintiff"), and Rechtsanwälte Zipper & Collegen, a firm of lawyers based in Germany ("the defendant").
- 15 In a letter of 13 August 2012, the defendant raised the issue of whether the plaintiff had sufficient standing to sue. However, the plaintiff withdrew the action. The withdrawal was formally noted in an order dated 21 August 2012 by the Princely Court. The order was served on the defendant. On 3 September 2012, the defendant submitted its defence to the action, arguing that it should be dismissed and that the plaintiff should pay the costs.
- 16 By order of the Princely Court of 14 September 2012, the defendant's request for costs was rejected. In principle, the plaintiff was to be regarded as the unsuccessful party. However, costs could not be awarded in relation to procedural steps that had taken place after 21 August 2012, or in connection with the defendant's letter of 13 August, which had not been required by the court. In

any event, under Articles 58 and 59 of the Liechtenstein Lawyers Act, the defendant, as a firm of German lawyers, had to nominate a lawyer from the list of Liechtenstein lawyers with an address for service in Liechtenstein, and to notify in advance the Head of the Liechtenstein Chamber of Lawyers (*Liechtensteinische Rechtsanwaltskammer*) of its intention to provide services in Liechtenstein.

- 17 On 24 September 2012, the defendant (now represented by Ritter & Wohlwend Rechtsanwälte, a firm of lawyers based in Liechtenstein), applied for costs amounting to CHF 676.75. The defendant argued that i) it had mandated a Liechtenstein lawyer to represent it at a cancelled hearing scheduled for 12 September, ii) the mandated lawyer only became aware of the withdrawal of the action upon being informed by the court of that cancellation, and iii) the documents to that effect had only been served on the defendant on 18 September.
- 18 On 4 December 2012, the decision to reject the request for costs was annulled by the Princely Court of Appeal (*Fürstliches Obergericht*) on the grounds that, *inter alia*, no hearing had been held.
- 19 A hearing was held by the Princely Court on 6 February 2013. At the hearing, the defendant submitted a new schedule for costs.
- 20 By order of the Princely Court of 7 February 2013, the defendant was given 14 days to produce its notification to the Liechtenstein Chamber of Lawyers and all the accompanying evidence required by Article 59 of the Liechtenstein Lawyers Act. The defendant was also given 14 days within which to submit observations concerning its claim that it was entitled to costs in accordance with the scale set out in the Lawyers' Fees Act and Regulation.
- 21 On 26 February 2013, the defendant provided a certificate (dated that day) from the Liechtenstein Chamber of Lawyers to the effect that Mr Zipper of Rechtsanwälte Zipper & Collegen had notified his intention of providing cross-border services as a lawyer in Liechtenstein from 20 February 2013, and that he satisfied the other relevant legal requirements. The defendant also pointed out that, had it been aware of the notification requirement, it would have complied with it prior to the start of proceedings.
- 22 However, since the defendant had not complied with the requirements laid down in Article 59 of the Lawyers Act at the time the costs had been incurred (in August and September 2012), the Princely Court expressed doubts as to whether the defendant could, as a matter of national law, be entitled to claim costs in accordance with the scale set out in the Lawyers' Fees Act and Regulation. It also queried the impact on this question of the principle of the freedom to provide services enshrined in EEA law, e.g. the detailed provisions of the Directive, and, in particular, its Article 7.
- 23 Consequently, on 9 April 2013 the Princely Court referred the following questions to the Court:

1. *Can a European lawyer bringing proceedings in another EEA State in his own name and not pursuant to the mandate of a third party rely on Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17)?*
2. *Is an obligation on European lawyers to notify the authorities of the host State (as provided for here in Article 59 of the Liechtenstein Lawyers Act (Rechtsanwaltsgesetz)) compatible with Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17) and, in particular, with Article 7 of that directive?*
3. *If Question 2 is answered in the affirmative: Having regard to Directive 77/249/EEC, may failure to provide notification in the host State on the part of a European lawyer engaged in the provision of services result in the consequence that the lawyer concerned may not claim lawyers' fees in accordance with the scale of fees provided for in the host State (in Liechtenstein the fees provided for in the Lawyers' Fees Act (Gesetz über den Tarif für Rechtsanwälte und Rechtsagenten) and the Lawyers' Fees Regulation (Verordnung über die Tarifsätze der Entlohnung für Rechtsanwälte und Rechtsagenten))?*
4. *Where a European lawyer engaged in the provision of services has only notified the authorities in the host State at a later date, may this subsequent notification result in the consequence that the lawyer may only claim fees in accordance with the scale of fees provided for in the host State in relation to the period following that notification but not in relation to procedural steps taken prior to that date?*
5. *Having regard to Directive 77/249/EEC, does the answer to Questions 3 and 4 depend on whether, at the start of the proceedings, the court of the host State referred the European lawyer engaged in the provision of services to the obligation under the law of that State to notify the authorities?*

24 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.

II The first question

25 By its first question, the national court asks whether a lawyer bringing proceedings in an EEA State other than the one in which he is established can rely on the provisions of the Directive when he is representing himself, rather than being engaged to provide legal services by a client.

- 26 It is not clear from the request whether the defendant was in fact representing itself before it mandated a lawyer based in Liechtenstein to represent it, or whether the defendant as an entity was the recipient of services provided by an individual lawyer working for it. However, questions posed by national courts under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice enjoy a presumption of relevance (see, *inter alia*, Case E-11/12 *Koch and Others*, judgment of 13 June 2013, not yet reported, paragraph 50, and case law cited). The Court therefore assumes that the defendant was self-represented.

Observations submitted to the Court

- 27 The Liechtenstein Government submits that, for Article 36(1) EEA and the Directive to be applicable, the provider and the recipient of the service must be two different persons. As Rechtsanwälte Zipper & Collegen are at the same time the provider and recipient of the services concerned, neither Article 36 EEA nor the Directive is applicable in the present case.
- 28 At the oral hearing, the Liechtenstein Government stated, in response to a question put to it, that, under Liechtenstein law, a lawyer is entitled to represent himself in judicial proceedings.
- 29 ESA and the Commission take the opposite view. ESA submits that, where an EEA host State's national law allows a lawyer to act before that State's courts or public authorities in his own name, in other words to represent himself, Article 36 EEA and the Directive apply. In a legal order in which a lawyer can represent himself rather than seeking the services of a colleague, there is nothing to suggest that that activity would fall outside the scope of activities relating to the representation of a client in legal proceedings within the meaning of Article 4(1) of the Directive.
- 30 The Commission contends that the key point for a lawyer representing himself is that the lawyer is nevertheless acting in a professional capacity. The fact that he, at the same time, is also a party to the proceedings is immaterial. He is both client and lawyer, and simply "wears two different hats".

Findings of the Court

- 31 Article 36(1) EEA prohibits any restriction on the free movement of services. The objective of the provision is to liberalise all gainful activity not covered by the free movement of goods, persons and capital (see, for comparison, *inter alia*, Joined Cases 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377, paragraph 10, and, more recently, Case C-221/11 *Demirkan*, judgment of 24 September 2013, not yet reported, paragraph 34). Pursuant to the third paragraph of Article 37 EEA, a person providing a service may temporarily pursue the activity in the State where the service is rendered, under the same conditions as are imposed by that State on its own nationals.

- 32 The Directive lays down more detailed rules with respect to the provision of cross-border services by lawyers. As stated in its preamble, the Directive only contains measures intended to facilitate the effective pursuit of the activities of lawyers by way of the provision of services. The Directive must be interpreted in light of the general principles enshrined in the EEA Agreement governing the freedom to provide services (see Case E-1/07 *Criminal Proceedings against A* [2007] EFTA Ct. Rep. 246, paragraph 28).
- 33 For services to fall within the scope of Article 36 EEA, it is sufficient that they are provided to nationals of an EEA State on the territory of another EEA State, irrespective of the place of establishment of the provider or the recipient of the services (see Case E-13/11 *Granville* [2012] EFTA Ct. Rep. 400, paragraph 38).
- 34 Moreover, according to the first paragraph of Article 37 EEA, only services normally provided for remuneration shall be deemed to be services within the meaning of the EEA Agreement. For the purposes of that provision, the essential characteristic of remuneration lies in the fact that it constitutes a consideration for the service rendered (see Case E-5/07 *Private Barnehagers Landsforbund v ESA* [2008] EFTA Ct. Rep. 62, paragraph 81, and case law cited). In this regard, it is not necessary that the remuneration be paid in money, as long as the consideration for the provision of the service is capable of being expressed in money.
- 35 Representation of a client in legal proceedings is a service normally provided for remuneration. In some jurisdictions, lawyers are entitled to represent themselves in legal proceedings. In such situations where lawyers act on their own behalf, the provider and the recipient of the service are the same person. However, this does not alter the fact that the service provided is a service normally provided for remuneration.
- 36 A lawyer representing himself in judicial proceedings may be awarded compensation for costs incurred during the proceedings. This effectively means that the service provided is paid for not by the recipient of the service, but, instead, by the opposing party in the proceedings. In this regard, it should be kept in mind that Article 37 EEA does not require that the service be paid for by those for whom it is performed (see, for comparison, *inter alia*, ECJ Cases 352/85 *Bond van Adverteerders and Others* [1988] ECR 2085, paragraph 16, and C-76/05 *Schwarz and Gootjes-Schwarz* [2007] ECR I-6849, paragraph 41).
- 37 Consequently, the answer to the first question must be that a lawyer bringing proceedings in his own name in an EEA State other than the one in which he is established may rely on the freedom to provide services and the Directive if he is acting in a professional capacity, and if the national legal order of the host State allows a lawyer to act on his own behalf in the capacity as a lawyer in legal proceedings. If these conditions are fulfilled, the Directive will apply.
- 38 It is for the national court to assess whether this is the situation in the case before it.

IV The second question

39 By its second question, the national court asks whether a national rule such as Article 59 of the Lawyers Act, pursuant to which lawyers established in other EEA States (also referred to as ‘European lawyers’) are required to notify the Liechtenstein Chamber of Lawyers of their intention to provide cross-border legal services in Liechtenstein before commencing that activity, and to attach certain documentation to such a notification, is compatible with the Directive, in particular Article 7(1) thereof.

Observations submitted to the Court

40 The Liechtenstein Government submits that such an obligation to notify is compatible with the Directive. Article 4(1) of the Directive states that a lawyer must abide by all the conditions laid down in the host State for lawyers established in that State, except all the conditions that require residence and/or registration with a professional organisation in the host State.

41 Furthermore, Article 7(2) entrusts the competent authority of the host State with a supervisory function in relation to lawyers providing services in that State within the scope of the Directive. In order to be able to exercise effective supervision of lawyers practising in Liechtenstein, the Liechtenstein Chamber of Lawyers must first and foremost know these lawyers.

42 The Liechtenstein Government contends further that Article 59 of the Lawyers Act is intended to ensure adequate and effective supervision of lawyers established in other EEA States providing services in Liechtenstein, for the benefit of present and future clients. The provision also complies with the principle of proportionality insofar as it is appropriate to ensure the attainment of the objective pursued and does not go beyond what is necessary for its attainment.

43 The Liechtenstein Government submits that Austrian law contains an obligation to notify that is comparable to that laid down in Article 59 of the Liechtenstein Lawyers Act.

44 At the oral hearing, the Liechtenstein Government added in response to a question from the bench that most of the provisions in the Lawyers Act have been in place since Liechtenstein joined the EEA Agreement on 1 May 1995, and that ESA has not instigated infringement proceedings against those provisions.

45 ESA and the Commission submit that the second question should be answered in the negative. In their view, Article 59 of the Lawyers Act goes beyond what it is possible to request from a European lawyer under the Directive.

46 Article 4(1) of the Directive expressly precludes a host State from requiring a European lawyer to register with a professional organisation in that State as a condition for temporarily pursuing activities relating to the representation of a

client in legal proceedings. The logic behind this is essentially that a lawyer remains subject to the national rules for practising the profession in his home State. It is his qualification as a lawyer in the home State that is crucial.

- 47 Furthermore, Article 7(1) of the Directive states that the competent national authority in the host State may request the person providing the services to establish that he is a qualified lawyer entitled to practise in his home State. Many European lawyers carry an identification card issued by the Chamber of Lawyers or Bar Association with which they are registered. Producing this card is comparable to a driver producing a driver's licence on request in a traffic control. Verification is therefore easy in practice.
- 48 In contrast, Liechtenstein law subjects a European lawyer intending to exercise his rights under Article 36 EEA and the Directive to a systematic procedure, whereby he, on his own motion, must give prior notification of his intention to provide services in Liechtenstein. This is coupled with an obligation to provide a certificate showing his qualification to practise in his home State, as well as evidence of nationality and professional indemnity insurance. Where appropriate, the notification must be renewed once every year. In the opinion of ESA and the Commission, this notification obligation exceeds what it is possible to require from a European lawyer under the Directive.
- 49 ESA and the Commission recall that it is well-established that restrictions on the freedom to provide services can only be justified when they are appropriate to achieve the objective sought and do not go beyond what is necessary to attain it.
- 50 ESA and the Commission submit that a universal rule requiring a lawyer, in all circumstances, not only to provide documentation but also prior notification to the competent authorities cannot be considered proportionate to the legitimate objective of ensuring that he is a qualified lawyer currently entitled to practise.
- 51 Articles 3, 4, 5 and 7 of the Directive take sufficient account of public policy objectives that arise in the context of the provision of cross-border legal services. The public interest objectives of ensuring answerability to the judicial authority concerned, the efficient functioning of the justice system and protection of clients are thus already taken into account, and cannot be used to justify an additional and general notification rule.
- 52 At the oral hearing, the Commission added that, according to its information, Austrian law, referred to by the Liechtenstein Government, differs from Liechtenstein law. The former only requires a one-off notification before the initial provision of services involving representation of a client in legal proceedings. Moreover, no documents must be submitted. In the Commission's view, the level of impact or burden on the service provider is quite different from that of Article 59 of the Liechtenstein Lawyers Act.

Findings of the Court

- 53 The Directive only contains measures intended to facilitate the effective pursuit of the activities of lawyers by way of the provision of services.
- 54 Article 2 of the Directive requires an EEA State to recognise as a lawyer for the purpose of pursuing services any person listed in Article 1(2), that is, any person entitled to pursue his professional activities under certain national designations.
- 55 Nevertheless, the Directive sets out certain safeguard measures. First, pursuant to its Article 3, a lawyer shall adopt the professional title used in the EEA State where he is authorised to practise, with an indication of the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise under the law of that State.
- 56 Second, Article 4(1) of the Directive provides that the activity of representing a client in legal proceedings in another EEA State must be pursued under the conditions laid down for lawyers established in the host State. However, a host State is expressly precluded from requiring a lawyer wishing to provide cross-border services to register with a professional organisation in that State.
- 57 Moreover, Article 5 of the Directive enables the EEA States to require lawyers from other EEA States representing a client in legal proceedings to work in conjunction with a national lawyer, albeit only in cases where representation by a lawyer is mandatory (see *Criminal proceedings against A*, cited above, paragraph 30, and the case law cited).
- 58 Furthermore, Article 7(1) of the Directive permits the competent authority of the host EEA State to request the person providing the services to establish his qualification as a lawyer, that is, to show that he is entitled to pursue his professional activities under the national designation in his home EEA State, as defined in Article 1(2). As pointed out by ESA and the Commission, this can often be easily done, as many European lawyers carry an identification card issued by the Chamber of Lawyers or Bar Association with which they are registered.
- 59 Article 59 of the Liechtenstein Lawyers Act requires that a lawyer established in another EEA State intending to provide cross-border services in Liechtenstein, on his own motion, must notify the Chamber of Lawyers before commencing such activities. The notification must be renewed once every year. Moreover, the lawyer must provide the Chamber of Lawyers with a certificate showing his qualification to practise in his home State, as well as evidence of nationality and professional indemnity insurance.
- 60 Such a national rule, whereby a lawyer established in another EEA State is required in all circumstances, and on his own motion, not only to provide documentation to establish his qualifications as a lawyer, but also to notify the competent authorities of the host State prior to providing services in that State,

and to renew the notification yearly, goes beyond what a host State is permitted to request pursuant to Article 7(1) of the Directive. The Court notes that the latter provision differs from the requirements that may be imposed on lawyers who seek to establish themselves in another EEA State on a permanent basis, as set out in Article 3 of Directive 98/5/EC of the European Parliament and the Council of 16 February 1998 to facilitate the practice of the profession of lawyer in a Member State other than that in which the qualification was obtained.

- 61 Moreover, such a compulsory requirement to notify the Chambers of Lawyers prior to commencing any activities is liable to dissuade those lawyers who only intend to provide services in a host EEA State on an occasional basis from proceeding with their plans, and thus render Directive 77/249/EEC ineffective. As such a rule is liable to hinder or render less attractive the provision of cross-border services, it also infringes Article 36(1) EEA.
- 62 It is settled case law that, in order to be capable of being justified, restrictions on the freedom to provide services must not go beyond what is necessary to attain the objective pursued (see, *inter alia*, Case E-2/11 *STX Norway and Others* [2012] EFTA Ct. Rep. 4, paragraph 68).
- 63 According to the observations of the Liechtenstein Government, the objective of Article 59 of the Liechtenstein Lawyers Act is to exercise effective supervision of lawyers practising in Liechtenstein, for the benefit of present and future clients.
- 64 However, a national rule such as Article 59 of the Liechtenstein Lawyers Act cannot be considered proportionate to the legitimate objective to ensure that a person is a qualified lawyer currently entitled to practise in another EEA State. That objective is already taken into account in the safeguard measure set out in Article 7(1) of the Directive, and it cannot therefore be used to justify verification measures that go beyond what is permitted under that Article.
- 65 For the sake of completeness, the Court adds that the argument of the Government of Liechtenstein that ESA has not brought infringement proceedings against the provisions of the Lawyers Act, despite most of those provisions being in force since 1995, is of no relevance. It cannot be inferred from the lack of an infringement proceeding concerning a national measure that the measure in question is in conformity with EEA law.
- 66 The answer to the second question must therefore be that a national rule such as Article 59 of the Liechtenstein Lawyers Act, whereby a lawyer established in another EEA State is required, in all circumstances and on his own motion, not only to provide documentation to establish his qualifications as a lawyer but also to notify the competent authorities of the host State prior to providing services in that State, and to renew the notification yearly, is contrary to Article 7(1) of the Directive and to Article 36 EEA.

V The third, fourth and fifth questions

- 67 The remaining questions from the national court concern the consequences with regard to remuneration of legal services under national law of non-compliance with a notification requirement such as that in Article 59 of the Liechtenstein Lawyers Act.
- 68 In its reply to the second question, the Court has found that a national rule such as Article 59 of the Liechtenstein Lawyers Act is contrary to the Directive and to Article 36 EEA. Therefore, the answer to the remaining questions must be that a failure to comply with such a rule cannot be a relevant consideration as regards the possibility of claiming legal fees relating to the cross-border provision of services by a lawyer.
- 69 In this regard, the Court recalls that Article 3 EEA requires the EEA States to take all measures necessary to guarantee the application and effectiveness of EEA law. It is inherent in the objectives of the EEA Agreement that national courts are bound, as far as possible, to interpret national law in conformity with EEA law. Consequently, they must, as far as possible, apply the methods of interpretation recognised by national law in order to achieve the result sought by the relevant rule of EEA law (see, *inter alia*, Case E-15/12 *Wahl*, judgment of 22 July 2013, not yet reported, paragraph 54, and case law cited).

VI Costs

- 70 The costs incurred by the Liechtenstein Government, ESA and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before the Princely Court, any decision on costs for the parties to those proceedings is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by Fürstliche Landgericht des Fürstentums Liechtenstein, hereby gives the following Advisory Opinion:

- 1. A lawyer bringing proceedings in his own name in an EEA State other than the one in which he is established may rely on the freedom to provide services and Directive 77/249/EEC if he is acting in a professional capacity, and if the national legal order of the host State foresees that a lawyer may act on his own behalf in the capacity as a lawyer in legal proceedings.**
- 2. A national rule such as Article 59 of the Liechtenstein Lawyers Act, whereby a lawyer established in another EEA State is required, in all circumstances and on his own motion, not only to provide documentation to establish his qualifications as a lawyer, but also to notify the competent authorities of the host State prior to providing services in that State, and to renew the notification yearly, is contrary to Article 7(1) of Directive 77/249/EEC and to Article 36 EEA.**
- 3. Failure to comply with a national rule such as Article 59 of the Liechtenstein Lawyers Act cannot be a relevant consideration as regards the possibility of claiming legal fees relating to the cross-border provision of services by a lawyer.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 27 November 2013.

Gunnar Selvik
Registrar

Per Christiansen
Acting President