



Luxembourg, 27 January 2010

## PRESS RELEASE 2/2010

### **Judgment in Case E-4/09 *Inconsult Anstalt v the Financial Market Authority (Finanzmarktaufsicht)***

#### **COURT LAYS DOWN CRITERIA BY WHICH INTERNET SITES CAN QUALIFY AS “DURABLE MEDIA” UNDER THE DIRECTIVE ON INSURANCE MEDIATION**

In a judgment delivered today, the EFTA Court gave an advisory opinion concerning a question referred to it by the Appeals Commission of the Financial Market Authority in Liechtenstein on the interpretation of Article 2(12) of Directive 2002/92/EC on insurance mediation. The question concerns what criteria have to be fulfilled in order for an Internet site to constitute a “durable medium” under the said Article.

In the case before the Appeals Commission, Inconsult, a private entity incorporated under Liechtenstein law, contests an order issued by the Financial Market Authority of Liechtenstein, whereby the Authority requires Inconsult to comply with certain information obligations that apply to insurance intermediaries. Inconsult claims that it has already fulfilled its obligations by operating a website containing the required information. According to Liechtenstein law, as well as Directive 2002/92/EC, the information has to be provided on paper or on any other “durable medium”. The dispute relates to whether an Internet site can constitute such a medium. The provision in Liechtenstein law that defines the concept of a durable medium is an implementation of Article 2(12) of Directive 2002/92/EC, as incorporated in the EEA Agreement.

The Court noted that for the purposes of consumer protection, the Directive sets out certain minimum obligations relating to the information which insurance intermediaries must provide to their customers and the manner in which this is done. By requiring this information to be submitted either on paper or any other durable medium, the Directive facilitates the subsequent verification of the information which an intermediary has provided to his customer.

The Court held that an Internet site can constitute a durable medium under Article 2(12) of the Directive, provided that several criteria are met. Firstly, the Internet site must enable the customer to store the information in question. Secondly, the Internet site must enable the customer to store the information in a way which makes it accessible for a period of time adequate to the purposes of the information, that is, for as long as it is relevant for the customer in order to protect his interests stemming from his relations with the insurance intermediary. This might cover the time during which contractual negotiations were conducted even if not resulting in the conclusion of an insurance contract, the period during which an insurance contract is in force and, to the extent necessary e.g. for seeking redress, the period after such a contract has lapsed.

Thirdly, the Internet site must allow for the unchanged reproduction of information stored. In this respect, the Court held that the information must be stored in a way that makes it impossible for

the insurance intermediary to change it unilaterally. It is for the insurance intermediary to ensure that the methods of electronic communication he employs permit this kind of reproduction. Finally, the Court held that for an Internet site to qualify as a durable medium it is irrelevant whether the customer has expressly consented to the provision of information through the Internet.

The full text of the judgment may be found on the Internet at: [www.eftacourt.int](http://www.eftacourt.int).

This press release is not an official document. Please note that the Court may not comment on the case.