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## **PRESS RELEASE 01/02**

### **Judgment of the EFTA Court in Case E-2/01 *Pucher***

In an advisory opinion delivered today, the EFTA Court held that a requirement in the national law of an EEA State that at least one board member of a company must be permanently resident in that State is contrary to the freedom of establishment provided for in Article 31 of the EEA Agreement. The advisory opinion is given in response to a request made by the Administrative Court of the Principality of Liechtenstein in an appeal by Dr. Franz Martin Pucher against a decision of the Government of Liechtenstein.

The dispute before the Administrative Court concerns a provision of the Liechtenstein Persons and Companies Act providing that the so-called qualified board member of a Liechtenstein domiciliary company (that is, a Liechtenstein company not carrying out business in Liechtenstein) must be permanently residing in Liechtenstein.

Dr. Pucher is an Austrian national residing in Austria. He is admitted to practise in Liechtenstein as a professional trustee. His application to the Liechtenstein authorities for an authorisation to serve as the qualified board member of a Liechtenstein domiciliary company was refused essentially on the grounds that he did not fulfil the requirement of permanent residence in Liechtenstein. Dr. Pucher initiated proceedings before the Administrative Court contesting the compatibility of the residence requirement with the freedom of establishment provided for in Article 31 EEA, and the Administrative Court decided to submit a request for an advisory opinion to the EFTA Court.

The EFTA Court found that the contested residence requirement constitutes a restriction on the freedom of establishment within the meaning of Article 31 EEA. The EFTA Court did not accept the submissions of the Government of Liechtenstein that the residence requirement is justified on grounds of public policy, in particular the maintenance of the functioning and good reputation of the Liechtenstein financial services sector. The Court held that there is, in principle, nothing in the EEA Agreement that prevents Liechtenstein from maintaining a liberal company law system. However, that system must operate within the limits of EEA law. The Court found that the residence requirement is not suitable, necessary or proportionate to achieve the objectives pursued by the Government of Liechtenstein. The EFTA Court concluded that a national provision such as that of the Liechtenstein Persons and Companies Act is incompatible with Article 31 EEA.

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

The EFTA Court is composed of the Judges Thór Vilhjálmsson (President), Carl Baudenbacher and Per Tresselt.

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