



## Press Release 02-2005

### Judgment in Case E-8/04 *EFTA Surveillance Authority v The Principality of Liechtenstein*

#### Freedom of establishment

In a judgment delivered today, the EFTA Court ruled that the requirement under Liechtenstein banking law that at least one member of the management board and one member of the executive management in banks established in its territory must reside in Liechtenstein, is incompatible with the freedom of establishment contained in Article 31 of the Agreement on the European Economic Area.

The EFTA Court held that the residence requirement contained in Section 25 of the Liechtenstein Banking Act (*Gesetz vom 21 Oktober 1992 über die Banken und Finanzgesellschaften*) constituted a restriction on the right of establishment in that it places nationals of other EEA States at a disadvantage as compared to Liechtenstein nationals seeking to become members of the management board or the executive management of a bank established in Liechtenstein.

The Court further found that the restriction was not justified by reasons referred to in Article 33 EEA or by considerations of overriding public interest. Referring to Case E-2/01 The Court recalled that in Case E-2/01, it was recognised that the protection of the good reputation and functioning of the Liechtenstein financial services sector is, in principle, a legitimate objective capable of justifying restrictions on the freedom of establishment. However, the Court found that the principle of proportionality was not fulfilled, in that the residence requirement was not suitable and necessary for securing that objective.

The Court has on two previous occasions been asked to assess the compatibility with the right of establishment, of residence requirements set out in Liechtenstein law (Case E-3/98 *Herbert Rainford-Towning*, and Case E-2/01 *Dr. Franz Martin Pucher*). At issue in *Rainford-Towning* was the residence requirement for at least one managing director of Liechtenstein companies, contained in the Business Act (*Gewerbegesetz*). In *Pucher* it was the residence requirement for at least one member of the board of directors of Liechtenstein companies, contained in the Persons and Companies Act (*Personen- und Gesellschaftsrecht*). In both cases, the Court found that the residence requirements constituted unjustified restrictions on the right of establishment.

The full text of the judgment may be found on the EFTA Court web site: [www.eftacourt.lu](http://www.eftacourt.lu)

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