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Judgment in Case E-1/07 – Request for an Advisory Opinion from Fürstliches Landgericht in criminal proceedings against A

EFTA COURT HOLDS THAT THE EC LAW PRINCIPLES OF DIRECT EFFECT AND PRIMACY ARE NOT PART OF EEA LAW

In a judgment delivered today, the EFTA Court gave an advisory opinion concerning two questions referred to it by the *Fürstliches Landgericht* in Liechtenstein in relation to a criminal case pending before that court.

The first question dealt with by the Court was essentially whether Article 36(1) EEA on the freedom to provide services and Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, referred to at point 2 of Annex VII EEA, preclude a Contracting Party from requiring that in court proceedings a lawyer from another EEA State must provide his or her service in conjunction with a national lawyer. In its answer, the Court held that such a requirement would be incompatible with Article 36(1) EEA and the Directive in cases where representation by a lawyer is not mandatory.

The second question concerned the issue of whether the EEA Agreement requires that a provision of a directive that has been made part of the EEA Agreement is directly applicable and takes precedence over a national rule that fails to transpose the relevant EEA rule correctly into national law. The Court answered this question in the negative.

In its reasoning, the Court stated *inter alia* that the EEA Agreement establishes a particular system of means and mechanisms in order to achieve its objectives. In that regard, it referred to Article 7 EEA and Protocol 35 EEA. It also stated that national courts are bound to interpret national law, and in particular legislative provisions specifically adopted to transpose EEA rules into national law, as far as possible in conformity with EEA law. Consequently, they must apply the interpretative methods recognised by national law as far as possible in order to achieve the result sought by the relevant EEA rule.

Referring to earlier case law of the Court, it stated that it follows from Article 7 EEA and Protocol 35 EEA that the Agreement does not entail transfer of legislative powers, and that accordingly EEA law does not require that individuals and economic operators can rely directly on non-implemented EEA rules before national courts. The Court held that this applies to all EEA law, including provisions of a directive such as the one at issue. This entails that the EEA law does not require that non-implemented EEA rules take precedence over conflicting national rules, including national rules which fail to transpose the relevant EEA rules correctly into national law.

The Court also noted that, in cases of conflict between national law and non-implemented EEA law, the Contracting Parties may decide whether, under their national legal order, national administrative and judicial organs can apply the relevant EEA rule directly, and thereby avoid violation of EEA law in a particular case. It also follows that the Contracting Parties may decide on which administrative and judicial organs they confer such a power. However, even Contracting Parties which have introduced principles of direct effect and primacy of EEA law in their internal legal order remain under an obligation to correctly transpose directives into national law.

In addition, the Court noted other means to ensure that the objectives of the EEA Agreement are being met, and in that regard referred to the principle of state liability under EEA law and the power of the EFTA Surveillance Authority to bring a case concerning a violation of EEA law before the EFTA Court.

The full text of the judgment may be found on the Internet at: www.eftacourt.lu.

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