



LIECHTENSTEIN-INSTITUT

22 July 2019

Enforcement of state aid rules and decisions by national courts in the EEA EFTA States - Liechtenstein

N. Sarah Schirmer and Enya Steiner



Introduction

- Objectives of the study
- Cases related to state aid law in Liechtenstein
- Obstacles regarding the private enforcement of state aid law
- Difficulties in practice
- Conclusions
- Recommendations



Objectives of the study

Find out:

- all relevant national judgments
 - how the standstill obligation is enforced
 - whether recovery decisions are enforced
- difficulties when applying state aid rules
- best practices regarding state aid enforcement
- to what extent ESA's guidelines on the enforcement of state aid law (Dec. No. 254/09/COL) are being used
 - ⇒ whether the national courts cooperated with ESA



Cases related to state aid law in Liechtenstein

- 0 regarding the enforcement of the standstill obligation
- 12 media support
 - ⇒ 11 Media support refused or less than requested
 - ⇒ 1 Recovery of media support (VGH 2008/08)
- 1 recovery of unlawful state aid
 - ⇒ Recovery of tax benefits
(StGH 2013/196; VGH 2013/093; LSteK 2011/25;
EFTA Court joined cases E-17/10 and E-6/11; ESA Dec. No. 97/10/COL)
- 2 private asset structures (PVS)
 - ⇒ Article 64 tax act (SteG) interpreted in accordance with Article 61(1) EEA Agreement



Obstacles regarding the private enforcement of state aid law

- Standstill obligation (Article 1(3) Part I of Protocol 3 SCA) not implemented into national law
- No case law on standstill obligation
- Unclear national legal framework on procedural rules for private enforcement of state aid law



Difficulties in practice

- Knowledge about EEA state aid law rather low
- Difficulty to find out whether (unlawful) state aid was granted to beneficiary
- Competitor or third party request the same benefit, rather than to challenge the state aid decision
- Litigation risk



Conclusions

- 2 relevant judgments
- Recovery decisions seem to be enforced by national courts
- The standstill obligation has not (yet) been enforced by Liechtenstein's courts
- Not possible to know:
 - ⇒ best practice regarding state aid law enforcement
 - ⇒ difficulties encountered by national courts when applying state aid rules
- ESA's guidelines on the enforcement of state aid law by national courts (Dec. No. 254/09/COL) not used (yet)
 - ⇒ No co-operation with ESA on state aid law matters (yet)



Recommendations

1. Legislation

- national legislation for private enforcement and recovery of unlawful state aid or
- clarification whether Article 1(3) Part I of Protocol 3 SCA is directly applicable

2. Guidelines - short version in German

3. Informal and anonymous complaint system on a national level

4. Seminars or further education on state aid law





LIECHTENSTEIN-INSTITUT

Thank you for your attention!

Study on state aid private enforcement by national courts in the EFTA EEA states:

<http://www.eftasurv.int/da/DocumentDirectAction/outputDocument?docId=4970>

www.liechtenstein-institut.li

