

## **EFTA COURT**

### **Request for an Advisory Opinion from the EFTA Court by Beschwerdekommision der Finanzmarktaufsicht in the case of X v Finanzmarktaufsicht**

**(Case E-10/23)**

A request has been made to the EFTA Court dated 17 August 2023 from Beschwerdekommision der Finanzmarktaufsicht (Appeals Board of the Financial Market Authority), which was received at the Court Registry on 18 August 2023, for an Advisory Opinion in the case of X v Finanzmarktaufsicht on the following questions:

#### **I.**

**1. Is the EFTA Court competent to interpret the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice of 2 May 1992 (SCA)?**

**2. If Question 1 is answered with “yes”:**

**Must Article 34 SCA be interpreted as meaning that a request to the EFTA Court for an advisory opinion is permitted also where, although the referring court considers the question on the interpretation of the EEA Agreement necessary in order to give its decision, this legal question has, however, in an earlier set of proceedings in the same procedure already been answered, in accordance with national procedural law, by a higher-ranking court with binding effect?**

**3. If Question 2 is also answered in the affirmative:**

**Is information which is the subject of formal and also informal exchanges of information between the competent authorities of the Member States as provided for in Article 4(1) of Directive 2013/36/EU subject to the obligation of professional secrecy within the meaning of Article 53 of this Directive?**

**4. If Question 3 is also answered with “yes”:**

**Must the cooperation between competent authorities as provided for in Article 24 of the Directive mentioned be regarded as an exchange of information which pursuant to Article 53 of this Directive is subject to an obligation of professional secrecy?**

**5. If finally Question 4 is also answered with “yes”:**

**May the obligation of professional secrecy set out in the first subparagraph of Article 53(1) of the Directive mentioned be breached only in the cases listed in Article 53(1) (second subparagraph: cases covered by criminal law; third subparagraph: disclosure in civil or commercial proceedings where a credit institution has been declared bankrupt or is being compulsorily wound up)? If this question is answered in the negative: Is a breach permissible also on grounds of national law, for example, by reason of a law that grants any person asserting a legitimate interest access to official documents unless precluded by overriding public or private interests?**

**II. If one of Questions I/1 to I/4 is answered with “no” or the main question in Question I/5 is answered in the negative, but the supplementary question in the affirmative:**

**Does the cooperation between competent authorities provided for in Article 4 of the Directive mentioned and thus the exchange of information that takes place between these authorities and the possibility to keep this partly or wholly secret constitute an appropriate particular measure, within the meaning of Article 3 of the EEA Agreement of 2 May 1992, to ensure fulfilment of the obligations arising out of this Agreement, and in particular to ensure the effective functioning of the system for supervision of the activities of credit institutions and investment firms and also the normal functioning of financial markets?**