



EIDSIVATING LAGMANNSRETT

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EFTA Court
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Luxembourg

Deres referanse

Vår referanse

Dato

23-083799ASK-ELAG/

28.08.2023

Låssenteret AS – Assa Abloy Opening Solutions Norway AS

Request for an Advisory Opinion

Eidsivating Court of Appeal, Case No 23-083799ASK-ELAG (appeal against a decision in a civil case):

Låssenteret AS v Assa Abloy Opening Solutions Norway AS

Introduction

Eidsivating Court of Appeal (*Eidsivating lagmannsrett*) hereby requests an Advisory Opinion from the EFTA Court in Case No 23-083799ASK-ELAG. The request is made pursuant to Section 51a of the Norwegian Courts of Justice Act (*lov om domstolene*) and Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (SCA).

The parties to the case are:

Appellant: Låssenteret AS, Ytrebygdsveien 11, 5251 Søreidgrend
Counsel: Advokat Peter Hallsteinsen
Assisting Counsel: Advokat Henrik Nordling

Respondent: Assa Abloy Opening Solutions Norway AS, P.O. Box 42, 1402 Ski
Counsel: Advokat Simen Skjold Sjøgaard
Assisting Counsel: Advokat Ylva Kolsrud Lønvik

By writ of summons of 24 October 2022 lodged with Follo and Nordre Østfold District Court (*Follo og Nordre Østfold tingrett*), Låssenteret AS (Låssenteret) initiated proceedings against Assa Abloy Opening Solutions Norway AS (AAOS) for alleged infringement of Section 11 of the Competition Act (*konkurranseloven*) and Article 54 of the EEA Agreement on abuse of a dominant position. The claimant seeks a declaratory judgment ordering that Låssenteret be given equivalent conditions in terms of delivery times and price as other operators of equivalent size. In the alternative, compensation is sought in an amount to be determined at the discretion of the Court.

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During the preparatory stages of the proceedings before the District Court, Låssenteret put forward 18 requests for access to evidence. On 8 May 2023, the District Court delivered a decision dismissing the requests for access to evidence, inter alia with reference to the Directive on the protection of trade secrets (Directive 2016/943). It is against that part of the decision that Låssenteret has appealed to Eidsivating Court of Appeal. Some of the requests for access to evidence have been withdrawn in the proceedings before the Court of Appeal.

The parties agree that a number of the requests relate to trade secrets that fall within the evidentiary exemption under Section 22-10 of the Norwegian Dispute Act (*tvisteloven*). The case raises doubts about the implications of EEA law for the interpretation of Section 22-12(2) and (3) of the Dispute Act, read in conjunction with Section 22-10, or whether there are provisions in EEA legislation that take precedence.

Following a request from Låssenteret, the Court of Appeal decided on 6 July 2023 to request an Advisory Opinion from the EFTA Court pursuant to Section 51a of the Courts of Justice Act.

Facts and parties' submissions in the main proceedings

Låssenteret is engaged in the sale, installation and maintenance of locks and security systems. AAOS produces and sells products and services in the access control field for individuals and professional operators, such as locksmiths, building materials suppliers, the industrial market and the electrical market. This includes sales of locks, keys, door handles and door closers. The product and service range encompasses mechanical lock systems and electronic access control. AAOS is part of the Assa Abloy Group, which has operations in a number of countries.

For mechanical lock systems, AAOS operates with a dealer concept, TrioVing Sikkerhetscenter (TVSS), in which a dealer can attain the status of partner. A TVSS partner has the right to use the trademark "TrioVing Sikkerhetscenter" as a quality designation on its retail shop and sales outlet. The partner then enters into a cooperation arrangement for marketing, trial and testing of new products. AAOS also offers a licensing agreement (LLS agreement), under which the dealer may design and produce lock systems itself based on system codes from AAOS. The LLS agreement includes inter alia the right to produce keys and lock cylinders for doors. A TVSS partner must have an LLS agreement in addition to a TVSS agreement, but a dealer may have an LLS agreement without being a TVSS partner. A dealer may also purchase lock systems that are designed and produced by AAOS, without an LLS agreement, and, for the purposes of service/after-sales service, a locksmith may purchase necessary services and components from AAOS without a specific service agreement.

In the period 2017 to 2019, Låssenteret had a TVSS agreement and LLS agreements with AAOS. On 2 December 2019, AAOS terminated the TVSS cooperation with Låssenteret. The termination notice period for the TVSS agreement was six months. At the end of September 2020, AAOS terminated the LLS agreements with Låssenteret. Låssenteret disputes the lawfulness of those terminations.

AAOS has offered Låssenteret a licence for after-sales service of the lock systems in the dealer's lock system archive. On the basis of such an agreement, Låssenteret has been able to perform maintenance by replacing various components, but Låssenteret has had to purchase finished products when installing new lock systems or extending existing systems. Låssenteret claims that the company does not receive the same discounts as TVSS dealers. In 2021,

AAOS presented an agreement proposal for after-sales service to the individual licence holders before the expiry of their LLS agreements. There were discussions about the agreement proposal. Låssenteret signed the agreement. Låssenteret claims that the agreement was signed despite disagreements about the draft, since not having such an agreement would have had immediate, drastic consequences for Låssenteret.

In the main proceedings, Låssenteret has claimed that AAOS has a dominant position in the market for mechanical locks/lock systems and electromechanical locks/lock systems and in the after-sales service markets for the sale of spare parts for such systems, including maintenance, extensions, etc., and that the abuse may affect the installation market. As the Court of Appeal understands the dispute, it is cross-border in the sense that both AAOS and Låssenteret operate in the EEA. The parties disagree, however, as to how the market is to be defined, both substantively and geographically [with regard to the product and the geographical market].

Låssenteret claims that AAOS has abused its dominant position by terminating Låssenteret's TVSS and licensing agreements on insufficient grounds. It is also claimed that there is abuse as AAOS has subsequently actively assisted in attempting to force Låssenteret out of the market, which has taken the form inter alia of Låssenteret not receiving the same discounts as previously and not being allowed to make components but instead having to order them from AAOS. Låssenteret submits that this leads to considerable delays compared with Låssenteret's competitors. Låssenteret further submits that AAOS has shared market-sensitive and confidential information with Låssenteret's competitors, disfavoured Låssenteret in terms of production capacity and logistical matters and spoken negatively about Låssenteret to potential customers. Låssenteret claims that it has thereby been prevented from being able to submit competitive offers for extensions and/or maintenance of already installed Assa Abloy systems at their own customers' and others' premises. In Låssenteret's submission, it is a case of abuse that is liable to restrict competition.

AAOS contends that it does not have a dominant position in any market. In the alternative, AAOS disputes that there has been abuse of a dominant position. It is referred to the fact that the terminations were objective and fair (*saklig*) and lawful. Changes to the discount scheme must be viewed in context with the termination of the LLS agreement. AAOS states that there is nothing to substantiate the claim that Låssenteret is being foreclosed from the market.

The dispute about access to evidence

The evidentiary dispute on which the Court of Appeal is to rule concerns inter alia the evidentiary exemption for trade secrets, see Section 22-10 of the Dispute Act. The District Court grouped the requests relating to trade secrets as follows:

Requests in evidence number 5 to 8, which were subsequently formulated as a single request in evidence, concern internal documents and correspondence about AAOS's market position in Norway and Europe in markets that indirectly or directly relate to one or more categories of locks, lock systems, components, irrespective of whether they are mechanical, electromechanical or electrical, in the period 1 December 2019 to 31 December 2022. Request in evidence number 14 asks for all market analyses, strategy documents or other internal documents that describe AAOS's position in Norway in the market for electromechanical lock systems, mechanical lock systems or wholesale sales of spare parts. Request in evidence number 13 concerns market analyses, strategy

documents or other internal documents that describe AAOS's position in the Norwegian market in the period 2019 to 22 December 2022.

Requests in evidence number 9 and 10 concern agreements between AAOS and Certego AS relating to mechanical and electromechanical lock systems in Norway in the period 2019 to 2022, including TVSS and LLS agreements with prices and detailed lists of prices obtained for sales of electromechanical and mechanical lock systems to Certego AS in the period 2019 to 2022. Requests in evidence number 11 and 12 ask for names of AAOS's 10 biggest customers, measured in value for each year in the period 2019 to 2022, and all discount matrixes used in relation to the abovementioned 10 biggest customers. Request in evidence number 15 asks for all written internal correspondence pertaining to volume discounts or other price reductions relating to volume/quantity of goods purchased in the period 2019 to 2022, to or from specified persons in AAOS. Request in evidence number 16 concerns a list of AAOS's 50 biggest customers in Norway based on turnover, giving name and turnover and, where applicable at group level, for the years 2020, 2021 and 2022.

Låssenteret's request in evidence number 17 concerns information about market partitioning which AAOS or companies in the same group have alleged in other cases before the courts and the competition authorities in cases in which it was relevant in the period 2017 to 2022.

As stated earlier, the parties agree, and there appear to be no doubt, that the abovementioned evidence contains trade secrets.

Relevant Norwegian legislation

The starting point and main rule in Norwegian law is that the parties are free to adduce the evidence they wish, see the first sentence of Section 21-3(1) of the Dispute Act. Exceptions from this must be justified and there must be a sufficient legal basis. The main rule on the parties' right to adduce the evidence they wish must be viewed in context with the parties' duties of truth and disclosure, see Section 21-4 of the Dispute Act, and the parties' duty to testify and give evidence under Section 21-5 and Section 26-5 of the Dispute Act. The starting point is that the exceptions laid down in the Dispute Act are exhaustive, see the judgment in HR-2018-931-U, paragraphs 22-24. Exceptions may also be based on EEA law, see Sections 1 and 2 of the Norwegian EEA Act (*EØS-loven*) and Section 1-2 of the Dispute Act.

The rules on evidence are drafted so as to enable the courts to deliver substantively correct decisions. This must, however, be weighed up against other relevant considerations.

Documents that are to be used as evidence must fulfil three principal requirements: they must be relevant to the legal dispute, be sufficiently specified and there is a requirement of proportionality, see the judgment in HR-2019-997-A, paragraph 29.

The requirement of relevance entails that the evidence must contain information about relevant facts. This must be determined on the basis of the claims that have been brought, the basis of those claims and the parties' submissions about legal rules. The court is not to rule on whether the legal submissions and objections are tenable. The court's examination of whether the relevance criterion is fulfilled is to be based solely on the submissions underpinning the substantive claims about the case put forward by the party requesting access to evidence. Whether the party's substantive claim is tenable or probable is accordingly irrelevant.

The evidentiary exemption for trade secrets is governed by Section 22-10 of the Dispute Act. The starting point is that a party may refuse access to evidence that cannot be made available without revealing a trade secret. The court may nevertheless order such evidence to be made available if, after weighing up the relevant interests, it finds this to be necessary.

The purpose behind the evidentiary exemption is to safeguard the interest in keeping business and trade secrets undisclosed, see the judgment reported in Rt. 2006 page 916. The key issue is whether confidential matters are involved that may have financial implications for the business in question should those matters be made known. The exemption for those cases where the court nevertheless finds it necessary to order disclosure will hinge on a specific weighing-up exercise in which the consideration of achieving a substantively correct outcome is weighed up against the need for secrecy. The order must, moreover, be based on strong grounds, see the judgment reported in Rt. 2009, page 1480, paragraph 28. In that specific weighing-up exercise, the court must have regard to inter alia how key the specific trade secret is for the dispute, how compelling the grounds are that the other party has for refusing access and the potential for harm arising from disclosure. In the weighing-up exercise, consideration must also be given to whether the requesting party's interests may be sufficiently safeguarded by that party being granted access to the information in anonymised form comprising, for example, redacting of particularly sensitive information in the documents. The possibility must also be considered of submitting the evidence in camera with an order imposing a duty of confidentiality. The court must carry out a specific weighing-up exercise for each request for access to evidence/category of document.

Where evidence about trade secrets is adduced further to an order of the court, the court may order that those present abide by a duty of confidentiality and a ban on use of the trade secret that can be inferred from the evidence, see the first sentence of Section 22-12(3) of the Dispute Act. The court may also decide that the oral hearing of the evidence is to take place in camera, see the second sentence of Section 22-12(3) of the Dispute Act. The court may, in certain cases, restrict the parties' right to make use of assisting counsel to what the court deems necessary, see the third sentence of Section 22-12(3) of the Dispute Act.

Section 26-7 of the Dispute Act further provides that the court may decide how evidence is to be made available and other matters having implications for how evidence is adduced.

Proposal for establishing a confidentiality ring

Låssenteret has submitted that it is possible to establish a confidentiality ring within the scope of the Dispute Act, so that evidence containing trade secrets may nevertheless be disclosed. Three alternative approaches have been proposed for such a ring:

1. A confidentiality ring under which AAOS, the court, counsels and the experts have access to documents deemed to be AAOS's trade secrets, but not Låssenteret as a party.
2. A confidentiality ring under which AAOS, the court, counsels and the experts have access to documents deemed to be AAOS's trade secrets, but Låssenteret's rights in that connection are ensured by a person not having commercial functions (Låssenteret has proposed the company's IT Director) and who is ordered to be subject to a duty of confidentiality.

3. Disclosure in camera with a duty of confidentiality for those present, both with and without the party's representative (*partsrepresentant*) (if the parties are granted access, it will be with the same order on duty of confidentiality, breach of which will incur penalty).

Under the first option, Låssenteret's representative will not be granted access to the documents disclosed. Only the court, the counsels and the experts are to have such access. When the evidence is examined in the main proceedings, this is to take place in camera, including in relation to Låssenteret's representative. If it is necessary to include trade secrets in the judgment, the suggestion is that it be redacted, so that Låssenteret does not obtain access, or that it be reproduced in a manner that does not reveal trade secrets.

Låssenteret AS's submissions in the evidentiary dispute

Private enforcement is a key part of the EEA competition law rules and is just as important as public enforcement by the Norwegian Competition Authority (*Konkurransetilsynet*), the EFTA Surveillance Authority or the European Commission. Such cases are characterised by a significant imbalance in information held and access to evidence is essential. Particularly in the sphere of competition law, national rules for legal proceedings aimed at safeguarding rights under EEA law must not undermine effective application of Article 54 of the EEA Agreement.

The Directive on the protection of trade secrets does not apply to the present case, but only in cases involving unlawful acquisition, use and disclosure of trade secrets. The Directive [on the protection of trade secrets] does not cover the use of trade secrets generally, and there is nothing to support the position that it applies in cases involving trade secrets constituting evidence. The subject matter of the dispute in the present case is not the acquisition or use of trade secrets.

After its wording, the Directive [on the protection of trade secrets] applies to "trade secrets", which is something else than "*forretningshemmeligheter*" (trade secrets) as that term is used in Norwegian, the latter encompassing a broad category of confidential information of a commercial nature. To the extent Norway were to give that directive a broader scope, that cannot lead to a limitation on access to evidence, to the detriment of private enforcement of the competition rules.

The Directive [on the protection of trade secrets] may not be used in the present case as a basis for preventing Låssenteret's access to evidence. The District Court's interpretation of the Directive [on the protection of trade secrets] is incorrect and contrary to inter alia the Damages Directive [Directive 2014/104] and the European Commission's Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law.

EEA law, including the principle of effectiveness, requires that national law enables access to evidence containing trade secrets in cases involving enforcement of EEA rules, particularly Article 54 of the EEA Agreement. Access may be made subject to conditions or restricted following a specific assessment of the parties' interests. Regard must first be had to the claimant's interest in obtaining access to evidence in order to bring proceedings, and particular emphasis must be placed on the fact that legal proceedings in competition cases are characterised by a significant imbalance in information held. Next, an assessment must be made of whether such access may affect the defendant's or public legitimate interests. A

weighing-up of those interests (and safeguarding of the principle of effectiveness) may be carried out in different ways. This may take the form of a confidentiality ring, hearing in camera and/or redacting in the judgment or reproduction of confidential information in an aggregated form in a manner that does not violate trade secrets, as described by the European Commission in its Communication. It is clearly contrary to the principle of effectiveness to prevent access to evidence solely because it contains trade secrets.

The Damages Directive has EEA law relevance, even though it has not been incorporated into the EEA Agreement and thus has not been implemented in Norwegian law. That directive lays down rules on access to evidence and has been in force as EU law since 2016. Norwegian courts must have regard to the Damages Directive in the interpretation of national law. First, the rules on access to evidence laid down in that directive, in particular Article 5, expresses the requirements that follows from the principle of effectiveness. Second, the principle of homogeneity and the objective of uniform interpretation of primary and secondary law in the EU and the EEA suggest that regard must be had to the Damages Directive in the interpretation of national law.

Assa Abloy Opening Solutions Norway AS's submissions in the evidentiary dispute

Norway's obligations under EEA law do not conflict with the national rules on access to evidence applicable to the present dispute concerning access to evidence.

Although national courts have a role in the private enforcement of infringements of competition law, that does not mean that each and every operator who so requests is to be entitled to be granted access to competitively-sensitive information. The principle of effectiveness does not require that access must be granted to competitively-sensitive information, and nor does the case law relied on by Låsenteret in support of that position suggest that such a rule exists.

It is not impossible or disproportionately difficult to enforce the EEA Agreement's competition rules in Norwegian courts. National law allows national courts to require trade secrets to be disclosed if, following a specific and discretionary weighing-up based on the facts of the specific case, the court finds it necessary, see the second sentence of Section 22-10 of the Dispute Act. There are good reasons for that weighing-up model and it is entirely compatible with EEA law (including the principle of effectiveness). The specific weighing-up of considerations to be undertaken by the national courts under Section 22-10 of the Dispute Act allows the national courts to weigh up considerations of protecting trade secrets against considerations of obtaining complete information in the case in the light of the specific circumstances in the individual case. In that discretionary weighing-up exercise, national courts may also consider whether potential concerns relating to disclosure of the evidence may be remedied by redacting, issuing an order imposing a duty of confidentiality or potentially conducting the hearing in which the evidence is heard in camera.

EEA law does not require that national courts, in a case involving alleged abuse of a dominant position, shall order the party alleged to have abused its dominant position to disclose evidence constituting trade secrets following a request to that effect from the other party to the proceedings, without the court undertaking an independent assessment of the proportionality of disclosure. In the proportionality assessment, the consideration of preserving the confidentiality of competitively-sensitive information must be weighed up against the consideration of having complete information in the case. Nor does EEA law place any limitations on the discretion exercised by national courts in that weighing-up exercise,

and does not contain any requirements as to how much weight is to be attached to the various factors in the national courts' discretionary weighing-up exercise.

EEA law neither requires that a national court, in a case where a specific weighing-up of considerations of protecting the trade secret weighs more heavily than considerations of having complete information in the case, nevertheless shall issue an order requiring disclosure of the trade secret where the evidence is disclosed under an arrangement which does not allow for at least one natural person from each party to be granted access to the evidence (Låssenteret's proposal for a "confidentiality ring"). Such an arrangement challenges the fundamental considerations of a proper and fair procedure that fosters trust. The lawyer will have to redact evidence before sharing it with their own clients, and the party itself will be deprived of insights into parts of both the reasons for judgment and the decision itself (judgment). The party will thus be bound by, and must potentially consider the use of legal remedies against, a decision (judgment) which is partly secret for the party. The arrangement also affects the cooperative relationship between a lawyer and a client, since the lawyer's ability to advise the client on procedural risks and strategy (whether further evidence is needed, etc.) may be impaired if the client is unable to have full access to the evidence on the basis of which the case is decided. Even though a party may consent to such an arrangement, it will be difficult for that party to foresee all the consequences of the implications of that consent for the party's procedural rights. EEA law does not require national courts to be able to order such a scheme. It is sufficient that national courts are able, on the basis of a specific weighing-up in the individual case, to issue an order requiring disclosure of trade secrets and in that case order those present to comply with a duty of confidentiality and a ban on the use of the trade secret that can be inferred from the evidence. An order can also be made directing that the hearing is to take place in camera and placing limitations on the use of assisting counsel during the oral hearing at which the evidence is heard.

The national rules on requests for access to evidence must in any event be considered in the light of the fact that the threshold for putting forward a request for access to evidence is very low. Whereas the rules on access to evidence in the Damages Directive (Directive 2014/104/EU), for example, which have not been incorporated into the EEA Agreement and therefore are not EEA law, apply only once the claimant has presented "a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of its claim for damages" (see Article 5(1)), no equivalent limitation is placed under national law. A high threshold for being able to put forward a request for access to evidence may suggest that less is required to be successful in the same request for access to evidence (provided the criteria for putting it forward are fulfilled). Conversely, if a low threshold applies for putting forward a request for access to evidence, as is the case under national law, this may suggest that there is a greater margin for refusing to grant the request (for example, on the basis of a specific weighing-up against other considerations).

Background for the request for an Advisory Opinion from the EFTA Court

The parties disagree as to the implications of EEA law for the interpretation of Section 22-12(2) and (3) of the Dispute Act, read in conjunction with Section 22-10 of the Dispute Act.

As the Court of Appeal understands it, the starting point is that it is up to each individual Member State to determine how obligations and rights under EEA law are to be asserted before national courts. This is referred to as the principle of national procedural autonomy. However, the principle of equivalence, the principle of effectiveness and the principle of EEA

conform interpretation may provide guidance on how the national provisions are to be construed.

Questions referred to the EFTA Court

The EEA law-related doubts about interpretation in the present case concerning access to evidence relate, firstly, to the material scope (*ratione materiae*) of the Norwegian Act on the protection of trade secrets (*lov om vern av forretningshemmeligheter*), which implements the Directive on the protection of trade secrets (Directive 2016/943) in Norwegian law. Section 22-12(3) and (4) of the Dispute Act implements Article 9 of that directive.

Låssenteret submits that the Act on the protection of trade secrets does not apply because the Directive on the protection of trade secrets covers only legal disputes in which the subject matter of the dispute is the acquisition or use of acquired trade secrets. It is argued that if the Directive [on the protection of trade secrets] is given a broader scope under Norwegian law, that cannot lead to a limitation on access to evidence, to the detriment of private enforcement of the competition rules.

AAOS submits that the scope of the Directive on the protection of trade secrets is not in dispute, but that the directive is given a broader scope under Norwegian law than what the directive requires. The question accordingly does not give rise to any EEA law-related doubts about interpretation.

Question 1: Is the material scope (*ratione materiae*) of Directive 2016/943 limited to cases in which the subject-matter of the dispute is the use of acquired trade secrets?

Next, there is disagreement as to whether Article 9 of the Directive on the protection of trade secrets, on which the Act on the protection of trade secrets is based, entails that the representative for the party must be part of the circle of persons to whom access to court hearings and evidentiary material is granted in a confidentiality ring.

Question 2: The last sentence of Article 9(2) of the Directive on the protection of trade secrets requires that “[t]he number of persons referred to in points (a) and (b) of the second subparagraph shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings”. Despite that wording, does the Directive [on the protection of trade secrets] allow for a national court to establish a confidentiality ring which does not allow for at least one natural person from each of the parties to the case to be granted access to evidence constituting trade secrets which is submitted as evidence in the case?

Question 3: Does the last sentence of Article 9(2) of the Directive on the protection of trade secrets express a general EEA law principle to the effect that a national court may not establish a confidentiality ring which does not allow for at least one natural person from each of the parties to the case to be granted access to evidence constituting trade secrets which is submitted as evidence in the case?

Question 4: Is it of significance to the answer to one or more of questions 1 to 3 above that the trade secrets that are requested disclosed as evidence are competitively sensitive in relation to the party requesting access to the information?

The parties also disagree on which significance EEA law principles generally have for access to evidence in cases involving private enforcement of the competition rules under EEA law. EU law provisions which are not part of the EEA Agreement do not, as a main rule, have any implications for Norwegian procedural law, apart from the indirect implications they may have through more general principles such as the duty of loyalty and the general rule that EU and EEA law provisions are to be interpreted in a uniform manner. The parties disagree as to whether the principle of effectiveness and/or the principle of homogeneity mean(s) that national procedural law must be interpreted in accordance with Article 5 of the Damages Directive (Directive 2014/104/EU), even though it is not part of the EEA Agreement.

There is also disagreement as to whether the principle of effectiveness – the right to have effectively determined whether rights under EU law have been violated – entails that it must be possible to grant access to trade secrets as evidence through disclosure within the framework of a confidentiality ring, as described by Låssenteret.

Låssenteret submits that EEA law, including the principle of effectiveness, requires that national law must make it possible to grant access to evidence containing trade secrets in cases involving enforcement of EEA rules, and particularly Article 54 of the EEA Agreement.

AAOS submits that the principle of effectiveness does not confer a legal claim on a party to access evidence constituting trade secrets. If the principle of effectiveness is to be relevant, it will be so only as a factor in the weighing-up of interests to be undertaken by the court under the second sentence of Section 2210 of the Dispute Act. AAOS has referred to the preparatory works for the Act on the protection of trade secrets (Prop. 5 LS (2019-2020), part 10.6, which refers to Section 2-3 of the Dispute Act, where it is stated that “artificial persons ... may only have one party representative”.

Question 5: In a case involving abuse of a dominant position under Article 54 of the EEA Agreement, does EEA law, including the principle of effectiveness or the principle of homogeneity, require a national court to order the party alleged to have abused its dominant position to disclose evidence constituting trade secrets, without that court having to weigh up the parties' interests?

Question 6: Do EEA law principles, including the principle of effectiveness or the principle of homogeneity, mean that national procedural law must be interpreted in accordance with Article 5 of the Damages Directive (Directive 2014/104/EU), even though it is not incorporated into the EEA Agreement?

If further information is required, please contact the Court of Appeal.

The present letter is also sent by e-mail to eftacourt@eftacourt.int

Eidsivating Court of Appeal

Liv Shelby
Court of Appeal Judge

Copy: Advokat Hallsteinsen and Advokat Skjold Sjøgaard