



ORDER OF THE PRESIDENT

19 July 2019

(Denial of request for accelerated procedure)

In Case E-5/19,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Borgarting Court of Appeal (Borgarting lagmannsrett) in criminal proceedings against

F and G

concerning the interpretation of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),

THE PRESIDENT

makes the following

Order

I Facts and procedure

- 1 This reference for an advisory opinion concerns the interpretation of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), and certain supplementary Commission legislative acts, incorporated into the EEA Agreement as points 29a, 29c, 29d, 29e, and 29f of Annex IX (Financial services) by Decisions of the EEA Joint Committee No 38/2004, No 103/2004, and No 149/2004 (together the “Market Abuse Directive”).
- 2 The request emanates from criminal proceedings, where F and G have been prosecuted for allegedly engaging in market manipulation, as prohibited by the Norwegian Act on Securities Trading, implementing the Market Abuse Directive.
- 3 According to the request for an advisory opinion, F, as an advisor and manager of a bond fund, and G, as a bond broker, are accused of manipulating the bond market on the Oslo Stock Exchange in connection with one purchase and one sale, respectively, of bonds listed on the Oslo Stock Exchange.

4 As it is disputed whether the actions in question constitute market manipulation, as defined under the Market Abuse Directive, Borgarting Court of Appeal has requested an advisory opinion from the Court on the interpretation of the directive. Further, the referring court requests the Court to apply an accelerated procedure pursuant to Article 97a(1) of its Rules of Procedure (“RoP”). The request for an advisory opinion was registered at the Court on 5 July 2019.

II Findings

5 Article 97a(1) RoP provides that, at the request of the national court and on a proposal from the Judge-Rapporteur, the President may exceptionally decide to apply an accelerated procedure derogating from the provisions of the Rules of Procedure to a reference for an advisory opinion, where the circumstances referred to establish that a ruling on the question referred is a matter of exceptional urgency.

6 In support of its request for an accelerated procedure, the referring court states that the case concerns alleged serious criminal offences, for which the prosecution has requested unconditional prison sentences of up to two years. Further, the referring court states that the case has already been subject to prolonged process, as the actions in question took place in August 2016 and the district court judgment under appeal was delivered in December 2018. As the appeal hearings are scheduled for 5 to 29 November 2019, the referring court considers that it would be regrettable if an already dated case were to be further delayed due to the pending opinion of the Court.

7 Although the referring court has emphasised the importance of an advisory opinion for the main proceedings, it has not established the existence of exceptional circumstances particular to the situation of the accused F and G, which are capable of demonstrating the urgency to give a decision on its request without delay under Article 97a(1) RoP.

8 First, it should be noted that the nature of the dispute in the main proceedings is not sufficient in itself to justify such a procedure (compare the order in *KN v Minister for Justice and Equality*, C-191/18, EU:C:2018:383, paragraph 19). Similarly, the duration of criminal cases before a referring court is not a consideration that in itself can establish the existence of exceptional urgency, justifying the use of the accelerated procedure (compare the order in *Pontini and Others*, C-375/08, EU:C:2008:528, paragraph 10).

9 Second, the order for reference does not state that F or G are currently in custody and, thus, they remain at liberty in the context of the main proceedings (compare the order in *KN v Minister for Justice and Equality*, cited above, paragraphs 19 and 21).

10 Furthermore, according to settled case law, the legal uncertainty affecting the parties in the main proceedings, and their legitimate interest in knowing as quickly as possible the scope and meaning of EEA law affecting their rights, does not constitute an exceptional circumstance that could justify the use of an accelerated procedure (see the Order of the President in Case E-3/19 *Gable Insurance AG in Konkurs*, paragraph 11 and case law cited).

- 11 Similarly, as regards the negative effects that the length of the proceedings is likely to cause to the professional activity of the accused, it must be borne in mind that the risk of economic loss is not such as to establish the existence of urgency within the meaning of Article 97a(1) RoP (compare the order in *Fluxys*, C-241/09, EU:C:2009:568, paragraph 11 and case law cited).
- 12 Lastly, it should be noted that, for the purposes of Article 6(1) of the European Convention on Human Rights, proceedings before the Court of Justice of the European Union for a preliminary ruling are not taken into consideration in the assessment of the length of time attributable to the domestic authorities (compare the judgment of the European Court of Human Rights, *Pafitis and Others v Greece*, Reports 1998-I, paragraph 95). The same must apply with regard to the procedure established under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. As a means of inter-court cooperation in cases where the interpretation of EEA law becomes necessary, this procedure contributes to the proper functioning of the EEA Agreement to the benefit of individuals and economic operators (see Case E-2/03 *Ásgeirsson* [2003] EFTA Ct. Rep. 185, paragraphs 23-24).
- 13 It follows that none of the grounds put forward by the referring court, in requesting that the present case be determined pursuant to an accelerated procedure, justifies the granting of that request. Accordingly, the President acting as Judge-Rapporteur has decided to deny the request.

On those grounds,

THE PRESIDENT

hereby orders:

The request to apply an accelerated procedure, pursuant to Article 97a of the Rules of Procedure, derogating from the provisions of the Rules of Procedure, to the reference for an advisory opinion is denied.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President