



Luxembourg, 15 January 2025

INFORMATION NOTE ON CASE E-25/24

A request has been made by Eidsivating Court of Appeal (Eidsivating lagmannsrett) to the EFTA Court, dated 27 September 2024, to give an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. The request was registered as Case E-25/24 - *Dartride AS v Staten v Justis- og beredskapsdepartementet* on 27 September 2024.

Eidsivating Court of Appeal referred the following questions to the EFTA Court;

1. *Do the EEA Agreement and [the principle of] State liability under EEA law entail that the State can be liable for damages for errors by the courts in the application of the EEA rules?*
2. *If question 1 is answered in the affirmative:*
 - a. *Which decisions by national courts can trigger liability for EEA States?*
 - b. *Is it compatible with EEA law for the possibility of filing a lawsuit concerning damages for errors by the courts in their application of the EEA rules to be subject to fulfilment of conditions laid down in the third paragraph of section 200 of the Courts of Justice Act?*

On 23 October 2024, in accordance with Article 20 of the Statute and Article 90(1) of the Rules of Procedure of the EFTA Court, the Governments of the EFTA States, the EFTA Surveillance Authority, the Union (which includes the Governments of the EU States), the European Commission and the parties to the dispute were invited to submit written observations to the Court on the referred question within two months.

On 23 December 2024, the Court had received and registered written observations from:

- Dartride AS
- The Government of Norway
- The Government of Iceland
- The Government of Liechtenstein
- The EFTA Surveillance Authority
- The European Commission

Those who submitted written observations suggested to answer the questions referred to the Court as follows:

Dartride AS

- 1. State liability under EEA law extends itself to judicial decisions in cases where the breach of EEA law has been “manifest in character”.*
- 2. Such State liability for judicial decisions encompasses all court instances under EEA law, or alternatively, judicial decisions from all instances when all legal remedies have been exhausted.*
- 3. The Courts of Justice Act § 200 third paragraph should explicitly allow for cases that satisfy the requirements under 1 and 2.*

The Government of Norway

- 1. The EEA Agreement and the principle of State liability under EEA law does not entail that an EFTA State can be liable for damages for infringements of EEA law by decisions of national courts.*
- 2. If question 1 is nevertheless answered in the affirmative:*
 - a. State liability for infringements of EEA law by decisions of national courts is limited to decisions by a court adjudicating at last instance, i.e., decisions on the merits by a national court of last resort against whose decisions there can be no appeal under national law.*
 - b. The rules on the assessment of damage caused by a breach of EEA law are determined by the national law of each EFTA State, subject to [respecting] the principles of equivalence and effectiveness. The same applies to the relationship between a claim for damages and other remedies which could be provided for in the legal order of the EFTA State concerned. EEA law, therefore, does not per se preclude a provision such as Section 200, third paragraph of the Court Act, pursuant to which a claim for damages for judicial decisions by national courts is subject to fulfilling conditions therein.*

The Government of Iceland

- 1. The scope of the principle of State liability under the EEA Agreement, as a corollary of the principle of homogeneity, is subject to the principle of judicial independence and, as a result, does not extend to the application of EEA rules by national courts. Nevertheless, the principles of effectiveness, equivalence and effective judicial protection require the Contracting Parties to ensure the full enjoyment by individuals and undertakings of the rights conferred by the EEA Agreement.*

2. a) *If the principle of State liability under the EEA Agreement entailed that the State could be liable for judicial acts (quod non), it would be limited to judgments on the merits by courts of last instance.*

b) *It follows from the principle of national procedural autonomy that it is for the Contracting Parties to the EEA Agreement to lay down the detailed procedural rules governing the safeguarding of rights which individuals and economic operators derive from EEA law, in compliance with the principles of effectiveness, equivalence and effective judicial protection.*

The Government of Liechtenstein

The EEA Agreement and the principle of state liability under EEA law do not establish that the EEA EFTA State may be held liable for damages resulting from judicial breaches of EEA law.

The EFTA Surveillance Authority

1. *The EEA Agreement and the principle of State liability under EEA law entail that the State is liable for damages for errors by the courts in the application of the EEA rules where the EEA rule infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between that breach and the loss or damaged sustained by the injured parties;*

2.a. *It is a decision by a national court adjudicating at last instance, which triggers liability of that EEA State for errors in the application of EEA law.*

2.b. *It is not compatible with EEA law to subject obtaining damages for errors by the courts in their application of the EEA rules to the fulfilment of the conditions laid down in the third paragraph of section 200 of the Courts of Justice Act.*

The European Commission

1. *The EEA Agreement and the principle of state liability under EEA law entail that the State can be liable for damages for infringements of the EEA Agreement by the judiciary where a national court adjudicating at last instance infringes a rule of the EEA Agreement, that rule is intended to confer rights on individuals, the judicial infringement of EEA law is manifest and there is a causal link between the breach of that rule and the loss and damage suffered by the injured parties.*

2. *The EEA Agreement and the principle of state liability under EEA law must be interpreted in a way that damages or breaches of EEA law by the judiciary can be claimed only in cases where a national court adjudicating at last instance infringed a rule of the EEA Agreement.*

The effective application of the principles of homogeneity and equal treatment as established in the EEA Agreement requires that the domestic legal system must not impose conditions stricter than those established in reply to the first question for the bringing of an action for damages for infringements of the EEA Agreement by the judiciary.

The public hearing of the Court in Case E-25/24 - *Dartride AS v Staten v Justis- og beredskapsdepartementet*, has been set for: **Wednesday 5 February at 9:30am** at the EFTA Court (1 rue du Fort Thüngen, L-1499, Luxembourg). The hearing will also be livestreamed on the Court's website, [here](#).