



**NOTE FOR GUIDANCE ON REQUESTS BY NATIONAL COURTS FOR
ADVISORY OPINIONS**



The development of the EEA legal order is, *inter alia*, the result of cooperation between the EFTA Court and national courts and tribunals through the advisory opinion procedure under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

In order to make this cooperation more effective and enable the EFTA Court to better meet the requirements of national courts by providing helpful answers to questions, this Note for Guidance is addressed to all interested parties, in particular to all national courts and tribunals.

It must be emphasised that the Note is for guidance only and has no binding or interpretative effect in relation to the provisions governing the advisory opinion procedure. It merely contains practical information based on experience in applying the advisory opinion procedure.

Any court or tribunal of an EFTA State which is party to the EEA Agreement (Iceland, Liechtenstein and Norway) may ask the EFTA Court to interpret a rule of EEA law, whether contained in the EEA Agreement or in acts of secondary law, if it considers that this is necessary for it to give judgment in a case pending before it.

The request for an advisory opinion must be limited to the interpretation of a provision of EEA law, since the EFTA Court does not have jurisdiction to interpret national law. It is for the referring court or tribunal to apply the relevant rule of EEA law in the specific case pending before it.

The request for an advisory opinion to the EFTA Court may be in any form allowed by national procedural law. It generally involves a stay of the national proceedings until the EFTA Court has given its opinion, but the decision to stay proceedings is for the national court alone to take, in accordance with its own national law.

The request for an advisory opinion to the EFTA Court may be expressed in the language of the national court. If so, the request will be translated into English, the language of the EFTA Court. Questions concerning the interpretation of EEA law may be of general interest and the EFTA States, the EFTA Surveillance Authority, the European Commission, and the EU Member States are entitled to submit observations. It is therefore desirable that the request should be drafted as clearly and precisely as possible.

The request for an advisory opinion should contain a statement of reasons which is succinct but sufficiently complete to give the EFTA Court and those who must be notified a clear understanding of the factual and legal context of the main proceedings.

In particular, it should include:

- a statement of the facts which are essential for a full understanding of the legal significance of the main proceedings;
- a description and explanation of the national law which may be applicable;
- a statement of the reasons which have prompted the national court to refer the question or questions to the EFTA Court;
- where appropriate, a summary of the arguments of the parties; and
- the names and contact details of the representatives of the parties.

The aim should be to put the EFTA Court in a position to give the national court an answer which will be of assistance to it.

The national court should ensure that the request itself includes all the relevant information. The request should normally not be accompanied by annexes. However, the EFTA Court may ask for relevant documents, if necessary.

A national court or tribunal may request an advisory opinion from the EFTA Court as soon as it finds that an opinion on the point or points of interpretation of EEA law is necessary to enable it to give judgment. It must be stressed, however, that it is not for the EFTA Court to decide issues of fact or to resolve disputes as to the interpretation or application of rules of national law. The national court may therefore find it more appropriate to request the advisory opinion once the national proceedings have reached a stage at which the national court is able to define the legal and factual context of the questions to be referred.

The request for an advisory opinion should be sent by the national court directly to the EFTA Court, by email to cases@eftacourt.int, and by registered post, addressed to:

EFTA Court
- Registry -
1, rue du Fort Thüngen
L-1499 Luxembourg

Telephone (352) 42 10 81
Fax (352) 43 43 89

The Court Registry will remain in contact with the national court until the advisory opinion is given and will send it copies of the various documents (in particular written observations and Report for the Hearing). The EFTA Court will also send its advisory

opinion to the national court. The EFTA Court would appreciate being informed about the application of its advisory opinion in the national proceedings and being sent a copy of the national court's final decision.

The EFTA Court has decided that all requests for an advisory opinion received from 1 January 2021 will be published on the Court's website as soon as they have been translated and the original has been received.

If, at any time in the process of making a request for an advisory opinion, a national court has questions concerning the procedure before the EFTA Court or related issues, members of the national court are welcome to contact the Registrar or the Lawyer/Administrator in the Registry. The same applies to any questions the national court may have while the case is pending before the EFTA Court.

Proceedings for an advisory opinion before the EFTA Court are free of charge. The EFTA Court does not rule on costs.