



GUIDANCE TO NATIONAL COURTS AND TRIBUNALS REQUESTING 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 to enable the EFTA Court to better meet the requirements of national courts by providing useful answers to questions, this Guidance is addressed to all interested parties, in particular to all national courts.

It must be emphasised that this document is for guidance only and has no binding or interpretative effects 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 concept of a court or a tribunal under Article 34 of the Surveillance and Court Agreement does not necessarily coincide with the one under national law.

In examining whether a body qualifies as a court or tribunal under Article 34 of the Surveillance and Court Agreement, the EFTA Court takes account of a number of factors. These include, in particular, whether the referring body is established by law, has a permanent existence, exercises binding jurisdiction, applies rules of law, is independent, and, as the case may be, whether its procedure is *inter partes* and similar to a court procedure. The EFTA Court has held that administrative appeal boards may fall within the concept 'court or tribunal' and that an interpretation which would render administrative appeal boards ineligible to request an advisory opinion would undermine the objective of Article 34 of the Surveillance and Court Agreement, which is to establish a system of cooperation as a means of ensuring a homogenous interpretation of EEA law (Case E-8/19 *Scanteam*, paragraphs 42-46). In case of any doubt as to whether a body considering to refer questions to the EFTA Court fulfils the conditions, they are invited to contact the Registrar.

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 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 submitted in the language of the national court. If that is done, the request will be translated into English which is the working language of the EFTA Court. A request may also be submitted to the EFTA Court in

English. This will shorten the processing time of the request at the EFTA Court since no translation of the request is needed before it is served.

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, and where appropriate, the relevant national case-law;
- a statement of the reasons which have prompted the national court to refer the question or questions to the EFTA Court;
- a summary of the arguments of the parties; and
- the names and contact details of the representatives of the parties to the case.

The aim should be to put the EFTA Court in a position to give the national court answers which will be of assistance to it in deciding the case before 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. In practice, it is rare that the EFTA Court requests clarification from the referring court.

A national court, 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.

Requests for an advisory opinion are published on the Court's website, in the original language and in English, as soon as they have been translated. In accordance with Article 20 of the Statute and Article 90(1) of the Rules of Procedure of the EFTA Court, the request is served on 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, who are entitled to submit written observations to the Court on the questions referred for an advisory opinion.

Questions concerning the interpretation of EEA law may be of general interest and parties listed above are entitled to submit written observations in the case. It is therefore important that the questions submitted to the Court are drafted as clearly and precisely as possible.

All written observations submitted in advisory opinion cases will be published on the Court's website before the oral hearing takes place unless the observations include confidential or sensitive information. In those cases, only the non-confidential version provided by the party

involved will be published. Should those submitting written observations believe that their written observations are, exceptionally, only to be published after the judgment of the Court has been delivered, they may submit a reasoned request setting out the reasons thereto.

The request for an advisory opinion should be sent by the national court directly to the EFTA Court, via the e-EFTACourt portal, by email to cases@eftacourt.int or by post, addressed to:

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

The preferred form of submitting a request is via the e-EFTACourt portal. Access to e-EFTACourt is requested via the EFTA Court website and account opened before a submission is made (www.eftacourt.int). Requests and other documents submitted via the e-EFTACourt portal are considered to be originals and no physical copies of documents are required. For any questions in this respect, the national court is welcome to contact the Court's Registry.

The Registry will remain in contact with the national court until the advisory opinion is given and will send it, for information purposes, a copy of the invitation to submit written observations in the case. The EFTA Court sends its advisory opinion to the national court in both English and the language of the requesting court, and appreciates 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.

If, at any time in the process of making a request for an advisory opinion or during the proceedings of a case, a national court or other participants in the proceedings have questions concerning the procedure before the EFTA Court or related issues, they are welcome to contact the Registrar or the Administrator in the Registry.

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