

NOTICE 1/99

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

The development of the EEA legal order is, *inter alia*, the result of co-operation between the EFTA Court and national courts and tribunals through the advisory opinion procedure under Article 34 of the ESA/Court Agreement.

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

It must be emphasized 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 the experience in applying the advisory opinion procedure.

Any court or tribunal of an EFTA State which is party to the EEA Agreement (at present 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 Court has given its opinion, but the decision to stay proceedings is one which it 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 questions will be translated into English, the language of the Court. Questions concerning the interpretation of EEA law are frequently of general interest and the EEA Member States, the EFTA institutions and the Community institutions are entitled to submit observations. It is therefore desirable that the reference 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 Court and those who must be notified (the EEA Member States, the Community, the EFTA Surveillance Authority and the Commission) 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;
- an exposition 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; and
- where appropriate, a summary of the arguments 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 order for reference itself includes all the relevant information. The reference should normally not be accompanied by annexes. However, the EFTA Court may ask for relevant documents, if necessary.

A national court or tribunal may refer a request for an advisory opinion to 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. It is therefore desirable that a decision to refer should not be taken until the national proceedings have reached a stage where the national court is able to define the factual and legal context of the question. Moreover, the questions asked should be of actual relevance for the case at hand. Hypothetical questions should not be referred. On any view, the administration of justice is likely to be best served if the request is not made until both sides have been heard.

The request for an advisory opinion should be sent by the national court directly to the EFTA Court, by registered post, addressed to:

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

Telephone (+352) 421081
Telefax (+352) 434389

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

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