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Judgment in Case E-14/24 *Elmatica AS v Confidee AS and Vidar Olsen*

ACCESS TO EVIDENCE IN TRADE SECRET DISPUTES

In a judgment delivered today, the Court answered questions referred to it by the Supreme Court of Norway (*Norges Høyesterett*), concerning the interpretation of the Trade Secrets Directive.¹ In the main proceedings, Elmatica AS claims compensation for an alleged breach of trade secrets in connection with the respondents' – Confidee AS and Mr Vidar Olsen – establishment of a competing business. The Supreme Court essentially asked whether the Trade Secrets Directive requires national courts to undertake a balance of interests assessment concerning access to evidence and whether national courts have to obtain and adduce all evidence that may contain trade secrets.

The Court recalled that the Directive itself does not explicitly regulate the handling of evidentiary disputes that arise in a case where a party claims that their trade secrets have been infringed. Therefore, in the absence of EEA rules governing the matter, it is for the domestic legal system of each EEA State to lay down detailed procedural rules in accordance with general principles of EEA law such as the right to protection of trade secrets and effective judicial protection.

The Court held that in disputes concerning the confidentiality of trade secrets, EEA law requires national courts to weigh up the respective protected interests on a case-by-case basis in order to strike a balance between the requirements of effective legal protection or the interest of a due examination of a claim and the protection of business confidentiality including trade secrets. This does not, however, place an obligation on national courts in all cases to obtain the disputed evidence as part of the balancing exercise. It is sufficient that national courts may, at their discretion, obtain and examine the evidence in question if they deem it necessary to conduct a proper assessment of whether the evidence is to be adduced. Such discretion must be exercised in accordance with general principles of EEA law, in particular the right to an effective remedy and to effective judicial protection.

The advisory opinion is a step in the proceedings pending before the national court. The Supreme Court will now resume its proceedings and decide the case pending before it in light of the Court's interpretation of the Directive.

The full text of the judgment is available on the Court's website: eftacourt.int/cases/e-14-24/

This press release is an unofficial document and is not binding upon the Court.

¹ Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.