

C/2024/2180

14.3.2024

**Request for an Advisory Opinion from the EFTA Court by Eidsivating Court of Appeal in the case of
Låssenteret AS v Assa Abloy Opening Solutions Norway AS****(Case E-11/23)**

(C/2024/2180)

A request has been made to the EFTA Court dated 28 August 2023 from Eidsivating Court of Appeal (*Eidsivating lagmannsrett*), which was received at the Court Registry on 31 August 2023, for an Advisory Opinion in the case of *Låssenteret AS v Assa Abloy Opening Solutions Norway AS* on the following questions:

- Question 1: Is the material scope (*ratione materiae*) of Directive 2016/943 limited to cases in which the subject-matter of the dispute is the use of acquired trade secrets?
- Question 2: The last sentence of Article 9(2) of the Directive on the protection of trade secrets requires that '[t]he number of persons referred to in points (a) and (b) of the second subparagraph shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings'. Despite that wording, does the Directive [on the protection of trade secrets] allow for a national court to establish a confidentiality ring which does not allow for at least one natural person from each of the parties to the case to be granted access to evidence constituting trade secrets which is submitted as evidence in the case?
- Question 3: Does the last sentence of Article 9(2) of the Directive on the protection of trade secrets express a general EEA law principle to the effect that a national court may not establish a confidentiality ring which does not allow for at least one natural person from each of the parties to the case to be granted access to evidence constituting trade secrets which is submitted as evidence in the case?
- Question 4: Is it of significance to the answer to one or more of questions 1 to 3 above that the trade secrets that are requested disclosed as evidence are competitively sensitive in relation to the party requesting access to the information?
- Question 5: In a case involving abuse of a dominant position under Article 54 of the EEA Agreement, does EEA law, including the principle of effectiveness or the principle of homogeneity, require a national court to order the party alleged to have abused its dominant position to disclose evidence constituting trade secrets, without that court having to weigh up the parties' interests?
- Question 6: Do EEA law principles, including the principle of effectiveness or the principle of homogeneity, mean that national procedural law must be interpreted in accordance with Article 5 of the Damages Directive (Directive 2014/104/EU), even though it is not incorporated into the EEA Agreement?