

**Action brought on 10 November 2014 by DB Schenker against the EFTA Surveillance Authority****(Case E-22/14)**

(2015/C 11/07)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 10 November 2014 by Schenker North AB, Schenker Privpak AB and Schenker Privpak AS (collectively DB Schenker), represented by Jon Midthjell, advokat, Advokatfirmaet Midthjell AS, Grev Wedels plass 5, N-0151 Oslo, Norway.

The applicants request the EFTA Court to:

1. Annul ESA's decision of 9 September 2014 in Case No 75697 (DB Schenker);
2. Order ESA and any intervener to bear the costs.

*Legal and factual background and pleas in law adduced in support:*

- The applicants, Schenker North AB and Schenker Privpak AB, both established in Sweden, and Schenker Privpak AS, established in Norway, are part of the DB Schenker group. The group is a global freight forwarding and logistics undertaking owned by Deutsche Bahn AG.
- By its judgment in Case E-5/13 *DB Schenker v ESA* on 7 July 2014, the EFTA Court annulled ESA's decision of 25 January 2013 in ESA Case No 73075 (DB Schenker) in so far as it refused full or partial access under Article 4(4) and (6) RAD 2012 to documents belonging to the case files that led to ESA Decision No 321/10/COL (Norway Post — loyalty/discount system) and refused to grant access to the complete version of ESA Decision No 321/10/COL.
- On 17 July 2014, DB Schenker received a letter by e-mail from ESA informing them that ESA had again decided to refuse DB Schenker access to the contested documents. DB Schenker was invited to submit a confirmatory application if it wanted ESA to reconsider its position.
- On 27 August 2014, DB Schenker sent a confirmatory application to ESA. On 9 September 2014 ESA sent an e-mail to DB Schenker containing a copy of the decision, which again refused DB Schenker full or partial access under Article 4(4) and (6) RAD 2012 to the same documents, i.e. the documents belonging to the case files that led to ESA Decision No 321/10/COL (Norway Post — loyalty/discount system), and the complete version of ESA Decision No 321/10/COL. DB Schenker seeks to annul this decision under Article 36 SCA.

The applicants claim that the EFTA Surveillance Authority has:

- infringed the commercial interests exception in Article 4(4) RAD (2012) and the professional secrecy obligation in Article 122 EEA, Article 14(4) SCA and Article 28(2) of Chapter II of Protocol 4 SCA, and thereby wrongfully suppressed the contested documents in contravention of the public right of access in Article 2(1) RAD 2012,
  - infringed the overriding public interest exception in Articles 4(4) and 4(6) RAD 2012, and thereby wrongfully suppressed the contested documents in contravention of the public right of access in Article 2(1) RAD 2012.
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