

**Action brought on 8 April 2013 by DB Schenker against the EFTA Surveillance Authority****(Case E-5/13)**

(2013/C 174/08)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 8 April 2013 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, 0151 Oslo, Norway.

The applicants request the EFTA Court to:

1. annul ESA's decision of 25 January 2013 in ESA Case No 73075 (DB Schenker) in so far as it refuses full or partial access under Article 3(a) RAD 2012 and Articles 4(4) and 4(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 refuses to grant access to the complete version of ESA Decision No 321/10/COL;
2. annul ESA's decision of 18 February 2013 in ESA Case No 73075 (DB Schenker) in so far as it refuses full or partial access under Articles 4(4) and 4(6) RAD 2012 to documents belonging to the case files that led to ESA Decision No 321/10/COL (Norway Post — loyalty/discount system);
3. 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, Schenker Privpak AB and Schenker Privpak AS, are part of the DB Schenker group, an international freight forwarding and logistic group. Schenker North AB runs the group's business operations in Norway, Sweden and Denmark, including the subsidiaries Schenker Privpak AS and Schenker Privpak AB.
- The applicants submitted a confirmatory application with ESA, on 14 January 2013, for access to documents in the case files that led to ESA Decision No 321/10/COL (Norway Post — loyalty/discount system) of 14 July 2010. On 25 January 2013 and 18 February 2013, ESA decided on the access request under its new rules on public access to documents (RAD 2012), enacted by way of ESA Decision No 300/12/COL on 5 September 2012. The applicants seek to annul those decisions under Article 36 SCA in so far as they deny full or partial access to the documents it requested.

The applicants claim that the EFTA Surveillance Authority has:

- infringed the public right of access to documents in Article 2(1) RAD 2012 and the duty to state reasons, cf. Article 16 SCA with regards to documents denied under Article 3(a) RAD 2012,
  - infringed the public right of access to documents in Article 2(1) RAD 2012 with regard to documents refused access to, in full or in part, under Article 4(6) RAD 2012, and
  - infringed the public right of access to documents in Article 2(1) RAD 2012 and the duty to state reasons, cf. Article 16 SCA with regard to documents refused access to, in full or in part, under Article 4(4) RAD 2012.
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