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**Judgment in Case E-10/22 *Eviny AS v EFTA Surveillance Authority***

**ANNULMENT OF DECISION ORDERING RECOVERY OF UNLAWFUL  
STATE AID**

In a judgment delivered today, the Court annulled a decision of 6 July 2022 of the EFTA Surveillance Authority (“ESA”) on aid in relation to streetlight infrastructure in Bergen (Norway).

In the contested decision, ESA found that there had been overcompensation for maintenance and operation and capital costs paid to companies within the Eviny group in respect of streetlights along municipal roads within Bergen municipality. ESA considered this overcompensation to amount to unlawful State aid that was incompatible with the functioning of the EEA Agreement. The contested decision ordered that the Norwegian authorities should take all necessary measures to recover the unlawful and incompatible aid.

In its application, Eviny AS (“Eviny”) sought the annulment of the contested decision. By its second plea, Eviny submitted that ESA had committed a manifest error of assessment by concluding that Eviny had received an economic advantage through overcompensation. In essence, Eviny argued that the evidence that ESA had relied on, whether taken separately or in combination with other evidence, was neither indicative nor could be considered proof of any overcompensation for operation and maintenance services or capital costs. Moreover, Eviny disputed the factual accuracy, consistency and reliability of figures derived from Statistics Norway’s KOSTRA database.

In its judgment, the Court held that a table of figures from the KOSTRA database, on which the contested decision relied to support its findings, was unreliable as evidence and unable to substantiate ESA’s conclusion. ESA had neither sufficiently explained why certain data was not included in its assessment nor taken account of all of the relevant information. Furthermore, the Court held that ESA was not justified in relying on the absence of certain information in order to support its findings, in particular since ESA failed to request that information during the administrative procedure.

In conclusion, the Court held that the evidence relied on by ESA in its assessment of whether the measures conferred an advantage on Eviny was not reliable and its factual accuracy was uncertain.

Accordingly, the Court held that ESA’s assessment as regards whether the measures conferred an advantage on Eviny was vitiated by manifest errors of assessment and that the second plea submitted by Eviny was well founded. Consequently, the Court found that the contested decision must be annulled.

The full text of the judgment may be found on the Court's website: [www.eftacourt.int](http://www.eftacourt.int).

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