



ORDER OF THE COURT

3 October 2007

(Taxation of costs)

In Case E-9/04 COSTS II,

The Bankers' and Securities Dealers' Association of Iceland, represented by
Dr. Hans-Jörg Niemeyer, Rechtsanwalt, Brussels, Belgium

Applicant,

supported by the European Banking Federation, represented by Marc Pittie,
Avocat, Brussels, Belgium,

Intervener,

v

EFTA Surveillance Authority, represented by Niels Fenger, Director, and
Lorna Young, Officer, Department of Legal & Executive Affairs, acting as
Agents, Brussels, Belgium,

Defendant,

supported by the Republic of Iceland, represented by Finnur Þór Birgisson, First
Secretary and Legal Officer, Ministry for Foreign Affairs, acting as Agent, and
Peter Christian Dyrberg, acting as Counsel,

Intervener,

APPLICATION for taxation of costs pursuant to the judgment of the Court of 7
April 2006 in Case E-9/04 *The Bankers' and Securities Dealers' Association of
Iceland v EFTA Surveillance Authority* [2006] EFTA Ct. Rep. 41,

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THE COURT,

composed of: Carl Baudenbacher, President, Thorgeir Örlygsson and Henrik Bull (Judge-Rapporteur), Judges

Registrar: Skúli Magnússon,

makes the following

Order

I Facts, procedure and forms of order sought

- 1 By an application lodged at the Registry of the Court on 23 November 2004, the Bankers' and Securities Dealers' Association of Iceland (hereinafter "the Applicant") brought an action under Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter "SCA") for annulment of the EFTA Surveillance Authority's Decision No 213/04/COL of 11 August 2004 concerning the Icelandic Housing Financing Fund.
- 2 By judgment of 7 April 2006 in Case E-9/04 *The Bankers' and Securities Dealers' Association of Iceland v EFTA Surveillance Authority* [2006] EFTA Ct. Rep. 41, the Court annulled the EFTA Surveillance Authority's Decision No 213/04/COL of 11 August 2004 concerning the Icelandic Housing Financing Fund and, pursuant to Article 66(2) of the Rules of Procedure (hereinafter "ROP"), ordered the EFTA Surveillance Authority (hereinafter "the Defendant") to pay the costs incurred by the Applicant.
- 3 By an application lodged at the Registry of the Court on 8 June 2007, the Applicant, pursuant to Article 70(1) ROP, applied for taxation of the costs it may recover from the Defendant. The Applicant requested the Court to fix the total amount of those costs at EUR 296 246.00 and applied for an authenticated copy of the order.
- 4 By observations lodged at the Registry of the Court on 13 August 2007, the Defendant requested the Court to fix the total amount of the said costs at EUR 83 486.66.

II Law and assessment of the case

Arguments of the Applicant

- 5 As recoverable costs under Article 69(b) ROP, the Applicant claims it has incurred a total of EUR 265 600 in lawyers' fees for the proceedings in Case E-9/04; lawyers' travel expenses to Iceland at a total of EUR 9 740; lawyers' travel

expenses to Luxembourg at a total of EUR 2 021; expenses for postage at a total of EUR 470; and Applicant's travel expenses to Luxembourg at a total of EUR 10 414. In addition, the Applicant claims as recoverable costs lawyers' fees for the present proceedings in Case E-9/04 COSTS II at a total of EUR 8 000.

- 6 According to the Applicant, referring to e.g. Case T-342/99 DEP *Airtours* [2004] ECR II-1785, the Court must make an unfettered assessment of the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law as well as the difficulties presented by the case, the amount of work generated by the proceedings for the agents and advisors involved and the financial interests which the parties had in the proceedings.
- 7 The Applicant also recalls, in particular, that the primary consideration of the Court is the total number of hours of work which may appear to be objectively necessary for the purpose of the proceedings, irrespective of the number of lawyers who may have provided the services in question. Reference is made to Case T-228/99 DEP *WestLB AG v Commission*, order of 19 December 2006, at paragraph 63 and Case T-331/94 DEP *IPK München GmbH v Commission* [2006] ECR II-51, at paragraph 71.
- 8 A total of 772 hours of lawyers' work in Case E-9/04 are claimed to be justified because of the purpose and nature of the proceedings, their significance from the point of view of Community law, the Applicant's financial interest and the complexity of the case. The number of hours claimed and the hourly rates are specified in detail in the Application.
- 9 As to the proceedings and their importance, the Applicant submits in particular that Case E-9/04 raised several novel and complex economic and legal issues, both with respect to substantive issues and with respect to the admissibility of the action for annulment. The Applicant's action for annulment contributed to the findings of the Court and the pleas made were all necessary to ensure a complete and adequate defence for the Applicant. The judgment clarified the conditions for admissibility and the scope of the requirement to initiate a formal investigation procedure under Article 1(2) in Part I of Protocol 3 SCA. The importance of the case from the point of view of Community state aid law is also evidenced by the fact that the Republic of Iceland, the Kingdom of Norway and the Commission of the European Communities (hereinafter "The Commission") intervened or submitted observations before the Court.
- 10 As to the financial interest, Case E-9/04 is alleged to have been of major financial interest to the Applicant's member banks. Housing loans are considered to be an essential component of banking operations, since the risk of losses associated with such loans is typically lower than with other types of loans. With the new Basel II rules it will be all the more important for banks to have large mortgage lending portfolios for their funding. Without such portfolios, Icelandic banks will have serious disadvantages compared to their competitors in other countries.

- 11 As to the complexity of the case, a comparison is also made with Case T-228/99 DEP *WestLB AG v Commission*, order of 19 December 2006, where the Court of First Instance of the European Communities (hereinafter “the CFI”) found a total of 700 hours of work to be objectively necessary in a case where the applicant faced the Commission and one intervener. It is submitted that Case E-9/04 required an even larger amount of work, as the Applicant had to reply to statements from two interveners and had to defend the case against pleadings from four parties at the hearing.
- 12 It is submitted that an average hourly rate of EUR 344 in lawyers’ fees is appropriate and well within the range accepted by the Court of Justice of the European Communities (hereinafter “the ECJ”) and the CFI. As the hourly rate and the amount of hours are adequate, the total amount of EUR 265 600 is adequate as well. Reference is made to Cases T-342/99 DEP *Airtours* [2004] ECR II-1785 and T-310/01 DEP *Schneider Electric v Commission*, order of 29 October 2004, where the CFI ruled respectively GBP 250 000 and EUR 384 000 in lawyers’ fees to be recoverable.
- 13 Two of the Applicant’s legal advisors travelled to Reykjavík twice to meet with the Applicant. One of them also had a third meeting with the Applicant in Reykjavík. In this respect, it is submitted that the CFI regards disbursements for travel and subsistence as expenses “necessarily incurred”. Reference is made to Case T-342/99 DEP *Airtours* [2004] ECR II-1785, at paragraph 75. Moreover, in Case C-286/95 P-DEP *ICI* [2004] ECR I-6469, at paragraph 28, the ECJ did not exclude, in principle, recoverability of lawyers’ travelling expenses for meetings with the client. The nature of the three meetings held in Reykjavík, and their necessity, is explained in the Application.
- 14 As for travel expenses to Luxembourg, it is submitted that the presence of two legal advisors at the hearing can be necessary. Reference is made to Case C-104/89 DEP *Mulder* [2004] ECR I-1, at paragraph 37. The CFI has accepted reimbursement of travel expenses to Luxembourg for three representatives. Reference is made to Case T-310/01 DEP *Schneider Electric v Commission*, order of 29 October 2004, at paragraphs 69 and 79. The ECJ has accepted reimbursement of travel expenses to Luxembourg for an in-house solicitor. Reference is made to Case C-286/95 P-DEP *ICI* [2004] ECR I-6469, at paragraph 28. It is submitted that the attendance of two lawyers, one trainee and five expert representatives of the Applicant and its member banks was necessary at the hearing. The Defendant, the Republic of Iceland, the Kingdom of Norway and the Commission all raised numerous and complex issues of fact and law and it was necessary to guarantee that the Applicant’s legal advisers were able to respond to all possible questions asked by the Court in a comprehensive and correct way.
- 15 According to the Applicant, there is in principle no disagreement about postage expenses amounting to EUR 168.93 but in addition there comes further expenses directly related to shipment of documents to the Court. The recoverable costs for postage thus total EUR 470.

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Arguments of the Defendant

- 16 The Defendant contests the amount claimed by the Applicant as excessive and unjustified. Particular reference, on several points, is made to the guidelines set out by the Court in Case E-9/04 COSTS *The Bankers' and Securities Dealers' Association of Iceland v EFTA Surveillance Authority*, order of 24 April 2007, not yet reported. Noting that much of the expenses claimed relates to the fact that several people were involved with the preparation of the case and that a total of eight representatives for the Applicant were present at the hearing, the Defendant starts by addressing travel and subsistence costs.
- 17 The Defendant underlines that travel and subsistence costs not related to a hearing before the Court are generally not recoverable. Reference is made to e.g. Case T-2/95 (92) *Industrie des poudres sphériques v Council* [2000] ECR II-463, at paragraph 33. As to the travel and subsistence expenses related to the meetings in Reykjavík, it is then submitted that none of these expenses were 'necessarily incurred'. The starting point should be that, in view of available technology, a claim for such expenses may only be justified by exceptional circumstances rendering electronic means of communication inadequate. No objective reasoning has been put forward in order to substantiate a claim that the meetings could not be held by telephone or video conferences.
- 18 Alternatively, should the Court consider that one or more of the meetings in Reykjavík were necessary, the Defendant contests any expenses incurred for a second person travelling. The Defendant has no objections to several lawyers working together to the extent that this does not result in higher legal fees in total. However, two lawyers taking part in the same meetings, both claiming travel and associated costs as well as billable hours, amounts to a duplication of work which cannot be considered as necessary for the purposes of the proceedings.
- 19 As to the travel and subsistence expenses related to the hearing in Case E-9/04, the Defendant finds it untenable to argue that the Applicant's rights of defence necessitated it being represented by a total of eight persons.
- 20 Firstly, it is submitted that there is a strong presumption against the necessity of more than one counsel at the hearing and, in the present case, the Defendant submits that no evidence has been adduced to justify otherwise. Concerning the amount of expenses, the hotel room at EUR 195 for one counsel is not contested. However, the Defendant questions the necessity in hiring a chauffeur and the claim for 12 hours of that person's time amounting to EUR 333.84. Also the claim for EUR 243.85 relating to 'mileage' corresponding to 4x220 km, i.e. two return journeys from Brussels, is questioned. It is submitted that the Court should deem recoverable the actual amount charged for petrol on the chauffeur's invoice (EUR 143.83) or, alternatively, 'mileage' for one notional return journey (EUR 121.93) instead of two return journeys. Moreover, the Defendant disputes the costs relating to hiring a meeting room for the purposes of preparing for the

hearing. Reference is made to Case C-286/95 P-DEP *ICI* [2004] ECR I-6469, at paragraph 29.

- 21 Secondly, it is argued that the costs listed as ‘Applicant’s travelling expenses to Luxembourg’ are not recoverable. It is settled case law that travel and subsistence expenses of the Applicant himself are only recoverable if his presence at the hearing is necessary for the purposes of the proceedings. Costs relating to the attendance of the Applicant or any outside experts are therefore recoverable only if it is evident from the documents before the Court that their services were essential. In contrast, such costs will not be recoverable if the facts necessary for deciding the issue were largely contained in the written material already before the Court. Reference is made to Case 24/79 COSTS *Oberthür v Commission* [1981] ECR 2229; Case T-271/94 (92) *Branco* [1998] ECR II-3761, at paragraph 21; and Case C-104/89 DEP *Mulder* [2004] ECR I-1, at paragraph 75. With respect to the four experts not working for the Applicant, but for various Icelandic banks, the Defendant adds that no information has been provided confirming that the Applicant even paid for their travel and subsistence costs.
- 22 As to the lawyers’ fees in Case E-9/04, the Defendant notes that it seems undisputed that the relevant legal test is not the number of hours actually spent but the number of hours which can be considered objectively necessary. Reference is made to *inter alia* Case T-290/94 (92) *Kaysersberg v Commission* [1998] ECR II-4105, at paragraph 20; Case T-82/96 DEP *ARAP*, order of 2 May 2005, at paragraph 33; and Case T-243/01 DEP *Sony Computer* [2005] ECR II-1121, at paragraphs 9 and 32. The Defendant underlines that it does not question the number of hours actually worked, neither that the work was performed in a qualified manner. What the Defendant contests, is that the case merited so much time spent on it.
- 23 First, the Defendant invites the Court to tax the costs on the basis of an hourly rate of EUR 340, as done in Case E-9/04 COSTS *The Bankers’ and Securities Dealers’ Association of Iceland v EFTA Surveillance Authority*, order of 24 April 2007, not yet reported. Taking the said hourly rate as the point of departure and considering the arguments reproduced above, the Defendant then provides a detailed account of its views on the number of hours which can be considered objectively necessary. In conclusion, it is submitted that lawyers’ fees are recoverable for a total of 243 hours of work at EUR 340, which adds up to EUR 86 620.
- 24 In this context, the Defendant argues *inter alia* that the financial interest of the Applicant in Case E-9/04 does not speak in favour of accepting high costs, as the Applicant was not the aid beneficiary. Reference is made to Case T-253/01 DEP *UPS Europe*, order of 6 September 2004, at paragraph 26. The Defendant also submits *inter alia* that it follows from case law that costs related to coordination between parties to a case (*in casu* between the Applicant and an intervener) are not recoverable when the coordination has not been instructed by the Court. Reference is made to Case C-104/89 DEP *Mulder* [2004] ECR I-1, at paragraph

64. Moreover, it is noted *inter alia* that it follows from case law that fees relating to periods subsequent to the hearing cannot be considered to be expenses necessarily incurred for the purposes of the proceedings. Reference is made to *Mulder*, at paragraph 48 and to Case T-78/99 (92) *Elder* [2000] ECR II-3717, at paragraph 17 and Case T-38/95 DEP *Groupe Origny* [2002] ECR II-217, at paragraph 31.

- 25 As to shipment of documents, the Defendant submits that the following expenses would be recoverable: delivery of the Application at EUR 54.37, delivery of the Reply to the Statement of Defence at the same rate, delivery of the Reply to Statement in Intervention by the Republic of Iceland at EUR 45.67 and delivery of the Reply to the Statement in Intervention from the European Banking Federation at EUR 39.58; in total EUR 193.99. The further expenses claimed by the Applicant are, on various grounds detailed in the Defendant's observations, submitted to be non-recoverable. The Defendant questions *inter alia* the need for the use of a courier service to deliver a request for an extension of a time-limit. Reference is made to Case T-251/00 DEP *Lagardère* [2004] ECR II-4217, at paragraph 34.
- 26 Finally, the Defendant contests that any costs are recoverable in respect of the present proceedings in Case E-9/04 COSTS II. It is submitted that the recoverability of costs in relation to the taxation process must follow the same logic as any matter of substance before the Court; i.e. that a party who does not find favour with the Court cannot recover any costs. Thus, should the Court agree with the Defendant that the amount claimed is excessive it is submitted that the Defendant cannot be held liable to cover the costs of the taxation process. In any event, the Defendant finds the claim for EUR 8 000 to be excessive and not sufficiently substantiated.

Findings of the Court

- 27 According to Article 69(b) ROP, the following shall be regarded as costs which are recoverable from the party ordered to pay the costs:

expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers.

- 28 The Court has already had to tax the recoverable costs for an intervener in the case at issue, cf. Case E-9/04 COSTS *The Bankers' and Securities Dealers' Association of Iceland v EFTA Surveillance Authority*, order of 24 April 2007, not yet reported. In that order, the Court noted that whilst, in interpreting its Rules of Procedure, the EFTA Court is not required to follow the ECJ or the CFI's interpretations of their Rules of Procedure, the Court attaches importance to these provisions being parallel. Article 69(b) ROP mirrors Article 73(b) of the Rules of Procedure of the ECJ and Article 91(b) of the Rules of Procedure of the CFI. In the interest of equal treatment and foreseeability for parties appearing before the ECJ, the CFI and the EFTA Court, the provisions should be

interpreted and applied in the same way unless specific circumstances would justify different treatment (cf. paragraph 16 of that order). In the case at hand, the Court can see no such specific circumstances.

- 29 The Court recalls that as concerns the ECJ and the CFI it is settled case law that, when taxing the recoverable costs, the Courts must, in the absence of Community provisions laying down fee-scales, make an unfettered assessment of the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law as well as the difficulties presented by the case, the amount of work generated by the proceedings for the agents and advisors involved and the financial interests which the parties had in the proceedings, see *inter alia* Joined Cases C-440/01 P(R)-DEP and C-39/03 P-DEP *Artogodan*, order of 11 January 2007, at paragraph 27; and Case T-214/04 DEP *Royal County of Berkshire Polo Club*, order of 25 January 2007, at paragraph 14.
- 30 The Court also recalls that only expenses “necessarily incurred” by a party “for the purpose of the proceedings” shall be regarded as recoverable from the party ordered to pay the costs.
- 31 This will be the case for reasonable travel and accommodation expenses in connection with a hearing before the Court and for reasonable expenses covering the delivery of documents to the Court, provided that the expenses are sufficiently substantiated.
- 32 Subject to the same proviso, i.e. that the expenses are sufficiently substantiated, it follows that also lawyers’ fees will be recoverable to the extent they must be considered necessarily incurred for the purpose of the proceedings. In determining whether that is the case, due regard must be paid to a number of factors, as indicated above.
- 33 A party to a case before the Court is free to make use of the services of more than one lawyer. However, to the extent this results in duplication of work and thus higher legal fees in total, those extra costs are not recoverable, since they cannot be considered as necessarily incurred for the purpose of the proceedings.
- 34 Moreover, the Court notes, in particular, that lawyers’ fees relating to periods subsequent to the hearing cannot be considered to be expenses necessarily incurred for the purposes of the proceedings, see e.g. Case C-104/89 DEP *Mulder* [2004] ECR I-1, at paragraph 48.
- 35 In the case at hand, the amount of recoverable lawyers’ fees can usefully be assessed as a number of hours’ work at a certain hourly rate. In this assessment, a primary consideration of the Court must be the number of hours’ work which may appear to be objectively necessary for the purpose of the proceedings before the Court, see for comparison Case T-342/99 DEP *Airtours* [2004] ECR II-1785, at paragraph 30.

- 36 The Court recalls its finding at paragraph 23 of its order in Case E-9/04 COSTS, where it is stated that Case E-9/04 must be considered one of not more than average difficulty and complexity in the field of State aid law. In paragraph 23 of that order, the Court also pointed to the fact that it had previously dealt with a system broadly similar to the Icelandic Housing Financing Fund system in Case E-4/97 *Husbanken II* [1999] EFTA Ct. Rep. 2.
- 37 The Court also notes that the financial interests involved only concerned the Applicant indirectly as a representative of competitors of the direct recipient of the disputed state aid, the Icelandic Housing Financing Fund, cf. in this regard Case T-253/01 DEP *UPS Europe*, order of 6 September 2004, at paragraph 26.
- 38 In establishing the number of hours, account must also be taken of the hourly rate that has been claimed or may reasonably be claimed. A higher hourly rate presupposes that the work is carried out by a more experienced lawyer in the relevant field, who should be able to carry out the necessary work not only with improved quality but at least to some extent also in a lesser number of hours.
- 39 The Court finds that the recoverable lawyers' fees in the case at hand can reasonably be assessed on the basis of an hourly rate of EUR 340, as suggested by the Defendant. In the view of the Court, this rate presupposes that the work was carried out by an experienced lawyer in the relevant field. See the order in Case E-9/04 COSTS, at paragraph 22.
- 40 Referring to the Applicant's specification of the number of hours worked by the lawyers at each stage of the procedure, the Court considers the 160 hours claimed for preparation for the oral hearing before the Court to be excessive. Particular note is also made of the 29 hours claimed for work on the Reply to the Statement in Intervention by the European Banking Federation. That intervention supported the Applicant on all accounts and the Court thus cannot see the necessity in the said claim. Also the 127 hours claimed for work on the Reply to the Statement in Intervention by the Republic of Iceland, the 168 hours claimed for work on the Reply to the Statement of Defence and the 288 hours claimed for work on the Application for Annulment must be considered more than objectively necessary for the purpose of the proceedings before the Court. Furthermore, it seems to the Court that there has been a certain degree of duplication of work.
- 41 Taken together with an hourly rate of EUR 340, which presupposes that the work was carried out, in its entirety, by an experienced lawyer in the relevant field, the Court finds that around 400 hours may reasonably be regarded as necessarily incurred for the purpose of the proceedings. On this basis, the Court finds it justified to request the Defendant to meet lawyers' fees at a total of EUR 136 000. This comprises also the present taxation proceedings, where the application has been only partly successful. In this respect, the Court shall add that even if the Applicant had been entirely successful, its unsubstantiated claim for EUR 8 000 would still seem excessive.

- 42 The Court's finding on lawyers' fees (cf. paragraph 40 above) also takes account of the following findings as regards attendance at the hearing in Luxembourg and at meetings with the Applicant, held in Iceland.
- 43 First, as to the meetings held between the Applicant in Iceland and the lawyers travelling to meet with the Applicant there, the Court recognises the need for lawyers to meet with their clients not only by means of electronic communication but also in person. The Court does not find it excessive that three such meetings were held. However, whereas a party may choose to make use of the services of more than one lawyer, unnecessary extra expenses resulting from such a choice are not recoverable. The presence of one lawyer must be presumed to have been sufficient at the said meetings and the Applicant has not substantiated otherwise. For the travelling and subsistence expenses of Dr. Niemeyer, the Applicant has claimed a total of EUR 6 757. Having reviewed the documentation submitted, the Court finds it difficult to see why three hotel nights are needed in connection with a one day meeting on 6 June 2005. On this basis, the Court deems EUR 6 535 of the amount claimed to be recoverable.
- 44 Second, as to attendance at the hearing in Luxembourg, the Court notes that a need to be represented at a hearing by more than one lawyer must be justified by the particular circumstances of the case. The Court also notes that the Applicant's claim for recovery of costs for the attendance of as many as three lawyers is no doubt excessive. However, notwithstanding this, the Court has under the circumstances found reason to deem costs for the attendance of two lawyers recoverable. Particular account is then taken of the position of the Bankers' and Securities Dealers' Association of Iceland as the Applicant in the case; and of the number of interveners and other parties attending the hearing. Although not a decisive factor, the Court also recalls in this context that the Defendant itself was represented by two lawyers.
- 45 The travel and accommodation expenses for Dr. Sauer, arriving from Berlin, are recoverable in their entirety at a total of EUR 869.38, as detailed and documented in the application. With regard to the expenses for Dr. Niemeyer, the claim for EUR 333.84 for a driver, together with EUR 243.85 for 'mileage', in making two return trips between Brussels and Luxembourg, cannot be considered recoverable. However, the Defendant has accepted to reimburse at least EUR 121.93 of these expenses ('mileage' for one return trip) and the Court deems that amount recoverable. The hotel room at EUR 195 is not contested and the Court also deems that expense recoverable. The costs claimed for hiring a conference room are, however, not recoverable, see Case C-286/95 P-DEP *ICI* [2004] ECR I-6469, at paragraph 29.
- 46 In addition, costs for the attendance of one representative of the Applicant and another four representatives of its member banks have been claimed. Such a claim is manifestly excessive and the Court can see nothing in the case at hand warranting it being put forward. Nevertheless, and taking particular account of the economic aspects of the case at issue and recalling the questions posed in this regard at the hearing, the Court will deem as recoverable expenses for the

attendance of one representative other than the lawyers (cf. above). Based on the documentation submitted, the Court deems up to EUR 2 000 recoverable in this respect.

- 47 As to costs claimed for shipment of documents, delivery of the Reply to the intervention from the European Banking Federation at EUR 39.58 and the Reply to the intervention by the Republic of Iceland at EUR 45.67, as well as delivery of the Application for Annulment at EUR 54.37, are undisputed and to be deemed recoverable. Regarding the expenses for delivery of the Reply to the Defence at EUR 217.34, the Applicant has not substantiated how such a particularly high expense, almost four times the cost for delivery of the Application for Annulment, could have been necessary. The Defendant has proposed to reimburse the delivery of the Reply to the Defence at the same rate as the delivery of the Application for Annulment. The Court agrees and finds, accordingly, that EUR 54.37 are recoverable in this respect.
- 48 Further, the Court notes that by virtue of Article 25(3) ROP, all supporting documentation submitted to the Court shall be in English or be accompanied by a translation into English. Where a party has submitted an incomplete pleading in this respect, the expenses connected to subsequent transmission of translations cannot be considered necessarily incurred for the purposes of the proceedings. Consequently, in the case at hand, the costs claimed for separate shipment of English translations of two of the Annexes to the Application for Annulment are not recoverable. The same applies where a party has submitted a pleading which is incomplete to the effect that an Annex is missing. The costs claimed by the Applicant for the subsequent transmission of a missing Annex to the Reply to the intervention by the Republic of Iceland are thus not recoverable.
- 49 While the Court encourages the use of fax, permitting originals to be subsequently submitted to the Court by means of inexpensive postal services, the Court acknowledges the use of registered mail. In light of this, the costs claimed for such shipment of an application for extension of a time-limit and a letter with comments on the Report for the Hearing, at respectively EUR 6.55 and EUR 6.10, are deemed recoverable. The use of a courier service for such purposes must, on the other hand, be said to incur excessive costs. Particular reference is made to Article 32(6) ROP. The Court deems recoverable the costs claimed by the Applicant for such shipment of an application for extension of a time-limit only at the same rate as delivery by registered mail, i.e. at EUR 6.55 in this case.
- 50 It follows from the foregoing that the costs which the Court has found that the Applicant may recover from the Defendant, namely lawyers' fees at a total of EUR 136 000, travel and accommodation expenses at a total of EUR 9 721.31 and expenses covering document deliveries at a total of EUR 213.19, in sum amount to EUR 145 934.50.
- 51 The Court will furnish an authenticated copy of the order, as applied for by the Applicant.

On those grounds,

THE COURT

hereby orders:

The total amount of the costs to be paid by the EFTA Surveillance Authority to the Bankers' and Securities Dealers' Association of Iceland is fixed at EUR 145 934.50.

Carl Baudenbacher

Thorgeir Örlygsson

Henrik Bull

Luxembourg, 3 October 2007

Skúli Magnússon
Registrar

Carl Baudenbacher
President