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Judgment in Case E-4/21 *Sýn hf. v EFTA Surveillance Authority*

ANNULMENT OF DECISION ON STATE AID FOR AN ICELANDIC SUBMARINE CABLE

In a judgment delivered today, the Court annulled a decision of 26 March 2021 of the EFTA Surveillance Authority (“ESA”) on State aid to Farice ehf. for investment in a third submarine cable connecting Iceland to Europe.

In the contested decision, ESA found that the aid to Farice ehf. constituted State aid within the meaning of Article 61(1) of the EEA Agreement (“EEA”). ESA further stated that it had no doubts that this State aid was compatible with the functioning of the EEA Agreement under Article 61(3)(c) EEA. Therefore, ESA had no objections to the implementation of the measure.

In its application, *Sýn hf.* sought an annulment of the contested decision based on two pleas. First, that ESA had failed to open the formal investigation procedure under Article 1(2) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”), given that ESA should have had doubts with regard to the compatibility of the aid with the functioning of the EEA. Second, that ESA had failed to fulfil its obligations under Article 16 SCA adequately to state reasons, including failure to apply the principles of the relevant guidelines in the assessment.

The Court recalled that the lawfulness of a decision not to raise objections depends on whether the assessment of the information and evidence which ESA had at its disposal during the preliminary examination phase should objectively have raised doubts as to the compatibility of the measure. The Court also noted that ESA is obliged to initiate the formal investigation procedure if it is unable to overcome all doubts or difficulties concerning the measure.

The Court found that *Sýn hf.* had established that ESA was aware of documents that called into question the information at its disposal and on which it relied in the contested decision, without going beyond a mere examination of the information submitted by the Icelandic authorities. Furthermore, the Court held that the incomplete nature of the assessment of the scope of application of the guidelines adopted by ESA had to be considered as another indication that ESA encountered serious difficulties in its preliminary examination. The Court thus concluded that there was a body of objective and consistent evidence that demonstrated that ESA adopted the contested decision despite the fact that ESA should have had doubts. Consequently, the Court found that the contested decision must be annulled. As the annulment was necessary in the light of the first plea, there was no need to examine the second plea.

The full text of the judgment may be found on the Court’s website: www.eftacourt.int.

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