JUDGMENT OF THE COURT

24 January 2023

(*State aid – Norwegian Wool Subsidy Scheme – Action for annulment of a decision of the EFTA Surveillance Authority – Rejection of a complaint – Decision taken at the end of the preliminary examination stage – Statement of reasons – No substantial alteration of existing aid*)

In Case E-1/22,

G. Modiano Limited, established in London, United Kingdom,
Standard Wool (UK) Limited, established in Dewsbury, United Kingdom,
represented by Karl O. Wallevik, Charles Whiddington and Zanda Romata, advocates,

applicants,

v

EFTA Surveillance Authority, represented by Michael Sánchez Rydelski, Claire Simpson and Kyrre Isaksen, acting as Agents,

defendant,

APPLICATION seeking the annulment of the EFTA Surveillance Authority Decision in Case No 84045 of 9 November 2021, the Norwegian Wool Subsidy System,

THE COURT,

composed of: Páll Hreinsson (Judge-Rapporteur), President, Bernd Hammermann and Ola Mestad (ad hoc), Judges,

Registrar: Ólafur Jóhannes Einarsson,

having regard to the written pleadings of the applicants and the defendant, and the written observations of the Norwegian Government, represented by Torje Sunde and Fredrik Bergsjø, acting as Agents,

having regard to the Report for the Hearing,

having heard oral arguments of the applicants, represented by Karl O. Wallevik and Charles Whiddington; the defendant, represented by Michael Sánchez Rydelski; and the Norwegian Government, represented by Torje Sunde at the hearing on 3 October 2022,

gives the following

Judgment

I Introduction

1 By an application lodged at the Court's Registry on 10 January 2022 ("the application"), G. Modiano Limited and Standard Wool (UK) Limited ("the applicants") 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 ("SCA"), seeking the annulment of Decision in Case No 84045 of 9 November 2021 ("the contested decision") taken by the EFTA Surveillance Authority ("ESA") concerning alleged State aid in the Norwegian wool industry subsidy scheme. In the contested decision, ESA concluded that the scheme constitutes existing aid that was put into effect before the entry into force of the Agreement on the European Economic Area ("the EEA Agreement" or "EEA"), within the meaning of Article 1(b)(i) of Part II of Protocol 3 to the SCA on the functions and powers of ESA in the field of State aid ("Protocol 3 SCA").

2 The application is based on four pleas. First, that ESA erred in law and erred in its assessment when concluding that the subsidy system constitutes existing aid. Second, that ESA failed to take into account all relevant information submitted by the applicants in their complaint and their letter to ESA of 25 October 2021 and breached its duty to state reasons. Third, that ESA failed to investigate and assess to what extent Fatland Ull AS ("Fatland Ull") and Norilia AS ("Norilia"), companies which operate wool collecting stations, received unlawful aid. Fourth, that ESA failed to investigate and assess the adverse competitive effects of the scheme.

II Legal background

EEA law

3 Article 61(1) and (3) EEA reads:

> *1. Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.*

...

3. The following may be considered to be compatible with the functioning of this Agreement:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of an EC Member State or an EFTA State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) such other categories of aid as may be specified by the EEA Joint Committee in accordance with Part VII.

4 Article 62 EEA reads:

1. All existing systems of State aid in the territory of the Contracting Parties, as well as any plans to grant or alter State aid, shall be subject to constant review as to their compatibility with Article 61. This review shall be carried out:

(a) as regards the EC Member States, by the EC Commission according to the rules laid down in Article 93 of the Treaty establishing the European Economic Community;

(b) as regards the EFTA States, by the EFTA Surveillance Authority according to the rules set out in an agreement between the EFTA States establishing the EFTA Surveillance Authority which is entrusted with the powers and functions laid down in Protocol 26.

2. With a view to ensuring a uniform surveillance in the field of State aid throughout the territory covered by this Agreement, the EC Commission and the EFTA Surveillance Authority shall cooperate in accordance with the provisions set out in Protocol 27.

5 Article 16 SCA reads:

Decisions of the EFTA Surveillance Authority shall state the reasons on which they are based.

6 The first and second paragraphs of Article 36 SCA read:

> *The EFTA Court shall have jurisdiction in actions brought by an EFTA State against a decision of the EFTA Surveillance Authority on grounds of lack of competence, infringement of an essential procedural requirement, or infringement of this Agreement, of the EEA Agreement or of any rule of law relating to their application, or misuse of powers.*
>
> *Any natural or legal person may, under the same conditions, institute proceedings before the EFTA Court against a decision of the EFTA Surveillance Authority addressed to that person or against a decision addressed to another person, if it is of direct and individual concern to the former.*

7 Article 1 of Part I of Protocol 3 SCA, reads, in extract:

> *1. The EFTA Surveillance Authority shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.*
>
> *2. If, after giving notice to the parties concerned to submit their comments, the EFTA Surveillance Authority finds that aid granted by an EFTA State or through EFTA State resources is not compatible with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement, or that such aid is being misused, it shall decide that the EFTA State concerned shall abolish or alter such aid within a period of time to be determined by the Authority.*
>
> *…*
>
> *3. The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement, it shall without delay initiate the procedure provided for in paragraph 2. The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.*

8 Article 1 of Part II of Protocol 3 SCA, entitled "Definitions", reads, in extract:

> *For the purpose of this Chapter:*
>
> *(a) "aid" shall mean any measure fulfilling all the criteria laid down in Article 61(1) of the EEA Agreement;*
>
> *(b) "existing aid" shall mean:*
>
> *(i) all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA States, that is to say, aid*

schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement;

(ii) authorised aid, that is to say, aid schemes and individual aid which have been authorised by the EFTA Surveillance Authority or, by common accord as laid down in Part I, Article 1(2) subparagraph 3, by the EFTA States.

(iii) aid which is deemed to have been authorised pursuant to Article 4(6) of this Chapter or prior to this Chapter but in accordance with this procedure;

(iv) aid which is deemed to be existing aid pursuant to Article 15 of this Chapter;

(v) aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the European Economic Area and without having been altered by the EFTA State. Where certain measures become aid following the liberalisation of an activity by EEA law, such measures shall not be considered as existing aid after the date fixed for liberalisation;

(c) "new aid" shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;

(d) "aid scheme" shall mean any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;

...

(f) "unlawful aid" shall mean new aid put into effect in contravention of Article 1(3) in Part I;

...

(h) "interested party" shall mean any State being a Contracting Party to the EEA Agreement and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations.

9 Article 4(2) to (4) of Part II of Protocol 3 SCA, entitled "Preliminary examination of the notification and decisions of the EFTA Surveillance Authority", reads:

> *2. Where the EFTA Surveillance Authority, after a preliminary examination, finds that the notified measure does not constitute aid, it shall record that finding by way of a decision.*
>
> *3. Where the EFTA Surveillance Authority, after a preliminary examination, finds that no doubts are raised as to the compatibility with the functioning of the EEA Agreement of a notified measure, in so far as it falls within the scope of Article 61(1) of the EEA Agreement, it shall decide that the measure is compatible with the functioning of the EEA Agreement (hereinafter referred to as a 'decision not to raise objections'). The decision shall specify which exception under the EEA Agreement has been applied.*
>
> *4. Where the EFTA Surveillance Authority, after a preliminary examination, finds that doubts are raised as to the compatibility with the functioning of the EEA Agreement of a notified measure, it shall decide to initiate proceedings pursuant to Article 1(2) in Part I (hereinafter referred to as a 'decision to initiate the formal investigation procedure').*

10 Article 10(1) of Part II of Protocol 3 SCA, entitled "Examination, request for information and information injunction", reads:

> *1. Where the EFTA Surveillance Authority has in its possession information from whatever source regarding alleged unlawful aid, it shall examine that information without delay.*

11 Article 13(1) of Part II of Protocol 3 SCA, entitled "Decisions of the EFTA Surveillance Authority", reads:

> *1. The examination of possible unlawful aid shall result in a decision pursuant to Article 4(2), (3) or (4) of this Chapter. In the case of decisions to initiate the formal investigation procedure, proceedings shall be closed by means of a decision pursuant to Article 7 of this Chapter. If an EFTA State fails to comply with an information injunction, that decision shall be taken on the basis of the information available.*

12 Article 20 of Part II of Protocol 3 SCA , entitled "Rights of interested parties", reads:

> *1. Any interested party may submit comments pursuant to Article 6 of this Chapter following an EFTA Surveillance Authority decision to initiate the formal investigation procedure. Any interested party which has submitted such comments and any beneficiary of individual aid shall be sent a copy of the decision taken by the EFTA Surveillance Authority pursuant to Article 7 of this Chapter.*

2. Any interested party may inform the EFTA Surveillance Authority of any alleged unlawful aid and any alleged misuse of aid. Where the EFTA Surveillance Authority considers that on the basis of the information in its possession there are insufficient grounds for taking a view on the case, it shall inform the interested party thereof. Where the EFTA Surveillance Authority takes a decision on a case concerning the subject matter of the information supplied, it shall send a copy of that decision to the interested party.

3. At its request, any interested party shall obtain a copy of any decision pursuant to Articles 4 and 7, Article 10(3) and Article 11 of this Chapter.

13 Article 4(1) of ESA Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ("the Implementing Decision") (OJ 2006 L 139, p. 37), as amended by Decisions No 319/05/COL of 14 December 2005 (OJ 2006 L 113, p. 24), 387/06/COL of 13 December 2006 (OJ 2009 L 148, p. 35), 789/08/COL of 17 December 2008 (OJ 2010 L 340, p. 1) and 108/17/COL of 4 July 2017, entitled "Simplified notification procedure for certain alterations to existing aid" reads:

1. For the purposes of Article 1(c) in Part II of Protocol 3 to the Surveillance and Court Agreement, an alteration to existing aid is any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market. An increase in the original budget of an existing aid scheme by up to 20% is not considered an alteration to existing aid.

III Facts and pre-litigation procedure

Background

14 G. Modiano Limited ("Modiano") is a private limited company incorporated under the laws of England and Wales. Its principal activity is the import, export and processing of and dealing in sheep's wool. Modiano has wool-buying/sourcing subsidiaries in Australia, New Zealand and South Africa, where it buys greasy wool, mainly at auction. Modiano also buys wool in Europe and South America, and has sales support offices in Turkey, China and Italy.

15 In addition, Modiano processes British wool purchased at the British Wool Marketing Board auctions. Modiano also has a subsidiary in the Czech Republic with a processing mill where it processes greasy wool resulting in wool tops, which is the raw material for making worsted wool yarn to sell to spinners. Modiano does not trade in scoured wools. Most of Modiano's wool tops are sold to EU/EEA clients.

16 Standard Wool (UK) Limited ("Standard Wool") is a private limited company incorporated under the laws of England and Wales. Standard Wool is an international

wool processor and trader, with a particular focus on early-stage wool processing and trading.

17 Standard Wool buys and sells raw sheep's wool, primarily sourced directly from farmers in Chile through its subsidiary in Chile. Standard Wool also has a wool collection depot in Ireland, through which it purchases and handles/grades raw wool purchased directly from farmers in Ireland. Standard Wool also purchases wool through exporters from auction houses in the United Kingdom, the rest of Europe (excluding Norway), the Middle East, Far East, New Zealand, Australia, South Africa and South America.

18 Standard Wool also owns Thomas Chadwick & Sons ("Chadwick") which operates a processing mill in Bradford, United Kingdom. The only other wool scouring mill in the United Kingdom is owned by Curtis Wool Direct Holdings Limited ("Curtis Wool"), which is a sister company of Norilia, the largest buyer and processor in Norway. Standard Wool trades in greasy wool, scoured wool and wool tops.

19 Norwegian sheep farmers are granted aid annually pursuant to a scheme which began in the 1950s when the Norwegian authorities established a system of price guarantees for wool. The price guarantee system was replaced in 1992 by the current scheme which was set out in the 1993 Regulation ("the 1993 Regulation"). The 1993 Regulation was replaced by the Regulation of 12 June 1997 on grants to Norwegian wool ("the 1997 Regulation"). The 1997 Regulation was amended on 18 July 2000 and again on 3 July 2002.

20 On 23 August 2007, a new circular (42/07) on the Norwegian wool standard was issued by the Norwegian Agricultural Agency ("the 2007 Circular"). The 2007 Circular complemented the 1997 Regulation. The 2007 Circular introduced certain criteria to make the control system for wool quality less discretionary, and to base it instead on measurable and verifiable criteria. The adjustments did not entail any change as regards which wool qualities were included in the scheme.

21 On 19 December 2008, the Norwegian authorities introduced a general regulation on agricultural subsidies in Norway ("the 2008 General Regulation") which repealed the 1997 Regulation. The 2008 General Regulation is the current legal framework for the scheme.

22 Under the 2008 General Regulation, detailed requirements for intermediaries of grants were replaced by more general requirements, such as the need to hold permits, to register the business, and to have suitable production equipment. The Norwegian Agricultural Agency was authorised to enact more detailed provisions related to the administration of the various subsidy systems.

23 The 2008 General Regulation is supplemented by the Agricultural Agreement. The Agricultural Agreement is the primary framework for budgetary aid granted to Norwegian farmers, with the objectives of achieving the agricultural policy set by the Norwegian Parliament. The Agricultural Agreement is subject to annual negotiations

between the Norwegian Government and the two farmers' organisations. The budget for the Agreement is subject to Parliamentary approval. Further details of the system are set out in circulars issued by the Norwegian Agricultural Agency. Following the introduction of the 2008 General Regulation, most detailed regulations on wool subsidies were removed and replaced by a Circular issued by the Norwegian Agricultural Agency. As opposed to the previous system, the current system relies on supplementary circular letters and the outcome of annual agricultural negotiations which result in the annual Agricultural Agreement.

24 In 2017, the five poorest wool qualities were removed from the scheme. According to the Norwegian authorities, this change was adopted during the 2016 agricultural negotiations. The change entered into force on 1 September 2016. As a result of this change, the grants for the remaining 11 classes/grades of wool were increased.

25 The objective of the aid scheme is to promote both sheep farming as an important part of Norwegian agriculture, and the production of quality wool. According to the documents submitted to the Court, the sums granted annually have ranged from NOK 122 million to NOK 243 million. The aggregated amount of aid for the period 1993 to 2019 exceeds NOK 4 billion. According to the applicants, the aid is given as direct subsidies through Fatland Ull and Norilia.

26 The subsidies are distributed to the sheep farmers in the following manner. The wool subsidy is granted by the Norwegian Agricultural Agency, and the distribution of the subsidy may be carried out in two different ways – either from the Agricultural Agency directly to the sheep farmers, or by using the wool collecting stations as intermediaries. When the subsidy is distributed using the wool collecting stations as intermediaries, these stations collect and purchase the wool from the sheep farmers. This is intended to provide for a suitable and cost-efficient system. In practical terms, the wool collecting stations pay a price for the wool (in their capacity as a purchaser) and distribute the subsidy to which the sheep farmer is entitled. In the settlement between the wool collecting stations and the sheep farmers, the documentation is supposed to set out the amounts that represent (i) the compensation for the wool purchase and (ii) the wool subsidy. Today, there are two companies running wool collection stations in Norway – namely Fatland Ull and Norilia.

27 Norilia is owned by the cooperative Nortura SA ("Nortura"), which also has a controlling stake in Curtis Wool. Norilia has eight wool collecting stations in year-round operation which receive, classify and resell Norwegian wool. Fatland Ull has three wool collecting stations in operation which receive, classify and resell Norwegian wool. At the wool collecting stations, all the wool delivered is classified according to the Norwegian wool standard (*Norsk ullstandard*). The quality of the wool delivered determines the level of the aid the sheep farmers receive from the wool collecting stations.

28 On 30 April 2019, a meeting took place between the applicants' representatives and ESA. On 6 September 2019, the applicants submitted a complaint to ESA concerning the aid scheme, alleging that the primary aid beneficiaries of the scheme were

Norwegian sheep farmers, and that the system was incompatible with Article 61 EEA. Furthermore, the applicants maintained in their complaint that the changes made to the legal framework of the scheme – at least from 2008 onwards – altered the legal basis for the scheme in such a way that it constituted new aid.

29 On 26 May 2021, ESA sent a letter to the applicants with its preliminary assessment that any aid granted on the basis of the scheme would constitute existing aid as the scheme had not been substantively altered such that it would constitute new aid. Furthermore, ESA considered that neither the Norwegian sheep farmers nor the wool collecting stations in Norway, had received unlawful State aid.

30 On 22 October 2021, ESA informed the applicants of the closure of the case, based on the assessment that the scheme constituted existing aid.

31 By e-mail on the same date, the applicants requested that ESA consider the final version of the applicants' comments to ESA's preliminary assessment. ESA responded on the same day stating that it had taken the exceptional administrative step of reopening the case in its case handling system and set the deadline for receiving comments as 25 October 2021.

32 On 25 October 2021, the applicants provided observations on ESA's letter of 26 May 2021. The applicants submitted that it was their firm opinion that the Norwegian Wool Subsidy Scheme warrants a review by ESA, as the aid scheme provided the Norwegian duopoly of Norilia and Fatland Ull with a decisive and unfair competitive advantage, while at the same time being seemingly without any measurable effect on the quality of Norwegian wool.

The contested decision

33 By letter of 9 November 2021, ESA stated that it had decided to close the applicants' complaint case, based on the assessment that the scheme constituted existing aid. In the contested decision, ESA noted that any aid involved would be existing aid in nature. ESA further held that the concerns raised by the applicants had not indicated that the scheme had changed to such an extent that an existing aid scheme could be regarded as new aid.

34 In its assessment on the legislative amendments, ESA referred to its letter of 26 May 2021 and noted that purely administrative changes are not capable of turning an existing aid scheme into new aid. In ESA's view, the introduction of the 2008 General Regulation, supplemented by the Agricultural Agreement, coupled with circulars and an unchanged systematic administrative practice, had not had the effect of turning the system into new aid, as the system, its administrative practice and its substance remained unchanged.

IV Procedure and forms of order sought

35 On 10 January 2022, the applicants lodged an application pursuant to Article 36 SCA which was registered at the Court on the same date.

36 The applicants request the Court to:

1. *Declare this appeal admissible and well founded.*

2. *Declare ESA's decision of 9 November 2021 in case number 84045 void.*

3. *Declare that the Subsidy Scheme is new aid and that the Collecting Stations have been receiving unlawful aid at least since 2002 and ask ESA to quantify the amount of unlawful aid.*

4. *Order ESA to cover the costs of G. Modiano Limited and Standard Wool (UK) Limited.*

5. *Take such other or further measures as justice may require.*

37 On 21 March 2022, ESA lodged an application for a decision on the admissibility of the action as a preliminary matter pursuant Article 133(1) of the Rules of Procedure of the EFTA Court ("RoP"). ESA requested the Court to dismiss the application as inadmissible, and to order the applicants to pay the costs of the proceedings.

38 On 22 April 2022, the applicants submitted a statement on ESA's application for a decision on admissibility, pursuant to Article 133(3) RoP. The statement was registered at the Court the same day.

39 On 26 April 2022, the Court decided, pursuant to Article 133(5) RoP, to reserve its decision on ESA's application for the final judgment.

40 On 25 May 2022, ESA submitted a statement of defence pursuant to Article 133(6) RoP, which was registered at the Court on the same day.

41 In its defence, ESA requests the Court to:

1. *Dismiss the Application as inadmissible and in the alternative unfounded;*

2. *order the applicants to pay the costs of the proceedings.*

42 On 27 June 2022, the applicants submitted their reply. On 26 July 2022, ESA submitted its rejoinder.

43 On 29 July 2022, the Norwegian Government submitted written observations pursuant to Article 20 of Protocol 5 to the SCA on the Statute of the EFTA Court ("the Statute").

44 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and pleas and arguments of the parties, which are mentioned or discussed in the following only insofar as it is necessary for the reasoning of the Court.

V Findings of the Court

Preliminary remarks

45 The applicants request the annulment of the contested decision for which the Court has jurisdiction according to Article 36 SCA. Insofar as the applicants request the Court to declare that: (i) the subsidy scheme is new aid, and that the wool collecting stations have been receiving unlawful aid at least since 2002, and (ii) ask ESA to quantify the amount of unlawful aid; the Court observes that there is no legal basis for this kind of declarations or orders sought.

46 ESA, supported by the Norwegian Government, argues that the present action for annulment is inadmissible since the applicants, first, are, in the particular circumstances of this case, no longer protected by Article 61(1) EEA, second, have no standing to challenge the merits of the contested decision as they are not individually concerned by it, third, have not established that they are an interested party within the meaning of Article 1(h) of Part II of Protocol 3 SCA, and fourth that the procedure for review of existing aid is not challengeable.

47 The applicants submit that their action is admissible.

48 It follows from case law that the Court is entitled to assess, according to the circumstances of each case, whether the proper administration of justice justifies the dismissal of the action on the merits without first ruling on its admissibility (compare inter alia the judgments in *Telefónica de España and Telefónica Móviles España* v *Commission*, T-151/11, EU:T:2014:631, paragraph 34 and *Achemos Grupė and Achema* v *Commission*, T-417/16, EU:T:2019:597, paragraphs 32 to 33 and case law cited).

49 In the circumstances of the present case, the Court considers that, in the interests of procedural economy, the substance of the action should be examined at the outset, without first ruling on the admissibility of the action, since the action is, in any event, unfounded, for the reasons set out below.

Substance

50 The applicants seek the annulment of the contested decision based on four pleas in law. The applicants assert that (i) ESA erred in law and erred in its assessment when concluding that the subsidy scheme constitutes existing aid; (ii) ESA failed to take into account all relevant information submitted by the applicants in their complaint and their letter to ESA of 25 October 2021, and that ESA breached its duty to state reasons as the contested decision is not sufficiently reasoned; (iii) ESA failed to investigate and assess

to what extent the wool collecting stations received unlawful aid; and (iv) ESA failed to investigate and assess the adverse competitive effects of the subsidy scheme.

51 Before the Court examines the first plea, it is appropriate to recall the rules governing alterations to existing aid schemes.

52 Under Article 62(1) EEA, the compatibility with the EEA Agreement of all existing systems of State aid in the territories of the Contracting Parties shall be subject to constant review. The notion of existing aid is under Article 1(b)(i) of Part II of Protocol 3 SCA, inter alia, defined as all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA States. That is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement (see Joined Cases E-17/10 and E-6/11 *Liechtenstein and VTM Fundmanagement* v *ESA* [2012] EFTA Ct. Rep. 114, paragraph 93).

53 Furthermore, according to Article 1(c) of Part II of Protocol 3 SCA, the alteration of existing aid gives rise to new aid (compare the judgment in *Namur-Les assurances du crédit*, C-44/93, EU:C:1994:311, paragraph 13 and the case law cited). In this regard, the Court recalls that measures taken after the entry into force of the EEA Agreement to grant or alter aid, whether the alterations relate to existing aid or to initial plans notified to ESA, must be regarded as new aid (see Case E-14/10 *Konkurrenten.no AS* v *ESA* [2011] EFTA Ct. Rep. 266, paragraph 55 and case law cited).

54 The determination of whether a measure constitutes aid and, having regard to the different regimes governing recovery, whether aid is new or existing cannot depend upon a subjective assessment by ESA. The mere fact that for an admittedly long period ESA does not open an investigation into a State measure cannot in itself confer on that measure the objective nature of existing aid, that is, if indeed it constitutes aid (see *Liechtenstein and VTM Fundmanagement* v *ESA*, cited above, paragraph 94 and case law cited).

55 Accordingly, the question of whether a State measure qualifies as existing aid or as new aid must be resolved without reference to the time which has elapsed since the measure was introduced and independently of any previous administrative practice of ESA (see *Liechtenstein and VTM Fundmanagement* v *ESA*, cited above, paragraph 95 and case law cited).

56 The Court notes that pursuant to Article 4 of the Implementing Decision, not every alteration of existing aid is necessarily new aid. Alterations of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure are not to be regarded as alterations to existing aid. In order to qualify as new aid, an alteration to existing aid must be substantial (compare the judgment in *Verband Deutscher Alten- und Behindertenhilfe and CarePool Hannover* v *Commission*, T-69/18, EU:T:2021:189, paragraph 189 and case law cited).

57 In addition, it is only the alteration as such that constitutes new aid. Accordingly, it is only where the alteration affects the actual substance of the original scheme that it is

transformed into a new aid scheme. On the other hand, an alteration does not affect the actual substance of the original scheme where the new element is clearly severable from the original scheme (compare the judgment in *Verband Deutscher Alten- und Behindertenhilfe and CarePool Hannover* v *Commission*, cited above, paragraph 190 and case law cited).

58 The applicants contend that it may be inferred from *Namur-Les assurances du crédit*, cited above, that the mere fact that the 2008 General Regulation replaced the original wool subsidy scheme sufficed to render the 2008 General Regulation an alteration of the original regime. Thus, changes to the legal and administrative basis of an aid scheme should be considered to be new aid even if in substance the scheme continues to be operated in a similar way.

59 That contention must be rejected. *Namur-Les assurances du crédit*, cited above, paragraph 28, outlines the importance of having regard to the underlying legal provisions when considering whether an existing aid scheme has been altered.

60 In the case of aid existing prior to the entry into force of the EEA Agreement, the significance of the alteration will have to be assessed by reference to the purport of the aid itself, its terms and its limits. In doing so, it is necessary to examine whether those changes affected the constituent elements of that system of the aid measure, such as the class of beneficiaries, the objective pursued by the aid, the public service task assigned to the beneficiaries and the source or, substantially, the amount of the aid (compare the judgments in *Rittinger and Others*, C-492/17, EU:C:2018:1019, paragraphs 60 to 63 and *Verband Deutscher Alten- und Behindertenhilfe and CarePool Hannover* v *Commission*, cited above, paragraph 191 and case law cited).

61 The present case must be examined in the light of those principles.

First plea

62 The Court will begin by examining the first plea which the Court understands as seeking the annulment of the contested decision on the basis that the wool subsidy scheme in question does not constitute existing aid. The applicants' first plea can be broken down, in essence, into five grounds of objection.

63 First, they maintain that before the 2002 amendment of Section 2 of the 1997 Regulation, the scheme also allowed the wool collecting stations to receive subsidies for their operational costs, and that the removal of the wording relating to the system of investment aid was a substantive change. The applicants argue that this changed not only the identity of the beneficiaries, but also could have affected the compatibility assessment of the aid.

64 Second, the applicants argue that the acquisition of Curtis Wool by Nortura in 2007–2008 was a significant change in the market which greatly expanded the capability for the subsidies to have adverse effects on competition outside Norway.

65 Third, the applicants maintain that additional changes were made to the scheme with the 2007 Circular.

66 Fourth, the applicants contend that the reform of the scheme by the introduction of the 2008 General Regulation brought with it a change to the existing scheme involving new aid. In the applicants' view, the 2008 General Regulation represented a fundamental change in the legal basis and framework of the scheme whereby the operation of the scheme was placed at the discretion of the Norwegian Agricultural Agency and the outcome of the annual agricultural negotiations as part of the Agricultural Agreement. This, the applicants maintain, effectively meant a change from legally binding system in which beneficiaries were entitled to some level of subsidy to a system where beneficiaries had no legally-binding right to any subsidy at all. In this regard, the applicants submit that it cannot be decisive for ESA's classification of an aid scheme how the scheme has been operated, as long as the actual legal basis and framework has undergone substantial changes.

67 Fifth, the applicants argue that the removal of the five poorest quality grades from the scheme in 2017 altered the scope of application of the subsidies.

68 ESA submits that the first plea should be dismissed. ESA argues that the applicants are merely making unsubstantiated allegations. Furthermore, the alterations invoked by the applicants are not substantial. ESA, supported by the Norwegian Government, submits that the 2008 General Regulation, coupled with circulars and an unchanged systematic administrative practice, has not had the effect of turning the scheme into a new aid scheme. This consolidation of several regulations concerning several subsidy systems constitutes a purely formal amendment to the legal basis of the scheme.

69 ESA adds that the mere fact that the Norwegian Agricultural Agency has been given the power to control the framework for the scheme by issuing circulars cannot constitute an amendment of the scheme if that power has not been used to implement substantial changes to the scheme. In ESA's view, the conferral of such powers is a purely administrative change that does not turn the existing aid scheme into new aid.

70 In the present case, it is necessary for the Court to verify whether the developments gave rise to a substantial alteration to the aid scheme established by the 1993 Regulation.

71 The Court observes that the objective pursued by the aid scheme remains unchanged, since the creation of the 1993 Regulation, which was intended to contribute to the income for sheep farmers.

72 First, regarding the applicants' arguments that, prior to 2002, the wool collecting stations were entitled to have their operational costs covered under the scheme, they have failed to demonstrate that such costs were actually covered by the aid scheme. That Section 2, second paragraph of the 1997 Regulation (prior to the amendment in 2002) stated that "[o]perating- and capital costs shall be covered by revenues from the sale of wool and subsidies" does not demonstrate that operational costs were in fact

covered by the aid scheme. ESA stated in their defence that operating costs were never granted under the aid scheme, even prior to 1992, when wool collecting stations were eligible for investment aid. As a result, there was no substantive change in relation to the operating costs and consequently no change of beneficiaries.

73 Second, regarding the argument relating to the acquisition of Curtis Wool by Nortura in 2007–2008, it is settled case law that, as set out in the contested decision, the question of whether a measure constitutes new or existing aid must be made by reference to the provisions providing for the aid and not at the level of the beneficiaries (compare inter alia the judgment in *Namur-Les assurances du crédit*, cited above, paragraph 28). The acquisition of Curtis Wool by Nortura is not a structural amendment of the aid scheme at issue. In that regard, as correctly found by ESA, a change in market conditions is not of itself capable of amounting to an alteration to existing aid.

74 Third, as to the amendments contained in the 2007 Circular, the Court recalls that, in accordance with Article 19 of the Statute and Article 101(1)(c) RoP, an application must contain the pleas in law on which it is based. Although specific points in the text of the application can be supported and completed by references to specific passages in the documents attached, a general reference to other documents cannot compensate for the lack of essential information in the application itself, even if those documents are attached to the application. It is not for the Court to seek and identify in the annexes the pleas and arguments on which the action is based, since the annexes have a purely evidential and instrumental purpose (see Case E-12/20 *Telenor ASA and Telenor Norge AS* v *ESA*, judgment of 5 May 2022, paragraph 87 and case law cited).

75 With regard to the changes contained in the 2007 Circular, the applicants have only stated that further changes have been made to the aid scheme, without identifying the changes and outlining why these should be considered material changes of the aid scheme. In paragraphs 13 and 42 of the application, the applicants merely referred to an annex to their complaint for an overview of all changes made in this respect. Therefore, the application does not comply with the necessary legal requirements in this regard.

76 Fourth, the applicants contend that the 2008 General Regulation, by complementing the system with circulars issued by the Norwegian Agricultural Agency turned the existing aid scheme into a new aid scheme. The Court observes that in its contested decision, ESA referred to its assessment in paragraph 60 of its letter to the applicants of 26 May 2021 noting that that change did not constitute a substantial alteration, since the aid scheme's substance remained unchanged and did not affect the rights of the beneficiaries (compare to that effect the judgment in *Eco Fox*, Joined cases C-915/19 to C-917/19, EU:C:2021:887, paragraphs 58 and 59). Indeed, the Court observes that the purpose of granting the financial support, the nature of the activities and the class of beneficiaries have not, in essence, changed since the adoption of the 1993 Regulation.

77 Fifth, the applicants' argument that the removal of the five poorest quality wool grades from the scheme in 2017 altered the scope of application of the subsidies cannot succeed. Even if, as a result of the redefinition of the criteria for the award of the aid, certain beneficiaries were to receive less while other beneficiaries were to have their

subsidies increased, this does not call into question the aim of the aid scheme and does not affect the constituent elements of that scheme (compare to that effect the judgment in *Eco Fox*, cited above, paragraphs 56 and 58).

78 Lastly, it must be held that the overall analysis presented by the applicants does not support the conclusion that there has been an alteration affecting the substance of the aid scheme. It is apparent from an examination of the relevant regulatory provisions and the development of those provisions between 1 January 1994 and the day on which the contested decision was adopted, that the alterations to the legal bases were of a purely formal or administrative nature, inasmuch as they did not substantially alter the constituent elements of the aid scheme, such as, inter alia, the amount of the support granted to the beneficiaries. That is the case, inter alia, of the 2008 General Regulation, which did not alter the beneficiaries of the aid scheme, the objective of the support, the source of the aid or, substantially, the amount of the aid.

79 In the light of the documentary evidence submitted to the Court, it has not been demonstrated that the regulatory changes entailed a substantial alteration to the scheme since it was instituted in 1993. Therefore, the first plea in law must be dismissed as unfounded.

Second plea

80 In the second plea, the applicants allege that ESA failed to take into account all relevant information submitted in their complaint and their letter to ESA of 25 October 2021, and that ESA thereby breached its duty to state reasons. In particular, the applicants maintain that the statement of reasons for the contested decision is lacking or is inadequate in connection with why ESA is of the opinion that the amendments made to the aid scheme's legal framework, since its inception, are of a purely formal or administrative nature.

81 First, the applicants maintain that ESA should have investigated and addressed the fact that although the wool collecting stations' operational costs were formally removed from the aid scheme in 2002, the wool collecting stations remained – and continue to be – beneficiaries of the aid scheme. Second, the applicants claim that ESA failed to investigate sufficiently the pricing structure arranged by the wool collecting stations and the opacity of their costs structure. Third, the applicants claim that ESA has not sufficiently investigated or assessed the administration of the scheme in order to draw conclusions concerning whether the aid now constituted "new aid" as a result of the alterations. Fourth, the applicants maintain that ESA has not addressed the issue that the payment of the funds to the wool collecting stations to disperse, at their discretion, under the scheme acts as a barrier to competition. For a substantive discussion of the arguments in their first, second and fourth submissions, the applicants refer to other documents, primarily to their complaint.

82 The Court notes that in their second plea, the applicants essentially put forward various arguments asserting an infringement of the obligation to state reasons or insufficient investigation, while others concern errors of assessment as regards the administration

of the scheme. Furthermore, the application's reference to the lack of, or inadequacy of, the statement of reasons is intrinsically linked to considerations concerning the lack of assessment in the contested decision. Finally, in addition to these considerations, the application emphasises, in the headings connected with the present plea, the lack of an assessment carried out by ESA of the information submitted by the applicants.

83 The Court observes that the applicants' arguments concerning the alleged error of fact and assessment relate to the merits and not to the statement of reasons of the contested decision. Since the Court has dealt with the merits of the contested decision in the context of the first plea, it will confine itself in this plea to examining the applicants' arguments alleging an infringement of the obligation to state reasons and the lack of an assessment carried out by ESA of the information that they had submitted.

(1) Alleged infringement of the obligation to state reasons

84 The applicants submit, with express reference to Article 16 SCA, that ESA infringed its obligation to state reasons. As regards the obligation to state reasons laid down in Article 16 SCA, it must be held that the applicants' arguments are not distinct from those which refer to the merits of the reasons set out in the contested decision. The Court recalls that the statement of reasons required under Article 16 SCA must be appropriate to the measure in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court to carry out its review (see Case E-21/13 *FIFA* v *ESA* [2014] EFTA Ct. Rep. 854, paragraph 89).

85 Accordingly, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question of whether the statement of reasons meets the requirements of Article 16 SCA must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see Joined Cases *E-4/10, E-6/10 and E-7/10 Liechtenstein and Others* v *ESA* [2011] EFTA Ct. Rep. 16, paragraph 172, and the case law cited). In particular, ESA is not obliged to adopt a position on all the arguments relied on by the parties concerned, instead it is sufficient if it sets out the facts and the legal considerations having decisive importance in the context of the decision (see *Liechtenstein and VTM Fundmanagement* v *ESA*, cited above, paragraph 162 and compare the judgment in *Région Île-de-France* v *Commission*, T-292/17, EU:T:2019:532, paragraph 42 and case law cited).

86 In the present context, a decision must simply set out the reasons based on which ESA takes the view that it is not faced with serious difficulties in assessing that the aid scheme constitutes existing aid which is compatible with the internal market. Even a succinct statement of reasons must be regarded as sufficient for the purpose of satisfying the requirement laid down in Article 16 SCA if it discloses in a clear and unequivocal

fashion the reasons why ESA considered that it was not faced with serious difficulties. The question of whether ESA's reasoning is well founded is a separate matter (compare the judgments in *Austria* v *Scheucher-Fleisch and Others*, C-47/10 P, EU:C:2011:698, paragraph 111, and *Hamr - Sport* v *Commission*, T-693/14, EU:T:2016:292, paragraph 54).

87 The applicants submit that the contested decision is vitiated by an inadequate statement of reasons as regards the categorisation of the disputed scheme as being of a purely formal or administrative nature.

88 ESA stated in the contested decision that, in accordance with Article 4(1) of the Implementing Decision, it was required to consider whether the alteration of the existing funding scheme, brought about by the amendments, was substantial. To that end, ESA observed that within the meaning of that provision, purely formal or administrative changes to an aid scheme do not lead to the reclassification of existing aid as new aid.

89 In its letter of 26 May 2021, referred to in the contested decision, ESA set out its understanding of the method which must be followed with regard to the treatment of alterations to existing aid schemes. ESA stated, in paragraph 52 of this letter, that adjustments which did not affect the evaluation of the compatibility of an aid scheme could not affect the substance of the aid either and therefore did not change the classification of the scheme as existing aid.

90 Next, the contested decision set out ESA's understanding of the method which must be followed with regard to the treatment of alterations to existing aid schemes. Referring to the judgment in *Eco Fox*, cited above, paragraphs 51, 58 and 59, ESA maintained that not just any change to existing aid is capable of turning it into new aid. It is rather changes to the constituent elements of the scheme, which could affect the compatibility of the aid with the internal market, that have the potential to change existing aid into new aid.

91 Referring to paragraphs 54 and 55 of ESA's letter of 26 May 2021, ESA explained that from 1992 onwards the operating costs were covered, and are still covered, by the wool collecting stations' own operating budgets, which include both the revenues from the sale of wool and the wool subsidies, paid to the wool collecting stations as the aid intermediary. Therefore, ESA observed that there was no substantive change in relation to the operating costs and consequently no change of beneficiaries. Furthermore, in the contested decision ESA addressed the claim concerning the pricing structure by referring to paragraph 46 of its letter of 26 May 2021. ESA conceded there that Fatland and Norilia may benefit more or less indirectly from the subsidies by receiving an indirect advantage or benefitting from a secondary economic effect of the subsidies, but concluded that this has no bearing on the existence of an aid scheme.

92 It is apparent from all the considerations set out above that in the contested decision ESA provided reasons to the requisite legal standard for its assessment with regard to the treatment of alterations to existing aid schemes. The question of whether ESA's

reasoning was well founded, was examined by the Court in the context of the first plea. Therefore, the plea alleging infringement of Article 16 SCA must be rejected.

(2) Allegation that ESA failed to take into account all relevant information submitted by the applicants in the complaint and their letter to ESA of 25 October 2021

93 The applicants submit that a number of their arguments put forward in the complaint have not been sufficiently addressed by ESA in the contested decision.

94 Apart from the reference to Article 16 SCA, it remains unclear whether the applicants allege with their second plea an infringement of an essential procedural requirement, or an infringement of the EEA Agreement or of any rule of law relating to its application according to the first paragraph of Article 36 SCA.

95 ESA identified and relied on in its defence, inter alia, Article 10(1) of Part II of Protocol 3 SCA. Pursuant to that provision, ESA must examine without delay any information in its possession concerning allegedly unlawful aid regardless of the information's source. The examination of a complaint, on the basis of that provision, gives rise to the initiation of the preliminary examination procedure under Article 1(3) of Part I of Protocol 3 SCA and obliges ESA to examine, immediately, the possible existence of aid and its compatibility with the functioning of the EEA Agreement (compare the judgments in *NDSHT* v *Commission*, C-322/09 P, EU:C:2010:701, paragraph 49 and *Flašker* v *Commission*, T-392/20, EU:T:2022:245, paragraph 30).

96 Article 13(1) of Part II of Protocol 3 SCA, which is applicable to the examination of a complaint concerning allegedly unlawful aid, requires ESA to close that preliminary examination phase by adopting a decision pursuant to Article 4(2), (3) or (4) of Part II of Protocol 3 SCA. Therefore, the case law concerning the notified aid procedure also applies in the context of the examination of existing aid. It follows from Article 4(4) of Part II of Protocol 3 SCA that ESA shall decide to initiate the formal investigation procedure pursuant to Article 1(2) of Part I of that Protocol after such preliminary examination if doubts are raised as to the compatibility with the functioning of the EEA Agreement of a particular measure. ESA is thus obliged to initiate the formal investigation procedure if it is unable to overcome all doubts or difficulties concerning a measure's compatibility with the EEA Agreement (see Case E-4/21, *Sýn hf.* v *ESA*, judgment of 1 June 2022, paragraph 58 and case law cited).

97 However, by classifying the aid scheme as existing aid, ESA applies the procedure laid down in Article 1(1) of Part I of Protocol 3 SCA to keep it under constant review. This type of decision is, by implication, also a refusal to initiate the formal investigation procedure pursuant to Article 1(2) of Part I of Protocol 3 SCA (see to that effect Case E-19/13 *Konkurrenten.no* v *ESA*, [2015] EFTA Ct. Rep. 52, paragraph 108 and case law cited, and compare the judgments in *NDSHT* v *Commission*, cited above, paragraph 52 and *Flašker* v *Commission*, cited above, paragraph 33).

98 The notion of the existence of doubts or serious difficulties is objective and relates to the circumstances in which the contested decision was adopted and to its content. The

Court must compare the assessment of facts and law that ESA relied on to close the preliminary investigation, with the information available to ESA at the time of the contested decision (see *Sýn hf.* v *ESA*, cited above, paragraph 59). ESA is required to conduct a diligent and impartial examination of the contested measures, so that it has at its disposal, when adopting the final decision establishing the existence and, as the case may be, the incompatibility or unlawfulness of the aid, the most complete and reliable information possible for that purpose (see *Sýn hf.* v *ESA*, cited above, paragraph 63).

99 It should be observed that, in the context of a preliminary examination, it may be necessary for ESA, where appropriate, to go beyond a mere examination of the matters of fact and law brought to its knowledge. However, it cannot be inferred from that obligation that it is for ESA, on its own initiative and in the absence of any evidence to that effect, to seek all information which might be connected with the case before it, even where such information is in the public domain (see *Sýn hf.* v *ESA*, cited above, paragraph 63 and case law cited).

100 This follows from the nature of the preliminary examination, which is intended to allow ESA to form a *prima facie* opinion. This is also consistent with settled case-law, according to which, under the preliminary examination procedure, ESA may generally confine itself to taking into account the information provided by the EFTA State at issue – if necessary, following an additional request from ESA (compare the judgment in *Secop* v *Commission*, T-79/14, EU:T:2016:118, paragraph 76).

101 However, ESA must exercise its power under Article 5(1) and (2) of Part II of Protocol 3 SCA to request additional information from the EFTA State concerned if that State provides incomplete, inaccurate or misleading information.

102 In its defence, ESA submits that sufficient reasoning was provided in the contested decision and that there was nothing to indicate that the information it received from the Norwegian authorities on this issue was not accurate. ESA submitted that it has complied with its obligations, as it assessed the information received from the applicants concluding that no unlawful aid was involved, since the scheme constituted existing aid.

103 It is the applicants that bear the burden of proof that ESA should have had doubts or serious difficulties concerning the compatibility of the aid scheme with the functioning of the EEA Agreement (see *Sýn hf.* v *ESA*, cited above, paragraph 60 and case law cited). However, the applicants' submissions under the second plea do not demonstrate to the requisite legal standard in what way ESA's examination of facts was insufficient following its receipt of information from the applicant.

104 As mentioned in paragraph 74, in accordance with Article 19 of the Statute and Article 101(1)(c) RoP, an application must contain the pleas in law on which it is based and a general reference to other documents cannot compensate for the lack of essential information in the application itself. With regard to the applicants' submissions in paragraphs 54 to 58 of the application, the applicants have only stated that: (i) the Norwegian government has not actively ensured that the wool collecting stations do not

benefit from the aid scheme; (ii) that the pricing structure and opacity of the costs structure has masked the portion of the subsidies retained by the wool collecting stations; (iii) that ESA's analysis of the amendments to the aid scheme is superficial and acritical; and (iv) that the way in which the aid is dispersed by the wool collecting stations acts as an insurmountable barrier to entry for others to enter the market and compete.

105 As the Court has noted, for a substantive discussion of the arguments in their first, second and fourth submissions, the applicants refer to other documents, primarily to their complaint. Therefore, the application does not comply with the necessary legal requirements in this regard. The third submission that ESA should have collected concrete information concerning how the aid scheme is actually administered in order to assess whether the aid scheme has been altered does not indicate any incorrect factual basis in ESA's assessment. The Court has addressed, and dismissed, the matter of whether the aid scheme has been altered under the first plea.

106 Accordingly, the second plea must be dismissed.

Third plea

107 By their third plea, the applicants claim that ESA failed to investigate and to assess to what extent the wool collecting stations received unlawful and incompatible aid.

108 It must be observed that the Court has dealt with the merits of the contested decision in the context of the first plea in law where it assessed the aid scheme and concluded that ESA had not erred in law as it qualified the aid as an existing aid scheme, and that consequently no unlawful aid was involved. Therefore, the third plea must be dismissed.

Fourth plea

109 By their fourth plea, the applicants contend that ESA failed to investigate and to assess the alleged adverse competitive effects of the aid scheme.

110 The applicants base the fourth plea on the assertion that the operators of the wool collecting stations derive a competitive advantage from the aid scheme that distorts competition. The applicants submit that Norilia and Fatland obtain high quality Norwegian wool at little to no cost, and in any case significantly below market value. As mentioned above, in accordance with Article 19 of the Statute and Article 101(1)(c) RoP, an application must contain the pleas in law on which it is based and a general reference to other documents cannot compensate for the lack of essential information in the application itself. The applicants, however, did not demonstrate in their application to the requisite legal standard sufficient factual indications for the alleged distortion of the competition that would justify objective doubts or serious difficulties concerning the compatibility of the aid scheme with the functioning of the EEA Agreement and thereby discharge their burden of proof.

111 Therefore, the fourth plea must be dismissed.

112 It follows from all of the foregoing that the action must be dismissed in its entirety.

VI Costs

113 Pursuant to Article 121(1) RoP, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since ESA has requested that the applicants be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs. The costs incurred by the Norwegian Government are not recoverable.

On those grounds,

THE COURT

hereby:

1. **Dismisses the action in its entirety;**

2. **Orders G. Modiano Limited and Standard Wool (UK) Limited to bear their own costs and to pay jointly and severally the costs incurred by the EFTA Surveillance Authority.**

Páll Hreinsson Bernd Hammermann Ola Mestad

Delivered in open court in Luxembourg on 24 January 2023.

Ólafur Jóhannes Einarsson
Registrar

Bernd Hammermann
Acting President