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Judgment in Case E-12/23 *Norwegian Air Shuttle ASA v the Norwegian State, represented by the Ministry of Climate and Environment*

OBLIGATION TO SURRENDER EMISSIONS ALLOWANCES IN LIGHT OF THE RESTRUCTURING OF AN INSOLVENT COMPANY

In a judgment delivered today, the Court answered a question referred to it by Oslo District Court (*Oslo tingrett*) concerning the interpretation of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (“the Directive”).

In the main proceedings Norwegian Air Shuttle ASA (“NAS”) challenges a decision imposing on NAS an administrative penalty of NOK 399 685 275 for failure to surrender greenhouse gas emissions allowances. Prior to the decision at issue being taken, NAS had offered to settle the obligation incumbent on it to surrender allowances for emissions by way of a dividend as part of a compulsory debt settlement in connection with its restructuring. The Norwegian Environment Agency declined to receive such a dividend settlement, on the grounds that the obligation to surrender allowances could be settled only by surrendering allowances that fully covered the total emissions for 2020.

By its question, the referring court asked whether Article 12(2a) of the Directive precludes national legislation that provides that the obligation to surrender emissions allowances may be settled by dividend in a compulsory debt settlement in connection with restructuring of an insolvent company. The Court found that the purpose of the Directive is to establish an emission allowance trading system which seeks to reduce greenhouse gas emissions into the atmosphere to a level that prevents dangerous anthropogenic interference with the climate system and the ultimate objective of which is protection of the environment. The overall scheme of the Directive is based on the strict accounting of the issue, holding, transfer and cancellation of greenhouse gas emission allowances. As such, accurate accounting is inherent in the very purpose of the Directive.

The Court considered that one of the pillars on which the system established by the Directive is built is the obligation on operators to surrender, in order to have them cancelled, a number of greenhouse gas emission allowances equal to their emissions during the preceding calendar year and that that obligation must be applied particularly strictly. Failure to surrender allowances would undermine the requirements as to strict accounting, accuracy and correlation between actual emissions and those authorised under the Directive. Accordingly, the Court held that Article 12(2a) of the Directive must be interpreted as precluding national legislation from providing that the obligation to surrender emissions allowances may be settled by dividend in a compulsory debt settlement in connection with the restructuring of an insolvent company.

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.