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Judgment in Case E-12/16 *Marine Harvest ASA v EFTA Surveillance Authority*

ESA IS NOT COMPETENT TO PERFORM SURVEILLANCE OF STATE AID IN THE FISHERIES SECTOR

In a judgment delivered today, the Court dismissed an application from Marine Harvest ASA (“Marine Harvest”) seeking the annulment of a decision by the EFTA Surveillance Authority (“ESA”) and a declaration that ESA has the competence to carry out surveillance of State aid in the fisheries sector.

Marine Harvest submitted a complaint to ESA concerning alleged State aid to the Norwegian fisheries sector. In its complaint, Marine Harvest inter alia contended that ESA is competent to examine State aid in that sector, notwithstanding former decisions of ESA to the contrary. In response to the complaint, ESA adopted a decision concluding that State aid in the fisheries sector is excluded from its competence and that such aid is to be assessed by the Contracting Parties to the EEA Agreement. With that, ESA closed the case. Subsequently, Marine Harvest lodged the present application.

The Court noted that Article 8(3) EEA, on the scope of the EEA Agreement, does not include fish and other marine products “unless otherwise specified”. The Contracting Parties wished to maintain their freedom to regulate such products unaffected by the rules in the EEA Agreement. Fish and marine products are regulated by Protocol 9 EEA. Article 4(1) of that protocol lays down an obligation to abolish State aid that distorts competition in the fisheries sector.

The Court stated that ESA’s surveillance competence under the EEA Agreement is not designed in a fully uniform fashion. When assessing ESA’s competence in the case at hand, it was therefore essential to look at the specific provisions on State aid surveillance. Neither Article 1 of Protocol 26 EEA nor Article 24 of the Surveillance and Court Agreement refers to Protocol 9 EEA. The Court found that the wording suggests that those two provisions are intended to be exhaustive with regard to ESA’s competence to perform surveillance of State aid. The lack of reference to Protocol 9 EEA reflects the intention of the Contracting Parties not to equip ESA with powers to perform State aid surveillance in the fisheries sector.

The Court noted that the obligations laid down in Article 4 of Protocol 9 EEA rest upon the Contracting Parties and the wording makes clear that the responsibility of enforcement lies with them. The Court found further support for this conclusion in the Joint Declaration on the agreed interpretation of Article 4(1) and (2) of Protocol 9 EEA and Article 6 of that protocol.

Since ESA is not authorised to perform surveillance of State aid in the fisheries sector, it did not infringe its obligations under the EEA Agreement. The contested decision was thus based on a correct interpretation of the relevant law. Accordingly, the application submitted by Marine Harvest was dismissed as unfounded.

The full text of the judgment may be found on the internet at: www.eftacourt.int.

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