

EFTA COURT

Action brought on 9 March 2011 by the VTM Fundmanagement AG against the EFTA Surveillance Authority

(Case E-6/11)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 9 March 2011 by VTM Fundmanagement AG, represented by Dr Michael Sánchez Rydelski, Rechtsanwalt, of Steptoe & Johnson LLP, Avenue Louise 240, BE-1050 Brussels, Belgium and Dr Hans-Michael Pott, Rechtsanwalt, of Sernetz Schäfer Rechtsanwälte, Berliner Allee 10, 40212 Düsseldorf, Germany.

The VTM Fundmanagement AG requests the EFTA Court to:

1. annul the EFTA Surveillance Authority's Decision No 416/10/COL of 3 November 2010 on the taxation of investment undertakings under the Liechtenstein Tax Act;
2. in the alternative, declare void Articles 3 and 4 of the EFTA Surveillance Authority's Decision No 416/10/COL of 3 November 2010, to the extent that they order the recovery of the aid referred to in Article 1 of that Decision; and
3. order the EFTA Surveillance Authority to pay the costs of the proceedings.

Legal and factual background and pleas in law adduced in support:

- The EFTA Surveillance Authority's Decision No 416/10/COL of 3 November 2010 declared that the aid measure implemented by the Liechtenstein authorities in favour of investment companies, and which were repealed with effect from 30 June 2006, were not compatible with Article 61(1) of the EEA Agreement.
- The EFTA Surveillance Authority further decided that the alleged aid constituted unlawful aid subject to recovery from investment companies receiving it from 15 March 1997 until the date in which beneficiaries last benefitted from the tax exemptions following their repeal in 2006.

- The applicant claims that the EFTA Surveillance Authority:
 - incorrectly applied Article 61(1) of the EEA Agreement;
 - erred in ordering the recovery of the alleged aid;
 - did not provide adequate reasoning as required by Article 16 of the Surveillance and Court Agreement.