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Judgment in Case E-2/05 *EFTA Surveillance Authority v The Republic of Iceland*

State aid for International Trading Companies in Iceland must be terminated and recovered

In a judgment delivered today, the Court decided its first case brought before it under Article 1(2) of Protocol 3 to the Surveillance and Court Agreement on State aid. Under that Article, the EFTA Surveillance Authority (ESA) is entitled to take a Contracting Party before the Court if it does not comply with an ESA decision obliging it to abolish and recover a State aid scheme found incompatible with the functioning of the EEA Agreement.

The case before the Court concerned the non-compliance of ESA's decision on the legislation introducing the so-called International Trading Companies in Iceland. These companies were especially designed for offshore trading and benefited from various tax advantages such as a lower corporate income tax compared to other companies. In its decision in 2004, ESA held that these advantages constituted State aid contrary to Article 61 of the EEA Agreement. At the same time, Iceland was ordered to terminate the tax measures, recover the aid from the beneficiary companies and to inform ESA of the steps taken within two months. In its application that led to today's judgment, ESA maintained that Iceland had not fulfilled these obligations.

The Court sustained the application and declared that the Republic of Iceland had failed to fulfil its obligations in regards to the decision. As ESA's decision was not challenged before the Court, that decision became binding and Iceland was consequently prevented from putting forward arguments relating to the legality of the decision. Having said that, the Court however held that under exceptional circumstances, namely in cases of serious and manifest defects of an obvious gravity, a decision may be considered non-existent. However, the decision at stake did not suffer from flaws of sufficient gravity. Neither excessive length of procedure, lack of competences nor disregard of legitimate expectations, as alleged by Iceland could substantiate a finding to the effect that the decision was non-existent.

Furthermore, the Court held that the applicability of so-called "De minimis" rules in Iceland was not sufficient to terminate the aid scheme at issue. These rules allow for the granting of State aid below a certain threshold. In the Court's view, the mere existence of these rules in the Icelandic legal order "would not offer any guarantee that a *de minimis* ceiling would not be exceeded, nor that cumulation with other State aid would not occur." Finally, as regards Iceland's contention that it was absolutely impossible to implement ESA's decision, the Court held that difficulties in calculating the amount of money to be recovered and an alleged lack of guidance from ESA could not be equated to an absolute impossibility. In particular, ESA did not contravene its obligation under EEA law to loyally cooperate with the Member States in the case at issue.

The full text of the judgment may be found on the Internet at: www.eftacourt.lu.

This press release is not an official document. Please note that the Court may not comment on the case.