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Judgment in Case E-9/04 *The Bankers' and Securities' Dealers Association of Iceland v EFTA Surveillance Authority*

Decision not to raise objections to State aid scheme in favour of the Icelandic Housing Financing Fund annulled on procedural grounds

In a judgment delivered today, the EFTA Court considered a decision by the EFTA Surveillance Authority (“ESA”) not to raise objections to an Icelandic State aid scheme in favour of the Icelandic Housing Financing Fund (the “HFF”). The HFF, an institution wholly owned by the Icelandic State, provides mortgage-secured housing loans to residents in Iceland. ESA found that in funding and operating its loan system, the HFF benefits from State aid, *inter alia* certain State guarantees. By a decision of 11 August 2004, ESA decided not to raise objections to this State aid scheme as it was considered compatible with Article 59(2) EEA which allows for derogations from i.a. State aid rules in relation to so-called “services of general economic interest” provided certain criteria are fulfilled.

Pursuant to Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the “SCA”), the Bankers’ and Securities’ Dealers Association of Iceland applied for the decision to be annulled. In today’s judgment, the Court sustained the application.

ESA’s decision had been made on the basis of the preliminary examination provided for under Article 1(3) in Part I of Protocol 3 to the SCA. However, in the opinion of the Court, the State aid scheme in question had raised “doubts ... as to the compatibility with the functioning of the EEA Agreement” within the meaning of Article 4(4) in Part II of the Protocol – doubts which had not been overcome by means of the preliminary examination. Hence, ESA was under an obligation to initiate a formal investigation procedure as provided for under Article 1(2) in Part I of the Protocol before making a decision. This was not done and, for that reason, the Court annulled ESA’s decision.

The Court found that a service with the objectives of the HFF’s so-called “general loans” scheme may qualify as a service of general economic interest justifying State aid. However, certain specific features of the scheme give rise to “doubts ... as to the compatibility with the functioning of the EEA Agreement”. The “general loans” scheme is not limited to providing loans for the construction or purchase of dwellings that fulfill any particular criteria as to size or value etc. Neither is this lending scheme limited to assisting the borrower in financing his or her own dwelling. Further, the Court also found that there were “doubts” as to the identification of the relevant product market for the assessment of whether the lending scheme would affect the development of trade contrary to the interest of the Contracting Parties to the EEA Agreement.

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.