

EFTA COURT

Action brought on 20 September 2016 by Marine Harvest ASA against the EFTA Surveillance Authority

(Case E-12/16)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 20 September 2016 by Marine Harvest ASA, represented by Torben Foss, advokate and Kjetil Raknerud, advokate, Advokatfirmaet PricewaterhouseCoopers AS, Sandviksbodene 2A, P.O. Box 3984 Sandviken, NO-5835 Bergen.

The Applicant requests the EFTA Court to declare that:

- 1. The EFTA Surveillance Authority's decision in Case No. 79116 from 27 July 2016 is based on a wrongful interpretation of the relevant sources of law, and is consequently void.**
- 2. The EFTA Surveillance Authority does have the competence and obligation to perform surveillance of State aid to the fisheries sector, pursuant to Article 4(1) of Protocol 9 EEA, and is therefore obliged to assess the claims made by the Applicant through the formal complaint filed on 2 May 2016.**
- 3. The EFTA Surveillance Authority shall bear the costs of these proceedings.**

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

- The Applicant seeks the annulment of the EFTA Surveillance Authority's Decision in Case No. 79116 from 27 July 2016.
- Marine Harvest submits that ESA has the necessary competence to review whether aid to the production and marketing of fisheries and aquaculture products is compatible with the EEA Agreement, and to carry out surveillance, pursuant to Article 62 EEA, cf. Protocol 26 of the EEA Agreement, and further that ESA is obliged to carry out such surveillance pursuant to the same article.
- An essential element is the interpretation of Protocol 26 of the Agreement, which sets out the competences of the EFTA Surveillance Authority, but does not specifically refer to the fisheries and aquaculture

sectors. According to ESAs decision, the aforementioned list should be regarded as exhaustive.

- The applicant finds this interpretation to add a qualification to Protocol 26 that is not supported by the objectives and basic provisions of the Agreement, which the Protocol itself enumerates.