



ORDER OF THE PRESIDENT

31 March 2017

*(Intervention – Application by the Government of the Kingdom of Norway –
e-EFTACourt)*

In Case E-12/16,

Marine Harvest ASA, established in Bergen (Norway),

represented by Torben Foss and Kjetil Raknerud, advocates, acting as counsel,
Advokatfirmaet PricewaterhouseCoopers AS,

applicant,

v

EFTA Surveillance Authority,

represented by Carsten Zatschler, Maria Moustakali and Michael Sánchez Rydelski,
Members of the Legal & Executive Affairs Department, acting as Agents,

defendant,

APPLICATION pursuant to the second paragraph of Article 36 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice seeking the annulment of the EFTA Surveillance Authority's decision in Case No 79116 of 27 July 2016 on the basis of a wrongful interpretation of the relevant sources of law and documented facts and further seeking a declaration that the EFTA Surveillance Authority has the competence and obligation to perform surveillance of State aid in the fisheries sector, pursuant to Article 4(1) of Protocol 9 to the EEA Agreement, and that the EFTA Surveillance Authority's refusal to do so constitutes an infringement of Article 62(1) of the EEA Agreement,

THE PRESIDENT

makes the following

Order**I Main proceedings**

- 1 Marine Harvest ASA (“the applicant”) is one of the largest seafood companies in the world, and the world’s largest producer of Atlantic salmon. On 2 May 2016, the applicant lodged a formal complaint with the EFTA Surveillance Authority (“the defendant”) alleging that unlawful State aid was granted to the Norwegian fisheries sector by means of levies imposed on fish exporters and exported fish products. The relevant Ministry imposes these levies based on the Act relating to the Regulation of Exports of Fish and Fish Products (*Lov om regulering av eksporten av fisk og fiskevarer*, LOV-1990-04-27-9). The proceeds from the levies cover the costs of the Norwegian Seafood Council, a public company owned by the Norwegian Ministry of Trade, Industry and Fisheries.
- 2 By letter dated 27 July 2016, the defendant closed the case stating that it lacked the competence to carry out surveillance of State aid to the fisheries sector, pursuant to Article 4(1) of Protocol 9 to the EEA Agreement.
- 3 On 23 September 2016, the applicant lodged an application pursuant to the second paragraph of Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”), requesting the Court to order as follows:

1. The EFTA Surveillance Authority’s decision in Case No. 79116 on 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.

4 On 22 November 2016, the defendant lodged its statement of defence. The defendant asserts that the surveillance of State aid measures in the fisheries sector is not part of the EEA Agreement, and that the defendant is therefore not competent to handle the applicant's claims. The defendant requests the Court to:

1. Dismiss the Application as unfounded;

2. Order the Applicant to pay the costs of the proceedings.

5 On 20 and 25 January 2017, the European Commission, and the Government of Iceland, respectively lodged written observations at the Court's Registry. Both invite the Court to dismiss the application as unfounded.

II Application to intervene

6 On 25 January 2017, the Norwegian Government sought leave to intervene pursuant to Article 36 of Protocol 5 to the SCA on the Statute of the EFTA Court ("the Statute") and Article 89 of the Rules of Procedure ("RoP").

7 The Norwegian Government submits that, as notice of the application was published in the Official Journal of the European Union on 15 December 2016, its application is timely. It states that it wishes to support the form of order sought by the defendant to the extent that the defendant seeks dismissal of the application as unfounded.

8 The Norwegian Government submits that the decision adopted by ESA on 27 July 2016, in which ESA held that it lacked the competence to assess State aid in the fisheries sector, is valid and thus the application should be dismissed as unfounded.

9 In relation to the requirement pursuant to Article 89(1)(d) RoP for an address for service at the place where the Court has its seat, the Norwegian Government states that it does not have an address for service in Luxembourg and requests the Court to serve documents either to the address of its Agent, Mr Dag Sørli Lund, at the Ministry of Foreign Affairs in Oslo, or to the Norwegian Mission to the European Union in Brussels.

10 On 13 February 2017, the application to intervene was served on the parties in accordance with Article 89(2) RoP.

11 On 21 February 2017, the defendant submitted written observations on the application for leave to intervene. The defendant states that it welcomes the Kingdom of Norway's application and notes that, as an EFTA State, it is entitled to intervene as of right in the present proceedings pursuant to the first paragraph of Article 36 of the

Statute. The defendant states further that, as a consequence, it has no specific observations on the application at hand.

III Law

- 12 Pursuant to the first paragraph of Article 36 of the Statute, any EFTA State, the EFTA Surveillance Authority, the European Union and the European Commission may intervene in cases before the Court.
- 13 Article 89(1) RoP provides that an application to intervene must be made within six weeks of the publication of the notice referred to in Article 14(6) RoP. Notice of the action was published on 15 December 2016 in the EEA Section of the Official Journal of the European Union. Accordingly, the time limit for submission of an application to intervene was 26 January 2017.
- 14 The present application to intervene was lodged at the Court's Registry on 25 January 2017, and is therefore timely.
- 15 Article 89(1)(d) RoP requires that an application for intervention shall contain the intervener's address for service at the place where the Court has its seat. Article 89(1) RoP specifies further that Articles 32 and 33 RoP shall apply.
- 16 On 9 March 2017, the Decision of the Court on the lodging and service of procedural documents by means of e-EFTACourt (the "Decision") was published in the Official Journal of the European Union (OJ 2017 C 73, p. 18) pursuant to the second subparagraph of Article 32(5) RoP.
- 17 Pursuant to Article 9 thereof, the Decision entered into force on 10 March 2017.
- 18 Article 6 of the Decision provides:

Procedural documents, including judgments and orders, shall be served on the parties' representatives by means of e-EFTACourt where they have expressly accepted this method of service or, in the context of a case, where they have consented to this method of service by lodging a procedural document by means of e-EFTACourt.

Procedural documents shall also be served by means of e-EFTACourt on States which are parties to the Agreement on the European Economic Area, the EFTA Surveillance Authority and institutions, bodies, offices or agencies of the Union, insofar as they have accepted this method of service.

- 19 The first and third paragraphs of Article 7 of the Decision provide as follows:

The intended recipients of the documents served referred to in Article 6 shall be notified by email of any document served on them by means of e-EFTACourt.

...

Where a party is represented by more than one agent or lawyer, the time to be taken into account in the reckoning of time-limits shall be the time when the first request for access was made.

- 20 In the present case, the Norwegian Government is represented by two agents: Mr Dag Sørli Lund and Mr Ketil Bøe Moen. It is sufficient to note that Mr Dag Sørli Lund has registered for e-EFTACourt and therefore expressly accepted this method of service in accordance with Article 6 of the Decision. Consequently, all procedural documents, including judgment and orders, may be served via e-EFTACourt on the Norwegian Government in the present case.
- 21 In light of the above, the Kingdom of Norway is granted leave to intervene in the case in support of the first part of the form of order sought by the defendant.

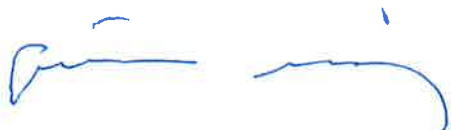
On those grounds,

THE PRESIDENT

hereby orders:

1. **The Kingdom of Norway is granted leave to intervene in Case E-12/16 in support of the first part of the form of order sought by the defendant and shall receive a copy of every document served on the parties.**
2. **Costs are reserved.**

Luxembourg, 31 March 2017.



Gunnar Selvik
Registrar



Carl Baudenbacher
President