

Case No: 70958
Event No: 665065
Dec. No: 159/13/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 24 April 2013

to close the case concerning existing state aid granted to Landsvirkjun and Orkuveita Reykjavíkur through unlimited state guarantees

(Iceland)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

The Agreement on the European Economic Area (the “EEA Agreement”), in particular to Articles 62 and Protocol 26 thereof,

The Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the “Surveillance and Court Agreement”), in particular to Article 24 thereof,

Article 1(1) of Part I and Article 19(1) of Part II of Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”),

WHEREAS:

- (1) By letter dated 26 September 2006 (Event No 280834), the Authority initiated the procedure on existing aid measures provided for in Article 17(2) of Part II of Protocol 3 with respect to certain measures in favour of electricity utilities in Iceland, thereby informing the Icelandic authorities of its preliminary view that the aforementioned measures involved existing state aid that was incompatible with the functioning of the EEA Agreement.
- (2) The measures assessed by the Authority were the unlimited state guarantees provided by the Icelandic State and the City of Reykjavík to the publicly owned electricity companies Landsvirkjun and Orkuveita Reykjavíkur.
- (3) *Firstly*, with regard to Landsvirkjun, according to the previously applicable legal framework concerning Landsvirkjun, its owners, i.e. the State Treasury (99.9%) and Eignarhlutir ehf. (0.1%),¹ were liable for all the obligations of the company. The State guaranteed all of Landsvirkjun’s liabilities and accordingly assured the continuation of the company in the market.

¹ Eignarhlutur ehf. is a limited liability company which is fully owned by the State and was founded for practical reasons, i.e. in order for Landsvirkjun to remain a partnership.

- (4) *Secondly*, with regard to Orkuveita Reykjavíkur, Article 1(2) of Act 139/2001 on Orkuveita Reykjavíkur, established joint and several liability for the owners of the company with respect to all of the company's obligations. The owners of Orkuveita Reykjavíkur, i.e. the City of Reykjavík, the Town of Akranes and the municipality of Borgarbyggð, were all individually liable, in proportion to their share of ownership, for all the company's obligations. They therefore provided an unlimited guarantee for the company's obligations. By virtue of Article 71 of the Icelandic Local Government Act No 138/2011, the guarantors are not subject to bankruptcy.
- (5) The Icelandic authorities responded to the Authority's Article 17(2) letter by letter dated 27 March 2007 (Event No 415630). On 16 May 2007 (Event No 418612), the Authority requested further information regarding the amendment of the state aid guarantees. The Icelandic authorities submitted the requested information by letter dated 31 January 2008 (Event No 462827).
- (6) On 8 July 2009, by Decision No 302/09/COL (Event No 465443),² the Authority concluded that the unlimited state guarantees enjoyed by Landsvirkjun and Orkuveita Reykjavíkur constituted existing state aid which was not in line with the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement,³ and in particular the Chapter on state guarantees, and therefore incompatible with the functioning of the EEA Agreement.
- (7) The Authority's Decision provided that the Icelandic authorities should take appropriate measures to abolish the unlimited state guarantees. The Authority proposed that the guarantees be abolished with effect from 1 January 2010.
- (8) By letter dated 8 August 2009 (Event No 527076), the Icelandic authorities accepted the measures proposed by the Authority and committed to inform the Authority of the measures they would take to implement the Authority's Decision.
- (9) In the subsequent exchanges of correspondence between the Authority and the Icelandic authorities, the Authority obtained detailed information concerning the status of the state guarantees and how the Icelandic authorities would ensure compliance with the state aid provisions of the EEA Agreement.⁴

² The EFTA Surveillance Authority Decision No 302/09/COL of 8.7.2009 to propose appropriate measures with regard to state aid granted to Landsvirkjun and Orkuveita Reykjavíkur, available on the Authority's website: <http://www.eftasurv.int/?1=1&showLinkID=17084&1=1>.

³ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19.1.1994, published in the Official Journal of the European Union (hereinafter referred to as the OJ) L 231 of 03.09.1994, p. 1 and EEA Supplement No 32 of 03.09.1994, p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>.

⁴ See letters from the Icelandic authorities to the Authority dated 18.11.2009 containing draft bill of law on Orkuveita Reykjavíkur (Event No 537528), dated 18.11.2009 containing draft bill of law on Landsvirkjun (Event No 537529), dated 15 January 2010 on the compatibility with Section 3.2. of the Guidelines on State guarantees (Event No 543331), dated 15.6.2010 on certain conditions in the guidelines and on establishing an independent review mechanism (Event No 560914), dated 2.11.2010 on certain outstanding issues (Event No 576014), dated 25.3.2011 on not providing guarantees to firms in difficulties and establishing a review mechanism (Event No 592685), dated 5.10.2011 on the performance guarantees (Event No 610667), dated 5.10.2011 on the compliance with appropriate measures (Event No 610672), dated 10.11.2011 on proposed legislative amendments (Event No 615010) and dated 17.2.2012 on premiums for performance guarantees (Event No 625466).

- (10) By letters dated 21 January 2013 (Event No 660269) and 14 February 2013 (Event No 663229), the Icelandic authorities confirmed that all the relevant legislative and regulatory measures, both with regard to Landsvirkjun and Orkuveita Reykjavíkur, had been adopted in order to comply with the Authority's Decision No 302/09/COL as well as the Authority's Guidelines on state guarantees.
- (11) The Authority considers that the adopted legislative and regulatory changes to the state guarantee schemes, both with regard to Landsvirkjun and Orkuveita Reykjavíkur, will make the schemes compatible with the functioning of the EEA Agreement.
- (12) By letter dated 26 March 2013 (Event No 667284), the Authority informed the complainant of its intention to close the case and gave the complainant the possibility to provide further comments. The complainant did not put forward additional comments.
- (13) On the basis of the above, the Authority concludes that there are no grounds for pursuing the matter further and has consequently decided to close the case.
- (14) The present decision is without prejudice to the possibility for the Authority to continuously assess existing aid schemes under Article 1(1) of Part I of Protocol 3 and to propose appropriate measures required by the progressive development or the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority records Iceland's acceptance of the appropriate measures proposed by the Authority in its Decision No 302/09/COL with regard to the existing state aid scheme to Landsvirkjun and Orkuveita Reykjavíkur.

Article 2

There are no longer grounds for pursuing the case concerning the appropriate measures. Therefore, the case is closed.

Article 3

Only the English version is authentic.

Done at Brussels, 24 April 2013.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Sabine Monauni-Tömördy
College Member