

Case No: 67629
Event No: 548842
Dec. No: 77/10/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 10 March 2010 on an
information injunction against Iceland
to provide information on the state intervention in *Sjóvá*
(Iceland)

THE EFTA SURVEILLANCE AUTHORITY¹,

Having regard to the Agreement on the European Economic Area², in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice³, in particular to Article 24 thereof,

Having regard to Article 10(3) of Part II of Protocol 3 to the Surveillance and Court Agreement⁴,

Whereas:

I. FACTS

The Authority learnt about the Icelandic state intervention in the insurance company *Sjóvá-Almennar tryggingar hf. (Sjóvá)* in 2009 from the Icelandic media. The Authority included this case in the agenda of the annual meeting on pending cases in the field of state aid between the Authority and the Icelandic authorities which was held in Reykjavik on 5 November 2009. At this meeting, the Authority requested information on the state intervention in *Sjóvá*. The Authority referred to a press release issued by the Icelandic Ministry of Finance 8 July 2009 on the Icelandic Government's participation in the financial restructuring of *Sjóvá* (press release No 47/2009). A separate press release was published on the same day on *Sjóvá's* website (www.sjova.is). An English version thereof states that the press release had been jointly issued by "*Sjóvá, the Resolution Committee of Glitnir banki hf., SAT eignarhaldsfélag and Íslandsbanki*" and contained the following information on the restructuring of *Sjóvá*:

"Sjóvá's financial restructuring is now complete. A new company with the name Sjóvá will be established to take over only the insurance activities of the former

¹ Hereinafter referred to as the Authority.

² Hereinafter referred to as the EEA Agreement.

³ Hereinafter referred to as the Surveillance and Court Agreement.

⁴ Hereinafter referred to as Protocol 3.

company. This means that investment activities involving real estate have been separated from Sjóvá's traditional activities.

Glitnir, the holding company SAT eignarhaldsfélag (a company owned by Glitnir) and Íslandsbanki have provided Sjóvá with capital of ISK 16 billion to boost its equity and ensure its future operation. The Treasury has provided SAT eignarhaldsfélag with credit in the form of bonds against SAT eignarhaldsfélag's shareholding in Sjóvá. With its participation, the government intends to protect the state's claims against Sjóvá as well as the interests of a large number of insurance customers. Preparation of the formal sales process for Sjóvá will begin in the coming months.

Following the restructuring, Sjóvá fulfils all FME's conditions for insurance activities; the company has sufficient assets to cover its technical provisions and its equity position is solid."

According to the latter press release the new owners of Sjóvá were:

- Glitnir Bank 18%
- SAT eignarhaldsfélag (a holding company owned by Glitnir Bank) 73%
- Íslandsbanki 9%

At the meeting on 5 November 2009 the Icelandic authorities explained the background and history of the case as it had been portrayed in the press releases mentioned above. From the explanations orally provided by the Icelandic authorities, the Authority understands that the above mentioned intervention intended to protect the State's claims against Sjóvá. It is the Authority's understanding that following the default of loans granted by the Central Bank of Iceland to Askar Capital investment bank, the Treasury took over assets offered as collateral and thereby came into possession of claims against Sjóvá. The Icelandic authorities further explained at the meeting that the aim of the government intervention was moreover to protect the large number of Sjóvá's customers. Sjóvá was the biggest insurance company in Iceland, with a market share of 1/3. In the view of the Icelandic authorities, Sjóvá was too big to be taken over by other insurance companies.

Due to the complexity of the intervention and the circumstances surrounding it, at the meeting 5 November 2009, the Authority requested the Icelandic authorities to provide written detailed information on the state intervention in Sjóvá.

In a letter sent to the Icelandic authorities 16 November 2009 (Event No 536644), the Authority summarised the points of discussion at the meeting 5 November 2009 and repeated its request for detailed information in writing regarding the state intervention on Sjóvá. Moreover, the Authority invited the Icelandic authorities to put forward their views regarding possible state aid issues involved in this case. The Authority requested that this information be provided no later than 16 December 2009.

When the deadline for reply to the Authority's request for information expired without any information being provided, the Authority sent a reminder letter to the Icelandic authorities, dated 14 January 2010 (Event No 543092) requesting the information being sent to the Authority by 29 January 2010.

The Icelandic authorities have not submitted any information.

II. ASSESSMENT

According to Article 10(1) of Part II of Protocol 3, where the Authority has in its possession information from whatever source regarding alleged unlawful state aid, it shall examine that information without delay.

The state intervention in Sjóvá may involve unlawful state aid. In order to be able to assess the compatibility of the measure with the state aid provisions of the EEA Agreement, in particular Article 61 thereof, the Authority has need of the detailed information required. Without this information, the Authority is unable to assess, firstly, whether state aid was involved in the said transaction and, secondly, whether, if state aid was granted, it is compatible with the provisions of the EEA Agreement governing state aid, in particular Article 61 thereof. Thus, the Authority cannot fulfil its duty to examine the information already in its possession on the mentioned intervention by the Icelandic State in Sjóvá.

If necessary, the Authority shall request information from the EFTA State, according to Article 10(2) of Part II of Protocol 3. Where, after a reminder according to Article 10(3) in conjunction with Article 5(2) of Part II of Protocol 3, the EFTA State concerned does not provide the information requested, the Authority shall, by way of an information injunction pursuant to Article 10(3) of Part II of Protocol 3, require the information to be provided.

Prior to the meeting held on 5 November 2009, the Authority had not been informed by the Icelandic authorities of the state intervention in Sjóvá. Despite the requests made by the Authority, both orally, at the meeting of 5 November 2009, and in writing, by letter dated 16 November 2009 and by reminder letter dated 14 January 2010, the Icelandic authorities have not provided the Authority with the required detailed information.

In light of the foregoing considerations, the Authority has decided to enjoin the Icelandic authorities pursuant to Article 10(3) of Part II of Protocol 3, to provide the necessary detailed information by way of information injunction. The Icelandic authorities are required to provide, within one month of the notification of this decision, i.e. **by 11 April 2010**, all detailed information on the state intervention in Sjóvá. In particular, but not exclusively, the Authority requires the Icelandic authorities to provide it with a detailed description of the capital injection in Sjóvá including copies of all relevant documents and moreover a detailed explanation of how the Central Bank of Iceland came into possession of the assets of Sjóvá.

Moreover, the Icelandic authorities are requested, also no later than 11 April 2010, to provide all information and data necessary to assess the compatibility of the measure with the state aid rules of the EEA Agreement.

The Icelandic authorities are invited to provide their comments and view regarding any possible and potential state aid issues involved in this case within the same deadline, i.e. 11 April 2010.

Should the Icelandic authorities, despite this information injunction, fail to provide the information required within the requested time-limit, the Authority might need to open a

formal investigation procedure on the basis of the facts available, pursuant to Article 1(2) of Part I of Protocol 3.

The Icelandic authorities are also invited to forward a copy of this decision to Sjóvá and any other potential beneficiaries.

Finally, the Icelandic authorities' attention is drawn to Article 14 of Part II of Protocol 3, which provides that all unlawful aid may be recovered from the recipient.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority enjoins the Icelandic authorities to submit by 11 April 2010 all documentation, information and data necessary to permit the Authority to assess the existence of state aid in the state intervention in Sjóvá as well as its compatibility with the state aid rules of the EEA Agreement. In particular, but not exclusively, the Authority requires the Icelandic authorities to provide it with a detailed description of the capital injection in Sjóvá including copies of all relevant documents and moreover a detailed explanation of how the Central Bank of Iceland came into possession of the assets of Sjóvá.

Article 2

This Decision is addressed to the Republic of Iceland.

Article 3

Only the English language version is authentic.

Done at Brussels, 10 March 2010.

For the EFTA Surveillance Authority

Per Sanderud
President

Kurt Jaeger
College Member