



C/2024/3640

6.6.2024

**JUDGMENT OF THE COURT**

**of 25 January 2024**

**in Case E-2/23**

**A Ltd v Finanzmarktaufsicht**

*(Directive 2009/138/EC – Regulation (EU) No 1094/2010 – Jurisdiction of the Court – Guidelines issued by the European Supervisory Authorities – Reputation of the proposed acquirer – Financial soundness of the proposed acquirer – Prudential assessment – Reasonable grounds)*

(C/2024/3640)

In Case E-2/23, A Ltd v Finanzmarktaufsicht – REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Board of Appeal of the Financial Market Authority (*Beschwerdekommision der Finanzmarktaufsicht*), concerning the interpretation of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), the Court, composed of Páll Hreinsson, President (Judge-Rapporteur), Bernd Hammermann and Michael Reiertsen, Judges, gave judgment on 25 January 2024, the operative part of which is as follows:

1. The term ‘reputation’ in point (a) of Article 59(1) of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) must be interpreted as referring to both the integrity and the professional competence of a proposed acquirer.
2. Article 59(1) of Directive 2009/138/EC must be interpreted as not precluding a national supervisory authority from taking into account in its assessment with regard to the criterion laid down in point (c) of any necessary supply of funds by a proposed acquirer to an insurance undertaking through a bank guarantee or the making available of funds on a trust account, which may be drawn on by the insurance undertaking at any time.
3. The term ‘reasonable grounds’ in Article 59(2) of Directive 2009/138/EC must be interpreted as not requiring certainty of non-compliance with the criteria set out in Article 59(1) of that directive.
4. A declaration by a competent authority pursuant to Article 16(3) of Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) to make every effort to comply with guidelines does not have a binding effect on the courts of an EEA State. However, it is for the courts of an EEA State to take such guidelines into consideration in order to resolve the disputes submitted to them, in particular when those guidelines are intended to supplement binding provisions of EEA law.