C/2025/1046

13.2.2025

Action brought on 14 December 2024 by SKEL fjárfestingafélag hf. against the EFTA Surveillance Authority

(Case E-32/24)

(C/2025/1046)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 14 December 2024 by SKEL fjárfestingafélag hf., Bjargargötu 1, 102 Reykjavík, represented by advocate Gjermund Mathisen, Kvale Advokatfirma DA.

SKEL fjárfestingafélag hf., requests that the EFTA Court:

1. Adopt a measure of organisation of procedure ordering ESA to produce all of the documents and other information on the basis of which it considered on the date of the contested decision that it had sufficiently serious indicia to justify carrying out an inspection at the Applicant's premises, and requesting the Applicant to express its views on the documents and information produced;
2. Annul ESA Decision No 159/24/COL of 3 October 2024 requiring SKEL fjárfestingafélag hf. together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyfjaval ehf., to submit to an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the Surveillance and Court Agreement; and
3. Order ESA to pay the costs of the proceedings.

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

— Lyfjaval ehf. (Lyfjaval) operates seven retail pharmacies in Iceland and has around 7 % of total annual turnover in retail pharmacy sales in Iceland. Lyfjaval is indirectly controlled by SKEL fjárfestingafélag hf. (SKEL).

— Decision No 159/24/COL of 3 October 2024 ('the contested decision') required SKEL, together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyfjaval, to submit to an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the Surveillance and Court Agreement (SCA).

— The contested measures relate to an unannounced inspection carried out by representatives of the EFTA Surveillance Authority (ESA) at the business premises of SKEL and Lyfjaval on 14 October 2024.

— The applicant seeks the annulment of the contested decision and bases its application on the following pleas:

  — ESA has infringed its obligation under Article 16 SCA, as its insufficient reasoning does not meet the required standard under that Article;

  — ESA has not sufficiently established the potential application of Article 53 EEA since the agreements are local in nature and thus in themselves not capable of appreciably affecting trade between EEA States; and

  — Sufficiently serious indicia not present to justify the contested decision. In particular, ESA cannot have had sufficiently serious indicia that the asset swap agreement, referred to in the contested decision, could constitute an infringement of Article 53 EEA, as that agreement consists of two previously notified and approved concentrations under Section 17, litra c, of the Icelandic Competition Act.