ORDER OF THE PRESIDENT
16 July 2026

(*Intervention - Interest in the result of the case – State aid – Aid grantor*)

In Case E-4/26,

Fitness Group Nordic AS, established in Oslo (Norway),

represented by Svein Terje Tveit and Håvard Ormberg, attorneys at law,

applicant,

v

EFTA Surveillance Authority,

represented by Daniel Vasbeck, David Pérez de Lamo, Johanne Førde and Melpo-Menie Joséphidès, 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 No 156/25/COL of 1 October 2025,

THE PRESIDENT

makes the following

O R D E R

I FACTS AND PROCEDURE

1 By application of 22 March 2026 submitted under Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('SCA'), the applicant, Fitness Group Nordic AS requested an annulment of the EFTA Surveillance Authority's Decision No 156/25/COL of 1 October 2025. In that decision, the EFTA Surveillance Authority ('ESA') concluded that ad hoc measures granted by Frogn municipality to the municipal company Drøbak Frogn Idrettsarena KF constituted state aid within the meaning of Article 61(1) of the Agreement on the European Economic Area ('the EEA Agreement'). ESA held that it had no doubts that the aid was compatible with the functioning of the EEA Agreement pursuant to Article 61(3)(b) thereof. The applicant claims that ESA adopted the decision in breach of its obligation to open the formal investigation procedure under Article 1(2) of Part I of Protocol 3 SCA. The applicant considers that ESA's preliminary examination should have raised doubts as to the compatibility of the measures with the functioning of the EEA Agreement.

2 By its defence submitted on 2 June 2026, ESA requested the Court to dismiss the application in its entirety.

II APPLICATION FOR LEAVE TO INTERVENE

3 By letter of 18 June 2026, Frogn municipality applied for leave to intervene under Article 36 of the Statute of the Court ('the Statute'). In its letter, Frogn municipality states that it granted the state aid at issue to its municipal company Drøbak Frogn Idrettsarena KF during the Covid 19 pandemic. The municipal company forms part of the legal personality of Frogn municipality. Accordingly, Frogn municipality states that it is both the grantor and the recipient of the state aid at issue. As such, Frogn municipality claims to have a direct interest in the outcome of the case. In its application, Frogn municipality states that it would intervene in support of ESA.

4 On 19 June 2026, acting under Article 114(1) of the Rules of Procedure ('RoP') the parties were invited to submit their observations on the application for leave to intervene by Frogn municipality.

5 In its observations dated 2 July 2026, ESA stated that the application for leave to intervene should be granted. ESA summarised its position by noting that Frogn municipality had an interest in the case; the application was timely; and that ESA was not aware of any circumstances which should lead to the application being rejected.

6 In its observations of 3 July 2026, Fitness Group Nordic acknowledged the interest of Frogn municipality as the grantor and the recipient of the contested state aid. Nevertheless, the applicant does not consider that the application for leave to intervene, as presented by the municipality, should be granted. In that respect, the applicant primarily relies on that the intervention, as framed by the municipality, would widen the scope of the proceedings. The applicant notes that the application is defined by two pleas in law: 1) the obligation to open the formal investigation procedure, and 2) the failure to state adequate reasons. The applicant contrasts this with the municipality's stated interest, which it considers to be directed at the municipality's exposure to recovery and the continued operation of the centre irrespective of any aid already unlawfully put into effect.

7 In the alternative, and should leave to intervene be granted, the applicant requests that the intervention is limited to supporting the form of order sought by ESA and is within the subject matter as defined in the application.

III LAW

8 According to the second paragraph of Article 36 of the Statute, any person establishing an interest in the result of any case submitted to the Court, save in cases between EFTA States or between EFTA States and the EFTA Surveillance Authority, may intervene in that case. The third paragraph of Article 36 of the Statute provides that an application to intervene shall be limited to supporting the form of order sought by one of the parties.

9 Article 113(1) RoP provides that an application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 15(5) RoP. Notice of the action was published on 7 May 2026 in the EEA Section of the Official Journal of the European Union. Accordingly, the time limit for submission of an application to intervene was 18 June 2026.

10 As the present application to intervene was lodged at the Court’s Registry on that date, it is timely.

11 The assessment of whether an applicant for intervention has established an interest in the result of the case within the meaning of the second paragraph of Article 36 of the Statute requires that a person must establish a direct and existing interest in the grant of the form of order sought by the party whom it intends to support and, thus, in the judgment on the validity of the decision whose annulment is sought (see the Order of the President of 12 July 2017 *in Konkurrenten.no AS v ESA (application for leave to intervene, County of Aust-Agder)*, E-1/17, paragraph 47).

12 Previously, it has been held that an aid recipient has a direct and existing interest in the outcome of an action for annulment related to the aid granted to it (see the order of the President of 25 March 2011 in *Konkurrenten.no AS v ESA*, E-14/10, paragraph 11; the order of the President of 12 July 2017 in *Konkurrenten.no AS v ESA (application for leave to intervene, Nettbuss AS)*, E-1/17, paragraph 50). Similarly, national authorities granting aid which is the subject of an action of annulment have also been regarded as

having a direct and existing interest (see the order of the President of 12 July 2017 in *Konkurrenten.no AS v ESA (application for leave to intervene, County of Aust-Agder)*, E-1/17, paragraph 48).

13 The present applicant for intervention, Frogn municipality, is both the grantor of the contested state aid as well as being its recipient through its municipal company Drøbak Frogn Idrettsarena KF. Accordingly, it has established a direct and existing interest in supporting the form of order sought by ESA in the present case.

14 As regards the objections of the applicant, Fitness Group Nordic AS, to the effect that Frogn municipality is seeking to widen the scope of the proceedings, it is appropriate to recall that under the third paragraph of Article 36 of the Statute, intervention is limited to supporting the form of order sought by one of the parties, cf. also Article 112(1) RoP. Moreover, Article 112(3) RoP provides that the intervener shall accept the case as he finds it at the time of his intervention.

15 In light of the above, Frogn municipality is granted leave to intervene in the case in support of the form of order sought by the defendant.

On those grounds,

THE PRESIDENT

hereby orders:

1. Frogn Municipality is granted leave to intervene in Case E-4/26 in support 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, 16 July 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President