EFTA COURT

Action brought on 27 September 2022 by Eviny AS against the EFTA Surveillance Authority

(Case E-10/22)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 27 September 2022 by Eviny AS, represented by advocates Svein Terje Tveit and Paul Gunnar Hagelund, Arntzen de Besche, Ruseløkkveien 30, 0251 Oslo, Norway.

Eviny AS requests the EFTA Court to:

1. **Annul Decision No 161/22/COL, of 6 July 2022, of the EFTA Surveillance Authority; and**

2. **Order the EFTA Surveillance Authority to pay the costs of the proceedings.**

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

- Eviny AS ("the applicant") is a Norwegian renewable energy company, incorporated under Norwegian law, producing and distributing electrical power in Western Norway.

- Decision No 161/22/COL ("the contested decision") was adopted following a complaint from NELFO, a Norwegian trade association, dated 11 May 2017, about state aid granted by the Municipality of Bergen.

- The contested measures relate to overcompensation for payment of operation and maintenance costs and capital costs in relation to streetlight infrastructure in Bergen.

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

    - The EFTA Surveillance Authority committed a manifest error of assessment in its application of the notion of undertaking by concluding that streetlight ownership and operation is an economic activity;

    - The EFTA Surveillance Authority committed a manifest error of assessment by concluding that the applicant received an economic advantage through overcompensation;

    - There is no distortion of competition or effect on trade;

    - The alleged aid must be classified as existing aid not subject to recovery; and

    - The contested decision is based on an insufficient examination of the facts and fails to provide a proper reasoning in violation of Article 16 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.