

Brussels, 12 June 2025
Case No: 94047
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ORIGINAL

IN THE EFTA COURT

APPLICATION

submitted pursuant to Article 31 (2) of the Agreement between the EFTA States
on the Establishment of a Surveillance Authority and a Court of Justice by

THE EFTA SURVEILLANCE AUTHORITY

represented by Hildur Hjörvar, Sigurbjörn Bernharð Edvardsson,
Sigrún Ingibjörg Gísladóttir, and Melpo-Menie Joséphidès

Department of Legal & Executive Affairs,
acting as Agents,

AGAINST

ICELAND

seeking a declaration that Iceland has failed to adopt the measures necessary to make the Act referred to at points 12zc and 12zzq of Chapter XV and point 6 of Chapter XXIX of Annex II to the Agreement on the European Economic, (*Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors, amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013*) as adapted by Protocol 1 to the Agreement, part of its internal legal order.

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1 INTRODUCTION

1. By this Application, the EFTA Surveillance Authority ("**ESA**") brings an action under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance and a Court of Justice ("**SCA**"). The Act in this application establishes harmonised rules concerning the marketing, possession, and use of explosive precursors.¹
2. ESA seeks a declaration from the Court that Iceland has failed to adopt the measures necessary to make the Act referred to at point 12zc and 12zzq of Chapter XV and point 6 of Chapter XXIX of Annex II to the Agreement on the European Economic ("**EEA**" or "**the EEA Agreement**") (*Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors, amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013*)² ("**the Act**"), as adapted by Protocol 1 to that Agreement, part of its internal legal order, as required by Article 7 of the EEA Agreement.

2 PRE-LITIGATION PROCEDURE

3. The time limit to adopt the measures necessary to implement the Act and to notify these to the EFTA Surveillance Authority expired on 16 March 2024. Having received no notification from Iceland setting out the measures which it had adopted to implement the Act, ESA sent a letter of formal notice to Iceland on 1 July 2024, concluding that as Iceland had failed to take the necessary measures to make the Act part of Iceland's legal order, it had failed to fulfil its obligations under Article 7 of the EEA Agreement.³ ESA requested that the Icelandic Government submit its observations within two months of receipt of the letter, i.e. by 1 September 2024.
4. The Icelandic Government did not reply to the letter of formal notice. However, on 27 August 2024, the Icelandic Government submitted a Form 1, dated 26 August 2024.⁴ The Form 1 did not indicate any measures which had been taken to implement the Act, nor give the text of any such national measures, nor indicate the

¹ This application is based on College Decision 077/25/COL (**Annex A.1** to this Application).

² OJ L 186, 11.7.2019, p. 1, as corrected by OJ L 231, 6.9.2019, p. 30.

³ Document No. 1462693; **Annex A.2** to this Application.

⁴ Document No. 1478140; **Annex A.3** to this Application.

date of entry into force of any such measures, nor indicate whether the Act had been partially or fully implemented. Instead, under the heading “please specify how and when the outstanding provisions are going to be implemented”, Iceland stated the following:

“In Iceland following the incorporation of Regulation (EU) 2019/1148 into the EEA Agreement, the intension [sic] is to repeal a provision in the Icelandic Act on Weapons No. 16/1998 regarding authorisation for the general public to have and use certain substances according to Regulation 98/2013, as well as provisions in the Icelandic Regulation No. 510/2018 on explosives and explosives precursors as regards authorisation to the general public to import, use or have access to explosive precursors.”

The Form’s standard text indicated that ESA would be informed of any further measures adopted to complement or amend the implementation and of any amendments to the notified measures. No national implementing measures were attached to the Form 1.

5. By email of 27 August 2024, ESA informed the Icelandic Government that the Form 1 was missing crucial information, including the title of the national implementing measures, an attachment of the national implementing measures, and the type of implementation which the notified measures were considered to ensure.⁵ ESA requested that the Icelandic Government resubmit the Form 1 with the requisite information. ESA furthermore advised the Icelandic Government that until it received a complete Form 1, it could not close the case for non-incorporation of the Act.
6. In the correspondence between ESA and the Icelandic Government which followed, Iceland did not provide the requested information, nor submit a complete Form 1, despite ESA’s repeated requests.⁶ On 2 October 2024, ESA advised the Icelandic Government that ESA would adopt a reasoned opinion in the case in the absence of a notification of implementing measures. On the same date, Iceland

⁵ Document No. 1487926; **Annex A.4** to this Application.

⁶ Idem.

acknowledged the reminder but provided no further updates on the implementation of the Act.

7. In light of the absence of a response to the letter of formal notice from Iceland and the above communication, ESA maintained the view that the Act had not been made part of the Icelandic internal legal order as required by Article 7 EEA, and delivered a reasoned opinion on 13 November 2024.⁷ Iceland was given two months in which to take the measures necessary to comply with the reasoned opinions, i.e. no later than 13 January 2025.
8. The Icelandic Government did not reply to the reasoned opinion. ESA has received no further communication from Iceland on the matter.
9. When the deadline set in the reasoned opinion expired, Iceland had neither informed ESA of any measures it had adopted to make the Act part of its internal legal order, nor was ESA in the possession of any other information which indicated that the Act had been made part of Iceland's internal legal order.
10. Since Iceland had not complied with the reasoned opinion by the deadline set therein, ESA on 11 June 2025 decided to bring the matter before the Court pursuant to Article 31 SCA.⁸
11. For the sake of completeness, ESA notes that at the point of lodging the present application, Iceland has neither made the Act part of its internal legal order, nor has it informed ESA of having done so.

3 LAW

12. Article 3, first and second paragraph, EEA provides:

“The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.

They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.”

⁷ Document No. 1481674; **Annex A.5** to this Application.

⁸ College Decision 077/25/COL.

13. Article 7 EEA provides:

“Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows:

(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties.

[...]“

14. Article 31 SCA provides:

“If the EFTA Surveillance Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement or of this Agreement, it shall, unless otherwise provided for in this Agreement, deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the EFTA Surveillance Authority, the latter may bring the matter before the EFTA Court.”

4 SUBMISSIONS

15. Article 3 EEA imposes upon the EEA EFTA States the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EEA Agreement.⁹

16. Under Article 7 EEA, the EEA EFTA States are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee. According to settled case-law, the lack of direct legal effect of acts referred to in decisions by the EEA Joint Committee makes timely implementation crucial for the proper functioning of the EEA Agreement also in Iceland. The EEA EFTA States find themselves under an obligation of result in that regard.¹⁰

⁹ See, *inter alia*, Case E-6/18 *ESA v Iceland*, judgment of 14 May 2019, paragraph 16.

¹⁰ *Ibid.*, paragraph 17.

17. Decision of the EEA Joint Committee No 66/2024 to the EEA Agreement by, *inter alia*, adding the Act. Decision No 66/2024 entered into force on 16 March 2024.¹¹ The time limit for the EEA EFTA States to adopt the measures necessary to make the Act part of their internal legal orders expired on the same day.
18. The Form 1 dated 26 August 2024 submitted by Iceland was incomplete and did not contain any of the information necessary to constitute notification of a national measure implementing the Act. In this, ESA notes that under Article 7 EEA, Regulations are to be made part of the internal legal order of the EEA EFTA States *as such*. Despite multiple reminders and requests for submission of a complete Form 1 indicating the national measures undertaken to implement the Act, no further information on national implementing measures has been provided by Iceland.
19. The question whether an EEA EFTA State has failed to fulfil its obligations must be determined by reference to the situation as it stood at the end of the period laid down in the reasoned opinion.¹² The Icelandic Government has not thus far sought to contest ESA's assertion that Iceland had not adopted the measures necessary to make the Act a part of its internal legal order by the expiry of the time limit set in the reasoned opinion.
20. ESA submits that it follows from the principle of sincere cooperation, read together with the principle of effectiveness as reflected in Article 3 EEA, and from Article 7 EEA, that the EFTA States must notify, in a timely manner, national measures which implement an EEA Act into national law. In the case of Regulations, such notification must sufficiently clearly and precisely indicate that the Act has *as such* been made part of national law.¹³ This is necessary to comply with the State's obligations under Article 7 EEA and to enable the Authority to serve its role under Article 108(1) EEA and Article 5(1)(a) SCA. Moreover, ESA is empowered under Article 6 SCA to request all necessary information from the EEA EFTA States in order to carry out its duties.

¹¹ No constitutional requirements were indicated in respect of the Decision.

¹² See, *inter alia*, Case E-6/06 *ESA v The Principality of Liechtenstein* [2007] EFTA Ct. Rep. 238, paragraph 20.

¹³ See, *mutatis mutandis*, C-543/17 *European Commission v Kingdom of Belgium*, ECLI:EU:C:2019:573, paragraph 51.

21. The Form 1 dated 26 August 2024 completely failed to meet these minimum requirements. It only indicated an intention to make legislative and regulatory changes in Iceland to comply with the Act. The Form 1 neither indicated that these measures had already been taken, nor did it indicate that the Act as such had been implemented into national law.
22. Moreover, ESA's requests for further information and for the submission of a complete Form 1 were not complied with, except to indicate that the Icelandic Government needed to look at the matter more closely and would provide further information later. No further information has been received by ESA, and Iceland has not submitted a complete Form 1.
23. Insofar as Iceland has cited complexities in implementing the Act into the national legal order, ESA notes that it is settled case-law that provisions, practices, or situations arising from the domestic legal order of an EFTA State cannot justify a failure to fulfil obligations arising under EEA law.¹⁴
24. For completeness' sake, ESA notes that its independent investigation has not revealed any measures to implement the Act as such into national law, nor any relevant amendments to the national legal instruments cited in the Form 1 submitted by Iceland on 26 August 2024.
25. As a result, ESA submits that Iceland has failed to fulfil its obligations under Article 7 EEA, by failing to make the Act part of its internal legal order.

5 CONCLUSION

26. Accordingly, ESA requests the Court to:

1. declare that Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement by failing to make the Act referred to at point 12zc and 12zzq of Chapter XV and point 6 of Chapter XXIX of Annex II to the Agreement on the European Economic, (*Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors, amending Regulation (EC) No*

¹⁴ See (*mutatis mutandis*) Case E-19/14 *ESA v Norway*, [2015] EFTA Ct. Rep. 300, paragraph 49.

1907/2006 and repealing Regulation (EU) No 98/2013) as adapted by
Protocol 1 to the Agreement, part of its internal legal order, and

2. order Iceland to bear the costs of these proceedings.

Hildur Hjörvar

Sigurbjörn Bernharð Edvardsson

Sigrún Ingibjörg Gísladóttir

Melpo-Menie Joséphidès

Agents of the EFTA Surveillance Authority

6 SCHEDULE OF ANNEXES

No	Description	Referred to in this Application at paragraph(s)	Number of pages
A.1	College Decision 077/25/COL	1, 10	
A.2	Letter of Formal Notice	3	2
A.3	Iceland's Form 1	4	2
A.4	Email communication	5, 6	6
A.5	Reasoned Opinion	7	4