

Brussels, 11 June 2025  
Case No: 94054  
Document No: 1538289

**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 fulfil its obligations under the Act referred to at points 1a, 7a, 7g and 7i of Annex XIX to the Agreement on the European Economic Area, (*Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules*), as adapted by Protocol 1 to that Agreement, and under Article 7 of the EEA Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof.

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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 (the 'Modernisation Directive') concerns the strengthening and modernisation of EEA consumer protection rules.<sup>1</sup>
2. ESA seeks a declaration from the Court that Iceland has failed to fulfil its obligations under the Act referred to at points 1a, 7a, 7g and 7i of Annex XIX to the Agreement on the European Economic Area ("**EEA**" or "**the EEA Agreement**") (*Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules*) ("**the Act**"), as adapted by Protocol 1 to that Agreement, and under Article 7 EEA, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof.

## 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 1 April 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 17 July 2024, concluding that by failing to take the necessary measures to make the Act part of its internal legal order and/or by failing to notify the EFTA Surveillance Authority Iceland had failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement.<sup>2</sup> Iceland was invited to submit its observations within two months, i.e. by 17 September 2024.
4. On 2 October 2024, the Icelandic Government replied to the letter of formal notice, stating that it had not yet taken the necessary measures to implement the Act.<sup>3</sup>

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<sup>1</sup> This application is based on College Decision 083/25/COL (**Annex A.1** to this Application).

<sup>2</sup> Document No 1467901; **Annex A.2** to this Application.

<sup>3</sup> Document No. 1488585; **Annex A.3** to this Application.

Furthermore, the Icelandic Government indicated that legislative work to implement the Act was underway.

5. Having considered Iceland's response, ESA delivered a reasoned opinion on 4 December 2024<sup>4</sup> in which it maintained the conclusion set out in its letter of formal notice. Iceland was given two months in which to take the measures necessary to comply with the reasoned opinions, i.e. no later than 4 February 2025.
6. The Icelandic Government did not reply to the reasoned opinion. Through informal communication after the deadline set in the reasoned opinion expired, the Authority was informed that a new Icelandic Marketing Act and an amendment to the Icelandic Act on Consumer Contracts, intended to implement the Act, was expected to be presented to Parliament in October 2025.<sup>5</sup>
7. When the deadline set in the reasoned opinion expired, ESA had received no notification that Iceland had implemented the Act. 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.
8. Since Iceland had not complied with the reasoned opinion by the deadline set therein, on 11 June 2025 ESA decided to bring the matter before the Court pursuant to Article 31 SCA.<sup>6</sup>
9. For the sake of completeness, ESA notes that at the point of lodging the present application, ESA has not been notified, and does not have any other information to suggest, that Iceland has implemented the Act into its national legal order.

### 3 LAW

10. 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.*

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<sup>4</sup> Document No. 1495451; **Annex A.4** to this Application.

<sup>5</sup> Document No. 1533510; **Annex A.5** to this Application.

<sup>6</sup> College Decision 083/25/COL.

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

11. 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.*

*[...]“*

12. 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.”*

13. Article 7 of the Act, as adapted, obliges the EFTA States to bring into force the laws, regulations and administrative provisions necessary to comply with the Act, and to notify to ESA the text of those provisions. It reads as follows:

*“1. By [1 April 2024], Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the [Authority] thereof.*

*They shall apply those measures from [1 April 2024].*

*When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.*

*2. Member States shall communicate to the [Authority] the text of the main measures of national law which they adopt in the field covered by this Directive.”*

#### 4 SUBMISSIONS

14. 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.<sup>7</sup>
15. 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.<sup>8</sup>
16. Decision of the EEA Joint Committee No 69/2021 of 5 February 2021 amended Annex XIX to the EEA Agreement by, *inter alia*, adding the Act. Decision No 69/2021 entered into force on 1 April 2024.<sup>9</sup> 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.
17. 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.<sup>10</sup> 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, and had not in any event notified ESA of the measures it had adopted to implement the Act, as required by the provisions of the Act, notably Article 7 thereof.

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<sup>7</sup> See, *inter alia*, Case E-6/18 *ESA v Iceland*, judgment of 14 May 2019, paragraph 16.

<sup>8</sup> *Ibid.*, paragraph 17.

<sup>9</sup> Iceland, Liechtenstein, and Norway indicated constitutional requirements to the Joint Committee Decision, which entered into force on 1 April 2024.

<sup>10</sup> See, *inter alia*, Case E-6/06 *ESA v The Principality of Liechtenstein* [2007] EFTA Ct. Rep. 238, paragraph 20.

18. 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.<sup>11</sup>

19. 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**

20. Accordingly, ESA requests the Court to:

1. declare that Iceland has failed to fulfil its obligations under the Act referred to at points 1a, 7a, 7g and 7i of Annex XIX to the Agreement on the European Economic Area, (*Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules*), as adapted by Protocol 1 to the EEA Agreement, and under Article 7 of the EEA Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof, and
2. order Iceland to bear the costs of these proceedings.

Hildur Hjörvar  
Sigrún Ingibjörg Gísladóttir

Sigurbjörn Bernharð Edvardsson  
Melpo-Menie Joséphidès

Agents of the EFTA Surveillance Authority

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<sup>11</sup> See (*mutatis mutandis*) Case E-19/14 *ESA v Norway*, [2015] EFTA Ct. Rep. 300, paragraph 49.

**6 SCHEDULE OF ANNEXES**

<b>No</b>	<b>Description</b>	<b>Referred to in this Application at paragraph(s)</b>	<b>Number of pages</b>
1	College Decision 083/25/COL	1, 8	2
2	Letter of Formal Notice	3	2
3	Reply to the Letter of Formal Notice	4	1
4	Reasoned Opinion	5	3
5	Email communication	6	3