

Brussels, 11 June 2025
Case No: 94053
Document No: 1538201

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 Sigurbjörn 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 point 5oc of Annex XI to the Agreement on the European Economic Area (*Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies*), 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 concerns the accessibility of public sector websites and mobile applications, particularly for persons with disabilities.¹
2. ESA seeks a declaration from the Court that Iceland has failed to fulfil its obligations under the Act referred to at point 50c of Annex XI to the Agreement on the European Economic Area ("**EEA**" or "**the EEA Agreement**") (*Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies*) ("**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 12 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 these to the EFTA Surveillance Authority, Iceland had failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement.² Iceland was invited to submit its observations within two months, i.e. by 12 September 2024.
4. On 10 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.³ Furthermore, the Icelandic Government indicated that the legislative measures

¹ This application is based on College Decision 082/25/COL (**Annex A.1** to this Application).

² Document No 1466350; **Annex A.2** to this Application.

³ Document No. 1489923; **Annex A.3** to this Application.

necessary to implement the Directive were underway and that a Bill was expected to be presented to Parliament in November 2024.

5. Having considered Iceland's response, ESA delivered a reasoned opinion on 13 November 2024,⁴ 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 13 January 2025.
6. The Icelandic Government did not reply to the reasoned opinion.
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 (i.e. 13 January 2025), on 11 June 2025, ESA decided to bring the matter before the Court pursuant to Article 31 SCA.⁵
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.

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

11. Article 7 EEA provides:

⁴ Document No. 1492886; **Annex A.4** to this Application.

⁵ College Decision 082/25/COL.

“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 12 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. *[EFTA] States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [1 April 2024]. They shall immediately inform the [Authority] thereof.*

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

2. *[EFTA] 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.*

3. *[EFTA] States shall apply those measures as follows:*

(a) to websites of public sector bodies not published before [the date of entry into force of Decision of the EEA Joint Committee No 59/2021 of 5 February 2021]: from [one year after the date of entry into force of Decision of the EEA Joint Committee No 59/2021 of 5 February 2021];

(b) to websites of public sector bodies not covered by point (a): from [two years after the date of entry into force of Decision of the EEA Joint Committee No 59/2021 of 5 February 2021];

(c) to mobile applications of public sector bodies: from [two and a half years after the date of entry into force of Decision of the EEA Joint Committee No 59/2021 of 5 February 2021].

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 the fulfilment of the obligations arising out of the EEA Agreement.⁶

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.⁷

16. Decision of the EEA Joint Committee No 59/2021 of 5 February 2021 amended Annex XI to the EEA Agreement by, *inter alia*, adding the Act. Decision No 59/2021 entered into force on 1 April 2024.⁸ 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.⁹ The Icelandic Government has not thus far sought to contest ESA's assertion that Iceland had not adopted the measures necessary

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

⁷ *Ibid.*, paragraph 17.

⁸ Iceland, Liechtenstein, and Norway indicated constitutional requirements to the Joint Committee Decision, which entered into force on 1 April 2024.

⁹ See, *inter alia*, Case E-6/06 *ESA v The Principality of Liechtenstein* [2007] EFTA Ct. Rep. 238, paragraph 20.

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 12 thereof.

18. 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

19. Accordingly, ESA requests the Court to:

1. declare that Iceland has failed to fulfil its obligations under the Act referred to at point 50c of Annex XI to the Agreement on the European Economic Area (*Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies*), 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.

Sigurbjörn B. 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
1	College Decision 082/25/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