



JUDGMENT OF THE COURT

2 April 2025

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Regulation (EU) 2022/750 – Benchmarks in OTC derivative contracts)

In Case E-20/24,

EFTA Surveillance Authority, represented by Sigurbjörn Bernharð Edvardsson, Sigrún Ingibjörg Gísladóttir and Melpo-Menie Joséphidès, acting as Agents,

applicant,

v

Iceland, represented by Hendrik Daði Jónsson and Eggert Páll Ólason, acting as Agents,

defendant,

APPLICATION seeking a declaration that Iceland has failed to adopt the measures necessary to make the act referred to at point 31bcp of Annex IX to the Agreement on the European Economic Area (Commission Delegated Regulation (EU) 2022/750 of 8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann (Judge-Rapporteur) and Michael Reiertsen, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having regard to the written pleadings of the parties,
having decided to dispense with the oral procedure,
gives the following

JUDGMENT

I INTRODUCTION

- 1 By an application lodged at the Court’s Registry on 11 September 2024, the EFTA Surveillance Authority (“ESA”) brought an action under the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”) seeking a declaration from the Court that Iceland has failed to adopt the measures necessary to make the act referred to at point 31bcp of Annex IX to the Agreement on the European Economic Area (“EEA Agreement” or “EEA”) (Commission Delegated Regulation (EU) 2022/750 of 8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts) (OJ 2022 L 138, p. 6) (“the Regulation”), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order, as required by Article 7 of the EEA Agreement.

II LEGAL BACKGROUND

- 2 Article 3 EEA reads, in extract:

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.

...

- 3 Article 7(a) EEA reads:

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;

4 Article 31 SCA reads:

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.

5 Decision of the EEA Joint Committee No 60/2023 of 17 March 2023 (OJ L, 2023/2373, 26.10.2023, ELI: <http://data.europa.eu/eli/dec/2023/2373/oj>, and Icelandic EEA Supplement 2023 No 77, p. 55) (“JCD No 60/2023”) amended Annex IX (Financial services) to the EEA Agreement by adding the Regulation in point 31bcp of the Annex. No constitutional requirements were indicated, and JCD No 60/2023 entered into force on 18 March 2023.

III FACTS AND PRE-LITIGATION PROCEDURE

6 On 18 August 2023, after prior correspondence, ESA sent a letter of formal notice to Iceland, concluding that, as Iceland had failed to take the necessary measures to make the Regulation part of its legal order, it had failed to fulfil its obligations under Article 7 EEA. Iceland did not reply to the letter of formal notice.

7 On 21 February 2024, ESA delivered a reasoned opinion in which it maintained the view that the Regulation had not been made part of the Icelandic internal legal order as required by Article 7 EEA. Iceland was given two months in which to take the measures necessary to comply with the reasoned opinion, i.e. no later than 21 April 2024.

8 Iceland did not reply to the reasoned opinion within the deadline set.

9 On 11 September 2024, after further correspondence between the parties, ESA decided, by way of College Decision No 136/24/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

10 On 11 September 2024, ESA lodged the present application at the Court’s Registry, which was registered at the Court on the same date. 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 31bcp of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2022/750 of

8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order, and

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

- 11 In its application, ESA notes that Iceland still has not made the Regulation part of its internal legal order, nor has it informed ESA of having done so.
- 12 On 18 November 2024, Iceland submitted its defence, which was registered at the Court on the same date. Iceland submits that the facts of the case, as brought forward in the application, are correct and undisputed. Iceland does not dispute the declaration sought by ESA in its application.
- 13 A deadline of 11 December 2024 was set for the reply. By way of a letter of 26 November 2024, registered at the Court on the same date, ESA noted that Iceland had not contested the declaration sought. Consequently, ESA waives its right to reply under Article 108 of the Rules of Procedure (“RoP”) and consents to the Court dispensing with the oral procedure should it wish to do so.
- 14 On 5 December 2024, the deadline for intervention expired, pursuant to Article 113(1) RoP.
- 15 On 2 January 2025, Iceland wrote to the Court stating that it also consents to the Court dispensing with the oral hearing pursuant to Article 70 RoP.
- 16 On 20 January 2025, the deadline for submitting written observations expired. No written observations were received.
- 17 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided, pursuant to Article 70 RoP, to dispense with the oral procedure.

V FINDINGS OF THE COURT

- 18 Article 3 EEA imposes upon the 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 (see the judgment of 5 February 2025, *ESA v Iceland*, E-16/24, paragraph 25 and case law cited).
- 19 Article 7(a) EEA provides that an act corresponding to an EU regulation, referred to in the Annexes to the EEA Agreement or a decision of the EEA Joint Committee, shall as such be made part of the internal legal order of an EEA State.
- 20 The Court notes that 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. The EFTA States find themselves under an obligation to implement regulations as such (see the judgment in *ESA v Iceland*, E-16/24, cited above, paragraph 27 and case law cited).

- 21 JCD No 60/2023 entered into force on 18 March 2023. The time limit for EFTA States to adopt the measures necessary to implement the Regulation expired on the same date.
- 22 The question of whether an 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 (see the judgment in *ESA v Iceland*, E-16/24, cited above, paragraph 29 and case law cited). In this case, the relevant date is 21 April 2024.
- 23 It is undisputed that Iceland had failed to make the Regulation part of its internal legal order by the expiry of the time limit set in the reasoned opinion.
- 24 In light of the above, it must be held that Iceland has failed to fulfil its obligations under Article 7 EEA by failing to make the Regulation, as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order.

VI COSTS

- 25 Under Article 121(1) RoP, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since ESA has requested that Iceland be ordered to pay the costs, the latter has been unsuccessful, and none of the exceptions in Article 121(2) RoP apply, Iceland must be ordered to pay the costs of the proceedings.

On those grounds,

THE COURT

hereby:

- 1. Declares 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 31bcp of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2022/750 of 8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order.**
- 2. Orders Iceland to bear the costs of the proceedings.**

Páll Hreinsson

Bernd Hammermann

Michael Reiertsen

Delivered in open court in Luxembourg on 2 April 2025.

Ólafur Jóhannes Einarsson
Registrar

Bernd Hammermann
Acting President