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EFTA SURVEILLANCE  
AUTHORITY

Icelandic Ministry of Foreign Affairs  
Rauðarástígur 25  
105 Reykjavík  
Island

Dear Sir or Madam,

**Subject: Complaint concerning an alleged incorrect implementation of EEA rules on consumer credit**

On 15 November 2016, the EFTA Surveillance Authority (“the Authority”) received a complaint against Iceland concerning an alleged failure to correctly apply or implement the provisions of *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC* (“Directive 2008/48/EC”) and *Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit* (“Directive 87/102/EEC”) into national law.<sup>1</sup> The complaint is based on the premise that the Icelandic State has violated the EEA Agreement either by the Icelandic Supreme Court alleged incorrect interpretation of Directive 87/102/EC, lawfully implemented into Icelandic law, or that Icelandic authorities incorrectly implemented Directive 87/102/EEC and Directive 2008/48/EC into the Icelandic legal order.

Both Directive 87/102/EEC and Directive 2008/48/EC<sup>2</sup> aim to protect consumers against unfair or misleading practices, in particular with respect to the disclosure of information by the creditor. In order to enable consumers to make their decisions in full knowledge of the facts, the Directives demand that they should receive adequate information, which the consumer may take away and consider, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure the fullest possible transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge applicable to the credit.

First, the complainant argues that the Icelandic Supreme Court judgment in Case no. 243/2015 contravenes Article 3 of Act no. 2/1993 (*lög um Evrópska efnahagssvæðið*), by not interpreting Icelandic law in accordance with Directive 87/102/EEC.<sup>3</sup> The complainant maintains that the interpretation of the Supreme Court of Article 12(1) of Act no. 121/1994 (*lög um neytendalán*), which implemented Directive 87/102/EEC, is incorrect. In the complainant’s view, the Supreme Court, by assuming that the basis for calculation of inflation could be 0% from the beginning to the end of the loan period, violated Directive 87/102/EEC by offering consumers unrealistic information on the content of indexed loans and consequently contravenes the EFTA Court’s interpretation in its advisory opinion in

<sup>1</sup> Act referred to in point 7h of Annex XIX (Consumer Protection) to the EEA Agreement.

<sup>2</sup> Directive 2008/48/EC repealed Directive 87/102/EEC.

<sup>3</sup> See judgment of the Icelandic Supreme Court of 26 November 2015 in Case 243/2015.

Case E-27/13. In that opinion, the EFTA Court states that an assumption that the rate of inflation will be indicated as 0% in a loan agreement, at a time when the actual rate of inflation is considerably higher, does not correctly represent the charges resulting from the price indexation and thus the total cost of credit within the meaning of Article 1(2)(d) of Directive 87/102/EEC. Consequently, such a statement does not correctly represent the annual percentage rate of charge defined in Article 1(2)(e) and Article 1a(1)(a) of the Consumer Credit Directive 87/102/EEC.<sup>4</sup> As a result, the complainant argues that the judicial practice of the Supreme Court in Case No. 243/2015, in light of the EFTA Court's opinion, breaches the EEA Agreement by not correctly interpreting the provisions of Directive 87/102/EEC.

Secondly, if the Authority finds the judgment of the Supreme Court of Iceland not having breached the EEA Agreement, the complainant argues that Iceland has incorrectly implemented the provisions of Directive 87/102/EEC and Directive 2008/48/EC. The complainant maintains that allowing the inflation rate in indexed based loan agreements to be calculated using the basis of 0% inflation rate throughout the borrowing period is an unrealistic premise that conveys inadequate information to the consumer. To support this, the complainant refers to EFTA Court advisory opinion in Case E-27/13. As a result, the complainant deems that the legislature incorrectly implemented the provisions of Directive 87/102/EEC and 2008/48/EC into the Icelandic legal order.

Finally, the complainant asks if the alleged breach of the EEA agreement by the Icelandic State may entail State liability in accordance with the settled case-law of the EFTA Court and the Icelandic Supreme Court.

In order for the Authority to examine and assess the complaint, the Icelandic Government is invited to provide the following information:

1. What is the common inflation rate used when calculating the total borrowing cost of indexed loans for the consumer?
2. How is the potential impact of inflation on the total borrowing cost of indexed loans explained to the consumer?
3. Are wages in Iceland indexed? If not, is there any limit in how much the total cost of the credit to the consumer of indexed loans can increase due to inflation?

The Icelandic Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *3 February 2017*. Please enclose copies of relevant national legislation, including English translations if available.

Yours faithfully,



Lennart Johanson  
Acting Director  
Internal Market Affairs Directorate

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<sup>4</sup> See EFTA Court judgment of 24 November 2014 in Case E-27/13, *Sævar Jón Gunnarsson v Landsbankinn*.