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EFTA SURVEILLANCE  
AUTHORITY

## REASONED OPINION

**delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning Iceland's failure to comply with its obligations under the Act referred to at point 19a of Annex IX to the EEA Agreement (*Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes*) and/or Article 4 of the EEA Agreement**

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### 1 Introduction

On 26 May 2010, the EFTA Surveillance Authority (hereafter "the Authority") issued a letter of formal notice to Iceland for its failure to ensure that Icesave depositors in the Netherlands and the United Kingdom receive payment of the minimum amount of compensation provided for in Article 7(1) of the Act referred to at point 19a of Annex IX to the EEA Agreement (*Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes*) as amended (hereafter "Directive 94/19/EC" or "the Act") within the time limits laid down in Article 10 of the Act, in breach of the obligations resulting from the Act and/or of Article 4 of the EEA Agreement.

The Government of Iceland answered the letter of formal notice on 2 May 2011. In that reply, the Government maintains the position that it has expressed previously to the Authority that it is not in breach of its obligations under Directive 94/19/EC and under Article 4 of the EEA Agreement. It disagrees with the statements made by the and urges the Authority to conclude this matter without any further action.

The Authority will examine each of the submissions made by the Government of Iceland below.

The Government of Iceland has made a number of allegations in its reply of 2 May 2011 concerning what it claims to be a number of breaches of cross-border banking legislation by the United Kingdom and the Netherlands, alleged incorrect implementation of the Directive by other EEA States and the alleged role of EEA States in the circumstances leading up to deposits becoming unavailable on 6 October 2008 or the recovery rate of the estate of Landsbanki Íslands hf. (hereafter "Landsbanki"). The Authority wishes to make clear that it considers that such allegations of breaches by other EEA States have no legal bearing on the present case. The Authority considers that such allegations, even if well founded, cannot release Iceland from its obligations under Directive 94/19/EC and under Article 4 of the EEA Agreement. Consequently, the Authority will not examine the substance of those allegations further.

The present infringement proceedings only relate to the compliance, by Iceland, with the obligations it has subscribed to under the EEA Agreement, according to which all depositors whose deposits in branches of Icelandic banks became unavailable must be compensated according to the terms of the protection laid down by Directive 94/19/EC and without discrimination.

The Authority emphasises the importance of the principle at stake. A main objective of the Directive is to enhance depositor protection. That objective would be compromised if the Directive were interpreted as only obliging Member States to set up a deposit guarantee scheme without any obligation actually to ensure that the aggrieved depositors are

provided with compensation. Depositors need to be able to place trust in the national deposit guarantee schemes established to protect them effectively as required by the Directive in order for the financial sector in the internal market to function properly and to increase the stability of the banking system within the EEA.

## 2 Background

In October 2006, the Icelandic bank Landsbanki Íslands hf. (hereafter “Landsbanki”) launched, through its UK branch, online savings accounts under the brand “Icesave”. In the spring of 2008, Landsbanki introduced the same product in the Netherlands through its Dutch branch.

In early October 2008, the three largest Icelandic banks, Kaupping, Glitnir and Landsbanki collapsed and were taken over by the Icelandic State. On 7 October 2008, the Icelandic Financial Supervisory Authority (the “*Fjármálaeftirlitið*”, hereafter “the FME”) decided to assume the powers of the meeting of the shareholders of Landsbanki and immediately suspend the bank’s board in its entirety because of the urgent financial and operational difficulties the bank suffered at that time. The FME appointed a winding-up committee which took over with immediate effect all authority of the board of directors.

On 27 October 2008, the FME issued an opinion stating that on 6 October 2008, Landsbanki’s Icesave websites in the Netherlands and in the United Kingdom had ceased to work. The FME concluded that on the same day, Landsbanki was unable to make payment of the amount customers demanded, of certain deposits, in accordance with applicable terms. The statement from the FME triggered an obligation for the Icelandic deposit guarantee scheme, the Depositors and Investors Guarantee Fund (hereafter “the Fund” or the “Deposit Guarantee Fund” – *Tryggingarsjóður innstæðueigenda og fjárfesta*), to make payments in accordance with Article 9 of the Act No. 98/1999 on Deposit Guarantees and Investor Compensation Scheme, to Landsbanki’s customers who did not receive the amount of their deposits. According to Article 10 of Directive 94/19, implemented into Icelandic law by Article 7(1) of Regulation No 120/2000 on Deposit Guarantees and Investor-Compensation Scheme, the payments from the fund should be made no later than three months from the time that the opinion of the FME is available, *i.e.* within three months from 27 October 2008. On 26 January 2009, 24 April 2009 and 23 July 2009, the Minister of Economic Affairs extended the deadline for payouts from the fund, each time for three months, based on Article 10(2) of the Directive (Article 7(4) of Regulation No 120/2000). Thus, the final deadline for payments expired on 23 October 2009. The Icelandic Government has not informed the Authority that the Fund has made any payments to depositors who had unavailable deposits.

The domestic depositors of Landsbanki were transferred to a new bank “new Landsbanki” (now NBI hf.) established by the Icelandic Government. The transfer was made by an FME decision of 9 October 2008 (later amended several times but with no effect on the deposits). The domestic depositors had thereby access to their funds in full at all times.

In accordance with the division of responsibility laid down under Directive 94/19/EC, deposits at the UK and Dutch branches of Landsbanki were under the responsibility of the Icelandic Fund, which offered a minimum guarantee of EUR 20 887 per depositor, *cf.* Article 10 of Act No. 98/1999. Iceland did not make use of the option provided for in Article 7(2) of the Directive to exclude certain categories of depositors from the guarantee scheme. From May 2008, Landsbanki opted to take part in the Dutch deposit guarantee