

Case No: 90573
Document No: 1449905
Decision No: 063/24/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 24 April 2024

to bring a matter against Iceland before the EFTA Court in accordance with Article 31(2) of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice due to the failure by Iceland to adopt the measures necessary to make the Act referred to at point 14i of Annex IX to the Agreement on the European Economic Area (*Commission Delegated Regulation (EU) 2021/923 of 25 March 2021 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of that Directive*), as adapted by Protocol 1 to the Agreement, part of its internal legal order.

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31(2) thereof,

Whereas:

Commission Delegated Regulation (EU) 2021/923 of 25 March 2021 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of that Directive ("the Act") was incorporated into the Agreement on the European Economic Area ("EEA Agreement") by Decision No 142/2022 of the EEA Joint Committee of 29 April 2022 at point 14i of Annex IX to the Agreement, as adapted to the Agreement by Protocol 1.

It follows from Article 7 of the EEA Agreement, that the EFTA States were required to adopt the measures necessary to implement the Act and to notify these to EFTA Surveillance Authority ("the Authority"). The time limit to do this expired on 1 July 2022.

By letter dated 7 March 2023 (Doc No 1329638), the Authority requested information from Iceland about the measures it had taken to implement the Act.

In its reply dated 10 May 2023 (Doc No 1372571), the Icelandic Government indicated that a bill would be submitted to the Icelandic Parliament in autumn 2023, to ensure that the Central Bank of Iceland would have a legal basis to implement the Act. The Icelandic Government further informed the Authority that the Central Bank would implement the Act following the enactment of the bill.

As the Authority had not received any notification from Iceland setting out the measures which it had adopted to implement the Act, on 21 July 2023 it sent a Letter of Formal Notice to Iceland (Doc No 1377142).

In its Letter of Formal Notice, the Authority concluded that by failing to adopt or, in any event, to inform the Authority of the national measures it had adopted to implement the Act, Iceland had failed to fulfil its obligations under Article 7 of the Agreement.

In its observations of 10 August 2023 (Doc No 1392278) on the Letter of Formal Notice, the Icelandic Government indicated that it was working on legislative amendments to provide the Central Bank of Iceland with a sufficient legal basis to implement the Act.

The Authority issued a Reasoned Opinion on 24 January 2024 (Doc No 1419113), concluding that by failing to make the Act part of its internal legal order, Iceland had failed to fulfil its obligations under Article 7 of that Agreement. The deadline for Iceland to comply with the Reasoned Opinion was 24 March 2024.

The Icelandic Government did not reply to the Reasoned Opinion. However, on 3 April 2024, the Authority was informed by informal correspondence that a bill introducing a legal basis for the implementation of the Act had been submitted to Parliament on 27 March 2024 (Doc No 1448389).

At the present time, the Authority has not been notified, and does not have any other information to suggest, that Iceland has implemented the Act into its national legal order.

For these reasons, the Authority considers that the matter should be brought before the EFTA Court.

HAS ADOPTED THIS DECISION:

1. Proceedings should be commenced before the EFTA Court to seek a declaration that 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 14i of Annex IX to the EEA Agreement (*Commission Delegated Regulation (EU) 2021/923 of 25 March 2021 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of that Directive*), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order.
2. The Director of Legal and Executive Affairs is instructed to seize the EFTA Court, liaising with the Internal Market Affairs Directorate and subject to control by the responsible College Member, and to represent the EFTA Surveillance Authority before the EFTA Court.

For the EFTA Surveillance Authority,

Arne Røksund
President

Stefan Barriga
Responsible College Member

Árni Páll Árnason
College Member

Melpo-Menie Joséphidès
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.