

Case No: 90535
Document No: 1449856
Decision No: 067/24/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 8 May 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 56z of Chapter V of Annex XIII to the Agreement on the European Economic Area (*Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports*), 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:

Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (“the Act”) was incorporated into the Agreement on the European Economic Area (“EEA Agreement”) by Decision No 128/2019 of the EEA Joint Committee of 8 May 2019 at point 56z of Chapter V of Annex XIII 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 February 2023.

In a letter dated 7 March 2023 (Doc No 1352307), the Authority requested information from Iceland about the measures it had taken to implement the Act. By informal correspondence received on 9 March 2023 (Doc No 1358238), the Icelandic Government informed the Authority that the implementation was pending legislative amendments and should be concluded by the end of summer 2023.

As the Authority had not received any notification from Iceland setting out the measures which it had adopted to implement the Act, on 4 July 2023 it sent a Letter of Formal Notice to Iceland (Doc No 1376168).

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.

The Icelandic Government did not formally reply to the Letter of Formal Notice but told the Authority through an informal letter of 25 September 2023 (Doc No 1400324) that it had not yet taken the necessary measures to implement the Act. In that letter, the Icelandic Government referred to an opinion issued by the Icelandic Competition Authority on 1 September 2023 (Doc No 1400332), which had raised some concerns regarding barriers to access to port facilities and services in Iceland, on which, in the Competition Authority's view, the national Regulation incorporating the Act could have a dissuasive impact. The Icelandic Government noted that it intended to finalise its assessment of these concerns in the coming weeks, with the aim of publishing a draft implementing Regulation for public consultation by 9 October 2023.

The Authority issued a Reasoned Opinion on 22 November 2023 (Doc No 1408024), 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 the EEA Agreement. The deadline for Iceland to comply with the Reasoned Opinion was 22 January 2024.

The Icelandic Government did not reply to the reasoned opinion.

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 56z of Chapter V of Annex XIII to the EEA Agreement (*Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports*), 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
College Member

Árni Páll Árnason
Responsible College Member

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

This document has been electronically authenticated by Arne Roeksund, Sigrun Ingibjorg Gisladdottir.