Case No: 71655
Document No: 1047483
Decision No: 002/20/COL

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 fulfil its obligations under Protocol 35 to the EEA Agreement and Article 3 of the EEA Agreement

1 Introduction

1. By letter of 11 April 2012,[1] the EFTA Surveillance Authority ("the Authority") asked the Icelandic Government to clarify how it fulfils its obligations under Protocol 35 to the EEA Agreement ("EEA"). The Internal Market Affairs Directorate of the Authority referred to three Icelandic Supreme Court rulings that appeared to suggest that in the event of a conflict between an EEA rule, implemented into Icelandic law, and another statutory provision of national law, the latter would be applied, irrespective of its (in)compatibility with the EEA Agreement. The judgments thus gave rise to doubts about whether Iceland's legislation was in accordance with the sole Article of Protocol 35 EEA, which states: *"For cases of possible conflicts between implemented EEA rules and other statutory provisions, the EFTA States undertake to introduce, if necessary, a statutory provision to the effect that EEA rules prevail in these cases."*
2. Iceland did not reply to this letter.
3. Since then, the EFTA Court has further clarified its view on Protocol 35 EEA. Furthermore, the Icelandic Supreme Court has handed down a significant number of judgments, which hold that, in the event of a conflict between an EEA rule, implemented into Icelandic law, and another provision of national law, the latter should be applied, irrespective of its (in)compatibility with the EEA Agreement.[2]

2 Correspondence

4. On 13 December 2017, the Authority sent a letter of formal notice to Iceland,[3] concluding that Iceland had failed to fulfil its obligations under Protocol 35 EEA and Article 3 EEA, by failing to adopt the necessary measure to ensure that implemented EEA rules prevail over conflicting provisions of national law, and thus failing to ensure that individuals and economic operators could rely on their rights derived from the EEA Agreement. Iceland was requested to submit its observations on the content of the letter of formal notice within two months from its receipt.
5. By letter dated 12 February 2018,[4] the Icelandic Government requested an extension of the deadline to submit observations on the letter of formal notice until 13 April 2018. On 14 February 2018, the Authority granted the requested extension.[5]
6. On 12 April 2018, the Icelandic Government requested a further extension of the deadline to submit observations until 13 August 2018.[6] By letter dated 13 April 2018,[7] the Authority granted the requested extension.
7. The case was discussed at the package meeting in Iceland on 6 June 2018, where the representatives of the Icelandic Government informed the representatives of the Authority that a working group composed of legal

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[1] Doc No 630826.
[2] See Section 5.3 below.
[3] Doc No 880792.
[4] Doc No 897776.
[5] Doc No 897991.
[6] Doc No 908887.
[7] Doc No 908923.

experts had been established in order to assess the legal aspects of this case and to examine the possible solutions.[8] The representatives of the Icelandic Government further explained that the working group was supposed to deliver its findings by mid-July and that a reply from Iceland to the Authority's letter of formal notice was expected by 13 August 2018.[9]

8. By e-mail of 27 August 2018, the Icelandic Government informed the Authority that, following the findings of the working group, the Government was assessing the next steps regarding the issue and requested the Authority's understanding that a short time would be needed to clarify the next steps.

9. By letter dated 18 December 2018,[10] the Icelandic Government informed the Authority that the working group had presented its preliminary findings to the Ministry in August 2018. Furthermore, the Government stated that a committee had been appointed to initiate a comprehensive review of Iceland's participation in the EEA and to scrutinise the legal framework of the EEA Agreement, to be finalised by autumn 2019. In the letter, the Icelandic Government further stated:

   "The Icelandic Authorities remain committed to proposing amendments to the relevant EEA implementing legislation in order to ensure that it fully reflects the obligation undertaken by Iceland under the EEA Agreement, if proved necessary on the basis of the recommendation received from the working group and the committee."

10. The case was discussed again at the package meeting in Iceland on 4 June 2019, where the representatives of the Icelandic Government reiterated the Government's commitment to proposing amendments to the relevant national legislation in order to ensure that it fully reflects Iceland's obligations under Protocol 35 EEA.[11] It was also noted that the committee which had been appointed to review Iceland's participation in the EEA was expected to deliver its report in August or September 2019.[12] The representatives of the Icelandic Government further stated that, following the publication of the committee's report and discussions on the report's conclusions, the next steps in this case would be decided and the Authority informed accordingly.[13]

11. The report on Iceland's participation in the EEA was published on 1 October 2019.[14] The committee does not conclude on this infringement case, but records that the working group composed of legal experts submitted their findings on 3 August 2018. These findings conclude that Iceland is not fulfilling its obligations under Protocol 35 EEA and that the only possible solution would be to amend the Icelandic EEA Act.[15]

12. On 21 April 2020, the Icelandic Government sent a letter to the Authority,[16] recalling the establishment of the working group of legal experts and the committee for reviewing Iceland's participation in the EEA, and adding that the

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[8] See the Authority's follow-up letter dated 4 July 2018, Doc No 917930.
[9] Ibid.
[10] Doc No 1045421.
[11] See the Authority's follow-up letter dated 28 June 2019, Doc No 1076000.
[12] Ibid.
[13] Ibid.
[14] https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=013b2f1a-e447-11e9-944d-005056bc4d74.
[15] Ibid, p. 102.
[16] Doc No 1128831.

Government had requested and received special legal advice on this matter, all of which had been the subject of examination in recent weeks and months. The Government also referred to concerns about constitutional disputes and stated that, given the nature of Protocol 35, it could be argued that a broader perspective than merely examining Article 3 of the EEA Act was needed when addressing the issue at hand.

13. The case was subsequently discussed with the Icelandic Government during the package meeting, which took place remotely on 26 May 2020. At the meeting, the representatives of the Icelandic Government reiterated Iceland's commitment to solving the issues raised in this case, while asking for the Authority's understanding of the complexity of the case and noting that certain substantives issues needed to be further addressed. The representatives of the Authority noted that the Authority remains understanding of the complexity of the case for the Icelandic Government, while however also emphasising the importance of this case for the functioning of the EEA Agreement in Iceland and highlighting the practical consequences of Iceland's insufficient implementation of Protocol 35.[17]

14. On 3 July 2020, the Icelandic Government sent a letter to the Authority,[18] which, *inter alia*, stated:

   "The interplay between the Icelandic constitution, its bearing on the transfer of powers, discussions around amendments to the Constitution, the evolution of Icelandic jurisprudence and the method of implementation of Protocol 35 into Icelandic law requires further elucidation. Indeed, the comments on the matter from the Authority and the subsequent work undertaken under the auspices of the Government since the letter of the Authority was received, provide grounds for giving deeper consideration to whether amending primary law is sufficient, even if the conclusion by the Government were to follow the recommendations of the Authority."

15. On 10 September 2020, the Icelandic Government sent another letter to the Authority,[19] reiterating much of what was mentioned in the letter of 3 July 2020, including a reference to the judgment of the Court of Justice in Case C-493/17 *Weiss*[20] which, according to the Icelandic Government, highlights an underlying issue concerning the priority of national constitutions vis-à-vis EU/EEA law. The Government further stated that, in light of this ruling and while uncertainty existed on these issues across the EEA, it was the view of the Government that it was premature to table amendments to Icelandic law in line with the comments delivered by the Authority in its letter of formal notice.

16. The Authority has taken good note of the views of the Icelandic Government as set out in the above correspondence. However, nearly three years have elapsed since the Authority's letter of formal notice and the legal issues set out in that letter remain unresolved.

17. It should finally be noted that the Authority has received two complaints concerning Iceland's insufficient implementation of Protocol 35 EEA, one dated 11 February 2019[21] and another dated 23 January 2020[22].

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[17] See the Authority's follow-up letter, Doc No 1133598.
[18] Doc No 1142354.
[19] Doc No 1151995.
[20] Case C-493/17 *Weiss*, EU:C:2018:1000.
[21] Doc No 1051635.

3 Relevant national law

18. Article 3 of Act No 2/1993 on the European Economic Area[23] ("the EEA Act") was intended to implement Protocol 35 EEA. Article 3 of the EEA Act provides:

    "[s]tatutes and regulations shall be interpreted, in so far as appropriate, in conformity with the EEA Agreement and the rules laid down therein."[24]

4 Relevant EEA law

19. Article 3 EEA provides:

    "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.

    Moreover, they shall facilitate cooperation within the framework of this Agreement."

20. Protocol 35 EEA provides:

    "Whereas this Agreement aims at achieving a homogeneous European Economic Area, based on common rules, without requiring any Contracting Party to transfer legislative powers to any institution of the European Economic Area; and

    Whereas this consequently will have to be achieved through national procedures;

    Sole Article

    For cases of possible conflicts between implemented EEA rules and other statutory provisions, the EFTA States undertake to introduce, if necessary, a statutory provision to the effect that EEA rules prevail in these cases."

21. Article 119 EEA reads as follows:

    The Annexes and the acts referred to therein as adapted for the purposes of this Agreement as well as the Protocols shall form an integral part of this Agreement.

5 The Authority's Assessment

5.1 Protocol 35 EEA and the EFTA Court's interpretation and application of the protocol

22. The sole Article of Protocol 35 EEA obliges the EFTA States to secure the priority of *implemented* EEA rules within their own legal systems.

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[22] Doc No 1127742.

[23] Lög nr. 2/1993 um Evrópska efnahagssvæðið.

[24] Unofficial translation by the Authority. The original wording reads as follows*: "Skýra skal lög og reglur, að svo miklu leyti sem við á, til samræmis við EES-samninginn og þær reglur sem á honum byggja."*

23. The EFTA Court has repeatedly held that it follows from Protocol 35 EEA that EEA rules, which have been implemented into national law, must prevail over other conflicting national provisions, provided that the former are unconditional and sufficiently precise.[25]

24. The first observations of the EFTA Court on Protocol 35 EEA arose in the Court's first case, *Restamark,* where the Court held it to be inherent in the nature of Protocol 35 EEA that, in cases of conflict, individuals and economic operators must be entitled to invoke and claim, at the national level, any rights that can be derived from the provisions of the EEA Agreement that have been made part of the national legal order, if they are unconditional and sufficiently precise.[26]

25. The EFTA Court judgment in *Einarsson*,[27] concerned the content of the undertaking in Protocol 35 EEA. In that case, the Reykjavík District Court raised the question of whether the EEA Agreement contained any provisions dictating which rules should apply if the relevant Icelandic law was deemed incompatible with the EEA Agreement. The EFTA Court ruled that if a provision of national law is incompatible with implemented EEA law, *"... a situation has arisen which is governed by the undertaking assumed by the EFTA States under Protocol 35 to the EEA Agreement, the premise of which is that the implemented EEA rule shall prevail."*[28]

26. In *HOB-vín*, the EFTA Court held:

> *"It is inherent in the nature of the EEA Agreement that, in cases of conflict between implemented EEA rules and national statutory provisions, individuals and economic operators must be entitled to invoke and to claim at the national level any rights that can be derived from provisions of the EEA Agreement, as being or having been made part of the respective national legal order, if they are unconditional and sufficiently precise."*[29]

27. This approach can also be seen in *Koch* and *ESA v Norway*, where the EFTA Court held that the EEA Agreement requires that implemented EEA rules shall prevail in cases of possible conflict with other national provisions.[30]

28. In *Wahl* and *ESA v Iceland*, the EFTA Court held:

> *"Article 3 EEA requires the EEA States to take all measures necessary, regardless of the form and method of implementation, to ensure that a directive which has been implemented and satisfies the conditions set out*

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[25] Case E-1/01 *Einarsson* [2002] EFTA Ct. Rep 1, para. 50; Case E-2/12 *HOB-vín ehf.* [2012] EFTA Ct. Rep 1092, para. 122; Case E-11/12 *Koch and Others* [2013] EFTA Ct. Rep 272, para. 119; Case E-6/12 *EFTA Surveillance Authority v Norway* [2013] EFTA Ct. Rep 618, para. 66; Case E-15/12 *Wahl* [2013] EFTA Ct. Rep. 534, para. 54 and Case E-12/13 *EFTA Surveillance Authority v Iceland* [2014], EFTA Ct. Rep. 58, para. 73.

[26] Case E-1/94 *Restamark* [1994-1995] EFTA Ct. Rep. 15, para. 77.

[27] Case E-1/01 *Einarsson*, cited above. The case related to a higher VAT rate levied on books in languages other than Icelandic. The Court determined that this measure was incompatible with EEA provisions and could not be justified on grounds relating to the public interest of enhancing the position of the national language.

[28] Case E-1/01 *Einarsson*, cited above, para. 50.

[29] Case E-2/12 *HOB-vín*, cited above, para. 122.

[30] Case E-11/12 *Koch and Others*, cited above, para. 119 and Case E-6/12 *EFTA Surveillance Authority v Norway,* cited above, para. 66.

above [“sufficiently precise and clear”] prevails over conflicting national law and to guarantee the application and effectiveness of the directive.”[31]

29. The Authority observes that the EFTA Court, in *HOB-vín*, *Koch* and *ESA v Norway,* confirmed that the effectiveness and priority of implemented EEA rules over other national law is an inherent part of the EEA Agreement. In *Wahl* and *ESA v Iceland*, the Court then relied on the loyalty obligation in Article 3 of the EEA Agreement in order to require national courts to give effect to this principle of priority of implemented EEA law.

30. The judgments of the EFTA Court on the interpretation and application of Protocol 35 EEA are clear. The Protocol requires the EFTA States to ensure that EEA rules, which have been implemented into national law and which are unconditional and sufficiently precise, take precedence over other, conflicting, national legislation that is not derived from EEA law.

5.2 Iceland’s implementation of Protocol 35 EEA - Article 3 of the EEA Act

31. As mentioned above, Protocol 35 EEA was implemented in Icelandic law by Article 3 of the EEA Act, which states that “*statutes and regulations shall be interpreted, in so far as appropriate, in conformity with the EEA Agreement and the rules laid down therein.*”[32]

32. The preparatory works accompanying the EEA Act state that the words *“statutes and regulations”* should be considered as meaning both the ordinary domestic legislation and regulations, as well as the statutes and regulations that incorporate EEA obligations into domestic law. The preparatory works then clarify that the words *“shall be interpreted, in so far as appropriate”* means that the ambit of this interpretation rule is limited in two ways. First, Article 3 applies only to national rules that may conflict with EEA rules. Second, its ambit is limited by the provisions of the Icelandic Constitution, meaning that the Parliament may not be limited in its future legislative activities by this rule.[33]

33. The Authority notes that the actual wording of Article 3 of the EEA Act does not contain “*a statutory provision to the effect that EEA rules prevail”* in cases “*of possible conflicts between implemented EEA rules and other statutory provisions”*, as prescribed by Protocol 35 EEA. According to its wording, Article 3 of the EEA Act is merely a rule of interpretation which provides that domestic law shall be interpreted in conformity with EEA law.

34. Thus far, the requirement in Article 3 of the EEA Act seems to be the same as the court-created *principle of conform interpretation*.[34] The EFTA Court has recognised and emphasised this principle, stating that national courts “*must apply the interpretative methods recognised by national law as far as possible in order to achieve the result sought by the relevant EEA rule*”.[35] The EFTA

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[31] Case E-15/12 *Wahl*, cited above, para. 54 and Case E-12/13 *EFTA Surveillance Authority v Iceland*, cited above, para. 73.

[32] Unofficial translation by the Authority. The original wording reads as follows: *“Skýra skal lög og reglur, að svo miklu leyti sem við á, til samræmis við EES-samninginn og þær reglur sem á honum byggja.”*

[33] Parliamentary Report A [Alþingistíðindi A] of 1992-1993, p. 224.

[34] The principle of conform interpretation was first established by the Court of Justice of the European Union in Case C-14/83 *Von Colson,* EU:C:1984:153.

[35] Case E-1/07 *Criminal proceedings against A*, [2007] EFTA Ct. Rep. 246, para. 39.

Court has furthermore held that, "*when interpreting national law, national courts will consider any relevant element of EEA law, whether implemented or not*".[36]

35. The undertaking in Protocol 35 EEA is however different from the *principle of conform interpretation*. Protocol 35 EEA addresses situations when national courts are faced with conflicts between implemented EEA law and other national provisions, which cannot be solved through interpretation.

36. In contrast however with the wording of Article 3 of the EEA Act itself, the preparatory works to Article 3 *do* address the question of conflicting legislation:

    "Article 3 of the EEA Act entails, inter alia, that implemented EEA rules will be considered as special provisions [lex specialis] in relation to incompatible subsequent legislation so that, in the event of possible conflict, the more recent law will be considered not to diverge from the specific [EEA] legislation, unless the legislator specifically states otherwise. This is necessary to ensure a uniform interpretation of the provisions of the EEA Agreement. Protocol 35 clearly states that this interpretation rule does not encompass a transfer of legislative power and Article 3 is based on this principle."[37]

37. According to the preparatory works, implemented EEA law should thus be considered as a type of "*lex specialis*" in order for it to prevail over incompatible subsequent legislation (irrespective of the generality or specificity of that subsequent legislation), unless the legislature has specifically stated that it intended to deviate from the implemented EEA rule.

38. The Authority notes however that such a *lex specialis* principle, which assumes that the Parliament does not intend to legislate contrary to EEA law, is not reflected in the text of Article 3 of the EEA Act, which is limited to a rule requiring conform interpretation. Furthermore, the case law of the Icelandic Supreme Court shows that the *lex specialis* principle, as set out in the preparatory works, is not applied by the Supreme Court.

39. As the below cases illustrate, the Supreme Court considers that Article 3 of the EEA Act is a mere rule of interpretation, and that an interpretation on the basis of Article 3 cannot secure the priority of implemented EEA legislation in cases of conflict with other national legislation.

40. It is settled case law that the scope of national laws, regulations or administrative provisions must be assessed in the light of the interpretation given to them by national courts.[38] The below cases of the Supreme Court

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[36] Case E-12/13 *EFTA Surveillance Authority v Iceland* [2014], cited above, para. 74.

[37] Unofficial translation by the Authority. The original wording reads as follows: *"Í 3. gr. felst m.a. að innlend lög sem eiga stoð í EES-samningnum verði jafnan túlkuð sem sérreglur laga gagnvart ósamræmanlegum yngri lögum, að því leyti að yngri lög víki þeim ekki ef þau stangast á, nema löggjafinn taki það sérstaklega fram. Þetta er nauðsynlegt til þess að tryggja samræmi í reglunum á Evrópska efnahagssvæðinu."* See Parliamentary Report A [Alþingistíðindi A] of 1992-1993, p. 224.

[38] Joined Cases C-132/91, C-138/91 and C-139/91 *Katsikas and Others,* EU:C:1992:517, para. 39; Case C-382/92 *Commission v United Kingdom,* EU:C:1994:233, para. 36; Case C-300/95 *Commission v United Kingdom,* EU:C:1997:255, para. 37; Case C-129/00 *Commission v Italy,* EU:C:2003:656, para. 30; Case C-418/04 *Commission v Ireland*, EU:C:2007:780, para. 166 and Case C-490/04 *Commission v Germany,* EU:C:2007:430, para. 49.

must therefore be regarded as legal authority in Iceland on the interpretation and application of Article 3 of the EEA Act.

5.3 The issue of conflict between implemented EEA rules and other statutory provisions in Iceland – the case law of the Icelandic Supreme Court since 2003

41. The Authority notes that the extent to which the undertaking in Protocol 35 EEA is fulfilled by an EFTA State depends on whether the national system produces the desired result in practice, i.e. that in conflicts between implemented EEA rules and other statutory provisions of national law, the EEA rules prevail.

42. Since the EEA Agreement entered into force, Icelandic courts have, on a number of occasions, dealt with cases where there was at least a potential conflict between implemented EEA rules and other national rules.

43. It appears to the Authority that the Supreme Court has on only one occasion come to the conclusion that an implemented EEA rule should prevail over another national provision. This was in **Supreme Court Case No 477/2002 *Hörður Einarsson v The Icelandic State*** of 15 May 2003. This case concerned the Icelandic VAT Act No 50/1988,[39] which provided for lower VAT rates for books in Icelandic than books in other languages. In its advisory opinion in the case, the EFTA Court came to the conclusion that such different tax rates were in breach of Article 14 EEA. The Supreme Court concluded, referring to Article 3 of the EEA Act, the preparatory works to that provision and to Protocol 35 EEA, that Article 14 EEA was to prevail over the relevant provision in the previously enacted VAT Act since Article 14 EEA was a special rule. The Court, therefore, appears to have applied a *lex specialis* principle, similar to that set out in the preparatory works, to reach this conclusion. However, the Court also took note of the fact that the VAT Act pre-dated Article 14 EEA.

44. The Authority notes that since the VAT Act predated Article 14 EEA and *the lex posterior* doctrine could also have been applied to reach the same conclusion, it cannot be deduced from this judgment with certainty that Article 3 of the EEA Act was understood by the Supreme Court as being more than a rule of interpretation. The Authority further notes that in subsequent case law, the Supreme Court has made no reference to the *lex specialis* principle found in the preparatory works, nor to any other rule of precedence.

45. In **Supreme Court Case No 220/2005 *JT S.A., JTF OY and S v the Icelandic State*** of 6 April 2006, on the display of tobacco products, a claimant sought a declaration that a provision in the Tobacco Control Act No 6/2002[40] (restricting the display of tobacco products in retail stores) was inoperative as it was contrary to Articles 11 and 36 EEA. In its ruling, the Reykjavík District Court, without referring to Article 3 of the EEA Act or Protocol 35 EEA, had stated:

    "<u>Even if the conclusion were reached that paragraph 6 of Article 7 of Act No 6/2002 were in breach of Articles 11 and 36 of the EEA Agreement, that conclusion would not mean that the provision of paragraph 6 of Article 7 of</u>

[39] Lög nr. 50/1988 um virðisaukaskatt.
[40] Lög nr. 6/2002 um tóbaksvarnir.

<u>Act No 6/2002, which was adopted based on constitutional processes, would not be applied.</u> Such a conclusion might on the other hand form the basis of a claim for damages, cf. judgment of the Supreme Court of 16 December 1999. Already for that reason will the plaintiff's claims to the effect that the cited provision of Act No 6/2002 infringes Articles 11 and 36 of the EEA Agreement, be rejected."[41] (emphasis added)

46. On appeal, the Supreme Court upheld this conclusion on the status of implemented EEA rules.

47. In **Supreme Court Case No 274/2006 *The Public Prosecutor against X*** of 24 May 2006, the defendant claimed that Article 20 of Act No 75/1998 on Alcoholic Beverages,[42] which prohibited the advertisement of alcoholic products, was incompatible with Protocol 47 to the EEA Agreement on the abolition of technical barriers to trade in wine. The defendant requested an advisory opinion from the EFTA Court, but the Supreme Court confirmed the refusal of the request upon appeal, referring to the ruling of the Reykjavík District Court, which stated:

"Cases, similar in nature to the one being discussed here, have been brought before the courts. The question has been whether Article 20 of the Act on Alcoholic Beverages is in accordance with constitutional provisions on freedom of expression, property rights and equality and discrimination. <u>The disputed issue in this case, as in the earlier cases, concerns the validity and interpretation of Article 20 of the Act on Alcoholic Beverages and whether it is compatible with constitutional provisions, since legislation adopted according to constitutional processes cannot be set aside on any other grounds.</u> The EFTA Court will not deal with that type of legal interpretation. There is therefore no use in seeking an advisory opinion in this case."[43] [44] (emphasis added)

48. The Authority notes that in these two judgments from 2006 (Case No 220/2005 *JT S.A., JTF OY and S v the Icelandic State* and Case No 274/2006 *The Public Prosecutor against X*), the Supreme Court makes no reference to either Article 3 of the EEA Act or Protocol 35 EEA, and the effect of its reasoning is that it will not disregard or set aside national legislation which is incompatible with the EEA Agreement, i.e. implemented EEA legislation. The

[41] Unofficial translation by the Authority. The original wording reads as follow: "*Þó svo komist yrði að þeirri niðurstöðu að ákvæði 6. mgr. 7. gr. laga nr. 6/2002 færu gegn 11. gr. eða 36. gr. EES-samningsins, myndi sú niðurstaða ekki leiða til þess að stjórnskipulega settum ákvæðum 6. mgr. 7. gr. laga nr. 6/2002 yrði ekki beitt. Slík niðurstaða kynni hins vegar að mynda bótagrundvöll, sbr. m.a. dómur hæstaréttar frá 16. desember 1999. Þegar af þessari ástæðu verður kröfum stefnanda á þeim grunni að tilvitnuð ákvæði laga nr. 6/2002 fari gegn ákvæðum 11. gr. og 36. gr. EES-samningsins hafnað.*"

[42] Áfengislög nr. 75/1998.

[43] Unofficial translation by the Authority. The original text reads as follows: "*Mál af samkynja toga og hér er til meðferðar hafa áður komið til kasta dómstóla. Hefur þar verið tekist á um hvort 20. gr. áfengislaga standist ákvæði stjórnarskrár, m.a. um tjáningarfrelsi, eignarrétt og jafnræði. Úrlausnarefni í þessu máli snýst sem fyrr um gildi og skýringu á nefndri 20. gr. áfengislaga og hvort hún standist ákvæði stjórnarskrár, þar sem stjórnskipulega settum lögum verður ekki vikið til hliðar með öðrum hætti. EFTA dómstóllinn mun ekki fjalla um slíka lagaskýringu. Stoðar því ekki að leita ráðgefandi álits hans í þessu máli.*"

[44] The Authority observes that the Supreme Court has adopted a similar approach in other cases concerning the prohibition on the advertising of alcohol and the alleged incompatibility of Article 20 of Act No 75/1998 with EEA law (see Supreme Court Cases No 60/2008 of 25 February 2008, No 491/2007 of 23 October 2008 and No 143/2008 of 6 November 2008).

reasoning in these cases thus fails to take into account the obligations in Protocol 35 EEA.

49. The issue of conflict arose again in the **Supreme Court Case No 79/2010 *Biðskýlið Njarðvík*** of 9 December 2010. In this case, the Supreme Court addressed the scope of Article 3 of the EEA Act, stating:

    "Article 3 of Act No 2/1993 states that statutes and regulations shall be interpreted, in so far as appropriate, in conformity with the EEA Agreement and the rules laid down therein. Such an interpretation, by definition, entails that the wording of the Icelandic legislation shall be interpreted, to the extent possible, to contain a meaning that falls within its scope and corresponds most closely to the common rules that should apply in the EEA. However, the interpretation cannot lead to the wording of the Icelandic legislation being disregarded. The wording of Article 10, concerning the direct liability of the supplier for the damage of the injured party, is unambiguous and leaves no room for that responsibility to be set aside by means of interpretation on the basis of Article 3 of Act No 2/1993."[45] (emphasis added)

50. In relation to this case, the Authority further refers to its reasoned opinion dated 22 May 2013 in Case 69276.[46] There, the Authority, *inter alia*, came to the conclusion that, by giving effect to Article 10 of Act No 25/1991 on product liability[47] in the above Supreme Court case, Iceland had failed to fulfil its obligations under Protocol 35 EEA. This case was closed on 26 March 2014, as Iceland had adopted legislative amendments to Act No 25/1991 in order to accommodate the findings of the Authority.[48]

51. The Authority observes, however, that the approach adopted in *Biðskýlið Njarðvík* continues to be a precedent for the Supreme Court on the scope and limits of Article 3 of the EEA Act, namely as a mere rule of interpretation. In particular, the Supreme Court maintains that an interpretation on the basis of Article 3 *"cannot lead to the wording of Icelandic legislation being disregarded"*.

52. This approach can also be seen in **Supreme Court Case No 10/2013 *Landsbankinn v Flugastraumur*** of 24 January 2013. The case concerned a request for an advisory opinion. Flugastraumur, a limited liability company, commenced litigation against Landsbankinn, claiming that its lease should be regarded as a loan agreement indexed to foreign currency and recalculated as such. Landsbankinn argued, *inter alia*, that the Icelandic Act No 38/2001 on Interest and Price Indexation,[49] as applied by the Supreme Court, was in breach of the free movement of capital as provided for in Article 40 EEA, and

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[45] Unofficial translation by the Authority. The original text reads as follows: *"Í 3. gr. laga nr. 2/1993 er mælt svo fyrir að skýra skuli lög og reglur, að svo miklu leyti sem við á, til samræmis við EES-samninginn og þær reglur, sem á honum byggja. Slík lögskýring tekur eðli máls samkvæmt til þess að orðum í íslenskum lögum verði svo sem framast er unnt gefin merking, sem rúmast innan þeirra og næst kemst því að svara til sameiginlegra reglna sem gilda eiga á Evrópska efnahagssvæðinu, en hún getur á hinn bóginn ekki leitt til þess að litið verði fram hjá orðum íslenskra laga. Orð 10. gr. laga nr. 25/1991 um beina ábyrgð dreifingaraðila á skaðsemistjóni gagnvart tjónþola hafa ótvíræða merkingu og gefa ekkert svigrúm til að hliðra þeirra ábyrgð með skýringu samkvæmt 3. gr. laga nr. 2/1993."*

[46] Doc No 630035.

[47] Lög nr. 25/1991 um skaðsemisábyrgð.

[48] Doc No 700985.

[49] Lög nr. 38/2001 um vexti og verðtryggingu.

requested an advisory opinion from the EFTA Court. In support of this, Landsbankinn referred to the Authority's letter of formal notice to Iceland dated 19 April 2012,[50] in which the Authority concluded that the ban on the granting of exchange rate indexed loans in ISK was in breach of Article 40 EEA, since it dissuaded Icelandic financial institutions from financing their loans in other currencies than the national currency.

53. Landsbankinn also argued that if Act No 38/2001 was considered incompatible with Article 40 EEA, it had to be decided which rules should prevail. It observed that Article 40 had acquired binding force in Icelandic law and therefore the Court would be obliged, under Protocol 35 EEA, to give Article 40 EEA precedence over Act No 38/2001. Landsbankinn observed that the wording of Article 3 of the EEA Act was vague and did not seem to prescribe an obligation to set aside other legislation on the basis of implemented EEA law. A ruling from the EFTA Court would therefore be necessary in order to determine whether Protocol 35 EEA had been correctly implemented in Icelandic law via Article 3 of the EEA Act.

54. The Supreme Court rejected the request for an advisory opinion. The Court referred to *Biðskýlið Njarðvík* and noted that Article 3 of the EEA Act requires the wording of the Icelandic legislation to be interpreted, to the extent possible, to coincide with the meaning of EEA rules. The Court then stated: *"Such interpretation cannot, on the other hand, lead to the wording of Icelandic legislation being disregarded [...]."*[51]

55. The Supreme Court recorded that it had, in Case No 92/2010, concluded that the granting of exchange rate indexed loans in Icelandic krona was incompatible with Act No 38/2001 and therefore illegal.[52] The Court then held:

> *"Articles 13 and 14 of Act No 38/2001 have not been amended since the aforementioned judgment of the Supreme Court in Case No 92/2010 was passed on 16 June of that year. The unequivocal ban on the granting of exchange rate indexed loans in Icelandic krona is still unaffected. It is not possible to diverge from this unequivocal ban via an interpretation on the basis of Article 3 of Act No 2/1993."*[53]

56. With regard to Protocol 35 EEA, the Supreme Court held that the dispute, which was between private parties, would *"be resolved on the basis of Icelandic rules of law"*. Hence, any answer the EFTA Court might give with regard to Protocol 35 EEA would not be of relevance for the outcome of the case.

57. The Authority observes that the Supreme Court then went on to make a reference to Article 31 of the Surveillance and Court Agreement and stated that it was for the EFTA Surveillance Authority, in accordance with that

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[50] Doc No 585210.

[51] Unofficial translation by the Authority. The original text reads as follows: *"Slík lögskýring getur á hinn bóginn ekki leitt til þess að litið verði framhjá orðum íslenskra laga […]. "*

[52] See *e.g.* Supreme Court Cases No 92/2010, No 153/2010, No 603/2010, No 604/2010 and No 155/2011.

[53] Unofficial translation by the Authority. The original text reads as follows: *"Ákvæði 13. gr. og 14. gr. laga nr. 38/2001 hafa staðið óbreytt frá því fyrrgreindur dómur Hæstaréttar í máli nr. 92/2010 var kveðinn upp 16. júní það ár. Hið fortakslausa bann laganna við því að binda skuldbindingar í íslenskum krónum við gengi erlendra gjaldmiðla stendur því enn óhaggað. Fram hjá þessu afdráttarlausa banni verður ekki litið og því ekki hliðrað til með skýringu samkvæmt 3. gr. laga nr. 2/1993."*

provision, to initiate infringement proceedings against an EFTA State, if the Authority considered that an EFTA State had not fulfilled its obligations under the EEA Agreement.

58. The issue of conflict of laws arose again in **Supreme Court Case No 552/2013 *Commerzbank AG v Kaupthing*** of 28 October 2013[54] and **Supreme Court Case No 120/2014 *De Nederlandsche Bank N.V. v LBI*** of 8 May 2014. In relation to these cases, the Authority refers to its letter of formal notice dated 6 July 2016 in Case 77038.[55] Here the Authority, *inter alia*, came to the conclusion *"that by not ensuring a derogation from the general principle that the law of the home EEA State shall apply, in order to secure that the creditors' rights of set-off and netting are not undermined in circumstances such as those described above, Iceland has failed to fulfil its obligations arising from […] Protocol 35 to the EEA Agreement."*[56]

59. The dispute in **Supreme Court Case No 306/2013 *Landesbank Baden-Württemberg v Glitnir,*** of 10 May 2013, concerned the question of whether the Icelandic legislature could provide for the *de facto* commencement of winding-up proceedings, without this being based on a ruling by a court or other competent judicial authority.

60. The background to the case was that on 24 November 2008, the Reykjavík District Court granted Glitnir a moratorium, in accordance with the Act No 161/2002 on Financial Undertakings.[57] On 22 April 2009, Act No 44/2009 came into force, amending the Act on Financial Undertakings, and introducing transitional provisions which transformed the moratorium granted to Glitnir into winding-up proceedings, as if the bank had been made subject to winding-up proceedings by a court decision on the date that the Act took effect (22 April 2009).[58] On 12 May 2009, the Reykjavík District Court appointed a Winding-up Board for Glitnir. The Winding-up Board issued an authorisation for the company's debt-collectors to call in debts on 26 May 2009, and the period allowed for filing claims ended on 26 November the same year. On 19 May 2010, the claimant filed claims with the Winding-up Board for a total amount of 5.89 billion krona. The defendant rejected the claimant's claim since the time limit within which to lodge claims had expired.

61. The claimant argued that the winding-up of Glitnir could not be considered to have commenced on 22 April, by the enactment of Act 44/2009, since the measure was not adopted by "*an administrative or judicial authority*", within the meaning of Article 101 of the Act on Financial Undertakings,[59] which implemented Article 9 of Directive 2001/24/EC on the reorganisation and

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[54] See also the decisions during trial in Case No 723/2012 and Case No 166/2013.
[55] Doc No 789678.
[56] The Authority closed Case 77038 following Iceland's amendments of national legislation on the reorganisation and winding-up of credit institutions in a way that accommodated the Authority's concerns. Before doing so, however, the Authority stated in a reasoned opinion dated 7 February 2018 (Doc No 874136) that, due to the opening of the present Case, it had removed its argument on the breach of Protocol 35 from the scope of Case 77038. The issues in relation to Protocol 35 therefore remain of concern, and form part of the present Case.
[57] Lög nr. 161/2002 um fjármálafyrirtæki.
[58] Point II of the transitional provisions of Act No 44/2009 amended the legal effects of the moratorium, by making financial institutions under moratorium subject to a specific winding-up scheme.
[59] Article 101 of the Act on Financial Undertakings was introduced by Article 5 of Act No 44/2009.

winding up of credit institutions.[60] Thus, the winding up of Glitnir could not be considered to have commenced until 22 November 2010, when the winding-up proceedings in relation to Glitnir were confirmed by a ruling of Reykjavík District Court. The claimant also argued that the court order could not be considered to have retrospective effect. The claimant requested an advisory opinion from the EFTA Court on all these points.

62. The Reykjavík District Court, whose ruling and reasoning was upheld by the Supreme Court, first recalled that Article 3 of the EEA Act could not lead to a situation where the clear wording of Icelandic legislation is disregarded. The judgments of the Icelandic Supreme Court in Case No 79/2010 (*Biðskýlið Njarðvík*) and Case No 10/2013 (*Landsbankinn v Flugastraumur*) made clear that if Icelandic law was unequivocally worded, the opinion of the EFTA Court could not be relevant for the outcome of the case. The Court then observed that, under the general rule in Article 101 of the Act on Financial Undertakings, a court must rule on whether an undertaking is placed in winding-up proceedings. However, the transitional provisions included in point II of Act No 44/2009 contained special rules, which made financial institutions under a moratorium subject to a specific winding-up scheme.

63. The District Court was unequivocal that Act No 44/2009, which amended several provisions of the Act on Financial Undertakings, placed the bank in winding-up, commencing on 22 April 2009, when the Act came into force. The general rule in Article 101 of the Act on Financial Undertakings (implementing the relevant Article of Directive 2001/24/EC) could not change this fact.

64. The District Court then went on to state:

    "The questions do not concern doubts as to the interpretation of the transitional provision but whether its introduction was compatible with EEA law. This case, however, does not concern a State liability claim against the Icelandic State, [...] but rather takes place between private parties [...] and the conclusion of the aforementioned dispute depends on Icelandic law."[61]

65. In light of the above, and of the nature of Article 3 of the EEA Act, the Court held that it could not see how an opinion from the EFTA Court could lead to the conclusion that a date, other than that stipulated in Act No 44/2009, could serve as reference for determining the commencement of the winding-up proceedings. Thus, an advisory opinion was deemed irrelevant to the outcome of the case.

66. In **Supreme Court Case No 429/2014** ***The Public Prosecutor v X, Y, Z and Þ*** of 15 July 2014, the accused had been charged under the Foreign Exchange Act No 87/1992,[62] which prohibits parties from acting as intermediaries in foreign exchange transactions in Iceland unless authorised

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[60] Article 9(1) of that Directive states: *"The administrative or judicial authorities of the home Member State which are responsible for winding up shall alone be empowered to decide on the opening of winding-up proceedings concerning a credit institution, including branches established in other Member States."*

[61] Unofficial translation by the Authority. The original text reads as follows: "*Spurningarnar í beiðni sóknaraðila snerta í reynd ekki vafa um túlkun á efni framangreinds ákvæðis til bráðabirgða, heldur hvort lögfesting þess hafi samræmst EES-rétti. Mál þetta lýtur hins vegar ekki að þeirri bótakröfu á hendur íslenska ríkinu […], heldur er um að ræða mál sem rekið er á milli tveggja lögaðila […], og niðurstaða málsins um framangreint ágreiningsefni aðila ræðst af íslenskum réttarreglum.*"

[62] Lög nr. 87/1992 um gjaldeyrismál.

to do so by, *inter alia,* the Central Bank. The accused requested that the case be referred to the EFTA Court, alleging the incompatibility of the Act with the free movement of capital (Article 40 EEA).

67. The Supreme Court stated that the questions in the case "*do not concern the application of Article 8(1) of Act No 87/1992 in light of an interpretation of the EEA Agreement, but whether the provision is compatible with it.*"[63] The Court then refused to seek an opinion from the EFTA Court, since any answer the EFTA Court might give "*could not influence the resolution of the criminal case against the accused, since their criminal liability is governed by Icelandic law.*"[64]

68. In **Supreme Court Case No 291/2015 *The Public Prosecutor v X*** of 5 May 2015, the accused had been charged with breaching the Customs Act No 88/2005,[65] the Medicinal Products Act No 93/1994[66] and the Medicinal Products Sales Act No 30/1963,[67] after having imported, without a marketing authorisation, nicotine filters for e-cigarettes. Before the Reykjanes District Court, the accused requested that an advisory opinion be sought from the EFTA Court on whether such a ban was in conformity with Articles 11 and 13 EEA on the free movement of goods. The accused reasoned that the e-cigarettes had been imported to Iceland from the United Kingdom, where they were lawfully sold and considered to be regular consumer products. By qualifying the product as a medicinal product, the Icelandic Medicines Agency had for all intents and purposes prohibited their sale in Iceland, and this constituted an unjustified restriction on the free movement of goods.

69. The Reykjanes District Court rejected the accused's request for an advisory opinion. The Supreme Court upheld that decision, stating that under Icelandic law it was unlawful and punishable to import medicinal products without a valid Icelandic marketing authorisation. The Court stated that *"it follows from Article 34 of the Surveillance and Court Agreement and Article 1(1) of Act No 21/1994 that it is the role of the EFTA Court to interpret the EEA Agreement but the assessment of evidence and the factual circumstances of the case, as well as interpretation of domestic legislation and the application of the Agreement in Iceland falls upon the Icelandic courts."*[68] The Court then held that on this basis, and on the basis of the facts of the case, the EFTA Court's opinion could not be considered to have an independent meaning for the outcome of the case, since the accused's criminal liability was governed by Icelandic law.

70. In these two criminal cases (Case No 429/2014 *The Public Prosecutor v X, Y, Z and Þ* and Case No 291/2015 *The Public Prosecutor v X*), which concerned

[63] Unofficial translation by the Authority. The original text reads as follows: *"Þær spurningar sem varnaraðilar krefjast ráðgefandi álits um varða ekki beitingu 1. mgr. 8. gr. laga nr. 87/1992 í ljósi túlkunar á EES-samningnum heldur hvort ákvæðið sé samrýmanlegt honum."*

[64] Unofficial translation by the Authority. The original text reads as follows: *"Svör EFTA-dómstólsins við þeim spurningum gætu því ekki haft áhrif við úrlausn sakamálsins á hendur varnaraðilum, enda fer um refsiábyrgð þeirra að íslenskum lögum."*

[65] Tollalög nr. 88/2005.

[66] Lyfjalög nr. 93/1994.

[67] Lyfsölulög nr. 30/1963.

[68] Unofficial translation by the Authority. The original text reads as follows: *"Af 1. mgr. 34. gr. samnings milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, sbr. 1. mgr. 1. gr. laga nr. 21/1994, leiðir að það er hlutverk EFTA-dómstólsins að skýra EES-samninginn, en íslenskra dómstóla að fara með sönnunarfærslu um staðreyndir máls, skýringu innlends réttar og beitingu samningsins að íslenskum lögum."*

the alleged incompatibility of national provisions with the freedom of movement, the Supreme Court thus rejected requests for advisory opinions from the EFTA Court on the basis that the cases were governed by Icelandic law, without making any reference to Article 3 of the EEA Act.

71. It should also be noted that, in a ruling of 9 January 2019, in Case No 830/2018 *The Icelandic State and the Icelandic Central Bank v Coldrock Investments Ltd.*, the recently established Court of Appeal (*Landsréttur*)[69] rejected a request for an advisory opinion in a case concerning alleged restrictions on the free movement of capital inherent in Act No 37/2016 on the Treatment of Króna-Denominated Assets Subject to Special Restrictions.[70] The Court made a reference to, *inter alia*, Case No 79/2010 *Biðskýlið Njarðvík* and Case No 10/2013 *Flugastraumur v Landsbankinn* and concluded that the provisions of Act No 37/2016 were unambiguous in relation to the restrictions on the free movement of capital inherent therein and would not be set aside by means of interpretation on the basis of Article 3 of the EEA Act.

72. It has thus become clear that the Court of Appeal follows the case law of the Supreme Court concerning actual or potential conflicts between implemented EEA rules and other statutory provisions of national law. This ruling of the Court of Appeal cannot be appealed to the Supreme Court and is therefore final on the matter.[71]

5.4 The Authority's conclusions

73. Protocol 35 EEA provides that the EFTA States are obliged, if necessary, to introduce a statutory provision to the effect that, in case of conflict between EEA rules which have been implemented into national law, and other statutory provisions of national law, the former will prevail. Furthermore, 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.[72]

74. As noted above, Article 3 of the EEA Act contains a rule requiring conform interpretation. It does not, by its wording, require that implemented EEA rules should prevail if and when in conflict with other national rules, as prescribed by Protocol 35 EEA. Thus, notwithstanding the preparatory works to the provision, the wording of Article 3 alone does not fulfil the obligations under Protocol 35 EEA.

75. That the wording of Article 3 of the EEA Act is not sufficient is confirmed by the case law of the Icelandic Supreme Court.[73] As the above cases illustrate, the Supreme Court has, in cases of actual or potential conflict between implemented EEA law and other national legislation, either refrained from making a reference to Article 3 of the EEA Act, while concluding that national rules cannot be set aside/disregarded (or simply stating that the matter is

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[69] As of 1 January 2018, Iceland has a three tiered court system, comprised of eight district courts, the Court of Appeal and the Supreme Court.
[70] Lög nr. 37/2016 um meðferð krónueigna sem háðar eru sérstökum takmörkunum.
[71] See Article 1(3) of Act No 21/1991.
[72] See, *inter alia*, Case E-2/15 *EFTA Surveillance Authority v Iceland* [2015] EFTA Ct. Rep. 340, para. 18, and case law cited therein.
[73] Although the Authority's assessment is restricted to the Supreme Court's case law, it should be noted that the Court of Appeal, which in many cases will be the court of last instance, has adopted the same approach.

governed by Icelandic law),[74] or explicitly stated that Article 3 of the EEA Act is a mere rule of interpretation, which cannot secure the priority of implemented EEA legislation.[75]

76. One of the effects of this is that the fundamental provisions of the EEA Agreement on free movement of goods, persons, services and capital, cannot be relied upon in cases of a (possible) conflict with other national provisions, despite the fact that the four freedoms are implemented into Icelandic law by the EEA Act and comply with the requirement of being unconditional and sufficiently precise.[76] The Authority observes that this deprives these main provisions of the EEA Agreement of their core purpose, that is to prevent unjustified restrictions on free movement, and entails that individuals and economic operators are unable to rely on their rights derived from the EEA Agreement.

77. As stated above, the scope of national laws, regulations or administrative provisions must be assessed in the light of the interpretation given to them by national courts.[77] The above cases of the Supreme Court must therefore be regarded as legal authority in Iceland on the interpretation and therefore application of Article 3 of the EEA Act.

78. Consequently, it is the Authority's view that Article 3 of the EEA Act, as interpreted and applied by the Supreme Court of Iceland, does not adequately implement the sole Article of Protocol 35 EEA, as it does not ensure that unconditional and sufficiently precise implemented EEA law prevails over conflicting national provisions. The Authority considers that Iceland has therefore failed to take the appropriate measures to ensure fulfilment of its obligations arising out of the EEA Agreement.

79. The Authority observes that, although the Icelandic Government had stated that it remained committed to proposing amendments to the relevant EEA implementing legislation in order to ensure its compliance with the EEA Agreement, no concrete measures have been taken and Iceland thus remains in breach of its obligations under the EEA Agreement.

FOR THESE REASONS,

THE EFTA SURVEILLANCE AUTHORITY,

pursuant to the first paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and after having given Iceland the opportunity of submitting its observations,

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[74] See, for example, Cases No 220/2005, No 274/2006, No 552/2013 and No 120/2014.

[75] See, for example, Supreme Court Cases No 79/2010, No 10/2013 and No 306/2013. See also Supreme Court Case No 92/2013 *The Icelandic State v Atli Gunnarsson* of 14 October 2014, where the Court made a reference to Article 3 of the EEA Act and Cases No 79/2010 and No 10/2013, explaining the scope of this rule of interpretation, i.e. that it may not lead to situations where *"explicitly worded provisions of Icelandic law are disregarded"*.

[76] See, for example, Supreme Court Cases No 220/2005, No 60/2008, No 491/2007, No 143/2008, No 10/2013, No 429/2014 and No 291/2015.

[77] Joined Cases C-132/91, C-138/91 and C-139/91 *Katsikas and Others*, cited above, para. 39; Case C-382/92 *Commission v United Kingdom*, cited above, para. 36; Case C-300/95 *Commission v United Kingdom,* cited above, para. 37; Case C-129/00 *Commission v Italy*, cited above, para. 30; and Case C-418/04 *Commission v Ireland*, cited above, para. 166.

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that by failing to adopt the necessary measure to ensure that implemented EEA rules prevail over conflicting provisions of national law, and thus failing to ensure that individuals and economic operators can rely on their rights derived from the EEA Agreement, Iceland has failed to fulfil its obligations under Protocol 35 EEA and Article 3 EEA.

Pursuant to 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, the EFTA Surveillance Authority requires Iceland to take the measures necessary to comply with this reasoned opinion within *three months* of its receipt.

Done at Brussels, 30 September 2020

For the EFTA Surveillance Authority

Bente Angell-Hansen President Responsible College Member	Frank J. Büchel College Member	Högni Kristjánsson College Member

Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.