

Case No: 88191
Document No: 1527488
Decision No: 062/25/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 9 April 2025

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 fulfil its obligations under the Act referred to at point 7 of Chapter XVII of Annex II to the Agreement on the European Economic Area (*Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste*), as adapted by Protocol 1 to that Agreement, and under Article 7 of the EEA Agreement, by failing to adopt the measures necessary to implement Articles 1(2), 1(5) and 1(17) of the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof

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:

Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste (“the Act”) was incorporated into the Agreement on the European Economic Area (“EEA Agreement”) by Decision No 296/2021 of the EEA Joint Committee of 29 October 2021 at point 7 of Chapter XVII of Annex II to the Agreement, as adapted to the Agreement by Protocol 1.

It follows from Article 7 of the EEA Agreement and from Article 2 of the Act, that the EFTA States were required to adopt the measures necessary to implement Articles 1(2), 1(5), and 1(17) of the Act and to notify these to EFTA Surveillance Authority (“the Authority”). The time limit to do this expired on 30 October 2021.

By letter dated 14 December 2021 (Doc No 1251643), the Authority reminded Iceland of the obligation to notify the measures it had taken to implement the Act.

As the Authority had not received any notification from Iceland setting out the measures which it had adopted to implement the Act, on 15 March 2022 it sent a Letter of Formal Notice to Iceland (Doc No 1269748).

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 the Act and Article 7 of the EEA Agreement.

The Icelandic Government did not reply to the Letter of Formal Notice.

The Authority issued a Reasoned Opinion on 31 May 2022 (Doc No 1287058), concluding that by failing to adopt the measures necessary to implement the Act, and/or by failing to notify the EFTA Surveillance Authority of the measures it has adopted to implement the Act, Iceland had failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement. The deadline for Iceland to comply with the Reasoned Opinion was on 31 July 2022.

On 7 June 2023, Iceland formally notified ESA by way of a Form 1 that the Act had been transposed into its national legal order as of 1 January 2023, indicating that Articles 1(2), 1(5), and 1(17) remained unimplemented (Doc No 1377781). On 8 June 2023, the Form 1 was discussed during the Package Meeting, where Iceland explained how the remaining provisions were to be implemented through regulations that would be adopted in the summer or autumn of 2023 (Document No 1379433).

On 12 June 2023, ESA sought confirmation from Iceland that the Act had only been partially implemented. Iceland confirmed this on 15 June 2023 and stated it would “*make sure to submit Form 1s when the necessary amendments to the specified regulations have gone through*” (Document No 1379619). To date, no such updated Form 1 concerning the Act has been submitted.

Between 28 August 2023 and 4 March 2025, ESA and Iceland engaged in extensive correspondence regarding the implementation of Articles 1(2), 1(5), and 1(17) of the Act, with the most recent update from Iceland, from 4 March 2025, indicating that implementation of the provisions reflected in the Form 1 as being outstanding was underway (Document No 1523901).

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 Iceland has failed to fulfil its obligations under the Act referred to at point 7 of Chapter XVII of Annex II to the EEA Agreement (*Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste*), as adapted by Protocol 1 to the EEA Agreement, and under Article 7 of the EEA Agreement, by failing to adopt the measures necessary to implement Articles 1(2), 1(5), and 1(17) of the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof.
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

Mel-po-Menie Joséphidès
Countersigning as Director,
Legal and Executive Affairs

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