JUDGMENT OF THE COURT

9 December 2025

(*Failure by an EFTA State to fulfil its obligations – Failure to implement – Directive (EU) 2019/770 – Contracts for the supply of digital content and digital services*)

In Case E-12/25,

EFTA Surveillance Authority, represented by Hildur Hjörvar, Sigurbjörn Bernharð Edvardsson, Sigrún Ingibjörg Gísladóttir and Melpo-Menie Joséphidès, acting as Agents,

applicant,

v

Iceland, represented by Hendrik Daði Jónsson and Arnar Halldórsson, acting as Agents,

defendant,

APPLICATION seeking a declaration that Iceland has failed to fulfil its obligations under the act referred to at points 7d, 7f and 7m of Annex XIX to the Agreement on the European Economic Area (Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services), 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 the act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann (Judge-Rapporteur) and Michael Reiertsen, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having regard to the written pleadings of the parties,

having decided to dispense with the oral procedure,

gives the following

JUDGMENT

I INTRODUCTION

1 By an application lodged at the Court's Registry on 11 June 2025, the EFTA Surveillance Authority ("ESA") brought an action under 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 ("SCA") seeking a declaration from the Court that Iceland has failed to fulfil its obligations under the act referred to at points 7d, 7f and 7m of Annex XIX to the Agreement on the European Economic Area ("EEA" or "the EEA Agreement") (Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services) (OJ 2019 L 136 p. 1 and Icelandic EEA Supplement 2021 No 71 p. 7) ("the Directive"), as adapted by Protocol 1 to that Agreement, and under Article 7 EEA, by failing to adopt the measures necessary to implement the act within the time prescribed, or in any event, by failing to inform ESA thereof.

II LEGAL BACKGROUND

2 Article 3 EEA reads, in extract:

> *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.*

3 Article 7 EEA reads, in extract:

> *Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows:*
>
> *…*
>
> *(b) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.*

4 Article 31 SCA reads:

> *If the EFTA Surveillance Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement or of this Agreement, it shall, unless otherwise provided for in this Agreement, deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.*
>
> *If the State concerned does not comply with the opinion within the period laid down by the EFTA Surveillance Authority, the latter may bring the matter before the EFTA Court.*

5 Decision of the EEA Joint Committee No 70/2021 of 5 February 2021 (OJ L 2024/53, 11.1.2024, http://data.europa.eu/eli/dec/2024/53/oj, and Icelandic EEA Supplement 2024 No 3, p. 118) ("JCD No 70/2021") amended Annex XIX (Consumer protection) to the EEA Agreement by adding the Directive as points 7d, 7f and 7m of the Annex. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled on 1 February 2024 and JCD No 70/2021 entered into force on 1 April 2024.

6 Article 24 of the Directive, entitled "Transposition", reads:

> 1. *By 1 July 2021 Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.*
>
> *They shall apply those measures from 1 January 2022.*
>
> *When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.*
>
> *Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.*
>
> *2. The provisions of this Directive shall apply to the supply of digital content or digital services which occurs from 1 January 2022 with the exception of Articles 19 and 20 of this Directive which shall only apply to contracts concluded from that date.*

III FACTS AND PRE-LITIGATION PROCEDURE

7 On 1 April 2024, the time limit to adopt the measures necessary to implement the Directive and to notify these measures to ESA expired.

8 On 17 July 2024, having not received any notification from Iceland setting out the measures which it had adopted to implement the Directive, ESA sent a letter of formal notice to Iceland, concluding that by failing to take the necessary measures to make the Directive part of its internal legal order, and/or by failing to notify these to ESA, Iceland had failed to fulfil its obligations under the Directive and Article 7 EEA. Iceland was invited to submit its observations within two months i.e. by 17 September 2024.

9 On 2 October 2024, Iceland replied to the letter of formal notice, stating that it had not yet taken the necessary measures to implement the Directive.

10 On 4 December 2024, having considered Iceland's response, ESA delivered its reasoned opinion in which it maintained the conclusion set out in its letter of formal notice. Iceland was given two months in which to take the measures necessary to comply with the reasoned opinion, i.e. no later than 4 February 2025.

11 Iceland did not reply to the reasoned opinion.

12 On 29 April 2025, ESA was informed by email that a Bill implementing the Directive was expected to be presented to Parliament in November 2025.

13 On 11 June 2025, ESA decided, by way of College Decision 084/25/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

14 On 11 June 2025, ESA lodged the present application at the Court's Registry, which was registered at the Court on the same date. ESA requests the Court to:

> *1. declare that Iceland has failed to fulfil its obligations under the Act referred to at points 7d, 7f and 7m of Annex XIX to the Agreement on the European Economic Area (Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services), 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 the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof, and*
>
> *2. order Iceland to bear the costs of these proceedings.*

15 In its application, ESA states that it has not been notified and does not have any other information to suggest that Iceland has implemented the Directive into its national legal order.

16 On 13 August 2025, Iceland submitted its defence, which was registered at the Court on the same date. Iceland submits that the facts of the case, as brought forward in the application, are correct and undisputed. Iceland does not dispute the declaration sought by ESA in its application.

17 A deadline of 19 September 2025 was set for the reply. By way of a letter of 29 August 2025, registered at the Court on the same date, ESA observed that Iceland had not contested the declaration sought. Consequently, ESA waived its right of reply pursuant to Article 108 of the Rules of Procedure ("RoP"). Further, ESA stated that it consented to the Court dispensing with the oral procedure should it wish to do so in the present case.

18 On 12 September 2025, Iceland consented to the Court dispensing with the oral hearing pursuant to Article 70 RoP.

19 On 25 September 2025, the deadline for intervention expired, pursuant to Article 113(1) RoP. No applications to intervene were received.

20 On 22 October 2025, the deadline for submitting written observations expired. No written observations were received.

21 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided, pursuant to Article 70 RoP, to dispense with the oral procedure.

V FINDINGS OF THE COURT

22 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 (see the judgment of 11 November 2025 in *ESA* v *Iceland*, E-4/25, paragraph 19 and case law cited).

23 Article 7(b) EEA provides that an act corresponding to an EU directive, referred to in the Annexes to the EEA Agreement or a decision of the EEA Joint Committee, shall be made part of the internal legal order of an EEA State in accordance with that EEA State's choice of form and method of implementation. An obligation to implement the Directive also follows from Article 24 thereof.

24 The Court notes that the lack of direct legal effect of acts referred to in decisions by the EEA Joint Committee makes timely implementation crucial for the proper functioning of the EEA Agreement. The EFTA States find themselves under an obligation of result in that regard (see the judgment in *ESA* v *Iceland*, E-4/25, cited above, paragraph 21 and case law cited).

25 JCD No 70/2021 entered into force on 1 April 2024. The time limit for EFTA States to adopt the measures necessary to implement the Directive expired on the same date.

26 The question of whether an EFTA State has failed to fulfil its obligations must be determined by reference to the situation as it stood at the end of the period laid down in the reasoned opinion (see the judgment in *ESA* v *Iceland*, E-4/25, cited above, paragraph 23 and case law cited). In this case, the relevant date is 4 February 2025.

27 It is undisputed that Iceland had failed to fulfil its obligations under the Directive and Article 7 EEA by the expiry of the time limit set in the reasoned opinion.

28 In light of the above, it must be held that Iceland has failed to fulfil its obligations under the Directive and under Article 7 EEA by failing to adopt the measures necessary to implement the Directive within the time prescribed.

VI COSTS

29 Under Article 121(1) RoP, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since ESA has requested that Iceland be ordered to pay the costs, the latter has been unsuccessful, and none of the exceptions in Article 121(2) RoP apply, Iceland must be ordered to pay the costs of the proceedings.

On those grounds,

THE COURT

hereby:

1. **Declares that Iceland has failed to fulfil its obligations under the act referred to at points 7d, 7f and 7m of Annex XIX to the Agreement on the European Economic Area, (Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services), 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 the act within the time prescribed.**

2. **Orders Iceland to bear the costs of the proceedings.**

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 9 December 2025.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President