JUDGMENT OF THE COURT

3 July 2026

(*Failure by an EFTA State to fulfil its obligations – Failure to implement – Article 3 EEA – Principle of sincere cooperation – Duty to provide information – Regulation (EU) 2019/881 – Cybersecurity – Electronic communication, audiovisual services and information society*)

In Case E-21/25,

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

applicant,

v

Iceland, represented by Hendrik Daði Jónsson and Gunnar Ingi Ágústsson, acting as Agents,

defendant,

APPLICATION seeking a declaration that Iceland has failed to adopt the measures necessary to make the act referred to at point 5cp of Annex XI and point 48 of Protocol 37 to the Agreement on the European Economic Area (Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act)), as adapted by Protocol 1 to the Agreement, part of its internal legal order,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann and Michael Reiertsen (Judge-Rapporteur), 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 The case concerns the obligation to implement an act referred to or contained in the Annexes to the EEA Agreement or in decisions of the EEA Joint Committee in accordance with Article 7 EEA.

2 By an application lodged at the Court's Registry on 8 October 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 adopt the measures necessary to make the act referred to at point 5cp of Annex XI and point 48 of Protocol 37 to the Agreement on the European Economic Area ('EEA' or 'the EEA Agreement') (Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act)) (OJ 2019 L 151, p. 15, and Icelandic EEA Supplement 2026 No 10, p. 1) ('the Regulation'), as adapted by Protocol 1 to the Agreement, part of its internal legal order.

II LEGAL BACKGROUND

3 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.*
> *...*

4 Article 7(a) EEA reads:

> *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:*

(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;

5 Article 2 SCA reads:

The EFTA States 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.

6 Article 5(1)(a) SCA reads:

The EFTA Surveillance Authority shall, in accordance with the provisions of this Agreement and the provisions of the EEA Agreement and in order to ensure the proper functioning of the EEA Agreement:

(a) ensure the fulfilment by the EFTA States of their obligations under the EEA Agreement and this Agreement;

7 Article 6 SCA reads:

In accordance with the provisions of this Agreement and the EEA Agreement, the EFTA Surveillance Authority may, in carrying out the duties assigned to it, request all the necessary information from the Governments and competent authorities of the EFTA States and from undertakings and associations of undertakings.

8 Article 22 SCA reads:

In order to ensure the proper application of the EEA Agreement, the EFTA Surveillance Authority shall monitor the application of the provisions of the EEA Agreement and of the present Agreement by the EFTA States.

9 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.

10 Decision of the EEA Joint Committee No 22/2023 of 3 February 2023 (OJ L, 2023/2306, 19.10.2023, ELI: http://data.europa.eu/eli/dec/2023/2306/oj, and Icelandic EEA Supplement 2023 No 75, p. 34) ('JCD No 22/2023') added the Regulation as point 5cp of Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement and as point 48 of Protocol 37 to the EEA Agreement. Constitutional requirements were indicated by Liechtenstein and Norway. The requirements were fulfilled on 25 June 2024 and JCD No 22/2023 entered into force on 1 August 2024.

III FACTS AND PRE-LITIGATION PROCEDURE

11 On 1 August 2024, the time limit to adopt the measures necessary to make the Regulation part of the internal legal order and to notify these measures to ESA expired.

12 On 4 November 2024, having not received notification from Iceland setting out the measures which it had adopted to make the Regulation part of its internal legal order, ESA sent a letter of formal notice to Iceland, concluding that as Iceland had failed to take the necessary measures to make the Regulation part of Iceland's legal order, it had failed to fulfil its obligations under Article 7 EEA. Iceland was invited to submit its observations within two months.

13 Iceland did not reply to the letter of formal notice.

14 On 26 March 2025, in light of the absence of a response from Iceland, ESA delivered a 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 26 May 2025.

15 Iceland did not reply to the reasoned opinion.

16 On 8 October 2025, ESA decided, by way of College Decision 163/25/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

17 On 8 October 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 Article 7 of the EEA Agreement by failing to make the Act referred to at point 5cp of Annex XI and point 48 of Protocol 37 to the EEA Agreement (Regulation (EU) 2019/881

of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act)), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order, and

2. order Iceland to bear the costs of these proceedings.

18 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 Regulation into its national legal order.

19 On 10 December 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. Further, Iceland stated that it does not contest the declaration sought by ESA in its application.

20 On 5 January 2026, the deadline for intervention expired, pursuant to Article 113(1) of the Rules of Procedure ('RoP'). No applications to intervene were received.

21 On 29 January 2026, the Court prescribed measures of organisation of procedure ('MOP') in accordance with Article 56(1) and Article 57(3)(a) and (b) RoP, and in furtherance of Article 57(1) and Article 57(2)(b) and (c) RoP. Those participating in the proceedings before the Court were invited to submit observations on the following questions, as well as on the legal implications of the answers thereto by 2 March 2026:

1) Why has the legislative act in question not been incorporated into the Icelandic legal order within the prescribed time limits? In this context, the Court notes that since 1 January 2022, 20 infringements proceedings under Article 31 SCA concerning Iceland's failure to incorporate 53 acts corresponding to regulations have been registered at the Court. Moreover, in 2025, the Court rendered 15 judgments against Iceland due to the lack of timely implementation of acts referred to in Article 7 EEA. Does this have any implications for the Court's interpretation and application of Article 7 EEA, read in the light of Article 3 EEA, in the present case?

2) With reference to Articles 5(1)(a) and 22 SCA and, inter alia, the judgments of 25 May 1982 in Commission v Netherlands, 96/81, EU:C:1982:192, paragraphs 7 and 8; of 16 June 2005 in Commission v Italy, C 456/03, EU:C:2005:388, paragraphs 26 and 27 and case law cited and of 8 May 2024 in Commission v Czech Republic, C-75/22, EU:C:2024:390, paragraph 259 and case-law cited:

In the application ESA points to the fact that Iceland has neither replied to the letter of formal notice nor to the reasoned opinion. Furthermore, Iceland has not informed ESA of having incorporated the act in question. Is this compatible with

the duty of loyal cooperation pursuant to Article 3 EEA, and ESA's powers to request all necessary information under Article 6 SCA?

22 A deadline of 9 March 2026 was set for the reply.

23 By way of letters of 2 March 2026, registered at the Court on the same date, ESA and Iceland submitted their responses to the MOP.

24 By way of a letter of 9 March 2026, registered at the Court on the same date, ESA observed that Iceland had not contested the declaration sought and waived its right of reply pursuant to Article 108 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.

25 On 18 March 2026, Iceland consented to the Court dispensing with the oral hearing pursuant to Article 70 RoP.

26 On 30 March 2026, the deadline for submitting written observations expired. No written observations were received.

27 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

28 Article 3 EEA imposes upon the EEA 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.

29 Article 7(a) EEA provides that an act corresponding to an EU regulation, referred to in the Annexes to the EEA Agreement or a decision of the EEA Joint Committee, shall as such be made part of the internal legal order of an EEA State.

30 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 to implement regulations as such (see the judgment of 11 March 2026 in *ESA* v *Norway*, E-22/25, paragraph 21 and case-law cited).

31 JCD No 22/2023 entered into force on 1 August 2024. The time limit for EFTA States to adopt the measures necessary to implement the Regulation expired on the same date.

32 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 *Norway*, E-22/25, cited above, paragraph 23 and case-law cited). In this case, the relevant date is 26 May 2025.

33 The Court observes that, at the time of filing the application before the Court, ESA had not received any information from Iceland as to whether Iceland had implemented the Regulation or the reasons for any delay. It was only in the course of the proceedings before the Court that it became apparent that the Regulation has still not been incorporated into the Icelandic legal order.

34 In that regard, it should be noted that Article 5(1)(a) SCA and Article 22 SCA set out that ESA shall ensure the fulfilment by the EFTA States of their obligations under the EEA Agreement and the SCA. For that purpose, ESA shall monitor the application of the provisions of the EEA Agreement and the SCA by the EFTA States.

35 In order to fulfil its tasks, and thus ensure the proper functioning of the EEA Agreement and the SCA, ESA may, in accordance with Article 6 SCA, request all the necessary information from the Governments and competent authorities of the EFTA States.

36 The EFTA States are, for their part, by virtue of Article 3 EEA and Article 2 SCA, obliged to facilitate the achievement of ESA's tasks. This includes providing ESA with the necessary information which must be clear, precise and indicate unequivocally why the EFTA State considers that it has fulfilled its obligations. The obligation to provide ESA with the necessary information is particularly important in cases concerning Article 7 EEA because ESA is largely reliant on the information provided by any complainants and by the EFTA State concerned. The failure of an EFTA State to fulfil that obligation, whether by providing no information at all or by providing insufficiently clear and precise information, may of itself justify recourse to the procedure under Article 31 SCA in order to establish the failure to fulfil the obligation (compare the judgments of 25 May 1982 in *Commission* v *Netherlands*, 96/81, EU:C:1982:192, paragraphs 7 and 8; of 16 June 2005 in *Commission* v *Italy*, C-456/03, EU:C:2005:388, paragraphs 26 and 27 and case-law cited; and of 8 May 2024 in *Commission* v *Czech Republic*, C-75/22, EU:C:2024:390, paragraph 259 and case-law cited).

37 Nevertheless, it is now undisputed that Iceland had failed to fulfil its obligations under Article 7 EEA by the time limit set out in the reasoned opinion.

38 In light of the above, it is clear that Iceland has failed to fulfil its obligations under Article 7 EEA by failing to make the Regulation, as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order.

39 The Court adds that Iceland, in its response to the Court's MOP, stated that the reason for the delay in implementing the Regulation was related to specific reasons such as the Covid-19 pandemic, the outbreak of volcanic activity in the Reykjanes Peninsula and the dissolution of the Althing in September 2024. Given this and the form of order sought by ESA, the Court sees no need to query whether the number of cases and judgments concerning Iceland's failure to incorporate acts could have any implications for the interpretation and application of Article 7 EEA in the case at hand.

VI COSTS

40 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 Article 7 of the EEA Agreement by failing to make the act referred to at point 5cp of Annex XI and point 48 of Protocol 37 to the EEA Agreement (Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act)), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order.**

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

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 3 July 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President