

EFTA COURT

Action brought on 3 July 2013 by the EFTA Surveillance Authority against Iceland

(Case E-14/13)

An action against Iceland was brought before the EFTA Court on 3 July 2013 by the EFTA Surveillance Authority, represented by Xavier Lewis, Gjermund Mathisen and Auður Ýr Steinarsdóttir, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, B-1040 Brussels.

The EFTA Surveillance Authority requests the EFTA Court to declare that:

- 1. By maintaining in force a difference in treatment between domestic mergers and cross-border mergers as a result of the application of Article 51 paragraph 1 of Act No 90/2003 on Income Tax (*lög nr. 90/2003 um tekjuskatt*), Iceland has failed to fulfil its obligations arising from Articles 31 and 40 of the Agreement of the European Economic Area.**
- 2. Iceland shall bear the costs of these proceedings.**

Legal and factual background and pleas in law adduced in support:

- The present application by the EFTA Surveillance Authority addresses the failure by Iceland to fulfil its obligations as regards the freedom of establishment and the free movement of capital under Articles 31 and 40 of the Agreement on the European Economic Area (EEA Agreement), by imposing an immediate tax on assets and shares of companies that merge cross-border with companies established in the other EEA States and on shareholders of such companies, whereas similar transactions within the Icelandic territory do not attract any immediate tax consequences.
- The EFTA Surveillance Authority submits that this different treatment between domestic mergers and cross-border mergers is not justified and is, therefore, incompatible with Articles 31 and 40 of the EEA Agreement.