



JUDGMENT OF THE COURT

11 November 2025

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Failure to notify – Directive (EU) 2018/852 – Packaging and packaging waste)

In Case E-3/25,

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

applicant,

v

Iceland, represented by Hendrik Daði Jónsson and Trausti Ágúst Hermannsson, acting as Agents,

defendant,

APPLICATION seeking 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 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 COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Bernd Hammermann 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 9 April 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 point 7 of Chapter XVII of Annex II to the Agreement on the European Economic Area (“EEA” or “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) (OJ 2018 L 150, p. 141, and Icelandic EEA Supplement 2021 No 74, p. 208) (“the Directive”), as adapted by Protocol 1 to the EEA Agreement, and under Article 7 EEA, 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 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 296/2021 of 29 October 2021 (OJ L, 2024/558, 29.2.2024, ELI: <http://data.europa.eu/eli/dec/2024/558/oj>, and Icelandic EEA Supplement 2024 No 19, p. 28) (“JCD No 296/2021”) amended Annex II to the EEA Agreement by adding the Directive in point 7 of Chapter XVII of that annex. No constitutional requirements were indicated and JCD No 296/2021 entered into force on 30 October 2021.

6 Article 2 of the Directive, entitled “Transposition”, reads:

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 5 July 2020. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall 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.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive. The Commission shall inform the other Member States thereof.

III FACTS AND PRE-LITIGATION PROCEDURE

7 On 15 March 2022, after prior correspondence, ESA sent a letter of formal notice to Iceland, concluding that as Iceland had failed to take the necessary measures to make the Directive part of its internal legal order, it had failed to fulfil its obligations under Article 7 of the EEA Agreement.

8 On 31 May 2022, in the absence of a response to the letter of formal notice, ESA delivered its reasoned opinion maintaining the conclusion set out in the 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 31 July 2022.

- 9 Iceland did not reply to the reasoned opinion within the deadline set.
- 10 On 7 June 2023, Iceland formally notified ESA that the Directive had been implemented into its national legal order from 1 January 2023, indicating, however, that Articles 1(2), 1(5), and 1(17) thereof remained unimplemented. Following significant correspondence and discussion between the parties, ESA has not been notified of relevant national measures implementing the entirety of the Directive.
- 11 On 9 April 2025, ESA decided, by way of College Decision No 062/25/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

- 12 On 9 April 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 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, and

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

- 13 In its application, ESA notes that Iceland still has not implemented the Directive, nor has it informed ESA of having done so.
- 14 On 11 June 2025, Iceland submitted its defence, which was registered at the Court on the same date. Iceland submits that the facts of the case, as set out in the application, are correct and undisputed. Iceland does not dispute the declaration sought by ESA in its application.
- 15 A deadline of 10 July 2025 was set for the reply. On 13 June 2025, ESA waived its right of reply pursuant to Article 108 of the Rules of Procedure (“RoP”) and consented to the Court dispensing with the oral procedure should it wish to do so in the present case.
- 16 On 24 June 2025, Iceland consented to the Court dispensing with the oral hearing pursuant to Article 70 RoP.
- 17 On 3 July 2025, the deadline for intervention expired, pursuant to Article 113(1) RoP. No applications to intervene were received.
- 18 On 12 August 2025, the deadline for submitting written observations expired. No written observations were received.

- 19 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

- 20 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 7 May 2025 in *ESA v Iceland*, E-28/24, paragraph 19 and case law cited).
- 21 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 2 thereof.
- 22 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-28/24, cited above, paragraph 21 and case law cited).
- 23 JCD No 296/2021 entered into force on 30 October 2021. The time limit for EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 24 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-28/24, cited above, paragraph 23 and case law cited). In this case, the relevant date is 31 July 2022.
- 25 It is undisputed that Iceland had failed to fulfil its obligations under the Directive and Article 7 EEA by the time limit set out in the reasoned opinion.
- 26 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

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

Páll Hreinsson

Bernd Hammermann

Michael Reiertsen

Delivered in open court in Luxembourg on 11 November 2025.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President