



JUDGMENT OF THE COURT

17 November 2022

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Regulatory framework for markets in financial instruments)

In Case E-7/22,

EFTA Surveillance Authority, represented by Kyrre Isaksen, Ingibjörg-Ólöf Vilhjálmsdóttir, and Melpo-Menie Joséphidès, acting as Agents,

applicant,

v

Iceland, represented by Inga Þórey Óskarsdóttir, Helga Hrönn Karlsdóttir and Guðmundur Kári Kárason, acting as Agents,

defendant,

APPLICATION for a declaration that Iceland has failed to adopt the measures necessary to make certain Acts concerning the regulatory framework for markets in financial instruments, incorporated into Annex IX (Financial Services) to the Agreement on the European Economic Area by Decisions No 85/2019 and No 100/2019 of the EEA Joint Committee, part of its internal legal order as required by Article 7 of that Agreement,

THE COURT,

composed of: Páll Hreinsson, President, Per Christiansen and Bernd Hammermann (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 By an application lodged at the Court’s Registry on 3 June 2022, 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 Article 7 of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) by failing to make the following Acts (“the Regulations”), as adapted by Protocol 1 to the EEA Agreement, part of its legal order:
 - a. the Act referred to at point 31bag of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country firms and the format of information to be provided to the clients (OJ 2016 L 313, p. 11 and Icelandic EEA Supplement 2022 No 20, p. 1) (“Regulation 2016/2022”);
 - b. the Act referred to at point 31bak of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets (OJ 2017 L 87, p. 117 and Icelandic EEA Supplement 2021 No 72, p.7) (“Regulation 2017/568”);
 - c. the Act referred to at point 31bar of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality

of execution of transactions (OJ 2017 L 87, p. 152 and Icelandic EEA Supplement 2021 No 78, p. 323) (“Regulation 2017/575”);

- d. the Act referred to at point 31bas of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution (OJ 2017 L 87, p. 166 and Icelandic EEA Supplement 2021 No 78, p. 337) (“Regulation 2017/576”);
- e. the Act referred to at point 31baz of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ 2017 L 87, p. 229 and Icelandic EEA Supplement 2021 No 72, p. 47) (“Regulation 2017/583”);
- f. the Act referred to at point 31bazb of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities (OJ 2017 L 87, p. 368 and Icelandic EEA Supplement 2022 No 20, p. 55) (“Regulation 2017/585”);
- g. the Act referred to at point 31bazc of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/586 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations (OJ 2017 L 87, p. 382 and Icelandic EEA Supplement 2022 No 20, p. 4) (“Regulation 2017/586”);
- h. the Act referred to at point 31bazp of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions (OJ 2017 L 155, p. 1 and Icelandic EEA Supplement 2022 No 8, p. 8) (“Regulation 2017/1018”);
- i. the Act referred to at point 31bazo of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/1799 of 12 June 2017

- supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council as regards the exemption of certain third countries central banks in their performance of monetary, foreign exchange and financial stability policies from pre- and post-trade transparency requirements (OJ 2017 L 259, p. 11 and Icelandic EEA Supplement 2022 No 20, p. 9) (“Regulation 2017/1799”);
- j. the Act referred to at point 31bazu of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms (OJ 2017 L 276, p. 4 and Icelandic EEA Supplement 2021 No 55, p. 214) (“Regulation 2017/1943”);
 - k. the Act referred to at point 31bazz of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2017/2194 of 14 August 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to package orders (OJ 2017 L 312, p. 1 and Icelandic EEA Supplement 2022 No 16, p. 1) (“Regulation 2017/2194”);
 - l. the Act referred to at point 31bad of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (OJ 2016 L 137, p. 10 and Icelandic EEA Supplement 2022 No 20, p. 12) (“Regulation 2016/824”);
 - m. the Act referred to at point 31bazzk of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (OJ 2017 L 144, p. 12 and Icelandic EEA Supplement 2022 No 20, p. 19) (“Regulation 2017/953”);
 - n. the Act referred to at point 31bazl of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2017/980 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with Directive 2014/65/EU of the European Parliament and of the Council (OJ 2017 L 148, p. 3 and Icelandic EEA Supplement 2022 No 20, p. 69) (“Regulation 2017/980”);

- o. the Act referred to at point 31bazzm of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2017/981 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with Directive 2014/65/EU of the European Parliament and of the Council (OJ 2017 L 148, p. 16 and Icelandic EEA Supplement 2022 No 20, p. 21) (“Regulation 2017/981”);
- p. the Act referred to at point 31bazzn of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2017/988 of 6 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State (OJ 2017 L 149, p. 3 and Icelandic EEA Supplement 2022 No 20, p. 92) (“Regulation 2017/988”);
- q. the Act referred to at point 31bazzq of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators (OJ 2017 L 158, p. 16 and Icelandic EEA Supplement 2022 No 26, p. 287) (“Regulation 2017/1093”);
- r. the Act referred to at point 31bazzs of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2017/1111 of 22 June 2017 laying down implementing technical standards with regard to procedures and forms for submitting information on sanctions and measures in accordance with Directive 2014/65/EU of the European Parliament and of the Council (OJ 2017 L 162, p. 14 and Icelandic EEA Supplement 2022 No 20, p. 108) (“Regulation 2017/1111”);
- s. the Act referred to at point 31bazzv of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council (OJ 2017 L 276, p. 12 and Icelandic EEA Supplement 2022 No 20, p. 116) (“Regulation 2017/1944”);
- t. the Act referred to at point 31bazzw of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council (OJ 2017 L 276, p. 22 and Icelandic EEA Supplement 2021 No 55, p. 222) (“Regulation 2017/1945”);

- u. the Act referred to at point 31basse of Annex IX to the EEA Agreement, namely Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council (OJ 2017 L 340, p. 6 and Icelandic EEA Supplement 2022 No 20, p. 29) (“Regulation 2017/2382”);
- v. the Act referred to at point 31batt of Annex IX to the EEA Agreement, namely Commission Delegated Regulation (EU) 2019/462 of 30 January 2019 amending Delegated Regulation (EU) 2017/1799 as regards the exemption of the Bank of England from the pre- and post-trade transparency requirements in Regulation (EU) No 600/2014 of the European Parliament and of the Council (OJ 2019 L 80, p. 13 and Icelandic EEA Supplement 2019 No 38, p. 153) (“Regulation 2019/462”).

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:

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

...

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 No 85/2019 of the EEA Joint Committee of 29 March 2019 (OJ 2019 L 279, p. 149, and Icelandic EEA Supplement 2019 No 88, p. 7) (“Decision No 85/2019”) amended Annex IX (Financial Services) to the EEA Agreement, inter alia by adding: Regulation 2016/2022 as point 31bag, Regulation 2017/568 as point 31bak, Regulation 2017/575 as point 31bar, Regulation 2017/576 as point 31bas, Regulation 2017/583 as point 31baz, Regulation 2017/585 as point 31bazz, Regulation 2017/586 as point 31babc, Regulation 2017/1018 as point 31bazzp, Regulation 2017/1799 as point 31bazzt, Regulation 2017/1943 as point 31bazu, Regulation 2017/2194 as point 31bazzz, Regulation 2016/824 as point 31bad, Regulation 2017/953 as point 31bazzk, Regulation 2017/980 as point 31bazzl, Regulation 2017/981 as point 31bazzm, Regulation 2017/988 as point 31bazzn, Regulation 2017/1093 as point 31bazzq, Regulation 2017/1111 as point 31bazzs, Regulation 2017/1944 as point 31bazzv, Regulation 2017/1945 as point 31bazzw, and Regulation 2017/2382 as point 31bazzze. No constitutional requirements were indicated. Decision No 85/2019 entered into force on 3 December 2019.
- 6 Decision No 100/2019 of the EEA Joint Committee of 11 April 2019 (OJ 2019 L 192, p. 55, and Icelandic EEA Supplement 2019 No 57, p. 22) (“Decision No 100/2019”) amended Annex IX (Financial Services) to the EEA Agreement by inserting Regulation 2019/462 in point 31bazzt. No constitutional requirements were indicated. Decision No 100/2019 entered into force on 3 December 2019.

III Facts and pre-litigation procedure

- 7 After certain correspondence between the parties, ESA issued 22 letters of formal notice on 23 July 2020 (concerning Regulation 2017/568), 31 August 2020 (concerning Regulations 2017/575, 2017/576, 2017/585, 2017/586, 2017/1018, 2017/1799, 2017/1943, 2017/953, 2017/981, 2017/1111, 2017/1944, and 2017/1945), 8 October 2020 (concerning Regulation 2017/583) and 23 February 2021 (concerning Regulations 2016/2022, 2017/2194, 2016/824, 2017/980, 2017/988, 2017/1093, 2017/2382, and 2019/462) in which it concluded that Iceland had failed to fulfil its obligations under Article 7 EEA, by failing to make the Regulations part of its internal legal order. Iceland did not reply to the letters of formal notice.
- 8 On 7 July 2021, ESA delivered 22 reasoned opinions, maintaining the conclusions set out in its letters of formal notice. Pursuant to the second paragraph of Article 31 SCA, ESA required Iceland to take the necessary measures to comply with the reasoned opinions within three months following their notification, that is, no later than 7 October 2021.

- 9 On 5 October 2021, Iceland replied to the 22 reasoned opinions jointly. Iceland informed ESA that the timeline foreseen for implementation of the Regulations was from November 2021 to January 2022.
- 10 On 18 February 2022, Iceland informed ESA by informal correspondence that the timeline foreseen for implementation of the Regulations was now from March to June 2022.
- 11 On 23 March 2022, ESA adopted Decision 066/22/COL to bring the matter before the Court in accordance with the second paragraph of Article 31 SCA as Iceland did not comply with the deadline set out in the reasoned opinions.

IV Procedure and forms of order sought

- 12 On 3 June 2022, 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 following Acts, as adapted by Protocol 1 to that Agreement, part of its legal order:*
 - a. *Commission Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country firms and the format of information to be provided to the clients, referred to at point 31bag of Annex IX to the EEA Agreement,*
 - b. *Commission Delegated Regulation (EU) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets, referred to at point 31bak of Annex IX to the EEA Agreement,*
 - c. *Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions, referred to at point 31bar of Annex IX to the EEA Agreement,*
 - d. *Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, referred to at point 31bas of Annex IX to the EEA Agreement,*
 - e. *Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to*

regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives, referred to at point 31baz of Annex IX to the EEA Agreement,

- f. Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities, referred to at point 31bazb of Annex IX to the EEA Agreement,*
- g. Commission Delegated Regulation (EU) 2017/586 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations, referred to at point 31bazc of Annex IX to the EEA Agreement,*
- h. Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions, referred to at point 31bazp of Annex IX to the EEA Agreement,*
- i. Commission Delegated Regulation (EU) 2017/1799 of 12 June 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council as regards the exemption of certain third countries central banks in their performance of monetary, foreign exchange and financial stability policies from pre- and post-trade transparency requirements, referred to at point 31bazt of Annex IX to the EEA Agreement,*
- j. Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms, referred to at point 31bazu of Annex IX to the EEA Agreement,*
- k. Commission Delegated Regulation (EU) 2017/2194 of 14 August 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to package orders, referred to at point 31bazz of Annex IX to the EEA Agreement,*
- l. Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive*

2014/65/EU of the European Parliament and of the Council on markets in financial instruments, referred to at point 31bad of Annex IX to the EEA Agreement,

- m. Commission Implementing Regulation (EU) 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments, referred to at point 31bazk of Annex IX to the EEA Agreement,*
- n. Commission Implementing Regulation (EU) 2017/980 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with Directive 2014/65/EU of the European Parliament and of the Council, referred to at point 31bazl of Annex IX to the EEA Agreement,*
- o. Commission Implementing Regulation (EU) 2017/981 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with Directive 2014/65/EU of the European Parliament and of the Council, referred to at point 31bazm of Annex IX to the EEA Agreement,*
- p. Commission Implementing Regulation (EU) 2017/988 of 6 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State, referred to at point 31bazn of Annex IX to the EEA Agreement,*
- q. Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators, referred to at point 31bazq of Annex IX to the EEA Agreement,*
- r. Commission Implementing Regulation (EU) 2017/1111 of 22 June 2017 laying down implementing technical standards with regard to procedures and forms for submitting information on sanctions and measures in accordance with Directive 2014/65/EU of the European Parliament and of the Council, referred to at point 31bazs of Annex IX to the EEA Agreement,*
- s. Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament*

and of the Council, referred to at point 31bazv of Annex IX to the EEA Agreement,

- t. Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council, referred to at point 31bazw of Annex IX to the EEA Agreement,*
- u. Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council, referred to at point 31bazze of Annex IX to the EEA Agreement,*
- v. Commission Delegated Regulation (EU) 2019/462 of 30 January 2019 amending Delegated Regulation (EU) 2017/1799 as regards the exemption of the Bank of England from the pre- and post-trade transparency requirements in Regulation (EU) No 600/2014 of the European Parliament and of the Council, referred to at point 31bazt of Annex IX to the EEA Agreement.*

2. *Order Iceland to bear the costs of these proceedings.*

- 13 On 8 August 2022, Iceland submitted its statement of 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, and that it does not dispute the declaration sought by ESA. Iceland submits that it had implemented 21 of the 22 Regulations into its national legal order by mid July 2022.
- 14 With regard to Regulation 2017/568 Iceland states that it has yet to be implemented. Iceland asserts its commitment to finalise the matter as soon as possible and aims to introduce a bill to that effect in Parliament in autumn 2022. In addition, Iceland submits that Icelandic translations of the following Regulations in the EEA Supplement to the Official Journal of the EU were a prerequisite for their implementation into its legal order: Regulations 2016/824, 2016/2022, 2017/585, and 2017/953, 2017/980, 2017/981, 2017/988, 2017/1018, 2017/1093, 2017/1111, 2017/1944 and 2017/2382. The Icelandic translations of these Regulations were published in the EEA Supplements on 10 February 2022 and on 24 March 2022.
- 15 By letter of 12 August 2022, registered at the Court on the same date, ESA waived its right to submit a reply, and consented to dispense with the oral procedure should the Court wish to do so. ESA welcomed Iceland's implementation and notification of 21 of the 22 Regulations, while noting, as Iceland acknowledged in its defence, that the reference point for the application is based on the legal situation in Iceland at the expiry of the deadline set out in the reasoned opinions. ESA further noted that Iceland has not contested its declaration sought.

- 16 By letter of 19 September 2022, registered at the Court on the same date, Iceland also consented to dispense with the oral procedure.
- 17 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided, pursuant to Article 70 of the Rules of Procedure of the Court (“RoP”), to dispense with the oral procedure.

V Findings of the Court

- 18 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 Case E-3/22 *ESA v Iceland*, judgment of 29 July 2022 paragraph 25 and case law cited).
- 19 In accordance with Article 7 EEA, the EFTA States are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee.
- 20 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 *ESA v Iceland*, cited above, paragraph 26 and case law cited).
- 21 Decisions Nos 85/2019 and 100/2019 both entered into force on 3 December 2019 and the time limit for the EFTA States to adopt the measures necessary to implement the Regulations cited in those Decisions expired on the same date.
- 22 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 *ESA v Iceland*, cited above, paragraph 28 and case law cited). It is undisputed that Iceland had not adopted the measures necessary to make the Regulations cited in Decisions Nos 85/2019 and 100/2019 part of its internal legal order by the expiry of the time limit set in the reasoned opinions.
- 23 Therefore, it must be held that Iceland has failed to fulfil its obligations under Article 7 EEA by failing, within the time prescribed, to adopt the measures necessary to make part of its internal legal order the Acts referred to at points 31bag (Regulation 2016/2022), 31bak (Regulation 2017/568), 31bar (Regulation 2017/575), 31bas (Regulation 2017/576), 31baz (Regulation 2017/583), 31bazb (Regulation 2017/585), 31bazc (Regulation 2017/586), 31bazp (Regulation 2017/1018), 31bazo (Regulation 2017/1799), 31bazu (Regulation 2017/1943), 31bazz (Regulation 2017/2194), 31bad (Regulation 2016/824), 31bazk (Regulation 2017/953), 31bazl (Regulation 2017/980), 31bazm (Regulation 2017/981), 31bazn (Regulation 2017/988), 31bazq (Regulation 2017/1093), 31bazu (Regulation 2017/1111), 31bazv (Regulation 2017/1944), 31bazw (Regulation 2017/1945), 31bazze (Regulation 2017/2382), 31bazt (Regulation

2019/462) of Annex IX to the EEA Agreement, as adapted by Protocol 1 to the EEA Agreement.

VI Costs

- 24 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 EEA by failing to make the following Acts, as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order:**
 - a. the Act referred to at point 31bag of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country firms and the format of information to be provided to the clients);**
 - b. the Act referred to at point 31bak of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets);**
 - c. the Act referred to at point 31bar of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions);**

- d. the Act referred to at point 31bas of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution);**
- e. the Act referred to at point 31baz of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives);**
- f. the Act referred to at point 31bazb of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities);**
- g. the Act referred to at point 31bazc of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/586 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations);**
- h. the Act referred to at point 31bazz of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions);**
- i. the Act referred to at point 31bazt of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/1799 of 12 June 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council as regards the exemption of certain third countries central banks in their performance of**

monetary, foreign exchange and financial stability policies from pre- and post-trade transparency requirements);

- j. the Act referred to at point 31bazu of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms);**
- k. the Act referred to at point 31bazz of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2017/2194 of 14 August 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to package orders);**
- l. the Act referred to at point 31bad of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments);**
- m. the Act referred to at point 31bazzk of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments);**
- n. the Act referred to at point 31bazzl of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2017/980 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with Directive 2014/65/EU of the European Parliament and of the Council);**
- o. the Act referred to at point 31bazzm of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2017/981 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the**

consultation of other competent authorities prior to granting an authorisation in accordance with Directive 2014/65/EU of the European Parliament and of the Council);

- p. the Act referred to at point 31bazn of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2017/988 of 6 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State);
- q. the Act referred to at point 31bazq of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators);
- r. the Act referred to at point 31bazs of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2017/1111 of 22 June 2017 laying down implementing technical standards with regard to procedures and forms for submitting information on sanctions and measures in accordance with Directive 2014/65/EU of the European Parliament and of the Council);
- s. the Act referred to at point 31bazv of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council);
- t. the Act referred to at point 31bazw of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council);
- u. the Act referred to at point 31baze of Annex IX to the EEA Agreement (Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the

transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council);

- v. the Act referred to at point 31b of Annex IX to the EEA Agreement (Commission Delegated Regulation (EU) 2019/462 of 30 January 2019 amending Delegated Regulation (EU) 2017/1799 as regards the exemption of the Bank of England from the pre- and post-trade transparency requirements in Regulation (EU) No 600/2014 of the European Parliament and of the Council).**

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

Páll Hreinsson Per Christiansen Bernd Hammermann

Delivered in open court in Luxembourg on 17 November 2022.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President