JUDGMENT OF THE COURT

10 November 2026

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Failure to notify – Directive (EU) 2019/1161 – Promotion of clean and energy-efficient road transport vehicles)

In Case E-3/26,

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

applicant,

v

Kingdom of Norway, represented by Bojana Stankovic and Thea Østerås Myrvold, acting as Agents,

defendant,

APPLICATION seeking a declaration that Norway has failed to fulfil its obligations under the act referred to at point 21av of Annex XX to the Agreement on the European Economic Area (Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles), 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(4) and 1(11) 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 17 March 2026, 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 that Norway has failed to fulfil its obligations under the act referred to at point 21av of Annex XX to the Agreement on the European Economic Area ('EEA' or 'the EEA Agreement') (Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles) (OJ 2019 L 188, p. 116, and Norwegian EEA Supplement 2023 No 91, p. 108) ('the Directive'), 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(4) and 1(11) of the act within the time prescribed, or in any event, by failing to inform ESA thereof.

II LEGAL BACKGROUND

2 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.*

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(b) 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:*
>
> *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.*

5 Decision of the EEA Joint Committee No 288/2022 of 28 October 2022 (OJ 2023 L 117, p. 18, and Norwegian EEA Supplement 2023 No 35, p. 18) ('JCD No 288/2022') amended Annex XX to the EEA Agreement adding the Directive in point 21av of that Annex. Constitutional requirements were indicated by Liechtenstein. The requirements were fulfilled on 27 April 2023. JCD No 288/2022 entered into force on 1 April 2024.

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 2 August 2021. They shall immediately inform the Commission thereof.*
>
> *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.*
>
> *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.*

III FACTS AND PRE-LITIGATION PROCEDURE

7 On 20 August 2024, ESA had not received any notification from Norway setting out the measures which it had adopted to implement the Directive. Therefore, ESA issued a letter of formal notice to Norway on that day, 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 ESA thereof, Norway had failed to fulfil its obligations under the Directive and under Article 7 EEA.

8 On 23 August 2024, Norway replied to the letter of formal notice, enclosing a Form 1 notifying partial implementation of the Directive into its internal legal order. In its reply, Norway acknowledged that full implementation was outstanding. The information contained in the Form 1 submitted by Norway indicated that Articles 1(4) and 1(11) of the Directive had not been fully implemented.

9 On 26 March 2025, ESA delivered a reasoned opinion in which it concluded that, by failing to fully implement Articles 1(4) and 1(11) of the Directive, or in any event, by failing to notify ESA of the measures it had adopted to fully implement those provisions of the Directive, Norway had failed to fulfil its obligations under the Directive and under Article 7 EEA. Norway 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.

10 Norway did not reply formally to that reasoned opinion.

11 On 11 March 2026, ESA decided, by way of College Decision No 053/26/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

12 On 17 March 2026, 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 Norway has failed to fulfil its obligations under the Act referred to at point 21av of Annex XX to the EEA Agreement (Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles), 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 fully implement Articles 1(4) and 1(11) of the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof, and*
>
> *2. order Norway to bear the costs of these proceedings.*

13 On 19 May 2026, Norway submitted its defence, which was registered at the Court on the same date. Norway respectfully requests the Court to declare the application to be founded. In its defence, Norway consents to the Court dispensing with the oral procedure.

14 On 11 June 2026, the deadline for intervention expired, pursuant to Article 113(1) of the Rules of Procedure ('RoP'). No applications to intervene were received.

15 A deadline of 17 June 2026 was set for the reply. On 16 June 2026, ESA waived its right of reply pursuant to Article 108 RoP and consented to the Court dispensing with the oral procedure should it wish to do so in the present case.

16 On 20 July 2026, the deadline for submitting written observations expired. No written observations were received.

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 RoP, to dispense with the oral part of the procedure.

V FINDINGS OF THE COURT

18 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.

19 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 (see the judgment of 11 March 2026 in *ESA* v *Norway*, E-19/25, paragraph 20 and case-law cited). An obligation to implement the Directive also follows from Article 2 thereof .

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 of result in that regard (see the judgment in *ESA* v *Norway*, E-19/25, cited above, paragraph 21 and case-law cited).

21 JCD No 288/2022 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.

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 the judgment in *ESA* v *Norway*, E-19/25, cited above, paragraph 23 and case-law cited). In this case, the relevant date is 26 May 2025.

23 It is undisputed that Norway had failed to fulfil its obligations under the Directive and Article 7 EEA by the time limit set out in the reasoned opinion.

24 In light of the above, it must be held that Norway has failed to fulfil its obligations under the Directive and under Article 7 EEA by failing to adopt the measures necessary to implement Articles 1(4) and 1(11) of the Directive within the time prescribed.

VI COSTS

25 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 Norway be ordered to pay the costs, the latter has been unsuccessful, and none of the exceptions in Article 121(2) RoP apply, Norway must be ordered to pay the costs of the proceedings.

On those grounds,

THE COURT

hereby:

1. **Declares that Norway has failed to fulfil its obligations under the act referred to at point 21av of Annex XX to the EEA Agreement (Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles), 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(4) and 1(11) of the act within the time prescribed.**

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

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 10 November 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President