JUDGMENT OF THE COURT

11 March 2026

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Directive (EU) 2016/1148 – Cybersecurity of network and information systems – Electronic communication, audiovisual services and information society)

In Case E-19/25,

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

applicant,

v

The Kingdom of Norway, represented by Emilie Goldhahn Oppheim and Bojana Stankovic, acting as Agents,

defendant,

APPLICATION seeking a declaration that Norway has failed to fulfil its obligations under the act referred to at point 5cpa of Annex XI and point 47 of Protocol 37 to the Agreement on the European Economic Area (Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union), 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 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 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 Norway has failed to fulfil its obligations under the act referred to at point 5cpa of Annex XI and point 47 of Protocol 37 to the Agreement on the European Economic Area ("EEA" or "the EEA Agreement") (Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union) (OJ 2016 L 194, p. 1, and Norwegian EEA Supplement 2024 No 63, p. 228) ("the Directive"), as adapted by Protocol 1 to that Agreement, and under Article 7 EEA, by failing to adopt the measures necessary to implement 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(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.

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 21/2023 of 3 February 2023 (OJ L, 2023/2310, 19.10.2023, ELI: http://data.europa.eu/eli/dec/2023/2310/oj, and Norwegian EEA Supplement 2023 No 75, p. 32) ("JCD No 21/2023") amended Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 (containing the list provided for in Article 101) to the EEA Agreement by adding the Directive as point 5cpa of Annex XI and point 47 of Protocol 37. Constitutional requirements were indicated by Liechtenstein and Norway. The requirements were fulfilled on 25 June 2024 and JCD No 21/2023 entered into force on 1 August 2024.

6 Article 25 of the Directive, entitled "Transposition", reads:

1. Member States shall adopt and publish, by 9 May 2018, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 10 May 2018.

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 provisions of national law which they adopt in the field covered by this Directive.

III FACTS AND PRE-LITIGATION PROCEDURE

7 On 1 August 2024, the time limit for EFTA States to adopt the measures necessary to implement the Directive and notify these measures to ESA expired.

8 On 4 November 2024, having not received notification from Norway setting out the measures which it had adopted to make the Directive part of its internal legal order, ESA sent a letter of formal notice to Norway, concluding that as Norway had failed to take the necessary measures to make the Directive part of its internal legal order and/or had failed to notify ESA of the national measures it had adopted to implement the Directive, Norway had failed to fulfil its obligations under both the Directive and under Article 7 of the EEA Agreement.

9 On 6 January 2025, Norway replied to the letter of formal notice, stating that it had not yet taken the necessary measures to implement the Directive. Norway indicated that it was in the process of implementing the Directive and that the relevant legislative amendments were expected to enter into force in the second half of 2025.

10 On 26 March 2025, having considered Norway's response, ESA delivered its reasoned opinion in which it maintained the conclusion set out in its letter of formal notice. 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.

11 When the deadline set in the reasoned opinion expired, ESA had not received any notification from Norway that it had implemented the Directive, nor was ESA in possession of any other information that indicated that the Directive had been made part of Norway's internal legal order.

12 On 8 October 2025, ESA decided, by way of College Decision No 165/25/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

13 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 Norway has failed to fulfil its obligations under the Act referred to at point 5cpa of Annex XI and point 47 of Protocol 37 to the EEA Agreement (Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for high common level of security of network and information systems across the Union), 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 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.*

14 On 8 December 2025, Norway submitted its defence, which was registered at the Court on the same date. Norway submits that the facts of the case, as set out in the application, are correct and undisputed. Norway requests the Court to declare the application to be founded. Norway states that it consents to the Court dispensing with the oral hearing pursuant to Article 70 of the Rules of Procedure ("RoP").

15 A deadline of 9 January 2026 was set for the reply. On 16 December 2025, 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 5 January 2026, the deadline for intervention expired, pursuant to Article 113(1) RoP. No applications to intervene were received.

17 On 12 February 2026, the deadline for submitting written observations expired. No written observations were received.

18 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

19 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 (see the judgment of 10 December 2025 in *ESA* v *Liechtenstein*, E-15/25, paragraph 21 and case law cited).

20 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 in *ESA* v *Liechtenstein*, E-15/25, cited above, paragraph 22 and case law cited). An obligation to implement the Directive also follows from Article 25 thereof.

21 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 *Liechtenstein*, E-15/25, cited above, paragraph 23 and case law cited).

22 JCD No 21/2023 entered into force on 1 August 2024. The time limit for EFTA States to adopt the measures necessary to implement the Directive expired on the same date.

23 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 of 10 December 2025 in *ESA* v *Iceland*, E-16/25, paragraph 26 and case law cited). In this case, the relevant date is 26 May 2025.

24 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.

25 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 the Directive within the time prescribed.

VI COSTS

26 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 5cpa of Annex XI and point 47 of Protocol 37 to the EEA Agreement (Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union), 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 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 11 March 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President