JUDGMENT OF THE COURT

11 March 2026

(*Failure by an EFTA State to fulfil its obligations – Failure to implement – Commission Implementing Regulation (EU) 2018/151 – Security of network and information systems – Electronic communication, audiovisual services and information society*)

In Case E-20/25,

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 adopt the measures necessary to make the act referred to at point 5cpaa of Annex XI to the Agreement on the European Economic Area (Commission Implementing Regulation (EU) 2018/151 of 30 January 2018 laying down rules for application of Directive (EU) 2016/1148 of the European Parliament and of the Council as regards further specification of the elements to be taken into account by digital service providers for managing the risks posed to the security of network and information systems and of the parameters for determining whether an incident has a substantial impact), as adapted by Protocol 1 to the Agreement, part of its internal legal order,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann (Judge-Rapporteur) 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 adopt the measures necessary to make the act referred to at point 5cpaa of Annex XI to the Agreement on the European Economic Area ("EEA" or "the EEA Agreement") (Commission Implementing Regulation (EU) 2018/151 of 30 January 2018 laying down rules for application of Directive (EU) 2016/1148 of the European Parliament and of the Council as regards further specification of the elements to be taken into account by digital service providers for managing the risks posed to the security of network and information systems and of the parameters for determining whether an incident has a substantial impact) (OJ 2018 L 26, p. 48, and Norwegian EEA Supplement 2024 No 63, p. 258) ("the Regulation"), as adapted by Protocol 1 to the Agreement, part of its internal legal order.

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(a) 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:

(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 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) to the EEA Agreement by adding the Regulation as point 5cpaa of the Annex. 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.

III FACTS AND PRE-LITIGATION PROCEDURE

6 On 1 August 2024, the time limit to adopt the measures necessary to make the Regulation part of the internal legal order and to notify these measures to ESA expired.

7 On 4 November 2024, having not received notification from Norway setting out the measures which it had adopted to make the Regulation 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 Regulation part of Norway's legal order, it had failed to fulfil its obligations under Article 7 EEA. Norway was invited to submit its observations within two months.

8 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 Regulation.

9 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.

10 On 28 May 2025, Norway replied to the reasoned opinion and, referring to its reply to the letter of formal notice, stated that the adoption of the measures necessary to implement the Regulation were expected to "enter into force during the second half of 2025," and that the consultation period for the proposed Bill had been finalised.

11 On 8 October 2025, ESA decided, by way of College Decision 162/25/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

12 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 Article 7 of the EEA Agreement by failing to make the Act referred to at point 5cpaa of Annex XI to the Agreement on the European Economic Area (Commission Implementing Regulation (EU) 2018/151 of 30 January 2018 laying down rules for application of Directive (EU) 2016/1148 of the European Parliament and of the Council as regards further specification of the elements to be taken into account by digital service providers for managing the risks posed to the security of network and information systems and of the parameters for determining whether an incident has a substantial impact), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order, and*
>
> *2. order Norway to bear the costs of these proceedings.*

13 In its application, ESA submits that it has not been notified and does not have any other information to suggest that Norway has made the Regulation part of its national legal order.

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 brought forward in the application, are correct and undisputed. Norway requests the Court to declare the application to be founded. Further, Norway consented to the Court dispensing with the oral hearing.

15 A deadline of 9 January 2026 was set for the reply. By way of a letter of 16 December 2025, registered at the Court on 17 December 2025, ESA observed that Norway had not contested the declaration sought. Consequently, ESA waived its right of reply pursuant to Article 108 of the Rules of Procedure ("RoP"). Further, ESA stated that it 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, *ESA* v *Iceland*, E-16/25, paragraph 22 and case law cited).

20 Article 7(a) EEA provides that an act corresponding to an EU regulation, referred to in the Annexes to the EEA Agreement or a decision of the EEA Joint Committee, shall as such be made part of the internal legal order of an EEA State.

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 to implement regulations as such (see the judgment in *ESA* v *Iceland*, E-16/25, cited above, paragraph 24 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 Regulation 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 in *ESA* v *Iceland*, E-16/25, cited above, 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 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 Article 7 EEA by failing to make the Regulation, as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order.

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 Article 7 of the EEA Agreement by failing to make the act referred to at point 5cpaa of Annex XI to the Agreement on the European Economic Area (Commission Implementing Regulation (EU) 2018/151 of 30 January 2018 laying down rules for application of Directive (EU) 2016/1148 of the European Parliament and of the Council as regards further specification of the elements to be taken into account by digital service providers for managing the risks posed to the security of network and information systems and of the parameters for determining whether an incident has a substantial impact), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order.**

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