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Brussels, 10 April 2012
Case No: 70866
Event No: 629544
ORIGINAL

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EFTA SURVEILLANCE AUTHORITY

IN THE EFTA COURT

REPLY

Submitted pursuant to Article 36 of the Rules of Procedure of the EFTA Court by the

EFTA SURVEILLANCE AUTHORITY

Represented by Xavier Lewis, Director, and Gjermund Mathisen, Officer in the Department of Legal & Executive Affairs, acting as Agents

In **Case E-16/11**

EFTA Surveillance Authority

v.

ICELAND

Seeking a declaration that by failing to ensure payment of the minimum amount of compensation to Icesave depositors in the Netherlands and in the United Kingdom provided for in Article 7(1) of the Act referred to at point 19a of Annex IX to the Agreement on the European Economic Area (*Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes*) within the time limits laid down in Article 10 of the Act, Iceland has failed to comply with the obligations resulting from that Act, in particular its Articles 3, 4, 7 and 10, and/or Article 4 of the Agreement on the European Economic Area.

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1 Introduction

1. In its Application, the Authority submits that Directive 94/19/EC imposes an obligation of result on the states. It submits that Iceland is in breach of its obligations under Directive 94/19/EC and under Article 4 of the EEA Agreement because it failed to ensure that a deposit guarantee scheme, capable of guaranteeing the deposits of depositors up to the amount laid down in Article 7(1) of the Directive[1], is set up, and to ensure that duly verified claims by depositors of unavailable deposits are paid within the deadline laid down in Article 10 of the Directive.

2. In its Defence, Iceland accepts that the basic facts set out by the Authority are correct, namely that depositors in the foreign branches of Landsbanki lost access to their deposits. Iceland expressly concedes at paragraph 91 of the Defence that the FME had issued declarations of unavailability of deposits for the purposes of Article 1 (3) of the Directive which triggered the obligations of the deposit-guarantee scheme. Iceland also concedes that the depositors in the foreign branches of Landsbanki received no compensation from the Icelandic deposit guarantee fund as required by the Directive and the Icelandic State took no action to ensure that they did.

3. In its Defence, Iceland submits three basic pleas which can be summarised as follows:

    - The Directive does not set out an obligation of result that can be achieved in the circumstances of this case: the deposit guarantee scheme is not designed to give protection in the event of a worldwide financial crisis (paragraphs 119 to 134 of the Defence); the states are not obliged to fund the deposit guarantee scheme and the use of state funds could distort competition (paragraphs 135 to 144, 153 to 245 of the Defence) and a

[1] That provision remains unchanged in the EEA as Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ 2009 L 68, p. 3) has not been made part of the EEA Agreement to date.

systemic collapse requires a wide range of policy tools (paragraphs 145 to 148 of the Defence)

- Iceland is exonerated by force majeure (paragraphs 246 to 263 of the Defence)
- Iceland did not discriminate, in a manner contrary to Article 4 EEA, against the depositors in the foreign branches of Landsbanki who lost access to their deposits and received no compensation as laid down by the Directive (paragraphs 264 to 331 of the Defence).

4. Iceland has chosen not to follow the structure of the Application. Nevertheless, the Authority will follow the structure of the Application in this Reply and thus it will respond to such submissions made by Iceland which need a response as and when they are relevant.

2 The Antecedents

(Paragraphs 18 to 52 of the Application)

5. Iceland has not questioned the narration of the events that led to the collapse of the Icelandic banking system and the default of the TIF. Iceland points out in paragraph 33 of the Defence that the SIC Report of April 2010 does not seek to determine the issues raised in the Application. The Authority does not and has not claimed that the SIC Report furnished such a determination. However, as stated in paragraph 19 of the Application, the SIC Report helps to understand the circumstances surrounding the present proceedings, provides contemporaneous evidence of how the Icelandic authorities themselves considered their own position under Directive 94/19/EC and how the response to the collapse of Icesave was coordinated between the Icelandic Government and the Icelandic Guarantee Fund.

3 The Authority's reply

3.1 Obligation of result under Articles 7 and 10 of Directive 94/19/EC

(Paragraphs 82 to 103 of the Application)

6. The Authority reaffirms that the Directive lays down an obligation of result.

7. An obligation of result is a well known and used technique in EU harmonisation measures. Thus, for example, the Court of Justice has recently reaffirmed in its judgment of 16 February 2012 in Case C-134/11 *Jürgen Blödel-Pawlik v HanseMerkur Reiseversicherung AG* [2] that Article 7 of Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours [3] imposes an obligation of result to ensure that the repatriation of the consumer and the refund of money paid over are guaranteed in the event of insolvency or bankruptcy on the part of a travel organiser.

8. It should therefore come as no surprise that a measure such as Directive 94/19/EC and its Articles 7 and 10 impose an obligation of result which means that in all circumstances depositors must receive the minimum compensation required by the Directive.

9. The Authority has never claimed, as Iceland seems to claim in paragraphs 157 and 158 of the Defence, that depositors must receive compensation for all the deposits to which they lost access. The Application makes clear that this case is about the failure to ensure compensation of the minimum required by the Directive.

10. Iceland claims in paragraphs 114 to 140 of the Defence in particular, as well as elsewhere in the Defence, that the Directive was not designed to deal with a systemic collapse of the banking sector. The Authority has already dealt with this issue in the Application. In particular, it pointed out in paragraph 145 of the Application that the Commission itself, contrary to the impression that Iceland wishes to create, has stated expressly that the Directive "is applicable regardless of whether there is a systemic crisis or not."[4]

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[2] Unpublished, paragraphs 20 and 22.

[3] OJ 1990 L 158, p. 59.

[4] See Application, paragraph 145 quoting in full the relevant passage on page 20 of the Commission Staff Working Document.

11. Clearly, a deposit guarantee scheme does not serve to buttress an entire banking sector in the event of crisis and such a crisis may demand a wide range of different measures. Nevertheless, a deposit guarantee scheme serves to guarantee deposits should banks fail. It simply cannot be the result intended by the EU legislature when adopting the Directive that the greater the risk to depositors, the lesser is the protection provided by the schemes.

12. Iceland submits in paragraphs 225 to 230 of the Defence that the Authority is not assisted by its claim, made in paragraphs 97 to 103 of the Application that the TIF forms part of the Icelandic State.

13. The Authority submits that Iceland has not rebutted or even attempted to rebut the evidence set out in paragraphs 99 to 101 that the TIF and the Icelandic State were linked to a degree even though Article 2 of Act No 98/1999 lays down that the Fund is a private foundation. Article 4 also lays down that the Minister of Business Affairs appoints the Chairman of the Board: as stated in paragraph 101 it would appear that the custom was to appoint an employee of the Ministry as Chairman. Moreover, the Managing Director, termed the Executive Director in Article 4, was, at the material time, an officer of the Central Bank. The Authority's point is that no matter the form the TIF takes in Icelandic law, the structure and personnel of the TIF and the State were so mixed up that they cannot be truly separated in fact.

14. Even if the TIF and Icelandic State were not so conjoined in fact, as a matter of law the Icelandic State remains under the obligation to ensure full compliance with the Directive and that the result prescribed by it is achieved, as stated in paragraph 98 of the Application.

3.2 Directive 94/19/EC and state responsibility

(Paragraphs 118 to 134 of the Application)

15. Iceland submits at paragraphs 135 to 144, 153 to 245 of the Defence and elsewhere that States are not obliged to fund the deposit guarantee scheme and the use of state funds could distort competition.

16. The Authority repeats - see paragraph 119 of the Application – that it reproaches Iceland for not taking any measures at all to ensure that depositors protected by the Fund receive the minimum amount guaranteed by the Directive. Iceland has simply not denied that its authorities contemplated a number of different measures but in the end did nothing.

17. No provision of the Directive states or implies that a state guarantee or a capital injection is impossible under its terms.

18. The Authority accepts that, depending on the specific circumstances of each case, a state injection of capital to refinance a deposit guarantee scheme may constitute state aid within the meaning of Article 61 EEA. That in itself is no barrier to the provision of state funds if required. Indeed, the Commission has, in its decision of 21 January 2009 in Case N 17/2009 *SoFFin guarantee for Sicherungseinrichtungsgesellschaft deutscher Banken – Germany,* [5] decided that a state capital injection to refinance the German Deposit Protection Fund was state aid compatible with Article 87(3) b) EC, the provision equivalent to Article 61 (3) (b) EEA. In that case, the German Deposit Protection Fund lacked sufficient liquidity to cover the amounts necessary to compensate Lehman Brothers Deutschland's depositors. Nevertheless, the German authorities acted swiftly[6] to ensure that sufficient funds (EUR 5.5 to 7.5 billion)[7] were available for the Deposit Protection Fund to meet its obligations on the due date.

19. The Authority points out that the Icelandic authorities never approached it to discuss the compatibility of any form of state intervention in this case. Nor do the state aid rules seem to have constrained the Icelandic authorities in any way in the protection provided for domestic deposits as mentioned in paragraph 118 of the Application and its footnote 57.

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[5] Non confidential version of the decision available at http://ec.europa.eu/competition/state_aid/cases/229209/229209_1016043_31_1.pdf.

[6] In less than four months.

[7] Two comments about that. First, those amounts exceed the total for which the TIF is liable in this case – see paragraphs 44 to 46 of the Application. Second, only between one third and two thirds of the amounts needed could be refinanced by realising the assets of Lehman Brothers Deutschland whereas Iceland now claims in paragraph 112 that 100% of the accepted claims of depositors can be financed through the winding up of Landsbanki.

20. Iceland places reliance on the judgment of the Court of Justice in Case C-222/02 *Paul v Germany* (paragraphs 181 to 200 of the Application). However, Iceland fails to notice and place the correct emphasis (in paragraph 187 of the Defence) on paragraph 31 of that judgment which clearly states :

> "That interpretation of Directive 94/19 is supported by the 24th recital in the preamble thereto, which states that the directive may not result in the Member States' or their competent authorities' being made liable in respect of depositors if they have ensured the compensation or protection of depositors under the conditions prescribed in the directive."

21. It is evident from that passage that "they" – meaning the Member States or their competent authorities – have a role in ensuring the compensation or protection of depositors under the conditions prescribed in the directive. How the Member States or their competent authorities carry out that role is left to them. But, compensation must be paid to depositors as prescribed by the Directive and that result must be "ensured" by the Member States or their competent authorities.

22. Unlike the situation which pertained in Case C-222/02 *Paul v Germany*, the Icelandic authorities ultimately did not ensure that the minimum compensation owed was paid to the depositors in the foreign branches in Landsbanki by 23 October 2009.

23. At various junctures and in particular in paragraph 143 of the Defence, Iceland expresses concern about the possible impact on competition that an obligation to provide a state guarantee could have. The passage quoted by Iceland in paragraph 143 discusses the impact on competition caused by levels of protection of deposits different from one Member State to another, not the impact of any form of state guarantee. The Authority points out that the Directive, even before it was modified by Directive 2009/14/EC, mitigates that impact by imposing a minimum level of guarantee. If Iceland were correct in its submissions and the minimum level specified was not in fact guaranteed in all circumstances for eligible deposits then there would be a greater risk of regulatory competition

between states to provide the more or most credible form of guarantee. Thus, states would compete to provide the best form of guarantee to attract deposits. That form of competition is avoided if all depositors are assured that in all circumstances their deposits are absolutely guaranteed to at least the minimum specified.

24. Iceland submits in paragraphs 231 to 245 of the Defence that a comparison between Directive 80/987/EEC and Directive 94/19/EC leads to the conclusion that no obligation on the state to make payments itself can be inferred.

25. The Court of Justice recently held in its judgment in Case C-477/09 *Charles Defossez v Christian Wiart and Others*:

> " Directive 80/987 is intended to guarantee employees a minimum level of protection under European Union law in the event of the insolvency of their employer (see, inter alia, Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 3, and Case C-69/08 *Visciano* [2009] ECR I-6741, paragraph 27), without prejudice, in accordance with its Article 9, to more favourable provisions which the Member States may apply or introduce (see, to that effect, Case C-160/01 *Mau* [2003] ECR I-4791, paragraph 32, and Case C-278/05 *Robins and Others* [2007] ECR I-1053, paragraph 40)."[8]

26. The Authority submits that the judgment of the Court of Justice in Case C-278/05 *Robins v Secretary of State for Work and Pensions* relied upon by Iceland in paragraph 240 of the Defence does not support the conclusion which Iceland seeks to draw from it.

27. Case C-278/05 concerned a particular provision of Directive 80/987/EEC - Article 8 - concerning the guarantee of rights to old-age benefits under supplementary pension schemes. The issue in that case was not whether the State was obliged to make up *any and every* shortfall in the assets of the pension scheme

[8] Judgment of 10 March 2011, unpublished, at paragraph 32.

in order to ensure payment of the old-age benefits protect by Article 8. The question to be answered in that case was whether accrued pension rights must be funded in full by the Member States themselves and whether they must funded in full at all, where the employer is insolvent and the assets of the supplementary company pension schemes are insufficient. The Court did answer in paragraph 35 of the judgment, as Iceland correctly points out, that, according to its Article 8, the States are not obliged themselves to fund the rights to the old-age benefits that must be protected by the Directive.

28. However, the Court of Justice explains carefully further on in the judgment why it came to that conclusion. It held in paragraph 42 of the judgment that:

> "So far as the guaranteeing of rights to old-age benefits under supplementary pension schemes is concerned, Article 8 of the Directive cannot be interpreted as demanding a full guarantee of the rights in question."

29. The Court continued in paragraph 45 that :

> "[...] in so far as it does no more than prescribe in general terms the adoption of the measures necessary to 'protect the interests' of the persons concerned, Article 8 of the Directive gives the Member States, for the purposes of determining the level of protection, considerable latitude which excludes an obligation to guarantee in full."

30. Accordingly, the Court held that the Member States were not obliged to fund the rights to benefits protected by Article 8 of the Directive to ensure that they are paid in full because that provision does not require those rights to be guaranteed in full in any event.

31. Thus, the Court of Justice was not confronted with the situation, similar to that which pertains in these proceedings, of what is the liability of the State in the event that the guarantee system it established has inadequate assets to make the payments required to achieve the level of protection specified in a directive.

32. In paragraphs 237 to 239 and paragraphs 243 to 245 Iceland submits that there can be no "implicit" requirement on the State to compensate depositors to be found in the Directive as the Court of Justice rejected such a requirement in Directive 80/987/EEC in Joined Cases C-6/90 and C-9/90 *Francovich and Bonifaci v Italy*[9].

33. The Authority repeats, if need be, that it seeks a declaration from the Court that Iceland has failed to ensure payment by the TIF on the due date in breach of the Directive. The Authority does not seek a declaration that Iceland must necessarily compensate depositors from public funds. As already started, the Authority submits that Iceland was under a duty to ensure payment by the TIF by taking any number of possible measures.

34. In Joined Cases C-6/90 and C-9/90 *Francovich and Bonifaci v Italy* the situation was different from the circumstances of the present case and the claims of the plaintiffs in the main proceedings were different from the declaration that the Authority seeks in this case.

35. In Joined Cases C-6/90 and C-9/90 *Francovich and Bonifaci v Italy*, the Italian State had clearly failed to implement Directive 80/987/EEC in breach of EU law. Consequently, there was no fund in Italy to pay out the arrears of wages which the plaintiffs claimed were owed to them. Because there was no fund on account of Italy's breach, the plaintiffs sought what amounted to a subrogation of their claim: they asked the Italian courts to order the State to pay their arrears of wages in lieu of the non-existent fund. The Court held in paragraph 25 of its judgment that such subrogation was not possible because Directive 80/987/EEC did not provide that the fund to be established must be financed entirely by public funds.

36. While the Court excluded subrogation in Joined Cases C-6/90 and C-9/90 *Francovich and Bonifaci v Italy* it went on to find that a Member State is required to make good loss and damage caused to individuals by failure to transpose a directive.

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[9] [1991] ECR I-5357.

37. Italy never constructed the "paper wall" in the transposition phase of Directive 80/987/EEC to which Advocate General Geelhoed so strikingly refers in his Opinion in Case C-494/01 *Commission v Ireland* mentioned in paragraph 107 of the Application. The judgment in Joined Cases C-6/90 and C-9/90 *Francovich and Bonifaci v Italy* deals with the consequences of not constructing that wall in the first place.

38. The present case goes beyond the "paper wall". In the present case, Iceland clearly did implement the Directive by adopting Act No. 98/1999. Article 10 of Act No. 98/1999 lays down the amounts of compensation payable from the TIF and includes a provision for dealing with insufficiency of assets should payments be due. The present case deals with the responsibilities of the State after the "paper wall" has been duly constructed by the State.

39. The Authority in this case does not seek some sort of subrogation of the TIF by the State as the plaintiffs did in Joined Cases C-6/90 and C-9/90 *Francovich and Bonifaci v Italy*. The Authority seeks a declaration from the Court that Iceland failed to ensure payment by the due date. The Authority submits that Iceland was under a duty to take the requisite measures - measures that Iceland was free to determine, including the facilitation of the loan mentioned in Article 10 of Act No. 98/1999 – to ensure that the result laid down in the Directive was actually achieved. The Authority made that point clearly in, inter alia, paragraph 119 of the Application and it is wrong to recharacterise the Authority's case as being the only measure which Iceland could and should have taken was the grant of a State guarantee.

3.3 Directive 94/19/EC and the obligation of transposition
(Paragraphs 104 to 117 of the Application)

40. Iceland also claims that the Authority is wrong to argue that the "huge costs of a deposit scheme, applicable even in the case of a total failure of the banking system, are in fact placed upon the State [...] (at paragraph 219 of the Defence). It

also claims that only "the clearest language possible" in the Directive could require such a result whereas the Directive is silent on this point.

41. As the Authority has already explained, the Directive does not specify how the deposit guarantee funds should be financed. The Commission has described various types of financing in its Staff Working Document of 12 July 2010 referred to in paragraph 131 of the Application. There, the Commission describes the different ways in which deposit guarantee funds are financed : ex ante contributions; ex post contributions, State loans or direct state interventions.

42. The Authority submits that it is normal for a Directive to prescribe a result and leave it to the States to choose the most appropriate method in their estimation to achieve it. That, as the Authority pointed out in paragraph 85 of the Application, goes to the very essence of what a directive does.

43. The Authority also points out that the Commission has assessed in the same document that the cost of state support of the banks themselves to prevent a collapse of the banking system and opined that the bank recapitalisation measures funded by the state (and their taxpayers) have been more costly than the increased coverage of the deposit guarantee scheme. The Icelandic authorities themselves stepped in to take control and refinance the new banks established to continue with domestic banking business (see paragraphs 36 and 37 of the Application). [10]

3.4 Directive 94/19/EC, exceptional circumstances and *force majeure* (paragraphs 135 to 155 of the Application)

44. Iceland submits in paragraphs 246 to 263 of the Defence that it is released from any obligation that may arise under the Directive by virtue of *force majeure.*

45. As Iceland correctly but incompletely points out, Advocate General Jacobs stated in paragraph 17 of his Opinion in Case C-236/99 *Commission v Belgium* that *force*

[10] The total cost of those measures is unknown to the Authority but some estimates place it at between 18% - 40 % of Iceland's GDP.

majeure is a flexible doctrine. However, the Advocate General also stated in paragraph 16 of his Opinion that :

> "[*Force majeure*] has the effect of relieving a person from a legal obligation or liability if, essentially, an unforeseeable change of circumstances has made it impossible to fulfil the obligation. The Court has never ruled explicitly that force majeure is a general principle of Community law, and it is doubtful whether one can deduce such a principle, applicable to all areas of Community law, from the existing case-law."

46. He also stated in paragraph 22 of his Opinion that :

> "It is none the less clear that the notion of force majeure is, in this context [of failure to implement a directive on time], very narrowly circumscribed. Indeed, force majeure has never been pleaded successfully by a Member State to excuse its failure to implement a directive within the prescribed time-limit. In general directives must be implemented on time even if that proves extremely difficult."

47. The Authority has already submitted in paragraphs 135 to 155 of the Application that exceptional circumstances are already catered for in the provisions of the Directive itself. Consequently, a State cannot plead exceptional circumstances to justify non-compliance with the Directive.

48. It should be recalled that the very purpose of the Directive is to protect depositors in the event of a calamity : the loss of their deposits in the event of a collapse of a bank.

49. The Authority submits that it is to be expected in such circumstances that *force majeure* would be very narrowly circumscribed if it were to exonerate Iceland from any responsibility to ensure payment of the minimum compensation as required by the Directive.

50. Iceland's argument is economic: it could not afford to pay the amounts involved.

51. Iceland fails to confront the Authority's submission that financial difficulties cannot justify non-compliance with a directive (paragraph 148 of the Application) and that the assets to be realised in the winding up of Landsbanki were estimated in 2009 to cover a substantial part of the amount owed by TIF to the depositors. In those circumstances, as the Authority submitted in paragraph 119 of the Application, the procedure laid down in Article 10 of Act no 98/1999 could have been commenced and those assets, together with the TIF's improved position as preferred creditor in the winding up process, could have been used to refinance the TIF once payments to depositors had been made.

52. Consequently, the Authority submits that Iceland has simply failed to show that it was impossible, despite all due care, to raise the capital required to enable the TIF to make the payments on the due date taking account of the assets to be made available in the event of the winding up of Landsbanki.

53. Moreover, doubt can be cast on whether the circumstances in which Iceland found itself on 23 October 2009 were unforeseeable. It was certainly clear that the TIF was under an obligation to make the minimum payments to depositors by that date given the manner and circumstances in which the Icelandic authorities extended the deadline for payment in accordance with Article 10 of Directive 94/19 as described in paragraph 40 of the Application. The fact remains that between the date of the collapse of the banks in October 2008 and the payment date on 23 October 2009 Iceland did not ensure payment. Indeed, it could be argued that the Icelandic State had compounded its difficulties by failing to act in a timely manner to prevent excessive liability being incurred by the TIF. It should be recalled, as stated in paragraph 23 of the Application, that the Icelandic authorities took no action to prevent Landsbanki from accepting deposits in its branch Amsterdam on 29 May 2008 when the financial condition of the bank was known to be parlous.[11] Had that operation been prevented, the TIF would not have been exposed to the obligation to pay an amount as high as EUR 1.34 billion

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[11] See Annex A 2 to the Application, Report of SIC, Chapter 18, section 18.3.1, in particular pp. 54 to 58.

to the depositors in the Netherlands who fell within its responsibility (see paragraph 46 of the Application).[12]

3.5 Non-discrimination

(paragraphs 156 to 185 of the Application)

54. Iceland submits in paragraphs 264 to 331 of the Defence that it did not discriminate unlawfully against the depositors of the foreign branches of Landsbanki. It claims, in particular, that all depositors have been treated equally because no depositors, whether domestic or foreign, in any failed bank received any compensation from the TIF.

55. The Authority submits that such an argument is remarkably disingenuous.

56. The Icelandic authorities took two measures in respect of depositors in domestic branches. First, they moved them to new banks with the consequence that those depositors, unlike the depositors in the foreign branches, never lost access to their deposits. Second, the Icelandic Government issued a declaration on 6 October 2008 that it would guarantee deposits in domestic branches in full, as mentioned in paragraph 34 of the Application.

57. Thus, on or before 5 October 2008, all depositors in the branches of Landsbanki were in the same position: all were depositors in a failing bank, likely to lose access to their deposits. By 9 October 2008, the depositors in the domestic branches still had full access to their deposits and a Government declaration guaranteeing their deposits in full. The depositors in the foreign branches had been left out in the cold with no access to their deposits and only the minimum guarantee of the TIF.

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[12] See Annex A 2 to the Application, Report of SIC, Chapter 18, section 18.3.1, in particular p. 55, Figure 5 which shows that deposits, both wholesale and retail nearly doubled after 29 May 2008.

58. The Authority repeats that it is a breach of the Directive read in the light of Article 4 EEA to differentiate between depositors protected under the Directive by providing protection for some depositors while leaving others without any or any comparable protection.

59. For the rest, the Authority refers to paragraphs 156 to 185 of its Application.

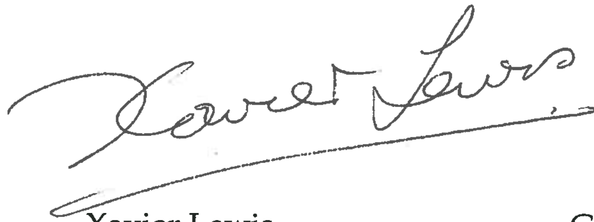
60. Accordingly, the Authority remains of the view that Iceland has failed to fulfil its obligations arising under Articles 3(1), 4(1), 7(1) and 10(1) of Directive 94/19/EC and/or Article 4 of the EEA Agreement by failing to ensure payment of compensation of 20 000 EUR to depositors on the so-called Icesave accounts of Landsbanki within the time limits laid down in the Directive.

4 Conclusion

61. Accordingly, the Authority requests the Court to:

a) Declare that by failing to ensure payment of the minimum amount of compensation to Icesave depositors in the Netherlands and in the United Kingdom provided for in Article 7(1) of the Act referred to at point 19a of Annex IX to the Agreement on the European Economic Area (*Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes*) within the time limits laid down in Article 10 of the Act, Iceland has failed to comply with the obligations resulting from that Act, in particular its Articles 3, 4, 7 and 10, and/or Article 4 of the Agreement on the European Economic Area,

b) Order Iceland to bear the costs.



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