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Brussels, 13 March 2026
Case No: 94974
Document No: 1592890

Icelandic Ministry of Finance and Economic Affairs
Arnarhvoli við Lindargötu
101 Reykjavík
Iceland

Subject: Request for information to Iceland concerning the retail sale of alcoholic beverages by ÁTVR

On 13 November, the EFTA Surveillance Authority (“the Authority”) received a complaint against Iceland concerning the retail sale of alcoholic beverages by the Icelandic State monopoly (“ÁTVR”).

According to the complainant, Iceland is in breach of its obligations under the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) in relation to the retail sale of alcoholic beverages. In particular, the complainant alleges that the current system of retail sale of alcoholic beverages no longer justifies the exclusive right afforded to ÁTVR and that the latter is thus incompatible with Article 16 of the EEA Agreement or, in the alternative, its Article 11.

The complainant mentions three factors in support of the claim. First, that the retail sale of certain alcoholic beverages at production site has been authorised, providing for an exemption to ÁTVR’s exclusive right. Second, that the retail sale of alcoholic beverages at Keflavík airport has been tendered out and it is now operated by a private party, providing for another exemption to ÁTVR’s exclusive Rights. Third, the access to and availability of alcoholic beverages has increased in the last 20 years. It is the complainant’s view that these elements go against the stated aims of the alcohol monopoly, namely to reduce alcohol consumption, combat alcohol abuse and protect public health.

The Authority’s Internal Market Affairs Directorate (“the Directorate”) is also aware of the developments in Iceland where online stores registered in other EEA States have opened and offer alcoholic beverages to Icelandic consumers, but their stock and delivery points are located in Iceland.¹ To the Directorate’s understanding, it is being debated whether the operation of these online stores constitutes retail sale of alcoholic beverages contrary to ÁTVR’s exclusive rights. In that regard, criminal charges have been issued against one representative of such an online store for the sale of an alcoholic beverage.

The operation of a State monopoly for the sale of alcoholic beverages has a long-standing tradition in Iceland, based on public health concerns. Article 16(1) of the EEA Agreement allows for such a State monopoly of a commercial character but provides that it must be adjusted so that no discrimination regarding the conditions under which goods are procured and marketed will exist between nationals of EC Member States and EFTA States.

¹ The Directorate has information that on some occasions the online stores in question have a show room located in Iceland where customers can enter to take a look at the products that are on offer in the foreign online store (see <https://www.ruv.is/frettir/innlent/2025-01-04-vin-i-rekkum-i-syningarsal-i-skeifunni-432226>).

In the Directorate's view a fundamental distinction must be drawn between the retail sale of alcoholic beverages within the territory of an EEA State and private importation. In the latter, private individuals order alcoholic beverages from abroad – whether online or from a physical store – and arrange for their importation into their home State. In doing so, they bear the cost associated with the importation, including any charges incurred as the product crosses a border.

In its judgment in Case C-170/04 *Rosengren and Others* the Court of Justice of the European Union ("CJEU") came to the conclusion that a national provision prohibiting individuals from importing alcoholic beverages into Sweden, must be assessed in the light of Article 28 EC (Article 11 EEA), which prohibits all quantitative restrictions on imports and measures having equivalent effect rather than Article 31 EC (Article 16 EEA) on State monopolies.² The CJEU specifically noted that the ban did not truly regulate the operation of the monopoly since it did not relate to the methods of retail sale of alcoholic beverages on Swedish territory.³ Having assessed the measure, the CJEU found that it was unsuitable for attaining the objective of limiting alcohol consumption generally and was not proportionate for attaining the objective of protecting young persons against the harmful effects of alcohol consumption. Therefore, the ban could not be regarded as being justified under Article 30 EC (Article 13 EEA) on grounds of protection of the health and life of humans.⁴

In its judgment in Case E-9/00 *ESA v Norway* the EFTA Court concluded that Norway had breached Article 16 EEA, by maintaining two forms of retail sale, whereby beer with an alcohol content of between 2.5% and 4.75% by volume, mainly produced domestically, could be sold outside the Norwegian State monopoly, while other pre-packaged beverages with the same alcohol content, mostly imported from other EEA States, could only be sold through the monopoly.⁵

In order for the Authority's Internal Market Affairs Directorate to examine and assess the complaint, the Icelandic Government is invited to provide the following information:

1. Can you please provide a short overview over the legal environment in Iceland governing the State monopoly for the retail sale of alcoholic beverages and the exceptions from the exclusive rights granted to ÁTVR.
2. When it was authorised to sell certain alcoholic beverages at production site was it assessed to what extent that would have an effect on ÁTVR's exclusive rights?
 - a. If so, please provide information on that assessment.
 - b. If not, please provide information on the views, the Icelandic Government considers that need to be taken into account for such an assessment.
3. How did the Icelandic legislature come to the decision of limiting the sale of alcoholic beverages at a production site to beverages to those with an alcoholic strength of up to 12%?
 - a. Are alcoholic beverages with more alcoholic strength produced in Iceland?
4. In light of the EFTA Court's judgment in Case E-9/00 *ESA v Norway*, how does the Icelandic Government justify that products similar to those that enjoy the right to be sold at a production site but originate from other EEA States do not enjoy the same right to be sold outside the Icelandic State monopoly?
5. When deciding to tender out the operation of the retail sale of alcoholic beverages in duty-free stores did the Icelandic Government consider what, if any, effects that would have on the State monopoly of alcoholic beverages in Iceland and whether the change in operation would still be compatible with Article 16 EEA?
 - a. If so, please provide information on that assessment.

² Case C-170/04 *Rosengren and Others*, EU:C:2007:313, paragraph 27.

³ *Ibid*, paragraph 24.

⁴ *Ibid*, paragraph 58.

⁵ Case E-9/00 *ESA v Norway*, [2002] EFTA Ct. Rep. 72, paragraph 47.

- b. If not, please provide information on the views the Icelandic Government considers that need to be taken into account for such an assessment.
6. What is the Icelandic Government's view as regards the online stores referred to above where the delivery seems to take place from their warehouse located in Iceland?
 - a. Does the Icelandic Government believe that this falls under private importation of alcoholic beverages and if so, on what basis?
 - i. How would the Icelandic Government justify that such an exception from ÁTVR's general State monopoly is compatible with Article 16 EEA?
 - ii. If not, does the Icelandic Government believe that it has in fact approved retail sale of alcoholic beverages within Iceland by the limited action taken to address such operation?
7. Is the Icelandic Government of the view that the system for the sale of alcoholic beverages in Iceland can justify maintaining the State monopoly for the retail sale of alcoholic beverages so that it still reaches its aims to reduce alcohol consumption, combat alcohol abuse and protect public health?

The Icelandic Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *20 April 2026*.

Yours faithfully,

Maria Moustakali
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Maria Moustakali.