



**Borgarráð**

**Ákvörðun stjórnar Eftirlitsstofnunar EFTA frá 6. september 2023 í máli nr. 87332**

Lögð er fram í borgarráði ákvörðun stjórnar Eftirlitsstofnunar EFTA (ESA) frá 6. september 2023 í máli nr. 87332. Málið varðar kvörtun sem barst ESA er laut að framkvæmd íslenskra stjórnvalda við reikningsskil Reykjavíkurborgar og Félagsbústaða ehf. í tengslum við reglugerðir (EB) nr. 1606/2002 og 1126/2008. Nánar tiltekið var því haldið fram í kvörtun að við mat á virði fasteigna Félagsbústaða ehf. við reikningsskil hafi ekki átt að telja leiguíbúðir félagsins til fjárfestingareigna samkvæmt IAS 40 (sem er alþjóðlegur reikningsskilastaðall). Þess í stað ætti að beita matsaðferð samkvæmt IAS 16 (sem einnig er alþjóðlegur reikningsskilastaðall) þar sem eignarhald Félagsbústaða ehf. á leiguíbúðum væri fremur til þess að veita tiltekna þjónustu. Í umræddri ákvörðun kemur fram að ekki hafi verið sýnt fram á í málinu að íslensk stjórnvöld hafi ranglega beitt tilvitnuðum reglugerðum og því engin ástæða af hálfu ESA til þess að rannsaka málið frekar. Ákvað því stjórn ESA að loka málinu.

Fyrir hönd borgarlögmanns

Theodór Kjartansson lögmaður

Hjálagt:

Ákvörðun stjórnar ESA frá 6. september 2023 í máli nr. 87332.

Case No: 87332  
Document No: 1363020  
Decision No: 116/23/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

Of 6 September 2023

closing a complaint case arising from an alleged failure by Iceland to comply with Regulation 1606/2002 and Regulation 1126/2008 by not ensuring the correct application of international accounting standards

### THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

#### 1. Background

On 23 August 2021, the EFTA Surveillance Authority (“the Authority”) received a complaint against Iceland alleging that Iceland had failed to ensure the correct application of international accounting standards,<sup>1</sup> as incorporated into the Agreement on the European Economic Area (“the EEA Agreement”), in Iceland.

According to the complainant, the breach was evident from the financial statements of Félagsbústaðir hf. (“Félagsbústaðir”), a public limited company wholly owned by the city of Reykjavík (“Reykjavík City”). It was alleged that Félagsbústaðir’s properties were rented out to provide a social service and could therefore not be accounted for as investment properties measured at fair value, as prescribed by international accounting standard 40 (“IAS 40”). Instead, they should be accounted for as owner-occupied properties under international accounting standard 16 (“IAS 16”), which requires the use of either a cost model or a revaluation model as an accounting policy. Moreover, that Félagsbústaðir’s financial statements, which applied an inaccurate fair value accounting policy to these properties, were reproduced in the combined financial statements of Reykjavík City, skewing the city’s reported debt-to-equity ratios. In support, the complaint referred to International Public Sector Accounting Standards (“IPSAS”) relating to property held to provide a social service.

In the complaint, implicit reference was made to Opinion No 1/2020 of the Icelandic Accounting Committee<sup>2</sup> concerning the accounting for investment properties by not-for-profit companies providing social housing. While noting that it was not competent to interpret international accounting standards, the Committee found that, in its opinion, it

<sup>1</sup> For the purposes of this decision, the term ‘international accounting standards’ has the meaning given to it in Article 2 of Regulation 1606/2002.

<sup>2</sup> The Icelandic Accounting Committee (*Ice. reikningsskilaráð*) is established by Article 118 of the Icelandic Act No 3/2006 on annual accounts. Pursuant to Article 119(1) of the same Act, it should give its opinion on what constitutes statutory accounting rules at any given time.

would not be possible for companies to which Act No 3/2006 on annual accounts (*Ice. lög um ársreikninga*) applied to use IPSAS. The Committee also found that accounting for investment properties at fair value gave a fair presentation, regardless of the purpose for holding the properties.

The complaint also referred to Opinion No 1/2020 of the Icelandic Accounting and Information Committee for Municipalities<sup>3</sup> concerning the group accounts of Reykjavík City and the financial statements of Félagsbústaðir. In its Opinion, the Committee found that the financial statements of Félagsbústaðir could be reproduced unaltered in the consolidated financial statements of Reykjavík City provided that the same accounting policy was used. This condition would be met if Reykjavík City considered that Félagsbústaðir held investment properties accounted for at fair value.

On 13 October 2021, the Authority's Internal Market Affairs Directorate ("the Directorate") sent a request for information (Doc No 1232956) to Iceland. Iceland responded to the request for information by letter of 17 December 2021 (Doc No 1259303). By letter of 3 February 2022 (Doc No 1263499), the Directorate requested supplementary information from the Icelandic Government. On 29 April 2022, Iceland submitted its response to the supplementary request for information (Doc No 1286047). By letter of 10 May 2022 (Doc No 1288779), the complainant provided additional statements in support of the complaint. Furthermore, the representatives of the Authority and of the Icelandic Government discussed the case at a 'package meeting' in Iceland on 8 June 2022.

## 2. Legal framework

As set out in Article 1 of Regulation (EC) No 1606/2002 on the application of international accounting standards<sup>4</sup> ("Regulation 1606/2002"), its objective is the adoption and use of international accounting standards for publicly traded companies. Thereby enhancing transparency and comparability of financial statements and hence an efficient functioning of the EEA capital market and of the internal market. International accounting standards are not developed by the European Union. Rather, they are presented by the International Accounting Standards Board and are subject to all interpretations presented by the International Financial Reporting Interpretations Committee.

While Article 4 of Regulation 1606/2002 limits its scope of application to publicly traded companies, Article 5 gives EEA States the option to extend its scope to certain non-publicly traded companies. Pursuant to Articles 90(3), 90(4) and point 2 of Article 1(1) of the Icelandic Act No 3/2006 on annual accounts, companies that have issued transferable securities which are traded on a regulated market, and which do not prepare consolidated financial statements, are also required to apply international accounting standards. This discretionary extension of the scope of application of Regulation 1606/2002 also serves to enhance efficient functioning of the EEA capital market and of the internal market for transferrable securities.

Regulation 1606/2002 is transposed into the Icelandic legal order by the Icelandic Act No 3/2006 on annual accounts.

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<sup>3</sup> The Icelandic Accounting and Information Committee for Municipalities (*Ice. reikningsskila- og upplýsinganefnd sveitarfélaga*) is established by Article 74(1) of the Icelandic Act no 138/2011 on local authorities (*Ice. sveitarstjórnarlög*). Pursuant to Article 74(2) of the same act, it should support coordinated accounting practices of municipalities.

<sup>4</sup> Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 *on the application of international accounting standards* (OJ L 243, 11.9.2002, p. 1), incorporated into the EEA Agreement at point 10b of Annex XXII by Decision of the EEA Joint Committee No 37/2003 of 14 March 2003.

Regulation (EC) No 1126/2008 on adopting certain international accounting standards<sup>5</sup> (“Regulation 1126/2008”) was adopted to reproduce the provisions of the applicable international accounting standards in full<sup>6</sup> in an annex thereto. This includes IAS 16 and IAS 40.

Paragraph 5 of IAS 16 sets out the definition of the term ‘investment property’. It reads as follows:

*Property, plant and equipment are tangible items that:*

*(a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and*

*(b) are expected to be used during more than one period.*

Paragraph 29 of IAS 16 provides that an entity should choose either the cost model or the revaluation model as its accounting policy.

Paragraph 30 of IAS 16 concerns the use of the cost model and reads as follows:

*After recognition as an asset, an item of property, plant and equipment shall be carried at its cost less any accumulated depreciation and any accumulated impairment losses.*

Paragraph 31 of IAS 16 concerns the use of the revaluation model and reads as follows:

*After recognition as an asset, an item of property, plant and equipment whose fair value can be measured reliably shall be carried at a revalued amount, being its fair value at the date of the revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses. Revaluations shall be made with sufficient regularity to ensure that the carrying amount does not differ materially from that which would be determined using fair value at the end of the reporting period.*

Paragraph 5 of IAS 40 sets out the definition of the term ‘investment property’. It reads as follows:

*Investment property is property (land or a building—or part of a building—or both) held (by the owner or by the lessee as a right-of-use asset) to earn rentals or for capital appreciation or both, rather than for:*

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<sup>5</sup> Commission Regulation (EC) No 1126/2008 of 3 November 2008 *adopting certain international accounting standards* in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1), incorporated into the EEA Agreement at point 10ba of Annex XXII by Decision of the EEA Joint Committee No 74/2009 of 29 May 2009. The Regulation has been amended regularly to adopt new and revised international accounting standards. In particular, IAS 40 has been amended by Commission Regulation (EU) 2017/1986 of 31 October 2017 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council *as regards International Financial Reporting Standard 16* (OJ L 291, 9.11.2017, p. 1), incorporated into the EEA Agreement at point 10ba of Annex XXII by Decision of the EEA Joint Committee No 101/2018 of 27 April 2018 and by Commission Regulation (EU) 2021/2036 of 19 November 2021 amending Regulation (EC) No 1126/2008 *adopting certain international accounting standards* in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard 17 (OJ L 416, 23.11.2021, p. 3), incorporated into the EEA Agreement at point 10ba of Annex XXII by Decision of the EEA Joint Committee No 27/2022 of 4 February 2022.

<sup>6</sup> With the exception of international accounting standard 39, of which limited parts were omitted.

*(a) use in the production or supply of goods or services or for administrative purposes; or*

*(b) sale in the ordinary course of business.*

Paragraph 30 of IAS 40 provides that an entity should choose either the fair value model or the cost model as its accounting policy.

Paragraph 33 of IAS 40 concerns the use of the fair value model and reads as follows:

*After initial recognition, an entity that chooses the fair value model shall measure all of its investment property at fair value, except in the cases described in paragraph 53.*

Paragraph 53 of IAS 40 concerns the inability to measure fair value reliably.

Regulation 1126/2008 is transposed into the Icelandic legal order by Icelandic Regulation No 596/2010.<sup>7</sup>

Icelandic law does not require local municipalities to apply international accounting standards or IPSAS and there is no duty under EEA law to require their application.<sup>8</sup>

### **3. The Authority's assessment**

By extending the scope of application of Regulation 1606/2002, Iceland has opted to contribute to the efficient functioning of the EEA capital market and of the internal market by ensuring a high degree of transparency and comparability of financial statements issued by companies that have issued securities which are traded on a regulated market. Félagsbústaðir is a public limited company that has issued bonds which are traded on a regulated market and is therefore required by Icelandic law to use international accounting standards for preparation of its financial statements.<sup>9</sup> The same does not apply for Reykjavík City and its financial statements.

In the complaint and other correspondence, the complainant has maintained that Reykjavík City has an obligation under Icelandic law to provide social housing and that this legal obligation has, in effect, been transferred to Félagsbústaðir. This, in the complainant's view, should influence the interpretation of international accounting standards. The complainant refers to IPSAS in support of a conclusion that Félagsbústaðir should not be allowed to account for its properties as investment properties under IAS 40.

The Authority takes note that the complaint concerns the practices of Félagsbústaðir and not Reykjavík City and acknowledges that Iceland cannot freely interpret international accounting standards. The Authority's assessment is nonetheless constrained by the applicable EEA rules.

There is no EEA level harmonisation of accounting standards for the public sector. IPSAS have neither been adopted by EEA law nor does Icelandic law require municipalities to apply IPSAS or international accounting standards. While IPSAS may be drawn primarily

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<sup>7</sup> Full title in Icelandic: *Reglugerð um gildistöku reglugerðar framkvæmdastjórnarinnar (EB) nr. 1126/2008 (um innleiðingu tiltekinna alþjóðlegra reikningsskilastaðla í samræmi við reglugerð Evrópuþingsins og ráðsins (EB) nr. 1606/2002).*

<sup>8</sup> Financial statements of municipalities in Iceland should be prepared in accordance with the provisions of Icelandic Act no 138/2011 on local authorities.

<sup>9</sup> See Article 90(4) of the Icelandic Act No 3/2006 on annual accounts and the option set out in Article 5 of Regulation 1606/2002.

from international accounting standards, the very reason to put in place a separate set of accounting standards is to allow for variances for public sector reasons. International public sector accounting standard 16 (“IPSAS 16”) for investment property contains additional commentary to identify the main differences from IAS 40. IPSAS 16’s non-application to property held by a public sector entity to deliver a social service which also generates cash inflows is one of these key differences. This key difference might also be of relevance should public sector entities be required to apply international accounting standards but not for private sector entities, to which the scope of EEA level harmonisation is limited.

In the absence of EEA law on the accounting standards applicable to public sector entities and with international accounting standards being the construct of standard setting bodies rather than a concept of EEA law, the Authority’s assessment is restricted to whether Iceland has allowed for an incorrect application of international accounting standards by companies that have issued transferable securities which are traded on a regulated market. On the face of it, Félagsbústaðir falls into this category whereas Reykjavík City does not. Therefore, the Authority draws no conclusions as regards the accounting practices of Reykjavík City and what impact its public sector obligations to deliver a social service might have on its financial statements.

According to the complainant, Félagsbústaðir holds properties to supply a service rather than to earn rentals or for capital appreciation. Therefore, they should be classified as property within the meaning of IAS 16 and not an investment property within the meaning of IAS 40. This would impact the measurement of the properties as the fair value model accounting policy under IAS 40 is not available under IAS 16.

While providing affordable housing might be viewed as a social service of a public sector entity, the Authority fails to see that the same would apply to a private sector entity which uses its properties solely to earn rentals. Whether the rental rates set by the private sector entity are affordable or not, in comparison with market rates, does not alter this conclusion. With respect to Félagsbústaðir in particular, its operating model of offering lower rent to tenants as compared to the market average has been expressly stated both with respect to the accounting choices made in its financial statements and in connection with the company’s proposed issuance of bonds to be traded on a regulated market.<sup>10</sup> Given the limitations of EEA level harmonisation, it would be for national authorities to assess whether a private sector entity, in effect, operates as a public sector entity and whether that would have any implications for its accounting practices under national law.

In light of the above, it appears that allegation that Iceland has failed to comply with Regulation 1606/2002 and Regulation 1126/2008 by not ensuring the correct application of international accounting standards is not substantiated.

#### **4. Closure of the complaint case**

By letter of 3 August 2022, the Internal Market Affairs Directorate informed the complainant of its intention to propose to the Authority that the case be closed. The complainant was invited to submit any observations on the Internal Market Affairs Directorate’s assessment of the complaint or present any new information by 3 September 2022.

By letter of 15 August 2022 (Doc No 1306801), the complainant replied to the Directorate’s letter. The complainant made further submissions to the Authority by letters of 13 March 2023 (Doc No 1364259) and 21 March 2023 (Doc No 1364258). The complainant maintained its allegation that Iceland had failed to ensure the correct

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<sup>10</sup> Félagsbústaðir hf., ‘Social Bond Impact Report 2022’ <https://ml-eu.globenewswire.com/Resource/Download/b2930f5c-b563-476b-a000-36615745c25b>.

application of international accounting standards, in breach of EEA law. In particular, the complainant emphasised that the complaint concerned the practices of Félagsbústaðir rather than Reykjavík City, noting that Félagsbústaðir was in any event providing a social service. Also, the complainant stated that Iceland was not free to interpret international accounting standards even if IPSAS had not been formally adopted and that tenants' housing benefits were paid directly to Félagsbústaðir. However, the Authority considers that this reply does not alter the conclusions set out in its letter of 3 August 2022.

There are, therefore, no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

The complaint case arising from an alleged failure by Iceland to comply with Regulation 1606/2002 and Regulation 1126/2008, is hereby closed.

For the EFTA Surveillance Authority

Arne Røksund  
President

Stefan Barriga  
Responsible College Member

Árni Páll Árnason  
College Member

Melpo-Menie Joséphidès  
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*This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.*