

## EFTA COURT

### **Action brought on 20 December 2016 by Autonomy Capital (Jersey) LP and Eaton Vance Management against the EFTA Surveillance Authority**

**(Case E-20/16)**

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 20 December 2016 by Autonomy Capital (Jersey) LP and Eaton Vance Management, represented by Pétur Örn Sverrisson hrl. and Halldór Backman hrl., Morrison & Foerster (UK) LLP, Citypoint, One Ropemaker Street, London EC2Y 9AW.

The Applicant requests the EFTA Court to:

- 1. Declare void the Defendant's decision of 23 November 2016 closing the Applicants' complaint against Iceland; and**
- 2. Order the Defendant to pay the Applicants' costs of the present proceedings.**

*Legal and factual background and pleas in law adduced in support:*

- The Applicants argue that Act No. 37/2016, passed by the Icelandic Parliament, discriminates on the grounds of nationality by imposing extensive requirements, with penalties for failure to comply, on the holders of offshore króna who are predominantly non-residents of Iceland, and does not place any equivalent requirements on domestic holders of króna.
- According to the Applicants, the EFTA Surveillance Authority has relied on Article 43 of the EEA Agreement to support the assertion that Iceland was, and continues to be, allowed to derogate from its obligation to comply with the fundamental freedoms set out in the EEA Agreement.
- The Applicants claims that the EFTA Surveillance Authority has misjudged the level of discretion awarded to EEA/EFTA States by Article 43 and, therefore, Iceland has not met the test set out in Article 43(4).
- Additionally, the Applicants submits that, regardless of scenario, any derogation from an obligation under the EEA Agreements must be in accordance with the principal of proportionality and must be no wider in

scope than necessary to remedy whatever sudden difficulties have arisen. According to the Applicants, the controls imposed by Act No. 37/2016 are disproportionate and do not address the Icelandic Government's stated concern, and, additionally, the Icelandic Authorities have failed to consider the considerably less restrictive options suggested to them..