



JUDGMENT OF THE COURT

5 December 2024

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Regulation (EU) 2020/697 – Allowing the managing body of a port or the competent authority to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak)

In Case E-12/24,

EFTA Surveillance Authority, represented by Hildur Hjörvar, Sigrún Ingibjörg Gísladóttir, and Melpo-Menie Joséphidès, acting as Agents,

applicant,

v

Iceland, represented by Inga Þórey Óskarsdóttir, Hendrik Daði Jónsson, and Vala Hrönn Viggósdóttir, acting as Agents,

defendant,

APPLICATION seeking a declaration that Iceland has failed to adopt the measures necessary to make the act referred to at point 56z of Chapter V of Annex XIII to the Agreement on the European Economic Area (Regulation (EU) 2020/697 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EU) 2017/352, so as to allow the managing body of a port or the competent authority to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak), as adapted by Protocol 1 to the Agreement, part of its internal legal order,

THE COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Bernd Hammermann 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 May 2024, 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 Iceland has failed to fulfil its obligations under Article 7 of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) by failing to make the Act referred to at point 56z of Chapter V of Annex XIII to the EEA Agreement (Regulation (EU) 2020/697 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EU) 2017/352, so as to allow the managing body of a port or the competent authority to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak) (OJ 2020 L 165, p. 7, and Icelandic EEA Supplement 2020 No 54, p. 225) (“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 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;

(b) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.

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 108/2020 of 14 July 2020 (OJ 2023 L 172, p. 26; and Icelandic EEA Supplement 2023 No 51, p. 26) (“JCD No 108/2020”) amended Annex XIII (Transport) to the EEA Agreement by adding the Regulation to point 56z of the Annex. No constitutional requirements were indicated, and JCD No 108/2020 entered into force on 1 February 2023.

III FACTS AND PRE-LITIGATION PROCEDURE

6 On 4 July 2023, after prior correspondence, ESA sent a letter of formal notice to Iceland, concluding that, as Iceland had failed to take the necessary measures to make the Regulation part of its legal order, it had failed to fulfil its obligations under Article 7 EEA.

7 Iceland did not formally reply to the letter of formal notice.

8 On 25 September 2023, Iceland wrote to ESA on a related matter stating that in an opinion dated 1 September 2023, the Icelandic Competition Authority had raised some concerns regarding barriers to access to port facilities and services in Iceland. In the Icelandic Competition Authority’s view, the national regulation incorporating Regulation (EU) 2017/352, which the Regulation amends, could have a dissuasive impact on such barriers.

Iceland stated that it intended to issue a draft implementing regulation for public consultation by 9 October 2023.

- 9 On 22 November 2023, ESA delivered a reasoned opinion in which it maintained the view that the Regulation had not been made part of the Icelandic internal legal order as required by Article 7 EEA. Iceland was given two months in which to take the measures necessary to comply with the reasoned opinion, i.e. no later than 22 January 2024.
- 10 Iceland did not reply to the reasoned opinion.
- 11 By the time that the deadline set in the reasoned opinion expired, Iceland had not informed ESA of any measures it had adopted to make the Regulation part of its internal legal order, nor was ESA in possession of any other information which indicated that it had been made part of Iceland's internal legal order.
- 12 On 8 May 2024, ESA decided, by way of College Decision 073/24/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

- 13 On 8 May 2024, 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 Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement by failing to make the Act referred to at point 56z of Chapter V of Annex XIII to the EEA Agreement (Regulation (EU) 2020/697 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EU) 2017/352, so as to allow the managing body of a port or the competent authority to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order, and

2. order Iceland to bear the costs of these proceedings.

- 14 In its application, ESA notes that Iceland still has not made the Regulation part of its internal legal order, nor has it informed ESA of having done so.
- 15 On 15 July 2024, Iceland submitted its defence, which was registered at the Court on the same date. Iceland submits that the facts of the case, as brought forward in the application, are correct and undisputed. Furthermore, Iceland states that it does not dispute the declaration sought by ESA.

- 16 A deadline of 19 August 2024 was set for the reply. By way of a letter dated 9 August 2024, registered at the Court on the same date, ESA notes that Iceland has not contested the declaration sought. Consequently, ESA waives its right to reply under Article 108 of the Rules of Procedure (“RoP”) and consents to the Court dispensing with the oral procedure should it wish to do so.
- 17 The deadline for intervention expired, pursuant to Article 113(1) RoP, on 15 August 2024. On 28 August 2024, Iceland wrote to the Court stating that it also consents to the Court dispensing with the oral hearing pursuant to Article 70 RoP.
- 18 The deadline for submitting written observations expired on 19 September 2024. No written observations were received.
- 19 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 procedure.

V FINDINGS OF THE COURT

- 20 Article 3 EEA imposes upon the EFTA 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 22 October 2024, *ESA v Iceland*, E-5/24, paragraph 18 and case law cited).
- 21 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 EFTA State.
- 22 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-5/24, cited above, paragraph 20 and case law cited).
- 23 JCD No 108/2020 entered into force on 1 February 2023. The time limit for EFTA States to adopt the measures necessary to implement the Regulation expired on the same date.
- 24 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-5/24, cited above, paragraph 22 and case law cited).

- 25 It is undisputed that Iceland had failed to make the Regulation part of its internal legal order by the expiry of the time limit set in the reasoned opinion.
- 26 In light of the above, it must be held that Iceland 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

- 27 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 Iceland be ordered to pay the costs, the latter has been unsuccessful, and none of the exceptions in Article 121(2) RoP apply, Iceland must be ordered to pay the costs of the proceedings.

On those grounds,

THE COURT

hereby:

- 1. Declares that Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement by failing to make the act referred to at point 56z of Chapter V of Annex XIII to the EEA Agreement (Regulation (EU) 2020/697 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EU) 2017/352, so as to allow the managing body of a port or the competent authority to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order.**
- 2. Orders Iceland to bear the costs of the proceedings.**

Páll Hreinsson

Bernd Hammermann

Michael Reiertsen

Delivered in open court in Luxembourg on 5 December 2024.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President