



JUDGMENT OF THE COURT

7 May 2025

(Failure by an EFTA State to fulfil its obligations – Failure to implement Directive (EU) 2016/2341 – Activities and supervision of institutions for occupational retirement provision)

In Case E-28/24,

EFTA Surveillance Authority, represented by Sigurbjörn Bernharð Edvardsson, Sigrún Ingibjörg Gísladóttir, and Melpo-Menie Joséphidès, acting as Agents,

applicant,

v

Iceland, represented by Hendrik Daði Jónsson, and Anna Valbjörg Ólafsdóttir, acting as Agents,

defendant,

APPLICATION seeking a declaration that Iceland has failed to fulfil its obligations under the act referred to at points 1 and 31d of Annex IX to the Agreement on the European Economic Area (Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)), as adapted by Protocol 1 to that Agreement, and under Article 7 of the EEA Agreement, by failing to adopt the measures necessary to implement the act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann and Michael Reiertsen (Judge-Rapporteur), 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 16 October 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 the act referred to at points 1 and 31d of Annex IX to the Agreement on the European Economic Area ("EEA Agreement" or "EEA") (Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)) (OJ 2016 L 354, p. 37, and Icelandic EEA Supplement 2022 No 70, p. 1) ("the Directive"), as adapted by Protocol 1 to the EEA Agreement, and under Article 7 EEA, by failing to adopt the measures necessary to implement the act within the time prescribed, or in any event, by failing to inform ESA thereof.

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, in extract:

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:

...

(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 54/2021 of 5 February 2021 (OJ L, 2024/63, 11.1.2024, ELI: <http://data.europa.eu/eli/dec/2024/63/oj>, and Icelandic EEA Supplement 2024 No 3, p. 97) (“JCD No 54/2021”) amended Annex IX (Financial services) to the EEA Agreement by incorporating the Directive in points 1 and 31d of the Annex. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 2 June 2023, and JCD No 54/2021 entered into force on 1 August 2023.

6 Article 64 of the Directive, entitled “Transposition”, reads:

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 13 January 2019. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

III FACTS AND PRE-LITIGATION PROCEDURE

7 On 21 November 2023, after prior correspondence, ESA sent a letter of formal notice to Iceland, concluding that by failing to take the necessary measures to make the Directive part of its internal legal order and/or by failing to notify ESA, Iceland had failed to fulfil its obligations under the Directive and under Article 7 of the EEA Agreement.

8 On 27 November 2023, the Icelandic Government submitted a letter to ESA, informing ESA that it was preparing a legislative bill to finalise the implementation of the act. The letter further indicated the government’s intention to present the bill to the Icelandic Parliament “in the spring of 2024”.

- 9 On 17 April 2024, having received no further updates on the status of the intended legislative proposals, ESA delivered a reasoned opinion in which it maintained the conclusion set out in its letter of formal notice. Iceland was given two months in which to take the measures necessary to comply with the reasoned opinion, i.e. no later than 17 June 2024.
- 10 On 13 June 2024, Iceland replied to the reasoned opinion and stated that it was “still preparing a bill to finalise the implementation of the [act]” and expressed its intention to submit the bill to the Icelandic Parliament (*Alþingi*) during the next legislative session. The letter further noted that the government would “inform the Authority when the bill is submitted”.
- 11 On 16 October 2024, ESA decided, by way of College Decision No 164/24/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

- 12 On 16 October 2024, ESA lodged the present application at the Court’s Registry, which was registered at the Court on the same day. ESA requests the Court to:
 1. *declare that Iceland has failed to fulfil its obligations under the Act referred to at points 1 and 31d of Annex IX to the EEA Agreement (Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast)), as adapted by Protocol 1 to the EEA Agreement, and under Article 7 of the EEA Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof, and*
 2. *order Iceland to bear the costs of these proceedings.*
- 13 In its application, ESA notes that Iceland still has not implemented the Directive, nor has it informed ESA of having done so.
- 14 On 18 December 2024, Iceland lodged its defence, registered at the Court on the same day, in which it submits that the facts of the case, as brought forward in the application, are correct and undisputed and that it does not dispute the declaration sought by ESA.
- 15 A deadline of 20 January 2025 was set for the reply. By way of a letter dated 20 January 2025, registered at the Court on the same day, ESA observed that Iceland had not contested the declaration sought and consequently ESA waived its right to submit a reply under Article 108 of the Rules of Procedure (“RoP”). Further, ESA consented to the Court dispensing with the oral procedure should it wish to do so in the present case.
- 16 On 9 January 2025, the deadline for intervention expired pursuant to Article 113(1) RoP. No applications to intervene were received. On 5 February 2025, by letter

registered at the Court on the same day, Iceland consented to the Court dispensing with the oral procedure pursuant to Article 70 RoP.

- 17 On 19 February 2025, the deadline for submitting written observations expired. No written observations were received.
- 18 After having received the express consent of the parties and acting on a report from the Judge-Rapporteur, the Court decided to dispense with the oral procedure pursuant to Article 70 RoP.

V FINDINGS OF THE COURT

- 19 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 5 December 2024, *ESA v Iceland*, E-9/24, paragraph 19 and case law cited).
- 20 Article 7(b) EEA provides that an act corresponding to an EU directive, referred to in the Annexes to the EEA Agreement or a decision of the EEA Joint Committee, shall be made part of the internal legal order of an EEA State in accordance with that EEA State's choice of form and method of implementation. An obligation to implement the Directive also follows from Article 64 thereof.
- 21 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 of result in that regard (see the judgment in *ESA v Iceland*, E-9/24, cited above, paragraph 21 and case law cited).
- 22 JCD No 54/2021 entered into force on 1 August 2023. The time limit for EFTA States to adopt the measures necessary to implement the Directive expired on the same day.
- 23 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-9/24, cited above, paragraph 23 and case law cited). In this case, the relevant date is 17 June 2024.
- 24 It is undisputed that Iceland had failed to fulfil its obligations under the Directive and Article 7 EEA by the time limit set out in the reasoned opinion.
- 25 In light of the above, it must be held that Iceland has failed to fulfil its obligations under the Directive and under Article 7 EEA by failing to adopt the measures necessary to implement the Directive within the time prescribed.

VI COSTS

- 26 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 the act referred to at points 1 and 31d of Annex IX to the EEA Agreement (Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)), as adapted by Protocol 1 to the EEA Agreement, and under Article 7 of the EEA Agreement, by failing to adopt the measures necessary to implement the act within the time prescribed.**
- 2. Orders Iceland to bear the costs of the proceedings.**

Páll Hreinsson

Bernd Hammermann

Michael Reiertsen

Delivered in open court in Luxembourg on 7 May 2025.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President