



JUDGMENT OF THE COURT

5 December 2024

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions)

In Case E-9/24,

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 Helga Hauksdóttir, acting as Agents,

defendant,

APPLICATION seeking a declaration that Iceland has failed to fulfil its obligations under the act referred to at point 1c of Chapter A of Annex VII to the EEA Agreement (Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions), 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,

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 25 April 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 point 1c of Chapter A of Annex VII to the Agreement on the European Economic Area (“EEA Agreement” or “EEA”), namely Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions), 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 Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions (OJ 2018 L 173, p. 25, and Icelandic EEA Supplement 2021 No 71, p. 236) (“the Directive”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 243/2021 of 24 September 2021 (OJ 2024 L 501, and Icelandic EEA Supplement 2024 No 17, p. 30) (“JCD No 243/2021”). The Directive is referred to at point 1c of Chapter A of Annex VII (Recognition of Professional Qualifications) to the EEA Agreement. Constitutional requirements were indicated by Liechtenstein. The requirements were fulfilled by 20 December 2022, and the decision entered into force on 1 February 2023.

6 Article 13 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 30 July 2020. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

III FACTS AND PRE-LITIGATION PROCEDURE

7 On 22 May 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 The Icelandic Government did not reply to the letter of formal notice. The case was, however, discussed during a Package Meeting between Iceland and ESA from 6 to 8 June 2023. Iceland confirmed that the Directive had yet to be implemented and explained difficulties which it had faced in realising that implementation.

- 9 On 6 December 2023, ESA delivered its reasoned opinion maintaining the conclusion set out in the letter of formal notice. ESA requested Iceland to take the measures necessary to comply with the reasoned opinion within two months of its receipt.
- 10 In its reply of 25 January 2024 to the reasoned opinion, Iceland stated that the complexity of the issue at hand and unforeseen circumstances had delayed implementation and indicated that a legislative bill would be ready for adoption by May 2024. On 15 April 2024, Iceland stated that a regulation aimed at the implementation would soon be published, but that a legislative bill supporting that regulation would not be submitted to the Icelandic Parliament until autumn 2024.
- 11 By the expiry of the deadline set out in the reasoned opinion, ESA had not received any notification that Iceland had implemented the Directive. On 24 April 2024, ESA decided by way of College Decision 062/24/COL to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

- 12 On 24 April 2024, ESA lodged the present application at the Court’s Registry, which was registered at the Court on 25 April 2024. ESA requests the Court to:
 1. *declare that Iceland has failed to fulfil its obligations under the Act referred to at point 1c of Chapter A of Annex VII to the EEA Agreement (Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions), 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 defence of 26 June 2024, registered at the Court on the same day, Iceland 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.
- 14 A deadline of 22 July 2024 was set for the reply. By way of a letter dated 11 July 2024, 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.
- 15 Pursuant to Article 113(1) RoP, the deadline for intervention expired on 18 July 2024. No applications to intervene were received.
- 16 By letter of 22 July 2024, registered at the Court on the same day, Iceland consented to the Court dispensing with the oral procedure.

- 17 The deadline for submitting written observations expired on 28 August 2024. 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 2 July 2024, *ESA v Norway*, E-14/23, paragraph 19 and case law cited).
- 20 Under Article 7 EEA, the EFTA States are obliged to implement all acts corresponding to regulations and directives referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee. An obligation to implement the Directive also follows from Article 13 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 Norway*, E-14/23, cited above, paragraph 21 and case law cited).
- 22 JCD No 243/2021 entered into force on 1 February 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 Norway*, E-14/23, cited above, paragraph 23 and case law cited).
- 24 In its defence, Iceland submitted that the facts of the case, as brought forward in the application, are correct and undisputed and that it did not dispute the declaration sought by ESA.
- 25 It is therefore 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.
- 26 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

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 the act referred to at point 1c of Chapter A of Annex VII to the EEA Agreement (Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions), 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 5 December 2024.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President