



JUDGMENT OF THE COURT

2 July 2024

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights)

In Case E-14/23,

EFTA Surveillance Authority, represented by Hildur Hjörvar, Kyrre Isaksen, and Melpo-Menie Joséphidès, acting as Agents,

applicant,

v

The Kingdom of Norway, represented by Pål Wennerås, Jon-Christian Rynning, and Margrethe R. Norum, acting as Agents,

defendant,

APPLICATION seeking a declaration that Norway has failed to adopt the measures necessary to fully implement the act referred to at point 6 of Annex VI to the Agreement on the European Economic Area (Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights) into its internal legal order,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann (Judge-Rapporteur) 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 18 October 2023, 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 Norway has failed to fulfil its obligations under Article 7 of the European Economic Area Agreement (“EEA Agreement” or “EEA”) and under Article 8 of the act referred to at point 6 of Annex VI to the EEA Agreement, namely Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (OJ 2014 L 128, p. 1, and Norwegian EEA Supplement 2021 No 40, p. 381) (“the Directive”), by failing to fully implement the Directive into its internal legal order.

II LEGAL BACKGROUND

EEA law

- 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 188/2014 of 25 September 2014 (OJ 2015 L 202, p. 40, and Norwegian EEA Supplement 2015 No 43, p. 40) (“JCD No 188/2014”) amended Annex VI (Social Security) to the EEA Agreement by adding the Directive as point 13 of the Annex. Constitutional requirements were indicated by Norway and fulfilled by 27 March 2015, and JCD No 188/2014 entered into force on 1 May 2015. Pursuant to Article 8(1) of the Directive, the time limit to adopt the measures necessary to implement the Directive expired on 21 May 2018. Pursuant to Article 1(3) of Decision of the EEA Joint Committee No 27/2016 of 20 July 2017 (OJ 2016 L 189, p. 43 and Norwegian EEA Supplement 2017 No 45, p. 46) (“JCD No 27/2016”) point 13 of Annex VI to the EEA Agreement was renumbered as point 6. No constitutional requirements were indicated and JCD No 27/2016 entered into force on 6 February 2016.

6 Article 4 of the Directive, entitled “Conditions governing the acquisition of rights under supplementary pension schemes”, reads, in extract:

1. The Member States shall take all necessary steps to ensure that:

...

(c) where an outgoing worker has not yet acquired vested pension rights when the employment relationship is terminated, the supplementary pension scheme shall reimburse the contributions paid by the outgoing worker, or paid on behalf of the outgoing worker, in accordance with national law or collective agreements or contracts, or, where the outgoing worker bears the investment risk, either the sum of the contributions made or the investment value arising from these contributions.

...

7 Article 8 of the Directive, entitled “Transposition”, reads:

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 21 May 2018, or shall ensure that the social partners introduce the required provisions by way of agreement by that date. Member States are required to take the necessary steps enabling them to guarantee the results imposed by this Directive. They shall immediately inform the Commission thereof.

2. *When Member States adopt the measures referred to in paragraph 1, 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 the Member States.*

III FACTS AND PRE-LITIGATION PROCEDURE

- 8 On 4 October 2018, after prior correspondence, ESA sent a letter of formal notice to Norway, concluding that, as Norway had failed to take the necessary measures to make the Directive part of its internal legal order, it had failed to fulfil its obligations under Article 7 EEA.
- 9 On 6 March 2019, having considered Norway's response of 4 December 2018, ESA maintained the view that the Directive had not been made part of the Norwegian internal legal order as required by Article 7 EEA and Article 8 of the Directive and delivered a reasoned opinion. Norway was given until 6 May 2019 to take the measures necessary to comply with the reasoned opinion.
- 10 Subsequently there was considerable correspondence between the parties. On 13 February 2020, ESA contacted Norway informally regarding the implementation of the Directive, having not received a Form 1 in respect of legislative initiatives previously referred to by Norway. On 14 February 2020, Norway replied stating that it would submit the Form 1 as soon as possible. On 31 March 2020, ESA sent a further informal reminder.
- 11 On 8 April 2020, Norway submitted a Form 1, dated 3 April 2020, to ESA in which it stated that it had partially implemented the Directive, by way of amendments to several acts. Subsequently, there was correspondence and informal consultation between ESA and Norway.
- 12 On 19 July 2023, ESA decided to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORMS OF ORDER SOUGHT

- 13 On 18 October 2023, 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 Norway has failed to fulfil its obligations under Article 7 of the EEA Agreement and Article 8 of the Act by failing to fully implement the Act referred to at point 13 of Annex VI to the Agreement on the European Economic Area (Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights) into its internal legal order.*

2. *order Norway to bear the costs of these proceedings.*

- 14 In its defence of 5 January 2024, registered at the Court on the same date, Norway acknowledged its failure to implement Article 4(1)(c) of the Directive by 6 May 2019. Therefore, Norway submits that the Court may declare judgment in accordance with ESA’s request. Norway also consented to dispense with the oral procedure.
- 15 A deadline of 23 January 2024 was set for the reply. By way of a letter dated 23 January 2024, registered at the Court on the same date, ESA waived its right to reply under Article 108 of the Rules of Procedure (“RoP”). ESA reserved its consent to dispense with the oral procedure for the time being, until submissions from Governments of the EFTA States, the Union and the European Commission, if any, had been served on the parties.
- 16 The deadline for intervention expired, pursuant to Article 113(1) RoP, on 25 January 2024. A deadline of 8 February 2024 was set for the rejoinder. By letter of 8 February 2024, registered at the Court on the same day, Norway declined the opportunity to submit a rejoinder.
- 17 The deadline for submitting written observations expired on 11 March 2024. No written observations were received. By letter of 12 March 2024, registered at the Court on the same day, ESA consented to dispense with the oral procedure.
- 18 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

- 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 12 July 2023, *ESA v Norway*, E-15/22, paragraph 32 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 8 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-15/22, cited above, paragraph 34 and case law cited, and the judgment of 14 May 2019, *ESA v Iceland*, E-6/18, paragraph 17).

- 22 JCD No 188/2014 entered into force on 1 May 2015. The time limit for EFTA States to adopt the measures necessary to implement the Directive expired on 21 May 2018 pursuant to Article 8 of the Directive.
- 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-15/22, cited above, paragraph 36 and case law cited). In this case, the relevant date is 6 May 2019.
- 24 In its application, ESA has chosen to limit the substantive scope of its application to the issue of the failure by Norway to implement and to notify implementation of Article 4(1)(c) of the Directive.
- 25 The Court observes that the application specifies that the Directive is referred to at point 13 of Annex VI to the EEA Agreement. However, since 2016, it has been located at point 6 of that annex.
- 26 In its defence, Norway acknowledged its failure to implement Article 4(1)(c) of the Directive and to notify the implementing measures by 6 May 2019.
- 27 It is therefore undisputed that Norway had failed to fulfil its obligations arising from Article 8 of the Directive by the expiry of the time limit set out in the reasoned opinion.
- 28 In light of the above, it must be held that Norway has failed to fulfil its obligations under Article 7 EEA and Article 8 of the Directive by failing to fully implement the act referred to at point 6 of Annex VI to the EEA Agreement into its internal legal order.

VI COSTS

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

On those grounds,

THE COURT

hereby:

- 1. Declares that the Kingdom of Norway has failed to fulfil its obligations under Article 7 of the EEA Agreement and Article 8 of the act by failing to fully implement the act referred to at point 6 of Annex VI to the Agreement on the European Economic Area (Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights) into its internal legal order.**
- 2. Orders the Kingdom of Norway to bear the costs of the proceedings.**

Páll Hreinsson

Bernd Hammermann

Michael Reiertsen

Delivered in open court in Luxembourg on 2 July 2024.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President