



## JUDGMENT OF THE COURT

22 October 2024

*(Failure by an EFTA State to fulfil its obligations – Failure to implement – Regulation (EU) 2021/1042 – System of interconnection of registers)*

In Case E-6/24,

**EFTA Surveillance Authority**, represented by Hildur Hjörvar, Catherine Howdle and Melpo-Menie Joséphidès, acting as Agents,

*applicant,*

v

**Iceland**, represented by Helga Hrönn Karlsdóttir and Sigurbjörg Stella Guðmundsdóttir, acting as Agents,

*defendant,*

APPLICATION seeking a declaration 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 1a of Annex XXII to the EEA Agreement (Commission Implementing Regulation (EU) 2021/1042 of 18 June 2021 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244), as adapted by Protocol 1 to the EEA Agreement, part of 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 27 March 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 1a of Annex XXII to the EEA Agreement (Commission Implementing Regulation (EU) 2021/1042 of 18 June 2021 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244) (OJ 2021 L 225, p. 7; and Icelandic EEA Supplement 2022 No 76, p. 252) (“the Regulation”), as adapted by Protocol 1 to the EEA 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 161/2022 of 29 April 2022 (OJ 2022 L 246, p. 130; and Icelandic EEA Supplement 2022 No 61, p. 126) (“JCD No 161/2022”) amended Annex XXII (Company law) to the EEA Agreement by adding the Regulation to point 1a of the Annex. No constitutional requirements were indicated, and JCD No 161/2022 entered into force on 30 April 2022.

### **III FACTS AND PRE-LITIGATION PROCEDURE**

6 On 24 April 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 On 27 September 2023, Iceland replied to the letter of formal notice, stating that it had not yet taken the necessary measures to implement the Regulation and indicating that a draft bill implementing the Regulation was being finalised after going through public consultation and that it would be presented before Parliament in the coming weeks.

8 On 22 November 2023, having considered Iceland’s response, 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.

- 9 On 15 March 2024, Iceland wrote to ESA informing it that a bill relating to the implementation of the Regulation had been presented to Parliament on 30 January 2024 and indicated that the bill was expected to be passed by Parliament, and that the Regulation was expected to be implemented subsequently by way of a regulation.
- 10 By the time that the deadline set in the reasoned opinion expired, i.e. 22 January 2024, 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.
- 11 On 27 March 2024, ESA decided, by way of College Decision 042/24/COL, to bring the matter before the Court pursuant to Article 31 SCA.

#### **IV PROCEDURE AND FORM OF ORDER SOUGHT**

- 12 On 27 March 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 1a of Annex XXII to the EEA Agreement (Commission Implementing Regulation (EU) 2021/1042 of 18 June 2021 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244), 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.*

- 13 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.
- 14 On 5 June 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.
- 15 A deadline of 11 July 2024 was set for the reply. By way of a letter dated 25 June 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.

- 16 The deadline for intervention expired, pursuant to Article 113(1) RoP, on 27 June 2024. On 5 July 2024, Iceland wrote to the Court stating that it also consents to the Court dispensing with the oral hearing pursuant to Article 70 RoP.
- 17 The deadline for submitting written observations expired on 12 August 2024. No written observations were received.
- 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 2 July 2024, *ESA v Norway*, E-14/23, paragraph 19 and case law cited).
- 20 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.
- 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 to implement regulations as such (see the judgment in *ESA v Norway*, E-14/23, cited above, paragraph 21 and case law cited, and the judgment of 12 July 2023, *ESA v Norway*, E-15/22, paragraph 34 and case law cited).
- 22 JCD No 161/2022 entered into force on 30 April 2022. The time limit for EFTA States to adopt the measures necessary to implement the Regulation expired on the same date.
- 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). In this case, the relevant date is 22 January 2024. 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.

- 24 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**

- 25 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 1a of Annex XXII to the EEA Agreement (Commission Implementing Regulation (EU) 2021/1042 of 18 June 2021 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244), 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 22 October 2024.

Ólafur Jóhannes Einarsson  
Registrar

Páll Hreinsson  
President