



JUDGMENT OF THE COURT

7 June 2018

*(Failure by an EFTA State to fulfil its obligations – Failure to implement –
Directive 2014/54/EU)*

In Case E-17/17,

EFTA Surveillance Authority, represented by Carsten Zatschler, Catherine Howdle, and Ingibjörg Ólöf Vilhjálmisdóttir, members of its Department of Legal & Executive Affairs, acting as Agents,

applicant,

v

Iceland, represented by Veturliði Þór Stefánsson, Counsellor, Ministry for Foreign Affairs, acting as Agent,

defendant,

APPLICATION for a declaration that Iceland has failed to fulfil its obligations under the Act referred to at point 8 of Annex V to the Agreement on the European Economic Area (Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers) as adapted to the Agreement by way of Protocol 1 thereto, and under Article 7 of the 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, Per Christiansen (Judge-Rapporteur) and Bernd Hammermann, Judges,

Registrar: Gunnar Selvik,

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 Registry on 21 December 2017, 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 8 of Annex V to the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”), that is Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ 2014 L 128, p. 8, and Icelandic EEA Supplement 2015 No 63, p. 2344) (“the Act” or “the Directive”) as adapted to the Agreement under its Protocol 1, and under Article 7 of the Agreement, by failing to adopt or in any event to inform ESA of the measures necessary to implement the Act within the time prescribed.

II Law

- 2 Article 3 EEA reads:

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:

...

(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 No 219/2015 of the EEA Joint Committee of 25 September 2015 (OJ 2017 L 85, p. 41, and Icelandic EEA Supplement 2017 No 19, p. 40) (“Decision No 219/2015”) amended Annex V (Free movement of workers) to the EEA Agreement by adding the Directive as point 8 of the Annex. Constitutional requirements were indicated by Liechtenstein for the purposes of Article 103 EEA. They were fulfilled by April 2016. Therefore, Decision No 219/2015 entered into force on 1 June 2016. The time limit for the EFTA States to adopt the measures necessary to implement the Directive expired on the same date.

III Facts and pre-litigation procedure

6 On 8 September 2016, after corresponding with the Icelandic authorities, ESA issued a letter of formal notice concluding that Iceland had failed to fulfil its obligations under the Directive and Article 7 EEA, by failing to adopt or in any event to inform ESA of the measures necessary to implement the Directive.

7 On 9 November 2016, the Icelandic Government responded to the letter of formal notice by informing ESA that it aimed to submit a bill to Parliament implementing the Directive in spring 2017.

8 On 18 January 2017, ESA delivered a reasoned opinion maintaining the conclusion set out in its letter of formal notice. Pursuant to the second paragraph of Article 31 SCA, ESA required Iceland to take the necessary measures to comply with the reasoned opinion within two months following the notification, that is, no later than 18 March 2017.

- 9 Iceland replied to ESA’s reasoned opinion on 13 February 2017. The Icelandic Government referred to its reply to the letter of formal notice and stated that it aimed to submit the bill implementing the Directive to Parliament before 1 April 2017.
- 10 In a Form 1 document (used by national authorities to notify ESA of national measures implementing an act referred to in an annex or a protocol to the EEA Agreement), dated 30 November 2017, the Icelandic Government indicated that it had fully implemented the Act into Icelandic law by way of Act No 105/2014 of 30 October 2014 on the free right to employment and residence within the European Economic Area (“Icelandic Act No 105/2014”). An implementation date was not indicated in the document.
- 11 By an email of 4 December 2017, ESA asked Iceland for an explanation of whether, considering the replies to the letter of formal notice and reasoned opinion, the notification of Icelandic Act No 105/2014 as an implementing measure was a mistake. Iceland replied by email on 7 December 2017, stating that in its view Icelandic Act No 105/2014 fully implemented the Directive. As an explanation for the previous line of replies, Iceland informed that “it was thought more transparent to have a special clause in [Icelandic Act No 105/2014] informing that [it] implements the Directive” and that this would be added by way of the bill proposed in April 2017.
- 12 Having undertaken an assessment of whether the notified measures could be said to have implemented the Act, ESA decided on 19 December 2017 to bring the matter before the Court pursuant to the second paragraph of Article 31 SCA.

IV Procedure, forms of order sought and submissions

- 13 ESA lodged the present application at the Court Registry on 21 December 2017. ESA requests the Court to:
 - a. *declare that by failing to adopt the measures necessary to implement the Act referred to at point 8 of Annex V to the Agreement on the European Economic Area (Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers), as adapted to the Agreement by way of Protocol 1, and in any event by failing to notify the EFTA Surveillance Authority of the measures it has adopted to implement that act, Iceland has failed to fulfil its obligations under that act and under Article 7 of the Agreement; and*
 - b. *order Iceland to bear the costs of these proceedings.*
- 14 ESA submits that 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 – in this case, 18 March 2017. By that date, Iceland had not notified ESA of the implementation of the Act into its national legal order.

- 15 ESA notes that Iceland’s Form 1, by which it purported to notify ESA that the Act had been implemented into the Icelandic legal order, was received by ESA on 1 December 2017. The Form 1 cited Icelandic Act No 105/2014 as implementing the Act into Icelandic national law. However, the Form 1 document was incomplete and did not contain any actual notification of the implementing measures.
- 16 ESA submits that in any event, Icelandic Act No 105/2014 could not be said to implement the Act into Icelandic national law. Therefore, ESA contends that there has been no implementation into Icelandic law of the Act and that Iceland is in breach of its obligations as set out in the Act and in Article 7 EEA, when read together.
- 17 Iceland’s statement of defence was registered at the Court on 21 February 2018. Iceland submits that it does not dispute the facts of the case as set out in ESA’s application. Furthermore, it does not contest the declaration sought by ESA. Nevertheless, in its defence, Iceland emphasises that a bill implementing the Directive was submitted to Parliament in April 2017. The bill was not passed, but it will be resubmitted during the current parliamentary session.
- 18 By letter of 27 February 2018, ESA waived its right to submit a reply and consented to dispense with the oral procedure should the Court wish to do so. By letter of 26 March 2018, Iceland also consented to dispense with the oral procedure.
- 19 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided, pursuant to Article 41(2) of the Rules of Procedure (“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, inter alia, Case E-7/17 *ESA v Iceland*, judgment of 24 April 2018, not yet reported, paragraph 15 and case law cited).
- 21 Under Article 7 EEA, the EFTA States are obliged to implement all acts 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 its Article 8. 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 in Iceland also. The EFTA States find themselves under an obligation of result in that regard (see, inter alia, *ESA v Iceland*, cited above, paragraph 16 and case law cited).

- 22 Decision No 219/2015 entered into force on 1 June 2016. The time limit for the EFTA States to adopt the measures necessary to implement the Act expired on the same date.
- 23 The question 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, inter alia, *ESA v Iceland*, cited above, paragraph 18 and case law cited). It is undisputed that Iceland had not adopted the measures necessary to implement the Directive by the expiry of the time limit set in the reasoned opinion.
- 24 Since Iceland did not implement the Directive within the time prescribed, there is no need to examine the alternative form of order sought against Iceland for failing to inform ESA of the measures implementing the Directive.
- 25 It must therefore be held that Iceland has failed to fulfil its obligations under the Act referred to at point 8 of Annex V to the EEA Agreement (Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers) as adapted to the Agreement under its Protocol 1, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed.

VI Costs

- 26 Under Article 66(2) 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 66(3) RoP apply, Iceland must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- 1. Declares that Iceland has failed to fulfil its obligations under the Act referred to at point 8 of Annex V to the Agreement on the European Economic Area (Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers), as adapted to the Agreement under its Protocol 1, and under Article 7 of the 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

Per Christiansen

Bernd Hammermann

Delivered in open court in Luxembourg on 7 June 2018.

Sindri M. Stephensen
Acting Registrar

Páll Hreinsson
President