JUDGMENT OF THE COURT

5 February 2025

(*Failure by an EFTA State to fulfil its obligations – Regulation (EU) No 996/2010 – Investigation and prevention of accidents and incidents in civil aviation – Article 12(3) – Advance arrangements*)

In Case E-16/24,

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

applicant,

v

Iceland, represented by Hendrik Daði Jónsson and Vala Hrönn Viggósdóttir, acting as Agents,

defendant,

APPLICATION seeking a declaration that Iceland has failed its obligations arising from Article 12(3) of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, as adapted to the EEA Agreement by Protocol 1 thereto, by failing to have in place advance arrangements between safety investigation authorities and other authorities involved in activities related to the safety investigation and to communicate such arrangements to the EFTA Surveillance Authority,

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 10 July 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 arising from Article 12(3) of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ 2010 L 295, p. 35; and Icelandic EEA Supplement 2014 No 36, p. 176) ("Investigation Regulation"), as adapted to the Agreement on the European Economic Area (the "EEA Agreement" or "EEA") by Protocol 1 thereto, by failing to have in place advance arrangements and to communicate such arrangements to ESA.

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(a) 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;

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 95/2014 of 16 May 2014 (OJ 2014 L 310, p. 60; and Icelandic EEA Supplement 2014 No 63, p. 52) ("JCD No 95/2014") amended Annex XIII (Transport) to the EEA Agreement by adding the Investigation Regulation to point 66d of that annex. Constitutional requirements were indicated by Iceland and were fulfilled by 27 October 2014. JCD No 95/2014 entered into force on 1 December 2014.

6 Article 12(3) of the Investigation Regulation, entitled "Coordination of investigations", reads:

Member States shall ensure that safety investigation authorities, on the one hand, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities, on the other hand, cooperate with each other through advance arrangements.

Those arrangements shall respect the independence of the safety investigation authority and allow the technical investigation to be conducted diligently and efficiently. Among others, the advance arrangements shall cover the following subjects:

(a) access to the site of the accident;

(b) preservation of and access to evidence;

(c) initial and ongoing debriefings of the status of each process;

(d) exchange of information;

(e) appropriate use of safety information;

(f) resolution of conflicts.

Member States shall communicate to the Commission those arrangements, which shall transmit them to the chairman of the Network, the European Parliament and the Council for information.

National law

7 The Investigation Regulation was implemented through Icelandic Regulation No 1248/2014 on the investigation and prevention of accidents and incidents in civil aviation (*Reglugerð um rannsóknir og forvarnir gegn slysum og flugatvikum í almenningsflugi*). Article 1 of this national regulation incorporates the Investigation Regulation into Icelandic law by reference, while Article 2 assigns its execution to the Icelandic Transport Safety Board.

III FACTS AND PRE-LITIGATION PROCEDURE

8 On 19 January 2015, Iceland notified ESA of its implementation of the Investigation Regulation. In December 2018, ESA opened a conformity assessment case into Iceland's implementation and requested that Iceland provide certain information by 1 February 2019.

9 By letter of 28 January 2020, Iceland informed ESA that formal written advance arrangements between safety investigation authorities and other authorities involved in activities related to safety investigation ("advance arrangements") were not yet in place, but that there was in practice an understanding or agreement between the relevant parties regarding the cooperation with each other. ESA replied by letter of 20 August 2020, inviting Iceland to provide it with the advance arrangements by 18 September 2020.

10 In April 2021, as Iceland still had not provided ESA with its advance arrangements, ESA decided to close its conformity assessment case and to begin infringement proceedings.

11 On 4 May 2022, after further correspondence, ESA sent a letter of formal notice to Iceland, concluding that, by failing to establish advance arrangements, Iceland had failed its obligations arising from Articles 12(3) and 23 of the Investigation Regulation.

12 On 7 July 2022, after having discussed the case with ESA at the package meeting in Iceland and having agreed to share a draft of its advance arrangements in its reply to the letter of formal notice, Iceland replied to the letter of formal notice. Iceland stated that no formal

agreement on advance arrangements had been made, but that it foresaw that such an agreement would be signed in the autumn of 2022.

13 On 10 May 2023, having considered Iceland's response and further correspondence, ESA delivered a reasoned opinion in which it maintained the view that by failing to have in place advance arrangements and communicate such arrangements to them, Iceland had failed to fulfil its obligation arising from Article 12(3) of the Investigation Regulation. Iceland was given two months within which to take the measures necessary to comply with the reasoned opinion from the date of its receipt.

14 On 6 June 2023, Iceland shared a draft agreement on advance arrangements with ESA which was discussed at the package meeting on 8 June 2023. Iceland agreed to share the final version with ESA by the deadline set out in the reasoned opinion.

15 On 19 October 2023, Iceland replied to the reasoned opinion. Iceland informed ESA that the draft agreement had been sent to the relevant national authorities for comment. Iceland indicated that it hoped that the agreement would be signed by the end of 2023.

16 On 27 December 2023, Iceland informed ESA that the agreement would not be finalised by the end of that year. ESA received no further updates from Iceland thereafter.

17 On 10 July 2024, ESA decided, by way of College Decision 098/24/COL, to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORM OF ORDER SOUGHT

18 On 10 July 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 its obligations arising from Article 12(3) of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, as adapted to the EEA Agreement by Protocol 1 thereto, by failing to have in place advance arrangements between safety investigation authorities and other authorities involved in activities related to the safety investigation and to communicate such arrangements to the Authority, and*
>
> *2. order Iceland to bear the costs of these proceedings.*

19 In its application, ESA contends that Iceland still has not complied with its obligations under Article 12(3) of the Investigation Regulation.

20 On 17 September 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. Iceland states that it does not dispute the declaration sought by ESA in its application.

21 A deadline of 21 October 2024 was set for the reply. By way of a letter of 4 October 2024, registered at the Court on the same date, ESA notes that Iceland had not contested the declaration sought by ESA. Consequently, ESA waives its right of reply pursuant to Article 108 of the Rules of Procedure ("RoP") and states that it consents to the Court dispensing with the oral procedure should the Court wish to do so in the present case.

22 The deadline for intervention expired, pursuant to Article 113(1) RoP, on 3 October 2024. On 18 October 2024, Iceland wrote to the Court stating that it also consents to the Court dispensing with the oral hearing pursuant to Article 70 RoP.

23 The deadline for submitting written observations expired on 19 November 2024. No written observations were received.

24 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

25 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 22 October 2024, *ESA* v *Iceland*, E-6/24, paragraph 19 and case law cited).

26 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 EEA State.

27 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 *Iceland*, E-6/24, cited above, paragraph 21 and case law cited).

28 JCD No 95/2014 entered into force on 1 December 2014. The time limit for EFTA States to adopt the measures necessary to implement the Investigation Regulation expired on the same date.

29 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-6/24, cited above, paragraph 23 and case law cited).

30 The Court notes that, even if the applicable national legislation itself complies with EEA law, a failure to fulfil obligations may arise due to the failure to apply that legislation in accordance with EEA law (see the judgment of 29 July 2022 in *ESA* v *Iceland*, E-3/22, paragraph 29 and case law cited).

31 Article 12(3) of the Investigation Regulation requires that EEA States ensure that safety investigation authorities, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities, cooperate with each other through advance arrangements. Those arrangements, covering, inter alia, evidential and procedural matters and information flows, shall respect the independence of the safety investigation authority and allow the technical investigation to be conducted diligently and efficiently. Furthermore, EFTA States shall communicate those arrangements to ESA.

32 It is undisputed that Iceland had failed to fulfil its obligations arising from Article 12(3) of the Investigation Regulation by the expiry of the time limit set in the reasoned opinion.

33 In light of the above, it must be held that Iceland has failed to fulfil its obligations arising from Article 12(3) of the Investigation Regulation by failing to have in place advance arrangements and to communicate such arrangements to ESA.

VI COSTS

34 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 arising from Article 12(3) of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, as adapted to the EEA Agreement by Protocol 1 thereto, by failing to have in place advance arrangements between safety investigation authorities and other authorities involved in activities related to the safety investigation and to communicate such arrangements to the EFTA Surveillance Authority.**

2. **Orders Iceland to bear the costs of the proceedings.**

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 5 February 2025.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President