



## JUDGMENT OF THE COURT

16 June 2026\*

*(Social security – Article 29(1) of Regulation (EC) No 216/2008 – Article 11(2) of Annex VIII to the Staff Regulations of the European Union – Transfer of pension rights – Article 28 EEA – Free movement of workers)*

In Case E-30/24,

**EFTA Surveillance Authority**, represented by Claire Simpson, Melpo-Menie Joséphidès and Sigurbjörn Bernharð Edvardsson, acting as Agents,

*applicant,*

v

**Iceland**, represented by Hendrik Daði Jónsson and Birgir Hrafn Búason, acting as Agents,

*defendant,*

APPLICATION seeking a declaration that Iceland has failed to fulfil its obligations under Article 29(1) of Regulation (EC) No 216/2008 and/or Article 28 of the EEA Agreement, by maintaining in force an administrative practice which precludes the transfer of the capital value of occupational pensions accrued in Iceland to the pension scheme of the European Union institutions,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann and Michael Reiertsen (Judge-Rapporteur), Judges,

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\* Translations of national law are unofficial and based on those in the case file.

Registrar: Ólafur Jóhannes Einarsson,

having regard to the written pleadings of the applicant and the defendant, and the written observations submitted on behalf of:

- the Liechtenstein Government, represented by Dr Andrea Entner-Koch and Dr Claudia Bösch, acting as Agents,
- the Norwegian Government, represented by Marie Munthe-Kaas and Emil Moss Skjelland, acting as Agents,
- the European Commission ('the Commission'), represented by Jean-François Brakeland, Corneliu Hödlmayr and Bernd-Roland Killmann, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of the EFTA Surveillance Authority ('ESA'), represented by Melpo-Menie Joséphidès and Sigurbjörn Bernharð Edvardsson; Iceland, represented by Hendrik Daði Jónsson; the Liechtenstein Government, represented by Dr Andrea Entner-Koch; the Norwegian Government, represented by Marie Munthe-Kaas; and the Commission, represented by Bernd-Roland Killmann, Marzena Brauhoff, and Corneliu Hödlmayr, acting as Agents, at the hearing on 16 September 2025,

gives the following

## **JUDGMENT**

### **I INTRODUCTION**

- 1 By the present application, ESA asserts that, by maintaining in force an administrative practice which precludes the transfer of the capital value of occupational pensions accrued in Iceland to the pension scheme of the European Union institutions ('PSEUI'), Iceland has failed to fulfil its obligations under Article 29(1) of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (OJ 2008 L 79, p. 1; and Icelandic EEA Supplement 2012 No 7, p. 214) ('EASA Regulation'), and/or Article 28 of the Agreement on the European Economic Area ('EEA Agreement' or 'EEA').
- 2 Iceland contests the action.

## II LEGAL BACKGROUND

### EEA law

3 Article 28 EEA reads:

*1. Freedom of movement for workers shall be secured among EC Member States and EFTA States.*

*2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of EC Member States and EFTA States as regards employment, remuneration and other conditions of work and employment.*

*3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*

*(a) to accept offers of employment actually made;*

*(b) to move freely within the territory of EC Member States and EFTA States for this purpose;*

*(c) to stay in the territory of an EC Member State or an EFTA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;*

*(d) to remain in the territory of an EC Member State or an EFTA State after having been employed there.*

*4. The provisions of this Article shall not apply to employment in the public service.*

*5. Annex V contains specific provisions on the free movement of workers.*

4 Paragraph 7 of Protocol 1 on horizontal adaptations to the EEA Agreement, entitled ‘Rights and obligations’, reads:

*Rights conferred and obligations imposed upon the EC Member States or their public entities, undertakings or individuals in relation to each other, shall be understood to be conferred or imposed upon Contracting Parties, the latter also being understood, as the case may be, as their competent authorities, public entities, undertakings or individuals.*

5 Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (‘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.*

6 The EASA Regulation was incorporated into the EEA Agreement at point 66n of Annex XIII (Transport) by Decision No 163/2011 of the EEA Joint Committee of 19 December 2011 (OJ 2012 L 76, p. 51; Icelandic EEA Supplement 2012 No 15, p. 58) ('JCD 163/2011'). Constitutional requirements were indicated by Norway and fulfilled by 11 January 2013 and the decision entered into force on 1 March 2013.

7 Recital 4 of JCD 163/2011 reads:

*Regulation (EC) No 216/2008 should therefore be incorporated into the Agreement in order to allow for the full participation of the EFTA States in the European Aviation Safety Agency.*

8 Article 29 of the EASA Regulation, entitled 'Staff', as adapted by JCD 163/2011, read:

*1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Agency, without prejudice to the application of Article 39 of this Regulation to the members of the Board of Appeal.*

*2. Without prejudice to Article 42, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of Employment shall be exercised by the Agency in respect of its own staff.*

*3. The Agency's staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.*

*4. By way of derogation from Article 12(2)(a) of the Conditions of employment of other servants of the European Union, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.*

- 9 Article 30 of the EASA Regulation, entitled ‘Privileges and immunities’, as adapted by JCD 163/2011, read:

*The Protocol on the Privileges and Immunities of the European Communities annexed to the Treaties establishing the European Community and the European Atomic Energy Community shall apply to the Agency.*

*The EFTA States shall apply to the Agency and to its staff the Protocol of Privileges and Immunities of the European Union and applicable rules adopted pursuant to that Protocol.*

- 10 The EASA Regulation was repealed by Regulation (EU) 2018/1139 (OJ 2018 L 212, p. 1; and Icelandic EEA Supplement 2023 No 62, p. 186), which was incorporated into the EEA Agreement at point 66zb of Annex XIII (Transport) by Decision No 114/2023 of the EEA Joint Committee of 28 April 2023 (OJ L, 2023/2294; Icelandic EEA Supplement 2023 No 81, p. 67). The decision entered into force in the EEA on 16 July 2024, thus after the expiry of the period laid down in the reasoned opinion.
- 11 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1; Icelandic EEA Supplement 2012 No 19, p. 23) (‘Regulation 883/2004’) was incorporated into the EEA Agreement at point 1 of Annex VI (Social security) by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011 (OJ 2011 L 262, p. 33; Icelandic EEA Supplement 2011 No 54, p. 46). Constitutional requirements were indicated by Iceland and Liechtenstein and fulfilled by 31 May 2012. The decision entered into force on 1 June 2012.

### **European Union law**

- 12 Article 14 of Protocol No 7 on the privileges and immunities of the European Union, annexed to the EU and FEU Treaties, provides:

*The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.*

- 13 Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968(I), p. 30) (‘Regulation 259/68’) lays down the Staff Regulations of officials (‘Staff Regulations’) and the Conditions of Employment of other Servants (‘Employment Conditions’).

14 The second recital of Regulation 259/68 reads:

*Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Article 7 and Articles 12 to 16 thereof;*

15 Article 11(2) of Annex VIII (Pension scheme) to the Staff Regulations read, on the expiry of the period laid down in the reasoned opinion:

*An official who enters the service of the Union after:*

*— leaving the service of a government administration or of a national or international organization; or*

*— pursuing an activity in an employed or self-employed capacity;*

*shall be entitled, after establishment but before becoming eligible for payment of a retirement pension within the meaning of Article 77 of the Staff Regulations, to have paid to the Union the capital value, updated to the date of the actual transfer, of pension rights acquired by virtue of such service or activities.*

*In such case the appointing authority of the institution in which the official serves shall, taking into account the official's basic salary, age and exchange rate at the date of application for a transfer, determine by means of general implementing provisions the number of years of pensionable service with which he shall be credited under the Union pension scheme in respect of the former period of service, on the basis of the capital transferred, after deducting an amount representing capital appreciation between the date of the application for a transfer and the actual date of the transfer.*

*Officials may make use of this arrangement once only for each Member State and pension fund concerned.*

### **National law**

16 Act No 1/1997 on the Pension Fund for State Employees (*lög nr. 1/1997 um Lífeyrissjóð starfsmanna ríkisins*) ('Act No 1/1997') establishes the Pension Fund for State Employees (*Lífeyrissjóður starfsmanna ríkisins*).

17 Article 6 of Act No 1/1997 reads:

*The board of the fund shall consist of eight members. The minister appoints four board members, the board of the Federation of State and Municipal Employees appoints two board members, the board of the Association of University Graduates appoints one board member, and the board of the Icelandic Teachers' Union appoints one board*

*member. Alternate members of the same number shall also be appointed by the same entities. The term of office for board members is three years. The board shall elect a chairperson from among its members for a term of one year at a time.*

18 Article 7 of Act No 1/1997 reads:

*The board of the fund shall manage the fund's affairs. The board shall address all major decisions regarding the fund's policy and operations. It shall ensure adequate oversight of the fund's accounting and the handling of its finances. The board shall formulate an investment policy and invest the fund's assets based on the best available terms regarding returns and risk at any given time. The board shall adopt articles of association for the fund in accordance with the provisions of this Act and the provisions of other laws on pension funds, as applicable. The fund's articles of association shall specify, among other things, how the fund's assets are to be invested.*

*The Minister shall confirm whether the fund's articles of association and any amendments thereto are in accordance with this Act and other laws on pension funds, after obtaining the opinion of the Financial Supervisory Authority.*

19 Article 32 of Act No 1/1997 reads:

*The State Treasury guarantees the payment of pensions according to this Act. The pensions shall be paid monthly, in advance, with one-twelfth of the annual pension paid each month.*

20 Article 41 of Act No 1/1997 reads

*The minister is permitted to issue regulations regarding the pension rights of government employees who come within the scope of the agreement between the Nordic countries dated 1 June 2001 on the coordination of pension rights under the pension schemes for government employees. The Pension Fund for State Employees may be entrusted with the implementation of the agreement. The costs arising from this shall be paid by the State Treasury.*

*It is permitted to provide in regulations, cf. paragraph 1, that deviations from the conditions of this Act regarding the commencement of pension payments may be allowed if deemed necessary for the coordination of rights under the agreement. Similarly, it may be decided that the amount of the retirement pension shall be reduced so that the overall liabilities of the fund do not increase if a government employee chooses to commence retirement pension payments earlier than provided for under this Act.*

*The additional cost arising from the payment of pensions that may result from the implementation of the agreement shall be calculated, and the State Treasury shall pay the pension fund that amount.*

*The calculations shall be based on the same actuarial assumptions as are used for the assessment of the fund's liabilities.*

*Any dispute arising from the application of the agreement may be appealed to the Minister for resolution.*

- 21 According to the application, the fourth paragraph of Article 1 of Act No 129/1997 on Mandatory Pension Insurance and on the Activities of Pension Funds (*lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða*) ('Pensions Act') requires all employees, and those engaged in commercial operations or self-employment, to join and contribute to a pension fund from the ages of 16 to 70.
- 22 The EASA Regulation was implemented into Icelandic law by Article 3 of Regulation No 812/2012 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (*reglugerð um sameiginlegar reglur um almenningsflug og stofnun Flugöryggisstofnunar Evrópu*). Article 3(a) thereof reads:

*Implementation:*

*With this regulation the following EU regulations enter into force, with those changes and amendments which follow from Annex XIII to the EEA Agreement, Protocol 1 to the EEA Agreement and other, relevant provisions:*

*a. Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ...*

### **III PRE-LITIGATION PROCEDURE**

- 23 On 24 June 2019, ESA received a complaint from an Icelandic citizen that the Icelandic authorities had refused to transfer his accrued occupational pension rights to the PSEUI. The complainant had been a staff member of the Icelandic Civil Aviation Authority from 2001 until 2009, at which time he became employed by the European Aviation Safety Agency ('EASA') in Cologne, Germany. The complainant had submitted the pension transfer request after commencing work for EASA and received a letter from the Icelandic Social Insurance Administration in 2012, stating that it was not possible to transfer pension rights acquired in Iceland to other countries or administrations and that this applied to both social pension from the Social Insurance Administration as well as all the occupational pension funds in Iceland. The complainant unsuccessfully resubmitted his request in 2019

via the European Commission Office for Administration and Payment of Individual Entitlements.

- 24 On 27 September 2019, ESA informed Iceland of the complaint and requested certain information. Further correspondence was exchanged between ESA and Iceland.
- 25 On 10 February 2021, ESA sent a letter of formal notice to Iceland. The letter concluded that, by maintaining in force an administrative practice which precluded the transfer of the capital value of occupational pensions accrued in Iceland to the PSEUI, Iceland had failed to fulfil its obligations under Article 29 of the EASA Regulation and/or Article 28 EEA.
- 26 In its reply of 23 June 2021, Iceland submitted that Article 29 of the EASA Regulation did not require Iceland to allow the transfer of accrued pension rights to the PSEUI. Iceland did not contest the fact that the EASA Regulation had been incorporated into the EEA Agreement. It also recognised that the text of Article 29 of the EASA Regulation, as adapted, explicitly states that the Staff Regulations shall apply to the staff of EASA. Iceland, however, observed that the Staff Regulations had not themselves been incorporated into the EEA Agreement. Iceland considered, inter alia, that a simple reference within one EU act to another EU act was insufficient to create an obligation to implement or transpose the act referred to. It also submitted that there was no obstacle to the free movement of workers under Article 28 EEA. In Iceland's view, Article 28 EEA does not confer rights in relation to employment with agencies to which the EFTA States are not party.
- 27 On 15 March 2023, ESA delivered a reasoned opinion to Iceland. It concluded that, by maintaining in force an administrative practice which precluded the transfer of the capital value of occupational pensions accrued in Iceland to the PSEUI, Iceland had failed to fulfil its obligations under Article 29 of the EASA Regulation and Articles 3 and 28 EEA. ESA required Iceland to take the measures necessary to comply with the reasoned opinion within two months of receipt.
- 28 On 15 May 2023, Iceland replied to the reasoned opinion. Iceland maintained its position that it had not breached Article 29 of the EASA Regulation or Articles 3 and 28 EEA.

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

- 29 On 26 November 2024, ESA lodged an application pursuant to the second paragraph of Article 31 SCA seeking a declaration that Iceland has failed to fulfil its obligations under Article 29(1) of the EASA Regulation and/or Article 28 EEA.
- 30 ESA requests the Court to:

1. *Declare that, by maintaining in force an administrative practice which precludes the transfer of the capital value of occupational pensions accrued in Iceland to the pension scheme of the European Union institutions, Iceland has failed to fulfil its obligations under Article 29(1) of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and/or Article 28 of the EEA Agreement.*

2. *Order Iceland to pay the costs of these proceedings.*

31 On 5 December 2024, the President, acting pursuant to Article 107(3) of the Rules of Procedure ('RoP'), granted Iceland's request for an extension of the time-limit for submitting the defence until 28 February 2025.

32 On 28 February 2025, Iceland submitted its defence, pursuant to Article 107 RoP. Iceland requests the Court to:

(i) *Dismiss the Application.*

(ii) *Order the EFTA Surveillance Authority to pay the costs of these proceedings.*

33 On 24 March 2025, the President, acting pursuant to Article 42 RoP, granted ESA's request for an extension of the time-limit for submitting the reply until 2 May 2025.

34 On 2 May 2025, ESA submitted its reply.

35 On 13 May 2025, the President, acting pursuant to Article 42 RoP, granted Iceland's request for an extension of the time-limit for submitting the rejoinder until 19 June 2025.

36 On 19 June 2025, Iceland submitted its rejoinder.

37 On 10 July 2025, the Court prescribed measures of organisation of procedure ('MOP') in accordance with Article 56(1) and Article 57(3)(a) and (b) RoP, and in furtherance of Article 57(1) and Article 57(2)(c) RoP. Those participating in the proceedings before the Court were invited, first, to make submissions on whether the case-law of the Court of Justice of the European Union ('ECJ') concerning the concept of 'State' in relation to the direct effect of directives was relevant for interpreting the concept of 'State' under Article 258 of the Treaty on the Functioning of the European Union ('TFEU') and Article 31 SCA, and to what extent the conduct of the Icelandic pension funds in refusing to transfer occupational pension capital to the PSEUI could be attributed to the Icelandic State. Second, they were asked whether ESA could amend its form of order sought, for instance, by seeking, in the alternative, a declaration that Iceland failed to adopt the necessary measures to ensure the transfer of occupational pension capital to the PSEUI, and whether the Court, in any event, could find such a breach of EEA law under Article 31 SCA.

- 38 Replies to the MOP were received from Iceland, ESA, the Liechtenstein and Norwegian Governments, and the Commission in July and August 2025.
- 39 The oral hearing was held on 16 September 2025.
- 40 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure, and the arguments of the parties, which are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

## V FINDINGS OF THE COURT

### **Admissibility**

#### *Arguments submitted to the Court*

- 41 Iceland claims that ESA's action is inadmissible as it constitutes an abuse of process. In its defence, Iceland contends that ESA has made repeated statements concerning ESA's interest in bringing the present case to the Court. Iceland argues that the interest expressed does not concern the actual dispute at issue in the present case, but rather the broader legal question that ESA would like the Court to clarify. Iceland is therefore of the opinion that the present action undermines the integrity of the procedure under Article 31 SCA, as it is being employed as a vessel to engage in legal debates of a general and academic nature.
- 42 Second, Iceland contends that ESA has extended the subject-matter of the dispute at the stage of the application. Iceland refers to differences between the arguments that ESA raised during the pre-litigation phase of the procedure, which had delimited the action to Article 29(1) of the EASA Regulation and Article 28 EEA, and those in the application.
- 43 ESA contests the grounds of inadmissibility put forward by Iceland. It submits that it is apparent that the action does not constitute an abuse of process. Rather, it concerns a consistent practice that precludes EASA staff members from transferring the capital value of their pensions to the PSEUI. This has affected the complainant and other Icelandic individuals working for EASA, and Iceland has confirmed that the same treatment would apply to other EEA nationals moving from Iceland to work for EASA.
- 44 Second, ESA submits that the subject-matter of the application was not extended in relation to the pre-litigation phase of the procedure and that it clearly relates to Article 29(1) of the EASA Regulation and Article 28 EEA.

#### *Findings of the Court*

- 45 As regards Iceland's submission that the present action constitutes an abuse of process, the Court recalls that the procedure provided for in Article 31 SCA is based on an objective finding that an EFTA State has failed to fulfil its obligations under the EEA Agreement

(compare the judgment of 4 March 2021 in *Commission v UK*, C-664/18, EU:C:2021:171, paragraph 53 and case-law cited).

- 46 According to settled case-law, ESA enjoys discretion as to whether or not to commence such proceedings, which is not for review by the Court (see the order of the Court of 24 May 2016 in *Gerhard Spitzer v ESA*, E-2/16, paragraph 22 and case-law cited, and compare, to that effect, the judgment of 16 July 2020 in *Commission v Romania (Anti-money laundering)*, C-549/18, EU:C:2020:563, paragraph 49 and case-law cited).
- 47 Accordingly, ESA does not have to show a legal interest in bringing proceedings or to state the reasons why it is bringing an action for failure to fulfil obligations (compare the judgment of 2 April 2020 in *Commission v Poland and Others*, Joined Cases C-715/17, C-718/17 and C-719/17, EU:C:2020:257, paragraph 67 and case-law cited).
- 48 In the present case, if the subject-matter of the action as set out in the application corresponds to the subject-matter of the dispute as stated in the letter of formal notice and in the reasoned opinion, it cannot validly be claimed that ESA misused its powers (compare the judgment of 3 March 2016 in *Commission v Malta*, C-12/14, EU:C:2016:135, paragraph 26 and case-law cited).
- 49 Iceland’s submission regarding an alleged abuse of process must therefore be rejected as unfounded.
- 50 Iceland has further submitted that ESA has raised additional pleas exceeding the scope of the subject-matter as defined during the pre-litigation procedure. In particular, Iceland submits that ESA has alleged violations of Articles 29(4) and 30 of the EASA Regulation in its application, while these violations were not mentioned in the pre-litigation procedure.
- 51 It should be recalled that the purpose of the pre-litigation procedure is to give the EFTA State concerned the opportunity to comply with its obligations arising from EEA law or to present its case effectively against the complaints put forward by ESA. The proper conduct of that procedure constitutes an essential guarantee not only in order to protect the rights of the EFTA State concerned, but also so as to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter (see the judgment of 30 September 2025 in *ESA v Norway*, E-24/24, paragraph 87 and case-law cited).
- 52 The Court recalls that the opportunity for the EFTA State concerned to submit its observations during the administrative procedure, even if it chooses not to make use of it, is an essential guarantee intended by the SCA; adherence to which is an essential formal requirement of the procedure for finding that an EFTA State has failed to fulfil its obligations (see the judgment in *ESA v Norway*, E-24/24, cited above, paragraph 88 and case-law cited).

- 53 The Court recalls, further, that the letter of formal notice issued by ESA to the EFTA State concerned and subsequently the reasoned opinion delivered by ESA delimit the subject-matter of the dispute, so that it cannot thereafter be extended. Consequently, the reasoned opinion and the application must be based on the same grounds and pleas. If a complaint was not included in the letter of formal notice or subsequently the reasoned opinion, it is inadmissible at the stage of proceedings before the Court (see the judgment in *ESA v Norway*, E-24/24, cited above, paragraph 89 and case-law cited).
- 54 The Court observes that ESA’s claim has consistently targeted an administrative practice in Iceland which it alleges precludes the transfer of pension rights to the PSEUI. With respect to the applicability of Articles 29(4) and 30 of the EASA Regulation, these provisions are referred to in the pre-litigation documents in the case. References to these provisions by ESA in the application are generally made in order to provide context for the pleas concerning Article 29(1) of the EASA Regulation and Article 28 EEA.
- 55 It follows that the fact that ESA set out in detail a complaint which it had already made more generally in the context of the pre-litigation procedure did not alter the subject-matter of the alleged infringement, and has thus had no effect on the scope of the proceedings (compare the judgment in *Commission v Portugal*, C-543/08, EU:C:2010:669, paragraph 23 and case-law cited).
- 56 In the light of the foregoing considerations, the plea of inadmissibility raised by Iceland must be rejected.

## **Substance**

### *Arguments submitted to the Court*

- 57 ESA submits that, by maintaining in force an administrative practice which precludes the transfer to the PSEUI of the capital value of the occupational pensions that EEA nationals have accrued in Iceland, Iceland is in breach of Article 29(1) of the EASA Regulation and/or Article 28 EEA.
- 58 ESA argues that Iceland has consistently maintained that it does not and is not required to transfer the capital value of occupational pensions accrued in Iceland to the PSEUI, which has manifested itself by way of a consistent administrative practice in relation to the complainant and other Icelandic nationals working or seeking to work for EASA.
- 59 ESA submits that the administrative practice at issue is clearly attributable to the Icelandic State. While the occupational pension funds operating in Iceland are not part of the Icelandic State, they nevertheless meet the relevant criteria to be considered an emanation of the State, so that their actions are attributable to the State.

- 60 Iceland disputes ESA’s allegation of an administrative practice. Iceland notes, in particular, that a failure to ensure compliance with EEA law can be established only as a result of sufficiently documented and detailed proof of the alleged practice, for which the EFTA State concerned is answerable, and argues that this standard has not been met in the present case. Iceland concedes that it has not introduced legislation to compel Icelandic pension funds to facilitate such transfers upon request, but notes that it is under no obligation to do so.
- 61 Iceland further observes that only one record has been submitted by ESA as evidence of the alleged administrative practice of the Pension Fund for State Employees. Iceland questions whether this isolated strand of correspondence suffices to establish a sufficiently documented and detailed proof of an administrative practice.
- 62 Iceland finally submits that the alleged practice is not attributable to the Icelandic State. The Icelandic State does not directly administer any pension schemes that could come within the purview of rights existing under the Staff Regulations as the Icelandic system of mandatory mutual pension funds is privately operated.

*The consistent and general nature of the contested practice*

- 63 The Court observes that, according to established case-law, in proceedings pursuant to Article 31 SCA for failure to fulfil obligations, it is incumbent upon ESA to prove the allegation that the obligation has not been fulfilled. It is ESA’s responsibility to place before the Court the information necessary for it to establish that the obligation has not been fulfilled, and, in doing so, ESA may not rely on any presumption for that purpose (see the judgment of 12 December 2024 in *ESA v Norway*, E-16/23, paragraph 35 and case-law cited).
- 64 With regard, in particular, to a complaint concerning the actual application of a national provision, the proof of an EFTA State’s failure to fulfil its obligations requires production of evidence different from that usually taken into account in an action for failure to fulfil obligations concerning solely the terms of a national provision. Where the subject-matter of an action for failure to fulfil obligations concerns the application of a national provision, the failure can be established only as a result of sufficiently documented and detailed proof of the alleged practice, for which the EFTA State concerned is answerable. The Court has held that it must be apparent from such proof that the administrative practice which infringes EEA law is, to some degree, of a consistent and general nature (see the judgment in *ESA v Norway*, E-16/23, cited above, paragraph 36 and case-law cited).
- 65 The Court observes that a number of different pension funds exist in Iceland. However, with respect to the evidence of an administrative practice submitted in the present case, ESA has only documented and sufficiently explained the regulatory framework of the Pension Fund for State Employees, which, as has been made apparent from the submissions of the parties, differs from other funds. Accordingly, ESA has not put forth the information

necessary for the Court to establish that the obligation has not been fulfilled in relation to the other funds operating in Iceland.

- 66 The Court notes that the existence of a general and consistent practice must be examined in the light of the facts of each case. Such a case-by-case approach must have regard, *inter alia*, to the absolute number of individuals affected by a particular alleged infringement. This may entail, for example, that where a large number of individuals are affected by a particular administrative practice, a significant number of examples of that practice must be brought before the Court to establish a failure to fulfil obligations on this basis (compare the judgment of 7 June 2007 in *Commission v Greece*, C-156/04, EU:C:2007:316, paragraph 51).
- 67 Whereas if the absolute number of individuals affected by a particular administrative practice is small, fewer examples will be necessary. In particular situations, the character of an infringement rather than a precise number of examples submitted by ESA can be the deciding factor, if they constitute evidence of a general problem (compare the judgments of 9 May 1985 in *Commission v France*, 21/84, EU:C:1985:184, paragraph 13, and of 15 November 2007 in *Commission v Germany*, C-319/05, EU:C:2007:678, paragraph 81).
- 68 When ESA has adduced sufficient evidence to show that the authorities of the defendant EFTA State have developed a practice that is contrary to EEA law, it is incumbent on that EFTA State to challenge in substance and in detail the information produced and the consequences flowing therefrom (compare the judgment of 25 October 2007 in *Commission v Ireland*, C-248/05, EU:C:2007:629, paragraph 69 and case-law cited).
- 69 The Court observes in this respect that the present case concerns the non-transferability of the capital value of accrued occupational pensions to the PSEUI where limited numbers are affected as few persons who have contributed to the Pension Fund for State Employees have taken up work within EASA.
- 70 In that regard, it should be noted, first of all, that although rejecting the existence of an administrative practice, Iceland stated at the oral hearing that the Pension Fund for State Employees is under no obligation to order or facilitate the transfer of accrued occupational

pension rights to the PSEUI. Iceland further argued that such transfers would require a ‘reorganisation’ of the pension fund given its closed nature.

- 71 In the present case, the Court considers, taking into account the context and nature of the alleged practice, that the evidence provided by ESA satisfies the requirements to establish the existence of a consistent administrative practice.
- 72 It follows from the foregoing that the practice alleged by ESA must be deemed to have been established as regards the Pension Fund for State Employees.

*Attribution*

- 73 It must now be assessed whether the contested practice of the Pension Fund for State Employees can be attributed to Iceland for the purposes of Article 31 SCA.
- 74 In infringement proceedings brought before the Court under Article 31 SCA, conduct may be attributable to an EFTA State even where it is carried out by a legally distinct entity, in particular where such a body is established by law, financed by the EFTA State or by mandatory contributions, and subject to control by that EFTA State – even where such control may be of a limited nature (compare the judgment of 5 November 2002 in *Commission v Germany*, C-325/00, EU:C:2002:633, paragraphs 18 and 19).
- 75 The Court observes that the Pension Fund for State Employees is established by law, namely Act No 1/1997 – unlike other pension funds in Iceland, which are generally established via private law instruments. The Pension Fund for State Employees is funded by the Icelandic State and mandatory contributions from fund members and covers employees in the State’s service that are within the scope of that Act. Its existence dates back to Act No 72/1919.
- 76 It follows from the provisions of Act No 1/1997 that the competent Minister has a considerable role in the fund’s activities. Pursuant to Article 6 of Act No 1/1997, the competent Minister appoints half of the board members of the Pension Fund for State Employees and, under Article 7 thereof, the competent Minister also confirms the fund’s articles of association after obtaining the opinion of the Icelandic financial supervisory authority.
- 77 Moreover, under Article 32 of that Act, the Icelandic State guarantees payments made on the basis of the Act. Under various transitional provisions of the Act, the State has an obligation to make significant monetary contributions to the fund.
- 78 In addition, Article 41 of Act No 1/1997 provides for the possibility of the competent Minister issuing rules and entrusting certain tasks to the Pension Fund for State Employees in relation to an international agreement. Any disputes arising from the application of that agreement may be appealed to the competent Minister for resolution.

- 79 Taken together, the fact that the Pension Fund for State Employees is established by law, the role of the Icelandic State in financing the Fund, and the competent Minister's role in appointing half of the Board Members result in the actions of the Fund being attributable to Iceland in the context of infringement proceedings under Article 31 SCA.
- 80 Throughout the proceedings, Iceland has consistently relied on the status of the Pension Fund for State Employees as being a private legal entity, as reflected, inter alia, in judgments of the Supreme Court of Iceland and Parliamentary Ombudsman materials, in order to maintain that the Fund is an autonomous entity legally independent of the executive, and that its actions cannot be attributed to the Icelandic State, a position that was reiterated at the hearing. However, in infringement proceedings, once conduct of an entity is held to be attributable to an EFTA State, that State cannot rely on its classification under national law to escape the scope of Article 31 SCA (compare the judgment of 12 November 2019 in *Commission v Ireland*, C-261/18, EU:C:2019:955, paragraphs 89 to 91 and case-law cited).
- 81 In conclusion, in view of the special features of the Pension Fund for State Employees, as laid down by Act No 1/1997, and its connection to the Icelandic State, the Court finds that its practice which precludes the relevant pension transfers is attributable to Iceland for the purposes of Article 31 SCA.

*The existence of a duty to transfer pension rights*

- 82 The Court notes that EEA law does not detract from the power of the EEA States to organise their social security systems. In the absence of harmonisation at EEA level, it is for the legislature of each EEA State to determine the conditions on which social security benefits are granted. When exercising that power, however, the EEA States must comply with EEA law and, in particular, with the provisions of the EEA Agreement giving every EEA national the right to move and reside freely within the territory of the EEA States (see the judgment of 5 December 2024 in *K*, E-15/23, paragraph 47 and case-law cited).
- 83 The Court recalls in this respect that any EEA national who exercises the right of freedom of movement to seek employment or has been employed in an EEA State other than that of residence falls within the scope of Article 28 EEA (see the judgment of 5 May 2021 in *Criminal proceedings against N*, E-8/20, paragraph 74 and case-law cited).
- 84 It is settled case-law that an EEA national working in an EEA State other than his or her State of origin and who has accepted a post in an international organisation or an institution, body or agency of the European Union also comes within the scope of that provision (compare the judgment of 22 December 2022 in *WP*, C-404/21, EU:C:2022:1023, paragraph 24 and case-law cited). As such, EEA nationals working for an EU institution, body or agency in another EEA State may not be refused the rights and social advantages which Article 28 EEA affords them.

- 85 However, Regulation 883/2004 does not apply in this context, as the staff of such an institution, body or agency are not subject to national social security legislation as required by Article 2(1) of that regulation, defining the personal scope thereof (compare the judgment of 12 May 2021 in *CAF*, C-27/20, EU:C:2021:383, paragraph 23 and case-law cited). Rather, co-ordination of pension entitlements is determined by reference to the EEA law applicable in the context of employment for the EU institution, body or agency in question.
- 86 It is therefore appropriate, in the first place, to examine whether Article 29(1) of the EASA Regulation entails a duty for EEA States to ensure pension transfers to the PSEUI.
- 87 The Court recalls that the interpretation of a provision of EEA law requires account to be taken not only of its wording, but of its context and the objectives and purpose pursued by the act of which it forms part. The legislative history of a provision of EEA law may also reveal elements that are relevant to its interpretation. Moreover, where a provision of EEA law is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness (see the judgment of 7 May 2025 in *TC and AA*, Joined Cases E-1/24 and E-7/24, paragraph 92 and case-law cited).
- 88 With respect to the literal interpretation of Article 29(1) of the EASA Regulation, the provision states that the Staff Regulations ‘shall apply to the staff of the Agency’. As noted by ESA, the formulation of the phrase is prescriptive, identifying the rules that are to be applied to EASA’s staff, irrespective of nationality, residence, or State of origin. It is therefore evident that an EASA staff member may, in principle, rely on the rights conferred by the Staff Regulations.
- 89 Article 11(2) of Annex VIII to the Staff Regulations provides that EU officials are entitled to transfer the capital value of occupational pensions accrued under different national systems. The ordinary meaning of the term ‘entitled’ confers on EU officials an individual right that may be invoked against both EEA States and EU institutions (compare the judgment in *WP*, C-404/21, cited above, paragraph 55 and case-law cited).
- 90 Therefore, a literal interpretation of Article 29(1) of the EASA Regulation, read in conjunction with Article 11(2) of Annex VIII to the Staff Regulations, indicates that EASA staff members have a right to transfer accrued pension rights from any EEA State.
- 91 Iceland submits, however, that Article 29(1) of the EASA Regulation cannot be interpreted literally as imposing a binding obligation on the EFTA States. In contrast to the situation under EU law, where the regulation laying down the Staff Regulations applies directly in the EU Member States pursuant to Article 288 TFEU, those regulations have not been incorporated into the EEA Agreement.
- 92 Iceland’s argument relies upon paragraph 7 of Protocol 1 to the EEA Agreement, which provides that the rights conferred and obligations imposed upon the EU Member States

shall be understood to be conferred or imposed upon the Contracting Parties. Since obligations for EU Member States do not arise automatically from a mere reference, but must be read in conjunction with the provisions of the referenced act in order to determine their content, Iceland submits that paragraph 7 of Protocol 1 to the EEA Agreement is not triggered. Any obligation for the EFTA States would need to be introduced explicitly through an adaptation adopted by the EEA Joint Committee.

- 93 The Court notes that paragraph 7 of Protocol 1 to the EEA Agreement concerns horizontal adaptations for the provisions of the acts referred to in the Annexes to the Agreement, and that the specific adaptations necessary for individual acts are set out in the Annex where the act concerned is listed. It therefore does not, by itself, provide decisive guidance on whether Article 29(1) of the EASA Regulation imposes a binding obligation on the EFTA States.
- 94 The Court further observes that Article 29(1) of the EASA Regulation fulfils the same legal function within both the EU and EFTA pillars of the EEA Agreement, namely, to extend the personal scope of the Staff Regulations to EASA's staff. In this context, the Staff Regulations necessarily 'shall apply' to all staff employed by EASA, without regard to their nationality. That the Staff Regulations have not been incorporated into the EEA Agreement cannot be used to deprive Article 29(1) of the EASA Regulation of its effect.
- 95 The literal interpretation of Article 29(1) of the EASA Regulation is confirmed by a contextual interpretation thereof and by the relevant Joint Committee Decision. As a result of the adaptations provided for in JCD 163/2011, Article 29(4) of the EASA Regulation explicitly permits the recruitment of EFTA nationals as EASA staff members. Iceland argues that this adaptation to the EASA Regulation illustrates that, if the Contracting Parties had intended the Staff Regulations to apply to the EFTA States, they would have enacted a corresponding adaptation.
- 96 The Court notes, however, that the objective of the adaptation provided for in Article 29(4) of the EASA Regulation is, as is apparent from recital 4 of JCD 163/2011, to allow for the full participation of the EFTA States in EASA. Without such an amendment, EFTA nationals would have been ineligible, in general, for employment in EASA. The adaptation provided for in Article 29(4) of the EASA Regulation, in offering the opportunity for EFTA nationals to become EASA staff, thus presupposes that there should be no difference in the rights of staff, regardless of whether they come from EFTA States or from the EU Member States.
- 97 The Court further observes that an adaptation was included for one of the employment conditions only – namely eligibility on the basis of nationality, as provided for in Article 29(4) of the EASA Regulation. In particular, the applicability of the Staff Regulations in respect of staff members from the EFTA States in accordance with Article 29(1) indicates

that the Staff Regulations and the Employment Conditions annexed to Regulation 259/68 were otherwise intended to apply in full.

- 98 Indeed, the ECJ has consistently held that the right to transfer provided for in Article 11(2) of Annex VIII to the Staff Regulations entails, as a corollary, a duty on Member States to adopt the measures necessary to facilitate such transfers (compare the judgments of 20 October 1981 in *Commission v Belgium*, 137/80, EU:C:1981:237, paragraph 13, and in *WP*, C-404/21, cited above, paragraph 38 and case-law cited).
- 99 The effective operation of a system for the portability of pension rights necessarily presupposes cooperation by national authorities, for instance in determining a calculation method to make it possible to transfer pension rights to the PSEUI (compare the judgment of 5 December 2013 in *Časta*, C-166/12, EU:C:2013:792, paragraph 37 and case-law cited).
- 100 The argument advanced by Iceland in this context – that the obligations on the part of the EU Member States to ensure the portability of pension rights cannot be transposed to the EEA context – cannot therefore be accepted. Full participation in EASA cannot entail that Iceland would gain the benefits of participation, including facilitating the eligibility of its nationals to take up posts therein, without taking up the reciprocal obligations prescribed by that regulation, including ensuring the effectiveness of the rights granted to EASA staff under the Staff Regulations.
- 101 The system for the transfer of retirement pension rights provided for in Article 11 of Annex VIII to the Staff Regulations seeks, by coordinating the PSEUI with national schemes, to facilitate movement from national, public or private employment to the EU administration and thereby ensure that access is had to the best-qualified staff with appropriate professional experience (compare the judgment of 4 February 2021 in *DQ*, C-903/19, EU:C:2021:95, paragraph 23 and case-law cited). If individuals were unable to benefit from their rights under the Staff Regulations, employment at EASA would become less attractive, which would be at variance with the shared interest of the Contracting Parties in facilitating the recruitment of future staff members from all EEA States in order to engage the best expertise available.
- 102 Contrary to the assertions of Iceland and the Norwegian Government, these findings are not called into question by the judgments of 4 July 2013 in *Gardella*, C-233/12, EU:C:2013:449, and in *WP*, C-404/21, cited above, in which the ECJ held that, in the absence of an explicit legal basis, the persons concerned did not have a right to transfer pension rights, but instead a right of aggregation. Unlike in those cases, in the present case the Staff Regulations explicitly apply to EASA staff, pursuant to Article 29(1) of the EASA Regulation.
- 103 It must therefore be concluded that, by maintaining in force an administrative practice, in respect of members of the Pension Fund for State Employees, which precludes the transfer

of the capital value of occupational pensions accrued in Iceland to the PSEUI, Iceland has failed to fulfil its obligations under Article 29(1) of the EASA Regulation.

- 104 As a failure to fulfil obligations on the basis of the EASA Regulation has thus been established, it is unnecessary to examine the action in respect of Article 28 EEA (see, to that effect, the judgment of 28 June 2011 in *ESA v Iceland*, E-12/10, paragraph 62 and case-law cited).

## **VI COSTS**

- 105 Under Article 121(2) RoP, where each party succeeds on some and fails on other heads, the Court may order that the costs shall be shared or that each party shall bear its own costs. Since ESA and Iceland have been partially successful, each party shall bear its own costs. The costs incurred by the Liechtenstein Government, the Norwegian Government, and the Commission are not recoverable.

On those grounds,

THE COURT

hereby:

- 1. Declares that, by maintaining in force an administrative practice, in respect of members of the Pension Fund for State Employees, which precludes the transfer of the capital value of occupational pensions accrued in Iceland to the pension scheme of the European Union institutions, Iceland has failed to fulfil its obligations under Article 29(1) of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency.**
- 2. Dismisses the application as to the remainder.**
- 3. Orders each party to bear its own costs.**

Páll Hreinsson

Bernd Hammermann

Michael Reiertsen

Delivered in open court in Luxembourg on 16 June 2026.

Ólafur Jóhannes Einarsson  
Registrar

Páll Hreinsson  
President