

Case No: 79508
Document No: 879221
Decision No: 194/17/COL

EFTA SURVEILLANCE
AUTHORITY

REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning Iceland's breach of Articles 4 and 28 EEA, Articles 1 and 4 of Regulation (EU) No 492/2011 and Article 24(1) of Directive 2004/38/EC by maintaining in place the quota on the number of foreign players allowed to participate in a basketball match in Iceland or by empowering the Icelandic Basketball Association to maintain this quota or, alternatively, of Iceland's breach of Articles 4 and 28 EEA, Articles 1 and 4 of Regulation (EU) No 492/2011 and Article 24(1) of Directive 2004/38/EC, interpreted in conjunction with Article 3 EEA, by failing to adopt all necessary and proportionate measures in order to prevent the Icelandic Basketball Association to maintain in place this quota

1 Introduction

1. By a letter dated 6 September 2016 (Doc. No 816745), the EFTA Surveillance Authority (“the Authority”) informed the Icelandic Government that it had received a complaint against Iceland regarding allegedly discriminatory provisions in the Regulation on Basketball Tournaments (*reglugerð um körfuknattleiksmót*) (“the IBA Regulation”) (Doc. No 816744) adopted by the Icelandic Basketball Association (*Körfuknattleikssamband Íslands*) (“the IBA”).

2. In particular, Article 18 of the IBA Regulation introduces a quota on the number of foreign players allowed to participate in a basketball match in Iceland. Under the provision at issue, a club can only field one foreign player, alongside at least four players with Icelandic citizenship or Icelandic permanent residency, in a match (the “4+1” rule).

3. In this reasoned opinion, the Authority maintains its conclusions presented in the letter of formal notice of 21 June 2017 (Doc. No 839447), that Iceland has infringed Articles 4 and 28 EEA, Articles 1 and 4 of Regulation (EU) No 492/2011¹, and Article 24(1) of Directive 2004/38/EC² by maintaining in place the abovementioned quota on the number of foreign players allowed to participate in a basketball match in Iceland or by empowering the IBA to maintain this quota.

4. Alternatively, Iceland has infringed Articles 4 and 28 EEA, Articles 1 and 4 of Regulation (EU) No 492/2011, and Article 24(1) of Directive 2004/38/EC, interpreted in conjunction with Article 3 EEA, by failing to adopt all necessary and proportionate measures in order to prevent the IBA to maintain in force the quota.

2 Correspondence

5. The Authority sent a request for information to the Icelandic Government on 27 September 2016 (Doc. No 819024). The Icelandic Government replied by a letter dated 25 November 2016 (ref. IRR16090056/30.18.2, Doc. No 829190).

6. The case was discussed at the package meeting of 8 June 2017 in Iceland³.

7. On 21 June 2017 (Doc. No 839447), the Authority issued a letter of formal notice to Iceland in which it considered that Iceland has infringed Articles 4 and 28 EEA, Articles 1 and 4 of Regulation (EU) No 492/2011, and Article 24(1) of Directive 2004/38/EC by maintaining in place the abovementioned quota on the number of foreign players allowed to participate in a basketball match in Iceland or by empowering the IBA to maintain this quota.

8. Alternatively, Iceland has infringed Articles 4 and 28 EEA, Articles 1 and 4 of Regulation (EU) No 492/2011, and Article 24(1) of Directive 2004/38/EC, interpreted in

¹ Act referred to at point 2 of Annex V to the EEA Agreement (*Regulation (EU) No 492/2011 of the European Union and of the Council of 5 April 2011 on freedom of movement for workers within the Union*), as adapted to the EEA Agreement by Protocol 1 thereto.

² Act referred to at point 3 of Annex VIII to the EEA Agreement (*Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC*), as adapted to the EEA Agreement by Protocol 1 thereto.

³ See the follow-up letter to the package meeting (Doc. 861615 in Case No 80020).

conjunction with Article 3 EEA, by failing to adopt all necessary and proportionate measures in order to prevent the IBA to maintain in force the quota.

9. The initial three-months deadline for Iceland to reply to the letter of formal notice was extended until 29 September 2017 (Doc. No 870112). However, the Authority has not received an answer from the Icelandic Government.

3 Relevant national and EEA law

10. For the account of the relevant national and EEA law the Authority refers to, correspondingly, **Part 2** and **Part 3** of the letter of formal notice.

4 The Authority's Assessment

11. The Authority refers to its assessment in **Part 4** of the letter of formal notice to conclude that by maintaining in force a quota on the number of foreign players allowed to participate in a basketball match in Iceland, such as the quota in Article 18 of the Regulation on Basketball Tournaments (*reglugerð um körfuknattleiksmót*) ("the IBA Regulation"), or by empowering the IBA to maintain in force this quota, Iceland has failed to fulfil its obligations arising from Articles 4 and 28 EEA, Articles 1 and 4 of Regulation (EU) No 492/2011 and Article 24(1) of Directive 2004/38/EC.

12. Alternatively, by failing to adopt all necessary and proportionate measures in order to prevent the IBA to maintain in force a quota on the number of foreign players allowed to participate in a basketball match in Iceland, such as the quota in Article 18 of the IBA Regulation, Iceland has failed to fulfil its obligations arising from Articles 4 and 28 EEA, Articles 1 and 4 of Regulation (EU) No 492/2011 and Article 24(1) of Directive 2004/38/EC, interpreted in conjunction with Article 3 EEA.

FOR THESE REASONS,

THE EFTA SURVEILLANCE AUTHORITY,

pursuant to the first paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and after having given Iceland the opportunity of submitting its observations,

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that by maintaining in force a quota on the number of foreign players allowed to participate in a basketball match in Iceland, such as the quota in Article 18 of the Regulation on Basketball Tournaments (*reglugerð um körfuknattleiksmót*) (the IBA Regulation), or by empowering the Icelandic Basketball Association (the IBA) to maintain in force this quota, Iceland has failed to fulfil its obligations arising from Articles 4 and 28 EEA, Articles 1 and 4 of the Act referred to at point 2 of Annex V to the EEA Agreement (*Regulation (EU) No 492/2011 of the European Union and of the Council of 5 April 2011 on freedom of movement for workers within the Union*), as adapted to the EEA Agreement by Protocol 1 thereto, and Article 24(1) of the Act referred to at point 3 of Annex VIII to the EEA Agreement (*Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing*

Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC), as adapted to the EEA Agreement by Protocol 1 thereto.

Alternatively, by failing to adopt all necessary and proportionate measures in order to prevent the IBA to maintain in force a quota on the number of foreign players allowed to participate in a basketball match in Iceland, such as the quota in Article 18 of the IBA Regulation, Iceland has failed to fulfil its obligations arising from Articles 4 and 28 EEA, Articles 1 and 4 of the Act referred to at point 2 of Annex V to the EEA Agreement, and Article 24(1) of the Act referred to at point 3 of Annex VIII to the EEA Agreement, interpreted in conjunction with Article 3 EEA.


Pursuant to 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, the EFTA Surveillance Authority requires Iceland to take the measures necessary to comply with this reasoned opinion within *two months* of its receipt.

Done at Brussels, 15 November 2017

For the EFTA Surveillance Authority



Frank J. Büchel
College Member



Carsten Zatschler
Director