

Case No: 79508
Document No: 1092886
Decision No: 076/19/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 6 November 2019

closing a complaint case arising from an alleged failure by Iceland to comply with the EEA Agreement in the area of officially organised basketball matches in Iceland

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

1 Introduction

On 30 August 2016 (Doc No 816744), the EFTA Surveillance Authority (“the Authority”) received a complaint against Iceland concerning the Regulation on Basketball Tournaments (*Reglugerð um körfuknattleiksmót*) (“the IBA Regulation”) adopted by the Icelandic Basketball Association (*Körfuknattleikssamband Íslands*) (“the IBA”). In particular, according to the complaint, Article 18 of the IBA Regulation, which contained a quota on the number of foreign players allowed to participate in an officially organised basketball match in Iceland, infringed the free movement of workers guaranteed under Article 28 of the EEA Agreement.

2 The Authority’s action and Iceland’s reaction

By letter of 27 September 2016 (Doc No 819024), the Authority requested the Icelandic Government to provide information regarding the complaint. Iceland replied by a letter dated 25 November 2016 (ref. IRR16090056/30.18.2, Doc No 829190). In its letter, it stated that the IBA Regulation is issued by the IBA under the auspices and authority of the National Olympic and Sports Association of Iceland (“the ISI”). The Regulation is not subject to the Government’s approval. Therefore, the duty to fulfil Iceland’s obligations under the EEA Agreement falls on the ISI, not on the Icelandic Government.

The case was discussed at the package meeting of 8 June 2017 in Iceland ¹.

¹ See the follow-up letter to the package meeting, Doc No 861615.

Having assessed the matter, on 21 June 2017 (Doc No 839447), the Authority issued a letter of formal notice to Iceland. In this letter, it concluded that by maintaining in place the above-mentioned quota or by empowering the IBA to maintain this quota, Iceland infringed Articles 4 and 28 of the EEA Agreement, Articles 1 and 4 of Regulation (EU) No 492/2011², and Article 24(1) of Directive 2004/38/EC³.

Alternatively, the Authority concluded that by failing to adopt all necessary and proportionate measures in order to prevent the IBA to maintain in force the quota, Iceland infringed Articles 4 and 28 of the EEA Agreement, 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 of the EEA Agreement.

Iceland did not reply to the letter of formal notice within the time-limit set. On 15 November 2017, the Authority issued a reasoned opinion in which it reiterated the conclusions presented in the letter of formal notice (Doc No 879221).

Iceland replied jointly to the letter of formal notice and the reasoned opinion by letter of 13 February 2018 (ref. MMR16100163/0.6.1, Doc No 898162). In this letter, the Government stated that the IBA had undertaken to lift the quota of EEA nationals allowed to participate in basketball matches in the IBA tournaments.

The case was again discussed at the package meeting of 6 June 2018 in Iceland⁴.

In summer 2018, Article 18 of the IBA Regulation was amended. These amendments exempted the so-called “Bosman-A players” from the quota in question. Currently, the quota and the exemption of “Bosman A players” is foreseen in Article 16 of the IBA Regulation⁵. The list of countries whose nationals are considered as “Bosman-A players” is provided on the website of the IBA⁶. The list contains all the EU Member States and the EFTA States (32 countries in total).

On 3 October 2018 (Doc No 932627), the Authority sent a request for information to the Icelandic Government inviting it to explain whether and how the changes introduced to the IBA Regulation ensure equal treatment of third-country nationals residing in Iceland on the basis of Directive 2004/38/EC with regard to their participation in officially organised basketball matches in Iceland.

² 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.

³ 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.

⁴ See the follow-up letter to the package meeting, Doc No 918168.

⁵ The current version of the IBA Regulation is accessible at: <http://www.kki.is/log-og-reglugerdir/reglugerdir/yfirlit-reglugerda/reglugerd-um-korfuknattleiksmot/>, checked on 21 October 2019.

⁶ See <http://kki.is/motamal/samningar-og-felagaskipti/listi-yfir-riki-ess-bosman-a-riki/> (checked on 21 October 2019).

On 29 October 2018, the Ministry of Education and Culture, on behalf of the Icelandic Government, responded to the request for information (ref. MMR16100163/0.6.1, Doc No 1019207). As regards the Authority's queries on the rights of third country national family members, the Ministry indicated that, in view of the fact that the Ministry of Justice is responsible for the transposition of Directive 2004/38/EC into Icelandic law, further questions on this matter should be addressed to that Ministry.

On 15 November 2018 (Doc No 1038446), the Authority addressed a further request for information to the Icelandic Government. However, even after several reminders, it had not received any reply from Iceland.

The issue raised in the above-mentioned requests for information was discussed at the package meeting of 4 June 2019 in Iceland⁷. The Icelandic Government undertook to organise a meeting with the IBA in order to discuss which steps have to be made in order to ensure equal treatment of third-country national family members of EEA nationals with regard to their participation in officially organised basketball matches in Iceland.

By e-mail of 19 August 2019 (Doc No 1084678), Iceland informed the Authority that, on 9 July 2019, the Icelandic Government held a meeting with the Chairman of the IBA to discuss the matter. The conclusion of the meeting was that the IBA has committed to ensure equal treatment of third-country national family members of EEA nationals through an interpretation and application of Article 18 (currently, Article 16) of the IBA Regulation. Consequently, the Icelandic Government considers that there is no need for an amendment to Article 18 (currently, Article 16) or other provisions of the IBA Regulation.

3 Assessment

The complaint concerned discriminatory provisions in Article 18 of the IBA Regulation specifically with regard to EEA nationals.

As mentioned above, Article 18 of the IBA Regulation was amended. These amendments exempted the so-called "Bosman-A players" from the quota on the number of foreign players allowed to participate in basketball matches organised by the IBA in Iceland. Currently, the quota and the exemption of "Bosman A players" is foreseen in Article 16 of the IBA Regulation. The list of countries whose nationals are considered as "Bosman-A players" is provided on the website of the IBA. It contains all the EU Member States and the EFTA States.

In the view of the Authority, these changes ensure that EEA nationals are now treated equally to Icelandic nationals, with regard to their right to take part in officially organised basketball matches in Iceland.

As concerns the participation in basketball matches by third-country national family members residing in Iceland on the basis of Directive 2004/38/EC, neither the IBA Regulation nor any other provision of Icelandic law directly provides that these nationals are also exempted from the quota on the number of foreign

⁷ See the follow-up letter to the package meeting, Doc No 1076000.

players allowed to participate in basketball matches organised by the IBA in Iceland.

However, according to information provided by the Icelandic Government, the IBA has undertaken to guarantee equal treatment of the third-country nationals through the interpretation of Article 18 (currently, Article 16) of the IBA Regulation. In view of this undertaking and given the fact, moreover, that the Authority does not have information that third-country nationals residing in Iceland on the basis of Directive 2004/38/EC are being discriminated against with regard to their possibilities to participate in basketball matches in Iceland, the Authority does not see any immediate interest in pursuing this part of the case further.

By letter of 19 September 2019 (Doc No 1084967), the Internal Market Affairs Directorate of the Authority informed the complainant of its intention to propose to the Authority that the case be closed. The complainant was invited to submit any observations on the Internal Market Affairs Directorate's assessment of the complaint or present any new information by 20 October 2019.

By e-mail of 30 September 2019 (Doc No 1089938), the complainant informed the Authority that he had no comments to that letter.

There are, therefore, no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

The complaint case arising from an alleged failure by Iceland to comply with 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, is hereby closed.

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Frank J. Büchel
Responsible College Member

Högni Kristjánsson
College Member

Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.