Reports of Cases

ORDER OF THE PRESIDENT OF THE COURT

18 December 2020*

(Failure of a Member State to fulfil obligations – Application for leave to intervene – Third State, party to the Agreement on the European Economic Area, and EFTA Surveillance Authority – Grant of application for leave to intervene)

In Case C-328/20,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 22 July 2020,

European Commission, represented by D. Martin and B.–R. Killmann, acting as Agents,

applicant,

v

Republic of Austria, represented by A. Posch, M. Klamert, J. Schmoll and C. Pesendorfer, acting as Agents,

defendant,

THE PRESIDENT OF THE COURT,

having regard to the proposal of F. Biltgen, Judge-Rapporteur,

after hearing the Advocate General, J. Richard de la Tour,

makes the following

Order

1 By application lodged at the Court Registry on 22 July 2020, the European Commission asks the Court to declare that, by adjusting the amount of family benefits, as well as social and tax advantages, for the children of persons entitled to such benefits in Austria to reflect the cost of living in the Member State in which the child resides, the Republic of Austria has failed to fulfil its obligations under, first, Articles 4, 7 and 67 of 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), and, second, Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

* Language of the case: German.

2 By documents lodged at the Court Registry on 28 October 2020 on the basis of the third paragraph of Article 40 of the Statute of the Court of Justice of the European Union and Article 130 of the Rules of Procedure of the Court of Justice, the EFTA Surveillance Authority and the Kingdom of Norway applied for leave to intervene in the present case in support of the forms of order sought by the Commission and the Republic of Austria respectively.

3 When requested, pursuant to Article 131(1) of the Rules of Procedure, to submit any observations they might have on those applications for leave to intervene, the Republic of Austria did not submit any observations, whereas the Commission, while stating that, as regards the substance, it has no objection to the granting of those applications for leave to intervene, questions whether those applications are admissible, in so far as they seek leave to intervene in proceedings between an EU institution and a Member State, within the meaning of the last sentence of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union.

The applications for leave to intervene

4 It should be noted, as a preliminary point, that the first three paragraphs of Article 40 of the Statute of the Court of Justice of the European Union provide for three different categories of interveners, each of which is subject to specific rules.

5 Under the first paragraph of Article 40 of the Statute of the Court of Justice of the European Union, Member States and EU institutions may intervene, without restrictions, in cases before the Court of Justice.

6 The second paragraph of Article 40 of the Statute of the Court of Justice of the European Union provides that the same right is open to the bodies, offices and agencies of the European Union and to any other natural or legal person, if they can establish an interest in the result of a case submitted to the Court, although natural or legal persons may not intervene in cases between Member States, between EU institutions or between Member States, on the one hand, and EU institutions, on the other.

7 Finally, the third paragraph of Article 40 of the Statute of the Court of Justice of the European Union pays particular attention to States which are parties to the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) ('the EEA Agreement'), other than the Member States, and to the EFTA Surveillance Authority referred to in that agreement, stating that they may intervene in cases before the Court where one of the fields of application of that agreement is concerned.

8 It follows from the latter provision that the admissibility of an application for leave to intervene made by a third State which is a party to the EEA Agreement, or by the EFTA Surveillance Authority, cannot be subject to any condition other than that the subject matter of the case to which that application for leave to intervene relates must fall within the scope of that agreement. Accordingly, the abovementioned States and the EFTA Surveillance Authority must be allowed to intervene in cases before the Court, without having to establish a particular interest, when those disputes concern one of the fields of application of the EEA Agreement.

9 It is not disputed that that condition is satisfied in the present case. The action brought against the defendant relates to an alleged failure by the defendant to fulfil its obligations under Regulations No 883/2004 and No 492/2011, which were incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011 amending Annex VI (Social security) and Protocol 37 to the EEA Agreement (OJ 2011 L 262, p. 33), and by Decision of the EEA Joint Committee No 52/2012 of 30 March 2012 amending Annex V (Free movement of workers) to the EEA Agreement (OJ 2012 L 207, p. 32), respectively.

10 In those circumstances, the applications for leave to intervene made by the EFTA Surveillance Authority and by the Kingdom of Norway in support of the forms of order sought by the Commission and the Republic of Austria respectively, must be granted.

Costs

11 Under Article 137 of the Rules of Procedure of the Court of Justice, a decision as to costs is to be given in the judgment or order which closes the proceedings.

12 In the present case, since the applications for leave to intervene made by the EFTA Surveillance Authority and by the Kingdom of Norway have been granted, the costs relating to their intervention must be reserved.

On those grounds, the President of the Court hereby orders:

1. **The EFTA Surveillance Authority and the Kingdom of Norway are granted leave to intervene in Case C-328/20 in support of the forms of order sought by the European Commission and the Republic of Austria respectively.**

2. **A copy of all the procedural documents will be served on the EFTA Surveillance Authority and on the Kingdom of Norway by the Registrar.**

3. **A period shall be prescribed within which the EFTA Surveillance Authority and the Kingdom of Norway may submit a statement in intervention.**

4. **The costs relating to the intervention of the EFTA Surveillance Authority and the Kingdom of Norway are reserved.**

[Signatures]