



JUDGMENT OF THE COURT

15 July 2015

(Failure by an EEA/EFTA State to fulfil its obligations – Failure to implement – Commission Directive 2010/26/EU amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery)

In Case E-1/15,

EFTA Surveillance Authority, represented by Xavier Lewis, Director, and Øyvind Bø, Officer, Department of Legal & Executive Affairs, acting as Agents,

applicant,

v

Iceland, represented by Jóhanna Bryndís Bjarnadóttir, Counsellor, Ministry for Foreign Affairs, acting as Agent,

defendant,

APPLICATION for a declaration that by failing to adopt, and/or to notify the EFTA Surveillance Authority forthwith of the measures necessary to implement the Act referred to at point 1a, seventh indent, of Chapter XXIV of Annex II to the Agreement on the European Economic Area (Commission Directive 2010/26/EU of 31 March 2010 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery), as adapted to the Agreement by way of Protocol 1 thereto and by Joint Committee Decision No 76/2013 of 3 May 2013, within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the Agreement on the European Economic Area.

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (Judge-Rapporteur), Judges,

Registrar: Gunnar Selvik,

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 Registry on 21 January 2015, 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, by failing, within the time prescribed, to adopt the measures necessary to implement the Act referred to at point 1a, seventh indent, of Chapter XXIV of Annex II to the Agreement on the European Economic Area (Commission Directive 2010/26/EU of 31 March 2010 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery) (OJ 2010 L 86, p. 29, and EEA Supplement 2013 No 37, p. 66) (“the Directive” or “the Act”) as adapted to the Agreement by way of Protocol 1 thereto and by Joint Committee Decision No 76/2013 of 3 May 2013 (OJ 2013 L 291, p. 34, and EEA Supplement 2013 No 61, p. 38) (“Decision No 76/2013”), Iceland has failed to fulfil its obligations under the Act and under Article 7 of the Agreement on the European Economic Area (“EEA”)

II Law

- 2 Article 3 EEA reads:

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 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:

...

(b) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.

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 EEA Joint Committee Decision No 76/2013 of 3 May 2013 amended Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement by adding the Directive to point 1a of Chapter XXIV of the Annex. No constitutional requirements were indicated by Iceland or Norway for the purposes of Article 103 EEA. The Directive entered into force on 4 May 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement the Directive and to notify ESA accordingly expired on the same date.

III Facts and pre-litigation procedure

- 6 By letter of 16 May 2013, ESA reminded Iceland of its obligation to implement the Directive. Iceland did not reply to the reminder letter.
- 7 On 16 October 2013, having received no further information from Iceland, ESA issued a letter of formal notice, concluding that Iceland had failed to fulfil its obligations under the Act and Article 7 EEA by failing to adopt the necessary measures to make the Directive part of its national legal order. Iceland did not reply to the letter of formal notice.
- 8 On 18 December 2013, ESA delivered a reasoned opinion maintaining the conclusion set out in its letter of formal notice. Pursuant to the second paragraph of Article 31 SCA, ESA required Iceland to take the necessary measures to comply with the reasoned opinion within two months following the notification, that is no later than 18 February 2014.

- 9 Iceland did not formally reply to the reasoned opinion, nor did it inform ESA informally of any measures adopted to fully implement the Directive.
- 10 On 18 December 2014, having received no further information, ESA decided to bring the matter before the Court pursuant to the second paragraph of Article 31 SCA.

IV Procedure and forms of order sought

- 11 ESA lodged the present application at the Court Registry on 21 January 2015. Iceland's statement of defence was registered at the Court on 30 March 2015. By letter of 27 April 2015, ESA waived its right to submit a reply and consented to dispense with the oral procedure should the Court wish to do so. By letter of 3 June 2015, Iceland also consented to dispense with the oral procedure.

- 12 The applicant, ESA, requests the Court to:

1. *Declare that, by failing to adopt and/or to notify the EFTA Surveillance Authority forthwith, of the measures necessary to implement the Act referred to at point 1a, seventh indent, of Chapter XXIV of Annex II to the Agreement on the European Economic Area (Commission Directive 2010/26/EU of 31 March 2010 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery) as adapted to the Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations under Article 3 of that Act and under Article 7 of the Agreement.*

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

- 13 The defendant, Iceland, submits that the facts of the case as set out in the application are correct and undisputed. Iceland does not contest the declaration sought by ESA. In its defence, Iceland indicates that it is “working on the implementation of the Directive”.
- 14 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided, pursuant to Article 41(2) of the Rules of Procedure (“RoP”), to dispense with the oral procedure.

V Findings of the Court

- 15 Article 3 EEA imposes upon the EEA/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, *inter alia*, Case E-21/14 ESA

v Iceland, judgment of 31 March 2015, not yet reported, paragraph 17 and case law cited).

- 16 Under Article 7 EEA, the EEA/EFTA States are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee. An obligation to implement the Directive also follows from Article 3 of the Directive. The Court observes 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 also in Iceland. The EEA/EFTA States find themselves under an obligation of result in that regard (see, *inter alia*, *ESA v Iceland*, cited above, paragraph 18 and case law cited).
- 17 Decision No 76/2013 entered into force on 4 May 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 18 The question whether an EEA/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, *inter alia*, *ESA v Iceland*, cited above, paragraph 20 and case law cited). It is undisputed that Iceland had not adopted the measures necessary to implement the Directive by the expiry of the time limit set in the reasoned opinion.
- 19 It must therefore be held that Iceland has failed to fulfil its obligations under the Act and Article 7 EEA by failing, within the time prescribed, to adopt the measures necessary to implement the Act referred to at point 1a, seventh indent, of Chapter XXIV of Annex II to the Agreement on the European Economic Area (Commission Directive 2010/26/EU of 31 March 2010 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery), as adapted to the Agreement by way of Protocol 1 thereto.

VI Costs

- 20 Under Article 66(2) 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, and the latter has been unsuccessful, and none of the exceptions in Article 66(3) RoP apply, Iceland must therefore be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by failing, within the time prescribed, to adopt the measures necessary to implement the Act referred to at point 1a, seventh indent, of Chapter XXIV of Annex II to the Agreement on the European Economic Area (Commission Directive 2010/26/EU of 31 March 2010 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery), as adapted to the Agreement by way of Protocol 1 thereto and by Joint Committee Decision No 76/2013 of 3 May 2013, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement.**
2. **Orders Iceland to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 15 July 2015.

Gunnar Selvik
Registrar

Carl Baudenbacher
President