



JUDGMENT OF THE COURT

15 November 2013

(Failure by an EEA/EFTA State to fulfil its obligations – Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle for equal opportunities and equal treatment of men and women in matters of employment and occupation (recast))

In Case E-10/13,

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

applicant,

v

Iceland, represented by Anna Katrín Vilhjálmsdóttir, First Secretary, Ministry for Foreign affairs, acting as Agent,

defendant,

APPLICATION for a declaration that by failing, within the time prescribed, to adopt measures necessary to correctly implement into its national legislation the provisions of Articles 2(1)(a)-(d) and 2(2)(a)-(b) of the Act referred to at point 21b of Annex XVIII to the Agreement on the European Economic Area, (Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle for equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)), as adapted to the Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations under the Act.

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen (Judge-Rapporteur) and Páll Hreinsson, 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 application lodged at the Court Registry on 28 June 2013, 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”), for a declaration that, by failing within the time limit prescribed, to adopt measures necessary to correctly implement into its national legislation the provisions of Articles 2(1)(a)-(d) and 2(2)(a)-(b) of the Act referred to at point 21b of Annex XVIII to the Agreement on the European Economic Area, that is Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle for equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23) (“the Directive”), as adapted to the Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations under the Directive.

II Facts and pre-litigation procedure

- 2 Decision No 33/2008 of 14 March 2008 of the EEA Joint Committee amended Annex XVIII to the EEA Agreement by adding the Directive to point 21b of that Annex. The Decision entered into force on 1 February 2009. The time limit for the EFTA States to adopt the measures necessary to implement the Act expired on the same date.
- 3 On 11 May 2009, Iceland provided ESA with a list of the national measures implementing the Directive, on the basis of which ESA undertook a conformity assessment. On 2 December 2010 ESA requested Iceland to submit a table of correspondence. On 20 July 2011, it submitted a request for information to Iceland, setting out the questions raised by the conformity assessment. On 11 October 2011, Iceland replied to the request for information.
- 4 On 7 December 2011, ESA issued a letter of formal notice to Iceland. ESA concluded that, due to an incorrect implementation of Articles 2(1)(a)-(d) and 2(2)(a)-(b) of the Directive, Iceland had failed to fulfil its obligations arising from the Directive.
- 5 On 6 February 2012, the Icelandic Government stated that legislative proposals were being drafted with the aim of correctly transposing the provisions of the Directive, and estimated that the bill would be submitted in the following legislative session of the Parliament, that is in the autumn of 2012.

- 6 By letter dated 20 June 2012, ESA delivered a reasoned opinion where it maintained its conclusions from the letter of formal notice. Pursuant to the second paragraph of Article 31 SCA, ESA requested Iceland to take the necessary measures to comply with the reasoned opinion within two months following notification thereof, that is no later than 20 August 2012.
- 7 Iceland replied to ESA's reasoned opinion on 20 August 2012, reiterating that a legislative proposal was being drafted with the aim to correctly transpose the provisions. The intention of the Icelandic Authorities was to submit the proposal to the Icelandic Parliament in October 2012.
- 8 On 5 March 2013, the Icelandic Government submitted to the Icelandic Parliament a bill for the amendment of the national measures with the purpose of addressing ESA's concerns. However, the bill was neither discussed nor adopted during the parliamentary session which ended on 28 March 2013.
- 9 On 29 May 2013, ESA decided to bring the matter before the Court.

III Procedure and forms of order sought

- 10 ESA lodged the present application at the Court Registry on 28 June 2013.
- 11 Iceland submitted a statement of defence which was registered at the Court on 2 September 2013. The reply from ESA was registered at the Court on 20 September 2013. By e-mail of 8 October 2013, Iceland waived its right to submit a rejoinder.
- 12 The applicant, ESA, requests the Court to:
 1. *Declare that by failing to implement correctly Articles 2(1)(a)-(d) and Articles 2(2)(a)-(b) of the Act referred to at point 21b in Annex XVIII to the Agreement on the European Economic Area (Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment occupation (recast)), as adapted to the EEA Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations under the Act.*
 2. *Order Iceland to bear the costs of these proceedings.*
- 13 The defendant, Iceland, does not dispute the declaration sought by the applicant. However, in Iceland's view, the delay in implementation results from the legislative procedure. A draft bill needed for the correct implementation was presented to the Icelandic Parliament for its 2012-2013 legislative session, but due to an exceptionally short session preceding parliamentary elections, the bill was not discussed and accordingly not passed by Parliament. However, the

Icelandic Government intends to reintroduce such a bill to Parliament for the legislative session which was scheduled to start on 1 October 2013.

- 14 Therefore, Iceland requests the Court to:

Order each party to bear its own costs of the proceedings.

- 15 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided to dispense with the oral procedure.

IV Findings of the Court

- 16 Article 3 EEA imposes upon the Contracting Parties 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-13/12 *ESA v Iceland*, judgment of 5 May 2013, not yet reported, paragraph 13, and the case law cited). Under Article 7 EEA, the Contracting Parties 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 33 of the Directive.
- 17 Decision 33/2008 of the EEA Joint Committee of 14 March 2008 entered into force on 1 February 2009. The time limit for EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 18 The question of whether an EFTA State has failed to fulfil its obligations must be determined by reference to the situation in that State as it stood at the end of the period laid down in the reasoned opinion (see, *inter alia*, *ESA v Iceland*, cited above, paragraph 15, and the case law cited). It is undisputed that Iceland did not adopt measures necessary to implement correctly Articles 2(1)(a)-(d) and Articles (2)(2)(a)-(b) of the Directive before the expiry of the time limit given in the reasoned opinion.
- 19 It must therefore be held that, by failing within the time limit prescribed to adopt the measures necessary to correctly implement into its national legislation the provisions of Articles 2(1)(a)-(d) and 2(2)(a)-(b) of the Directive, Iceland has failed to fulfil its obligations under the Directive.

V Costs

- 20 Under Article 66(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the EFTA Surveillance Authority has requested that Iceland be ordered to pay the costs and the latter has been unsuccessful, and since none of the exceptions in Article 66(3) apply, Iceland must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- 1. Declares that, by failing within the time limit prescribed to adopt the measures necessary to correctly implement into its national legislation Articles 2(1)(a)-(d) and 2(2)(a)-(b) of the Act referred to at point 21b of Annex XVIII to the Agreement on the European Economic Area (Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle for equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)), as adapted to the Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations under the Act.**
- 2. Orders Iceland to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 15 November 2013.

Gunnar Selvik
Registrar

Carl Baudenbacher
President