



## JUDGMENT OF THE COURT

27 October 2015

*(Failure by an EEA/EFTA State to fulfil its obligations – Failure to implement – Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations)*

In Case E-10/15,

**EFTA Surveillance Authority**, represented by Auður Ýr Steinarsdóttir, Officer, and Marlene Lie Hakkebo, Temporary 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 Iceland has failed to fulfil its obligations under the Act referred to at point 21au of Chapter III of Annex XX to the Agreement on the European Economic Area (Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations), as adapted to the Agreement under its Protocol 1, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed.

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 an application lodged at the Court Registry on 21 April 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 Iceland has failed to fulfil its obligations under the Act referred to at point 21au of Chapter III of Annex XX to the Agreement on the European Economic Area (“EEA” or “the EEA Agreement”), that is Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (OJ 2009 L 285, p. 36 and Icelandic EEA Supplement 2013 No 46, p. 61) (“the Act” or “the Directive”), as adapted to the EEA Agreement under its Protocol 1, and under Article 7 EEA, by failing to adopt the measures necessary to implement the Act within the time prescribed.

**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 Decision No 45/2013 of 15 March 2013 of the EEA Joint Committee (OJ 2013 L 231, p. 19, and EEA Supplement 2013 No 49, p. 21) (“Decision No 45/2013”) inserted the Directive as point 21au of Chapter III of Annex XX (Environment) to the EEA Agreement. Iceland indicated constitutional requirements for the purposes of Article 103 EEA. In December 2013, Iceland notified that the constitutional requirements had been fulfilled. Consequently, Decision No 45/2013 entered into force on 1 February 2014. The time limit for the EEA/EFTA States to adopt the measures necessary to implement the Directive expired on the same date.

### **III Facts and pre-litigation procedure**

6 By letter of 18 December 2013, ESA reminded Iceland of its obligation to implement the Directive. Iceland did not reply to that letter.

7 On 24 April 2014, ESA issued a letter of formal notice, concluding that Iceland had failed to fulfil its obligations under Article 7 EEA by failing to adopt, or in any event to inform ESA of, the measures necessary to implement the Directive. Iceland did not reply to the letter of formal notice.

8 By email of 25 November 2014, following an informal request from ESA, the Icelandic Government informed ESA that it was working on the implementation of the Directive. It was stated that amendments to the national legislation were necessary. For that purpose, a bill would be introduced to Parliament in March 2015. Full implementation of the Directive was expected by May 2015.

- 9 On 10 December 2014, 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 measures necessary to comply with the reasoned opinion within two months following the notification, that is 10 February 2015. Iceland did not reply to the reasoned opinion.
- 10 On 8 April 2015, 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 April 2015. Iceland's statement of defence was registered at the Court on 22 June 2015. By letter of 8 July 2015, ESA waived its right to submit a reply and consented to dispense with the oral procedure should the Court wish to do so. On 11 September 2015, Iceland also consented to dispense with the oral procedure.
- 12 The applicant, ESA, requests the Court to:
1. *Declare that Iceland has failed to fulfil its obligations under the Act referred to at point 21au of Chapter III of Annex XX to the Agreement on the European Economic Area, (Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations) as adapted to the Agreement by way of Protocol 1 thereto, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed.*
  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 informs that the Directive is expected to be implemented no later than September 2015.
- 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-1/15 ESA v

*Iceland*, judgment of 15 July 2015, not yet reported, paragraph 15 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 10 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 16 and case law cited).
- 17 Decision No 45/2013 entered into force on 1 February 2014. 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 18 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 referred to at point 21au of Chapter III of Annex XX to the Agreement on the European Economic Area (Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations), as adapted to the Agreement under its Protocol 1, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed.

## **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 Iceland has failed to fulfil its obligations under the Act referred to at point 21au of Chapter III of Annex XX to the Agreement on the European Economic Area (Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations), as adapted to the Agreement under its Protocol 1, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed.**
- 2. Orders Iceland to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 27 October 2015.

Gunnar Selvik  
Registrar

Per Christiansen  
Acting President