

JUDGMENT OF THE COURT

19 June 1998

(Failure of a Contracting Party to fulfil its obligations – health protection for workers exposed to vinyl chloride monomer – Council Directive 78/610/EEC)

In Case E-10/97,

EFTA Surveillance Authority, represented by Håkan Berglin, Director of Legal & Executive Affairs, acting as Agent; and assisted by Anne-Lise H. Rolland, National Expert in the same department, 74 Rue de Trèves, Brussels,

applicant,

v

The Kingdom of Norway, represented by Jan Bugge-Mahrt, Assistant Director General, Royal Ministry of Foreign Affairs, acting as Agent, 7. Juni plassen/Victoria Terrasse 0251 Oslo,

defendant,

APPLICATION for a declaration that, by failing to adopt, within the prescribed time-limit, the national provisions necessary to comply with the Act referred to in point 2 of Annex XVIII (“the Act”) to the Agreement on the European Economic Area (“EEA”), i.e. Council Directive 78/610/EEC of 29 June 1978 on the approximation of the laws, regulations and administrative provisions of the Member States on the protection of the health of workers exposed to vinyl chloride monomer, as adapted by way of Protocol 1 to the EEA Agreement, the Kingdom of Norway has failed to fulfil its obligations under Article 11 of that Act and Article 7 EEA,

THE COURT

Composed of: Bjørn Haug, President, Thór Vilhjálmsson and Carl Baudenbacher (Judge-Rapporteur), Judges,

Registrar: Per Christiansen

gives the following

Judgment

- 1 By application lodged at the Court Registry on 29 December 1997, the *EFTA Surveillance Authority* submitted, pursuant to 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, an application for a declaration that, by failing to adopt, within the prescribed time-limit, the national provisions necessary to comply with the Act referred to in point 2 of Annex XVIII to the EEA Agreement, i.e. Council Directive 78/610/EEC of 29 June 1978 on the approximation of the laws, regulations and administrative provisions of the Member States on the protection of the health of workers exposed to vinyl chloride monomer, as adapted by way of Protocol 1 to the EEA Agreement, the Kingdom of Norway has failed to fulfil its obligations under Article 11 of that Act and Article 7 EEA.
- 2 The *Commission of the European Communities*, represented by John Forman, Legal Adviser in its Legal Service and Nicola Yerrell, official seconded to the Commission's Legal Service under the arrangements for the exchange of national officials, submitted written observations pursuant to Article 20 of the Statute of the EFTA Court.
- 3 The *Norwegian Government* and the *EFTA Surveillance Authority* consented to the oral procedure being dispensed with.

Facts and Procedure

- 4 Council Directive 78/610/EEC of 29 June 1978 on the approximation of the laws, regulations and administrative provisions of the Member States on the protection of the health of workers exposed to vinyl chloride monomer (OJ No. L 197, 22.7.1978, p. 12) is referred to in point 2 of Annex XVIII to the EEA Agreement. It follows from Article 11 of that Act, as adapted by way of Protocol 1 to the EEA Agreement, that Norway was to bring into force the laws, regulations and administrative provisions necessary to comply with the Act by 1 January 1994 and inform the EFTA Surveillance Authority of the measures taken to that end.

- 5 In a notification to the EFTA Surveillance Authority of 28 February 1994 concerning national implementation measures, the Norwegian Government submitted a draft text for a regulation, apparently intended to be adopted to ensure compliance with the Act, and indicated that further information would follow.
- 6 On 15 April 1996, in the absence of any subsequent information, the EFTA Surveillance Authority issued a letter of formal notice to the Norwegian Government, stating that Norway had not adopted the necessary national measures and had, therefore, failed to fulfil its obligations under the Act and Articles 3 and 7 EEA.
- 7 After an exchange of letters and communication by telephone, the EFTA Surveillance Authority delivered a reasoned opinion in which it concluded that, by failing to take the necessary measures to comply with the Act, Norway had failed to fulfil its obligations under Article 11 of the Act and Articles 3 and 7 EEA. The Norwegian Government was requested to take the necessary measures to comply with the reasoned opinion within two months following notification thereof. The reasoned opinion was notified to the Norwegian Government on 12 May 1997. The time-limit to comply with the opinion thus expired on 12 July 1997.
- 8 After several contacts between the Norwegian authorities and the EFTA Surveillance Authority, which did not lead to the requested measures being taken, the present application was brought before the Court.

Law

- 9 The application of the *EFTA Surveillance Authority* is based on one plea of law, *viz.* that, by failing to adopt the national measures necessary to comply with the Act referred to in point 2 of Annex XVIII to the EEA Agreement, as adapted by way of Protocol 1 to the EEA Agreement, Norway has failed to fulfil its obligations under Article 11 of that Act and Article 7 EEA.
- 10 The time-limit for Norway to take the measures necessary to comply with the Act expired on 1 January 1994. Norway did not implement any such measures, either at that time or by the time-limit set by the EFTA Surveillance Authority in its reasoned opinion.
- 11 Referring to these circumstances the EFTA Surveillance Authority requests the EFTA Court to grant the application and to order Norway to pay the costs of the proceedings.
- 12 The *Norwegian Government* does not dispute the order sought by the applicant. It requests the EFTA Court to order each party to pay its own costs of the proceedings.

- 13 The *Commission of the European Communities* supports the view of the EFTA Surveillance Authority and concludes that the application should be granted.
- 14 The *Court* notes that Norway was obliged to adopt national provisions necessary to comply with the Act referred to in point 2 of Annex XVIII to the EEA Agreement, as adapted by way of Protocol 1 to the EEA Agreement not later than 1 January 1994. On 12 July 1997, the date on which the time-limit given in the reasoned opinion of the EFTA Surveillance Authority expired, Norway had still not adopted national measures necessary to comply with the reasoned opinion.
- 15 The Court notes that 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 Agreement (see Judgment of the EFTA Court on 30 April 1998 in Case E-7/97, at paragraph 16).
- 16 Furthermore, the Contracting Parties are obliged to implement all acts referred to or contained in the Annexes to the EEA Agreement or in decisions of the EEA Joint Committee.
- 17 It must therefore be held that, by failing to adopt, within the prescribed time-limit, the laws, regulations and administrative provisions necessary to comply with the Act referred to in point 2 of Annex XVIII to the EEA Agreement, i.e. Council Directive 78/610/EEC of 29 June 1978 on the approximation of the laws, regulations and administrative provisions of the Member States on the protection of the health of workers exposed to vinyl chloride monomer, as adapted by way of Protocol 1 to the EEA Agreement, Norway has failed to fulfil its obligations under Article 11 of that Act and Article 7 EEA.

Costs

- 18 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. The EFTA Surveillance Authority has asked for the Kingdom of Norway to be ordered to pay the costs. Since the latter has been unsuccessful in its defence, it must be ordered to pay the costs. The Cost incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

On those grounds,

THE COURT

hereby:

- 1. Declares that, by failing to adopt, within the prescribed time-limit, the national provisions necessary to comply with the Act referred to in point 2 of Annex XVIII to the EEA Agreement (Council Directive 78/610/EEC of 29 June 1978 on the approximation of the laws, regulations and administrative provisions of the Member States on the protection of the health of workers exposed to vinyl chloride monomer), as adapted by way of Protocol 1 to the EEA Agreement, the Kingdom of Norway has failed to fulfil its obligations under Article 11 of that Act and Article 7 EEA.**
- 2. Orders the Kingdom of Norway to pay the costs.**

Bjørn Haug

Thór Vilhjálmsson

Carl Baudenbacher

Delivered in open court in Luxembourg on 19 June 1998.

Per Christiansen
Registrar

Bjørn Haug
President