



## JUDGMENT OF THE COURT

15 November 2013

*(Failure by a Contracting Party to fulfil its obligations – Directive 2002/92/EC of 9 December 2002 on insurance mediation)*

In Case E-11/13,

**EFTA Surveillance Authority**, represented by Xavier Lewis, Director, and Clémence Perrin and Maria Moustakali, Officers, Department of Legal and Executive Affairs, acting as Agents,

*applicant,*

v

**Iceland**, represented by Anna Katrín Vilhjálmsdóttir, Ministry for Foreign Affairs, acting as Agent,

*defendant,*

APPLICATION for a declaration that, by failing to correctly implement Article 9, paragraphs 1 and 2, and Article 10 of the Act referred to at point 13b of Annex IX to the Agreement on the European Economic Area (Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation), as adapted to the EEA Agreement by Protocol 1 thereto, Iceland has failed to fulfil its obligations arising under that Act and under Article 7 of the EEA Agreement.

THE COURT,

composed of: Carl Baudenbacher, President and Judge-Rapporteur, Per Christiansen 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 The application**

- 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 to correctly implement Articles 9 and 10 of the Act referred to at point 13b of Annex IX to the Agreement on the European Economic Area (Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation) (“the Directive”), as adapted to the EEA Agreement by Protocol 1 thereto, Iceland has failed to fulfil its obligations arising pursuant to that Act and pursuant to Article 7 of the EEA Agreement.

**II Facts and pre-litigation procedure**

- 2 Decision No 115/2003 of 26 September 2003 of the EEA Joint Committee (“Decision 115/2003”) amended Annex IX to the EEA Agreement by adding the Directive to point 13b of that Annex. Iceland indicated constitutional requirements for the purposes of Article 103 EEA.
- 3 As Iceland notified on 31 March 2004 that the constitutional requirements had been fulfilled, Decision 115/2003 entered into force on 1 May 2004. According to Article 16(1) of the Directive, the time limit for the EEA States to adopt the measures necessary to implement the Act expired on 15 January 2005.

- 4 In a letter dated 9 May 2008, Iceland provided ESA with a completed table of correspondence for the Directive on the basis of which ESA undertook the conformity assessment. The national measures indicated in the table of correspondence as implementing measures were:
  - A. Act No. 32/2005 on Insurance Mediation.
  - B. Act No. 60/1994 on Insurance Activity.
  - C. Act No. 30/2004 on Insurance Contracts.
  - D. Regulation No. 590/2005 on Trusteeship Accounts of Insurance Intermediaries and Tied Insurance Intermediaries.
  - E. Regulation No. 592/2005 on Professional Indemnity Insurance.
  - F. Regulation No. 972/2006 on Examination of Insurance Mediation.
  - G. Act No. 87/1998 on Official Supervisions of Financial Operations.
- 5 By letters dated 3 September 2009, 18 March 2010, 10 and 16 September 2011, ESA requested Iceland to submit information on the implementation measures taken by Iceland with regard to Article 9, paragraphs 1 and 2, and Article 10 of the Directive.
- 6 Iceland replied to these requests for information on 25 October 2009, 7 June 2011 and 21 November 2011 respectively.
- 7 On 21 March 2012, ESA sent a letter of formal notice to Iceland, in which it concluded that due to the incorrect implementation of Article 9, paragraphs 1 and 2 and Article 10 of the Directive, Iceland had failed to fulfil its obligations arising from the Directive, in particular Article 9, paragraphs 1 and 2 and Article 10 thereof, and pursuant to Article 7 EEA.
- 8 In its reply on 18 June 2012 to the letter of formal notice, Iceland acknowledged that changes needed to be made to Icelandic law to fully implement Article 9, paragraphs 1 and 2, and Article 10 of the Directive and stated that the necessary changes would be submitted before the Icelandic Parliament in autumn 2012.
- 9 ESA issued a reasoned opinion on 4 July 2012, in which it maintained its conclusions made in its letter of formal notice. Pursuant to the first paragraph of Article 31 SCA, ESA concluded that by failing to correctly implement Article 9, paragraphs 1 and 2 and Article 10 of the Directive, Iceland had failed to fulfil its obligations pursuant to the Directive and pursuant to Article 7 EEA.

- 10 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, i.e. no later than 4 September 2012.
- 11 In its reply to the reasoned opinion dated 29 August 2012, Iceland reiterated that it acknowledged the shortcomings in its national legislation. By email dated 2 April 2013, Iceland informed ESA that the amending bills had yet to be adopted by the Icelandic Parliament.

### **III Procedure before the Court and forms of order sought**

- 12 On 28 June 2013, the present application was lodged at the Court Registry.
- 13 On 2 September 2013, Iceland lodged its statement of defence.
- 14 On 20 September 2013, ESA's reply was registered at the Court.
- 15 On 8 October 2013, Iceland by way of an email, waived its right to submit a rejoinder.
- 16 The applicant, the EFTA Surveillance Authority, requests the Court to:

*(1) Declare that by failing to correctly implement Article 9, paragraphs 1 and 2, and Article 10 of the Act referred to at point 13b of Annex IX to the Agreement on the European Economic Area (Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation), as adapted to the EEA Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations pursuant to that Act and pursuant to Article 7 of the EEA Agreement.*

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

- 17 The defendant, Iceland, does not dispute the declaration sought by the applicant, but requests the Court to:

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

- 18 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 in accordance with Article 41(2) of the Rules of Procedure ("RoP").

#### **IV Findings of the Court**

- 19 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.
- 20 EEA Joint Committee Decision No 115/2003 of 26 September 2003 entered into force on 1 May 2004. The obligation to implement also follows from Article 16(1) of the Directive, according to which transposition by the EU Member States was required before 15 January 2005. Decision 115/2003 did not set a separate EEA time-limit for the implementation of the Directive into national law.
- 21 The question of whether an EEA/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 by the expiry of the time limit given in the reasoned opinion, Iceland had not adopted such measures as to correctly implement Article 9, paragraphs 1 and 2, and Article 10 of the Directive.
- 22 It must therefore be held that, by failing within the time limit prescribed to adopt the measures necessary to implement into its national legislation Article 9, paragraphs 1 and 2, and Article 10 of the Act referred to at point 13b of Annex IX to the EEA Agreement (Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation), as adapted to the EEA Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations pursuant to the Act, as well as pursuant to Article 7 EEA.

#### **V Costs**

- 23 Under Article 66(2) RoP, the unsuccessful party is to be ordered to bear the costs of the proceedings if it has been applied for in the successful party's pleadings, and if none of the exceptions set out in Article 66(3) RoP apply to the case.
- 24 Iceland has requested the Court to order that each party should bear its own costs of the proceedings, with reference to the circumstances of the case.
- 25 Since Iceland has neither specified what circumstances of the case, nor set out any other reason as to why any of the exceptions set out in Article 66(3) RoP should apply, and being the unsuccessful party, Iceland is ordered to pay the costs of the proceedings in accordance with Article 66(2) RoP.

On those grounds,

THE COURT

hereby:

- 1. Declares that, by failing to correctly implement Article 9, paragraphs 1 and 2, and Article 10 of the Act referred to at point 13b of Annex IX to the Agreement on the European Economic Area (Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation), as adapted to the EEA Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations pursuant to that Act and pursuant to 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 November 2013

Gunnar Selvik  
Registrar

Carl Baudenbacher  
President