



JUDGMENT OF THE COURT

28 January 2015

(Failure by a Contracting Party to fulfil its obligations – Failure to implement – Directive 2011/7/EU on combating late payments in commercial transactions)

In Case E-11/14,

EFTA Surveillance Authority, represented by Markus Schneider, Deputy Director, and Janne Tysnes Kaasin, 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 by failing, within the time prescribed, to adopt and/or to notify the EFTA Surveillance Authority forthwith of, all measures necessary to implement the Act referred to at point 2 of Annex XII to the Agreement on the European Economic Area, that is Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payments in commercial transactions, as adapted to the Agreement by way of Protocol 1, Iceland has failed to fulfil its obligations under Article 12 of the Act and Article 7 EEA.

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 17 July 2014, the EFTA Surveillance Authority (“ESA”) brought an action under Article 31(2) 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 and/or to notify ESA forthwith of all measures necessary to implement the Act referred to at point 2 of Annex XII to the Agreement on the European Economic Area, that is Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payments in commercial transactions (OJ 2011 L 48, p. 1) (“the Directive” or “the Act”), as adapted to the Agreement by way of Protocol 1, Iceland has failed to fulfil its obligations under Article 12 of the Act and Article 7 EEA.

II Law

- 2 Decision No 55/2012 of 30 March 2012 of the EEA Joint Committee (OJ 2012 L 207, p. 35 and the EEA supplement No 43, p. 43) (“Decision 55/2012”) added the Directive to point 2 of Annex XII to the EEA Agreement.
- 3 The EEA/EFTA States indicated constitutional requirements for the purposes of Article 103 EEA. In March 2013, as the last of the EEA/EFTA States, Iceland notified that the constitutional requirements had been fulfilled. Consequently, Decision 55/2012 entered into force on 1 May 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 4 The aim of the Directive is to combat late payments in commercial transactions, in order to ensure the proper functioning of the internal market. The Directive establishes rules on commercial transactions, including rules on payment schedules, compensation for recovery costs, unfair commercial terms and practices and recovery procedures for unchallenged claims.

III Facts and pre-litigation procedure

- 5 By letter of 15 May 2013, ESA reminded Iceland of its obligation to notify the measures taken to implement the Directive into Iceland's legal order by 1 May 2013.
- 6 On 2 October 2013, having received no further information from Iceland, ESA issued a letter of formal notice. ESA concluded that Iceland had failed to fulfil its obligations under the Directive and Article 7 EEA by failing to adopt or, in any event, to inform ESA of the national measures it had adopted to implement the Directive.
- 7 By letter of 27 November 2013, Iceland replied to the letter of formal notice, stating that a bill implementing the Directive would be presented to Parliament in December 2013.
- 8 On 18 December 2013, ESA delivered a reasoned opinion to Iceland, maintaining the conclusion set out in its letter of formal notice. Pursuant to Article 31(2) SCA, ESA required Iceland to take the measures necessary to comply with the reasoned opinion within two months following the notification.
- 9 By letter of 18 February 2014, Iceland replied to the reasoned opinion, and informed ESA that a bill implementing the Directive had been submitted to Parliament on that day.
- 10 By letter of 21 May 2014, Iceland informed ESA that the process of adopting the bill had not been completed during that term of Parliament. Iceland further stated that the implementing bill would be redistributed on 9 September 2014, when Parliament reconvened.
- 11 On 2 July 2014, having received no further information with respect to the implementation of the Directive, ESA decided to bring the matter before the Court pursuant to Article 31(2) SCA.

IV Procedure and forms of order sought

- 12 ESA lodged the present application at the Court Registry on 17 July 2014. Iceland's statement of defence was registered at the Court on 30 September 2014. By letter of 16 October 2014, ESA waived its right to submit a reply and consented to dispense with the oral procedure should the Court wish to do so. By email of 20 November 2014, Iceland also consented to dispense with the oral procedure.
- 13 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 2 of Annex XII to the Agreement on the European Economic Area (Directive 2011/7 of the European Parliament and of the Council of 16 February 2011 on combating late payments in commercial transactions), as adapted to the EEA Agreement by Protocol 1 thereto, Iceland has failed to fulfil its obligations under Article 12 of the Act and Article 7 of the EEA Agreement.

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

- 14 The defendant, Iceland, submits that the facts of the case as set out in the application are correct and undisputed. Iceland disputes neither the declaration nor the order sought by ESA.
- 15 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

- 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-8/14 *ESA v Iceland*, judgment of 10 November 2014, not yet reported, paragraph 17, and the case law cited).
- 17 Under Article 7 EEA, the Contracting Parties are obliged to implement into their legal order 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, and to notify ESA, also follows from Article 12 of the Directive. The Court points out that the lack of direct legal effect in Iceland of acts referred to in decisions from the EEA Joint Committee, makes timely implementation crucial for the proper functioning also in Iceland of the EEA Agreement. The EEA/EFTA States find themselves under an obligation of result in that regard.
- 18 Decision 55/2012 entered into force on 1 May 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 19 The question 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 19, and the 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 given in the reasoned opinion.

- 20 Since Iceland did not implement the Directive within the time prescribed, there is no need to examine the alternative form of order sought against Iceland for failing to notify ESA of the measures implementing the Directive.
- 21 It must therefore be held that Iceland has failed to fulfil its obligations under Article 12 of the Act referred to at point 2 of Annex XII to the Agreement on the European Economic Area, that is Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payments in commercial transactions, as adapted to the Agreement by way of Protocol 1, and under Article 7 EEA, by failing to adopt the measures necessary to implement into its national legislation the Act within the time prescribed.

VI Costs

- 22 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) 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 Article 12 of the Act referred to at point 2 of Annex XII to the Agreement on the European Economic Area (Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payments in commercial transactions), as adapted to the Agreement by way of Protocol 1, and under Article 7 of the Agreement, by failing to adopt all 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 28 January 2015.

Gunnar Selvik
Registrar

Carl Baudenbacher
President