



JUDGMENT OF THE COURT

27 October 2015

*(Failure by an EEA/EFTA State to fulfil its obligations – Failure to implement –
Directive 2011/83/EU on consumer rights)*

In Case E-11/15,

EFTA Surveillance Authority, represented by Markus Schneider, Deputy Director, 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 points 7a, 7e and 7i of Annex XIX of the Agreement on the European Economic Area (Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council) 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 points 7a, 7e and 7i of Annex XIX of the Agreement on the European Economic Area (“EEA” or “the EEA Agreement”), that is Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64 and Icelandic EEA Supplement 2014 No 54, p. 1047) (“the Directive” or “the Act”) as adapted to the 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 EEA Joint Committee Decision No 181/2012 of 28 September 2012 (OJ 2012 L 341, p. 35 and EEA Supplement 2012 No 70, p. 42) (“Decision No 181/2012”) amended Annex XIX (Consumer Protection) to the EEA Agreement by adding the Directive to points 7a, 7e and 7i of the Annex. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway for the purposes of Article 103 EEA. By December 2013, all States had notified that the constitutional requirements had been fulfilled. Consequently, Decision No 181/2012 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 13 January 2014, ESA reminded Iceland of its obligation to implement the Directive.

7 On 14 January 2014, Iceland replied by email that a bill was being prepared which was expected to be presented to Parliament in the next autumn session, with a plan to achieve implementation sometime before next autumn.

8 On 8 May 2014, having received no information indicating that the necessary measures had been adopted, ESA issued a letter of formal notice, concluding that Iceland had failed to fulfil its obligations under the Act and Article 7 EEA by failing to adopt, or in any event, to inform ESA of the national measures adopted to make the Directive part of its national legal order.

- 9 By an email of 9 May 2014, Iceland replied to the letter of formal notice, reaffirming its initial intention to submit the bill in question for adoption by Parliament and to achieve implementation before next autumn.
- 10 On 24 September 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 necessary measures to comply with the reasoned opinion within two months following the notification, that is no later than 24 November 2014.
- 11 By an email of 25 September 2014, Iceland replied to the reasoned opinion, explaining that the implementation of the Directive would require amendments to a national act currently in force. However, Iceland also held that a draft bill would most likely not be presented to Parliament during the current Parliamentary session.
- 12 By a letter of 28 January 2015, ESA sent an informal request to Iceland for an update regarding the current state of implementation.
- 13 On 29 January 2015, Iceland stated that it was unable to give a more specific date for implementation due to lack of resources and difficulties of finding time for the proposal in the schedule.
- 14 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

- 15 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 6 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.
- 16 The applicant, ESA, requests the Court to:
 1. *Declare that Iceland has failed to fulfil its obligations under the Act referred to at points 7a, 7e and 7i of Annex XIX to the Agreement on the European Economic Area (Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council) 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.*

- 17 The defendant, Iceland, submits that it does not dispute the facts of the case as they are set out by ESA in its application. Furthermore, it does not contest the declaration sought by ESA. Nevertheless, in its defence, Iceland underlines its willingness to implement the Directive into the Icelandic legal order, and remains “committed to having the parliamentary process concluded as soon as possible in the autumn of 2015”.
- 18 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

- 19 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-2/15 *ESA v Iceland*, judgment of 15 July 2015, not yet reported, paragraph 18, and case law cited).
- 20 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 its Article 28. 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 19 and case law cited).
- 21 Decision No 181/2012 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.
- 22 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 21 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.
- 23 It must therefore be held that Iceland has failed to fulfil its obligations under the Act referred to at points 7a, 7e and 7i of Annex XIX of the Agreement on the European Economic Area (Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council) 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

- 24 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 points 7a, 7e and 7i of Annex XIX to the Agreement on the European Economic Area (Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council) 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