



JUDGMENT OF THE COURT

15 May 2013

(Failure by a Contracting Party to fulfil its obligations – Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC)

In Case E-12/12,

EFTA Surveillance Authority, represented by Markus Schneider, Deputy Director, and Clémence Perrin, 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 limit prescribed, to adopt, or to notify the EFTA Surveillance Authority of the measures necessary to implement into its national legislation the Act referred to at point 7h of Annex XIX to the Agreement on the European Economic Area, i.e. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, as adapted to the Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations under Article 27 of the Directive and under Article 7 of the EEA Agreement.

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 and the written observations of:

- the European Commission (“the Commission”), represented by Michel van Beek and Marta Owsiany-Hornung, Members of its Legal Service, acting as Agents,

having decided to dispense with the oral procedure,

gives the following

Judgment

I Introduction

- 1 By application lodged at the Court Registry on 30 November 2012, 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, within the time limit prescribed, to adopt, or to notify the EFTA Surveillance Authority of the measures necessary to implement into its national legislation the Act referred to at point 7h of Annex XIX to the Agreement on the European Economic Area (“EEA”), Iceland has failed to fulfil its obligations under Article 27 of the Act and under Article 7 EEA. The Act referred to is Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66) (“the Directive”), as adapted to the Agreement by way of Protocol 1 thereto.

II Facts and pre-litigation procedure

- 2 Decision No 16/2009 of 5 February 2009 of the EEA Joint Committee (“Decision 16/2009”) amended Annex XIX to the EEA Agreement by adding Directive 2008/48 to point 7h of that Annex. Iceland indicated constitutional requirements for the purposes of Article 103 EEA. The six-month period provided by Article 103 EEA expired on 5 August 2009. Iceland did not notify a delay in implementation before the expiry of the six-month period. The Directive thus became provisionally applicable on 5 August 2009 vis-à-vis Iceland. Norway and Liechtenstein implemented the Directive prior to the expiry of the six-month period prescribed in Article 103 EEA.
- 3 On 1 September 2011, Iceland notified that the constitutional requirements had been fulfilled, and, consequently, Decision 16/2009 entered into force on 1 November 2011. The time limit for EFTA States to adopt the measures necessary to implement the Act expired on the same date.

- 4 By letter of 11 October 2011, ESA reminded the Icelandic Government of its obligation to take the national measures necessary to implement the Directive into the Icelandic legal order.
- 5 On 1 February 2012, ESA issued a letter of formal notice to Iceland. ESA concluded that, by failing to adopt or, in any event, to inform ESA of the national measures it had adopted to implement the Directive, Iceland had failed to fulfil its obligation under the Directive and under Article 7 EEA.
- 6 On 13 April 2012, the Icelandic Government stated in its observations on the letter of formal notice that it had not yet adopted the necessary measures to implement the Directive. The Government indicated, however, that the Directive would be fully implemented before June 2012.
- 7 By further letter of 21 June 2012, the Icelandic Government informed ESA that the proposal presented to the parliament in the 2012 spring session had been rejected, but that it would be presented again during the 2012 autumn session. It was also stated that the implementing legislation was expected to be in place before the end of 2012.
- 8 By letter of 4 July 2012, ESA delivered a reasoned opinion to Iceland, maintaining the conclusion in its letter of formal notice. Pursuant to Article 31(2) SCA, ESA requested Iceland to take the measures necessary to comply with the reasoned opinion within two months following notification thereof, i.e. no later than 4 September 2012.
- 9 On 28 November 2012, ESA decided to bring the matter before the Court.

III Procedure before the Court

- 10 ESA lodged the present application at the Court Registry on 30 November 2012. The application is based on one plea in law, namely that, by failing to adopt the national measures necessary to fully implement Directive 2008/48 within the time limit prescribed, or to notify ESA thereof, Iceland has failed to fulfil its obligations under Article 27 of the Directive and under Article 7 EEA.
- 11 The statement of defence from Iceland was received on 4 February 2013. Iceland does not contest the declaration sought by ESA.
- 12 However, Iceland requests that the Court orders each party to bear its own costs of the proceedings. In this regard, Iceland indicates that the delay in implementation of the Directive results from the legislative procedure. A draft bill needed for the implementation was discussed in the parliament during the 2012 spring session, but was not passed as law. However, as the same draft bill with minor amendments is currently being debated in parliament, Iceland is confident that the bill will be passed before the spring recess (15 March 2013).

- 13 Pursuant to Article 20 of the Statute of the Court, written observations were received from the European Commission, which fully supports ESA's application.
- 14 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.

IV Findings of the Court

- 15 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-5/11 *ESA v Norway* [2011] EFTA Ct. Rep. 418, paragraph 26 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. An obligation to implement the Directive, and to notify ESA thereof, also follows from Article 27 of the Directive.
- 16 Decision 16/2009 of the EEA Joint Committee of 5 February 2009 entered into force on 1 November 2011. The time limit for EFTA States to adopt the measures necessary to implement the Act expired on the same date.
- 17 The question of whether an 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*, Case E-16/11 *ESA v Iceland*, judgment of 28 January 2013, not yet reported, paragraph 118 and the case law cited). It is undisputed that Iceland did not adopt those measures before the expiry of the time limit given in the reasoned opinion.
- 18 It must therefore be held that, by failing within the time limit prescribed to adopt the measures necessary to implement into its national legislation the Act referred to at point 7h of Annex XIX to the Agreement on the European Economic Area, i.e. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, as adapted to the Agreement by way of Protocol 1 thereto, or to notify ESA thereof, Iceland has failed to fulfil its obligations under Article 27 of the Directive and under Article 7 EEA.

V Costs

- 19 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. Since the EFTA Surveillance Authority has requested that Iceland be ordered to pay the costs and the latter has been unsuccessful, and since none of the exceptions in Article 66(3) apply, Iceland must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by failing within the time limit prescribed to adopt the measures necessary to implement into its national legislation the Act referred to at point 7h of Annex XIX to the Agreement on the European Economic Area, i.e. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, as adapted to the Agreement by way of Protocol 1 thereto, or to notify ESA thereof, Iceland has failed to fulfil its obligations under Article 27 of the Directive and under 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 May 2013.

Gunnar Selvik
Registrar

Carl Baudenbacher
President