



JUDGMENT OF THE COURT

28 September 2015

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

In Case E-12/15,

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

the Principality of Liechtenstein, represented by Dr. Andrea Entner-Koch, Director, and Helen Lorez, Legal Officer, EEA Coordination Unit, acting as Agents,

defendant,

APPLICATION for a declaration that by failing, within the time prescribed, to adopt the measures necessary to implement 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 by way of Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations under the Act and under Article 7 of the Agreement.

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (Judge-Rapporteur), 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, by failing, within the time prescribed, to adopt the measures necessary to implement 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) (“the Directive” or “the Act”) as adapted to the Agreement by way of Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations under the Act and under Article 7 EEA.

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 No 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 Liechtenstein of its obligation to implement the Directive.

7 On 4 April 2014, following an informal request for an update on the implementation, Liechtenstein replied to ESA’s letter stating that a transposition time plan would be made available to ESA within two weeks. On 16 April 2014, Liechtenstein submitted a preliminary transposition plan to ESA, indicating that the implementing measures would enter into force in March 2016. According to Liechtenstein, the reason for this delay was the fact that Liechtenstein’s legislation was based on Austrian legislation and therefore the implementation of the Directive would have to await the Directive being transposed into Austrian law.

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

Liechtenstein 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 a letter of 8 July 2014, Liechtenstein replied to the letter of formal notice. While it acknowledged that the necessary implementing measures had not yet been adopted, it informed ESA that such measures had been finalised in Austria and that, subsequently, Liechtenstein was finalising its draft bill implementing the Directive. The letter also included a new transposition plan, according to which the entry into force of the implementing measures was by the spring of 2016. Accordingly, Liechtenstein indicated that the Directive would not be implemented before that time.
- 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 Liechtenstein 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 a letter of 24 November 2014, Liechtenstein replied to the reasoned opinion, stressing the submissions of its letter of 8 July 2014, in particular regarding the necessity to wait for Austria to adopt the respective implementing measures. In addition, Liechtenstein submitted a new, affirmative time plan, according to which the implementing measures would enter into force on 1 January 2016.
- 12 By a letter of 28 January 2015, ESA sent an informal request to Liechtenstein for an update regarding the current state of implementation.
- 13 On 29 January 2015, Liechtenstein confirmed its intention to follow the time plan submitted on 24 November 2014.
- 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. Liechtenstein's statement of defence was registered at the Court on 19 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 6 July 2015, Liechtenstein also consented to dispense with the oral procedure.
- 16 The applicant, ESA, requests the Court to:
 1. *Declare that the Principality of Liechtenstein 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 Liechtenstein to bear the costs of these proceedings.*

- 17 The defendant, Liechtenstein, 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, Liechtenstein underlines its willingness to implement the Directive “as swiftly as possible” and stresses that the implementing measures are expected to enter into force on 1 January 2016. As to the costs of the case, Liechtenstein 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, 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 Liechtenstein. The EEA/EFTA States find themselves under an obligation of result in that regard (see, *inter alia*, cases E-1/15 and E-2/15, *ESA v Iceland*, cited above, paragraphs 19 and 20 respectively 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 Liechtenstein 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 Liechtenstein 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 by way of Protocol 1 thereto, and under and 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 Liechtenstein be ordered to pay the costs, and the latter has been unsuccessful, and none of the exceptions in Article 66(3) RoP apply, Liechtenstein must therefore be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that the Principality of Liechtenstein 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. **Orders the Principality of Liechtenstein to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 28 September 2015.

Gunnar Selvik
Registrar

Carl Baudenbacher
President