



JUDGMENT OF THE COURT

15 May 2013

(Failure by a Contracting Party to fulfil its obligations – Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community)

In Case E-13/12,

EFTA Surveillance Authority, represented by Xavier Lewis, Director, and Maria Moustakali, 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 limits 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 10 of part 7.1 of Chapter I of Annex I to the Agreement on the European Economic Area (Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community), as adapted to the Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations under Article 15 of the Directive and under 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 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 limits 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 10 of part 7.1 of Chapter I of Annex I to the Agreement on the European Economic Area (“EEA”), Iceland has failed to fulfil its obligations under Article 15 of the Act and under Article 7 EEA. The Act referred to is Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community (OJ 1990 L 92, p. 42) (“the Directive”), as adapted to the Agreement by way of Protocol 1 thereto.

II Facts and pre-litigation procedure

- 2 By Decision No 69/98 of 17 July 1998, which entered into force on 1 January 1999, the EEA Joint Committee incorporated the Directive into Annex I to the EEA Agreement. According to point 2 of the Introductory Part of Chapter I of Annex I, the transitional period for Iceland to make the Directive part of its internal legal order expires 18 months after the entry into force of Decision No 133/2007 of the EEA Joint Committee.
- 3 Decision No 133/2007 was adopted on 26 October 2007. Iceland indicated constitutional requirements for the purposes of Article 103 EEA. The six-month period provided by Article 103 EEA expired on 26 April 2008. Iceland notified a delay on 5 May 2008. However, as the delay was notified after the expiry of the six-month period provided by Article 103 EEA, the Decision became provisionally applicable upon that date. On 17 March 2010, Iceland notified that the constitutional requirements had been fulfilled. Consequently, the Decision entered into force on 1 May 2010.
- 4 In a letter of 15 November 2011, ESA reminded the Icelandic Government that the transitional period expired on 1 November 2011, and of Iceland’s obligation to take the national measures necessary to implement the Directive into the Icelandic legal order.

- 5 On 15 February 2012, ESA issued a letter of formal notice to Iceland. ESA concluded that, in the absence of any information indicating that national measures had been taken to ensure implementation of the Directive by 1 November 2011, Iceland had failed to fulfil its obligation under the Directive and under Article 7 EEA.
- 6 Iceland did not reply to the letter of formal notice.
- 7 By letter of 27 June 2012, ESA delivered a reasoned opinion to Iceland, where it maintained 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 27 August 2012.
- 8 On 28 November 2012, ESA decided to bring the matter before the Court.

III Procedure before the Court

- 9 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 the Directive within the time limit prescribed, or to notify ESA thereof, Iceland has failed to fulfil its obligations under Article 15 of the Directive and under Article 7 EEA.
- 10 The statement of defence from Iceland was received on 4 February 2013. Iceland does not contest the declaration sought by ESA.
- 11 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 is currently being debated in parliament, and Iceland is confident that the bill will be passed before the spring recess (15 March 2013).
- 12 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

- 13 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 15 of the Directive.

- 14 Decision No 133/2007 of the EEA Joint Committee of 26 October 2007 entered into force on 1 May 2010. The transitional period for Iceland to make the Directive part of its internal legal order expired 18 months after that date, i.e. 1 November 2011.
- 15 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 the measures necessary to make the Directive part of its internal legal order before the expiry of the time limit given in the reasoned opinion.
- 16 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 10 of part 7.1 of Chapter I of Annex I to the Agreement on the European Economic Area, i.e. Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community, 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 15 of the Directive and under Article 7 EEA.

V Costs

- 17 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 10 of part 7.1 of Chapter I of Annex I to the Agreement on the European Economic Area, i.e. Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community, 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 15 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