



JUDGMENT OF THE COURT

28 January 2015

(Failure by a Contracting Party to fulfil its obligations – Failure to implement – Directive 2009/48/EC on the safety of toys)

In Case E-14/14,

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 to adopt, and/or to notify the EFTA Surveillance Authority forthwith of, the measures necessary to implement the Act referred to at point 1a of Chapter XXIII of Annex II to the Agreement on the European Economic Area (Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys), as adapted to the EEA Agreement by way of Protocol 1 thereto and by Joint Committee Decision No 127/2012 of 13 July 2012, within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA 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 application lodged at the Court Registry on 17 July 2014, 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 to adopt, and/or to notify ESA forthwith of, the measures necessary to implement the Act referred to at point 1a of Chapter XXIII of Annex II to the Agreement on the European Economic Area, that is Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ 2009 L 170, p. 1) (“the Directive” or “the Act”), as adapted to the EEA Agreement by way of Protocol 1 thereto and by Joint Committee Decision No 127/2012 of 13 July 2012 (OJ 2012 L 309, p. 6 and EEA Supplement No 63, p. 7) (“Decision 127/2012”), within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 EEA.

II Law

- 2 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.

3 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.

- 4 Decision 127/2012 amended Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement by adding the Directive to point 1a of Chapter XXIII of the Annex.
- 5 The Directive lays down rules on the safety of toys and on their free movement in the internal market. It applies to products designed or intended for use in play by children under 14 years of age. Specifically, the Directive sets out the obligations of manufacturers, importers and distributors to comply with essential safety requirements when placing a toy on the market, as well as detailed rules concerning the conformity assessment of such toys with the safety requirements prescribed by the Directive.
- 6 According to Article 54 of the Directive, read in conjunction with Decision 127/2012, the EEA/EFTA States were required to adopt the measures necessary to implement the Directive by 1 April 2013 and to notify ESA forthwith the text of those measures.

III Facts and pre-litigation procedure

- 7 By letter of 27 March 2013, ESA reminded Iceland of its obligation to implement the Directive into its legal order by 1 April 2013.
- 8 By emails dated 2 and 6 September 2013, ESA made informal requests for information on the status of the implementation of the Directive in Iceland. Pursuant to these requests, Iceland informally stated that the precise implementation date was uncertain, but that it aimed to implement the Directive at the beginning of 2014.
- 9 On 11 December 2013, having received no further information from Iceland, ESA issued a letter of formal notice. 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 obligations under the Directive and under Article 7 EEA.
- 10 Iceland did not formally reply to this letter. However, by email of 13 December 2013, Iceland stated that it aimed to finalise the implementation process before June 2014.

- 11 On 5 March 2014, having received no further information, 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 notification thereof, which would be no later than 5 May 2014.
- 12 Iceland did not formally reply to the reasoned opinion. However, by email of 12 March 2014, Iceland indicated that it aimed to finalise the implementation process by the end of July 2014.
- 13 The time limit of 5 May 2014 expired without any further action having been taken by Iceland.
- 14 By email of 3 June 2014, ESA asked for an update on the implementation of the Directive in Iceland. On the same date, Iceland replied by email restating that it aimed to finalise the implementation process by the end of July 2014.
- 15 On 2 July 2014, having received no further information, ESA decided to bring the matter before the Court pursuant to Article 31(2) SCA.

IV Procedure and forms of order sought

- 16 On 17 July 2014, ESA lodged its application at the Court Registry. Iceland submitted a statement of defence which was registered at the Court on 30 September 2014. By letter dated 16 October 2014, and registered at the Court on 17 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. On 20 November 2014, Iceland also consented to dispense with the oral procedure.
- 17 The applicant, ESA, requests the Court to:
 1. *Declare that by failing to adopt, and/or to notify the EFTA Surveillance Authority forthwith of, all the measures necessary to implement the Act referred to at point 1a of Chapter XXIII of Annex II to the Agreement on the European Economic Area (Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys), as adapted to the EEA Agreement by way of Protocol 1 and by Joint Committee Decision No 127/2012 thereto, within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement.*
 2. *Order Iceland to bear the costs of these proceedings.*
- 18 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.

- 19 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 in accordance with Article 41(2) of the Rules of Procedure (“RoP”).

V Findings of the Court

- 20 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-18/14 *ESA v Iceland*, judgment of 10 November 2014, not yet reported, paragraph 17, and the case law cited).
- 21 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. 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.
- 22 Decision 127/2012 entered into force on 1 April 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 23 The question of whether an EEA/EFTA State has failed to fulfil its obligations must be determined by reference to the situation in the EEA/EFTA 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 did not adopt measures necessary to implement the Directive before the expiry of the time limit given in the reasoned opinion.
- 24 Since Iceland did not in fact implement the Directive within the time limit 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.
- 25 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 1a of Chapter XXIII of Annex II to the Agreement on the European Economic Area (Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys), as adapted to the EEA Agreement by way of Protocol 1 thereto and by Joint Committee Decision No 127/2012 of 13 July 2012, Iceland has failed to fulfil its obligations under the Directive and under Article 7 EEA.

VI Costs

- 26 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.
- 27 On those grounds,

THE COURT

hereby:

- 1. Declares that by failing, within the time prescribed, to adopt the measures necessary to implement the Act referred to at point 1a of Chapter XXIII of Annex II to the Agreement on the European Economic Area (Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys), as adapted to the EEA Agreement by way of Protocol 1 thereto and by Joint Committee Decision No 127/2012 of 13 July 2012, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement.**
- 2. Orders Iceland to bear the costs of these proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 28 January 2015.

Gunnar Selvik
Registrar

Carl Baudenbacher
President