



JUDGMENT OF THE COURT

28 January 2015

(Failure by a Contracting Party to fulfil its obligations – Failure to implement – Regulation (EU) No 1007/2011 on textile fibre names and related labelling and marking of the fibre composition of textile products – Commission Delegated Regulation (EU) No 286/2012)

In Case E-15/14,

EFTA Surveillance Authority, represented by Markus Schneider, Deputy Director, and Janne Tysens 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 Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement by failing, within the time prescribed, to adopt the measures necessary to make part of its internal legal order the Act referred to at point 4d of Chapter XI of Annex II to that Agreement (Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council, as amended by Commission Delegated Regulation (EU) No 286/2012 of 27 January 2012 amending in order to include a new textile fibre name, Annex I, and, for the purposes of their adaptation to technical progress, Annexes VIII and IX to Regulation (EU) No 1007/2011 of the European Parliament and of the Council on textile fibre names and related labelling and marking of the fibre composition of textile products), as adapted to the EEA Agreement by way of Protocol 1 thereto.

THE COURT,

composed of: Carl Baudenbacher (Judge-Rapporteur), President, Per Christiansen 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 18 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 the measures necessary to implement the Act referred to at point 4d of Chapter XI of Annex II to the Agreement on the European Economic Area, that is Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council (“Regulation 1007/2011”), as amended by Commission Delegated Regulation (EU) No 286/2012 of 27 January 2012 amending in order to include a new textile fibre name, Annex I, and, for the purposes of their adaptation to technical progress, Annexes VIII and IX to Regulation (EU) No 1007/2011 of the European Parliament and of the Council on textile fibre names and related labelling and marking of the fibre composition of textile products (“Regulation 286/2012”), Iceland has failed to fulfil its obligations under Article 7 EEA.

II Facts and pre-litigation procedure

Regulation 1007/2011

- 2 Decision No 158/2012 of 28 September 2012 of the EEA Joint Committee (OJ 2012 L 341, p. 8 and EEA Supplement No 70, p. 9) (“Decision 158/2012”) amended Chapter XI of Annex II to the EEA Agreement by adding, as new point 4d, Regulation 1007/2011.

- 3 Iceland indicated constitutional requirements for the purposes of Article 103 EEA. The six-month period for notification prescribed in Article 103 EEA expired on 28 March 2013.
- 4 On 4 March 2013 Iceland notified that the constitutional requirements had been fulfilled. Consequently, Decision 158/2012 entered into force on 1 May 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement Regulation 1007/2011 expired on the same date.
- 5 By letter of 30 May 2013, ESA reminded Iceland of its obligation to notify the measures taken to implement Regulation 1007/2011 into the Icelandic legal order, and requested Iceland to confirm it had done so by 20 June 2013.
- 6 By emails of 26 and 27 August 2013, Iceland informed ESA that it aimed to present a bill to Parliament implementing Regulation 1007/2011 into the Icelandic legal system, without giving an exact timeframe.
- 7 On 18 September 2013, having received no information from Iceland regarding the implementation of Regulation 1007/2011 into the Icelandic legal order, ESA issued a letter of formal notice. ESA concluded that, by failing to adopt the national measures to implement Regulation 1007/2011, Iceland had failed to fulfil its obligations under Article 7 EEA.
- 8 By email of 25 September 2013, Iceland informed ESA that it intended to implement Regulation 1007/2011 before the end of 2013.
- 9 On 18 December 2013, 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 necessary measures to comply with the reasoned opinion within two months following notification thereof, i.e. no later than 18 February 2014.
- 10 By email of 7 January 2014, Iceland informed ESA that it intended to implement Regulation 1007/2011 before June 2014.
- 11 By email of 29 April 2014, ESA invited Iceland to provide updated information on the matter. By email of the same date, Iceland expressed that Regulation 1007/2011 would be implemented by the end of June 2014.
- 12 By email of 5 June 2014, ESA again requested information from Iceland on the implementation of Regulation 1007/2011. Iceland replied, by email of the same date, that it intended to implement Regulation 1007/2011 by August 2014.
- 13 On 2 July 2014, not having received information on any measures adopted to implement Regulation 1007/2011, ESA decided to bring the matter before the Court pursuant to Article 31(2) SCA.

Regulation 286/2012

- 14 Decision No 210/2012 of 7 December 2012 of the EEA Joint Committee (OJ 2013 L 81, p. 10 and EEA Supplement No 18, p. 12) (“Decision 210/2012”) amended Chapter XI of Annex II to the EEA Agreement by adding Regulation 286/2012 to point 4d in Chapter XI of Annex II.
- 15 Iceland indicated constitutional requirements for the purposes of Article 103 EEA. The six-month period for notification prescribed in Article 103 EEA expired on 7 June 2013.
- 16 On 3 June 2013, Iceland notified that the constitutional requirements had been fulfilled. Consequently, Decision 210/2012 entered into force on 1 August 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement Regulation 286/2012 expired on the same date.
- 17 By letter of 26 August 2013, ESA reminded Iceland of its obligation to notify the measures taken to implement Regulation 286/2012 into the Icelandic legal order, and requested Iceland to confirm it had done so by 16 September 2013.
- 18 By emails of 26 and 27 August 2013, Iceland informed ESA that it aimed to present a bill to Parliament implementing Regulation 286/2012 into the Icelandic legal system, without giving an exact timeframe.
- 19 On 11 December 2013, having received no information from Iceland regarding the implementation of Regulation 286/2012 into the Icelandic legal order, ESA issued a letter of formal notice. ESA concluded that, by failing to adopt the national measures to implement the Act, Iceland had failed to fulfil its obligations under Article 7 EEA.
- 20 Iceland did not reply to the letter of formal notice.
- 21 On 5 March 2014, 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 necessary measures to comply with the reasoned opinion within two months following notification thereof, i.e. no later than 5 May 2014.
- 22 By email of 12 March 2014, Iceland informed ESA that it intended to implement Regulation 286/2012 before May 2014.
- 23 By email of 4 July 2014, ESA invited Iceland to provide updated information on the matter. By email of the same date, Iceland stated that it intended to implement Regulation 286/2012 by 15 September 2014.

- 24 On 16 July 2014, having not received information on any measures adopted to implement Regulation 286/2012, ESA decided to bring the matter before the Court pursuant to Article 31(2) SCA.

III Procedure and forms of order sought

- 25 On 18 July 2014, ESA lodged the present application at the Court Registry.

- 26 The applicant, ESA, requests the Court to:

1. Declare that Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement by failing, to adopt the measures necessary to make part of its internal legal order, within the time prescribed, the Act referred to at point 4d of Chapter XI of Annex II to that Agreement, Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council, as amended by Commission Delegated Regulation (EU) No 286/2012 of 27 January 2012 amending in order to include a new textile fibre name, Annex I, and, for the purposes of their adaptation to technical progress, Annexes VIII and IX to Regulation (EU) No 1007/2011 of the European Parliament and of the Council on textile fibre names and related labelling and marking of the fibre composition of textile products, as adapted to the EEA Agreement by way of Protocol 1 thereto.

2. Order Iceland to bear the costs of these proceedings.

- 27 On 1 October 2014, Iceland's statement of defence was registered at the Court. The defendant, Iceland, submits that the facts of the case as set out in the application are correct and undisputed. Iceland does not dispute the declaration sought by ESA.
- 28 In a letter 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.
- 29 By email of 20 November 2014, Iceland also consented to dispense with the oral procedure.
- 30 After having received the 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").

IV Findings of the Court

- 31 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-8/14 *ESA v Iceland*, judgment of 10 November 2014, not yet reported, paragraph 17, and the case law cited).
- 32 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. 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 to implement regulations as such.
- 33 Decision 158/2012 entered into force on 1 May 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement Regulation 1007/2011 expired on the same date.
- 34 Decision 210/2012 entered into force on 1 August 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement Regulation 286/2012 expired on the same date.
- 35 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 by the expiry of the time limit given in the reasoned opinion concerning Regulation 1007/2011, Iceland had not adopted measures so as to implement Regulation 1007/2011.
- 36 Further, it is undisputed that by the expiry of the time limit given in the reasoned opinion concerning Regulation 286/2012, Iceland had not adopted measures so as to implement Regulation 286/2012.
- 37 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 4d of Chapter XI of Annex II to the Agreement on the European Economic Area (Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council as amended by Commission Delegated Regulation (EU) No 286/2012 of 27 January 2012 amending in order to include a new textile fibre name, Annex I, and, for the purposes of their adaptation to technical progress Annexes VIII and IX to Regulation (EU) No 1007/2011 of the European Parliament and of the Council

on textile fibre names and related labelling and marking of the fibre composition of textile products), as adapted to the EEA Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations under Article 7 EEA.

V Costs

- 38 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 since none of the exceptions in Article 66(3) 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 Article 7 of the EEA Agreement by failing to adopt the measures necessary to make part of its internal legal order within the time prescribed, the Act referred to at point 4d of Chapter XI of Annex II to that Agreement, Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council, as amended by Commission Delegated Regulation (EU) No 286/2012 of 27 January 2012 amending in order to include a new textile fibre name, Annex I, and, for the purposes of their adaptation to technical progress, Annexes VIII and IX to Regulation (EU) No 1007/2011 of the European Parliament and of the Council on textile fibre names and related labelling and marking of the fibre composition of textile products, as adapted to the EEA Agreement by way of Protocol 1 thereto.**
2. **Orders Iceland to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 28 January 2015.

Gunnar Selvik
Registrar

Carl Baudenbacher
President