



JUDGMENT OF THE COURT

6 December 2013

(Failure by a Contracting Party to fulfil its obligations – Directive 2001/81/EC – Failure to implement)

In Case E-18/13,

EFTA Surveillance Authority, represented by Xavier Lewis, Director, and Auður Ýr Steinarsdóttir and Maria Moustakali, Officers, Department of Legal & Executive Affairs, acting as Agents,

applicant,

v

Iceland, represented by Anna Katrín Vilhjálmsdóttir, First Secretary, Ministry for Foreign Affairs, acting as Agent,

defendant,

APPLICATION for a declaration that by failing, within the time prescribed to adopt or to notify the EFTA Surveillance Authority forthwith of all measures necessary to implement the Act referred to at point 21ar of Annex XX to the Agreement on the European Economic Area, that is Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, as adapted to the Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations under the Act 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 10 July 2013, 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 ESA forthwith of all measures necessary to implement the Act referred to at point 21ar of Annex XX to the Agreement on the European Economic Area, that is Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ 2001 L 309, p. 22) (“the Directive”), as adapted to the Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations under the Act and under Article 7 EEA.

II Facts and pre-litigation procedure

- 2 Decision No 149/2009 of 4 December 2009 of the EEA Joint Committee (“Decision 149/2009”) amended Annex XX to the EEA Agreement by adding the Directive to point 21ar of the Annex. Iceland indicated constitutional requirements for the purposes of Article 103 EEA.
- 3 As Iceland notified ESA on 10 November 2011 that the constitutional requirements had been fulfilled, Decision 149/2009 entered into force on 1 January 2012. The time limit for EEA/EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 4 By letter of 15 November 2011, ESA reminded the Icelandic Government of its obligations to implement the Directive into its legal order by 1 January 2012. On 16 May 2012, 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 Act and under Article 7 EEA.
- 5 Iceland did not reply to the letter of formal notice.
- 6 On 3 October 2012, 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 the notification thereof, that is no later than 3 December 2012.

- 7 On 6 December 2012, Iceland submitted observations on the reasoned opinion. It was explained that a bill which included provisions to transpose the Directive was presented to the Parliament during the 2011-2012 parliamentary session. However, the bill had not been adopted by the Parliament during that session and had therefore been put forward again in the 2012-2013 session. It was expected that the bill would be adopted before that session came to an end in mid-March of 2013.
- 8 On 3 April 2013, in response to an informal inquiry by ESA, Iceland informed ESA that the Parliament had not adopted the bill and that the bill would be presented again at the following parliamentary session. Due to the upcoming election in Iceland, it was not possible to predict whether there would be a summer session. On 15 May 2013, it was still not clear whether there would be a summer parliamentary session.
- 9 On 12 June 2013, having neither received information on any measures adopted to implement the Directive, nor being in possession of any information which could indicate that the Directive had nevertheless been implemented, ESA decided to bring the matter before the Court pursuant to Article 31(2) SCA.

III Procedure and forms of order sought

- 10 ESA lodged the present application at the Court Registry on 10 July 2013. Iceland submitted a statement of defence which was registered at the Court on 26 September 2013. The reply from ESA was registered at the Court on 2 October 2013. By email of 8 October 2013, Iceland waived its right to submit a rejoinder.
- 11 The applicant requests the Court to:
1. *Declare that by failing (i) to adopt, or (ii) to notify the EFTA Surveillance Authority forthwith of, all the measures necessary to implement the Act referred to at point 21a of Annex XX to the Agreement on the European Economic Area (Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants), as adapted to the Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the Agreement.*
 2. *Order Iceland to bear the costs of these proceedings.*
- 12 Iceland does not dispute the declaration sought by the applicant. However, in the defendant's view the delay in implementation results from legislative procedure and requests the Court to order each party to bear its own costs of the proceedings, due to the circumstances of the case.

- 13 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.

IV Findings of the Court

- 14 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-11/13 *ESA v Iceland*, judgment of 15 November 2013, not yet reported, paragraph 19, 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.
- 15 Decision No 149/2009 of the EEA Joint Committee of 4 December 2009 entered into force on 1 January 2012. The time limit for EFTA States to adopt the measures necessary to implement the Directive expired on the same date. Decision No 149/2009 did not set a separate EEA time limit for the implementation of the Directive into national law.
- 16 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*, *ESA v Iceland*, cited above, paragraph 21, 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.
- 17 Since Iceland did not 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.
- 18 It must therefore be held that Iceland has failed to fulfil its obligations under the Directive, and under Article 7 EEA, by failing, within the time limit prescribed, to adopt the measures necessary to implement the Directive.

V Costs

- 19 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 the EFTA Surveillance Authority 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.

On those grounds,

THE COURT

hereby:

- 1. Declares that Iceland has failed to fulfil its obligations under the Act referred to at point 21ar of Annex XX to the Agreement on the European Economic Area (Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants), as adapted to the Agreement by way of Protocol 1 thereto, and under Article 7 of the Agreement, by failing to adopt all the measures necessary to implement the Act within the time prescribed.**
- 2. Orders Iceland to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 6 December 2013.

Gunnar Selvik
Registrar

Carl Baudenbacher
President