



JUDGMENT OF THE COURT

31 March 2015

*(Failure by an EEA/EFTA State to fulfil its obligations – Failure to implement –
Directive 2010/30/EU on product information of energy consumption)*

In Case E-21/14,

EFTA Surveillance Authority, represented by Markus Schneider, Deputy Director, and Clémence Perrin, 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 prescribed, to adopt and/or to notify the EFTA Surveillance Authority forthwith of, the measures necessary to implement the Act referred to at point 4 of Chapter IV of Annex II to the Agreement on the European Economic Area (Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products), 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 on the European Economic Area.

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 an application lodged at the Court Registry on 22 October 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”), seeking a declaration from the Court that by failing, within the time prescribed, to adopt and/or to notify ESA forthwith of, the measures necessary to implement the Act referred to at point 4 of Chapter IV of Annex II to the Agreement on the European Economic Area, that is Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJ 2010 L 153, p. 1) (“the Directive” or “the Act”), 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 on the European Economic Area.

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 No 217/2012 of 7 December 2012 of the EEA Joint Committee (OJ 2013 L 81, p. 17 and EEA Supplement No 18, p. 19) (“Decision 217/2012”) added the Directive to point 4 of Chapter IV of Annex II to the EEA Agreement.
- 5 Iceland indicated constitutional requirements for the purposes of Article 103 EEA. On 10 April 2013, Iceland notified that the constitutional requirements had been fulfilled. Consequently, the Directive entered into force on 1 June 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 6 The Directive sets out an obligation for suppliers of energy-related products to provide accurate, relevant and comparable information on the specific energy consumption in order to influence the consumer’s choice in favour of those products which consume less energy.

III Facts and pre-litigation procedure

- 7 By letter of 16 May 2013, ESA reminded Iceland of its obligation to notify the measures taken to implement the Directive into the national legal order by 1 June 2013.
- 8 On 4 June 2013, Iceland replied that the implementation of the Directive would be delayed due to necessary changes in legislation. The letter indicated that a bill was under preparation and was expected to be introduced to Parliament in autumn.
- 9 On 18 September 2013, ESA issued a letter of formal notice, concluding that Iceland had failed to fulfil its obligations under the Directive and Article 7 EEA by failing to adopt or, in any event, to inform ESA of the national measures it had adopted to implement the Directive. Iceland did not reply to the letter of formal notice.
- 10 On 18 December 2013, 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 Iceland to take the measures necessary to comply with the reasoned opinion within two months following the notification. Iceland did not reply to the reasoned opinion.
- 11 On 26 May 2014, Iceland informally notified ESA that the adoption of the implementing act would be delayed until the autumn session of Parliament. This was reiterated by Iceland both in August and September 2014.

- 12 On 15 October 2014, having received no further information with respect to the implementation of the Directive, 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

- 13 ESA lodged the present application at the Court Registry on 22 October 2014. Iceland's statement of defence was registered at the Court on 30 December 2014. By letter of 15 January 2015, ESA waived its right to submit a reply and consented to dispense with the oral procedure should the Court wish to do so. By letter of 30 January 2015, Iceland also consented to dispense with the oral procedure.

- 14 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 4 Chapter IV of Annex II to the Agreement on the European Economic Area (Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products), 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 on the European Economic Area.*
2. *Order Iceland to bear the costs of these proceedings.*

- 15 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.

- 16 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

- 17 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-14/14 *ESA v Iceland*, judgment of 28 January 2015, not yet reported, paragraph 20 and case law cited).

- 18 Under Article 7 EEA, the EEA/EFTA States 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. An obligation to implement the

Directive also follows from Article 16 of the Directive. 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 of the EEA Agreement also in Iceland. The EEA/EFTA States find themselves under an obligation of result in that regard (see, *inter alia*, *ESA v Iceland*, cited above, paragraph 21).

- 19 Decision 217/2012 entered into force on 1 June 2013. The time limit for the EEA/EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 20 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 23 and case law cited). It is undisputed that Iceland had not adopted the measures necessary to implement the Directive by the expiry of the time limit given in the reasoned opinion.
- 21 Since Iceland did not implement the Directive within the time 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.
- 22 It must therefore be held that Iceland has failed to fulfil its obligations under the Act referred to at point 4 of Chapter IV of Annex II to the Agreement on the European Economic Area (Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products), 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.

VI Costs

- 23 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.

On those grounds,

THE COURT

hereby:

1. **Declares that Iceland has failed to fulfil its obligations under the Act referred to at point 4 of Chapter IV of Annex II to the Agreement on the European Economic Area (Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products), as adapted to the Agreement by way of Protocol 1, and under Article 7 of the Agreement, by failing to adopt 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 31 March 2015.

Gunnar Selvik
Registrar

Per Christiansen
Acting President