



JUDGMENT OF THE COURT

29 October 2008

(Failure by a Contracting Party to fulfil its obligations – Regulation (EC) No 648/2004 on detergents)

In Case E-3/08,

EFTA Surveillance Authority, represented by Niels Fenger, Director, and Florence Simonetti, Officer, in the Department of Legal & Executive Affairs, acting as Agents, Brussels, Belgium,

Applicant,

v

The Republic of Iceland, represented by Sesselja Sigurðardóttir, First Secretary and Legal Officer, Ministry for Foreign Affairs, acting as Agent, Reykjavik, Iceland,

Defendant,

APPLICATION for a declaration that, by failing to adopt the measures necessary to make the Act referred to at point 12u of Chapter XV of Annex II to the EEA Agreement, i.e. Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, as adapted to the EEA Agreement by Protocol 1 thereto, part of its internal legal order within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement.

THE COURT,

composed of: Carl Baudenbacher, President, Thorgeir Örlygsson and Henrik Bull (Judge-Rapporteur), Judges,

Registrar: Skúli Magnússon,

having regard to the written pleadings of the parties,

having decided to dispense with the oral procedure,

gives the following

Judgment

I The application

- 1 By application lodged at the Court Registry on 21 February 2008, the EFTA Surveillance Authority (hereinafter “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 (hereinafter the “SCA”), for a declaration that, by failing to adopt the measures necessary to make the Act referred to at point 12u of Chapter XV of Annex II to the EEA Agreement, part of its internal legal order within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 7 EEA. The Act referred to is Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, as adapted by way of Protocol 1 to the EEA Agreement.

II Facts and pre-litigation procedure

- 2 Decision 144/2005 of 2 December 2005 of the EEA Joint Committee amended Annex II to the EEA Agreement by adding Regulation (EC) 648/2004 to point 12u of Chapter XV of that Annex. Article 3 of this decision requires the EFTA States to adopt the measures necessary to make this Regulation part of its internal legal order by 3 December 2005, and to notify ESA thereof.
- 3 By letter of 6 April 2006, ESA invited the Government of Iceland to provide information concerning measures by which Regulation (EC) No 648/2004 had been made part of the Icelandic internal legal order.
- 4 At a meeting held in Reykjavík on 12 June 2006, the Government of Iceland informed ESA that it would submit a proposal for a new Act on Chemicals to Parliament in October 2006, and expected its adoption during spring 2007. Iceland further informed ESA that, once the new Act on Chemicals had been adopted, Regulation (EC) No 648/2004 would be incorporated by means of an Icelandic regulation concerning detergents.
- 5 Having received no other information allowing it to conclude that Regulation (EC) No 648/2004 had been made part of the Icelandic internal legal order, ESA decided to initiate proceedings under Article 31 SCA and, on 7 November 2006, a letter of formal notice was sent to the Government of Iceland, setting out ESA's

conclusions on the matter and inviting the Government to submit its observations within three months of receipt.

- 6 By letter of 16 April 2007, the Government of Iceland informed ESA that a proposal for a new Act on Chemicals would be submitted to Parliament in October 2007, with expected adoption in December 2007 or during spring 2008. At a meeting held in Reykjavík on 24 May 2007, Iceland confirmed this intention and also confirmed that, once the new Act had been adopted, Regulation (EC) No 648/2004 would be incorporated immediately.
- 7 Not being in possession of any other information enabling it to conclude that the measures necessary to make Regulation (EC) No 648/2004 part of the Icelandic legal order had, nevertheless, been adopted by Iceland, ESA delivered, on 4 July 2007, a reasoned opinion concluding that Iceland had failed to fulfil its obligations under Article 7 EEA. The Government of Iceland was requested to take the measures necessary to comply with the reasoned opinion within a time-limit of three months following notification thereof.
- 8 By letter of 4 October 2007, the Government of Iceland provided its observations on the reasoned opinion, and informed ESA that the delay in incorporating Regulation (EC) No 648/2004 was mainly due to the decision taken to incorporate also another Regulation by means of the new Act on Chemicals. Iceland indicated that the proposal for a new Act would be submitted to Parliament later in October 2007 and that the Government would emphasise the importance of the bill being adopted before the end of 2007.

III Procedure before the Court

- 9 ESA lodged the present application at the Court Registry on 21 February 2008. The statement of defence from the Government of Iceland was received on 23 April 2008. On 19 May 2008, ESA submitted a reply to the defence lodged by Iceland.
- 10 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 Arguments of the parties

- 11 The application is based on one plea in law, namely that by failing to adopt the national measures necessary to make the Act referred to at point 12u of Chapter XV of Annex II to the EEA Agreement, i.e. Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, part of its internal legal order within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 7 EEA.
- 12 It is undisputed by the Government of Iceland that the necessary national implementation measures were not adopted within the time-limit prescribed. Moreover, in its statement of defence, the Government does not dispute the order

sought by ESA. The Government nevertheless requests the Court to order each party to bear its own costs of the proceedings. No reasons are submitted to substantiate this request.

- 13 As a factual observation, the Government of Iceland has clarified that the delay in implementation relates to legislative steps which had to be taken before the Regulation could be implemented.
- 14 In its reply to Iceland's statement of defence, ESA contests the request for sharing of costs in this case. It is submitted that according to the general rule under Article 66(2) of the Rules of Procedure Iceland must be ordered to bear the costs and that none of the exceptions in Article 66(3) apply.

V Findings of the Court

- 15 Under Article 7 EEA, all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee, shall be, or be made, part of the internal legal order of the Contracting Parties. In this context, the Court notes that 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 Case E-3/07 *EFTA Surveillance Authority v Iceland* [2007] EFTA Ct. Rep. 356, at paragraph 12).
- 16 Article 19 of Regulation (EC) No 648/2004 sets the date of entry into force in the EC Member States to 8 October 2005. Decision 144/2005 of the EEA Joint Committee, incorporating the Regulation into the EEA Agreement, entered into force 3 December 2005.
- 17 Further, Decision 144/2005 did not set an EEA time limit for the implementation of the Regulation into national law. Thus, Iceland was obliged to adopt the national measures necessary to make the Regulation part of its internal legal order by the date on which the Decision entered into force.
- 18 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 Case E-3/07 *EFTA Surveillance Authority v Iceland*, cited above, at paragraph 14). It is undisputed that Iceland did not adopt those measures before the expiry of the time-limit given in the reasoned opinion.
- 19 Further, Article 7 EEA does not allow for the Contracting Parties to plead provisions, practices or circumstances existing in their internal legal order in order to justify a failure to comply with the obligations and time-limits laid down in a decision by the EEA Joint Committee to add a regulation to the EEA Agreement (see for comparison Case E-6/06 *EFTA Surveillance Authority v Liechtenstein* [2007] EFTA Ct. Rep. 238, at paragraph 21).

- 20 It must therefore be held that, by failing to adopt, within the prescribed time-limit, the national measures necessary to make the Act referred to at point 12u of Chapter XV of Annex II to the EEA Agreement, i.e. Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, as adapted by way of Protocol 1 to the EEA Agreement, part of its internal legal order, Iceland has failed to fulfil its obligations under Article 7 EEA.

VI Costs

- 21 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 the Republic of 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 to adopt, within the time-limit prescribed, the measures necessary to make the Act referred to at point 12u of Chapter XV of Annex II to the EEA Agreement, i.e. Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, as adapted to the EEA Agreement by Protocol 1 thereto, part of its internal legal order, the Republic of Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement.**
2. **Orders the Republic of Iceland to bear the costs of the proceedings.**

Carl Baudenbacher

Thorgeir Örlygsson

Henrik Bull

Delivered in open court in Luxembourg on 29 October 2008.

Skúli Magnússon
Registrar

Carl Baudenbacher
President