



JUDGMENT OF THE COURT

14 May 2019

*(Failure by an EFTA State to fulfil its obligations – Failure to implement –
Regulation (EU) 2015/1051)*

In Case E-3/18,

EFTA Surveillance Authority, represented by Carsten Zatschler, Catherine Howdle and Ingibjörg-Ólög Vilhjálmsdóttir, members of its Department of Legal & Executive Affairs, acting as Agents,

applicant,

v

Iceland, represented by Gautur Sturluson, Specialist, Ministry for Foreign Affairs, acting as Agent,

defendant,

APPLICATION for a declaration that Iceland has failed to adopt the measures necessary to make the Act referred to at point 7ja of Annex XIX to the Agreement on the European Economic Area (Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes) as adapted by Protocol 1 to the Agreement, part of its internal legal order as required by Article 7 of the Agreement,

THE COURT,

composed of: Páll Hreinsson, President, Per Christiansen (Judge-Rapporteur) and Bernd Hammermann, Judges,

Registrar: Ólafur Jóhannes Einarsson,

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 Decision of the EEA Joint Committee No 194/2016 of 23 September 2016 (OJ 2018 L 80, p. 37, and Icelandic EEA Supplement 2018 No 19, p. 51) (“Decision No 194/2016”), three legal acts concerning consumer dispute resolution were incorporated into the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”). These are Directive 2013/11/EU on alternative dispute resolution for consumer disputes, Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes, and Regulation (EU) 2015/1051 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013.
- 2 By applications lodged at the Court’s Registry on 9 November 2018, the EFTA Surveillance Authority (“ESA”) brought three actions 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”) concerning Iceland’s alleged failure to implement these acts into its internal legal order: Case E-4/18 concerns Regulation (EU) No 524/2013; Case E-5/18 concerns Directive 2013/11/EU. The present case concerns Regulation (EU) 2015/1051.
- 3 ESA seeks a declaration from the Court that Iceland has failed to adopt the measures necessary to make the Act referred to at point 7ja of Annex XIX to the EEA Agreement, that is Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes (OJ 2015 L 171, p. 1, and Icelandic EEA Supplement 2016 No 57, p. 73) (“the Act” or “the Regulation”), as adapted

by Protocol 1 to the EEA Agreement, part of its internal legal order as required by Article 7 EEA.

II Law

4 Article 3 EEA reads:

The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.

They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.

...

5 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:

(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;

...

6 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.

7 Decision No 194/2016 amended Annex XIX (Consumer protection) to the EEA Agreement by adding the Regulation as point 7ja of the Annex. Constitutional requirements for the purposes of Article 103 EEA were indicated by Iceland, Liechtenstein and Norway. By May 2017, all three States had notified that their constitutional requirements had been fulfilled. Therefore, Decision No 194/2016 entered into force on 1 July 2017. The time limit for the EFTA States to adopt the measures necessary to make the Regulation part of their legal order expired on the same date.

III Facts and pre-litigation procedure

- 8 On 2 August 2017, ESA wrote to Iceland inviting it to confirm that it had taken the measures necessary to incorporate the Act as such into its legal order and asked for a copy of the national measures to be included. Iceland did not respond to that letter.
- 9 On 22 November 2017, ESA issued a letter of formal notice concluding that Iceland had failed to fulfil its obligations under Article 7 EEA, by failing to adopt the measures necessary to make the Regulation part of its internal legal order.
- 10 On 22 January 2018, Iceland responded to the letter of formal notice and indicated that the legal acts covered by Decision No 194/2016 would be implemented in the autumn of 2018.
- 11 On 21 February 2018, 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 necessary measures to comply with the reasoned opinion within two months of its receipt, that is, no later than 23 April 2018. On the same date, ESA also delivered two other reasoned opinions concerning Directive 2013/11/EU and Regulation (EU) No 524/2013, respectively, which also set the time limit to 23 April 2018.
- 12 On 22 April 2018, Iceland replied to the reasoned opinion by letter which was received by ESA on 30 April 2018. Iceland explained that, following the rejection of its previous draft bill after consultation, inter alia, with the Icelandic Consumer Agency, it intended to submit a new draft bill to Parliament. Iceland requested ESA to extend the deadline until 10 May 2018, by which date Iceland would be able to provide ESA with a more detailed timeline for the incorporation of the new bill, anticipating the incorporation of the bill to occur during autumn 2018.
- 13 On 2 May 2018, ESA replied to Iceland noting that a request for an extension of the deadline could only be granted if it was made within the deadline set out in the reasoned opinion. However, ESA agreed to take no further action in the case concerning the Regulation until 10 May 2018, provided that Iceland would send ESA the detailed timeline for incorporation before that date.
- 14 On 9 May 2018, Iceland replied to ESA's reasoned opinion. Iceland explained that there had been confusion in the communication regarding the three cases since Iceland had considered them to be part of the same assignment. Iceland set out a timeline whereby a bill would be presented to Parliament in October 2018. As a result of that law, Directive 2013/11/EU would be implemented in November or December 2018, and both Regulation (EU) No 524/2013 and the Regulation would be incorporated shortly thereafter.
- 15 By an email of 4 September 2018, Iceland notified ESA of a delay in the legislative procedure. The bill would be presented to Parliament in January 2019, with

Directive 2013/11/EU being implemented in February 2019 and both Regulation (EU) No 524/2013 and the Regulation being incorporated shortly thereafter.

- 16 Since Iceland did not comply with the deadline set out in the reasoned opinion concerning the Regulation, ESA decided, on 24 October 2018, to bring the matter before the Court pursuant to the second paragraph of Article 31 SCA.

IV Procedure and forms of order sought

- 17 ESA lodged the present application at the Court’s Registry on 9 November 2018. ESA requests the Court to:

1. *Declare that Iceland has failed to adopt the measures necessary to make the Act referred to at point 7ja of Annex XIX to the Agreement on the European Economic Area (Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order as required by Article 7 of the EEA Agreement.*

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

- 18 Iceland’s statement of defence was registered at the Court on 11 January 2019. Iceland submits that it does not dispute the facts of the case as set out in ESA’s application. Furthermore, Iceland does not contest the declaration sought by ESA. Nevertheless, in its defence, Iceland states that the new draft bill will be presented to Parliament no later than February 2019 and implemented into the Icelandic legal order no later than March 2019.

- 19 By a letter of 22 January 2019, ESA waived its right to submit a reply and consented to dispense with the oral procedure should the Court wish to do so. On 22 February 2019, Iceland also consented to dispense with the oral procedure, should the Court wish to do so.

- 20 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

- 21 Article 3 EEA imposes upon the 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-16/17 *ESA v*

Iceland, judgment of 14 June 2018, not yet reported, paragraph 14 and case law cited).

- 22 Under Article 7 EEA, the EFTA States are obliged to implement all acts corresponding to regulations and directives referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee. The Court notes that the lack of direct legal effect of acts referred to in decisions by the EEA Joint Committee makes timely implementation crucial for the proper functioning of the EEA Agreement in Iceland also. The EFTA States find themselves under an obligation to implement regulations as such.
- 23 Decision No 194/2016 entered into force on 1 July 2017. The time limit for the EFTA States to adopt the measures necessary to implement the Regulation expired on the same date.
- 24 The question of whether an 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 17 and case law cited). It is undisputed that Iceland had not adopted the measures necessary to make the Regulation part of its internal legal order by the expiry of the time limit set in the reasoned opinion.
- 25 It must, therefore, be held that Iceland has failed to fulfil its obligations under Article 7 of the Agreement on the European Economic Area 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 7ja of Annex XIX to the Agreement (Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes), as adapted by Protocol 1 to the Agreement.

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, the latter has been unsuccessful and none of the exceptions in Article 66(3) RoP apply, Iceland must 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 Agreement on the European Economic Area by failing, within the time prescribed, to make part of its internal legal order the Act referred to at point 7ja of Annex XIX to the Agreement (Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes), as adapted by Protocol 1 to the Agreement.**
2. **Orders Iceland to bear the costs of the proceedings.**

Páll Hreinsson

Per Christiansen

Bernd Hammermann

Delivered in open court in Luxembourg on 14 May 2019.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President