



## JUDGMENT OF THE COURT

1 December 2009

*(Failure by a Contracting Party to fulfil its obligations – Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC)*

In Case E-5/09,

**EFTA Surveillance Authority**, represented by Bjørnar Alterskjær, Deputy Director, and Ólafur Jóhannes Einarsson, Senior Officer, Department of Legal and Executive Affairs, acting as Agents, Brussels, Belgium,

*Applicant,*

v

**The Republic of Iceland**, represented by Sesselja Sigurðardóttir, Legal Officer, and Högni S. Kristjánsson, Director for European Affairs, Ministry for Foreign Affairs, acting as Agents, Reykjavik, Iceland,

*Defendant,*

APPLICATION for a declaration that by failing to adopt, or to notify the EFTA Surveillance Authority of the measures necessary to implement the Act referred to, *inter alia*, at point 7b of Annex IX to the EEA Agreement, i.e. Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC, as adapted to the EEA Agreement by Protocol 1 thereto, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 64(1) of that Act and 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 30 April 2009, 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, or to notify ESA of, the national measures necessary to implement the Act referred to, inter alia, at point 7b of Annex IX to the EEA Agreement, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 64(1) of that Act and Article 7 EEA. The Act referred to is Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC, as adapted by way of Protocol 1 to the EEA Agreement.

### **II Facts and pre-litigation procedure**

- 2 Decision 59/2006 of 2 June 2006 of the EEA Joint Committee amended Annex IX to the EEA Agreement by adding Directive 2005/68/EC, inter alia, as point 7b of that Annex. The Decision entered into force on 1 June 2007. According to Article 64(1) of Directive 2005/68/EC, the Republic of Iceland was obliged to take the measures necessary to ensure compliance with the Act by 10 December 2007.
- 3 The Government of Iceland was reminded of the date by which the measures necessary to implement the Act had to be taken, in a letter from ESA dated 22 October 2007. The Government was also asked to notify ESA as soon as possible, and before 10 December 2007, of the measures taken to implement the Act.
- 4 On 20 May 2008, ESA received a transposition forecast from the Icelandic Government, which stated that the Act was expected to be implemented into Icelandic legislation by the second quarter of 2008. Thereafter, on 11 June 2008, the Icelandic Government informed ESA by email that the draft Bill implementing the Act had not yet been submitted to the Icelandic Parliament, but that the Bill would most likely be passed by the Parliament before the Christmas recess 2008.

- 5 In the absence of any further information from the Government of Iceland as to the implementation of the Act, ESA initiated proceedings under Article 31 SCA and, on 16 July 2008, a letter of formal notice was sent to the Government of Iceland, stating that the Republic of Iceland had failed to take or, in any event, to inform ESA of the national measures necessary to comply with the Act. The Government was invited to submit its observations on the matter within three months.
- 6 Not having received any response from the Government of Iceland regarding the implementation of the Act, ESA delivered, on 26 November 2008, a reasoned opinion concluding that, by failing to comply with the time-limit set out in the Act, Iceland had failed to fulfil its obligations under Article 64(1) of the Act and Article 7 EEA. The Government of Iceland was requested to take the measures necessary to comply with the reasoned opinion within three months.
- 7 The Government of Iceland responded to the reasoned opinion on 27 February 2009, informing ESA that a Bill implementing the Act was pending before the Icelandic Parliament.

### **III Procedure before the Court**

- 8 ESA lodged the present application at the Court Registry on 30 April 2009. The statement of defence from the Government of Iceland was received on 6 July 2009.
- 9 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**

- 10 The application is based on one plea in law, namely that by failing to adopt, or to notify ESA of, the national measures necessary to implement the Act referred to, inter alia, at point 7b of Annex IX to the EEA Agreement, i.e. Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC, as adapted to the EEA Agreement by Protocol 1 thereto, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 64(1) of that Act, as included in the EEA Agreement, and under Article 7 of the EEA Agreement.
- 11 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.
- 12 As a factual observation, the Government of Iceland has informed the Court that a Bill to implement Directive 2005/68/EC is being discussed in the Icelandic Parliament.

## **V Findings of the Court**

- 13 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-3/08 *EFTA Surveillance Authority v The Republic of Iceland* [2008] EFTA Ct. Rep. 308, at paragraph 15). 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.
- 14 The obligation to implement also follows from Article 64(1) of Directive 2005/68/EC, according to which implementation by the EC Member States is required not later than 10 December 2007. Decision 59/2006 of the EEA Joint Committee did not set a separate EEA time-limit for the implementation of the Directive into national law.
- 15 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-3/08 *EFTA Surveillance Authority v The Republic of Iceland*, cited above, at paragraph 18). It is undisputed that Iceland did not adopt those measures before the expiry of the time-limit given in the reasoned opinion.
- 16 It must therefore be held that, by failing to adopt, within the prescribed time-limit, the national measures necessary to implement the Act referred to, inter alia, at point 7b of Annex IX to the EEA Agreement, i.e. Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC, as adapted to the EEA Agreement by Protocol 1 thereto, the Republic of Iceland has failed to fulfil its obligations under Article 64(1) of that Act and Article 7 of the EEA Agreement.

## **VI Costs**

- 17 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 ESA has requested that the Republic of Iceland be ordered to pay the costs and the latter has been unsuccessful, it 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 implement Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC, as adapted to the EEA Agreement by Protocol 1 thereto, the Republic of Iceland has failed to fulfil its obligations under Article 64(1) of the Directive and 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 1 December 2009.

Skúli Magnússon  
Registrar

Thorgeir Örlygsson  
Acting President