



JUDGMENT OF THE COURT

20 September 2011

(Failure by a Contracting Party to fulfil its obligations – Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency – Regulation (EC) No 1891/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and amending Regulation (EC) No 1406/2002)

In Case E-5/11,

EFTA Surveillance Authority, represented by Xavier Lewis, Director, and Ólafur Jóhannes Einarsson, Deputy Director, Department of Legal & Executive Affairs, acting as Agents,

Applicant,

v

The Kingdom of Norway, represented by Ms Ida Thue, Advocate, Office of the Attorney General (Civil Affairs), and Mr Vegard Emaus, Adviser, Ministry of Foreign Affairs, acting as Agents

Defendant,

APPLICATION for a declaration that by failing to adopt the measures necessary to make a) the Act referred to at point 56o of Chapter V of Annex XIII to the Agreement on the European Economic Area (Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency), as adapted to the EEA Agreement by Protocol 1 thereto, and, b) the Act referred to at point 56oa of Chapter V of Annex XIII to the Agreement on the European Economic Area (Regulation (EC) No 1891/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and amending Regulation (EC) No 1406/2002), as adapted to the EEA Agreement by Protocol 1 thereto, part of its internal legal order within the time prescribed, the Kingdom of Norway failed to fulfil its obligations under Article 7 EEA.

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (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 24 February 2011, 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 (hereinafter the “SCA”), for a declaration that, by failing to adopt measures necessary to make the Acts referred to at points 560 and 560a of Chapter V of Annex XIII to the EEA Agreement (“EEA”), within the time-limit prescribed, the Kingdom of Norway (“Norway”) has failed to fulfil its obligations under Article 7 EEA. The Acts referred to are Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency, and Regulation (EC) No 1891/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and amending Regulation (EC) No 1406/2002, as adapted by Protocol 1 to the EEA Agreement.

II Facts and pre-litigation procedure

- 2 Decision 81/2003 of 20 June 2003 of the EFTA Joint Committee amended Annex XIII to the EEA Agreement by adding Regulation (EC) No 1406/2002 to point 560 of Chapter V of that Annex. The Decision entered into force on 1 January 2004 and the time limit for EFTA States to adopt the measures necessary to implement the Act expired on the same date.
- 3 By letter of 13 July 2004 ESA invited the Government of Norway to provide information concerning the measures by which Regulation (EC) No 1406/2002 had been made part of the Norwegian internal legal order.
- 4 The Government of Norway wrote to ESA on 16 August 2004 to inform it that Norway had presented a parliamentary bill regarding Regulation (EC) No 1406/2002 and that the Norwegian Parliament had approved the incorporation

into the EEA Agreement of the Act by a Parliamentary Resolution dated 6 November 2003. As a consequence of the approval of the Parliament the Government was obliged to allocate funds regarding Norway's participation in the European Maritime Safety Agency ("the Agency"). Norway did not consider Regulation (EC) No 1406/2002 to establish either obligations or privileges for Norwegian citizens of such a character that any other national measures must be taken to implement Regulation (EC) No 1406/2002. Therefore the Act was considered by Norway to have "as such" been made part of Norway's internal legal order. Norway noted that it had also made the establishment of the Agency and the Norwegian participation in it known to the Norwegian maritime community.

- 5 At a meeting in Oslo on 22 September 2004, ESA invited Norway to send copies of the documents which established the basis for the incorporation of Regulation (EC) No 1406/2002. ESA discussed the incorporation of regulations in the internal legal order of Norway, in light of the Authority's interpretation of Article 7 EEA, at meetings in 2006, 2007 and 2008. Apart from that, the ESA did not actively pursue the incorporation of the Regulation until the issue arose again in connection with the incorporation of Regulation (EC) No 1891/2006.
- 6 Decision No 52/2007 of 8 June of the EFTA Joint Committee amended Annex XIII to the EEA Agreement by adding Regulation (EC) No 1891/2006 to point 560a of Chapter V of that Annex. The Decision entered into force on 9 June 2007 and the time limit for EFTA States to adopt the measures necessary to implement the Act expired on the same date.
- 7 By letter of 6 July 2007 ESA invited the Government of Norway to provide information concerning the measures by which Regulation (EC) No 1891/2006 had been made part of the internal legal order of Norway.
- 8 In its reply of 10 July 2007, the Norwegian Government informed ESA that as Regulation (EC) No 1891/2006 deals with the organisation of budgetary commitments only, the Parliament's approval of Joint Committee Decision No 81/2003, incorporating Regulation (EC) No 1891/2006 into the EEA Agreement was considered a sufficient measure to incorporate the Act.
- 9 ESA did not agree with the arguments set forward by Norway and on 27 February 2008 issued a letter of formal notice. The Norwegian Government replied by letter of 8 October 2008, and reiterated its previous opinion that the Act had been incorporated by the Parliament's approval of Joint Committee Decision No 81/2003.
- 10 On 1 July 2009 ESA delivered a reasoned opinion to Norway concluding that by failing to make Regulation (EC) No 1891/2006 part of its internal legal order, Norway had failed to comply with its obligations under Article 7 EEA.
- 11 On the same day, the Authority issued a letter of formal notice for failure to make Regulation (EC) No 1406/2002 part of its internal legal order. The Norwegian

Government submitted a reply to both the letter and to the reasoned opinion of 1 July 2009 on 1 December 2009.

- 12 In those replies, Norway maintained that, due to their nature and content, it was not required to incorporate Regulation (EC) No 1891/2006 and Regulation (EC) No 1406/2002 into the Norwegian internal legal order. Insofar as such an obligation should exist, Norway maintained that the acts had been incorporated into the Norwegian legal order in accordance with Article 7(a) EEA.
- 13 Having assessed the reply, ESA upheld its opinion that the acts had not been made part of the Norwegian internal legal order as required by Article 7 EEA. Accordingly, ESA delivered a reasoned opinion to Norway on 24 February 2010 for failure to make Regulation (EC) No 1406/2002 part of its internal legal order.
- 14 In its letter of 23 April 2010 in reply to the reasoned opinion, Norway informed ESA that after reassessing the case, both acts, Regulation (EC) No 1406/2002 and Regulation (EC) No 1891/2006, would be incorporated by way of statutes and/or regulations. The reply stated that Norway could not preclude the possibility that Regulation 1406/2002 indeed contained provisions affecting the rights and obligations of individuals.
- 15 By a letter of 24 August 2010, Norway informed ESA that work had been started to ensure the incorporation of both acts as soon as possible, and not later than 1 July 2011.
- 16 At a meeting in November 2010 ESA invited Norway to provide information on how far the incorporation process had come, and asked if Norway foresaw to finalise the incorporation before 1 July 2011 as indicated in earlier correspondence. The representatives of the Norwegian Government told ESA that four ministries in Norway were involved in the incorporation of the Regulation into the national legal order which made the task more time consuming. It had not yet been determined in Norway whether the incorporation into national law would require Parliamentary action, resolution or amendment to existing legislation.
- 17 In a letter of 1 December 2010 the Norwegian Government stated that the incorporation involved questions relating to the jurisdiction of several ministries. Accordingly the method of technical legal incorporation required further clarification between the ministries. In the letter it was further submitted that this work was in progress and more detailed information on the time schedule depended on the outcome of this process. However, it had been clarified that there was no need for changes to any laws and that the objective was to make the incorporation as soon as possible, and not later than 1 July 2011.
- 18 Given its view that Norway should have incorporated Regulation (EC) No 1406/2002 and Regulation (EC) No 1891/2006 respectively more than seven and more than three and a half years ago, ESA considered that the Norwegian Government had had more than sufficient time to adopt the measures necessary

to make the Regulations part of its internal legal order. Accordingly, on 2 February 2011, ESA decided to refer the matter to the Court.

III Procedure before the Court

- 19 ESA lodged the present application at the Court Registry on 24 February 2011. The statement of defence from Norway was received on 15 April.
- 20 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

- 21 The application is based on one plea in law, namely that by failing to adopt the national measures necessary to fully implement Regulations 1406/2002 and 1891/2006 within the time-limit prescribed, Norway has failed to fulfil its obligations under Article 7 EEA.
- 22 In its statement of defence, Norway does not dispute that it is obliged to make the Acts in question part of its legal order under Article 7 EEA and that the time limit for the implementation of the Acts has expired. Nor is the order sought by ESA disputed.
- 23 However, Norway submits some general views on the obligation to make regulations part of the internal legal order. In this regard, it contends that Article 7(a) EEA must be interpreted in light of its object and purpose, which is to ensure the simultaneous and uniform application of regulations throughout the EEA. Thus, in its view, Article 7(a) requires such implementing action by dualist Norway which ensures the simultaneous and uniform application of regulation throughout the European Economic Area.
- 24 It is further argued that in the majority of cases, Article 7(a) EEA requires that regulations are made part of the Norwegian legal order as such. However, Norway holds that, in exceptional cases, implementation is not required. Where it is apparent that a regulation does not affect rights or obligations of natural or legal persons, but merely regulates internal affairs of an EU body, the relationship between EU bodies, or the rights and obligations of states, it would serve no legal or practical purpose to make the regulation part of the internal legal order. In such cases, non-implementation would not prejudice the simultaneous and uniform application of the regulation throughout the EEA. Such regulations do not, for instance, contain provisions that can be invoked in national courts.
- 25 Moreover, since measures of Norwegian law are traditionally confined to establishing rights or obligations for natural or legal persons or regulating the affairs of public bodies, regulations that merely concern the internal affairs of international organizations, or the rights and obligations of states, would not form a natural part of the internal Norwegian legal order. Provided that a regulation is

of such a nature that it is not to be implemented into the internal legal order of the EEA EFTA States, there can be no need for an adaptation text when the act is taken into the EEA Agreement by a decision of the EEA Joint Committee.

V Findings of the Court

- 26 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-18/10 *EFTA Surveillance Authority v The Kingdom of Norway*, judgment of 28 June 2011, not yet reported, paragraph 25). 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.
- 27 Decision 81/2003 of the EEA Joint Committee of 20 June 2003 entered into force on 1 January 2004. The time limit for EFTA States to adopt the measures necessary to implement the Act expired on the same date. As regards Decision No 52/2007, it entered into force on 9 June 2007. The time limit for EFTA States to adopt the measures necessary to implement the Act expired on the same date.
- 28 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-18/10 *EFTA Surveillance Authority v The Kingdom of Norway*, cited above, paragraph 30). It is undisputed that Norway did not adopt those measures before the expiry of the time-limit given in the reasoned opinion.
- 29 It must therefore be held that, by failing to adopt the measures necessary to make the Acts referred to at points 56o and points 56oa of Chapter V of Annex XIII to the EEA Agreement, i.e. Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency, as adapted to the EEA Agreement by Protocol 1 thereto, and Regulation (EC) No 1891/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and amending Regulation (EC) No 1406/2002), as adapted to the EEA Agreement by Protocol 1 thereto, part of its internal legal order within the time prescribed, Norway has failed to fulfil its obligations under Article 7 EEA.

VI Costs

- 30 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 Kingdom of Norway be ordered to pay the costs and the latter has been unsuccessful, and since none of the exceptions in Article 66(3) apply, the Kingdom of Norway must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by failing to adopt the measures necessary to make a) the Act referred to at point 56o of Chapter V of Annex XIII to the Agreement on the European Economic Area (Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency), as adapted to the EEA Agreement by Protocol 1 thereto, and b) the Act referred to at point 56oa of Chapter V of Annex XIII to the Agreement on the European Economic Area (Regulation (EC) No 1891/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and amending Regulation (EC) No 1406/2002), as adapted to the EEA Agreement by Protocol 1 thereto, part of its internal legal order within the time prescribed, the Kingdom of Norway has failed to fulfil its obligations under Article 7 EEA.**
2. **Orders the Kingdom of Norway to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 20 September 2011.

Skúli Magnússon
Registrar

Carl Baudenbacher
President