



JUDGMENT OF THE COURT

14 May 2019

*(Failure by an EFTA State to fulfil its obligations – Failure to implement –
Directive 2013/11/EU)*

In Case E-5/18,

EFTA Surveillance Authority, represented by Carsten Zatschler, Catherine Howdle and Ingibjörg-Ólöf 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 fulfil its obligations under the Act referred to at points 7d, 7f and 7k of Annex XIX to the Agreement on the European Economic Area (Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC), as adapted by Protocol 1 to the Agreement, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof,

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-3/18 concerns Regulation (EU) 2015/1051; Case E-4/18 concerns Regulation (EU) No 524/2013. The present case concerns Directive 2013/11/EU.
- 3 ESA seeks a declaration from the Court that Iceland has failed to fulfil its obligations under the Act referred to at points 7d, 7f and 7k of Annex XIX to the EEA Agreement, that is Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ 2013 L 165, p. 63, and Icelandic EEA Supplement 2016 No 57, p. 77) (“the Act or “the Directive”), as adapted by Protocol 1 to the EEA Agreement, and under Article 7 EEA, by failing to adopt or in any event to inform ESA of the measures necessary to implement the Act within the time prescribed.

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:

...

(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.

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 Directive to points 7d, 7f and 7k 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 implement the Directive expired on the same date.

III Facts and pre-litigation procedure

- 8 On 2 August 2017, ESA wrote to Iceland reminding it of its obligation to notify ESA of the measures it had taken to implement the Directive. 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 the Directive and Article 7 EEA by failing to adopt and/or to notify ESA of the measures taken to implement the Directive.
- 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 reasoned opinions concerning Regulations (EU) No 524/2013 and 2015/1051, respectively, which also set the time limit to 23 April 2018.
- 12 By a letter of 22 April 2018, which was received at ESA on 30 April 2018, Iceland replied to the reasoned opinion concerning Regulation (EU) 2015/1051. In this letter 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 bill to Parliament in the autumn of 2018. Iceland requested ESA to extend the deadline until 10 May 2018, by which date Iceland would be able to give ESA a more detailed timeline for the incorporation of the new bill.
- 13 ESA replied by a letter of 2 May 2018, in which it stated 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 Regulation (EU) 2015/1051 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, the Directive would most likely be implemented in November or December 2018 and both Regulations (EU) No 524/2013 and 2015/1051 would be incorporated shortly thereafter.

- 15 On 4 September 2018, Iceland sent an email to ESA notifying them of a delay in the legislative procedure. It stated that the new draft bill would be presented to Parliament in January 2019, with the Directive being implemented in February 2019 and both Regulations (EU) No 524/2013 and 2015/1051 being incorporated shortly thereafter.
- 16 Since Iceland did not comply with the reasoned opinion concerning the Directive by the deadline, 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 fulfil its obligations under the Act referred to at points 7d, 7f and 7k of Annex XIX to the Agreement on the European Economic Area (Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC), as adapted to the EEA Agreement by Protocol 1 and under Article 7 of the EEA Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event, by failing to inform the EFTA Surveillance Authority thereof; and*
 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, it 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 2018, and the Directive implemented in the Icelandic legal order in March 2019.
- 19 On 22 January 2019, ESA wrote a letter to the Court in which it 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 wrote a letter to the Court in which it 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-17/17 *ESA v Iceland*, judgment of 7 June 2018, not yet reported, paragraph 20 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. An obligation to implement the Directive also follows from its Article 25. 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 of result in that regard.
- 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 Directive 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 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 set in the reasoned opinion.
- 25 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 inform ESA of the measures implementing the Directive.
- 26 It must, therefore, be held that Iceland has failed to fulfil its obligations under the Act referred to at points 7d, 7f and 7k of Annex XIX to the Agreement on the European Economic Area (Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC), as adapted by Protocol 1 to the Agreement, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed.

VI Costs

- 27 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 the Act referred to at points 7d, 7f and 7k of Annex XIX to the Agreement on the European Economic Area (Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC), as adapted by Protocol 1 to the Agreement, 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.**

Páll Hreinsson

Per Christiansen

Bernd Hammermann

Delivered in open court in Luxembourg on 14 May 2019.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President