



## JUDGMENT OF THE COURT

3 October 2007

*(Failure by a Contracting Party to fulfil its obligations – Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise)*

In Case E-6/06,

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

*Applicant,*

v

**The Principality of Liechtenstein**, represented by Dr. Andrea Entner-Koch, Director of the EEA Coordination Unit, acting as Agent, Vaduz, Liechtenstein,

*Defendant,*

APPLICATION for a declaration that, by failing to adopt, within the time-limit prescribed, or to notify the EFTA Surveillance Authority of the adoption of, the measures necessary to implement the Act referred to at point 32g of Annex XX to the EEA Agreement, i.e. Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002, as adapted to the EEA Agreement by Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations under Article 14 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 and the written observations of the Commission of the European Communities, represented by María-Amparo Alcover, Member of its Legal Service, acting as Agent,

having decided to dispense with the oral procedure,

gives the following

## **Judgment**

### **I The application**

- 1 By application lodged at the Court Registry on 18 December 2006, 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, within the time-limit prescribed, the national provisions necessary to implement the Act referred to at point 32g of Annex XX to the Agreement on the European Economic Area (hereinafter the “EEA” or the “EEA Agreement”), or to notify ESA thereof, the Principality of Liechtenstein has failed to fulfil its obligations under Article 14 of that Act and Article 7 EEA. The Act referred to is Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2005 relating to the assessment and management of environmental noise, as adapted by way of Protocol 1 to the EEA Agreement.

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

- 2 Decision 160/2003 of 7 November 2003 of the EEA Joint Committee amended Annex XX to the EEA Agreement by adding Directive 2002/49/EC at point 32g of that Annex. At the request of Liechtenstein, the entry into force of this Decision was made subject to the fulfilment of constitutional requirements in that state, as provided for by Article 103(1) EEA.
- 3 By letter of 23 April 2004, the Liechtenstein authorities notified the Secretary to the EFTA Standing Committee that the constitutional requirements relating to Decision 160/2003 had been fulfilled. The Decision thus entered into force on 1 June 2004, cf. the second subparagraph of Article 103(1) EEA.

- 4 Article 14 of Directive 2002/49/EC requires EC Member States to adopt the measures necessary to implement the Act by 18 July 2004, and to notify the Commission thereof. A parallel obligation was extended to the EFTA States by the entry into force of Decision 160/2003.
- 5 In its transposition forecast of 15 November 2004, the Government of Liechtenstein informed ESA that the Act would be implemented during the third quarter of 2005.
- 6 In the absence of any further information from the Government of Liechtenstein as to the implementation of the Act, ESA decided to initiate proceedings under Article 31 SCA and, on 16 December 2004, a letter of formal notice was sent to the Government of Liechtenstein, stating that Liechtenstein had failed to take the measures necessary to comply with the Act, and inviting the Government to submit its observations on the matter within three months of receipt.
- 7 By letter of 1 April 2005, the Government of Liechtenstein informed ESA that the process of implementation of the Act was ongoing. The Government of Liechtenstein indicated that, according to the timetable for implementation, the Landtag (the Liechtenstein Parliament) would deal with a Bill in autumn 2005. However, the Government of Liechtenstein subsequently informed ESA that the process of implementation of the Act had been delayed.
- 8 At the package meeting held in Vaduz on 28 March 2006, the Government of Liechtenstein provided an updated timetable for implementation according to which the public consultation would be launched before the summer break with entry into force of the implementing legislation expected for a year later, in summer 2007.
- 9 In light of the observations submitted by Liechtenstein and the fact that it did not contest the conclusions set out in the letter of formal notice, ESA delivered, on 10 May 2006, a reasoned opinion in which it concluded that, by failing to adopt, or to notify ESA of the adoption of, the measures necessary to implement the Act, Liechtenstein had failed to fulfil its obligations under Article 14 of that Act and Article 7 EEA. The Government of Liechtenstein was requested to take the measures necessary to comply with the reasoned opinion within a time-limit of three months following notification thereof. That time-limit for compliance expired on 11 August 2006.
- 10 By letter of 3 August 2006, the Government of Liechtenstein provided its observations on the reasoned opinion, and informed ESA that the second reading of the relevant Bill in the Landtag was expected to take place in December 2007.
- 11 On 10 November 2006, a transposition forecast was submitted to ESA according to which entry into force of the implementing legislation is expected in the first quarter of 2008.

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

- 12 ESA lodged the present application at the Court Registry on 18 December 2006. The statement of defence from the Government of Liechtenstein was received on 9 February 2007. Written observations were submitted by the Commission of the European Communities on 5 April 2007.
- 13 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**

- 14 The application is based on one plea of law, that, by failing to adopt, or to notify ESA of the adoption of, the national measures necessary to implement the Act referred to at point 32g of Annex XX to the EEA Agreement, i.e. Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise, within the time-limit prescribed, the Principality of Liechtenstein has failed to fulfil its obligations under Article 14 of that Directive, as included in the EEA Agreement, and under Article 7 EEA.
- 15 ESA points out that the time-limit laid down in its reasoned opinion of 10 May 2006 for Liechtenstein to take the necessary measures expired on 11 August 2006. By that date, Liechtenstein had not brought into force the laws, regulations and administrative provisions necessary to comply with the Act.
- 16 Referring to these circumstances, ESA requests the EFTA Court to grant the application and to order the Principality of Liechtenstein to bear the costs of the proceedings.
- 17 In its statement of defence, the Government of Liechtenstein describes the reasons for the delay in implementation. The Government does not, however, dispute the order sought by ESA. The Government of Liechtenstein nevertheless requests the Court to order each party to bear its own costs of the proceedings.

### **V Findings of the Court**

- 18 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. 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 Cases E-7/97 *EFTA Surveillance Authority v Norway* [1998] EFTA Court Report 62, at paragraphs 15–17 and E-5/01 *EFTA Surveillance Authority v Liechtenstein* [2000–2001] EFTA Court Report 287, at paragraphs 15–16).
- 19 The obligation to implement also follows from Article 14 of Directive 2002/49/EC, according to which implementation by the EC Member States is

required not later than 18 July 2004. As the EEA Joint Committee in Decision 160/2003 did not set a separate EEA time-limit for the implementation of the Directive into national law, Liechtenstein was obliged to adopt the national measures necessary to implement the Directive by that date.

- 20 On 11 August 2006, the date on which the time-limit given in the reasoned opinion expired, Liechtenstein, according to its own submissions, had still not adopted those measures. 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-3/00 *EFTA Surveillance Authority v Norway* [2000–2001] EFTA Court Report 73, at paragraph 39).
- 21 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 directive to the EEA Agreement, or laid down in the directive itself as adapted for the purposes of the EEA Agreement (see Joined Cases E-5/05, E-6/05, E-7/05, E-8/05 and E-9/05 *EFTA Surveillance Authority v Liechtenstein* [2006] EFTA Court Report 141, at paragraph 21).
- 22 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 at point 32g of Annex XX to the EEA Agreement, i.e. Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002, as adapted by way of Protocol 1 to the EEA Agreement and the sectoral adaptation in Annex XX, Liechtenstein has failed to fulfil its obligations under Article 14 of that Act and Article 7 EEA.

## **VI Costs**

- 23 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 Principality of Liechtenstein be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs. The costs incurred by the Commission of the European Communities are not recoverable.

On those grounds,

THE COURT

hereby:

- 1. Declares that, by failing to adopt, within the time-limit prescribed, the measures necessary to implement the Act referred to at point 32g of Annex XX to the EEA Agreement, i.e. Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise, as adapted to the EEA Agreement by Protocol 1 thereto and the sectoral adaptation contained in Annex XX to that Agreement, the Principality of Liechtenstein has failed to fulfil its obligations under Article 14 of that Act and under Article 7 of the EEA Agreement.**
- 2. Orders the Principality of Liechtenstein to bear the costs of the proceedings.**

Carl Baudenbacher

Thorgeir Örlygsson

Henrik Bull

Delivered in open court in Luxembourg on 3 October 2007.

Skúli Magnússon  
Registrar

Carl Baudenbacher  
President