



## JUDGMENT OF THE COURT

14 May 2019

*(Failure by an EFTA State to fulfil its obligations – Failure to implement –  
Directive 2014/52/EU)*

In Case E-6/18,

**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 Veturliði Þór Stefánsson, Counsellor, 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 point 1a of Annex XX to the Agreement on the European Economic Area (Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment), as adapted by Protocol 1, 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 an application lodged at the Court’s Registry on 9 November 2018, 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 (“SCA”) seeking a declaration from the Court that Iceland has failed to fulfil its obligations under the Act referred to at point 1a of Annex XX to the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”), that is Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ 2014 L 124, p. 1, and Icelandic EEA Supplement 2015 No 34, p. 229) (“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**

- 2 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.*

...

3 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.*

4 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.*

5 Decision of the EEA Joint Committee No 117/2015 of 30 April 2015 (OJ 2016 L 211, p. 76, and Icelandic EEA Supplement 2016 No 42, p. 73) (“Decision No 117/2015”) amended Annex XX (Environment) to the EEA Agreement by adding the Directive to point 1a of the Annex. Constitutional requirements for the purposes of Article 103 EEA were indicated by Iceland and Liechtenstein. By November 2015, both States had notified that their constitutional requirements had been fulfilled. Therefore, Decision No 117/2015 entered into force on 1 January 2016. The EEA-wide time limit to adopt the measures necessary to implement the Directive expired on 16 May 2017 pursuant to its Article 2(1).

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

6 On 16 June 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.

7 On 7 September 2017, ESA sent a letter of formal notice concluding that, by failing to take and/or to notify ESA of the measures taken to implement the Act, Iceland had failed to fulfil its obligations under the Act and Article 7 EEA.

8 On 13 December 2017, Iceland informed ESA that it had been working on a legislative bill to implement the Directive, which would be presented to Parliament in February 2018.

9 On 31 January 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 3 April 2018.

- 10 During summer 2018, Iceland informed ESA that it had attempted to bring a legislative bill before Parliament, but the bill had not been passed during the summer term. Iceland stated that the bill would be reintroduced in September 2018.
- 11 Since Iceland did not comply with the deadline set out in the reasoned opinion, ESA decided to bring the matter before the Court pursuant to the second paragraph of Article 31 SCA.

#### **IV Procedure and forms of order sought**

- 12 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 point 1a of Annex XX to the Agreement on the European Economic Area (Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment), 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.*

- 13 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, Iceland states that it is working as swiftly as possible and that it plans to present a bill to Parliament in spring 2019 to implement the Act.
- 14 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 20 March 2019, Iceland also consented to dispense with the oral procedure, should the Court wish to do so.
- 15 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**

- 16 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).
- 17 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 2. 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.
- 18 Decision No 117/2015 entered into force on 1 January 2016. The time limit for the EFTA States to adopt the measures necessary to implement the Directive expired on 16 May 2017.
- 19 The question 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.
- 20 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.
- 21 It must, therefore, be held that Iceland has failed to fulfil its obligations under the Act referred to at point 1a of Annex XX to the Agreement on the European Economic Area (Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment), 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**

- 22 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 point 1a of Annex XX to the Agreement on the European Economic Area (Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment), 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