



JUDGMENT OF THE COURT

7 May 2010

(Failure by a Contracting Party to fulfil its obligations – Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC on the approximation of the laws of the Member States relating to lifts – Judgment by default)

In Case E-8/09,

EFTA Surveillance Authority, represented by Xavier Lewis, Director, and Florence Simonetti, Officer, Department of Legal and Executive Affairs, acting as Agents, Brussels, Belgium,

Applicant,

v

The Republic of Iceland, represented by Íris Lind Sæmundsdóttir, Legal Officer, Ministry for Foreign Affairs, acting as Agent, Reykjavík, 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 at point 5 of Chapter III of Annex II to the EEA Agreement, i.e. Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC on the approximation of the laws of the Member States relating to lifts, as adapted to the EEA Agreement by way of Protocol 1 thereto, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under that Act and Article 7 of the EEA Agreement.

THE COURT,

composed of: Carl Baudenbacher, President, Thorgeir Örlygsson (Judge-
Rapporteur) and Henrik Bull, Judges,

Registrar: Skúli Magnússon,

having regard to the application of the EFTA Surveillance Authority,

having regard to the application of the EFTA Surveillance Authority for
judgment by default,

gives the following

Judgment

I The application

- 1 By application lodged at the Court Registry on 2 December 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 at point 5 of Chapter III of Annex II to the EEA Agreement, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under that Act and Article 7 EEA. The Act referred to is Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC, as adapted by way of Protocol 1 to the EEA Agreement.

II Facts and pre-litigation procedure

- 2 Decision 6/2007 of 27 April 2007 of the EEA Joint Committee amended Annex II to the EEA Agreement by adding Directive 2006/42/EC in point 5 of Chapter III of that Annex. The Decision entered into force on 28 April 2007. According to Article 26(1) of Directive 2006/42/EC, the Republic of Iceland was obliged to take the measures necessary to ensure compliance with the Act by 29 June 2008.
- 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 14 May 2008.
- 4 In the absence of any information from the Government of Iceland as to the implementation of the Act, ESA initiated proceedings under Article 31 SCA and, on 1 October 2008, sent a letter of formal notice to the Government of Iceland, stating that the Republic of Iceland had failed to take or, in any event, to inform ESA of national measures taken necessary to comply with the Act. The

Government was invited to submit its observations on the matter within two months.

- 5 In its observations of 30 December 2008 to the letter of formal notice, the Government stated that it had not yet adopted the necessary measures to implement the Act because of delays in its translation. By e-mail of 22 January 2009, an official of the Icelandic Ministry of Social Affairs and Security confirmed that the measures necessary to implement the Act had still not been adopted.
- 6 Under these circumstances, on 25 February 2009, ESA delivered 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 the Act and Article 7 EEA. The Government of Iceland was requested to take the measures necessary to comply with the reasoned opinion within two months.
- 7 The Government of Iceland responded to the reasoned opinion on 5 June 2009, informing ESA that the Ministry would finalise a draft Regulation implementing the Act in June and estimating that the Regulation would be published at the beginning of July.
- 8 The Internal Market Affairs Directorate of ESA regularly inquired about the status of the implementation process during July, September and October 2009 and on all occasions was informed that the implementation process was still ongoing.

III Procedure before the Court

- 9 ESA lodged the present application at the Court Registry on 2 December 2009. By telefax of 25 January 2010, registered at the Court Registry on 27 January 2010, the Government of Iceland informed the Court that it would not take part in the proceedings. In reply to the Court's invitation to comment on the telefax on 16 February 2010, ESA submitted an application for judgment by default against the Republic of Iceland.
- 10 Having regard to the intention of the Republic of Iceland not to take part in the procedure and to ESA's application for judgment by default, the President decided not to open the oral procedure.

IV Arguments of the Applicant

- 11 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 at point 5 of Chapter III of Annex II to the EEA Agreement, i.e. Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC, as adapted by way of Protocol 1 to the EEA Agreement, within the time-limit prescribed, the Republic of Iceland

has failed to fulfil its obligations under that Act, as included in the EEA Agreement, and under Article 7 of the EEA Agreement.

V Findings of the Court

- 12 Before considering the plea relied on by ESA, it should be noted that where, as in this case, the Court gives judgment by default, under Article 90(2) of the Rules of Procedure, when assessing the merits of the case, it only has to consider “whether the application appears well founded”.
- 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 26(1) of Directive 2006/42/EC, according to which implementation by the EC Member States is required not later than 29 June 2008. Decision 6/2007 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). According to the application, 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 at point 5 of Chapter III of Annex II to the EEA Agreement, i.e. Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery and amending Directive 95/16/EC, as adapted to the EEA Agreement by way of Protocol 1 thereto, the Republic of Iceland has failed to fulfil its obligations under 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 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC, as adapted to the EEA Agreement by way of Protocol 1 thereto, the Republic of Iceland has failed to fulfil its obligations under 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 7 May 2010.

Skúli Magnússon
Registrar

Thorgeir Örlygsson
Acting President