



## JUDGMENT OF THE COURT

10 December 2010

*(Failure by a Contracting Party to fulfil its obligations – Directive 2005/36/EC on the recognition of professional qualifications)*

In Case E-8/10,

**EFTA Surveillance Authority**, represented by Xavier Lewis, Director, and Markus Schneider, Officer, Department of Legal & Executive Affairs, acting as Agents, Brussels, Belgium,

*Applicant,*

v

**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, within the time prescribed, to adopt, or to notify the EFTA Surveillance Authority of, all the measures necessary to fully implement into its national legislation the Act referred to at point 1 of Annex VII to the EEA Agreement, i.e. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as adapted to the EEA Agreement by Protocol 1 thereto, the Republic of Iceland has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive and under 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,

having decided to dispense with the oral procedure,

gives the following

## **Judgment**

### **I The application**

- 1 By application lodged at the Court Registry on 26 July 2010, 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 “SCA”), for a declaration that, by failing to adopt, or to notify ESA of, all the measures necessary to fully implement the Act referred to at point 1 of Annex VII to the EEA Agreement, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under the first paragraph of Article 63 of that Act and under Article 7 EEA. The Act referred to is Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended.

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

- 2 Decision 142/2007 of 26 October 2007 of the EEA Joint Committee amended Annex VII to the EEA Agreement by adding Directive 2005/36/EC (hereinafter “the Directive”) to point 1 of that Annex. The Decision entered into force on 1 July 2009 and the time-limit for EFTA States to adopt the measures necessary to implement the Directive and to notify ESA thereof expired on the same date.
- 3 The Directive was subsequently amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 and by Commission Regulation (EC) No 755/2008 of 31 July 2008, which were incorporated into the EEA Agreement by Joint Committee Decisions No 50/2008 and No 127/2008 respectively.
- 4 By a letter from ESA dated 1 September 2009, the Government of Iceland was reminded of the date by which the measures necessary to implement the Directive had to be taken. The Government was also asked to notify ESA as soon as possible of the measures taken to implement the Directive.
- 5 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 25 November 2009, issued a letter of formal notice to the Government of Iceland, stating that Iceland had failed to take or, in any event, to inform ESA of

the measures necessary to comply with the Directive. The Government of Iceland was invited to submit its observations on the matter within two months of receipt.

- 6 In its observations of 7 December 2009 to the letter of formal notice, the Government of Iceland stated that a bill had already been presented to Althingi (the Icelandic Parliament) and that further progress would be reported to ESA as the occasion arose.
- 7 Under these circumstances, on 10 March 2010, ESA delivered a reasoned opinion concluding that by failing to comply with the time-limit set out in the Directive Iceland had failed to fulfil its obligations under the Directive and Article 7 EEA. The Government of Iceland was requested to take the measures necessary to comply with the reasoned opinion within two months.
- 8 By a letter of 14 April 2010, the Government of Iceland notified ESA of full implementation of the Directive, referring to Icelandic Act No 26 of 31 March 2010.
- 9 By further letters of 6 May 2010, the Government of Iceland notified ESA that the EEA Acts corresponding to Commission Regulations No 1430/2007 and No 755/2008 had been made part of the Icelandic legal order by 27 April 2010.
- 10 On 25 May 2010, ESA informed the Government of Iceland that, in its view, the national measures attached to the notification of 14 April 2010 indicated that there were still further national measures required. While Icelandic Act No 26/2010 provides a legal basis for further implementing measures, Articles 8 and 9 require further national regulations containing the substantive provisions on the different professions necessary to fully implement the Directive into national legislation. Those measures had neither been attached to the notification nor submitted to ESA since.
- 11 According to information provided by the Government of Iceland at a meeting on 3 June 2010 in Reykjavík, the full implementation of the Directive had been notified by mistake as the respective national regulations implementing the Directive for the different professions had not yet been finalised. No exact date for the finalisation of these national regulations was indicated by the Government of Iceland.

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

- 12 ESA lodged the present application at the Court Registry on 26 July 2010. The statement of defence from the Government of Iceland was received on 21 September 2010. On 14 October 2010, ESA submitted a reply to the defence lodged by Iceland.
- 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 in law, namely that by failing to adopt, or to notify ESA of, all the measures necessary to fully implement the Directive, within the time-limit prescribed, Iceland has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive, as incorporated into the EEA Agreement, and under Article 7 EEA.
- 15 It is undisputed that not all the necessary national implementation measures were adopted within the time-limit prescribed and the Government of Iceland has not disputed the order sought by ESA. The Government of Iceland emphasises, however, that the Directive has been partially implemented in Iceland.
- 16 The Government of Iceland requests the Court to order each party to bear its own costs of the proceedings. No reasons are submitted to substantiate this request.
- 17 In its reply to the statement of defence from the Government of Iceland, ESA contests the request for sharing of costs.

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

- 18 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-3/10 *ESA v Iceland*, judgment of 18 October 2010, not yet reported, paragraph 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.
- 19 The obligation to implement also follows from Article 63 of the Directive, according to which implementation by the EC Member States is required not later than 20 October 2007. As Decision 142/2007 of the EEA Joint Committee did not set a separate EEA time-limit for the implementation of the Directive into national law, Iceland was obliged to adopt all the national measures necessary to implement the Directive by the date on which that Decision entered into force, namely 1 July 2009.
- 20 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 *ESA v Iceland*, cited above, paragraph 20). It is undisputed that Iceland did not adopt all those measures before the expiry of the time-limit given in the reasoned opinion.
- 21 It must therefore be held that, by failing to adopt, within the time-limit prescribed, all the measures necessary to fully implement the Act referred to at point 1 of Annex VII to the EEA Agreement, i.e. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as adapted by Protocol 1 to the EEA Agreement,

the Republic of Iceland has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive and under Article 7 EEA.

## **VI Costs**

- 22 Without putting forward any pleas in support, whether in law or in fact, the Government of Iceland has requested that each party be ordered to bear its own costs. The Court can see no basis for this claim. 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, and since none of the exceptions in Article 66(3) apply, the Republic of Iceland 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, all the measures necessary to fully implement the Act referred to at point 1 of Annex VII to the EEA Agreement, i.e. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as adapted to the EEA Agreement by Protocol 1 thereto, the Republic of Iceland has failed to fulfil its obligations under the first paragraph of Article 63 of 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 10 December 2010.

Skúli Magnússon  
Registrar

Carl Baudenbacher  
President