



JUDGMENT OF THE COURT

15 November 2013

(Failure by an EEA State to fulfil its obligations – Commission Directive 2010/48/EU of 5 July 2010 adapting to technical progress Directive 2009/40/EC of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers)

In Case E-9/13,

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

applicant,

v

The Kingdom of Norway, represented by Dag Sørli Lund, Adviser, Department of Legal Affairs, Ministry of Foreign Affairs, and Ketil Bøe Moen, Advocate, Office of the Attorney General (Civil Affairs), acting as Agents

defendant,

APPLICATION for a declaration that by failing to adopt, or to notify the EFTA Surveillance Authority forthwith of all the measures necessary to implement the Act referred to at point 16a of Chapter II of Annex XIII to the Agreement on the European Economic Area (Commission Directive 2010/48/EU of 5 July 2010 adapting to technical progress Directive 2009/40/EC of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers), as adapted to the Agreement by way of Protocol 1 thereto, within the time prescribed (both except for paragraph 3 of Annex II to the Directive on roadworthiness certificates which is only to be implemented by 31 December 2013), the Kingdom of Norway has failed to fulfil its obligations under the Act and under Article 7 of the Agreement.

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (Judge-Rapporteur), Judges,

Registrar: Gunnar Selvik,

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 on 28 June 2013, 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 by failing to adopt, or to notify ESA forthwith of all the measures necessary to implement the Act referred to at point 16a of Chapter II of Annex XIII to the Agreement on the European Economic Area (Commission Directive 2010/48/EU of 5 July 2010 adapting to technical progress Directive 2009/40/EC of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers (“the Directive” or “the Act”)), as adapted to the Agreement by way of Protocol 1 thereto, within the time prescribed (both except for paragraph 3 of Annex II to the Directive on roadworthiness certificates which is only to be implemented by 31 December 2013), the Kingdom of Norway has failed to fulfil its obligations under the Act and under Article 7 of the Agreement.

II Facts and pre-litigation procedure

- 2 By Decision No 55/2011 of 20 May 2011, the EEA Joint Committee amended Annex XIII to the EEA Agreement by adding the Directive to point 16a of that Annex.
- 3 The Decision entered into force on 21 May 2011. Pursuant to Article 2 of the Directive, the time limit for EEA States to adopt the measures necessary to implement the Directive expired on 31 December 2011. Except for the provisions of paragraph 3 of Annex II to the Directive which shall be implemented by the EEA States by 31 December 2013.
- 4 By a letter dated 3 January 2012, ESA pointed out to the Norwegian Government that 31 December 2011 was the final date by which measures necessary to

implement the Directive should have been taken. In its letter, ESA also requested that the Norwegian Government provide detailed structured information, so that ESA would be able to assess the corresponding national measures for conformity.

- 5 The Norwegian Government responded in an email dated 19 January 2012, where it stated that it expected the Directive to be implemented in Norway by 1 July 2012, and that the requested documents would be sent to ESA by 2 July 2012.
- 6 Having received no further information, ESA issued a letter of formal notice to Norway dated 19 April 2012. ESA concluded that, as its information presently stood, Norway had, by failing to adopt or, in any event, to inform ESA of the national measures it had adopted to implement the Act, failed to fulfil its obligations under the Act and under Article 7 EEA.
- 7 By a letter dated 4 June 2012 the Norwegian Government stated that it expected that a Norwegian regulation implementing the Directive would be adopted by 1 October 2012.
- 8 Having received no further information, ESA delivered a reasoned opinion to Norway by a letter dated 3 October 2012. ESA maintained the conclusion of its letter of formal notice that by failing to adopt the measures necessary to implement the Act, or in any event, by failing to notify ESA forthwith of the measures necessary it had adopted to implement the Act, Norway had failed to fulfil its obligations under the Act and under Article 7 EEA. Furthermore, ESA required Norway pursuant to Article 31(2) SCA to take the measures necessary to comply with the reasoned opinion within two months following notification thereof, i.e. no later than 3 December 2012. By that date, the Norwegian Government did not respond to ESA's reasoned opinion.
- 9 By a letter dated 11 December 2012, the Norwegian Government notified ESA of the implementation of the Directive into Norwegian law, referring to national Regulation no. 1039 of 1 November 2012 amending national Regulation No. 591 of 13 May 2009 on periodic roadworthiness tests of vehicles (*forskrift om endring i forskrift om periodisk kontroll av kjøretøy*). The Norwegian Government further stated that the national provisions corresponding to Annex II to the Directive would enter into force on 31 December 2013.
- 10 By a letter to the Norwegian Government dated 18 December 2012, ESA noted that these submissions seemed to be inconsistent with the information contained in Norwegian Regulation No. 1039/2012 which specified 1 January 2015 as the date of entry into force for the relevant amendments. Therefore, ESA requested the Norwegian Government to clarify the matter.
- 11 The Norwegian Government responded to that letter by a letter dated 15 January 2013. In the letter it indicated that the Annex to Norwegian Regulation No. 1039/2012 was equivalent to Annex II to the Directive and that the Annex to

Norwegian Regulation No. 1039/2012 would enter into force on 1 January 2015. Furthermore, the Norwegian Government submitted that it had decided, in light of ESA’s reasoned opinion, to precipitate the implementation of the Annex to the Directive to 31 December 2013, by way of adaptations to the existing instruction for the periodic roadworthiness tests of vehicles, while the existing instruction in its entirety would be replaced by a new Annex to the national regulation on 1 January 2015. As a consequence, the revised instruction for the periodic roadworthiness tests would enter into force on 31 December 2013.

- 12 The Norwegian Government further explained that the Annex to the national regulation was “systematically adapted” in order to be compatible with a future data system for electronic registration of periodic roadworthiness tests. As that data system was still under development, and would not be ready before 1 January 2015, temporary measures would be made in the present instruction to ensure the implementation of the Directive in the meantime.
- 13 In light of this information, ESA decided on 29 May 2012, to bring the matter before the Court pursuant to Article 31(2) SCA.

III Procedure before the Court and forms of order sought

- 14 ESA lodged the present application at the Court on 28 June 2013. The statement of defence from Norway was received on 2 September 2013.
- 15 The applicant, the EFTA Surveillance Authority, requests the Court to:

1. *Declare that by failing (i) to adopt, or (ii) to notify the Authority forthwith of, all the measures necessary to implement the Act referred to at point 16a of Chapter II of Annex XIII to the Agreement on the European Economic Area (“the EEA Agreement”) (Commission Directive 2010/48/EU of 5 July 2010 adapting to technical progress Directive 2009/40/EC of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers), as adapted to the Agreement by way of Protocol 1 thereto, within the time prescribed (both except for paragraph 3 of Annex II to the Directive on roadworthiness certificates which is only to be implemented by 31 December 2013), the Kingdom of Norway has failed to fulfil its obligations under the Act and under Article 7 of the Agreement.*

2. *Order the Kingdom of Norway to bear the costs of these proceedings.*

- 16 The defendant, the Kingdom of Norway, requests the Court to:

Declare the application to be founded.

- 17 For clarification, Norway adds that it has notified ESA of partial implementation measures regarding the Act. Moreover, it states that all remaining amendments will have entered into force by the end of December 2013.

- 18 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 Findings of the Court

- 19 Article 3 EEA imposes upon the EEA 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-13/12 *ESA v Iceland*, judgment of 5 May 2013, not yet reported, paragraph 13, and the case law cited). Under Article 7 EEA, the EEA States are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee.
- 20 By Decision No 55/2011 of 20 May 2011, the EEA Joint Committee made the Directive part of the EEA Agreement. The Decision entered into force on 21 May 2011, and the time limit for EFTA States to adopt the measures necessary to implement the Act expired on 31 December 2011, pursuant to Article 2 of the Directive.
- 21 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, *inter alia*, *ESA v Iceland*, cited above, paragraph 15, and the case law cited). It is undisputed that Norway did not adopt the measures necessary to implement the Act before the expiry of the time limit given in the reasoned opinion.
- 22 Since Norway did not in fact implement the Act within the prescribed period, the Court does not need to examine the alternative form of order sought for failing to notify ESA of the measures implementing the Act.
- 23 It must therefore be held that, by failing to adopt the measures necessary to implement the Act referred to at point 16a of Chapter II of Annex XIII to the Agreement on the European Economic Area, the Kingdom of Norway has failed to fulfil its obligations under that Act and under Article 7 of the EEA agreement.

V Costs

- 24 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 Kingdom of Norway be ordered to pay the costs, and the latter has been unsuccessful, and since none of the exceptions in Article 66(3) apply, the Kingdom of Norway must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by failing to adopt all the measures necessary to implement the Act referred to at point 16a of Chapter II of Annex XIII to the Agreement on the European Economic Area (Commission Directive 2010/48/EU of 5 July 2010 adapting to technical progress Directive 2009/40/EC of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers), as adapted by the Agreement by way of Protocol 1 thereto, within the time prescribed (both except for paragraph 3 of Annex II to the Directive on roadworthiness certificates which is only to be implemented by 31 December 2013), the Kingdom of Norway has failed to fulfil its obligations under the Act and under Article 7 of the EEA agreement.**
2. **Orders the Kingdom of Norway to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 15 November 2013.

Gunnar Selvik
Registrar

Carl Baudenbacher
President