



JUDGMENT OF THE COURT

7 June 2017

*(Failure by an EFTA State to fulfil its obligations – Failure to implement –
Directive 2009/127/EC amending Directive 2006/42/EC with regard to machinery
for pesticide application)*

In Case E-17/16,

EFTA Surveillance Authority, represented by Carsten Zatschler and Marlene Lie Hakkebo, members of its Department of Legal & Executive Affairs, acting as Agents,

applicant,

v

Iceland, represented by Jóhanna Bryndís Bjarnadóttir, 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 1c of Chapter XXIV of Annex II to the Agreement on the European Economic Area (Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application) as adapted by way of Protocol 1 thereto 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: Carl Baudenbacher, President, Per Christiansen (Judge-Rapporteur) and Benedikt Bogason (ad hoc), 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 Registry on 17 November 2016, 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 1c of Chapter XXIV of Annex II to the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”), that is Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application (OJ 2009 L 310, p. 29) (“the Act” or “the Directive”) as adapted to the Agreement under its Protocol 1, and under Article 7 of the Agreement, 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 EEA Joint Committee Decision No 279/2014 of 12 December 2014 (OJ 2015 L 311, p. 32) (“Decision 279/2014”) amended Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement by adding the Directive to point 1c of Chapter XXIV. No constitutional requirements were indicated. Decision 279/2014 entered into force on 1 June 2015. The time limit for the EFTA States to adopt the measures necessary to implement the Directive expired on the same date.

III Facts and pre-litigation procedure

6 By a letter of 1 June 2015, ESA reminded Iceland of the obligation to notify the measures it had taken to implement the Directive. Iceland did not reply to that letter.

7 On 16 September 2015, ESA issued a letter of formal notice concluding that Iceland had failed to fulfil its obligations under the Directive and Article 7 EEA, by failing to adopt and/or to inform ESA of the measures necessary to implement the Directive. Iceland did not respond to the letter of formal notice.

8 On 9 February 2016, 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 following the notification, that is no later than 9 April 2016. Iceland did not reply to the reasoned opinion.

- 9 Since Iceland did not comply with the reasoned opinion by the deadline, 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

- 10 ESA lodged the present application at the Court Registry on 17 November 2016. ESA requests the Court to:

1. *Declare that Iceland has failed to fulfil its obligations under the Act referred to at point 1c of Chapter XXIV of Annex II to the Agreement on the European Economic Area (Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application) as adapted by way of Protocol 1 thereto 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.*

- 11 Iceland's statement of defence was registered at the Court on 23 January 2017. 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, in its defence, Iceland informs that the Directive was implemented into Icelandic law with effect from 30 December 2016.

- 12 By a letter of 30 January 2017, ESA waived its right to submit a reply and consented to dispense with the oral procedure should the Court wish to do so. By a letter of 13 March 2017, Iceland also consented to dispense with the oral procedure.

- 13 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

- 14 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-14/16 *ESA v Iceland*, judgment of 31 March 2017, not yet reported, paragraph 31 and case law cited).

- 15 Under Article 7 EEA, the EFTA 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. 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 (see, *inter alia*, *ESA v Iceland*, cited above, paragraph 32 and case law cited).

- 16 Decision 279/2014 entered into force on 1 June 2015. The time limit for the EFTA States to adopt the measures necessary to implement the Directive expired on the same date.
- 17 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 33 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.
- 18 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.
- 19 It must therefore be held that Iceland has failed to fulfil its obligations under the Act referred to at point 1c of Chapter XXIV of Annex II to the Agreement on the European Economic Area (Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application) as adapted under its Protocol 1, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed.

VI Costs

- 20 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 1c of Chapter XXIV of Annex II to the Agreement on the European Economic Area (Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application) as adapted by way of Protocol 1 thereto 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.**

Carl Baudenbacher

Per Christiansen

Benedikt Bogason

Delivered in open court in Luxembourg on 7 June 2017.

Gunnar Selvik
Registrar

Carl Baudenbacher
President