



JUDGMENT OF THE COURT

7 June 2017

(Failure by an EFTA State to fulfil its obligations – Failure to implement – Regulation (EU) No 98/2013 on the marketing and use of explosives precursors)

In Case E-18/16,

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 adopt the measures necessary to make the Act referred to at point 12zzq of Chapter XV of Annex II to the Agreement on the European Economic Area (Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors), as adapted to the Agreement by way of Protocol 1 thereto, part of its internal legal order as required by Article 7 of the Agreement,

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 adopt the measures necessary to make the Act referred to at point 12zzq of Chapter XV of Annex II to the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”), that is Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (OJ 2013 L 39, p. 1) (“the Act” or “the Regulation”), as adapted to the Agreement under its Protocol 1, part of its internal legal order as required by Article 7 EEA.

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:

(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;

...

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 269/2014 of 12 December 2014 (OJ 2015 L 311, p. 20) (“Decision 269/2014”) amended Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement by adding the Regulation *inter alia* as point 12zzq of Chapter XV. Constitutional requirements were indicated by Iceland and Norway for the purposes of Article 103 EEA, but they were fulfilled by 9 June 2015. Consequently, Decision 269/2014 entered into force on 1 August 2015. The time limit for the EFTA States to adopt the measures necessary to make the Regulation part of their internal legal orders expired on the same date.

III Facts and pre-litigation procedure

6 By a letter of 3 August 2015, ESA asked Iceland to provide information on the national measures which had been taken to make the Regulation part of Iceland’s legal order. Iceland did not formally reply to that letter.

7 By way of informal correspondence received on 17 August 2015, ESA understood that the Icelandic Government expected to present a draft bill in the following Parliamentary session. It was indicated that the draft bill would not be presented before Christmas 2015.

8 On 4 November 2015, ESA issued a letter of formal notice concluding that Iceland had failed to fulfil its obligations under the Regulation and Article 7 EEA, by failing to adopt the measures necessary to make the Regulation part of its internal legal order.

- 9 On 5 November 2015 Iceland responded to the letter of formal notice and indicated that it hoped to present a draft bill in that Parliamentary session, so that the Regulation would be implemented shortly.
- 10 On 2 March 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 2 May 2016. Iceland did not reply to the reasoned opinion. However, by email of 12 August 2016 the Icelandic Government informed ESA that it was intending to present a draft bill to Parliament before Christmas that year.
- 11 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

- 12 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 adopt the measures necessary to make the Act referred to at point 12zzq of Chapter XV of Annex II to the EEA Agreement (Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order as required by Article 7 of the EEA Agreement.*
 2. *Order Iceland to bear the costs of these proceedings.*
- 13 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 preparations have been made for Parliament to amend national legislation (the Weapons Act No 16/1998, as amended) in spring 2017 in order to give the Regulation a necessary legal basis. As soon as the amendments are in place, a national administrative regulation will be adopted to implement the Regulation.
- 14 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.
- 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-2/15 *ESA v Iceland* [2015] EFTA Ct. Rep. 340, paragraph 18 and case law cited).
- 17 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. 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 to implement regulations as such (see, *inter alia*, *ESA v Iceland*, cited above, paragraph 19 and case law cited).
- 18 Decision 269/2014 entered into force on 1 August 2015. The time limit for the EFTA States to adopt the measures necessary to implement the Regulation expired on the same date.
- 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 21 and case law cited). It is undisputed that Iceland had not adopted the measures necessary to make the Regulation part of its internal legal order by the expiry of the time limit set in the reasoned opinion.
- 20 It must therefore be held that Iceland has failed to fulfil its obligations under Article 7 of the Agreement on the European Economic Area by failing, within the time prescribed, to adopt the measures necessary to make part of its internal legal order the Act referred to at point 12zzq of Chapter XV of Annex II to the Agreement (Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors), as adapted to the Agreement under its Protocol 1.

VI Costs

- 21 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 adopt the measures necessary to make the Act referred to at point 12zzq of Chapter XV of Annex II to the Agreement on the European Economic Area (Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors), as adapted to the Agreement by way of Protocol 1 thereto, part of its internal legal order as required by Article 7 of the Agreement.**
- 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