



JUDGMENT OF THE COURT

24 April 2018

*(Failure by an EFTA State to fulfil its obligations – Failure to implement –
Directive 2014/29/EU)*

In Case E-7/17,

EFTA Surveillance Authority, represented by Carsten Zatschler, Catherine Howdle and Ingibjörg Ólöf Vilhjálmsdóttir, 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 6f of Chapter VIII of Annex II to the Agreement on the European Economic Area (Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels), as adapted by Protocol 1 to the Agreement, part of its internal legal order, and in any event has failed to notify the EFTA Surveillance Authority of the measures it has adopted to implement the Act, as required by Article 7 of the Agreement,

THE COURT,

composed of: Páll Hreinsson, President and Judge-Rapporteur, Per Christiansen and Bernd Hammermann, 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 21 September 2017, 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 6f of Chapter VIII of Annex II to the Agreement on the European Economic area (“EEA” or “the EEA Agreement”), that is Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels (OJ 2014 L 96, p. 45, and Icelandic EEA Supplement 2015 No 63, p. 940) (“the Act” or “the Directive”), as adapted to the Agreement under its Protocol 1, part of its internal legal order, and in any event has failed to notify ESA of the measures it has adopted to implement the Act, as required by Article 7 of the EEA Agreement.

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 85/2015 of 30 April 2015 (OJ 2016 L 211, p. 21, and Icelandic EEA Supplement 2016 No 42, p. 21) (“Decision 85/2015”) amended Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement by adding the Directive to point 6f of Chapter VIII of the Annex. No constitutional requirements were indicated. Decision 85/2015 entered into force on 1 May 2015. The time limit for the EFTA States to adopt the measures necessary to implement the Directive expired on the same date with respect to Articles 42 to 45 of the Directive but expired on 19 April 2016 for the remainder of the Directive.

III Facts and pre-litigation procedure

6 On 14 September 2016, after certain correspondence, ESA issued a letter of formal notice, in which it concluded that Iceland had failed to fulfil its obligations under the Act and Article 7 EEA by failing to adopt and/or to notify ESA of the national measures necessary to make the Act part of its legal order.

7 On 9 November 2016, Iceland responded to the letter of formal notice by informing ESA that it aimed to publish a national regulation implementing the Act in February 2017.

8 On 8 December 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 measures necessary to comply with the reasoned opinion within two months of receipt of the reasoned opinion.

- 9 Iceland did not formally reply to the reasoned opinion. By informal email correspondence on 3 May 2017, the Icelandic Government informed ESA that it expected that the Directive would be implemented during the summer of 2017. By a response sent on 2 June 2017 to ESA’s follow-up request for a more specific timeline, the Icelandic Government informed ESA that it aimed to provide further information later that week. However, no further correspondence was received by ESA.
- 10 Since Iceland did not comply with the reasoned opinion by the deadline, on 12 July 2017 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

- 11 ESA lodged the present application at the Court Registry on 21 September 2017. ESA requests the Court to:
1. *Declare that Iceland has failed to adopt the measures necessary to make the Act referred to at point 6f of Chapter VIII of Annex II to the EEA Agreement (Directive 2014/29/EU of the European Parliament and of the Council of [26 February 2014 on the harmonisation of the laws of the Member States relating to the] making available on the market of simple pressure vessels), as adapted by Protocol 1 to the EEA Agreement, part of its internal legal order, and in any event has failed to notify the EFTA Surveillance Authority of the measures it has adopted to implement the Act, as required by Article 7 of the EEA Agreement.*
 2. *Order Iceland to bear the costs of these proceedings.*
- 12 Iceland’s statement of defence was registered at the Court on 22 November 2017. Iceland submitted that it did not dispute the facts of the case as set out in ESA’s application. Furthermore, it did not contest the declaration sought by ESA. Nevertheless, Iceland stated that the implementation of the Directive into national law would be finalised on 27 November 2017.
- 13 By a letter of 28 November 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 3 January 2018, Iceland also consented to dispense with the oral procedure.
- 14 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

- 15 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-17/16 *ESA v Iceland*, judgment of 7 June 2017, not yet reported, paragraph 14 and case law cited).
- 16 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 of result in that regard (see, inter alia, *ESA v Iceland*, cited above, paragraph 15 and case law cited).
- 17 Decision 85/2015 entered into force on 1 May 2015. The time limit to adopt the measures necessary to implement the Directive expired on the same date with respect to Articles 42 to 45 of the Directive but expired on 19 April 2016 for the remainder of the Directive.
- 18 The question of 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 17 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.
- 19 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.
- 20 It must therefore be held that Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement by failing, within the time prescribed, to adopt the measures necessary to implement the Act referred to at point 6f of Chapter VIII of Annex II to the EEA Agreement (Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels), as adapted to the EEA 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 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 implement the Act referred to at point 6f of Chapter VIII of Annex II to the Agreement (Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels), as adapted to the Agreement under its Protocol 1.**
2. **Orders Iceland to bear the costs of the proceedings.**

Páll Hreinsson

Per Christiansen

Bernd Hammermann

Delivered in open court in Luxembourg on 24 April 2018.

Gunnar Selvik
Registrar

Páll Hreinsson
President