



## JUDGMENT OF THE COURT

20 May 2009

*(Failure by a Contracting Party to fulfil its obligations – Commission Regulation (EC) No 593/2007 on the fees and charges levied by the European Aviation Safety Agency – judgment by default)*

In Case E-2/09,

**EFTA Surveillance Authority**, represented by Bjørnar Alterskjær, Deputy Director, and Ólafur Jóhannes Einarsson, Senior Officer, in the Department of Legal & Executive Affairs, acting as Agents, Brussels, Belgium,

*Applicant,*

v

**The Republic of Iceland**

*Defendant,*

APPLICATION for a declaration that by failing to adopt the measures necessary to make the Act referred to at point 66s of Chapter VI of Annex XIII to the EEA Agreement (Commission Regulation (EC) No 593/2007 of 31 May on the fees and charges levied by the European Aviation Safety Agency), as adapted to the EEA Agreement by Protocol 1 thereto, part of its internal legal order within the time prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement.

THE COURT,

composed of: Carl Baudenbacher, President (Judge-Rapporteur), Thorgeir Örlygsson and Henrik Bull, Judges,

Registrar: Skúli Magnússon,

having regard to the application of the EFTA Surveillance Authority,

having regard to the application of the EFTA Surveillance Authority for judgment by default,

gives the following

## **Judgment**

### **I The application**

- 1 By application lodged at the Court Registry on 6 February 2009, 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 the “SCA”), for a declaration that by failing to adopt the measures necessary to make the Act referred to at point 66s of Chapter VI of Annex XIII to the EEA Agreement, as adapted to the EEA Agreement by Protocol 1 thereto, part of its internal legal order within the time prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement. The Act referred to is Commission Regulation (EC) No 593/2007 of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency, as adapted by way of Protocol 1 to the EEA Agreement.

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

- 2 Decision 166/2007 of 7 December 2007 of the EEA Joint Committee amended Annex XIII to the EEA Agreement by adding Commission Regulation (EC) No 593/2007 to point 66s of Chapter VI of that Annex. Article 3 of this decision requires the EFTA States to make the Act part of their internal legal order by 8 December 2007.
- 3 By letter of 14 January 2008, ESA invited the Government of Iceland to provide information concerning the measures by which the Act had been made part of the Icelandic internal legal order. By e-mail of 23 January 2008, the Government of Iceland informed the Authority that the Act had not yet been made part of the Icelandic internal legal order.
- 4 Having received no further information from the Government of Iceland indicating that the Act had been made part of the Icelandic internal legal order, ESA decided to initiate proceedings under Article 31 SCA and, on 27 February 2008, a letter of formal notice was sent to the Government of Iceland, stating that Iceland had failed to make the Act part of its legal order, and inviting the Government to submit its observations on the matter within two months of receipt.
- 5 By e-mail of 29 February 2008, the Government of Iceland informed ESA that the Act had not yet been translated. At a meeting held in Reykjavík on 22 May

2008, the Government could not provide any information to ESA as to when the incorporation of the Act into the Icelandic internal legal order would take place.

- 6 Not being in the possession of any information enabling it to conclude that the measures necessary to make the Act part of the Icelandic internal legal order had been adopted by Iceland, ESA delivered, on 16 July 2008, a reasoned opinion concluding that, by failing to adopt the measures necessary to implement Commission Regulation (EC) No. 593/2007 (of 31 May 2007) on the fees and charges levied by the European Aviation Safety Agency, Iceland had failed to fulfil its obligations under Article 7 EEA. The Government of Iceland was requested to take the measures necessary to comply with the reasoned opinion within a time-limit of three months following notification thereof.
- 7 In its observations of 4 September 2008 on the reasoned opinion, the Government of Iceland informed ESA that the delay in incorporating the Act was due to the fact that the Act had still not been translated. By an e-mail of 19 January 2009 and a letter dated 29 January 2009, the Government indicated the Act had still not been translated.
- 8 On 4 February 2009, ESA decided to bring the matter before the EFTA Court. By e-mail of 5 February 2009, Iceland informed ESA that the Act had been incorporated into its internal legal order.

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

- 9 ESA lodged the present application at the Court Registry on 6 February 2009. By telefax of 11 March 2009, registered at the Court Registry the same day, the Government of Iceland informed the EFTA Court that it would not take part in the proceedings. In reply to the Court's invitation to comment on the telefax ESA submitted, on 24 March 2009, an application for judgment by default against the Republic of Iceland.
- 10 Having regard to the intention of the Republic of Iceland not to take part in the proceedings and to ESA's application for judgment by default, the President decided not to open the oral procedure.

### **IV Arguments of the Applicant**

- 11 The application is based on one plea in law, namely that by failing to adopt the measures necessary to make the Act referred to at point 66s of Chapter VI of Annex XIII to the EEA Agreement, as adapted to the EEA Agreement by Protocol 1 thereto, part of its internal legal order within the time prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 7 of the EEA Agreement.

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

- 12 Before considering the plea relied on by ESA, it should be noted that where, as in this case, the Court gives judgment by default, under Article 90(2) of the Rules

of Procedure, when assessing the merits of the case, it only has to consider “whether the application appears well founded”.

- 13 Under Article 7 EEA, all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee, shall be, or be made, part of the internal legal order of the Contracting Parties. In this context, the Court notes that 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-3/07 *EFTA Surveillance Authority v Iceland* [2007] EFTA Ct. Rep. 356, at paragraph 12).
- 14 Article 14(1) of Commission Regulation (EC) No 593/2007 sets the date of entry into force in the EC Member States to 1 June 2007. Decision 166/2007 of the EEA Joint Committee, incorporating the Regulation into the EEA Agreement, entered into force 8 December 2007.
- 15 Further, Decision 166/2007 did not set an EEA time limit for the implementation of the Regulation into national law. Thus, Iceland was obliged to adopt the national measures necessary to make the Regulation part of its internal legal order by the date on which the Decision entered into force.
- 16 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 Case E-3/07 *EFTA Surveillance Authority v Iceland*, cited above, at paragraph 14). According to the application, Iceland did not adopt those measures before the expiry of the time-limit given in the reasoned opinion.
- 17 It must therefore be held that, by failing to adopt, within the prescribed time-limit, the national measures necessary to make the Act referred to at point 66s of Chapter VI of Annex XIII to the EEA Agreement, i.e. Commission Regulation (EC) No 593/2007 of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency, as adapted by way of Protocol 1 to the EEA Agreement, part of its internal legal order, Iceland has failed to fulfil its obligations under Article 7 EEA.

## **VI Costs**

- 18 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 the EFTA Surveillance Authority has requested that the Republic of Iceland be ordered to pay the costs and the latter has been unsuccessful, Iceland must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- 1. Declares that, by failing to adopt, within the prescribed time-limit, the national measures necessary to make the Act referred to at point 66s of Chapter VI of Annex XIII to the EEA Agreement, i.e. Commission Regulation (EC) No 593/2007 of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency, as adapted by way of Protocol 1 to the EEA Agreement, part of its internal legal order, Iceland has failed to fulfil its obligations under Article 7 EEA.**
- 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 20 May 2009.

Skúli Magnússon  
Registrar

Carl Baudenbacher  
President