



JUDGMENT OF THE COURT

14 December 2007

(Failure by a Contracting Party to fulfil its obligations – Directive 2002/88/EC relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery)

In Case E-3/07,

EFTA Surveillance Authority, represented by Niels Fenger, Director, and Arne Torsten Andersen, Senior Officer, in the Department of Legal & Executive Affairs, acting as Agents, Brussels, Belgium,

Applicant,

v

The Republic of Iceland, represented by Ms. Sesselja Sigurðardóttir, First Secretary and Legal Officer, Ministry for Foreign Affairs, acting as Agent, Reykjavik, Iceland,

Defendant,

APPLICATION for a declaration that, by failing to adopt, within the time-limit prescribed, or to notify the EFTA Surveillance Authority of the adoption of, the measures necessary to implement the Act referred to at the second indent of point 1a of Chapter XXIV of Annex II to the EEA Agreement, i.e. Directive 2002/88/EC of the European Parliament and of the Council of 9 December 2002 amending Directive 97/68/EC, as adapted to the EEA Agreement by Protocol 1 thereto, the Republic of Iceland has failed to fulfil its obligations under Article 2 of that Act and Article 7 of the EEA Agreement.

THE COURT,

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

Registrar: Skúli Magnússon,

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having regard to the written pleadings of the parties and the written observations of the Commission of the European Communities, represented by Doyin Lawunmi, a detached national expert within its Legal Service, and Søren Schønberg, a member of its Legal Service, acting as Agents,

having decided to dispense with the oral procedure,

gives the following

Judgment

The application

- 1 By application lodged at the Court Registry on 8 March 2007, 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, within the time-limit prescribed, the national provisions necessary to implement the Act referred to at the second indent of point 1a of Chapter XXIV of Annex II to the Agreement on the European Economic Area (hereinafter the “EEA” or the “EEA Agreement”), or to notify ESA thereof, the Republic of Iceland has failed to fulfil its obligations under Article 2 of that Act and Article 7 EEA. The Act referred to is Directive 2002/88/EC of the European Parliament and of the Council of 9 December 2002 amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, as adapted by way of Protocol 1 to the EEA Agreement.

Facts and pre-litigation procedure

- 2 Decision 151/2003 of 7 November 2003 of the EEA Joint Committee amended Annex II to the EEA Agreement by adding Directive 2002/88/EC at the second indent of point 1a of Chapter XXIV of that Annex.
- 3 Article 2 of Directive 2002/88/EC requires EC Member States to adopt the measures necessary to implement the Act by 11 August 2004, and to notify the Commission thereof. A parallel obligation was extended to the EFTA States by the entry into force of Decision 151/2003.
- 4 In the absence of any information from the Government of Iceland as to the implementation of the Act, ESA decided to initiate proceedings under Article 31 SCA and, on 23 February 2005, a letter of formal notice was sent to the Government of Iceland, stating that Iceland had failed to take the measures

necessary to comply with the Act, and inviting the Government to submit its observations on the matter within two months of receipt.

- 5 By letter of 13 May 2005, the Government of Iceland provided its observations on the letter of formal notice, and informed ESA that the Ministry of Social Affairs was preparing the implementation of the Act. The Government of Iceland indicated that a new regulation implementing the Act was expected to enter into force in July 2005.
- 6 Not having received any subsequent information from the Government of Iceland regarding the implementation of the Act, ESA delivered, on 20 December 2005, a reasoned opinion in which it concluded that, by failing to adopt, or to notify ESA of the adoption of, the measures necessary to implement the Act, Iceland had failed to fulfil its obligations under Article 2 of that Act and 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 The Government of Iceland did not respond to the reasoned opinion.

Procedure before the Court

- 8 ESA lodged the present application at the Court Registry on 8 March 2007. The statement of defence from the Government of Iceland was received on 10 April 2007. Written observations were submitted by the Commission of the European Communities on 14 June 2007.
- 9 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.

Arguments of the parties

- 10 The application is based on one plea of law, that, by failing to adopt, or to notify ESA of the adoption of, the national measures necessary to implement the Act referred to at the second indent of point 1a of Chapter XXIV of Annex II to the EEA Agreement, i.e. Directive 2002/88/EC of the European Parliament and of the Council of 9 December 2002 amending Directive 97/68/EC, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 2 of that Act, as included in the EEA Agreement, and under Article 7 EEA.
- 11 It is undisputed by the Government of Iceland that the necessary national implementation measures were not adopted within the time-limit prescribed. Moreover, in its statement of defence, the Government of Iceland does not dispute the order sought by ESA. The Government of Iceland nevertheless requests the Court to order each party to bear its own costs of the proceedings.

Findings of the Court

- 12 Under Article 7 EEA, the Contracting Parties are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee. 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 Cases E-7/97 *EFTA Surveillance Authority v Norway* [1998] EFTA Court Report 62, at paragraphs 15–17 and E-5/01 *EFTA Surveillance Authority v Liechtenstein* [2000–2001] EFTA Court Report 287, at paragraphs 15–16).
- 13 The obligation to implement also follows from Article 2 of Directive 2002/88/EC, according to which implementation by the EC Member States is required not later than 11 August 2004. As the EEA Joint Committee in Decision 151/2003 did not set a separate EEA time-limit for the implementation of the Directive into national law, Iceland was obliged to adopt the national measures necessary to implement the Directive by that date.
- 14 It is undisputed that Iceland did not adopt those measures before the expiry of the time-limit given in the reasoned opinion. 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-3/00 *EFTA Surveillance Authority v Norway* [2000–2001] EFTA Court Report 73, at paragraph 39).
- 15 It must therefore be held that, by failing to adopt, within the prescribed time-limit, the national measures necessary to implement the Act referred to at the second indent of point 1a of Chapter XXIV of Annex II to the EEA Agreement, i.e. Directive 2002/88/EC of the European Parliament and of the Council of 9 December 2002 amending Directive 97/68/EC, as adapted by way of Protocol 1 to the EEA Agreement, Iceland has failed to fulfil its obligations under Article 2 of that Act and Article 7 EEA.

Costs

- 16 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, it must be ordered to pay the costs. The costs incurred by the Commission of the European Communities are not recoverable.

On those grounds,

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THE COURT

hereby:

- 1. Declares that, by failing to adopt, within the time-limit prescribed, the measures necessary to implement the Act referred to at the second indent of point 1a of Chapter XXIV of Annex II to the EEA Agreement, i.e Directive 2002/88/EC of the European Parliament and of the Council of 9 December 2002 amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, as adapted to the EEA Agreement by Protocol 1 thereto, the Republic of Iceland has failed to fulfil its obligations under Article 2 of that Act and under Article 7 of the EEA Agreement.**
- 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 14 December 2007.

Skúli Magnússon
Registrar

Carl Baudenbacher
President