



JUDGMENT OF THE COURT

6 December 2013

(Failure by an EEA State to fulfil its obligations – Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests)

In Case E-15/13,

EFTA Surveillance Authority, represented by Markus Schneider, Deputy Director, and Catherine Howdle, Temporary Officer, Department of Legal & Executive Affairs, acting as Agents,

applicant,

v

Iceland, represented by Anna Katrín Vilhjálmsdóttir, First Secretary at the Ministry for Foreign Affairs, acting as Agent,

defendant,

APPLICATION for a declaration that by failing to adopt, or to notify the EFTA Surveillance Authority forthwith of, the measures necessary to implement the Act referred to at point 7d of Annex XIX to the Agreement on the European Economic Area (Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests), as adapted by the Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement.

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (Judge-Rapporteur) 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 application lodged at the Court on 9 July 2013, 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 by failing to adopt, or to notify ESA forthwith of, the measures necessary to implement the Act referred to at point 7d of Annex XIX to the Agreement on the European Economic Area (Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers’ interests, OJ 2009 L 110, p. 30, [“the Directive” or “the Act”]), as adapted to the EEA Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the Agreement (“EEA”).

II Facts and pre-litigation procedure

- 2 By Decision No 35/2010 of 12 March 2010, the EEA Joint Committee amended Annex XIX to the EEA Agreement by adding the Directive to point 7d of that Annex. According to Article 3 of the Decision it was to enter into force on 13 March 2010, provided that all the notifications under Article 103(1) of the EEA Agreement regarding the fulfilment of constitutional requirements had been made to the EEA Joint Committee. As the last notification was made by Iceland on 11 November 2011, the Decision entered into force on 1 January 2012, pursuant to the second paragraph of Article 103(1) EEA.
- 3 By a letter dated 14 December 2011, ESA reminded the Icelandic Government of its obligation to implement the Directive into the Icelandic legal order by 1 January 2012.
- 4 The Icelandic Government replied by a letter dated 18 December 2011. The Icelandic Government indicated that the measures necessary to implement the Act had not yet been adopted.
- 5 ESA issued a formal notice to Iceland by a letter of 28 March 2012. ESA concluded that, by failing to adopt or, in any event, to inform ESA of the measures necessary to ensure the implementation of the Act, Iceland had failed to fulfil its obligations under the Act and under Article 7 EEA.

- 6 By e-mail of 29 March 2012, the Icelandic Government responded to the letter of formal notice. It informed ESA that Iceland had not yet adopted the measures necessary to implement the Act. The Icelandic Government indicated that the implementation would require amendments to its national law, namely Act No. 141/2001, on Injunction and Litigation to Protect Overall Consumers' Interests (*Lög nr 141/2001 um lögbann og dómsmál til að vernda heildarhagsmuni neytenda*). The Icelandic Government stated that as the Directive had been translated and published in the EEA Supplement, the work on the implementing regulation could start, but it was unable to indicate when the implementing measures would be in place.
- 7 By further e-mail of 3 September 2012, responding to an informal inquiry by ESA of the same day, the Icelandic Government confirmed that the measures necessary to implement the Act had not yet been adopted.
- 8 Having received no further information as to the measures the Icelandic Government had taken to implement the Act, ESA delivered a reasoned opinion to Iceland on 5 September 2012. ESA maintained the conclusion set out in its letter of formal notice that by failing to adopt the measures necessary to implement the Act, or in any event, to notify ESA forthwith of the measures it had adopted to implement the Act, Iceland had failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement. Furthermore, pursuant to Article 31(2) SCA, ESA required Iceland to take the measures necessary to comply with the reasoned opinion within two months following notification thereof (i.e. no later than 5 November 2012).
- 9 ESA received no response from the Icelandic Government before the expiry of the time limit to comply with the reasoned opinion.
- 10 By email of 13 December 2012, responding to an informal inquiry by ESA of the same day, the Icelandic Government expressed its hope that Parliament would adopt the measures necessary to implement the Act before the end of March 2013.
- 11 By a further e-mail of 2 April 2013, responding to another informal inquiry by ESA of the same day, the Icelandic Government informed ESA that Parliament had not yet adopted the necessary measures and that the Government intended to present relevant bills to Parliament in the autumn of 2013.
- 12 In light of the fact that the Icelandic Government had not informed ESA of any measures adopted to implement the Act, and ESA was not in possession of any information which could indicate that the Act had nevertheless been implemented, ESA decided on 12 June 2013 to bring the matter before the Court pursuant to Article 31(2) SCA.

III Procedure before the Court and the forms of order sought

13 ESA lodged the present application at the Court on 9 July 2013. The statement of defence from Iceland was received on 26 September 2013.

14 ESA requests the Court to:

1. *Declare that by failing (i) to adopt, or (ii) to notify the EFTA Surveillance Authority forthwith of, the measures necessary to implement the Act referred to at point 7d of Annex XIX to the Agreement on the European Economic Area (Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests), as adapted by the Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement.*
2. *Order Iceland to bear the costs of these proceedings.*

15 The Icelandic Government does not contest the declaration sought by ESA but requests the Court to “order each party to bear its own costs of the proceedings, due to the circumstances of the case”.

16 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.

IV Findings of the Court

17 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, *inter alia*, Case E-11/13 *ESA v Iceland*, judgment of 15 November 2013, not yet reported, paragraph 19, and case law cited). 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.

18 By Decision No 35/2010 of 12 March 2010, the EEA Joint Committee made Directive 2009/22 part of the EEA Agreement. The Decision entered into force on 1 January 2012 and the time limit for EFTA States to adopt the measures necessary to implement the Act expired on the same date.

19 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, *inter alia*, *ESA v Iceland*, cited above, paragraph 21, and case law cited). It is undisputed that Iceland did not adopt those measures before the expiry of the time limit given in the reasoned opinion.

- 20 As Iceland did not implement the Act within the prescribed period, the Court does not need to examine the alternative form of order sought for failing to notify ESA of the measures implementing the Act.
- 21 It must therefore be held that by failing to adopt the measures necessary to implement the Act referred to at point 7d of Annex XIX to the Agreement on the European Economic Area (Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests), as adapted by the Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations arising under that Act and under Article 7 EEA.

V Costs

- 22 Under Article 66(2) of the Rules of Procedure (“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 and the latter has been unsuccessful, and since 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 by failing to adopt the measures necessary to implement the Act referred to at point 7d of Annex XIX to the Agreement on the European Economic Area (Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests), as adapted by the Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the Agreement.**
- 2. Orders Iceland to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

Delivered in open court in Luxembourg on 6 December 2013.

Gunnar Selvik
Registrar

Carl Baudenbacher
President