



JUDGMENT OF THE COURT

6 December 2013

(Failure by a Contracting Party to fulfil its obligations – Failure to implement - Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts)

In Case E-16/13,

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, 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, measures necessary to implement the Act referred to at point 7b of Annex XIX to the Agreement on the European Economic Area (Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts), as adapted to 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.

THE COURT,

composed of: Carl Baudenbacher (Judge-Rapporteur), President, Per Christiansen and Páll Hreinsson, 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 Registry 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”), for a declaration that by failing to adopt, or to notify ESA forthwith, of the measures necessary to implement the Act referred to at point 7b of Annex XIX to the Agreement on the European Economic Area (Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts), (“the Directive”), as adapted to the Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations arising pursuant to that Act and pursuant to Article 7 of the EEA Agreement.

II Facts and pre-litigation procedure

- 2 Decision No 86/2009 of 3 July 2009 of the EEA Joint Committee (“Decision 86/2009”) amended Annex XIX to the EEA Agreement by replacing Directive 94/47/EC with Directive 2008/122/EC at point 7b of that Annex. Iceland, Norway and Liechtenstein indicated constitutional requirements for the purposes of Article 103 EEA.
- 3 As Iceland notified ESA on 16 September 2011 that the constitutional requirements had been fulfilled, the last such notification to be received, Decision 86/2009 entered into force on 1 November 2011. The time limit for EFTA States to adopt the measures necessary to implement the Act expired on the same date.

- 4 By letter of 11 October 2011, ESA reminded Iceland of its obligation to implement Directive 2008/122 into the Icelandic legal order by 1 November 2011.
- 5 By email of 12 October 2011, Iceland replied to ESA's reminder letter indicating that preparations for the implementing measures had been initiated, although it could not provide an exact time line regarding their adoption.
- 6 Having received no further information, ESA sent a letter of formal notice to Iceland on 1 February 2012. ESA concluded that, by failing to adopt, or to inform ESA of the national measures it had adopted to implement the Act, Iceland had failed to fulfil its obligations pursuant to the Directive and pursuant to Article 7 EEA.
- 7 In its reply to the letter of formal notice on 14 February 2012, Iceland stated that the necessary implementing measures were expected to be adopted by the Icelandic Parliament during its 2012 spring session.
- 8 By email of 4 June 2012, Iceland informed ESA that the implementing measures would not be adopted by the Icelandic Parliament during its 2012 spring session.
- 9 ESA issued a reasoned opinion on 11 July 2012, in which it maintained the conclusions made in its letter of formal notice that by failing to adopt the measures necessary to implement the Directive, or by failing to notify ESA forthwith of the measures it has adopted to implement the Directive, Iceland had failed to fulfil its obligations pursuant to the Directive and pursuant to Article 7 EEA.
- 10 Pursuant to the second paragraph of Article 31 SCA, ESA requested Iceland to take the necessary measures to comply with the reasoned opinion within two months following notification thereof, that is no later than 11 September 2012.
- 11 By emails of 10 October 2012, 21 March 2013, and 2 April 2013, Iceland informed ESA that the Icelandic Parliament had yet to adopt the measures necessary to implement the Directive.

III Procedure before the Court and forms of order sought

- 12 On 9 July 2013, the present application was lodged at the Court's Registry. On 26 September 2013, Iceland lodged its statement of defence. On 2 October 2013, ESA's reply was registered at the Court. On 8 October 2013, Iceland, by way of email, waived its right to submit a rejoinder.
- 13 The applicant, the EFTA Surveillance Authority, 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 7b of Annex XIX to the Agreement on the European Economic Area (Directive*

2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange products), as adapted to the Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations pursuant to that Act and pursuant to Article 7 of the Agreement.

(2) *Order Iceland to bear the costs of these proceedings.*

- 14 The defendant, Iceland, does not dispute the declaration sought by the applicant, and requests the Court to order each party to bear its own costs of the proceedings, due to the circumstances of the case.
- 15 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 in accordance with Article 41(2) of the Rules of Procedure (“RoP”).

IV Findings of the Court

- 16 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 the 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.
- 17 EEA Joint Committee Decision No 86/2009 of 3 July 2009 entered into force on 1 November 2011. The time limit for EFTA States to adopt the measures necessary to implement the Directive expired on the same date. Decision 86/2009 did not set a separate EEA time-limit for the implementation of the Directive into national law.
- 18 The question of whether an EEA/EFTA State has failed to fulfil its obligations must be determined by reference to the situation in the EFTA State as it stood at the end of the period laid down in the reasoned opinion, that is no later than 11 September 2012 (see, *inter alia*, *ESA v Iceland*, cited above, paragraph 21, and the case law cited). It is undisputed that by the expiry of the time limit given in the reasoned opinion, Iceland had not adopted such measures as to implement the Directive.
- 19 Since Iceland did not implement the Directive within the time limit prescribed, there is no need to examine the alternative form of order sought.
- 20 It must therefore be held that, by failing, within the time limit prescribed, to adopt the measures necessary to implement into its national legislation the Act referred to at point 7b of Annex XIX to the Agreement on the European

Economic Area (Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange products), as adapted to the EEA Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations pursuant to the Act, as well as pursuant to Article 7 EEA.

V Costs

- 21 Under Article 66(2) RoP, the unsuccessful party is to be ordered to bear the costs of the proceedings if it has been applied for in the successful party's pleadings, and none of the exceptions set out in Article 66(3) RoP apply to the case.
- 22 Iceland has requested the Court to order that each party should bear its own costs of the proceedings, with reference to the circumstances of the case.
- 23 Since Iceland has neither specified what circumstances of the case, nor set out any other reason as to why any of the exceptions set out in Article 66(3) RoP should apply, and being the unsuccessful party, Iceland is ordered to pay the costs of the proceedings in accordance with Article 66(2) RoP.

On those grounds,

THE COURT

hereby:

1. **Declares that, by failing to correctly implement the Act referred to at point 7b of Annex XIX to the Agreement on the European Economic Area (Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange products), as adapted to the Agreement by way of Protocol 1 thereto, within the time prescribed, Iceland has failed to fulfil its obligations pursuant to that Act and pursuant to 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