

Brussels, 21 September 2017
Case No: 80922
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ORIGINAL

IN THE EFTA COURT

APPLICATION

submitted pursuant to Article 31 (2) of the Agreement between the EFTA States on the
Establishment of a Surveillance Authority and a Court of Justice by

THE EFTA SURVEILLANCE AUTHORITY

represented by Carsten Zatschler, Catherine Howdle, and Ingibjörg-Ólöf Vilhjálmsdóttir,
Department of Legal & Executive Affairs,
acting as Agents,

applicant

AGAINST

ICELAND

defendant

Seeking 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 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

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I. INTRODUCTION

1. By this application, the EFTA Surveillance Authority (“ESA”) brings 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”).
2. ESA seeks a declaration from the Court that Iceland has failed 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 “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 vessels¹ (“the Act”) as adapted to the Agreement by way of Protocol 1 thereto, 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.

II. LAW

3. 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.

...

4. 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:

...

(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties.

...

5. 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

¹ OJ L 96, 29.03.2014, p. 45 and EEA Supplement No 63, 15.10.2015, p 940.

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.

6. Decision No 85/2015 of the EEA Joint Committee of 30 April 2015² (“Decision No 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. Decision No 85/2015 entered into force on 1 May 2015. The time limit for the EFTA States to adopt the measures necessary to implement the Act expired on the same date.
7. It follows from Article 7 of the EEA Agreement that that the EFTA States were obliged to take by 1 May 2015 the measures necessary to ensure that the Act as such became part of their internal legal order.

III. FACTS AND PRE-LITIGATION PROCEDURE

8. On 14 September 2016, after correspondence, ESA issued a letter of formal notice,³ in which it concluded that Iceland had failed to fulfil its obligations under Article 7 EEA by failing to adopt the national measures necessary to make the Act part of its legal order.
9. On 10 November 2016, the Icelandic Government sent a reply to the letter of formal notice,⁴ in which it informed the Authority that the Act had still not been implemented. In this letter of reply the Icelandic Government further stated that the aim was to publish the national regulation implementing the Act in February 2017.
10. Having received no further information, ESA delivered a reasoned opinion on 8 December 2016,⁵ 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 following the notification, that is, no later than 8 February 2017.

² OJ L 211, 4.8.2016, p. 21

³ Document No. 816817; **Annex A.1** to this Application.

⁴ Document No. 826107, Icelandic reference VEL15051809/02.30.06; **Annex A.2** to this Application.

⁵ Document No. 827064; **Annex A.3** to this Application.

11. Iceland did not reply formally to the reasoned opinion. By informal correspondence received by email on 3 May 2017, the Icelandic Government informed ESA that it expected that the Directive would be implemented in summer 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 the staff member in charge was out of office and an e-mail would be sent later that week with further information.⁶ However, no further correspondence has been received.
12. Since Iceland did not comply with the reasoned opinion by the deadline set therein, ESA on 12 July 2017 decided to bring the matter before the Court pursuant to the second paragraph of Article 31 SCA.⁷

IV. SUBMISSIONS

13. 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.
14. 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. According to settled case-law, 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 also in Iceland. The EFTA States find themselves under an obligation of result in that regard.⁸
15. Decision No 85/2015 entered into force on 1 May 2015. The time limit for the EFTA States to adopt the measures necessary to implement the Act expired on the same date.
16. The question 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.⁹ The Icelandic Government has not thus far sought to contest ESA's assertion that Iceland had not adopted the measures necessary to make the Act a part of its internal legal order by the expiry of the time limit set in the reasoned opinion.

⁶ The email correspondence referred to in this paragraph is set out in Document No. 864674; **Annex A.4** to this Application.

⁷ College Decision No 142/17/COL.

⁸ See, *inter alia*, Case E-11/14 *ESA v Iceland*, [2015] EFTA Ct. Rep. 4, paragraph 17.

⁹ See, *inter alia*, Case E-6/06 *ESA v The Principality of Liechtenstein*, [2007] EFTA Ct. Rep. 238, paragraph 20.

17. As a result, ESA submits that Iceland has failed to fulfil its obligations under Article 7 EEA, by failing to adopt the measures necessary to implement the Act within the time prescribed, and by failing in any event to notify the EFTA Surveillance Authority of the measures it has adopted to implement the Act.

V. CONCLUSION

18. Accordingly, ESA requests the Court to:
- a. 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 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.
 - b. order Iceland to bear the costs of these proceedings.

Carsten Zatschler

Catherine Howdle

Ingibjörg-Ólöf Vilhjálmsdóttir

Agents of the EFTA Surveillance Authority

VI. SCHEDULE OF ANNEXES

No	Description	Referred to in this Application at paragraph(s)	Number of pages
A.1	Letter of formal notice	8	2
A.2	Reply to letter of formal notice	9	1
A.3	Reasoned Opinion	10, 16	3
A.4	Email correspondence between the Icelandic Government and ESA	11	2