

Case

E-13/16

EFTA Surveillance Authority



Iceland

*(Failure by an EFTA State to fulfil its obligations – Failure to comply –
Directive 2000/30/EC – Technical roadside inspections)*

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- 1 Article 3 EEA imposes upon the EEA/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.
- 2 The question whether an EEA/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.
- 3 Iceland failed to fulfil its obligations arising from the Act referred to at point 17h of Chapter II of Annex XIII to the EEA Agreement (Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community), as adapted to the Agreement under its Protocol 1, by not introducing, within the time prescribed, the technical roadside inspections required by Article 3(1) of the Act.

Judgment of the Court

31 March 2017

(Failure by an EFTA State to fulfil its obligations – Failure to comply – Directive 2000/30/EC – Technical roadside inspections)

In Case E-13/16,

EFTA Surveillance Authority, represented by Carsten Zatschler, Auður Ýr Steinarsdóttir and Øyvind Bø, members of its Department of Legal & Executive Affairs, acting as Agents,
– *applicant*,

≡V≡

Iceland, represented by Jóhanna Bryndís Bjarnadóttir, Counsellor, Ministry for Foreign Affairs, acting as Agent,
– *defendant*,

APPLICATION for a declaration that Iceland has failed to fulfil its obligations under the Act referred to at point 17h of Annex XIII to the EEA Agreement (Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community) by not introducing the technical roadside inspections required by Article 3(1) of the Act,

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

INTRODUCTION

- 1 By an application lodged at the Court Registry on 26 September 2016, 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 Iceland has failed to fulfil its obligations under the Act referred to at point 17h of Annex XIII to the Agreement on the European Economic Area (“EEA” or “the EEA Agreement”), that is Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community (OJ 2000 L 203, p. 1, and EEA Supplement 2001 No 57, p. 5) (“the Act” or “the Directive”), by not introducing the technical roadside inspections required by Article 3(1) of the Act.

II LAW

EEA LAW

2 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.

...

3 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 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.

4 EEA Joint Committee Decision No 111/2000 of 22 December 2000 (OJ 2001 L 52, p. 36 and EEA Supplement 2001 No 9, p. 3) (“Decision 111/2000”) amended Annex XIII (Transport) to the EEA Agreement by adding the Directive to point 17g of the Annex, which was later renumbered to 17h by EEA Joint Committee Decision No 2/2004 of 6 February 2004 (OJ 2004 L 116, p. 42). No constitutional requirements were indicated. Therefore, Decision 111/2000 entered into force on 23 December 2000 in accordance with its Article 3. The time limit for the EFTA States to adopt the measures necessary to

implement the Directive expired on 9 August 2002, as laid out in a Corrigendum to the Directive (OJ 2003 L 53, p. 64).

- 5 Article 1(1) of the Directive sets out the purpose of the Directive as follows:

In order to improve road safety and the environment, the purpose of this Directive shall be to ensure that commercial vehicles circulating within the territories of the Member States of the Community comply more fully with certain technical conditions imposed by Directive 96/96/EC.

- 6 Article 3(1) of the Directive reads:

Each Member State shall introduce technical roadside inspections such as will achieve the objectives stated in Article 1 as regards commercial vehicles covered by this Directive, bearing in mind the national arrangements applicable to such vehicles under Directive 96/96/EC.

NATIONAL LAW

- 7 The Directive was implemented into the Icelandic legal order by Regulation No 680/2002 of 24 September 2002, which amended Regulation No 378/1998 of 29 June 1998 on the inspection of vehicles. That Regulation was replaced by Regulation No 8/2009 of 7 January 2009 on the inspection of vehicles (“Regulation No 8/2009”), which was intended to fully implement the Directive and replace previously notified measures.

- 8 At the expiry of the deadline of 16 September 2014 set out in the reasoned opinion, Article 10 of Regulation No 8/2009 read:

Inspection agencies, in cooperation with the police, the Icelandic Road Administration and the road Traffic Directorate, shall carry out regular roadside inspections [tests] to inspect the condition of heavy goods

vehicles, coaches and trailers of more than 3500 kg maximum weight. The inspections shall comprise the following:

...

- 9 Regulation No 8/2009 was amended by Regulation No 367/2015 of 25 March 2015. After the amendment, Article 10 of Regulation No 8/2009 reads:

The Icelandic Transport Authority, in cooperation with the police and inspection agencies, shall carry out regular roadside inspections to inspect the condition of heavy goods vehicles, coaches and trailers of more than 3500 kg maximum weight. The inspections shall comprise one, two or all of the following:

...

III FACTS AND PRE-LITIGATION PROCEDURE

- 10 By a letter of 26 January 2011, ESA informed Icelandic authorities that it had initiated a conformity assessment of the implementation of the Directive. On 31 August 2011, following the receipt of a table of correspondence, ESA requested clarification on certain issues regarding the implementation.
- 11 On 21 December 2012, Iceland informed ESA that technical roadside inspections were “not actively carried out in Iceland”, but that it was intending to carry them out as soon as the legal requirements were in place.
- 12 By a letter of 24 April 2013, ESA set out its preliminary views on Iceland’s compliance with the Directive, addressing the lack of inspections in Iceland, as well as other issues. ESA invited Iceland to submit its clarifications and observations to the matters identified in the letter.

- 13 On 19 February 2014, after a package meeting and further correspondence with the Icelandic authorities, ESA issued a letter of formal notice concluding that Iceland had failed to fulfil its obligations under the Act and Article 7 EEA by maintaining an administrative practice not to carry out technical roadside inspections, contrary to Article 3(1) of the Directive, by failing to correctly implement Articles 4(1)(c) and 5(2) of the Directive and by failing to implement Articles 4(3) and 5(1) of the Directive. Iceland did not reply to the letter of formal notice.
- 14 On 16 July 2014, ESA delivered a reasoned opinion 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 necessary measures to comply with the reasoned opinion within two months following the notification, that is no later than 16 September 2014.
- 15 Iceland responded to the reasoned opinion by an email of 10 September 2014. Iceland stated that a bill proposing amendments to the Traffic Act, establishing a legal basis for technical roadside inspections of commercial vehicles, would be presented to the Parliament in the fall.
- 16 Iceland did not comply with the reasoned opinion by the deadline laid down in the reasoned opinion. After the expiry of the deadline, correspondence between ESA and Icelandic authorities continued.
- 17 On 13 February 2015, ESA asked whether the technical roadside inspections were being carried out in conformity with the Directive and, if not, when it was expected that such inspections would commence.

- 18 On 21 April 2015, Iceland responded that inspections had “not yet begun in a strategic manner, as was expected”, due to lack of financial resources. However, Iceland informed ESA that Regulation No 8/2009 had been amended and that the Icelandic legislation was now in full accordance with the Directive.
- 19 At a package meeting in Iceland in May 2015, Iceland confirmed that the technical roadside inspections were not carried out “in a strategic manner”, as required under the Directive. Iceland informed ESA that the Icelandic police had carried out “special effort” checks of heavy goods vehicles.
- 20 By a letter of 18 September 2015, Iceland informed ESA of a report containing information of one “special effort” road inspection carried out in June 2014. Iceland presented ESA with no further evidence of other technical roadside inspections required by Article 3(1) of the Directive.
- 21 On 27 April 2016, ESA decided to bring the matter before the Court pursuant to the second paragraph of Article 31 SCA. ESA decided only to seek a declaration from the Court that Iceland has failed to fulfil its obligations arising under Article 3(1) of the Directive by not introducing the technical roadside inspections required by that provision, as Iceland had taken the measures necessary to comply with the other objections ESA had in its reasoned opinion.

IV PROCEDURE AND FORMS OF ORDER SOUGHT

- 22 ESA lodged the present application at the Court Registry on 26 September 2016. Iceland’s statement of defence was registered at the Court on 5 December 2016. By letter of 3 January 2017, ESA waived its right to submit a reply and consented to dispense with the oral procedure should the Court wish to do so. By letter of 23 January 2017, Iceland also consented to dispense with the oral procedure.

23 The applicant, ESA, requests the Court to:

1. *Declare that Iceland has failed to fulfil its obligations arising from the Act referred to at point 17h of Chapter II of Annex XIII to the Agreement on the European Economic Area (Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community) by not introducing the technical roadside inspections required by Article 3(1) of the Act; and*
2. *order Iceland to bear the costs of these proceedings.*

24 The defendant, Iceland, submits that it does not dispute the facts of the case as they are set out in ESA’s application. Furthermore, it does not contest the declaration sought by ESA. Nevertheless, Iceland indicates that as of 1 January 2016 an institutional set-up has been in place in Iceland, resolving the previous failures to comply with the Directive.

25 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided pursuant to Article 41(2) of the Rules of Procedure (“RoP”) to dispense with the oral procedure.

V FINDINGS OF THE COURT

26 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 (see, *inter alia* Case E-10/16 *ESA v Iceland*, judgment of 1 March 2017, not yet reported, paragraph 13 and case law cited).

- 27 Decision 111/2000 entered into force on 23 December 2000. The time limit for the EFTA States to adopt the measures necessary to implement the Directive expired on 9 August 2002.
- 28 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 (see, *inter alia*, *ESA v Iceland*, cited above, paragraph 16 and case law cited). In this case, the relevant date is 16 September 2014.
- 29 The Court notes that even if the applicable national legislation itself complies with EEA law, a failure to fulfil obligations may arise due to the existence of an administrative practice which infringes EEA law (see Case E-6/12 *ESA v Norway*, [2013] EFTA Ct. Rep. 618, paragraph 58 and case law cited). Article 3(1) of the Directive imposes on EEA States a duty to introduce technical roadside inspections of commercial vehicles. Such duty is an obligation as to the result to be achieved. Therefore, it cannot be satisfied merely by the creation of an appropriate regulatory framework for attaining that objective (see Case E-35/15 *ESA v Norway*, judgment of 2 August 2016, not yet reported, paragraph 41).
- 30 It is undisputed that Iceland did not carry out roadside inspections in a structured manner before the time limit set in the reasoned opinion expired. Moreover, Iceland has not provided records showing that its efforts in this regard go beyond a single road inspection carried out in June 2014. Consequently, Iceland did not fulfil its obligations arising from Article 3(1) of the Directive within the time limit given in the reasoned opinion.
- 31 It must therefore be held that Iceland has failed to fulfil its obligations under the Act referred to at point 17h of Chapter II of Annex XIII to the EEA Agreement (Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial

vehicles circulating in the Community), as adapted to the Agreement under its Protocol 1, by not introducing, within the time prescribed, the technical roadside inspections required by Article 3(1) of the Act.

VI COSTS

32 Under Article 66(2) 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, the latter has been unsuccessful, and none of the exceptions in Article 66(3) apply, Iceland must be ordered to pay the costs.

On those grounds,

The Court

Hereby:

- 1. Declares that, Iceland has failed to fulfil its obligations arising from the Act referred to at point 17h of Chapter II of Annex XIII to the Agreement on the European Economic Area (Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community), as adapted to the Agreement under its Protocol 1, by not introducing, within the time prescribed, the technical roadside inspections required by Article 3(1) of the Act.**
- 2. Orders Iceland to bear the costs of the proceedings.**

Carl Baudenbacher

Per Christiansen

Páll Hreinsson

*Delivered in open court in Luxembourg on
31 March 2017.*

Birgir Hrafn Búason
Acting Registrar

Carl Baudenbacher
President