

Registered at the EFTA Court under N° E-12/12-1
30 day of November 2012

Brussels, 29 November 2012

Case No: 72846

Event No: 654323

ORIGINAL

EFTA SURVEILLANCE
AUTHORITY

ORIGINAL

Alþingi
Erindi nr. P 141/1111
komudagur 17.12.2012

TO THE PRESIDENT AND THE MEMBERS OF 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 ("SCA") by

THE EFTA SURVEILLANCE AUTHORITY

represented by
Markus Schneider, Deputy Director, and
Clémence Perrin, Officer,
Department of Legal & Executive Affairs,
acting as Agents,

AGAINST

ICELAND

seeking a declaration that by failing, within the time prescribed, to adopt, or to notify the EFTA Surveillance Authority ("the Authority") of the measures necessary to implement into its national legislation the Act referred to at point 7h of Annex XIX to the Agreement on the European Economic Area ("the EEA Agreement"). *i.e. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC*, as adapted to the Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations under Article 27 of the Directive and under Article 7 of the EEA Agreement.

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1 INTRODUCTION

1. The present application addresses Iceland's failure to comply, no later than 4 September 2012, with a reasoned opinion delivered by the Authority on 4 July 2012 on the failure to adopt the measures necessary to implement into its national law *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC* ("the Act").¹
2. Iceland is required, under Article 27 of the Act and Article 7 of the EEA Agreement, to take, and to inform the Authority of, the measures it has taken in order to implement the Act. The Authority has received no such information from the Icelandic Government, nor is the Authority in possession of any other information which would enable it to conclude that the measures necessary to implement the Act have been taken.

2 PRE-LITIGATION PROCEDURE

3. By decision No 16/2009, which entered into force on 1 November 2011, the EEA Joint Committee incorporated the Act into the EEA Agreement; and the time-limit for Iceland to implement the Act expired on the same day.²
4. By letter of 11 October 2011 (a copy of which is enclosed as **Annex A1** to this Application), the Authority reminded the Icelandic Government of its obligation to take the national measures necessary to implement the Act into the Icelandic legal order.
5. On 1 February 2012, the Authority issued a letter of formal notice to Iceland (a copy of which is enclosed as **Annex A2** to this Application). In the letter of formal notice the Authority concluded that, by failing to adopt or, in any event, to inform

¹ The act referred to at point 7h of Annex XIX to the EEA Agreement, *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC*.

the Authority of the national measures it had adopted to implement the Act, Iceland had failed to fulfil its obligation under the Act and under Article 7 of the EEA Agreement.

6. On 13 April 2012, the Icelandic Government stated in its observations on the letter of formal notice (a copy of which is enclosed as **Annex A3** to this Application) that it had not yet adopted the necessary measures to implement the Act. Furthermore, the Icelandic Government indicated that the Directive would be fully implemented before June 2012.
7. By further letter of 21 June 2012 (a copy of which is enclosed as **Annex A4** to this Application), the Icelandic Government informed the Authority that the proposal presented to Parliament in the 2012 spring session had been rejected, but that it would be presented again during the 2012 autumn session. The Icelandic Government further informed the Authority that the implementing legislation was expected to be in place before the end of 2012.
8. By letter of 4 July 2012, the Authority delivered a reasoned opinion to Iceland (a copy of which is enclosed as **Annex A5** to this Application) maintaining the conclusion of its letter of formal notice. Pursuant to Article 31(1) SCA, the Authority concluded that by failing to adopt the measures necessary to implement the Act, or in any event, by failing to notify the Authority forthwith of the measures it has adopted to implement the Act, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the Agreement. Pursuant to Article 31(2) SCA, the Authority requested Iceland to take the measures necessary to comply with the reasoned opinion within two months following notification thereof, *i.e.* no later than 4 September 2012.
9. However, the Icelandic Government has not informed the Authority of any measures adopted to implement the Act, nor is the Authority in the possession of any information which could indicate that the Act has nevertheless been implemented.

10. Accordingly, on 28 November 2012, the Authority decided to bring the matter before the EFTA Court pursuant to Article 31(2) SCA.

3 RELEVANT LAW

11. Iceland has failed to fulfil its obligation under Article 27 of the Act and under Article 7 of the EEA Agreement by failing to adopt, or to notify the Authority of, the measures necessary to implement the Act within the time prescribed.

12. Article 7 of the EEA Agreement provides that acts referred to or contained in the Annexes to the EEA Agreement shall be binding on the Contracting Parties and be, or be made, part of their internal legal order as follows:

- (a) an act corresponding to an EU Regulation shall as such be made part of the internal legal order of the Contracting parties;
- (b) an act corresponding to an EU Directive, shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.

13. According to Article 27 of Directive 2008/48/EC, read in conjunction with EEA Joint Committee Decision No. 16/2009, Iceland was obliged to take the measures necessary to ensure full compliance with the Directive no later than 1 November 2011 and to communicate to the Authority the text of those measures.

4 THE AUTHORITY'S SUBMISSIONS

14. The Authority submits that the question of whether an EFTA state has failed to fulfil its obligation 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.³ In the present case, that period ended on 4 September 2012.

³ See to that effect Case E-3/08 *EFTA Surveillance Authority v Iceland* [2008] EFTA Ct. Rep. 308, at paragraph 18.

15. As mentioned above, the Authority delivered a reasoned opinion on 4 July 2012 concluding that Iceland had failed to comply with this obligation and time-limit. Moreover, the Authority requested the Icelandic Government to take the measures necessary to comply with the reasoned opinion within two months following notification thereof, *i.e.* no later than 4 September 2012.
16. During the pre-litigation procedure, the Icelandic Government has not disputed the delay in implementing the Act. Nor has the Icelandic Government informed the Authority of any measures adopted to implement the Act. Further, the Authority has no information before it that could indicate that the Act has nevertheless been implemented.
17. As a result, the Authority submits that Iceland has failed to fulfil its obligations under Article 27 of the Directive and under Article 7 of the EEA Agreement by failing to adopt, or to notify the Authority of, the measures necessary to implement the Directive within the time prescribed.

5 CONCLUSION

On those grounds, the Authority requests the Court to:

- 1. Declare that by failing to adopt, or to notify the Authority of, the measures necessary to implement the Act referred to at point 7h of Annex XIX to the Agreement on the European Economic Area, (*Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC*), as adapted to the Agreement by way of Protocol 1 thereto, within the time limit 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.**


Markus Schneider


Clémence Perrin

Agents of the EFTA Surveillance Authority

Case No: 70926
Event No: 636654
Dec. No: 256/12/COL

EFTA SURVEILLANCE
AUTHORITY

REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning the failure by Iceland to adopt the measures necessary to implement the Act referred to at point 7h of Annex XIX to the Agreement on the European Economic Area (*Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC*) or, in any event, its failure to notify the Authority forthwith of the measures it has adopted to implement the Act

REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning the failure by Iceland to adopt the measures necessary to implement the Act referred to at point 7h of Annex XIX to the Agreement on the European Economic Area (*Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC*) or, in any event, its failure to notify the Authority forthwith of the measures it has adopted to implement the Act

1 Iceland's obligations under the Agreement on the European Economic Area

In accordance with Article 7 of the Agreement on the European Economic Area ("EEA Agreement") and Article 27 of the Act referred to at point 7h of Annex XIX to the Agreement,

Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC
("the Act"),

as adapted to the Agreement by Protocol 1, the EFTA States were required to adopt the measures necessary to implement the Act by 1 November 2011 and to notify the EFTA Surveillance Authority (hereinafter referred to as the "Authority") forthwith thereof.

The Act was incorporated in the EEA Agreement by Joint Committee Decision 16/2009 of 5 February 2009, which 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.

2 The Authority's letter of formal notice of 1 February 2012 and Iceland's observations

In its letter dated 11 October 2011 (Event No 610977), the Authority reminded Iceland that it should adopt the measures necessary to implement the Act by 1 November 2011. As Iceland did not notify the Authority of any measures it had adopted to implement the Act, the Authority, on 1 February 2012, issued a letter of formal notice to Iceland (Event No 618267).

In its letter of formal notice, the Authority concluded that by failing to adopt or, in any event, to inform the Authority of the national measures it had adopted to implement the Act, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the Agreement.

In its observations of 13 April 2012 (ref. EVR12020009/3.5.3) on the letter of formal notice, the Icelandic Government stated that it had not yet adopted the necessary implementing measures to implement the Act. Furthermore, the Icelandic Government indicated that the Directive would be fully implemented before June 2012.

The Authority has not received to date notification of any measures adopted to implement the Act before June 2012 nor has Iceland informed the Authority whether the bill has passed the parliamentary session as indicated in its letter of 13 April 2012. Accordingly, the Authority must conclude that the measures intended to implement the Act have still not been adopted.

3 The Authority's assessment

Iceland is required, under Article 27 of the Act and Article 7 of the EEA Agreement, to take, and to inform the Authority of, the measures it has taken in order to implement the Act. The Authority has received no such information from the Icelandic Government, nor is the Authority in possession of any other information which would enable it to conclude that the measures necessary to implement the Act have been taken.

The Authority must, therefore, conclude that, by failing to adopt the measures necessary to implement the Act referred to at point 7h of Annex XIX to the EEA Agreement, (Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC), as adapted to the EEA Agreement by way of Protocol 1, or, in any event, failing to notify the EFTA Surveillance Authority forthwith of the measures it has adopted to implement the Act, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement.

FOR THESE REASONS,

THE EFTA SURVEILLANCE AUTHORITY,

pursuant to the first paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and after having given Iceland the opportunity of submitting its observations,

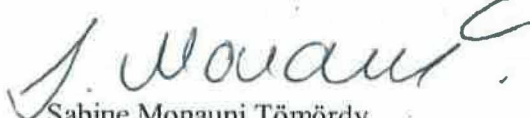
HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that by failing to adopt the measures necessary to implement the Act referred to at point 7h of Annex XIX to the Agreement on the European Economic Area, (Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC), as adapted to the Agreement by way of Protocol 1 thereto, or, in any event, failing to notify the EFTA Surveillance Authority forthwith of the measures it has adopted to implement the Act, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the Agreement.

Pursuant to 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, the EFTA Surveillance Authority requests Iceland to take the measures necessary to comply with this reasoned opinion within two months following notification thereof.

Done at Brussels, 4 July 2012

For the EFTA Surveillance Authority



Sabine Monauni Tömördy
College Member



Florence Simonetti
Deputy Director