JUDGMENT OF THE COURT
17 December 2010

(Failure by a Contracting Party to fulfil its obligations – Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation)

In Case E-11/10,

EFTA Surveillance Authority, represented by Xavier Lewis, Director, and Markus Schneider, Officer, Department of Legal & Executive Affairs, acting as Agents, Brussels, Belgium,

Applicant,

v

The Principality of Liechtenstein, represented by Dr Andrea Entner-Koch, Director, EEA Coordination Unit, acting as Agent, Vaduz, Liechtenstein,

Defendant,

APPLICATION for a declaration that, by failing, within the time-limit prescribed, to adopt, or to notify the EFTA Surveillance Authority of, all the measures necessary to fully implement into its national legislation the Act referred to at point 21b of Annex XVIII to the EEA Agreement, i.e. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), as adapted to the EEA Agreement by Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations under Article 33 of that Act and Article 7 of the EEA Agreement,

THE COURT,

composed of: Carl Baudenbacher, President, Thorgeir Örlygsson (Judge-Rapporteur) and Henrik Bull, Judges,

Acting Registrar: Gjermund Mathisen,

having regard to the written pleadings of the parties and the written observations of the European Commission, represented by Michel van Beek, member of its Legal Service, acting as Agent,

having decided to dispense with the oral procedure,

gives the following

Judgment

I The application

1 By application lodged at the Court Registry on 10 August 2010, the EFTA Surveillance Authority (hereinafter "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 (hereinafter the "SCA"), for a declaration that, by failing to adopt, or to notify ESA of, all the measures necessary to implement the Act referred to at point 21b of Annex XVIII to the EEA Agreement, within the time-limit prescribed, the Principality of Liechtenstein has failed to fulfil its obligations under the first paragraph of Article 33 of that Act and Article 7 EEA. The Act referred to is Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), as adapted by Protocol 1 to the EEA Agreement.

II Facts and pre-litigation procedure

2 Decision 33/2008 of 14 March 2008 of the EEA Joint Committee amended Annex XVIII to the EEA Agreement by adding Directive 2006/54/EC to point 21b of that Annex. The Decision entered into force on 1 February 2009 and the time limit for EFTA States to adopt the measures necessary to implement the Directive and to notify ESA thereof expired on the same date.

3 By a letter from ESA dated 11 February 2009 the Government of Liechtenstein was reminded of the date by which the measures necessary to implement the Directive had to be taken. The Government was also asked to notify ESA forthwith of the measures taken to implement the Directive.

4 In the absence of any information from the Government of Liechtenstein as to the implementation of the Directive, ESA decided to initiate proceedings under Article 31 SCA and, on 24 June 2009, ESA sent a letter of formal notice to the Government of Liechtenstein, stating that Liechtenstein had failed to take, or in any event, inform ESA of the national measures necessary to comply with the

Directive. The Government of Liechtenstein was invited to submit its observations on the matter within three months of receipt.

5 In its observations of 22 September 2009 to the letter of formal notice, the Liechtenstein Government stated that the implementation process was ongoing and that a draft bill for the implementation of the Directive would be presented in the autumn of 2009. The first reading of the bill in the Landtag was foreseen for March 2010 with a second reading in May 2010.

6 Under these circumstances, on 9 December 2009, ESA delivered a reasoned opinion, concluding that by failing to adopt the measures necessary to implement the Directive, or in any event, failing to notify ESA forthwith of the measures it had adopted to implement the Directive, Liechtenstein had failed to fulfil its obligations under Article 33 of the Directive and Article 7 EEA. The Government of Liechtenstein was requested to take the measures necessary to comply with the reasoned opinion within two months.

7 By a letter of 28 January 2010, the Liechtenstein Government requested an extension of the time limit to reply to ESA's reasoned opinion until 9 April 2010, as such an extension would allow it to present to ESA the necessary concrete implementation measures. On 1 February 2010, ESA granted the aforementioned extension.

8 In a letter dated 31 March 2010, the Liechtenstein Government informed ESA of measures it considered to ensure partial implementation of the Directive. Furthermore, the Government stated that ESA would be informed of any further measures adopted to complement partial implementation and of any amendments to the measures notified. The Government estimated that the remaining measures would be adopted in November 2010 and would enter into force in January 2011.

9 On 8 April 2010, the Liechtenstein Government provided its observations on the reasoned opinion, where it stated that the bill to fully implement the Directive had not been finalised. The first reading of the bill was foreseen for September 2010 and the second reading for November 2010.

III Procedure before the Court

10 ESA lodged the present application at the Court Registry on 10 August 2010. The statement of defence from the Government of Liechtenstein was received on 7 October 2010. On 10 November 2010, ESA submitted a reply to the defence lodged by Liechtenstein.

11 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 Arguments of the parties

12 The application is based on one plea in law, namely that by failing to adopt, or to notify ESA of, all the national measures necessary to fully implement the

Directive, within the time-limit prescribed, the Principality of Liechtenstein has failed to fulfil its obligations under Article 33 of the Directive, as incorporated into the EEA Agreement, and under Article 7 EEA.

13 In its statement of defence, the Liechtenstein Government sets out several reasons for the delay in implementation, noting that the decision to combine the implementation of Directives 2006/54/EC and 2004/113/EC caused a longer delay than expected. The Government of Liechtenstein does not, however, dispute that the necessary national implementation measures were not all adopted within the time-limit prescribed. Moreover, in its statement of defence, Liechtenstein does not dispute the order sought by ESA.

14 Furthermore the Liechtenstein Government states that since Directive 2006/54/EC is a recast of several existing directives already implemented into Liechtenstein law, and entails in substance only minor changes, neither the homogeneity within the EEA nor individuals' rights were put at risk by the slightly delayed implementation. The Government requests the Court to order each party to bear its own costs of the proceedings. No reasons are submitted to substantiate this request.

15 In its reply to the statement of defence from the Government of Liechtenstein, ESA submits that there are clear differences between the recast Directive and previous legislation already implemented. Additionally, the argument of the Liechtenstein Government does not alter the fact that Liechtenstein accepts that it was late in ensuring the full implementation of the Directive. Furthermore, ESA also contests the request for sharing of costs in this case. It is submitted that according to the general rule under Article 66(2) of the Rules of Procedure, Liechtenstein must be ordered to bear the costs and that none of the exceptions in Article 66(3) apply.

V 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 Case E-3/10 *ESA* v *Iceland*, judgment of 18 October 2010, not yet reported, paragraph 18). 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 The obligation to implement also follows from Article 33 of the Directive, according to which implementation by the EC Member States is required not later than 15 August 2008. As Decision 33/2008 of the EEA Joint Committee did not set a separate EEA time-limit for the implementation of the Directive into national law, Liechtenstein was obliged to adopt all the national measures necessary to implement the Directive by the date on which that Decision entered into force, namely 1 February 2009.

18 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 Case E-3/10 *ESA* v *Iceland*, cited above, paragraph 20). It is undisputed that Liechtenstein did not adopt all those measures before the expiry of the time-limit given in the reasoned opinion.

19 It must therefore be held that, by failing to adopt, within the time-limit prescribed, all the measures necessary to implement the Act referred to at point 21b of Annex XVIII to the EEA Agreement, i.e. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), as adapted to the EEA Agreement by Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations under the first paragraph of Article 33 of the Act and under Article 7 EEA.

VI Costs

20 Without putting forward any pleas in support, whether in law or in fact, the Government of Liechtenstein has requested that each party be ordered to bear its own costs. The Court can see no basis for this claim. Under Article 66(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the EFTA Surveillance Authority has requested that the Principality of Liechtenstein be ordered to pay the costs and the latter has been unsuccessful, and since none of the exceptions in Article 66(3) apply, the Principality of Liechtenstein must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that, by failing to adopt, within the time-limit prescribed, all the measures necessary to implement the Act referred to at point 21b of Annex XVIII to the EEA Agreement, i.e. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), as adapted to the EEA Agreement by Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations

under the first paragraph of Article 33 of the Act and under Article 7 EEA.

2. **Orders the Principality of Liechtenstein to bear the costs of the proceedings.**

Carl Baudenbacher Thorgeir Örlygsson Henrik Bull

Delivered in open court in Luxembourg on 17 December 2010

Gjermund Mathisen
Acting Registrar

Carl Baudenbacher
President