JUDGMENT OF THE COURT

30 April 1998

(Failure of a Contracting Party to fulfil its obligations – safety and health protection of workers in surface and underground mineral-extracting industries – Council Directive 92/104/EEC)

In Case E-7/97,

EFTA Surveillance Authority, represented by Håkan Berglin, Director of the Legal & Executive Affairs Department, acting as Agent, assisted by Anne-Lise H. Rolland, National Expert in the same department, 74 Rue de Trèves, Brussels,

applicant,

v

The Kingdom of Norway, represented by Jan Bugge-Mahrt, Assistant Director General, Royal Ministry of Foreign Affairs, acting as Agent, 7. Juni plassen/Victoria Terrasse 0251 Oslo,

defendant,

APPLICATION for a declaration that, by not adopting by the time-limit prescribed the national provisions necessary to comply with the Act referred to in point 16f of Annex XVIII ("the Act") to the Agreement on the European Economic Area ("the EEA Agreement"), i.e. Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries, as adapted by way of Protocol 1 to the EEA Agreement, the Kingdom of Norway has failed to fulfil its obligations under Article 13 of that Act and Article 7 of the EEA Agreement,

THE COURT,

composed of: Bjørn Haug, President, Thór Vilhjálmsson and Carl Baudenbacher (Judge-Rapporteur), Judges,

gives the following

Judgment

1 By application lodged at the Court Registry on 21 October 1997, the *EFTA Surveillance Authority* submitted, 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, an application for declaration that, by not adopting by the time-limit prescribed the national provisions necessary to comply with the Act referred to in point 16f of Annex XVIII to the Agreement on the European Economic Area, i.e. Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries, as adapted by way of Protocol 1 to the EEA Agreement, the Kingdom of Norway has failed to fulfil its obligations under Article 13 of that Act and Article 7 of the EEA Agreement.

2 The *Commission of the European Communities*, represented by John Forman, Legal Adviser in its Legal Service and Nicola Yerrell, official seconded to the Commission's Legal Service under the arrangements for the exchange of national officials, submitted written observations pursuant to Article 20 of the Statute of the EFTA Court.

3 The *Norwegian Government* and the *EFTA Surveillance Authority* have consented to the oral procedure being dispensed with.

Facts and Procedure

4 By Decision No. 7/94 of 21 March 1994 of the EEA Joint Committee (OJ 1994 No. L 160, p. 1), which entered into force on 1 July 1994, Council Directive 92/104/EEC on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (OJ No. L 404, p.10) was added as a new point 16f of Annex XVIII to the EEA Agreement.

5 It follows from Article 2 of the decision and Article 13 of the Act, as adapted by way of Protocol 1 to the EEA Agreement, that Norway was to bring into force the laws, regulations and administrative provisions necessary to comply with the Act by 3 December 1994 and inform the EFTA Surveillance Authority about the measures which were taken.

6 In its communication of 29 December 1995 concerning implementation of the Act, the Norwegian Government stated that a preliminary draft Regulation on Mining (Forskrift om bergarbeid) would be given national notification early in 1996.

7 On 15 April 1996, the EFTA Surveillance Authority issued a letter of formal notice to the Norwegian Government, stating that Norway had not adopted the national measures necessary to comply with the Act and Articles 3 and 7 of the EEA Agreement.

8 Following an exchange of letters, the EFTA Surveillance Authority delivered a reasoned opinion on 17 April 1997 in which it concluded that, by failing to take the necessary measures to comply with the Act, Norway had failed to fulfil its obligations under Article 13 of the Act and Articles 3 and 7 of the EEA Agreement. The Norwegian Government was requested to take the necessary measures to comply with the reasoned opinion within two months following notification thereof. The reasoned opinion was notified to the Norwegian Government on 17 April 1997. The time-limit to comply with the opinion thus expired on 17 June 1997.

9 The Norwegian authorities and the EFTA Surveillance Authority had contact on several occasions, but the requested measures failed to materialize. The present application was then brought before the Court.

Law

10 The application of the *EFTA Surveillance Authority* is based on one plea of law, *viz.* that, by failing to adopt the national measures necessary to comply with the Act referred to in point 16f of Annex XVIII to the EEA Agreement, as adapted by way of Protocol 1 to the EEA Agreement, Norway has failed to fulfil its obligations under Article 13 of that Act and Article 7 of the EEA Agreement.

11 The time-limit for Norway to take the measures necessary to comply with the Act expired on 3 December 1994. Norway did not implement any such measures, either at that time or by the time-limit set by the EFTA Surveillance Authority in its reasoned opinion.

12 Referring to these circumstances, the EFTA Surveillance Authority requests the EFTA Court to grant the application and to order Norway to pay the costs of the proceedings.

13 The *Norwegian Government* does not dispute the order sought by the applicant. It requests the EFTA Court to order each party to pay its own costs of the proceedings.

14 The *Commission of the European Communities* supports the view of the EFTA Surveillance Authority and concludes that the application should be granted.

15 The *Court* notes that Norway was obliged to adopt national provisions necessary to comply with the Act referred to in point 16f of Annex XVIII to the EEA Agreement, as adapted by way of Protocol 1 to the EEA Agreement, not later than 3 December 1994. On 17 June 1997, the date on which the time-limit given in the reasoned opinion of the EFTA Surveillance Authority expired, Norway had still not adopted national measures necessary to comply with the reasoned opinion.

16 Under these circumstances, the Court notes that Article 3 of the EEA Agreement imposes upon the Contracting Parties two general obligations. There is a positive obligation for the Contracting Parties to "take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement". There is, correspondingly, a negative obligation to "abstain from any measure which could jeopardize the attainment of the objectives of this Agreement". These fundamental legal obligations require loyal co-operation and assistance.

17 Furthermore, the Contracting Parties are obliged to implement all acts referred to or contained in the Annexes to the EEA Agreement or in decisions of the EEA Joint Committee.

18 It must therefore be held that, by not adopting by the time-limit prescribed the national provisions necessary to comply with the Act referred to in point 16f of Annex XVIII to the Agreement on the European Economic Area, i.e. Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries, as adapted by way of Protocol 1 to the EEA Agreement, the Kingdom of Norway has failed to fulfil its obligations under Article 13 of that Act and Article 7 of the EEA Agreement.

Costs

19 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. The EFTA Surveillance Authority has asked for the Kingdom of Norway to be ordered to pay the costs. Since the latter has been unsuccessful in its defence, it must be ordered to pay the costs. The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

On those grounds,

THE COURT

hereby:

1. Declares that, by not adopting by the time-limit prescribed the national provisions necessary to comply with the Act referred to in point 16f of Annex XVIII to the Agreement on the European Economic Area, i.e. Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries, as adapted by way of Protocol 1 to the EEA Agreement, the Kingdom of Norway has failed to fulfil its obligations under Article 13 of that Act and Article 7 of the EEA Agreement.

2. Orders the Kingdom of Norway to pay the costs of the proceedings.

Bjørn Haug Thór Vilhjálmsson Carl Baudenbacher

Delivered in open court in Luxembourg on 30 April 1998.

Per Christiansen
Registrar

Bjørn Haug
President