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EFTA SURVEILLANCE AUTHORITY

Icelandic Ministry for Foreign Affairs
Rauðarárstígur 25
IS-150 Reykjavík
Iceland

Dear Sir or Madam,

Subject: Letter of formal notice to Iceland concerning requirements imposed by Iceland on imports of egg and dairy products

1 Introduction

At the package meeting of 27 May 2015, the EFTA Surveillance Authority ("the Authority") informed the Icelandic Government that it had decided to open an investigation concerning the requirements imposed by Iceland for the importation of egg and dairy products.

In the context of the proceedings in Case No 70943 – *Complaint against Iceland concerning imports of raw meat*, the Authority noted that the Icelandic legislation imposing restrictions on the import into Iceland of meat products was imposing similar restrictions on certain other products, in particular on egg and dairy products.

The Icelandic legislation concerned is Act No 25/1993 on animal diseases and on preventive measures against them and Regulation (IS) No 448/2012 of 23 May 2012 on measures to prevent the introduction of animal diseases and contaminated products to Iceland.

The Authority has reached the following conclusion:

The Icelandic legislation currently applicable to the import of egg and dairy products from other States of the European Economic Area ("EEA")

- imposes an authorisation system and additional requirements for the import of raw egg and raw egg products, that are not compatible with *Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market*[1] ("Directive 89/662/EEC"), and in particular Article 5 thereof;

- imposes an authorisation system and additional requirements for the import of unpasteurised milk and dairy products processed from unpasteurised milk, a

[1] Act referred to at Point 1.1.1 of Chapter I of Annex I to the EEA Agreement.

prohibition of the marketing for direct human consumption of imported dairy products processed from unpasteurised milk as well as additional requirements for the import of certain cheeses, that are not compatible with Directive 89/662/EEC, and in particular Article 5 thereof;

- imposes an obligation for importers to make a declaration and obtain the approval of the Food and Veterinary Authority ("MAST") for the import of treated egg and dairy products, that is not compatible with Directive 89/662/EEC, and in particular Article 5 thereof.

2 Correspondence

In its pre-Article 31 letter of 21 October 2015 (Doc No 757580), the Authority's Internal Market Affairs Directorate presented its preliminary conclusions to Iceland. It considered that:

- by maintaining in force an authorisation system for the import of raw egg and dairy products and additional requirements, a prohibition of the marketing for direct human consumption of imported dairy products processed from unpasteurised milk and additional requirements for certain cheeses, as well as an administrative practice of requiring importers to make a declaration and obtain the approval of MAST for the import of treated egg and dairy products, Iceland has failed to comply with Directive 89/662/EEC, in particular Article 5 thereof*;*

- Alternatively, these requirements are in breach of Article 18 of the EEA Agreement.

On 10 February 2016 (Doc No 792343), the Authority sent a letter to Iceland, in which it invited it to inform the Authority of how it intended to comply with the EFTA Court's judgment of 1 February 2016 in case E-17/15 - *Ferskar kjötvörur ehf. v the Icelandic State*, in view of the conclusions concerning the incompatibility with Directive 89/662/EEC of the Icelandic authorisation system for raw meat imports.

On 10 March 2016 (Doc No 796940), the Icelandic Government sent a reply to that letter, in which it stated in particular that it was in the process of evaluating possible adjustments to this authorisation system.

3 Relevant national law

Article 10 of Act No 25/1993 on animal diseases and preventive measures against them, as amended, provides that:

"To prevent animal diseases from reaching the country it is prohibited to import the following types of goods:

*a. raw and lightly salted slaughter products, both processed and non-processed, raw eggs, non-disinfected raw skins and hides, feed for food producing animals (*in Icelandic: alidýraaburður*) and (*rotmassi*) mixed with feed for food producing animals,*

b. *meat meal, bone flour, blood meal, and fat that is distilled from the production of these materials,*
c. *hay and straw,*
d. *any type of used packaging, saddlery, machinery, device, instruments, and other objects that have been in contact with animals, animal products or animal waste,*
e. *any type of equipment used for angling.*

Despite the provision of paragraph 1, the Food and Veterinary Authority is authorised to allow the import of the products mentioned in items a-e, if it is considered proven that they will not transmit infectious agents that can cause animal diseases. The Minister can decide by regulation that paragraph 1 shall not apply to certain categories of the products listed therein, if the product is disinfected in production or a special disinfection is performed before importation and the product is accompanied with a satisfactory certificate of origin, processing and disinfection, in the case of producers outside of the European Economic Area. The Minister is authorised to prohibit by regulation the import of products, irrespective of their origin, which carry the risk of transmitting contaminating agents that could cause danger to the health of animals.[…]"[2]

Icelandic Regulation (IS) No 448/2012 of 23 May 2012 on measures to prevent the introduction of animal diseases and contaminated products provides detailed provisions on the implementation of Article 10 of Act No 25/1993.

Article 3 of Regulation (IS) No 448/2012 provides that:

"The importation to Iceland of the following animal products and products that may carry infectious agents which cause diseases in animals and humans is not permitted, cf. however, further details in Chapter III.

(…)

e. *Untreated raw eggs, raw eggshells and raw egg products, which have not been treated by heating so that the product has been heated to 65°C for 5 minutes, or received other comparable treatment in the assessment of MAST.*

f. *Unpasteurised milk and dairy products processed from unpasteurised milk. However, up to 1 kg of cheese processed from unpasteurised milk from approved establishments in the European Economic Area may be imported for personal use; however, the Minister may authorise the import of a larger quantity for the same purpose."*

Article 4 of Regulation (IS) No 448/2012 provides that:

"*The Minister of Fisheries and Agriculture is authorised to allow the import of products mentioned in Article 3, cf. Article 10 of [Act No 25/1993] and subsequent amendments, having received recommendations from the Food and Veterinary Authority, if it is considered proven that they will not transmit infectious agents that can cause diseases in animals and humans, and the conditions imposed for the import have been fulfilled, see however Article 7.*

[2] Paragraph 2 of Article 10 of Act No 25/1993 on animal diseases and preventive measures against them was amended by Act No 71/2015, which entered into force on 20 July 2015 (unofficial translation by the Authority).

When an application is submitted for the first time to import a raw or unsterilized product as referred to in the first paragraph, an importer must provide the Ministry of Fisheries and Agriculture with the necessary information on the product for consideration and approval before the product is dispatched from the country of export.

An importer of raw products shall in all cases apply for a permit to the Minister of Fisheries and Agriculture and submit, for the consideration of MAST, an import declaration, information on the country of origin and production, the type of product and producer, and the required certificates, as provided for in Article 5."

In practice, when the initial application has been processed, the importer has to apply for permission for the import of each individual consignment. This is satisfied by submitting all the necessary documentation to the Office of import and export at MAST, where an evaluation of conformity with Article 5 of Regulation (IS) No 448/2012 takes place. If conformity is established, the documents are sent to the Ministry for final approval (the Authority understands that, upon the amendment of Article 10 paragraph 2 of Act No 25/1993 by Act No 71/2015, the approval is now granted by MAST). Upon such final approval, the importer may submit the documents to the Customs authorities and have the consignments released.

Moreover, Article 5 of Regulation (IS) No 448/2012 provides that:

"Imported foods which are listed under classifications (CN Codes) 0202, 0203, 0204, 0207, 0208, 0210, 1601 and 1602[3]*, cf. Appendix I to the Customs Act, No 88/2005, which the Minister has authorised for import to Iceland as referred to in Article 4 and which have not received satisfactory heat treatment must be accompanied by the following certificates:*

a. an official certificate of origin and health, in the case of products from producers outside the European Economic Area;
b. an official certificate confirming that the animals from which the products derive were not given growth-promoting substances during rearing, in the case of products from producers outside the European Economic Area;
c. a certificate confirming that the products have been stored at a temperature of at least -18°C for a month prior to customs clearance;
d. an official certificate confirming that the animals from which the products derive were slaughtered in slaughterhouses and the products processed in processing plants authorised in the European Economic Area, in the case of products from producers outside the European Economic Area;
e. an official certificate confirming that the products are free of salmonella bacteria;
f. animal meat products and by-products, dairy products and raw eggs shall conform to the appropriate provisions of the current Regulation on food contaminants;

[3] Description of the CN Codes: 0202: Meat of bovine animals, frozen, 0203: Meat of swine, fresh, chilled or frozen ; 0204: Meat of sheep or goats, fresh, chilled or frozen ; 0207: Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen ; 0208: Other meat and edible meat offal, fresh, chilled or frozen ; 0210: Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal ; 1601: Sausages and similar products, of meat, meat offal or blood; food preparations based on these products ; 1602: Other prepared or preserved meat, meat offal or blood.

g. *the product shall be labelled in conformity with current rules on labelling, advertising and promotion of foodstuffs.*

[…] *Imported cheese in customs classifications (CN Codes) 0406.2000 and 0406.3000*[4] *must have received appropriate treatment so that the cheesecurd has been heat treated at least to 48°C, the product must have been stored for at least 6 months at a temperature of not less than 10°C and a humidity of less than 36%. The product must be accompanied by an official certificate of origin and health, in the case of producers outside of the European Economic Area, and confirmation that the product has received appropriate treatment.*"

The Authority considers that Article 10 of Act No 25/1993 and Articles 3 and 4 of Regulation (IS) No 448/2012 read together, impose a system of import authorisation for raw egg and dairy products based on the production of certain documents.

The Authority understands that Article 5 of Regulation (IS) No 448/2012 further requires operators to establish:

- For the import of raw egg and dairy products, the conformity of the products with the relevant provisions of the regulation on food contaminants (Article 5.f) and with labelling rules (Article 5.g);

- for the import of certain cheeses, that they have received a specific heat treatment and have been stored for at least 6 months at a temperature of not less than 10°C and a humidity of less than 36%.

Finally, the Icelandic Government specified during the package meeting of 27 May 2015 that:

- the marketing for direct human consumption of unpasteurised milk and dairy products processed from unpasteurised milk was prohibited even after the delivery of an import authorisation (except for certain cheeses complying with the requirements of Article 5 of Regulation (IS) No 448/2012);

- For treated egg and dairy products (i.e. complying with the heat treatments mentioned in Article 3 (e) and (f) respectively of Regulation (IS) No 448/2012), importers had to obtain the approval of MAST in order to get customs clearance. The Authority understands that this administrative practice results from the application of Article 3 of Regulation (IS) No 448/2012.

4 Relevant EEA law

Directive 89/662/EEC as adapted to the EEA Agreement aims to regulate veterinary checks in intra-EEA trade of products of animal origin. Its main objective is to eliminate veterinary checks at the EEA's internal borders while reinforcing those carried out at the point of origin. It defines and harmonises the type of controls that can be performed within the EEA on products of animal origin.

[4] Description of the CN Codes: 0406.2000 - grated or powdered cheese of all kinds; 0406.3000 - processed cheese, not grated or powdered.

Under Article 1 of that directive, veterinary checks to be carried out on products of animal origin covered by that directive, which are intended for trade between EEA States, are (subject to the provisions of Article 6 on products from third countries) no longer to be carried out at frontiers within the EEA, but are to take place in accordance with the provisions of Directive 89/662/EEC.
Article 2 of Directive 89/662/EEC specifies that the term 'veterinary check' within the meaning of the directive "*means any physical check and/or administrative formality which applies to the products covered by the directive and which is intended for the safeguarding, direct or otherwise, of public or animal health"*.

Chapter I of that directive, entitled 'Checks at origin', consists of Articles 3 and 4 which regulate veterinary checks in the EEA State of dispatch.

Under the first of those two provisions, the EEA State of dispatch is to ensure that the only products intended for intra-EEA trade are those which have been obtained, checked, marked and labelled in accordance with EEA rules for the destination in question and which are accompanied to the final consignee by the certificates required by the EEA veterinary rules.

In practice, this means that products of animal origin can only be placed on the market if they comply with the requirements laid down in the applicable EEA legislation, i.e. in particular the so-called "hygiene package" as well as the relevant animal health and welfare rules applicable in the EEA. For products of animal origin, this refers in particular to the harmonised requirements of *Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin*[5] ("Regulation (EC) No 853/2004"), of *Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption*[6] and *Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules*[7].

Then, Article 4(1) of Directive 89/662 provides that:

> "*Member States of dispatch shall take the necessary measures to ensure that operators comply with veterinary requirements at all stages of the production, storage, marketing and transport of the products referred to in Article 1* […]."

Chapter II of Directive 89/662/EEC, entitled 'Checks on arrival at the destination', consists of Articles 5 to 8.

Article 5 defines – restrictively – the types of checks that can be carried out by the competent authority at the place of destination and states in particular that:

> *"1. Member States of destination shall implement the following measures:*

[5] Act referred to at Point 6.1.17 of Chapter I of Annex I to the EEA Agreement.
[6] Act referred to at Point 1.1.12 of Chapter I of Annex I to the EEA Agreement.
[7] Act referred to at Point 1.1.11 of Chapter I of Annex I to the EEA Agreement.

> *The competent authority may, at the places of destination of goods, check by means of non-discriminatory veterinary spot-checks that the requirements of Article 3 have been complied with; it may take samples at the same time.*
>
> *Furthermore, where the competent authority of the Member State of transit or of the Member State of destination has information leading it to suspect an infringement, checks may also be carried out during the transport of goods in its territory, including checks on compliance as regards the means of transport."*

It follows from these provisions that competent authorities of the EEA State of destination may only check, by means of non-discriminatory veterinary spot-checks, compliance with the relevant EEA legislation.

Articles 7 and 8 of Directive 89/662/EEC lay down the measures to be taken and the procedure to be followed if, during a check carried out at the place of destination of a consignment, the competent authority establishes the existence of an epizootic disease, any new serious and contagious disease or other cause likely to constitute a serious hazard to animals or to human health.

Article 9 of Directive 89/662/EEC provides that, in cases of an outbreak in its territory of any zoonoses, disease or other cause likely to constitute a serious hazard to human or animal health, EEA States may adopt safeguard measures[8].

Finally, it should be mentioned that, concerning dairy products, Regulation (EU) No 853/2004 provides in its Article 10.8 that:

> "*A Member State may, of its own initiative and subject to the general provisions of the Treaty, maintain or establish national rules:*
>
> *(a) prohibiting or restricting the placing on the market within its territory of raw milk or raw cream intended for direct human consumption;*
> *or*
> *(b) permitting the use, with the authorisation of the competent authority, of raw milk not meeting the criteria laid down in Annex III, Section IX, as regards plate count and somatic cell count of the manufacture of cheeses with an ageing or ripening period of at least 60 days, and dairy products obtained in connection with the manufacture of such cheeses, provided that this does not prejudice the achievement of the objectives of this Regulation.*"

5 The Authority's assessment

5.1 Introduction

The rules concerning the intra-EEA trade of products of animal origin and veterinary checks have been harmonised in the EEA.

[8] Directive 89/662/EEC was incorporated into the EEA Agreement with an adaptation to Article 9, according to which this provision does not apply and any reference to it must be read as a reference to paragraph 3 of the Introductory Part of Annex I, Chapter I thereto, which concerns safeguard and protective measures.

According to Directive 89/662/EEC, veterinary checks are to take place at the place of dispatch, and the competent authority at the place of destination may carry checks only by means of non-discriminatory spot-checks. In addition, Article 5 of Directive 89/662/EEC provides that the veterinary checks at the place of destination are limited to verifying the fulfilment of the requirements in the relevant EEA legislation.

The EFTA Court stated, in its judgment of 1 February 2016 in case E-17/15 *Ferskar kjötvörur ehf.* v *the Icelandic State* ("the *Ferskar kjötvörur ehf.* judgment") that:

"*65 The harmonised system of veterinary checks [under Directive 89/662/EEC] is based on full inspection of the goods in the EEA State of dispatch. The system is intended to replace, as a rule, inspection in the EEA State of destination. Considerations related to the need to protect public or animal health cannot justify additional specific constraints imposed by an EEA State when the frontier is crossed (see, for comparison, judgment in Commission v Sweden, C-111/03, EU:C:2005:619, paragraph 51).*

66 The objective of the Directive could not be realised, nor its effectiveness achieved, if the EEA States were free to go beyond its requirements. Maintaining or adopting national measures other than those expressly provided for in the Directive must therefore be regarded as incompatible with the Directive's purpose".

Furthermore, the EFTA Court stated in paragraph 76 of that judgment that: "*The aim to protect human and animal health in EEA trade mentioned in Article 13 EEA cannot be invoked to justify measures banning or restricting imports when a Directive provides for the harmonization of the measures necessary to guarantee the protection of animal and human health and when they establish procedures to check that they are observed*".

It also follows from the consistent interpretation made on several occasions by the Court of Justice of the European Union ("the CJEU" or "the Court of Justice") that Directive 89/662/EEC has exhaustively harmonised veterinary checks that can take place in the State of destination[9]. The CJEU stated that a detailed and harmonised system of health inspections, based on harmonised rules at EEA level, replaces all other inspection systems existing within the country of destination, whatever the place where such inspections may be carried out[10].

A review of the Icelandic legal framework, in light of the above and in particular of the *Ferskar kjötvörur ehf.* judgment, has led the Authority to reach the conclusion that the authorisation procedure and the additional requirements imposed by the Icelandic legislation on imports of egg and dairy products are not in line with Directive 89/662/EEC, and in particular Article 5 thereof. The Authority also notes that the amendment of Article 10 paragraph 2 of Act No 25/1993 by Act No 71/2015 mentioned above does not alter this conclusion.

[9] See, in particular, *Commission* v *Germany*, C-186/88, ECLI:EU:C:1989:601; *Commission* v *Germany*, C-102/96, ECLI:EU:C:1998:529; *Danske Slagterier*, C-445/06, ECLI:EU:C:2009:178 and *Commission* v *Sweden*, C-111/03, ECLI:EU:C:2005:619.

[10] See, in particular, *Commission* v *Sweden*, C-111/03, cited above, paragraph 51 and joined cases *Ligur Carni Srl and Genova Carni Srl v Unità Sanitaria Locale n. XV di Genova and Ponente SpA v Unità Sanitaria Locale n. XIX di La Spezia and CO.GE.SE.MA Coop a r l* , C-277/91, C-318/91 and C-319/91, ECLI:EU:C:1993:927, paragraph 26.

5.2 The Icelandic legal framework regarding imports of raw eggs and raw egg products is in breach of Directive 89/662/EEC

Article 10 of Act No 25/1993 read in conjunction with Articles 3 to 5 of Regulation (IS) No 448/2012 imposes an authorisation procedure for the import of raw eggs and raw egg products into Iceland.

In particular, Article 4 of Regulation (IS) No 448/2012 requires all operators to submit an initial application and then – systematically and for each consignment – an application for the import of raw eggs and raw egg products.

The EFTA Court concluded in the *Ferskar kjötvörur ehf.* judgment that:

"*It is not compatible with the provisions of Directive 89/662/EEC for an EEA State to enact rules demanding that an importer of raw meat products applies for a special permit before the products are imported* […]."

The authorisation system for the import of raw eggs and raw egg products is essentially the same as the one for raw meat products. Therefore the same conclusion must be made, i.e. that these requirements are not compatible with the provisions of Directive 89/662/EEC, and in particular Article 5 thereof, as they constitute obligations that go beyond the controls permitted at the place of destination.

Furthermore, Article 5, paragraphs (f) and (g) of Regulation (IS) No 448/2012 imposes obligations for importers to provide information for the verification by MAST, that raw egg products conform to, respectively:

- the appropriate provisions of the current regulation on food contaminants;
- rules on labelling, and advertising and promotion of foodstuffs.

Concerning Article 5(f) of Regulation (IS) No 448/2012, the obligations under EEA legislation on contaminants in food are already laid out in Council Regulation (EEC) No 315/93 of 8 February 1993[11], while maximum levels for certain contaminants in food are set in Commission Regulation (EC) No 1881/2006 of 19 December 2006[12]. A product that complies with the levels set out in these Acts is presumed to be safe and compliant. The legislation on food contaminants does not contain any provisions that give EEA States a legal basis to impose on importers the completion of a systematic procedure to demonstrate that food products conform to the current legislation on food contaminants.

Concerning Article 5(g) of Regulation (IS) No 448/2012, the obligations under EEA legislation on the labelling of foodstuffs are already laid out in particular in Regulation (EU) No 1169/2011 of 25 October 2011 on the provision of information to consumers[13]. This regulation does not contain any provisions that give EEA States a legal basis to impose on importers the completion of a systematic procedure to demonstrate that food products conform to the legislation on labelling.

[11] Point 54f of Chapter XII of Annex II to the EEA Agreement.
[12] Point 54zzzz of Chapter XII of Annex II to the EEA Agreement.
[13] Point 86 of Chapter XII of Annex II to the EEA Agreement.

Moreover, the EFTA Court stated in the *Ferskar kjötvörur ehf.* judgment, as regards these additional requirements, that:

"*72. The Directive makes no provisions for the freezing of meat as a legitimate trade rule for veterinary purposes between EEA States and does not allow for any such requirement to be made under national law. As a consequence, national law may not require a certificate to verify the freezing of meat".*
73. […]

74. The present procedures have focused on the requirement of the freezing certificate. The observations submitted to the Court and the pleadings at the oral hearing do not provide a firm basis to examine the other conditions for obtaining an import permit mentioned in the second question from the national court.

75. ESA has stated that certificates concerning salmonella, food contaminants and labelling, as required under Article 5(e), (f) and (g) of the Icelandic Regulation, are dealt with in separate regulations under EEA law. The Court observes that in relation to the Directive such certificates must, in principle, be considered in the same manner as a freezing certificate."

Hence, the EFTA Court considered in principle that the additional requirements concerning food contaminants and labelling were incompatible with Directive 89/662/EEC.

It follows from the above, that the obligations imposed by Article 5 paragraphs (f) and (g) of Regulation (IS) No 448/2012 do not find a legal basis in the EEA legislation and are also incompatible with Directive 89/662 as they constitute veterinary checks which go beyond the checks allowed under Article 5.

5.3 The Icelandic legal framework regarding imports of unpasteurised milk and dairy products processed from unpasteurised milk is in breach of Directive 89/662/EEC

First of all, Article 4 of Regulation (IS) No 448/2012 requires all operators to submit an initial application and then – systematically and for each consignment – an application for the importation of unpasteurised milk and dairy products processed from unpasteurised milk. In addition, according to the practice of the Icelandic Government (as presented in the package meeting of 27 May 2015), the marketing of imported dairy products processed from unpasteurised milk and intended for direct consumption is totally prohibited, even after obtaining an import authorisation.

The Authority considers that these measures do not find a legal basis in Article 10.8 (a) of Regulation (EU) No 853/2004. Indeed:

- the authorisation procedure for the import of unpasteurised milk goes beyond what is permitted under Article 10.8 (a) of Regulation (EC) No 853/2004, which only allows restrictive measures concerning raw milk for direct human consumption, but does not cover raw milk for other uses (i.e. destined for further processing). The Icelandic legislation, which generally covers raw milk irrespective of its use, is thus not in line with Article 10.8 (a) of Regulation (EC) No 853/2004 ;

- the authorisation procedure for the import of dairy products processed from unpasteurised milk as well as the prohibition of their marketing for direct human consumption goes beyond what is permitted under Article 10.8 (a) of Regulation (EC) No 853/2004, which only allows restrictive measures on raw milk or raw cream for direct human consumption.

It follows that, for the same reasons as those presented above, the authorisation procedure for the import of unpasteurised milk and dairy products processed from unpasteurised milk and the prohibition of the marketing for direct human consumption of imported dairy products processed from unpasteurised milk, are not compatible with the provisions of Directive 89/662/EEC, and in particular Article 5 thereof.
Secondly, the Icelandic legislation obliges importers to show the conformity of unpasteurised milk and dairy products processed from unpasteurised milk with the relevant provisions of the Regulation on food contaminants and with labelling rules. For the same reasons as those presented above, these requirements do not find a legal basis in the relevant EEA legislation and are not compatible with the provisions of Directive 89/662/EEC and in particular Article 5 thereof.

Finally, Article 5 of Regulation (IS) No 448/2012 imposes restrictions on certain categories of imported cheeses, including a heat treatment and a storage for at least 6 months.

However, these requirements do not find a legal basis in Article 10.8 (a) of Regulation (EC) No 853/2004, which only allows restrictive measures on raw milk or raw cream for direct human consumption.

Concerning Article 10.8 (b) of Regulation (EC) No 853/2004, it only allows EEA States to impose national rules permitting the use, with the authorisation of the competent authority, of raw milk not meeting the criteria laid down in Annex III, Section IX of the said regulation, as regards plate count and somatic cell count, for the manufacture of cheeses with an ageing or ripening period of at least 60 days.

The Authority considers that the requirements provided in Article 5 of Regulation (IS) No 448/2012 for certain cheeses are not in line with Article 10.8 (b) of Regulation (EC) No 853/2004, as:

- Article 10.8 (b) of Regulation (EC) No 853/2004 only allows national measures permitting the use of raw milk not meeting the criteria laid down in Annex III of the said regulation for the purpose of processing cheese, but not national measures concerning imports of raw milk cheeses;

- Even if it were considered that Article 10.8 (b) of Regulation (EC) No 853/2004 allows an EEA State to take national measures concerning imported raw milk cheeses, the Icelandic legislation is not in line with Article 10.8 (b) as it applies irrespective of whether raw milk meets the criteria set by Regulation (EC) No 853/2004.

It follows from the above that the additional requirements for certain imported cheeses do not find a legal basis in Article 10.8, paragraphs (a) or (b) of Regulation (EC) No 853/2004 and are not compatible with the provisions of Directive 89/662/EEC and in particular Article 5 thereof.

5.4 The Icelandic legal framework regarding imports of treated egg and dairy products is in breach of Directive 89/662/EEC

The Authority understands that importers of treated egg and dairy products (i.e. complying with the heat treatments mentioned in Article 3, paragraphs (e) and (f) respectively of Regulation (IS) No 448/2012) are not subject to the authorisation procedure of Article 4 of Regulation (IS) No 448/2012, but still have to obtain the approval of MAST in order to get customs clearance.

Although there does not appear to be an express provision in Act No 25/1993 or Regulation (IS) No 448/2012 providing for this obligation, this practice was confirmed by the Icelandic Government during the package meeting of 27 May 2015.

In view of the judgement of the EFTA Court mentioned above and relevant case-law of the CJEU, the Authority considers that this obligation of declaration and approval by MAST constitutes a veterinary check which goes beyond the checks allowed under Article 5 of Directive 89/662/EEC. This administrative practice is thus incompatible with Directive 89/662/EEC, and in particular Article 5 thereof.

6 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that:

- by maintaining in force an authorisation system for the import of raw eggs and raw egg products and additional requirements such as the ones laid down in Article 10 of Act No 25/1993 and Articles 3 (e), 4 and 5 of Regulation (IS) No 448/2012,

- by maintaining in force an authorisation system for the import of unpasteurised milk and dairy products processed from unpasteurised milk and additional requirements, a prohibition of the marketing for direct human consumption of imported dairy products processed from unpasteurised milk as well as additional requirements for the import of certain cheeses such as laid down in Article 10 of Act No 25/1993 and Articles 3 (f), 4 and 5 of Regulation (IS) No 448/2012,

- by maintaining in force an administrative practice, such as the one applicable in the context of the application of Regulation (IS) No 448/2012, of requiring importers to make a declaration and obtain an approval for the import of treated egg and dairy products,

Iceland has failed to fulfil its obligations arising from the Act referred to at Point 1.1.1 of Chapter I of Annex I to the EEA Agreement, *Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market* as amended and as adapted to the EEA Agreement by Protocol 1 thereto and by the sectoral adaptations in Annex I thereto, and in particular Article 5 thereof.

In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority requests that the Icelandic Government submits its observations on the content of this letter *within two months* of its receipt.

After the time limit has expired, the Authority will consider, in the light of any observations received from the Icelandic Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority

Helga Jónsdóttir
College Member

This document has been electronically signed by Helga Jonsdottir on 20/04/2016