

Questions and Answers regarding the Fresh meat case and the import of egg and dairy products

1) What are the products concerned by the Icelandic measures?

The Icelandic measures concern meat products described in the following 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.

Basically, it concerns, based on definitions found in EEA law (and applicable to Iceland) “Fresh meat”, “Meat preparations” and “Meat products” (see definitions in footnote¹).

The Icelandic legislation also concerns imports of raw eggs and raw egg products, unpasteurised milk and dairy products processed from unpasteurised milk from other EEA States.

Importantly, the measures do not concern live animals. Further to a derogation granted to Iceland², imports of live animals are not allowed in Iceland. This is specifically designed to protect the Icelandic livestock from diseases.

2) What are the Icelandic measures on meat products about?

The measures under review do not in fact constitute a total ban on the importation of fresh meat but rather a system of import declaration and further authorisation for these products based on the production of certain certificates by the relevant food business operator.

In particular, for EEA products mentioned above that have not received satisfactory heat treatment, importers must systematically 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 following certificates:

- a. 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 products are free of salmonella bacteria;
- f. animal meat products and by-products, dairy products and eggs shall conform to the appropriate provisions of the current Regulation on food contaminants;
- g. the product shall be labelled in conformity with current rules on labelling, advertising and promotion of foodstuffs.

¹ "Fresh meat" as “*meat that has not undergone any preserving process other than chilling, freezing or quick-freezing, including meat that is vacuum-wrapped or wrapped in a controlled atmosphere*” ; “Meat preparations” as “*fresh meat, including meat that has been reduced to fragments, which has had foodstuffs, seasonings or additives added to it or which has undergone processes insufficient to modify the internal muscle fibre structure of the meat and thus to eliminate the characteristics of fresh meat*” and “Meat products” as “*processed products resulting from the processing of meat or from the further processing of such processed products, so that the cut surface shows that the product no longer has the characteristics of fresh meat*”.

² Protocol 1 to the EEA Agreement exempts Iceland from implementing the veterinary *acquis* for live animals other than fish and aquaculture animals,

3) Why are these measures not compatible with EEA law?

In November 2011, EEA rules concerning general and specific hygiene rules for animal products became applicable in Iceland. Soon after, these rules were made part of the Icelandic legal order. This meant that Iceland started using the same hygiene standard as in all other EEA States for the production, transformation and placing on the market of meat products.

Council Directive 89/662/EEC harmonised the way EEA States can carry out veterinary checks at their borders. The main objective of this Directive is to eliminate veterinary checks at the EEA's internal borders while reinforcing those carried out at the point of origin. These veterinary checks have been harmonised in the EEA and controls at the place of destination are now limited to non-discriminatory veterinary spot-checks (for example at retail level).

According to the EFTA Surveillance Authority, the prior authorisation system in place in Iceland is not compatible with this Directive as it imposes additional veterinary checks to those that have been harmonised, such as requesting a certificate confirming that the products have been stored at a temperature of at least -18°C for a month.

In addition, the Authority considers that the Icelandic government has not provided scientific explanations that could justify these measures. Iceland has submitted scientific documentation that shows that the risk of infection of livestock via the importation of fresh meat is very low.

Fresh meat produced in EEA countries, like in Iceland, is subject to a large number of regulations designed to guarantee the safety of these products³ as well as official controls carried out by national competent authorities based on harmonised standards⁴. This comprehensive body of rules greatly minimises the risk and reduces the likelihood of introducing pathogens via fresh meat produced in the EEA. In addition, a complex system of control measures to be taken within the European Union in the face of a disease outbreak further limits the risk for Iceland.

In cases of an outbreak of a disease or other cause likely to constitute a serious hazard to animals or human health, Iceland may adopt safeguard measures to protect animal and public health. The EEA Agreement contains a specific safeguard mechanism for Iceland and Norway⁵. Such safeguard measures should be temporary in nature (subject to evaluation of the risk) and must be notified to the EFTA Surveillance Authority. They must lead to consultation with all trading partners in order to find appropriate solutions.

The EFTA Court considered, in its judgment in case E-17/15 *Ferskar kjötvörur ehf. v the Icelandic State*, an import authorisation procedure for raw meat products to be in breach of Directive 89/662/EEC. The District Court of Reykjavík did so as well in November 2016.

4) How does this apply to the import of eggs and milk?

Under Icelandic law, an authorisation is needed to import raw eggs and raw egg products, unpasteurised milk and dairy products processed from unpasteurised milk. Importers must apply for a permit and submit documentation to the Icelandic Food and Veterinary Authority. ESA considers this authorisation procedure to be in breach of Directive 89/662/EEC concerning veterinary checks in EEA trade. The main objective of the directive is to reinforce health checks at the product's point of origin while limiting controls at the place of destination to non-discriminatory veterinary spot-checks. By requiring importers to apply for import permits and imposing additional requirements, the Icelandic legislation imposes additional checks that go beyond the types of checks permitted under this directive. It should further be noted that Icelandic

³ “Hygiene package” and, in particular, Regulations (EU) No. 852/2004 and No. 853/2004.

⁴ See Regulations (EU) No. 882/2004 and No. 854/2004

⁵ See paragraph 3 of the Introductory Part of Annex I, Chapter I thereto

export products are subject to the same EEA rules on veterinary checks when leaving Iceland and before they enter the EEA internal market.

The EFTA Surveillance Authority

The EFTA Surveillance Authority is responsible for monitoring implementation and application by Iceland and Norway of EEA legislation on food and feed safety, animal health and welfare.

More generally, it further:

- Ensures that Norway, Iceland and Liechtenstein respect the EEA Agreement.
- Protects the rights of individuals and market participants.
- Ensures timely implementation of EEA law.
- Pursues breaches of EEA law.
- Enforces the rules concerning state aid.
- Takes action against breaches of the EEA competition rules