

Case No: 80760
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Decision No: 181/17/COL

The logo of the EFTA Surveillance Authority, featuring the text "EFTA SURVEILLANCE AUTHORITY" in white on a dark blue background.

EFTA SURVEILLANCE AUTHORITY
DELEGATED DECISION

of 5 October 2017

concerning the draft regulation notified by Iceland regarding the indication of the country of origin for fresh, chilled and frozen meat of fish and other marine products

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 86 of Chapter XII of Annex II to the EEA Agreement:

Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/11/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004

as adapted to the EEA Agreement by point 4(d) of Protocol 1 to the EEA Agreement and Articles 1(2) and 3 of Protocol 1 to the Surveillance and Court Agreement.

Having regard to the EFTA Surveillance Authority Decision No 101/17/COL of 12 June 2017 to submit a draft decision concerning the draft regulation notified by Iceland regarding the indication of the country of origin for fresh, chilled and frozen meat of fish and other marine products to the EFTA Committee on Technical Regulations, Standards, Testing and Certification, and empowering the competent College Member to adopt the final decision if the EFTA Committee on Technical Regulations, Standards, Testing and Certification approves the draft decision.

WHEREAS:

On 13 March 2017, the Icelandic Government notified to the EFTA Surveillance Authority (“the Authority”) a draft regulation regarding the indication of the country of origin for fresh, chilled and frozen meat of fish and other marine products (“the draft regulation”).

The notification was made both under *Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations*¹ and under Articles 39 and 45 of Regulation (EU) No 1169/2011. However, the Authority notes that, according to Articles 39 and 45 of Regulation (EU) No 1169/2011, measures concerning the mandatory indication of the country of origin of foods are subject only to the specific procedure of Article 45 of Regulation (EU) No 1169/2011, and not to the notification procedure of Directive 98/34/EC.

Article 45, paragraphs 3 and 4 of Regulation (EU) No 1169/2011 as adapted provide that the EEA State which notifies the measures envisaged may adopt these measures 3 months after the notification, provided that it has not received a negative opinion from the Authority. If the Authority's opinion is negative, the Authority shall initiate the examination procedure in order to determine whether the envisaged measures may be implemented subject, if necessary, to the appropriate modifications.

The draft regulation lays down rules on the mandatory indication of the country of origin on the label of fresh, chilled and frozen meat of fish and other marine products falling within the Combined Nomenclature codes 0302 to 0308. It provides in its Article 2(1) that the label of the fish and other marine products concerned, intended for supply to consumers or to mass caterers, shall contain the indication of the country of origin in which the catch or aquaculture takes place. This requirement applies to products originating in EEA States or third countries.

Article 39(2) of Regulation (EU) No 1169/2011 establishes specific conditions that EEA States must meet in order to adopt measures concerning the mandatory indication of the country of origin or place of provenance of foods.

Firstly, Article 39(2) of Regulation (EU) No 1169/2011 provides that EEA States may introduce measures concerning the mandatory indication of the country of origin of foods only where there is a proven link between certain qualities of the food and its origin. However, the notification sent by Iceland does not contain elements establishing a link between certain qualities of the fish and marine products concerned and their origin.

Secondly, Article 39(2) of Regulation (EU) No 1169/2011 provides that, when notifying measures concerning the mandatory indication of the country of origin of foods, the State must provide evidence that the majority of consumers attach significant value to the provision of information on the country of origin. However, the notification does not contain such evidence. The Icelandic Government indicates in the notification that the draft regulation is intended to protect consumers by giving them the relevant information following the results of the Institute Matis according to which “30% of the fish sold in restaurants were not sold in accordance with the information provided to the end consumer”. This reference, which is not supported by documentary evidence, does not establish, in the Authority's view, that the majority of consumers attach significant value to the information on the country of origin of the fish and other marine products concerned. Therefore, this reference does not appear to constitute sufficient evidence as required by Article 39(2).

Furthermore, in this respect, the draft regulation does not contain provisions specifying how the origin of the products concerned would be determined, e.g. for wild fish caught at

¹ Act referred to at point 1 in Chapter XIX of Annex II to the EEA Agreement.

sea. In this regard, the draft regulation does not ensure that the indication of origin would relate to certain qualities of the products concerned and to the stage at which consumers consider important to have information on the origin of the products.

Accordingly, the Authority considers that the notification of the draft regulation by the Icelandic Government does not meet the conditions set in Article 39 of Regulation (EU) No 1169/2011.

On 12 June 2017, the Authority sent a negative opinion to Iceland concerning the draft regulation pursuant to Article 45(3) of Regulation (EU) No 1169/2011 (Doc No 859214).

By the examination procedure initiated pursuant to Article 45(4) of Regulation (EU) No 1169/2011, the EFTA Committee on Technical Regulations, Standards, Testing and Certification delivered a positive opinion on the draft of the present decision submitted to it.

In light of the above, and in accordance with the opinion of the EFTA Committee on Technical Regulations, Standards, Testing and Certification, it is determined, pursuant to Article 45(4) of Regulation (EU) No 1169/2011, that the draft regulation regarding the indication of the country of origin for fresh, chilled and frozen meat of fish and other marine products notified by the Icelandic Government may not be implemented.

HAS ADOPTED THIS DECISION:

Article 1

The draft regulation regarding the indication of the country of origin for fresh, chilled and frozen meat of fish and other marine products as notified by the Icelandic Government may not be implemented.

Article 2

This Decision is addressed to Iceland.

Article 3

This Decision shall be authentic in the English language.

Done at Brussels on 5 October 2017

For the EFTA Surveillance Authority

Helga Jónsdóttir
College Member

For Carsten Zatschler
Director

This document has been electronically signed by Helga Jonsdottir, Catherine Howdle.