

Case No: 82106
Document No: 1045279
Decision No: 005/19/COL



EFTA SURVEILLANCE
AUTHORITY

REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning Iceland's failure to comply with the judgment of the EFTA Court in Joined Cases E-02/17 and E-03/17 concerning requirements imposed on imports of meat, egg and dairy products

1 Introduction

By letter dated 16 January 2018 (Doc No 892278), the EFTA Surveillance Authority (“the Authority”) invited the Icelandic Government to provide information on how it intended to comply with the judgment of the EFTA Court of 14 November 2017 in Joined Cases E-02/17 and E-03/17 *EFTA Surveillance Authority v Iceland* (“Cases E-02/17 and E-03/17 *ESA v. Iceland*”).¹

In its judgment, the EFTA Court declared that Iceland had failed to fulfil its obligations arising from Article 5 of 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*, referred to at point 1 in Part 1.1 of Chapter I of Annex I to the Agreement on the European Economic Area (“EEA Agreement”), as amended and as adapted to the EEA Agreement under its Protocol 1 and Annex I, by maintaining in force:

- (i) the authorisation system for the import of fresh meat and meat products laid down in Article 10 of Icelandic Act No 25/1993 on *Animal Diseases and Preventive Measures against them* (“Act No 25/1993”) and Article 3(a) and Articles 4 and 5 of Icelandic Regulation No 448/2012 on *measures to prevent the Introduction of Animal Diseases and Contaminated Products to Iceland* (“Regulation No 448/2012”);
- (ii) the authorisation system for the import of raw eggs and egg products laid down in Article 10 of Icelandic Act No 25/1993 and Article 3(e) and Article 4 of Regulation No 448/2012;
- (iii) the authorisation system for the import of unpasteurised milk and dairy products processed from unpasteurised milk laid down in Article 3(f) and Article 4 and the additional requirements concerning certain cheeses laid down in the third paragraph of Article 5 of Regulation No 448/2012; and
- (iv) an administrative practice requiring importers of treated egg and dairy products to submit data to the relevant national authority proving that the products have been treated in accordance with national legislation.

2 Correspondence

The Authority sent a letter to Iceland dated 16 January 2018 (Doc No 892278), in which it invited it to provide information on how it intended to comply with the EFTA Court judgment of 14 November 2017.

The Icelandic Government replied by a letter of 19 February 2018 (Doc No 898623, Ref. ANR18010560/15.02.03), in which it provided information concerning the planned amendments to the Icelandic legislation, in order to comply with the EFTA Court judgment.

It indicated in particular the intent to abide by the EFTA Court judgment and make the necessary amendments so that the Icelandic legislation is in conformity with the EEA

¹ Judgment of 14 November 2017 in Joined Cases E-02/17 and E-03/17 the EFTA Surveillance Authority v. Iceland, [2017] EFTA Ct. Rep. 727.

Agreement. It further stated that a bill was being drafted, in order to amend Article 10, paragraph 1, point a of Act No 25/1993, so that the products concerned by the EFTA Court judgment would be deleted from that provision and these products would no longer be subject to the authorisation procedure laid down in Article 10 of Act No 25/1993.

The Icelandic Government stated that it intended to introduce this bill before the Icelandic Parliament in its - then - current session. It further specified that Regulation No 448/2012 would be reviewed accordingly. This would entail amendments of Articles 3, 4 and 5 of that Regulation.

Finally, the Icelandic Government indicated that concurrently an application for special guarantees with regard to salmonella, in accordance with Article 8 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*², was being prepared.

The Authority sent a further letter to Iceland on 22 March 2018 (Doc No 903897), inviting it to confirm the steps and the associated timeframe for the process of adoption of the planned amendments.

The Icelandic Government replied by a letter dated 20 April 2018 (Doc No 910202, Ref. ANR 18011647/15.02.03), indicating in particular that they had begun preliminary discussions with the European Commission regarding the possibility of adaptations to Annex I of the EEA Agreement in light of the EFTA Court judgment and a meeting in that regard had been held on 11 April 2018. Furthermore, the Icelandic Government indicated that work was ongoing concerning the bill amending Act No 25/1993 and concerning other measures related to animal health planned as a consequence of the legislative amendments.

Representatives of the Authority and of the Icelandic Government held a meeting on 17 May 2018 to discuss the status of the case. A further meeting was held on 5 June 2018, where the Icelandic Government indicated in particular that the bill amending Article 10 of Act No 25/1993 would not be introduced at the parliamentary session ending in June 2018, but would likely be introduced at the next session.

In light of the above, the Authority issued a letter of formal notice to Iceland on 11 July 2018 (Document No 919488). In the letter of formal notice the Authority concluded that Iceland had failed to comply with its obligations under Article 33 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by failing to comply with the judgment of the EFTA Court of 14 November 2017 in Joined Cases E-02/17 and E-03/17 *ESA v Iceland*.³

The Icelandic Government replied to the Authority's letter of formal notice by a letter dated 12 October 2018 (Doc No 934239, Ref. ANR 18010560/15.02.03). The Icelandic Government indicated in particular that the bill amending Act No 25/1993 had been put on the Icelandic Government's list of legislative proposals for the 2018-2019 session of the Icelandic Parliament, and that it was foreseen to be introduced in February 2019 with the intention of it passing during that session of Parliament. The Icelandic Government also confirmed that Regulation No 448/2012 would be amended accordingly.

² 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* (OJ L 139, 30.4.2004, p. 55), referred to at point 17 in Part 6.1 of Chapter I of Annex I to the EEA Agreement.

³ Joined Cases E-02/17 and E-03/17 *ESA v. Iceland*, cited above.

3 Relevant EEA law

According to Article 33 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”), the EFTA States concerned shall take the necessary measures to comply with the judgments of the EFTA Court.

4 The Authority’s assessment

The EFTA Court handed down its judgment in Joined Cases E-02/17 and E-03/17 *ESA v. Iceland* on 14 November 2017. It follows from the information provided by the Icelandic Government that it has not yet adopted measures necessary in order to comply with the EFTA Court judgment. According to Iceland’s reply to the Authority’s letter of formal notice, the bill amending Act No 25/1993 is foreseen to be introduced in February 2019 with the intention of it passing during the current session of the Icelandic Parliament. Further revisions to Regulation No 448/2012 would also have to be made.

According to Article 33 SCA, the EEA EFTA States are required to take necessary measures to comply with the judgments of the EFTA Court.

The EFTA Court has held that while Article 33 SCA does not specify when the measures necessary to comply with a judgment must be taken, the interest in the immediate and uniform application of EEA law requires that the process of compliance with a judgment must be commenced immediately and must be completed as soon as possible.⁴

It is also settled case law that EEA EFTA States cannot plead internal circumstances or practical difficulties to justify non-compliance with obligations and time limits arising from EEA law.⁵

As more than 14 months have now passed since the judgment of the EFTA Court, the Authority considers that the Icelandic Government has had sufficient time to take the measures necessary to comply with the judgment of the EFTA Court of 14 November 2017.

The Authority therefore considers that, by failing to take the measures necessary to comply with the judgment of the EFTA Court of 14 November 2017 in Joined Cases E-02/17 and E-03/17⁶ Iceland has failed to fulfil its obligations under Article 33 SCA.

⁴ Judgment of the EFTA Court of 28 June 2011 in Case E-18/10 *EFTA Surveillance Authority v The Kingdom of Norway* [2011] EFTA Ct. Rep. 202, paragraph 29.

⁵ See in this regard *inter alia* judgment of the Court of Justice of the European Union of 11 September 2008, Case C-316/06 *Commission v Ireland*, ECLI:EU:C:2008:487, paragraph 31, judgment of 2 October 2003 in Case C-89/03 *Commission v Luxembourg*, ECLI:EU:C:2003:542, paragraph 5, judgment of 14 November 2002 in Case C-140/00 *Commission v United Kingdom*, ECLI:EU:C:2002:653, paragraph 60, and judgment of 8 June 1993 in Case C-52/91 *Commission v Netherlands*, ECLI:EU:C:1993:225, paragraph 36.

⁶ Joined Cases E-02/17 and E-03/17 *ESA v. Iceland*, cited above.

FOR THESE REASONS,

THE EFTA SURVEILLANCE AUTHORITY,

pursuant to the first paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and after having given Iceland the opportunity of submitting its observations,

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that by failing to comply with the judgment of the EFTA Court of 14 November 2017 in Joined Cases E-02/17 and E-03/17 *EFTA Surveillance Authority v Iceland*, Iceland has failed to comply with its obligations under Article 33 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

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, the EFTA Surveillance Authority requires Iceland to take the measures necessary to comply with this reasoned opinion within *two months* of its receipt.

Done at Brussels, 13 February 2019

For the EFTA Surveillance Authority

Bente Angell-Hansen
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This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.