JUDGMENT OF THE COURT
1 February 2016*

(Jurisdiction – Article 8 EEA – Import of raw meat – Directive 89/662/EEC – Harmonisation of the regulatory regime for veterinary checks)

In Case E-17/15,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Reykjavík District Court (*Héraðsdómur Reykjavíkur*), in the case between

Ferskar kjötvörur ehf.

and

The Icelandic State,

concerning the applicability of the provisions of the Agreement on the European Economic Area to the import to Iceland of raw meat products,

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen (Judge-Rapporteur), and Páll Hreinsson, Judges,

Registrar: Gunnar Selvik,

having considered the written observations submitted on behalf of:

- Ferskar kjötvörur ehf. ("the plaintiff"), represented by Arnar Þór Stefánsson, Supreme Court Attorney, acting as Counsel;

- The Icelandic State ("the defendant"), represented by Kristján Andri Stefánsson, Director General, Ministry of Foreign Affairs, and Einar Karl Hallvarðsson, State Attorney General and Supreme Court Attorney, acting as Agents, and Jóhannes Karl

* Language of the request: Icelandic

Sveinsson and Gizur Bergsteinsson, Supreme Court Attorneys, acting as Counsel;

- the Government of Norway, represented by Janne Tysnes Kaasin, Senior Adviser, Department of Legal Affairs, Ministry of Foreign Affairs, and Torje Sunde, Advocate, Office of the Attorney General (Civil Affairs), acting as Agents;

- the EFTA Surveillance Authority ("ESA"), represented by Carsten Zatschler, Director, Maria Moustakali, Officer, and Írís Ísberg, Temporary Officer, Department of Legal & Executive Affairs, acting as Agents;

- the European Commission ("the Commission"), represented by Daniele Bianchi, member of its Legal Service, and Kathleen Skelly, a national civil servant on secondment to the Legal Service, acting as Agents;

having regard to the Report for the Hearing,

having heard oral argument of the plaintiff, represented by Arnar Þór Stefánsson; the defendant, represented by Kristján Andri Stefánsson and Jóhannes Karl Sveinsson; the Government of Norway, represented by Janne Tysnes Kaasin; ESA, represented by Maria Moustakali and Írís Ísberg; and the Commission, represented by Daniele Bianchi and Kathleen Skelly, at the hearing on 2 December 2015,

gives the following

Judgment

I Introduction

1 The plaintiff imported 83 kg of raw beef fillets from the Netherlands via Denmark to Iceland in February 2014. The import permit was granted, *inter alia*, on the condition that the meat was stored at a temperature of at least -18°C for one month before customs clearance. The plaintiff objected to that condition, but this was to no avail. As a consequence, the meat was discarded. In the case before the national court, the plaintiff seeks compensation from the defendant for the expenses incurred. In the context of those proceedings, the national court has decided to refer several questions concerning the compatibility of the system for import permits with the Agreement on the European Economic Area ("the EEA Agreement" or "EEA").

II Legal background

EEA law

2 The fourth recital of the preamble to the EEA Agreement reads:

> *CONSIDERING the objective of establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition and providing for the adequate means of enforcement including at the judicial level, and achieved on the basis of equality and reciprocity and of an overall balance of benefits, rights and obligations for the Contracting Parties;*

3 Article 1(1) EEA reads:

> *The aim of this Agreement of association is to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition, and the respect of the same rules, with a view to creating a homogeneous European Economic Area, hereinafter referred to as the EEA.*

4 Article 3 EEA reads:

> *The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.*
>
> *They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.*
>
> *Moreover, they shall facilitate cooperation within the framework of this Agreement.*

5 Article 7 EEA reads:

> *Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows:*
>
> *(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;*
>
> *(b) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.*

6 Article 8 EEA reads:

> *1. Free movement of goods between the Contracting Parties shall be established in conformity with the provisions of this Agreement.*
> *2. Unless otherwise specified, Articles 10 to 15, 19, 20 and 25 to 27 shall apply only to products originating in the Contracting Parties.*
> *3. Unless otherwise specified, the provisions of this Agreement shall apply only to:*
> *(a) products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System, excluding the products listed in Protocol 2;*
> *(b) products specified in Protocol 3, subject to the specific arrangements set out in that Protocol.*

7 Article 13 EEA reads:

> *The provisions of Articles 11 and 12 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties.*

8 Article 17 EEA reads:

> *Annex I contains specific provisions and arrangements concerning veterinary and phytosanitary matters.*

9 Article 18 EEA reads:

> *Without prejudice to the specific arrangements governing trade in agricultural products, the Contracting Parties shall ensure that the arrangements provided for in Articles 17 and 23(a) and (b), as they apply to products other than those covered by Article 8(3), are not compromised by other technical barriers to trade. Article 13 shall apply.*

10 Article 19(2) EEA reads:

> *The Contracting Parties undertake to continue their efforts with a view to achieving progressive liberalization of agricultural trade.*

11 Article 23 EEA reads:

> *Specific provisions and arrangements are laid down in:*

(a) Protocol 12 and Annex II in relation to technical regulations, standards, testing and certification;

(b) ...

(c) ...

They shall apply to all products unless otherwise specified.

12 Chapter I of Annex I to the EEA Agreement contains provisions on veterinary issues. Following the adoption of EEA Joint Committee Decision No 69/98 of 17 July 1998 (OJ 1999 L 158, p. 1, and EEA Supplement 1999 No 27, p. 1), the first paragraph of point 2 of the introductory part made clear that the acts referred to in the Chapter should apply to Iceland where it was so stated in relation to a specific act. By EEA Joint Committee Decision No 133/2007 of 26 October 2007 (OJ 2008 L 100, p. 27, and EEA Supplement 2008 No 19, p. 34), the Contracting Parties reviewed the situation and several changes were made to Annex I with regard to Iceland. The first paragraph of point 2 of the introductory part of Chapter I was replaced by the following two paragraphs:

The provisions contained in this Chapter shall apply to Iceland, except for the provisions concerning live animals, other than fish and aquaculture animals, and animal products such as ova, embryo and semen. When an act is not to apply or is to apply partly to Iceland, it shall be stated in relation to the specific act.

Iceland shall implement the provisions contained in this Chapter, in the areas which did not apply to Iceland prior to the review of this Chapter by Decision of the EEA Joint Committee No 133/2007, no later than 18 months after the entry into force of this Decision.

13 Under heading 1.1 in Chapter I, which sets out the basic texts concerning control matters, point 1 refers to 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 (OJ 1989 L 395, p. 13) ("the Directive"), and to subsequent amendments to that directive. That point does not provide for any special arrangements concerning Iceland.

14 The preamble to the Directive includes the following recitals:

[3] Whereas in the veterinary field frontiers are currently being used for carrying out checks aimed at safeguarding public health and animal health;

[4] Whereas the ultimate aim is to ensure that veterinary checks are carried out at the place of dispatch only; whereas the attainment of this objective implies the harmonization of the basic requirements relating to the safeguarding of public health and animal health;

[5] Whereas with a view to the completion of the internal market, pending

the attainment of this objective, the emphasis should be placed on the checks to be carried out at the place of dispatch and in organizing those that could be carried out at the place of destination; whereas such a solution would entail the suspension of veterinary checks at the Community's internal frontiers;

...

[7] Whereas in the State of destination spot veterinary checks could be carried out at the place of destination; whereas, however, in the event of a serious presumption of irregularity, the veterinary check could be carried out while the goods are in transit;

15 Article 1 of the Directive reads:

Member States shall ensure that the veterinary checks to be carried out on products of animal origin covered by the acts referred to in Annex A or by Article 14 and which are intended for trade are no longer carried out ... at frontiers but are carried out in accordance with this Directive.

16 Article 2(1) of the Directive contains the following definition:

'Veterinary check' means any physical check and/or administrative formality which applies to the products referred to in Article 1 and which is intended for the protection, direct or otherwise, of public or animal health;

17 Chapter I of the Directive is concerned with checks at origin and consists of Articles 3 and 4. The first subparagraph of Article 3(1) reads:

Member States shall ensure that the only products intended for trade are those referred to in Article 1 which have been obtained, checked, marked and labelled in accordance with Community rules for the destination in question and which are accompanied to the final consignee mentioned therein by a health certificate, animal-health certificate or by any other document provided for by Community veterinary rules.

18 The first sentence of Article 4(1) reads:

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.

19 Chapter II of the Directive contains rules on checks on arrival at the destination. Article 5(1)(a) requires EEA States to implement the following measure:

> *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.*

20 Articles 7 and 8 of the Directive lay down the measures to be taken if the competent authority of the EEA State of destination establishes the presence of agents responsible for a disease named in Directive 82/894/EEC, a zoonosis or disease, or any cause likely to constitute a serious hazard to animals or humans. In such a case, protective measures provided for in Article 9 may be applied.

National law

21 Article 10 of Act No 25/1993 on Animal Diseases and Preventive Measures against them (*lög nr. 25/1993 um dýrasjúkdóma og varnir gegn þeim*) ("the Icelandic Act") reads:

> *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 …*
>
> *Despite the provisions of paragraph 1 the Minister [of Fisheries and Agriculture] is authorized to allow the import of products mentioned in items a-e, having received recommendations from the Food and Veterinary Authority, 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 those mentioned 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, production and disinfection. The Minister is authorized to prohibit by notice the import of products which carry the risk of transmitting contamination agents that could cause danger to the health of animals.*
>
> …

22 Regulation No 448/2012 on Measures to prevent the Introduction of Animal Diseases and Contaminated Products (*reglugerð nr. 448/2012 um varnir gegn því að dýrasjúkdómar og sýktar afurðir berist til landsins*) ("the Icelandic Regulation") sets out detailed provisions on the implementation of Article 10 of the Act. Article 3 of the Icelandic Regulation reads:

> *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:*
>
> *a. Raw meat, processed or unprocessed, chilled or frozen, as well as offal and slaughter wastes, which have not been treated by heating, so that the core temperature has reached 72°C for 15 seconds, or other comparable treatment in the assessment of the Food and Veterinary Authority.*
>
> *...*

23 Article 4 of the Icelandic Regulation reads:

> *The Minister of Fisheries and Agriculture is authorized to allow the import of products mentioned in Article 3, cf. Article 10 of [the Act] 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.*
>
> *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 the Food and Veterinary Authority, 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.*

24 Article 5 of the Icelandic Regulation reads:

> *Imported foods which are listed under [Combined Nomenclature Codes] 0202 ... which the Minister has authorised for import to the country as referred to in Article 4 and which have not received satisfactory heat treatment must be accompanied by the following certificates:*

a. …
b. …
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. …
e. 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.*

The Combined Nomenclature is established on the basis of the Harmonized System.

25 In relation to this legislation, ESA submitted a reasoned opinion on 8 October 2014 in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA"). In that opinion, ESA alleged that Iceland had failed to fulfil its obligations under the Directive, in particular Article 5, by maintaining in force the authorisation system for fresh meat and meat products provided for in Article 10 of the Icelandic Act and Articles 3 to 5 of the Icelandic Regulation. Alternatively, ESA considered the authorisation system to be in breach of Article 18 EEA. It appears from its written observations to the Court that ESA has decided to postpone further handling of the infringement case until the Court has given its Advisory Opinion in the present case.

III Facts and procedure

26 The plaintiff ordered 83 kg of beef fillets from a Dutch company for EUR 1 909. On 26 February 2014, the plaintiff applied to the Icelandic Minister of Fisheries and Agriculture for permission to import the meat to Iceland. The day after, the meat was transported by air from Denmark to Iceland. The freight costs amounted to ISK 80 606. The meat was stored at the customs office in Keflavík pending an import permit.

27 On 6 March 2014, acting on behalf of the Minister of Fisheries and Agriculture, the Minister of Industries and Innovation authorised the import, provided that the conditions in Article 5(c), (e) and (g) of the Icelandic Regulation were met.

28 On 11 March 2014, the plaintiff requested the Food and Veterinary Authority to process a request to allow the import and to permit customs clearance of the fresh meat without requiring it to be frozen. The plaintiff stated that the purpose of the import was to offer consumers in Iceland fresh meat that had not been frozen.

29 On 14 March 2014, the Food and Veterinary Authority replied that it was not in a

position to grant the request and that the conditions imposed were in accordance with the Icelandic Regulation. Following this, the Directorate of Customs stopped clearance of the meat, and the meat was discarded at the request of the plaintiff.

30 In April 2014, the plaintiff brought a case before Reykjavík District Court, claiming compensation for the costs of the meat and its transport. The plaintiff claims that the defendant's refusal to grant permission to import fresh meat violates Icelandic law and EEA law, in particular Article 18 EEA, the Directive and Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law.

31 By order of 24 February 2015, Reykjavík District Court, upon the request of the plaintiff, decided to refer certain questions to the Court. Following an appeal from the defendant, the Supreme Court of Iceland (*Hæstirettur Íslands*) rephrased and amended the questions by judgment of 27 April 2015. Accordingly, by letter of 22 May 2015, registered at the Court on 16 June 2015, the District Court referred the following questions to the Court:

1. *Does the field of application of the EEA Agreement, as defined in Article 8 thereof, entail that a Member State of the Agreement has discretion regarding the setting of rules on the importation of raw meat products and is, in this respect, not bound by the provisions of the Agreement and the acts based thereon?*

2. *If the answer to the first question is in the negative, then the question arises whether it is compatible with the provisions of [the Directive] that a Member State of the EEA Agreement should set rules demanding that an importer of raw meat products applies for a special permit before the products are imported, and require the submission, for this purpose, of an import declaration, information on the country of origin and production, the type of product and the producer, and the required certificates, including a certificate confirming that the products have been stored frozen for a certain period prior to customs clearance.*

3. *The national court requests the opinion of the Court whether the provisions of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law are relevant in answering the second question.*

4. *Following on from the second and third questions, an answer is requested to the question of whether it constitutes a technical barrier to trade in the sense of Article 18 EEA if an EEA State sets rules under which the importation to that State of raw meat products is not permitted.*

5. *An opinion is requested on whether it affects the answer to the fourth question, if it is permitted, under the rules of the EEA State of destination, to grant exceptions from the general prohibition referred to in that question.*

6. *If the answer to the fourth and/or fifth question is in the affirmative, an answer is then requested to the question of in which cases such a prohibition on the importation of raw meat products taking into account, as appropriate, the circumstances described in the fifth question, could be considered justifiable with reference to Article 13 EEA. Also, an answer is requested to the question of what requirements should be made regarding proof in this connection, particularly in the light of the precautionary principle of EEA law.*

32 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed only insofar as is necessary for the reasoning of the Court.

IV Answers of the Court

The first question

Observations submitted to the Court

33 The plaintiff, ESA and the Commission submit that agricultural products and foodstuffs are subject to the provisions of Chapters 2 and 4 of Part II of the EEA Agreement. Article 17 EEA refers to Annex I, which contains specific provisions and arrangements regarding veterinary and phytosanitary matters. This includes the Directive as well as other foodstuffs legislation and relevant animal health and welfare rules applicable in the EEA. These legal acts harmonise the conditions under which products of animal origin are produced, placed on the market and circulated in the EEA. Furthermore, Article 23(a) EEA refers to Annex II on technical regulations, standards, testing and certification, which contains a specific chapter related to foodstuffs. These provisions limit the discretion of the EEA States when enacting rules on the import of raw meat products.

34 ESA and the Commission contend that the inclusion of Chapters 2 and 4 and of the legal acts referred to in Annexes I and II would be devoid of any meaning and effectiveness if EEA States were free not to apply those provisions. Pursuant to Article 7 EEA, Iceland is bound to ensure the full implementation of the relevant acts. Thus, any national measure related to veterinary checks on raw meat has to be compatible with the Directive and related legislation on animal products.

35 The plaintiff and the Commission further argue that Article 18 EEA prohibits any technical barriers to trade other than those included in Annexes I and II. National rules concerning import of fresh meat and meat products must thus be assessed

under Article 18 EEA.

36 The defendant submits that it follows from Article 8 EEA that EEA States have discretion to regulate the import of raw meat, unless otherwise specified in the Agreement. The Directive has different legal effects in the EU and in Iceland. Iceland is not part of the EU Common Agricultural Policy, and is thus unable to adjust to the EU rules to the same extent as would be the case within the EU. For this reason, unrestricted trade in agricultural products cannot be required of Iceland. This was to a large extent the reason for the negotiation of the EEA Agreement, and in particular Article 17. Furthermore, the application and the objective of the Directive are completely different in the EU in comparison with the situation in the EEA. The Directive aims at the completion of the internal market for agricultural products, yet no such market exists in the EEA context.

37 The defendant continues that, by agreeing to the Directive, Iceland merely contributed to ensuring that certain procedures and formalities in terms of health standards would apply to facilitate trade in agricultural products. However, the agricultural system falls in its entirety outside the scope of the EEA Agreement. Iceland can therefore adopt the required safety measures concerning the protection of livestock and public health.

38 The Government of Norway observes that the EEA States have agreed to the common regulation of some aspects of trade in agricultural and fishery products. This is shown, in particular, in Article 17 EEA with its reference to Annex I on veterinary and phytosanitary matters. Annex I largely reflects the unique expansion of the EEA Agreement that took place from 1999, with the inclusion of the veterinary rules in accordance with EEA Joint Committee Decision No 69/98. The legal acts in Annex I therefore apply both to agricultural and fishery products. Article 18 EEA is intended to ensure that the effects of the harmonised legal acts in Annex I are not counteracted by technical barriers to trade not foreseen in those acts. It is clear from its wording that this provision is not meant to bring agricultural products within the general scope of the EEA Agreement.

39 The Government of Norway argues that EEA law and EU law are not fully harmonised as regards agricultural products. Thus, a difference in the interpretation of the two agreements cannot be excluded. Accordingly, it must be assessed on a case-by-case basis to what extent the EEA regulatory framework leaves discretion for the EEA States to enact specific national regulations.

Findings of the Court

40 By its first question, the national court essentially asks if raw meat products fall outside the scope of the EEA Agreement, as defined in Article 8, such that an EEA State has discretion when setting the rules for importation of raw meat, since it is not bound by the provisions of the Agreement or acts incorporated therein.

41 The Court notes that the EEA Agreement has established a homogeneous and

dynamic European Economic Area for the benefit of businesses, workers and consumers. The aim of the Agreement is to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties, achieved in particular on the basis of equality and reciprocity concerning rights and obligations. The EEA shall provide for the fullest possible realisation of the free movement of goods. At the same time, it aims at guaranteeing a high level of health protection and at promoting the interests of consumers. These goals are reflected in the preamble to the Agreement and laid down in various provisions.

42 The defendant has argued that Iceland is not part of the EU Agricultural Policy. That is true. However, the Agreement does contain specific arrangements concerning agricultural products.

43 Article 8(1) EEA provides that free movement of goods between the Contracting Parties shall be established in conformity with the provisions of the Agreement. Article 8(3)(a) limits free movement to products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System ("Harmonized System"), unless otherwise provided for in the EEA Agreement. As raw bovine meat does not fall within the said chapters of the Harmonized System, it falls outside the scope of the EEA Agreement, unless otherwise provided for in the Agreement.

44 The Court notes that certain legal acts dealing with specific aspects of trade in agricultural and fish products have been incorporated in the EEA Agreement. This extension of the scope of the EEA is intended to further a continuous and balanced strengthening of trade and economic relations between the Contracting Parties in a homogeneous and dynamic EEA.

45 According to Article 17 EEA, provisions and arrangements concerning veterinary and phytosanitary matters are to be incorporated in Annex I. The Directive has been included in Annex I. Similarly, Article 23 incorporates specific provisions and arrangements that apply to all products, unless otherwise specified. Moreover, the Contracting Parties have undertaken to make efforts to achieve progressive liberalisation of agricultural trade (see Article 19(2) EEA). These provisions provide for the regulation of agricultural matters in the EEA context.

46 As regards the regulation of veterinary and phytosanitary matters, EEA law is not fully homogeneous with EU law. For example, Annex I only applied to Iceland with regard to aquaculture animals and fisheries products until EEA Joint Committee Decision No 133/2007 was adopted. In that decision, the Contracting Parties reviewed the situation and declared that "Iceland will take over the acts referred to in Chapter I of Annex I, except for the provisions that concern live animals, other than fish and aquaculture animals, and animal products such as ova, embryo and semen" and that "[w]hen an act is not to apply or is to apply partly to Iceland, it shall be stated in relation to the specific act". The points are included in Chapter I of Annex I to the Agreement.

47 The acts included in Chapter I of Annex I therefore apply to Iceland, unless an adaptation text states otherwise (for a similar situation regarding acts included in Annex II compare Case E-2/12 *HOB-vín* [2012] EFTA Ct. Rep. 1092, paragraph 46). In relation to the Directive no adaptation has been agreed. As a result, the Directive fully applies to Iceland.

48 According to Article 7 EEA, a Contracting Party is bound by and must ensure full implementation of acts included in the Annexes. Moreover, the EEA/EFTA States are obliged under Article 3 EEA to take all appropriate measures to ensure fulfilment of the obligations arising from the Agreement and they must abstain from measures that could jeopardise the attainment of its objectives.

49 It follows that in so far as the Contracting Parties have agreed to extend the scope of the Agreement such an extension may limit, as in this case, an EEA/EFTA State's discretion in setting rules on trade in goods.

50 The answer to the first question must thus be that the field of application of the EEA Agreement, as defined in Article 8 EEA, does not entail that an EEA State has discretion to set rules on the importation of raw meat products unbound by relevant provisions incorporated into the Annexes to the EEA Agreement.

The second question

Observations submitted to the Court

51 The plaintiff, ESA and the Commission argue that the Directive has introduced a detailed and harmonised system of veterinary inspections of fresh meat to replace existing inspection systems within the country of destination. In the context of such a harmonised system, the scope for an EEA State to impose additional controls or requirements with respect to products being imported into its territory is strictly limited. The Commission adds that any such discretion to impose additional rules or requirements would be contrary to the aim of the Directive, expressed in the fourth recital of its preamble.

52 The plaintiff, ESA and the Commission submit that the checks that may be carried out at the place of destination are described in Article 5 of the Directive. EEA States cannot impose more rigorous measures, save for protective measures which are temporary in nature and required for the control of an outbreak of a zoonosis or disease or a cause likely to constitute a serious health hazard to animals or humans. Furthermore, as the Directive has exhaustively harmonised the regulatory regime for veterinary checks for animal products, the imposition of additional requirements or rules by the EEA State of destination cannot be justified under Article 13 EEA.

53 In the view of the plaintiff, ESA and the Commission, the administrative requirements referred to in the question from the national court constitute veterinary checks within the meaning of Article 2 of the Directive. They do not appear to fall within the type of checks permitted by Article 5 of the Directive.

Insofar as the requirements are systematic, they cannot be described as spot-checks, and as such go beyond what is permissible pursuant to Article 5. In particular, the so-called freezing requirement is beyond what is permitted under the Directive or any act to which it refers.

54 The plaintiff, ESA and the Commission contend that a prior notification system is not in line with the requirements of the Directive. Thus, it must be all the more clear that a prior authorisation system, such as the one at issue, is incompatible with the Directive.

55 The plaintiff and ESA submit further that the Icelandic administrative formalities require importers to fulfil certain substantive conditions. That is not permitted under Article 5 of the Directive. Veterinary checks in the State of destination can only aim at verifying, by means of non-discriminatory examination, that the requirements of Article 3 of the Directive have been complied with. This means whether the product has been obtained, checked, marked and labelled in accordance with EEA rules. EEA States thus cannot impose checks that do not find their basis in EEA rules. In the plaintiff's view, this applies to the requirement of the Icelandic Regulation to demonstrate that products have been stored frozen for a certain period of time prior to customs clearance.

56 ESA goes on to challenge Article 5(e), (f) and (g) of the Icelandic Regulation. As to the salmonella certificate required under its Article 5(e), ESA contends that such additional guarantees, which are provided for under Regulation (EC) No 853/2004, may not be applied when the EEA State in question does not have an approved control programme.

57 As regards the requirement in Article 5(f) of the Icelandic Regulation, that the products conform to the regulation on food contaminants, ESA observes that the EEA legislation on contaminants in food sets out maximum levels for certain contaminants (Regulation (EEC) No 315/93 and Regulation (EC) No 1881/2006). That legislation does not contain any provisions giving EEA States a legal basis to impose on importers the completion of a systematic procedure to demonstrate that food products are in conformity with the current legislation on food contaminants.

58 ESA understands Article 5(g) of the Icelandic Regulation to entail a systematic obligation for the importer to present to the Food and Veterinary Authority photographs/pdf documents illustrating the packaging. ESA notes that the EEA legislation on the labelling of foodstuffs (Regulation (EU) No 1169/2011) does not provide a legal basis for EEA States to impose on importers the completion of a systematic procedure to demonstrate that food products are in conformity with legislation on labelling.

59 In ESA's view, the existence of customs controls on agricultural goods by EFTA States cannot justify the existence of additional veterinary checks, as argued by Iceland. Customs controls and veterinary checks serve different purposes and operate in different spheres of the EEA Agreement.

60 The defendant submits that the Directive was enacted with a view to completing the internal market and pursuing the common agricultural policy. In the EEA there is no internal market for the products at issue and there is no common agricultural policy. The isolated geographical location of Iceland and the immunological vulnerability of the country's animal population are reflected by the numerous acts in Annex I to the EEA Agreement not applicable to Iceland. Thus, the specific EEA context of the Directive and the special circumstances of Iceland must be taken into account when interpreting the Directive.

61 The defendant observes that the matter in dispute in the main proceedings concerns the freezing certificate. In its view, it is not clear from the District Court's question why all the Icelandic rules concerning the import of raw meat should be reviewed in the light of the Directive in the present proceedings.

62 The defendant submits that the freezing certificate does not discourage imports of raw meat, as can be seen from the increasing volume of imported meat over the last ten years. Moreover, the certificate does not seek to double check compliance with requirements that have been controlled in the State of dispatch. Iceland has full trust in the veterinary checks that are conducted in other EEA States by virtue of the common EEA rules. The certificate only seeks to respond to the special situation of Iceland. That objective lies beyond the EEA rules. Consequently, the freezing certificate does not come within the scope of the Directive.

Findings of the Court

63 By its second question, the referring court asks whether the Icelandic rules demanding that an importer of raw meat products applies for a special permit before the products are imported, and require the submission, for this purpose, of an import declaration, information on the country of origin and production, the type of product and the producer, and the required certificates, including a certificate confirming that the products have been stored frozen for a certain period, prior to customs clearance, are compatible with the Directive.

64 As expressed in its preamble, the emphasis of the Directive is to ensure that veterinary checks are carried out at the place of dispatch only. This is an emanation of the country of origin principle. Article 1 of the Directive provides that veterinary checks for products of animal origin may no longer be carried out at the frontiers, but shall be carried out in accordance with the Directive. In particular, Article 3 of the Directive as adapted to the EEA Agreement requires that an EEA/EFTA State shall ensure that products of animal origin have been obtained, checked, marked and labelled in accordance with the relevant EEA rules for the destination in question and that the products are accompanied by a health certificate, animal-health certificate or any other document provided for by EEA veterinary rules. According to Article 5, veterinary checks may be carried out in the State of destination at the place of destination as veterinary spot-checks or, in the event of a serious presumption of irregularity, while the goods are in transit.

65 The objective of the Directive leads to the harmonisation of the basic requirements of veterinary control to safeguard public and animal health. The harmonised system of veterinary checks 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 (compare *Commission* v *Sweden*, cited above, paragraph 63).

67 To ensure that the requirements of Article 3 of the Directive have been complied with, Article 5 permits the State of destination to carry out veterinary spot-checks. However, the defendant has not argued that the requirements in question constitute spot-checks. On the contrary, it is undisputed that they are regular and systematic. They are thus incompatible with the Directive. The same goes for the exercise of veterinary checks by customs clearance at the frontier since checks must be made at the place of destination, unless a serious presumption of irregularity exists. Such a presumption has not been alleged.

68 The defendant has argued that the national rules do not discourage imports of raw meat, since the volume of imported meat to Iceland over the last ten years has increased. A distinction should be made between administrative formalities and substantive requirements. According to the defendant, the Directive contains requirements regarding administrative formalities, whereas the Icelandic legislation on importation of raw meat and, in particular, the freezing requirement is of a substantive nature.

69 However, the reference to import volumes cannot include raw meat, as illustrated by the present case. In any event, the existence of adverse effects on trade is not a requirement to establish a breach of an obligation under the EEA Agreement (see for comparison *Commission* v *Sweden*, cited above, paragraph 67).

70 Moreover, a distinction between administrative formalities and substantive requirements cannot be made in this case. The administrative formalities under the Directive serve to verify that substantive checks have been carried out to protect public and animal health.

71 A duty of prior notification imposed by national law on importers of products of animal origin from other Member States is incompatible with the Directive (compare *Commission* v *Sweden*, cited above). An import permit requirement such as the one at issue is even more restrictive than a mere notification system.

72 Furthermore, 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 The defendant's argument that Iceland's geographical isolation and the immunological vulnerability of Iceland's animal population and the potential consequences for the life and health of humans should be taken into account when interpreting the Directive must be rejected. Iceland averred that it has full trust in the veterinary checks that are conducted in other EEA States by virtue of the common EEA rules. The EEA Agreement recognises an adaptation for Iceland when live animals, other than fish and aquaculture animals, are concerned. However, the Agreement has no adaptation for import to Iceland of raw meat.

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.

76 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 (see, for comparison, judgment in *Commission* v *Portugal*, C-52/92, EU:C:1993:216, paragraph 17).

77 The answer to the second question must therefore be that it is not compatible with the provisions of the Directive 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, and requiring the submission of a certificate confirming that the meat has been stored frozen for a certain period prior to customs clearance.

Third to sixth questions

78 In light of the answer given to the second question, there is no need to address the remaining questions referred by the national court.

V Costs

79 The costs incurred by the Norwegian Government, ESA and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by Reykjavík District Court hereby gives the following Advisory Opinion:

1. **The field of application of the EEA Agreement as defined in Article 8 EEA does not entail that an EEA State has discretion to set rules on the importation of raw meat products, since that discretion may be limited by provisions incorporated into an Annex to the EEA Agreement.**

2. **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, and requiring the submission of a certificate confirming that the meat has been stored frozen for a certain period prior to customs clearance.**

Carl Baudenbacher Per Christiansen Páll Hreinsson

Delivered in open court in Luxembourg on 1 February 2016.

Gunnar Selvik
Registrar

Carl Baudenbacher
President