



Luxembourg, 5 April 2001

Press Release
Judgment in Case E-3/00

EFTA Surveillance Authority v The Kingdom of Norway

The EFTA Court today delivered a judgment declaring that the Kingdom of Norway, by applying its legislation so as to prohibit the import and marketing in Norway of corn flakes fortified with thiamine, riboflavin, niacin and iron, which have been lawfully manufactured and marketed in other EEA States, had, as at 14 January 2000, failed to fulfil its obligations under Article 11 EEA.

The case was brought by the EFTA Surveillance Authority following a complaint by Nordisk Kellogg's A/S. The Norwegian Food Control Authority had refused the application of Nordisk Kellogg's A/S for authorisation to sell fortified corn flakes in Norway, on the grounds that the addition of nutrients is only authorised if there is a nutritional need in the Norwegian population.

The EFTA Court held that, in the absence of harmonisation of rules, where there is uncertainty as to the current state of scientific research, it is for the EEA States to decide what degree of protection of human health they intend to assure, having regard to the fundamental requirements of EEA law, notably, the free movement of goods within the EEA. This means that a risk management decision rests with each EEA State. It is within the discretion of the State to make a policy decision as to what level of risk it considers appropriate. Under those conditions, an EEA State may invoke the precautionary principle, according to which it is sufficient to show that there is relevant scientific uncertainty with regard to the risk in question. That measure of discretion must, however, be exercised subject to judicial review.

Measures taken by an EEA State must be based on scientific evidence, proportionate, non-discriminatory, transparent, and consistent with similar measures already taken. The essential question is whether there is danger to health. The mere finding by a national authority of the absence of a nutritional need will not justify an import ban, a most restrictive measure, under the EEA law requirement of proportionality. A proper application of the precautionary principle presupposes, firstly, an identification of potentially negative health consequences arising from a proposed fortification, and, secondly, a comprehensive evaluation of the risk to health based on the most recent scientific information.

When the insufficiency, or the inconclusiveness, or the imprecise nature of the conclusions to be drawn from those considerations make it impossible to determine with certainty the risk or hazard, but the likelihood of considerable harm still persists, were the negative eventuality to occur, the precautionary principle would justify the taking of restrictive measures.

The information before the Court did not show that the Norwegian authorities had conducted a comprehensive risk assessment. Thus the administrative procedure did not correctly address the issue of risk assessment as required under EEA law. The Court stated that, on the basis of information made available during the proceedings before it, the situation had changed but, for procedural reasons, that could not be taken into account. The judgment had to be based on the situation one the date of the time-limit set by the EFTA Surveillance Authority for amending the situation in Norway, i.e. 14 January 2000.

The full text of the judgment may be found on the Internet at: www.efta.int.

The EFTA Court is composed of the Judges Thór Vilhjálmsson (President), Carl Baudenbacher and Per Tresselt. This press release is an unofficial document. Please note that no comments on the case itself may be given.