**JUDGMENT OF THE COURT**
15 March 2002

*(Failure of a Contracting Party to fulfil its obligations – State retail alcohol monopoly – licensed serving of alcoholic beverages – discrimination)*

In Case E-9/00,

**EFTA Surveillance Authority**, represented by Peter Dyrberg, Director, Legal and Executive Affairs, acting as Agent, assisted by Michael Sanchez Rydelski, Officer, Legal and Executive Affairs, 74 Rue de Trèves, Brussels, Belgium;

*applicant*,

v

**The Kingdom of Norway**, represented by Thomas Nordby, Advokat, Office of the Attorney General (Civil Affairs), acting as Agent, and Fanny Platou Amble, Advokat, Office of the Attorney General (Civil Affairs), acting as Co-Agent, P.O. Box 8012 Dep., 0030 Oslo, Norway,

*defendant*,

APPLICATION for a declaration that the Kingdom of Norway has failed to comply with the following provisions of the EEA Agreement:

- Article 16, by applying two forms of sale at the retail level where beer with an alcohol content of between 2.5% and 4.75% by volume, mainly produced domestically, may be sold outside the stores of the State retail alcohol monopoly ("Vinmonopolet"), while other beverages with the same alcohol content, mostly imported from other EEA States, may only be sold through the monopoly; and

- Article 11, by applying more restrictive measures regarding licences to serve beverages with an alcohol content of between 2.5% and 4.75% by volume, mostly imported from other EEA States, compared to beer with the same

alcohol content, mainly produced domestically, these measures not being necessary and proportionate in relation to the objective of safeguarding public health under Article 13.

THE COURT,

composed of: Thór Vilhjálmsson, President, Carl Baudenbacher (Judge-Rapporteur) and Per Tresselt, Judges,

Registrar: Lucien Dedichen,

having regard to the written pleadings of the parties, the written observations of the Government of Iceland, represented by Magnús Hannesson, Legal Advisor, Ministry of Foreign Affairs, acting as Agent and the Commission of the European Communities, represented by Lena Ström, member of its Legal Service, acting as Agent.

having regard to the Report for the Hearing,

having heard oral argument from the applicant, the defendant, the Government of Iceland, and the Commission of the European Communities, all represented by their agents, at the hearing on 19 October 2001,

gives the following

**Judgment**

## I Facts and procedure

1 By an application lodged with the Registry of the Court on 21 December 2000, the EFTA Surveillance Authority submitted a request for a declaration that the Kingdom of Norway has failed to comply with the following provisions of the EEA Agreement:

- Article 16, by applying two forms of sale at the retail level where beer with an alcohol content of between 2.5% and 4.75% by volume, mainly produced domestically, may be sold outside Vinmonopolet, while other beverages with the same alcohol content, mostly imported from other EEA States, may only be sold through the monopoly; and

- Article 11, by applying more restrictive measures regarding licences to serve beverages with an alcohol content of between 2.5% and 4.75% by volume, mostly imported from other EEA States, compared to beer with the same

alcohol content, mainly produced domestically, these measures not being necessary and proportionate in relation to the objective of safeguarding public health under Article 13.

2 The Norwegian Act No. 27 of 2 June 1989 on the sale of alcoholic beverages (the "Alcohol Act"), Chapter 1, defines alcoholic beverages as beverages that contain more than 2.5% alcohol by volume. Alcoholic beverages are furthermore divided into beer, wine and spirits. Beverages containing between 2.5% and 4.75% alcohol by volume that cannot be considered beer, are to be regarded as wine or spirits. Chapter 3 of the Alcohol Act provides that Vinmonopolet has the exclusive right to carry on the retail sale of all alcoholic beverages, with the exception of beer containing between 2.5% and 4.75% alcohol by volume, which may be sold by grocery stores pursuant to a municipal licence. The number of Vinmonopolet stores is said to be around 150, whilst the number of grocery stores selling beer is around 4 400.

3 According to Chapter 4 of the Alcohol Act, alcoholic beverages may only be served by a holder of a municipal licence granted for that purpose. A licence may cover different types of alcoholic beverages, i.e., beer, wine or spirits. A licence to serve beer containing 2.5% to 4.75% alcohol by volume does not give the right to serve other beverages with the same alcohol content.

4 Chapter 1 of the Alcohol Act states that beer can be served to persons of at least 18 years of age, whilst spirits may be served only to persons of 20 years of age or older.

5 On 3 December 1997 the EFTA Court held in Case E-1/97 *Gundersen* v *Oslo kommune* [1997] EFTA Court Report 110, that the system of maintaining two standards for the sale of alcoholic beverages, whereby wine or wine products with between 2.5% and 4.75% alcohol by volume may only be sold through Vinmonopolet, while beer with the same alcohol content may be sold outside that monopoly, may lead to discrimination contrary to Article 16 EEA. Notwithstanding that ruling, Norway did not amend the alcohol legislation in question.

6 After having received a complaint and after having initiated informal communication with the Norwegian authorities, the EFTA Surveillance Authority issued a letter of formal notice to Norway on 10 September 1998, in which it expressed the view that the Norwegian legislation was contrary to the EEA Agreement on two points: (1) discriminatory treatment as regards the retail sale of beverages containing between 2.5% and 4.75% alcohol by volume; and (2) discriminatory treatment as regards licences to serve such alcoholic beverages.

7 In their reply of 13 November 1998, the Norwegian authorities introduced the concept of alcopops referring to certain types of beverages containing between 2.5% and 4.75% alcohol by volume. There is no common definition or understanding of alcopops in Norway or elsewhere in the European Economic Area. They may be

described as beverages that, by their taste, presentation, and name, appear to appeal particularly to young people.

8 The Norwegian authorities stated that, in the light of the need to protect young people from the harmful effects of such alcoholic beverages, neither of the two points raised by the EFTA Surveillance Authority in the letter of formal notice gave rise to concern in relation to Articles 11 and 16 EEA.

9 The EFTA Surveillance Authority found the research documentation presented by the Norwegian authorities unpersuasive, and issued a reasoned opinion to Norway on 11 October 1999.

10 The Norwegian authorities did not take any measures to comply with the reasoned opinion. Therefore, the EFTA Surveillance Authority filed the application that has given rise to the present case.

## II Arguments of the parties

11 With regard to the provisions of the Norwegian legislation concerning the retail sale of alcoholic beverages, the applicant submits that it follows from the EFTA Court's ruling in *Gundersen*, cited above, that in principle, all beverages containing between 2.5% and 4.75% alcohol by volume must be treated equally as long as the products are covered by the EEA Agreement.

12 With respect to the question of whether there is a competitive relationship between beer and other beverages with an alcohol content of between 2.5% and 4.75%, the applicant argues that it follows from *Gundersen*, cited above, that the Norwegian legislation constitutes discrimination between beer, and other alcoholic beverages, including wine and wine products.

13 Alcohol is, to a very large degree, associated or connected with social situations. If beer is the only alcoholic beverage readily available for this purpose, then the consumers' choice will obviously be beer. If other alcoholic beverages are as readily available, then they may be just as likely choices.

14 The majority of beer sold in Norway is domestically produced, whilst other beverages with the same alcohol content are mostly imported. The more restricted availability at the retail level for the latter products compared to beer constitutes discrimination, since trade in products from other EEA States is put at a disadvantage as compared to trade in domestically produced products. The national measures are, therefore, according to the EFTA Surveillance Authority, contrary to Article 16 EEA.

15 The applicant adds that the case law of the Court of Justice of the European Communities indicates that national measures contrary to Article 16 EEA cannot be justified under Article 13 EEA on grounds relating to public health.

16 The defendant is of the view that the judgment in *Gundersen*, cited above, permits the different treatment of beer and other beverages with the same alcohol content.

17 The defendant contends that there is no competitive relationship between beer, on the one hand, and spirits or wine-based beverages with the same alcohol content, on the other. In support of its contention, the defendant argues that young people consume alcopops in addition to beer, and not as an alternative thereto. All the products in question, whether produced domestically or imported from other EEA States, are treated in the same manner. The Norwegian rules for the retail sale of alcoholic beverages are indistinctly applicable and do not lead to any discrimination.

18 The defendant submits that a finding of different treatment would in any event be justified on grounds relating to public health. In this context, the defendant argues that it would be self-contradictory if health considerations, which are a fundamental concern of Article 13 EEA, were not to be considered an inherent part of Article 16 EEA.

19 The Government of Iceland submits that the Norwegian legislation concerning the retail sale of beer and alcopops must be regarded as governing selling arrangements, because it does not impede the access of the products in question to the market.

20 In any event, it is argued that the Norwegian legislation should be deemed lawful by virtue of Article 13 EEA. Like all other alcoholic beverages except beer, alcopops are sold in Vinmonopolet, so as to make it more difficult for young people to obtain them. The rule of proportionality has been fully respected.

21 The Commission of the European Communities is of the view that, as compared with beer, wine-based and spirits-based products are subject to substantially different treatment under the law, as long as beer may be sold outside the monopoly stores, which is not possible for other alcoholic beverages with the same alcohol content.

22 Alcopops would tend to be consumed instead of beer or, more precisely, in a given situation, the total amount of alcohol consumed would not increase, but rather, one beverage would be replaced with another. This also tends to show the competitive interaction between the two products. From a consumer standpoint, the different beverages at issue meet the same needs and are interchangeable.

23 As to the defendant’s attempts to justify the different treatment of beer and alcopops, the Commission of the European Communities argues that since beer is the most commonly consumed alcoholic beverage in Norway, it would seem to be the prime

source of any health or social problems which might result from the consumption of alcohol. Based on the relevant data, it would appear logical, from a health viewpoint, to keep beer out of the grocery stores.

24 The Norwegian system of different treatment between beer containing between 2.5% and 4.75% alcohol by volume and other beverages with the same alcohol content appears to constitute arbitrary discrimination that does not seem to be justified as being inherent in the existence or operation of the monopoly, and therefore, is contrary to Article16 EEA.

25 With regard to the provisions of the Norwegian legislation concerning the serving of alcoholic beverages, the applicant submits that it is not related to Vinmonopolet's exclusive right to sell alcoholic beverages. Therefore, this issue must be assessed under Article 11 EEA.

26 The applicant refers to the ruling in *Gundersen*, cited above, where the EFTA Court held that the therein contested provisions of Norwegian legislation favoured the marketing of beer containing between 2.5 and 4.75% alcohol as opposed to other beverages with the same alcohol content. Therefore, the principle laid down by the Court of Justice of the European Communities in Joined Cases C-267/91 and 268/91 *Keck and Mithouard* [1993] ECR I-6097, may not be applied to the case at hand. Accordingly, the Norwegian measures fall within the scope of the prohibition of Article 11 EEA. The applicant submits that the Norwegian measures can not be justified under Article 13 EEA.

27 The defendant argues that the contested rules relating to the serving of alcoholic beverages establish a selling arrangement that falls outside the scope of Article 11 EEA, as set out in *Keck and Mithouard*, cited above.

28 In the event that the EFTA Court were to find that the rules relating to the serving of alcoholic beverages constitute different treatment in law or in fact, the defendant submits that this treatment is justified on grounds relating to public health under Article 13 EEA.

29 The Commission of the European Communities shares the view of the applicant that the application of more restrictive measures regarding licences to serve beverages with an alcohol content of between 2.5% and 4.75% by volume, mostly imported from other EEA States, as compared to beer with the same alcohol content, mainly produced domestically, amounts to a breach of Article 11 EEA.

## III Findings of the Court

### Introductory remarks

30 The Court finds it appropriate first to consider to what extent the products at issue in the present case fall within the material scope of the EEA Agreement. The Court has previously found that both Article 11 and Article 16 EEA apply to beer, whereas only the latter Article applies to wine (see Case E-1/94 *Restamark* [1994-1995] EFTA Court Report 15, at paragraph 41, and Case E-6/96 *Wilhelmsen* [1997] EFTA Court Report 56, at paragraph 33). Article 8(3)(b) EEA provides that the provisions of the EEA Agreement apply to products specified in Protocol 3. Spirits are listed under heading 22.08 in Table II of Protocol 3. It follows that both Articles 11 and 16 EEA also apply to spirits.

31 There is no established definition of the product category at issue in the instant case, but a common trade term describes a widely marketed group of products as "alcopops". That appears to be a term most generally applied in a marketing context, indicating products aimed at young consumers, generally comprising pre-packaged beverages consisting of a mixture of spirits, wine or beer and a mixer, mainly flavoured sodas or fruit juices. Basing itself on the classification of their alcohol source, the Court concludes that such beer or spirits based beverages fall within the material scope of Articles 11 and 16 EEA. Beverages based on wine fall only within the material scope of Article 16 EEA. The reasoning of the Court in the present case must be read with this limitation in mind. The considerations and conclusions of the Court are restricted to pre-packaged products that are marketed or served in closed containers.

32 In its written and oral submissions before the Court, the defendant has described the Norwegian alcohol policy and emphasized its importance from the point of view of the protection of health. The Norwegian Alcohol Act is a comprehensive strategy whose aim is to "curb to the greatest possible extent the harm to society and the individual that may result from the consumption of alcoholic beverages." In pursuit of this goal, numerous measures to limit the total consumption of alcohol have been undertaken, such as preventive work, information strategies, prohibition of advertisement of alcoholic beverages, high taxes and restrictions on the availability of alcoholic beverages through the retail monopoly and licensing schemes. The defendant also maintains that the classification of alcoholic beverages into different categories, and the different treatment according to this classification with regard to age limits, retail sale and serving licences, form the foundation of this comprehensive strategy. The Norwegian alcohol policy is based on considerations and legislation with a long history. The retail monopoly has been part of Norwegian society for nearly 80 years. As part of its submission, the defendant refers to two reports published in 2001 at a World Health Organization European Ministerial

Conference on Young People and Alcohol. By reference to these reports, the defendant submits that it is generally accepted, and supported by considerable research, that there is a link between availability, consumption, and alcohol-related problems in the population.

33 In particular, as regards the products referred to as "alcopops", the defendant stresses their popularity among young people and quotes several studies, including those by the World Health Organization, and a proposal drafted by the Commission of the European Communities for a Council Recommendation on "Drinking of Alcohol by Children and Adolescents." The defendant expresses the opinion that allowing all alcoholic beverages containing between 2.5% and 4.75% alcohol by volume to be sold in grocery stores or served under the same license as beer, will create a whole new market situation in Norway. Since both domestic and foreign producers are likely to respond to new profit potential, this could lead to a dramatic increase in the range of products offered.

34 The Court notes that the concerns reflected in the Norwegian alcohol policy are serious and important. There is, in principle, nothing in the EEA Agreement that prevents Norway from maintaining a strict alcohol policy. However, that alcohol policy must operate within the limits of EEA law. It must be implemented so as not to conflict with the rules of the EEA Agreement on the free movement of goods, including Article 11, and Article 16 EEA.

**The rules relating to the retail sale of alcoholic beverages**

35 The provisions of the Norwegian legislation relating to the retail sale of alcoholic beverages define the scope and product coverage of Vinmonopolet's exclusive right to sell alcoholic beverages. Therefore, those provisions are subject to examination under Article 16 EEA.

36 It follows from the Court's case law that the EEA States have the right to pursue their alcohol policies by operating a State retail alcohol monopoly. According to Article 16 EEA, they are, however, required to ensure that such a monopoly is organised and operated so that no discrimination regarding conditions under which goods are produced or marketed will exist between nationals of the EEA States. Trade in goods from other EEA States must not be put at a disadvantage, in law or in fact, as compared to trade in domestic goods (see *Restamark*, cited above, at paragraph 63 et seq.; *Wilhelmsen*, cited above, at paragraphs 96 and 97; and *Gundersen*, cited above, at paragraph 21).

37 The Court held in *Gundersen*, cited above, that the therein contested Norwegian legislation leads to a situation where wine producers are adversely affected compared to beer producers. Since almost all of the wine sold in Norway is

imported, a large portion from other EEA States, while beer is mostly domestically produced, economic operators from other EEA States are put at a competitive disadvantage compared to Norwegian operators. In this context, the Court found that a competitive relationship exists between wine and medium-strength beer, warranting their equal treatment.

38 The question is then whether such a competitive relationship also exists between medium-strength beer and other beverages with a content of between 2.5% and 4.75 % alcohol by volume, in particular alcopops. It is clear from the Court's ruling in *Gundersen*, cited above, that for Article 16 EEA to apply, it is sufficient that two products are to some extent capable of meeting the same consumer needs and therefore are at least in partial competition with each other in the market.

39 The defendant argues that there is little or no competitive relationship between beer and the alcoholic beverages in dispute in the present case. The Court notes that these beverages are to some extent bought and consumed for the same purpose. At least for some groups of consumers, beer, and wine and spirit based alcoholic beverages, may meet the same needs. Furthermore, one cannot conclude from an alleged increase in alcohol consumption that beer and other beverages with the same alcohol content are not in a competitive relationship. It must therefore be concluded that medium-strength beer and other beverages with the same alcohol content are, at least partially and potentially, in a competitive relationship.

40 In Norway, beer accounts for over half of the total alcohol consumption, calculated in litres of pure alcohol, and about 83%, calculated in litres of product. Beer containing less than 4.75% alcohol by volume accounts for roughly 95% of all beer consumed. Virtually all beer consumed is domestically produced, and 68% reaches the consumers through grocery stores. Statistics indicate that beer is by far the alcoholic beverage most consumed by young people.

41 Under the current system, beer containing between 2.5 % and 4.75 % alcohol by volume is available in about 4 400 retail stores, whereas other beverages having the same alcohol content, are sold in about 150 monopoly stores. The more limited availability of these other beverages compared to beer constitutes discrimination. Trade in products from other EEA States is put at a disadvantage as compared to trade in domestically produced products.

42 Maintaining two forms of retail sale, whereby beer with an alcohol content of between 2.5% and 4.75% by volume may be sold outside the State retail alcohol monopoly, while other beverages with the same alcohol content may only be sold through the monopoly, constitutes discrimination within the meaning of Article 16 EEA.

43 The defendant has argued that the contested rules on the sale of alcoholic beverages may be justified on grounds of public health, in particular the need to prevent an

increase in the consumption of alcohol among young people, and in general to combat alcohol abuse. The defendant has argued that the principles underlying Article 13 EEA can be seen as forming an inherent part of Article 16 EEA.

44 The Court also finds it appropriate to recall that combating alcohol abuse constitutes a public health concern of high priority (see *Wilhelmsen*, cited above, at paragraph 85). Moreover, the Court acknowledges that the rules on the sale of alcoholic beverages are motivated by social and health considerations.

45 It follows from the wording and from the purpose of Article 13 EEA that it is only applicable as justification for derogations from Articles 11 and 12 EEA, relating to quantitative restrictions on imports and exports and measures having equivalent effect. It provides no direct basis for derogations from Article 16 EEA.

46 It is not necessary to consider whether there is a sufficient basis in the EEA Agreement for establishing the possibility of justifying national measures contrary to Article 16 EEA on grounds of public health. Justification would in any case not be possible if the national measure do not meet the conditions of being necessary to protect the objective pursued and proportionate to that objective. The defendant has not been able to prove that the contested rules on the retail sale of alcoholic beverages fulfil those conditions. The Court refers to paragraphs 54 et seq. below.

47 The Court concludes that the Kingdom of Norway has failed to comply with Article 16 EEA, by maintaining two forms of retail sale, whereby beer with an alcohol content of between 2.5% and 4.75% by volume, mainly produced domestically, may be sold outside Vinmonopolet, while other pre-packaged beverages with the same alcohol content, mostly imported from other EEA States, may only be sold through the monopoly.

**The rules relating to the serving of alcoholic beverages**

48 The provisions of the Norwegian legislation concerning the serving of alcoholic beverages are not related to Vinmonopolet’s exclusive right to sell alcoholic beverages. This issue must be dealt with under Article 11 EEA.

49 Article 11 EEA provides that quantitative restrictions on imports and all measures having equivalent effect are prohibited between the Contracting Parties. It is settled case law that all trading rules enacted by EEA States which are capable of hindering, directly or indirectly, actually or potentially, intra-EEA trade are to be considered as measures having an effect equivalent to quantitative restrictions and are thus prohibited by Article 11 EEA (see, to that effect, Case 8/74 *Dassonville* [1974] ECR 837, at paragraph 5).

50 However, the application to products from other EEA States of national provisions restricting or prohibiting certain selling arrangements in the territory of the EEA State concerned does not fall within Article 11 EEA so long as those provisions apply to all relevant traders operating within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other EEA States (see, to that effect, *Keck and Mithouard*, cited above, at paragraph 16).

51 The Norwegian legislation concerning the serving of alcoholic beverages contains more stringent rules for the serving of alcoholic beverages with an alcohol content of between 2.5% and 4.75% by volume, such as alcopops, compared to beer with the same alcohol content. This different treatment is clearly capable of hindering intra-EEA trade. The contested legislation does not affect in the same manner the sale of domestic products and products of other EEA States. It discriminates between the sale of beer, a product mainly produced domestically, and other alcoholic beverages with the same alcohol content, which are mainly produced abroad.

52 According to the defendant, only one of the products presently on the Norwegian market that may be categorised as alcopops has an alcohol content within the range established for medium strength beer. The Court notes that it is sufficient to establish a breach of Article 11 EEA that the contested rules relating to the serving of alcoholic beverages may potentially hinder intra-EEA trade. There is no requirement that an appreciable effect on the cross-border sale of goods be demonstrated.

53 The Court therefore concludes that the contested provisions of the Norwegian legislation on the serving of alcoholic beverages constitute a measure having equivalent effect to a quantitative restriction within the meaning of Article 11 EEA.

54 Based on the above finding, it is necessary to consider whether that restriction on the free movement of goods may be justified on grounds of public health under Article 13 EEA. In making this determination, it must be remembered that the burden of proof rests with the EFTA State invoking public interest grounds in order to justify national measures that would otherwise be contrary to the rules governing the fundamental freedoms of the EEA Agreement.

55 The combating of alcohol abuse constitutes a public interest ground under Article 13 EEA that may justify a restriction on the free movement of goods provided for in Article 11 EEA. However, in order for the contested national rules relating to the serving of alcohol to be justified under Article 13 EEA, that measure must also be necessary to protect the objective pursued and proportionate to that objective.

56 Excessive alcohol consumption causes health problems, as well as considerable social problems, and there is a link between availability and the harmful effects caused by the consumption of alcohol. However, the Court finds that the defendant

has not been able to show that the above-mentioned conditions for justification under Article 13 EEA have been fulfilled. The different treatment of beer and other beverages with the same alcohol content appears to be neither necessary nor proportionate in relation to the health objectives pursued. In this context the Court notes that the Norwegian Alcohol Act prevents the serving of any form of alcoholic beverage to anyone under the age of 18 in establishments with a license to serve alcohol. To the extent that the defendant's concerns for an increase in the consumption of alcohol among people younger than 18, the adoption of measures to ensure the compliance with this requirement and the enforcement thereof, may constitute a more appropriate and less restrictive measure. In this context, the Court also notes that the advertising of alcoholic beverages is prohibited in Norway.

57 The Court has not, in that regard, been convinced by the argument of the defendant that the consumption of alcopops or other pre-packaged alcoholic beverages containing less that 4.75% alcohol, is merely additional to the consumption of beer. As set out above in paragraphs 37 et seq., these products constitute, at least partially and potentially, alternative choices for certain groups of consumers. The Court accepts that alcopops are products that appeal in particular to young people, but this can not affect the finding of fact that beer and alcopops with the same alcohol content are to a certain extent competing products. Moreover, the appeal to young consumers cannot justify the different treatment of those products. The Court notes that measures necessary for the protection of the health and life of humans may be adopted, as long as those measures apply equally, in law and in fact, to beer and other beverages with the same alcohol content.

58 The Court concludes that the Kingdom of Norway has failed to comply with Article 11 EEA, by applying more restrictive measures regarding licences to serve pre-packaged beverages with an alcohol content of between 2.5% and 4.75% by volume, mostly imported from other EEA States, compared to beer with the same alcohol content, mainly produced domestically, which measures are not necessary and proportionate in relation to the objective of safeguarding public health under Article 13 EEA.

59 The Court is aware of the distinctions in Norwegian alcohol legislation between licences to serve beer, or wine or spirits. When traditional spirits are packaged in a closed container with a mixer, to produce a drink with an alcohol content not exceeding 4.75% by volume, it is acknowledged that the conclusion in the preceding paragraph may lead to apparent inconsistencies with regard to terminology. The Court has in previous judgments accepted that the alcohol content of beverages may be used as a criterion for the different treatment of products. Inconsistencies in relation to terminology in national legislation cannot preclude that finding.

## IV Costs

60 Under Article 66(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. The EFTA Surveillance Authority has not asked that the Kingdom of Norway be ordered to pay costs. Therefore, although the latter has been unsuccessful in its defence, it is not ordered to pay costs. The costs incurred by the Government of Iceland and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

On those grounds,

THE COURT

hereby:

**declares that the Kingdom of Norway has failed to comply with:**

**Article 16 of the EEA Agreement, by maintaining two forms of retail sale, whereby beer with an alcohol content of between 2.5% and 4.75% by volume, mainly produced domestically, may be sold outside Vinmonopolet, while other pre-packaged beverages with the same alcohol content, mostly imported from other EEA States, may only be sold through the monopoly; and,**

**Article 11 of the EEA Agreement, by applying more restrictive measures regarding licences to serve pre-packaged beverages with an alcohol content of between 2.5% and 4.75% by volume, mostly imported from other EEA States, compared to beer with the same alcohol content, mainly produced domestically, which measures are not necessary and proportionate in relation to the objective of safeguarding public health under Article 13 of the EEA Agreement.**

Thór Vilhjálmsson Carl Baudenbacher Per Tresselt

Delivered in open court in Luxembourg on 15 March 2002.

Lucien Dedichen
Registrar

Thór Vilhjálmsson
President