

Case No: 76763
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Decision No: 475/15/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 adopt or to notify the EFTA Surveillance Authority of, the measures necessary to ensure implementation of the Act referred to at point 56t of Annex XIII to the Agreement on the European Economic Area (*Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security*)

1 Iceland's obligations under the Agreement on the European Economic Area

In accordance with Article 7 of the Agreement on the European Economic Area ("EEA Agreement") and Article 18 of the Act referred to at point 56t of Annex XIII to the Agreement,

Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security ("the Act" or "the Directive"),

as adapted to the Agreement by Protocol 1, the EFTA States were required to adopt the measures necessary to implement the Act by 15 June 2007 and to notify the EFTA Surveillance Authority (the "Authority") forthwith thereof.

The Act imposes several obligations on Iceland, one of them being the development and implementation of port security plans ("PSPs") for the ports falling within the scope of the Directive. Iceland has, eight years after the date of entering into force of the Directive, still not developed PSPs for the Icelandic ports falling within the scope of the Directive in accordance with Article 7 of the Directive.

2 Correspondence

In its letter dated 12 September 2014 (your reference 1309755 ARJ), Iceland stated that the process of development of PSPs had still not been completed:

"Port Security Plans have not yet been developed for any Icelandic ports in accordance with Article 7 of the Directive. Work is now, starting on making guidelines for ports that will need to develop port security plans but it will take considerable time to get the port security plans for all the relevant ports completely finished and then approved by the Icelandic Transport Authority.

Milestones for the finalisation of this will be as follows:

Guidelines for the ports -end of January 2015

Introduction for the ports - end of March 2015

Development of Port Security Plans - end of December 2015"

The lack of development of PSPs for all Icelandic ports is also demonstrated in the context of the maritime security inspections carried out by the Authority in the light of *Regulation 324/2008 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security.*

On 7 May 2015, the Authority issued a letter of formal notice to Iceland concluding that by failing to develop PSPs for the ports falling within the scope of the Act, Iceland had failed to fulfil its obligations arising from Articles 2(2) and 7 of the Act.

The Icelandic Government replied to the letter of formal notice on 2 July 2015 (Doc No. 763948) not objecting to the view of the Authority that Iceland failed to comply with its obligations under Article 7 of the Directive. In this letter Iceland also acknowledged that that PSPs had not yet been developed for any Icelandic ports, and informed the Authority about the existence of an action plan with milestones that aimed at completing the development and approval of PSPs by the end of 2015.

3 Relevant EEA law

Article 2(2) of the Act reads:

"The measures laid down in this Directive shall apply to every port located in the territory of a Member State in which one or more port facilities covered by an approved port facility security plan pursuant to Regulation (EC) No 725/2004 is or are situated. This Directive shall not apply to military installations in ports."

Article 7 of the Act reads:

1' "Subject to the findings of port security assessments, Member States shall ensure that port security plans are developed, maintained and updated. Port security plans shall adequately address the specificities of different sections of a port and shall integrate the security plans for port facilities within their boundaries established pursuant to Regulation (EC) No 725/2004.

2. Port security plans shall identify for each of the different security levels referred to in Article 8:

- (a) the procedures to be followed;*
- (b) the measures to be put in place;*
- (c) the actions to be undertaken.*

3. Each port security plan shall take into account as a minimum the detailed requirements specified in Annex II. Where, and to the extent appropriate, the port security plan shall in particular include security measures to be applied to passengers and vehicles set for embarkation on seagoing vessels which carry passengers and vehicles. In the case of international maritime transport services, the Member States concerned shall cooperate in the security assessment.

4. Port security plans may be developed by a recognised security organisation as referred to in Article 11.

5. Port security plans shall be approved by the Member State concerned before implementation.

6. Member States shall ensure that the implementation of port security plans is monitored. The monitoring shall be coordinated with other control activities carried out in the port.

7. Member States shall ensure that adequate exercises are performed, taking into account the basic security training exercise requirements listed in Annex III.

4 The Authority's assessment

According to Article 2(2) of the Directive, the Directive applies to every port located in the territory of a Contracting State in which one or more port facilities covered by Regulation 725/2004¹ is or are situated. Moreover, in accordance with Articles 6 and 7 of the Directive, the Contracting Parties have to ensure that Port Security Assessments are carried out for the

¹ Regulation (EC) 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security ("Regulation 725/2004").

ports covered by the Directive, and based on the findings of such Port Security Assessments, Contracting Parties shall ensure that PSPs are developed, maintained and updated.

It is not contested by the Icelandic Government that the PSPs for the Icelandic ports falling within the scope of the Directive have still not been developed. On the contrary, Iceland has acknowledged that PSPs have not yet been developed for these ports in both its letters dated 12 September 2014 (your reference 1309755 ARJ) and 2 July 2015 (Doc No. 763948).

Consequently, the Authority must conclude that, by not developing PSPs for the ports notified as falling within the scope of the Directive, Iceland has failed to adopt the measures necessary to comply with Article 7 of the Act referred to at point 56t of Annex XIII of the EEA Agreement, and therefore Iceland has failed to fulfil its obligations under Articles 2 (2) and Article 7 of the Act.

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 to submit its observations,

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that by failing to develop Port Security Plans for the ports falling within the scope of the Act referred to at point 56t of Chapter V of Annex XIII to the Agreement on the European Economic Area, (*Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security*), as adapted to the Agreement by way of Protocol 1 thereto, Iceland has failed to fulfil its obligations arising from Articles 2(2) and 7 of the Act.

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 requests Iceland to take the measures necessary to comply with this reasoned opinion within *two months* of receipt of this reasoned opinion.

Done at Brussels, 11 November 2015

For the EFTA Surveillance Authority

Helga Jónsdóttir
College Member

Markus Schneider
Acting Director