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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 correctly implement Directive 2014/67/EU on the enforcement of the Posting of Workers Directive

1 Introduction and correspondence

1. By letter dated 6 February 2020,¹ the EFTA Surveillance Authority (“the Authority”) informed Iceland that it had decided to carry out a conformity assessment of its implementation of Directive 2014/67/EU *on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services*² (“Directive 2014/67” or “the Directive”).
2. Directive 2014/67 establishes a common framework for better and more uniform implementation, application and enforcement in practice of the rules on posting of workers within the EEA. It aims to guarantee respect for an appropriate level of protection of the rights of posted workers, while facilitating the exercise of the freedom to provide services and promoting fair competition between service providers.³
3. The Directive was incorporated in the EEA Agreement by Joint Committee Decision No 215/2018 of 26 October 2018. The time limit for the EEA/EFTA States to adopt the measures necessary to implement the Directive expired on 1 January 2020.
4. On 27 November 2018, the Authority received a Form 1 from Iceland indicating full implementation of the Directive.⁴ On 31 January 2020, the present case was opened in order to carry out a conformity assessment on Iceland’s implementation of the Directive.
5. By letter dated 6 February 2020,⁵ the Authority invited Iceland to submit a Table of Correspondence (“ToC”) for the implementation of the Directive. On 21 April 2020, the Authority received the requested ToC from Iceland.⁶
6. On 29 September 2021, the Authority sent a supplementary request for information to Iceland, as the review of the ToC had raised some issues.⁷ The reply was received by letter dated 13 December 2021.⁸
7. On 10 May 2023, the Authority issued a letter of formal notice to Iceland, concluding that Iceland had not sufficiently implemented several provisions of Directive 2014/67.⁹ Following several extensions of the deadline, Iceland submitted its reply to the letter of formal notice on 3 October 2023.¹⁰
8. Following a meeting between the Authority and Iceland on 5 February 2024, the Authority sent a supplementary request for information on 21 February 2024.¹¹ The matter was discussed at the package meeting held on 15-16 May 2024. Iceland replied to the supplementary request for information on 8 July 2024.¹²

¹ Doc No 1112498.

² Act referred to at point 30b of Annex XVIII and point 3 of Annex X to the EEA Agreement (*Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘IMI Regulation’)*), as adapted to the EEA Agreement by way of Protocol 1 thereto.

³ See Article 1 of the Directive on its subject matter.

⁴ Doc No 1040230.

⁵ Doc No 1112498.

⁶ Doc No 1128826 / your ref. FRN20020034/30.20.01.

⁷ Doc No 1229003.

⁸ Doc No 1255499 / your ref. FRN20020034/30.20.01.

⁹ Doc No 1304533.

¹⁰ Doc No 1402265 / your ref. FRN20020034/30.20.01.

¹¹ Doc No 1436486.

¹² Doc No 1469851 / your ref. FRN24020088/8474.

9. Article 4 of Directive 2014/67 is titled “[i]dentification of genuine posting and prevention of abuse and circumvention”. Article 4(1) of the Directive provides that, for the purposes of implementing, applying and enforcing the Directive, the competent authorities are to make an overall assessment of all factual elements necessary. Such elements may, in particular, include those listed in Article 4(2) and 4(3) of the Directive although these are non-exhaustive¹³. Moreover, Article 4(4) of the Directive stipulates that a failure to satisfy one or more of those factual elements listed is not to automatically preclude a situation from being characterised as one of posting.
10. The Authority notes that Articles 1a and 12, read in conjunction with Article 3(1), 3(5) and 3(6), of the Icelandic Act No 45/2007 on Posted Workers establish an obligation on Iceland to monitor the application of the Act in full, in line with its aims, that is, to ensure the identification of genuine undertakings and genuine posted workers, in conformity with Article 4(1) and 4(4) of the Directive.
11. Moreover, the Authority notes that Articles 7, 8 and 11 of the Icelandic Act No 45/2007 on Posted Workers jointly provide for an extensive list of information which the Icelandic Directorate of Labour is to receive, be it from (alleged) self-employed persons, and from the posting undertaking (regarding not only information about the posting undertaking itself but also information about the posted worker and the nature of his or her work). Moreover, the Authority observes that Article 12 of that same Act provides that the Icelandic Directorate of Labour is to monitor the application of that Act, in particular to establish whether the party involved is in fact a genuine undertaking or a genuine self-employed individual, and also whether the worker is demonstrably a posted worker, in accordance with the definitions referred to therein. Given the aforementioned, the Authority considers these provisions conform with Article 4(1), 4(2) and 4(3) of the Directive.
12. After having examined the information received from Iceland to date, the Authority concludes that Iceland has failed to sufficiently implement Articles 6(2) and 6(5), 7(2), 7(3) and 7(4), 10(1) and 10(2), 11(1) and 11(5), 15(1) and 15(2), 16(3), 18 and 19(1) of Directive 2014/67.

2 Relevant EEA law

13. Article 7 of the EEA Agreement provides:
“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. “
14. The following recitals of Directive 2014/67 read as follows:
“[...]
(27) In order to ensure better and more uniform application of Directive 96/71/EC as well as its enforcement in practice and to reduce, as far as possible, differences in the level of application and enforcement across the Union, Member States should ensure that effective and adequate inspections are carried out on their territory, thus

¹³ These are elements that will contribute to identifying whether an undertaking genuinely performs substantial activities, as well as whether the worker is genuinely or fraudulently characterised as a temporarily posted worker.

contributing, inter alia, to the fight against undeclared work in the context of posting, also taking into account other legal initiatives to address this issue better.

[...]

(34) To facilitate the enforcement of Directive 96/71/EC and ensure its more effective application, effective complaint mechanisms should exist through which posted workers may lodge complaints or engage in proceedings either directly or, with their approval, through relevant designated third parties, such as trade unions or other associations as well as common institutions of social partners. This should be without prejudice to national rules of procedure concerning representation and defence before the courts and to the competences and other rights of trade unions and other employee representatives under national law and/or practice.

[...]

(38) It is a matter of concern that there are still many difficulties for Member States to recover cross-border administrative penalties and/or fines and therefore the mutual recognition of administrative penalties and/or fines needs to be addressed.

(39) The disparities between the systems of the Member States for enforcing imposed administrative penalties and/or fines in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union.

[...]

(40) Effective enforcement of the substantive rules governing the posting of workers for the provision of services should be ensured by specific action focusing on the cross-border enforcement of imposed financial administrative penalties and/or fines. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite in order to ensure a higher, more equivalent and comparable level of protection necessary for the proper functioning of the internal market.

(41) The adoption of common rules which provide mutual assistance and support for enforcement measures and the associated costs, as well as the adoption of uniform requirements for the notification of decisions relating to administrative penalties and/or fines imposed for the non-respect of Directive 96/71/EC, as well as of this Directive, should resolve a number of practical cross-border enforcement problems and guarantee better communication and better enforcement of such decisions emanating from another Member State.

[...]"

15. Article 6 of the Directive titled "Mutual assistance — general principles" provides:

"2. The cooperation of the [EEA] States shall in particular consist in replying to reasoned requests for information from competent authorities and in carrying out checks, inspections and investigations with respect to the situations of posting referred to in Article 1(3) of Directive 96/71/EC, including the investigation of any non-compliance or abuse of applicable rules on the posting of workers. Requests for information include information with respect to a possible recovery of an administrative penalty and/or fine, or the notification of a decision imposing such a penalty and/or fine as referred to in Chapter VI.

[...]

5. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the [EEA] State in question shall without delay inform the requesting [EEA] State with a view to finding a solution.

[...]"

16. Article 7 of Directive 2014/67 on the role of the Member States in the framework of administrative cooperation provides;

"[...]"

2. The Member State of establishment of the service provider shall continue to monitor, control and take the necessary supervisory or enforcement measures, in accordance with its national law, practice and administrative procedures, with respect to workers posted to another Member State.

3. The Member State of establishment of the service provider shall assist the Member State to which the posting takes place to ensure compliance with the conditions applicable under Directive 96/71/EC and this Directive. That responsibility shall not in any way reduce the possibilities of the Member State to which the posting takes place to monitor, control or take any necessary supervisory or enforcement measures in accordance with this Directive and Directive 96/71/EC.

4. Where there are facts that indicate possible irregularities, a Member State shall, on its own initiative, communicate to the Member State concerned any relevant information without undue delay.

[...]

17. Article 10 of Directive 2014/67 on inspections provides:

“1. [EEA] States shall ensure that appropriate and effective checks and monitoring mechanisms provided in accordance with national law and practice are put in place and that the authorities designated under national law carry out effective and adequate inspections on their territory in order to control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC, taking into account the relevant provisions of this Directive and thus guarantee their proper application and enforcement. Notwithstanding the possibility of conducting random checks, inspections shall be based primarily on a risk assessment by the competent authorities. The risk assessment may identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory. When making such a risk assessment, the carrying out of large infrastructural projects, the existence of long chains of subcontractors, geographic proximity, the special problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers may in particular be taken into account.

2. [EEA] States shall ensure that inspections and controls of compliance under this Article are not discriminatory and/or disproportionate, whilst taking into account the relevant provisions of this Directive.

[...]

18. Article 11 of the Directive titled “Defence of rights — facilitation of complaints — back-payments” states:

“1. For the enforcement of the obligations under Directive 96/71/EC, in particular Article 6 thereof, and this Directive, [EEA] States shall ensure that there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings, also in the [EEA] State in whose territory the workers are or were posted, where such workers consider they have sustained loss or damage as a result of a failure to apply the applicable rules, even after the relationship in which the failure is alleged to have occurred has ended.

[...]

5. Posted workers bringing judicial or administrative proceedings within the meaning of paragraph 1 shall be protected against any unfavourable treatment by their employer.

[...]

19. Article 15 of the Directive titled “General principles — mutual assistance and recognition” provides:

“1. At the request of the requesting authority, the requested authority shall, subject to Articles 16 and 17:

- a) recover an administrative penalty and/or fine that has been imposed in accordance with the laws and procedures of the requesting [EEA] State by a competent authority or confirmed by an administrative or judicial body or, where applicable, by industrial tribunals, which is not subject to further appeal; or*
- b) notify a decision imposing such a penalty and/or fine.*

In addition, the requested authority shall notify any other relevant document related to the recovery of such a penalty and/or fine, including the judgment or final decision, which may be in the form of a certified copy, that constitutes the legal basis and title for the execution of the request for recovery.

2. The requesting authority shall ensure that the request for recovery of an administrative penalty and/or fine or the notification of a decision imposing such a penalty and/or fine is made in accordance with the laws, regulations and administrative practices in force in that [EEA] State.

Such a request shall only be made when the requesting authority is unable to recover or to notify in accordance with its laws, regulations and administrative practices.

The requesting authority shall not make a request for recovery of an administrative penalty and/or fine or notification of a decision imposing such a penalty and/or fine if and as long as the penalty and/or fine, as well as the underlying claim and/or the instrument permitting its enforcement in the requesting [EEA] State, are contested or challenged in that [EEA] State.

[...]”

20. Article 16(3) of the Directive on request for recovery or notification reads:

“The requested authority shall take all the necessary steps to notify the service provider of the request for recovery or of the decision imposing an administrative penalty and/or fine and of the relevant documents, where necessary, in accordance with its national law and/or practice as soon as possible, and no later than one month of receipt of the request.

The requested authority shall as soon as possible inform the requesting authority of:

- a) the action taken on its request for recovery and notification and, more specifically, of the date on which the addressee was notified;*
- b) the grounds for refusal, in the event that it refuses to execute a request for recovery of an administrative penalty and/or fine or to notify a decision imposing an administrative penalty and/or fine in accordance with Article 17.”*

21. Article 18 of the Directive on suspension of the procedure provides:

“1. If, in the course of the recovery or notification procedure, the administrative penalty and/or fine and/or underlying claim is challenged or appealed by the service provider concerned or by an interested party, the cross-border enforcement procedure of the penalty and/or fine imposed shall be suspended pending the decision of the appropriate competent body or authority in the requesting [EEA] State in the matter.

Any challenge or appeal shall be made to the appropriate competent body or authority in the requesting [EEA] State.

The requesting authority shall without delay notify the requested authority of the contestation.

2. Disputes concerning the enforcement measures taken in the requested [EEA] State or concerning the validity of a notification made by a requested authority shall be brought before the competent body or judicial authority of that [EEA] State in accordance with its laws and regulations.”

22. Article 19(1) of Directive 2014/67 on costs reads:

“Amounts recovered with respect to the penalties and/or fines referred to in this Chapter shall accrue to the requested authority.

The requested authority shall recover the amounts due in the currency of its [EEA] State, in accordance with the laws, regulations and administrative procedures or practices which apply to similar claims in that [EEA] State.

The requested authority shall, if necessary, in accordance with its national law and practice convert the penalty and/or fine into the currency of the requested State at the rate of exchange applying on the date when the penalty and/or fine was imposed.”

3 Relevant national law

23. In the ToC, Iceland listed the following acts as implementing acts of Directive 2014/67:

- Act No 45/2007 on Posted Workers and the Obligations of Foreign Service-Providers, with subsequent amendments¹⁴ (“Act No 45/2007” or “the Act”)
- Act No 80/1938 on Trade Unions and Industrial Disputes, with subsequent amendments¹⁵
- Constitution of the Republic of Iceland No 33/1944, with subsequent amendments¹⁶
- Act No 46/1980 on Working Environment, Health and Safety in Workplaces, with subsequent amendments¹⁷

24. Article 2 of Act No 45/2007 on “administration” provides:

“The Minister shall be in charge of administration in the area covered by this Act. The Directorate of Labour shall attend to the application of this Act at the administrative level.

In collaboration with the organisations of the social partners, the Directorate of Labour shall publish, in an accessible form (e.g., electronically) and without remuneration, information on the laws and regulations applying on the labour market in Iceland, and also where the applicable collective agreements may be accessed.

The Directorate of Labour shall provide the competent authorities in other Member States of the European Economic Area, other EFTA States or the Faroe Islands with assistance when any of them is a host state to an Icelandic undertaking, either with the gathering of information about the Icelandic undertaking or in connection with communication with the Icelandic undertaking, including as regards the collection of fines, if the competent authorities in the host state request such assistance, providing that the request is made for a legitimate purpose and also that it is proportionate. In the case of a request for information, the Directorate of Labour shall provide the information requested within 25 working days of receiving the request. In urgent cases, where the urgency is substantiated by the competent authority in the host state, the Directorate of Labour shall provide the information requested within two working days of receiving the request.”

¹⁴ Lög nr. 45/2007 um útsenda starfsmenn og skyldur erlendra þjónustuveitenda. Official English translation available at:

<https://www.government.is/library/04-Legislation/Act%20on%20Posted%20Workers%20and%20the%20Obligations%20of%20Foreign%20Service-Providers%20No%2045%202007%20as%20amended%202018.pdf>

¹⁵ Lög nr. 80/1938 um stéttarfélög og vinnudeilur. Official English translation available at: https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Act_on_trade_unions_and_industrial_disputes_No_80_1938_with_subsequent_amendments.pdf

¹⁶ Stjórnarskrá Lýðveldisins Íslands nr. 33/1944. Official English translation available at: https://www.government.is/library/01-Ministries/Prime-Ministrers-Office/constitution_of_iceland.pdf

¹⁷ Lög nr. 46/1980 um aðbúnað, hollustuhætti og öryggi á vinnustöðum. Official English translation available at:

<https://www.government.is/library/04-Legislation/Act%20No%2046%201980%20with%20subsequent%20amendments%202018.pdf>

25. Article 12 of Act No 45/2007 on “monitoring” provides:

“The Directorate of Labour shall monitor the application of this Act and of regulations issued hereunder, for example to establish whether the party involved is an undertaking (cf. item 1 of Article 3) or a self-employed individual (cf. item 5 of Article 3), and also whether the worker is in fact, demonstrably a worker (cf. item 6 of Article 3).

Staff of the Directorate of Labour who carry out workplace inspections may, amongst other things, make inspection visits to workplaces, and shall be granted access to the workplaces in question if they so request. When carrying out inspections, they shall show special identification documents issued by the directorate. Staff of the Directorate of Labour may request the assistance of the police when making workplace inspections as described above when this is necessary in the opinion of the directorate.

If the Directorate of Labour receives information indicating that an undertaking, a user undertaking or a self-employed individual has violated the provisions of this Act, it shall be obliged to investigate the matter further. If the directorate comes to the conclusion that the undertaking, a user undertaking or a self-employed individual has violated the provisions of this Act, it shall demand that the party in question operate in conformity with this Act.”

26. Article 13 of Act No 45/2007 on information for monitoring purposes stipulates:

“Undertaking shall provide the Directorate of Labour with the information and materials that the directorate considers necessary for monitoring the application of this Act, including a copy of the service contract under item 7 of Article 3, or according to the Temporary-Work Agencies Act, as appropriate, and copies of employment contracts and other materials regarding the terms of employment of those workers who are working for the undertaking in Iceland, such as working-time reports, pay-slips and confirmation that the wages of each worker have been paid in accordance with what is stated in his or her pay-slip, including as regards the wage amount.

User undertaking shall provide the Directorate of Labour with the information and materials concerning the business between the parties that the directorate considers necessary in order to monitor the application of this Act, including a copy of the service contract under item 7 of Article 3, or according to the Temporary-Work Agencies Act, as appropriate.

Self-employed individuals shall provide the Directorate of Labour with information in connection with the services they provide in Iceland and which the directorate considers necessary in order to monitor the application of this Act, such as the type of services that the individual in question provides, the name and ID number of the user undertaking, or a comparable means of identification, and where the service is provided.

Information which user undertakings, undertakings and self-employed individuals are required to provide to the Directorate of Labour under this Act or regulations issued hereunder shall be in writing, either in electronic form or on paper. When materials are delivered in a language other than Icelandic or English, they shall be accompanied by translations into Icelandic or English. Notwithstanding this requirement, the Directorate of Labour may, in exceptional cases, decide to accept materials in a language other than Icelandic or English, e.g. when, in its opinion, there is no need to have them translated.

The Directorate of Labour may obtain and disseminate information to the extent that it is permitted to do under this Act, either electronically or in another manner decided by the directorate.

If the Directorate of Labour receives information under this Act which indicates that provisions of Icelandic laws or regulations are being violated, it shall be obliged to deliver this information to the appropriate government authority without unreasonable delay.

In those instances where the Directorate of Labour does not have the information which, in its opinion, is necessary for it to monitor the implementation of this Act in accordance with the first paragraph of Article 12, it shall request such information from

the government authorities or the monitoring officers of the organisations of the social partners (cf. the Act on Workplace ID Cards and Workplace Inspection) as may be of use to the directorate, e.g. in assessing whether the provisions of this Act have been violated, including information on the names and ID numbers of undertakings, user undertakings and self-employed individuals, and also information on wage payments to workers, and the relevant parties shall be obliged to give the Directorate of Labour the information requested if they possess it. If government authorities or the monitoring officers of the organisations of the social partners receive information indicating that this Act is being violated, they shall be obliged to deliver the information to the Directorate of Labour without unreasonable delay.

To the extent that the Directorate of Labour considers it necessary in connection with the monitoring of the application of this Act under the first paragraph of Article 12, it may request assistance from the competent authorities in the home state of the undertaking or self-employed individual concerned, e.g. as regards the obtaining of information about the undertaking or self-employed individual and communication with the undertaking or self-employed individual, including as regards the collection of fines, providing that the request is made for a lawful purpose and is proportionate.

Employees of the Directorate of Labour may not use their position in order to obtain other information than that which is necessary, or may be necessary, for the purpose of monitoring under the first paragraph or Article 12, in the opinion of the directorate. Staff of the Directorate of Labour shall be bound by a non-disclosure (confidentiality) obligation regarding information handled by the directorate under this Act (see, however, the fifth paragraph), and this obligation shall continue in force after they cease working for the directorate."

27. Article 17 of Act No 45/2007 on "appeals" provides:

"Appeals may be lodged with the Ministry against decisions taken by the Directorate of Labour under this Act within three months of the date on which the parties involved are informed of the decision. Appeals shall be regarded as having been submitted to the ministry by the deadline if a letter presenting the appeal is received by the ministry, or has been committed to the postal service, before the deadline.

The Ministry shall seek to deliver its ruling within two months of the date on which it receives matters for adjudication.

In other respects, procedure shall be in accordance with the provisions of the Administrative Procedure Act."

28. Article 15a and 15b of Act No 45/2007 are titled "per diem fines" and administrative fines", respectively. Article 18 of the Act is titled "punishments".
29. Chapter XI of Act No 46/1980 on Working Environment, Health and Safety in Workplaces concerns risk assessments, health protection and medical check-ups in relation to the safety and health of workers.
30. Article 70(1) of the Icelandic Constitution states:
- "Everyone shall, for the determination of his rights and obligations or in the event of a criminal charge against him, be entitled, following a fair trial and within a reasonable time, to the resolution of an independent and impartial court of law. A hearing by a court of law shall take place in public, except if the judge decides otherwise as provided for by law in the interest of morals, public order, the security of the State or the interests of the parties."*

4 The Authority's Assessment

4.1 Implementation of directives in EEA law

31. It follows from Article 7 of the EEA Agreement that the EEA States have the choice of form and method when implementing directives into their legal order.¹⁸ However, the EFTA Court has held that provisions of directives must be implemented with unquestionable binding force and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty and that EEA States must ensure full application of directives not only in fact but also in law.¹⁹

4.2 Article 6(2) and 6(5) of Directive 2014/67 – Mutual assistance – General principles

32. Article 6(1) of Directive 2014/67 provides that EEA States are to work in close cooperation and provide each other with mutual assistance without undue delay. According to Article 6(2), this cooperation in particular consists in replying to reasoned requests for information from competent authorities and in carrying out checks, inspections and investigations. Article 6(5) further provides that, in the event of a difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the EEA State in question is to inform without delay the requesting EEA State with a view to finding a solution.
33. In the ToC, Iceland referred to Articles 2(3) and 13(8) of Act No 45/2007 as the relevant measures implementing the above provisions of the Directive.²⁰ The Authority recalls that Article 2(3) of that Act covers the situation when Iceland is the EEA State of establishment of the service provider and where the Directorate of Labour is providing assistance to a competent authority in another EEA State, whereas Article 13(8) of the Act concerns the situation when Iceland is the host EEA State and the Directorate of Labour is requesting assistance from another EEA State.
34. Noting that those provisions do not mention checks, inspections or investigations nor cover the situation described in Article 6(5) of the Directive, the Authority invited Iceland to explain how Articles 2(3) and 13(8) of Act No 45/2007 provide for a sufficient implementation of Article 6(2) and 6(5) of the Directive. In its letter of 13 December 2021, Iceland provided the following reply:

“In Article 2(3) of the Act it states among other that the Directorate of Labour shall provide competent authorities in other member states assistance when any of them is a host state to an Icelandic undertaking. This assistance can be in form of request for information, regarding collecting of fines and is not exhaustive in the Article. In Article 13(8) of the Act it states that the Directorate of Labour in Iceland may as well, to the extent that it considers necessary, in connection with monitoring of the application under the Act, request assistance from the competent authority in the home state of the undertaking or self-employed individual. The potential assistance is not exhaustive in the Article. In the explanatory note to Act No 75/2018, amending Article 3 of the Act, it is further explained how the cooperation should take place and deadlines regarding requests for information and other communications between EEA States. The same applies for the explanatory note regarding Article 13(8) of the Act. Since the cooperation between member states is not exhaustive in the above-mentioned Articles, it is the view of the Icelandic Government that all kinds of assistance, such as checks, inspections and investigations are part of the mutual assistance and therefore providing sufficient implementation of Article 6 of the Directive.”²¹

¹⁸ See Case E-15/12 *Jan Anfinn Wahl v. Iceland*, [2013] EFTA Ct. Rep. 534, paragraph 49 and Case E-12/13 *EFTA Surveillance Authority v Iceland*, [2014] EFTA Ct. Rep. 58, paragraph 67.

¹⁹ See *Wahl*, cited above, paragraphs 50-51 and 56. See also *EFTA Surveillance Authority v Iceland*, cited above, paragraph 70.

²⁰ See pp. 14-15 of the ToC.

²¹ See p. 3 of the letter.

35. In its letter of formal notice, the Authority observed that, contrary to the view held by Iceland, it does not follow clearly from Article 2(3) of Act No 45/2007 that the assistance mentioned therein is not exhaustively listed. On the contrary, the provision states that the Directorate of Labour provides assistance to competent authorities in other EEA States which are host States to an Icelandic undertaking, either in relation to gathering information on the Icelandic undertaking or as regards correspondence with the Icelandic undertaking, including concerning collection of fines. The Authority noted that it does not follow from this that the assistance can take the form of checks, inspections and investigations or that the Directorate of Labour has a legal mandate to engage in such activities.
36. Moreover, as regards Article 13(8) of Act No 45/2007, the Authority pointed out that this provision concerns the possibility for the Directorate of Labour to request assistance from competent authorities in other EEA States and is, thus, not relevant for the assessment of whether the Act sufficiently prescribes the legal mandate and obligations put on the Directorate of Labour in relation to providing assistance to other EEA States (as prescribed in Article 6(2) of the Directive).
37. Finally, the Authority observed that, neither Act No 45/2007, nor the preparatory works lay down the obligation on the Directorate of Labour to inform the requesting EEA State if it experiences difficulty in meeting a request for assistance, as required by Article 6(5) of the Directive.
38. In its reply to the letter of formal notice, Iceland did not engage with the arguments presented in the Authority's letter of formal notice with regard to these articles.
39. The Authority emphasises that Article 6(2) and 6(5) of the Directive establishes firm and specific obligations on national competent authorities to ensure successful mutual assistance across the EEA and, in turn, proper enforcement of EEA posting rules.
40. With reference to the above, the Authority maintains its conclusion that Iceland has not demonstrated that it has correctly implemented Article 6(2) and 6(5) of Directive 2014/67.

4.3 Article 7(2), 7(3) and 7(4) of Directive 2014/67 – Role of the Member States in the framework of administrative cooperation

41. Article 7 of Directive 2014/67 describes the role of the EEA States in the framework of administrative cooperation. Article 7(2) of the Directive provides that the EEA State of establishment of the service provider is to continue to monitor, control and take the necessary measures with respect to workers posted to another EEA State. The Authority finds that the Icelandic Act No 45/2007 on Posted Workers does not stipulate that Iceland (or the Directorate of Labour) is obliged to continue to monitor, control and take the necessary supervisory or enforcement measures with respect to workers posted to other EEA States, as required by Article 7(2) of the Directive.
42. The Authority observes that the Icelandic Government's statement that "*the obligation imposed by Article 7(2) is in accordance with Icelandic law, practice and administrative procedures in general in the absence of a specific provision stating the aforementioned obligation directly*"²² has not been supported with any evidence, nor has the national provision been identified explicitly. In that context, the Authority also recalls the EFTA

²² See p. 4 of the reply of 13 December 2021 to the supplementary request for information, Doc No 1255499 / your ref. FRN20020034/30.20.01.

Court case law²³ whereby provisions of directives must be implemented with unquestionable binding force and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty and that EEA States must ensure full application of directives not only in fact but also in law. Therefore, the Authority notes that Article 7(2) of the Directive has not been implemented into Icelandic legislation.

43. Article 7(3) of Directive 2014/67 provides that the EEA State of establishment is to assist the EEA State to which the posting takes place to ensure compliance under Directive 96/71²⁴ (the “Posting of Workers Directive”) and under Directive 2014/67. The Authority observes that Article 2(3) of the Icelandic Act No 45/2007 requires, inter alia, the Icelandic Directorate of Labour to provide the competent authorities in other EEA States with assistance when any of them is a host EEA State to an Icelandic undertaking, but only within the following narrowed scope or circumstances: (i) “[provide with assistance] either with the gathering of information about the Icelandic undertaking **or** (*emphasis added*) [(ii)] in connection with communication with the Icelandic undertaking [...]”.
44. Thus, Article 2(3) of Act No 45/2007 is more restrictive insofar as it limits the content of the communications and of the assistance that should take place between the EEA State of establishment and the EEA State of posting. The Authority recalls that Article 7(3) of the Directive obliges the EEA State of establishment to assist another EEA State with the purpose to ensure compliance with the Posting of Workers Directive and Directive 2014/67 in full, with respect to workers posted in a different state than Iceland. Not only insofar as it concerns information about the Icelandic undertaking or insofar as assistance is required for communication with the Icelandic undertaking. Therefore, the Authority notes that Article 2(3) of Act No 45/2007 does not implement in conformity Article 7(3) of the Directive.
45. Article 7(4) of Directive 2014/67 requires that EEA States on their own initiative communicate to other EEA States any relevant information without undue delay where there are facts indicating possible irregularities. The Authority notes that Article 12(3) of the Icelandic Act No 45/2007 requires the Icelandic Directorate of Labour to investigate if it received information indicating that the provisions of that Act have been violated. However, the Authority cannot find in the Act the obligation to, on its own initiative, communicate to other EEA States any relevant information without undue delay, where there would be facts indicating possible irregularities. Additionally, Article 2(3) of the Act does not specifically prescribe the communication between EEA States envisaged in Article 7(4) of the Directive.
46. In light of the above, the Authority maintains its conclusion that Iceland has not sufficiently implemented Article 7(2), 7(3) and 7(4) of Directive 2014/67.

4.4 Article 10(1) and 10(2) of Directive 2014/67 – Inspections

47. Article 10(1) and 10(2) of the Directive prescribes that the competent authorities are to carry out effective and adequate inspections on their territory, which are to be based primarily on a risk assessment (notwithstanding the possibility of conducting random checks) and are not to be discriminatory and/or disproportionate.

²³ See Case E-15/12 *Jan Anfinn Wahl v. Iceland*, [2013] EFTA Ct. Rep. 534, paragraphs 50-51 and 56; and Case E-12/13 *EFTA Surveillance Authority v Iceland*, [2014] EFTA Ct. Rep. 58, paragraph 70.

²⁴ Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services. Incorporated into Annex XVIII of the EEA Agreement by Decision of the EEA Joint Committee No 37/98, entering into force on 1 July 1999.

48. For the implementation of these provisions, the ToC submitted by Iceland referred to Articles 12 and 13 of Act No 45/2007 and Chapter XI of Act No 46/1980 on Working Environment, Health and Safety in Workplaces.²⁵
49. In its letter of 29 September 2021, the Authority noted that Article 13 of Act No 45/2007 does not mention inspections²⁶ and only concerns information sharing within Iceland.²⁷ The Authority observed that according to Article 12(2) of the same Act, the Directorate of Labour is allowed to do inspections at workplaces, but the provision is silent about how these inspections are to be conducted and on which basis.²⁸ Finally, as regards Chapter XI of Act No 46/1980 on risk assessment, health protection and medical check-ups, the Authority remarked that it concerns the health and safety of workers but not working conditions of posted workers.
50. Against this background, Iceland was asked to clarify how the notified implementing measures provided for a sufficient implementation of Article 10(1) and 10(2) of the Directive. In its letter of 13 December 2021, Iceland provided the following reply:

"In Article 12(2) of the Act it is stated that the Directorate of Labour shall monitor the application of the Act and of regulations issued thereunder. Article 12(2) further states that the Directorate shall carry out workplace inspections which may, amongst other things, conduct inspection visits to workplaces. In the explanatory note of Act No 75/2018, amending Article 12 of the Act it is further stated that amendments to Article 12 were made to be consistent with the Directive whereas the objective of the Article is to ensure effective and sufficient inspections. According to the Directorate of Labour, the Directorate inspects every employment contract of workers posted temporarily to Iceland to ensure that the wages and other terms are in conformity with the provision of the Act. In addition, the Directorate of Labour endeavours to conduct inspection visits to all workplaces, without discrimination, of foreign service providers that are posted temporarily to Iceland.

Additionally, in Article 13(7) of the Act it is stated that if other Government Authorities or the monitoring officers of the organisations of the social partners in Iceland receive information indicating that provisions of the Act are being violated they are obliged to inform the Directorate of Labour. To further ensure effective labour market inspections, the Directorate of Labour conducts joint inspections, including physical inspection visits to workplaces, in cooperation with other Government Authorities, such as the Iceland's Revenue and Customs, the police and the Administration of Occupational Safety and Health in Iceland. Coordinated and joint inspections are also conducted with the monitoring officers of the organisations of the social partners in Iceland. These joint inspections are supplementary to each authority's responsibilities to conduct inspections under the auspices of their own legal competences.

*The Icelandic Government considers that these measures provide for effective and adequate inspections in relation to Article 10 of the Directive."*²⁹

51. In its letter of formal notice, the Authority recognised that it does follow from the above information from Iceland that the Directorate of Labour can conduct inspections at workplaces and does so in practice.
52. However, as already observed in the letter of formal notice, nothing in the Icelandic legal provisions appears to ensure that these inspections are based primarily on a risk

²⁵ See pp. 24-25 of the ToC.

²⁶ See p. 2 of the Authority's letter.

²⁷ See p. 2 and p. 3 of the Authority's letter. With the exception of Article 13(8) which provides that the Directorate of Labour may request assistance from the competent authorities in other EEA States.

²⁸ See p. 2 of the Authority's letter.

²⁹ See pp. 4-5 of Iceland's letter.

assessment, as required by Article 10(1) of the Directive, and that they are not discriminatory and/or disproportionate, in accordance with Article 10(2) of the Directive.

53. The Authority further observes that the preparatory works do not appear to support such a reading of Articles 12 and 13 of the Posted Workers Act.³⁰

54. The letter of formal notice went on to recall that the European Commission's Report on the application and implementation of the Directive ("the Implementation Report")³¹ had emphasised that:

*"While effective monitoring procedures are essential for the enforcement of the Directive and the Posting of Workers Directive, the Commission considers that inspections need to be based primarily on risk assessment by competent authorities. In addition, Member States need to ensure that inspections and controls of compliance are not discriminatory and/or disproportionate. This means that they have to be suitable for achieving the objectives pursued without restricting the cross-border provision of services any more than necessary."*³²

55. In its response to the letter of formal notice, Iceland merely stated that: "(...) article 12 and 13 of the Act should be interpreted together with the general provisions of the Act on Administrative Procedures No. 37/1993, for example Article 10 on rule of investigation, Article 11 on principal of equality and Article 12 on principal of proportionality. These provisions ensure, inter alia, that all information that the Directorate of Labour receives is investigated thoroughly, is proportionate and non-discriminatory and that all inspections are based on the information that the Directorate of Labour receives as stated in Article 12(3) of the Act."³³

56. As regards, first, Article 10(1) of the Directive and its requirement that inspections are to be primarily based on a risk assessment by the competent authorities (notwithstanding the possibility of conducting random checks), the Authority holds that this provision is of great importance to achieve the Directive's overall objective of better enforcement of the posting rules at EEA-level. More specifically, the Authority takes the view that the application of this rule substantially reduces the risk of arbitrary enforcement towards, for example, foreign service providers and their posted workers (c.f. also below as regards the provision contained in Article 10(2) of the Directive). As such, this rule is of great significance to both service providers and posted workers. It is clear from the wording of Article 10(1) of the Directive that this is a legal requirement under the Directive that should be implemented into the Icelandic legal order.

57. In the Authority's view, this obligation finds little or no trace in the provisions referred to by Iceland as implementing measures.

58. The Authority further notes that, according to the Implementation Report, the majority of EU member states opted for an explicit transposition of Article 10 of the Directive.

59. As regards, secondly, the obligation in Article 10(2) of the Directive to ensure that inspections and controls of compliance under Article 10 of the Directive are not discriminatory and/or disproportionate, the Authority takes note of the additional provisions referred to by Iceland in its response to the letter of formal notice.

³⁰ Alpt. 2017-2018, A-deild, þskj. pp 1, pp. 58-62 / Alpt. 2017-2018, A-deild, þskj. 674- case 468., comments to Article 17 and 18. The Authority notes that those two Articles amended Articles 12 and 13 of the Icelandic Posted Workers Act.

³¹ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application and implementation of Directive 2014/67/EU, 25.9.2019, COM (2019) 426 final.

³² COM (2019) 426 final, *op.cit.*, p.14.

³³ See p. 2 of Iceland's reply to the letter of formal notice.

60. However, the Authority asserts that the principles of non-discrimination and proportionality in national administrative law do not necessarily correspond entirely to those same principles in EEA law. The principle of non-discrimination in EEA law is mainly focused on non-discrimination on grounds of nationality,³⁴ which is not necessarily the case for the principle in national administrative law.
61. Moreover, the principle of proportionality in EEA law in this context entails that the inspections must be suitable for achieving the objectives pursued without restricting the cross-border provision of services any more than necessary.³⁵ This does not necessarily follow from the principle of proportionality in national administrative law.
62. Furthermore, the Authority notes that EU legislation and treaties also contain general principles of non-discrimination and proportionality. Despite that, the co-legislators have still decided to reinforce these principles in the specific context and obligations of Article 10(2) of the Directive, constituting a concrete and reinforced level of guarantee and protection.
63. Therefore, the Authority is not convinced by Iceland's reference to general provisions of administrative law, read in conjunction with articles 12 and 13 of the Act No 45/2007, forming a sufficient basis for the implementation of Article 10(2) of the Directive into its national legal order.
64. The Authority emphasises that Article 10(2) of the Directive provides an important protection against discriminatory and disproportionate action towards foreign service providers and their posted workers.
65. In light of the above, the Authority maintains its conclusion that Iceland has not sufficiently implemented Article 10(1) and 10(2) of Directive 2014/67.

4.5 Article 11(1) and 11(5) of Directive 2014/67 – Defence of rights – Facilitation of complaints – Back-payments

66. Article 11(1) of Directive 2014/67 stipulates that EEA States are to ensure that there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings. Article 11(5) further provides that posted workers bringing such judicial or administrative proceedings are to be protected against any unfavourable treatment by their employer.
67. As regards the implementation of Article 11(1) of the Directive, the ToC submitted by Iceland referred to Articles 13(6) and 17 of Act No 45/2007³⁶, whereas Article 70(1) of the Icelandic Constitution was referenced as the implementing measure for Article 11(5) of the Directive.³⁷
68. In its supplementary Request for Information of 29 September 2021, the Authority observed that Article 13(6) of Act No 45/2007 concerns information-sharing between Icelandic authorities and that Article 17 of the same Act provides for the right to appeal decisions of the Directorate of Labour to the relevant ministry.

³⁴ See e.g. Article 4 of the EEA Agreement.

³⁵ See Case C-113/89 *Rush Portuguesa*, EU:C:1990:142, paragraph 17; Case C-445/03 *Commission v Luxembourg*, EU:C:2004:655, paragraph 40; and Case C-244/04 *Commission v Germany*, EU:C:2006:49, paragraph 36.

³⁶ See p. 27 of the ToC.

³⁷ See p. 28 of the ToC.

69. In said supplementary Request for Information, the Authority noted that those provisions do not appear to ensure that posted workers can lodge complaints directly against their employers or initiate administrative proceedings. Moreover, Article 70(1) of the Constitution, on the right to a fair trial, does not specifically protect posted workers bringing proceedings against any unfavourable treatment by their employer as is required by Article 11(5) of the Directive.

70. Iceland was therefore asked to explain how the above provisions ensure a sufficient implementation of Article 11(1) and 11(5) of the Directive. In its reply, it stated that:

"In Article 13(6) of the Act, it is stated that if the Directorate of Labour receives information under the Act which indicate that provisions of Icelandic law or regulations are being violated, it is obliged to deliver this information to the appropriate authority. In Article 17 of the Act it is further stated that appeals can be lodged to the Ministry against decisions taken by the Directorate of Labour under the Act and in Article 17(3) it is stated that the procedure shall be in accordance with the provisions of the Administrative Procedure Act, No 37/1993.

The Icelandic Government considers that these measures are effective measures for posted workers to lodge a complaint against their employers and initiate administrative proceedings both within and outside the scope of the Act as stated in the ToC regarding Article 11(1) of the Directive.

Regarding the right to institute judicial proceedings the Icelandic Government considers that Article 70(1) of the Constitution provides the posted worker the right to a judicial proceedings for determination of his rights and obligations as mentioned in the ToC regarding Article 11(1) and (5) of the Directive. The Icelandic Government further considers that Act on Equal Treatment on the Labour Market No 86/2018, prevents any unfavourable treatment from the employer regarding administrative or judicial proceedings lodged by a posted worker against his employer directly." ³⁸

71. In its letter of formal notice, the Authority noted that the above reply from Iceland does not clarify how the notified implementing provisions for Article 11(1) of the Directive ensure the right for posted workers to lodge complaints against their employers directly and the right to institute administrative proceedings. It was observed that an obligation on the Directorate of Labour to deliver information on violations to other authorities and the right to appeal decisions of the Directorate of Labour to the relevant ministry does not entail a right for posted workers to lodge complaints against their employers directly or to institute administrative proceedings with the Directorate of Labour.

72. As regards the implementation of Article 11(5) of the Directive, the Authority observed in its letter of formal notice that, although Article 70(1) of the Icelandic Constitution provides for the right to institute judicial proceedings, it says nothing about the protection of workers bringing such proceedings against any unfavourable treatment by their employer. Also, it was noted that Article 70 of the Constitution does not concern administrative proceedings. Moreover, the Authority noted that Act No 86/2018 on Equal Treatment on the Labour Market only concerns complaints in relation to the discrimination covered by that Act. It does not apply more generally to posted workers bringing administrative or judicial proceedings against their employer, as is the obligation set in Article 11(5) of the Directive.

73. In its reply, Iceland did not engage directly with the arguments made by the Authority in the letter of formal notice. Concerning Article 11(1) of the Directive, on the right for posted workers to institute administrative proceedings, the Authority was informed that the website www.posting.is contained information for posted workers, including how to institute such proceedings. As regards Article 11(5) of the Directive, on the protection of workers from any unfavourable treatment by their employer, Iceland noted that

³⁸ See p.5 of Iceland's letter of 13 December 2021.

article 13 of Act No 86/2018 on Equal Treatment in the Labour Market provides protection against unjust treatment in connection with a worker's complaint against their employer.

74. As regards, first, the right for posted workers to lodge complaints against their employers directly as well as the right to institute administrative proceedings (Article 11(1) of the Directive), the Authority emphasises the importance of this provision in order to allow for workers to enforce their rights and, consequently, contribute to the effective enforcement of the posting rules. The Authority cannot see that this unequivocal right is reflected in any national implementing measures in Iceland, including the website www.posting.is, which, in any case, cannot constitute a relevant implementing measure of Article 11(1) of the Directive.
75. In that respect, the Authority notes that all EU member states provide for posted workers' possibility to turn with a complaint to the competent labour inspection authority in case of a violation of their rights by the employer.³⁹
76. As regards, secondly, posted workers' right to be protected against any unfavourable treatment by their employer in case they have brought judicial or administrative proceedings, the Authority has taken note of Iceland's argument related to article 13 of Act No 86/2018 on Equal Treatment in the Labour Market. However, the Authority would observe that any protection against retaliation set out therein is limited to the scope as defined in its article 1(1), i.e. discrimination on grounds of race, ethnic origin, religion, sexual orientation etc. These are factors that do not relate to complaints about the failure to apply the applicable posting rules, as required specifically by Article 11(5) of the Directive.
77. In light of the above, the Authority maintains its conclusion that Iceland has not sufficiently implemented Article 11(1) and 11(5) of Directive 2014/67.

4.6 Articles 15(1) and 15(2), 16(3), 18 and 19(1) of Chapter VI of Directive 2014/67 – Cross-border enforcement of financial administrative penalties and/or fines

78. Chapter VI of Directive 2014/67 deals with the cross-border enforcement of financial administrative penalties and/or fines, which are governed by the principles of mutual assistance and mutual recognition. Article 15(1) and 15(2) of the Directive describes the general principles governing requests to recover an administrative penalty and/or fine and to notify a decision imposing such a penalty and/or fine, explaining the obligations on both the requesting and the requested authority, including in which circumstances such requests are or are not to be made. Article 16(3) of the Directive prescribes the obligation on the requested authority to provide the service provider and the requesting authority with certain information within specific time limits. Article 18 of the Directive provides for the suspension of the cross-border enforcement procedure in the event that the administrative penalty and/or fine and/or underlying claim is challenged or appealed. Moreover, Article 19(1) stipulates that amounts recovered accrue to the requested authority.
79. For Articles 15(1) and 15(2) of the Directive, the ToC submitted by Iceland referred to Articles 2(3) and 13(8) of Act No 45/2007 as the relevant implementing provisions. For Articles 16(3), 18 and 19(1) of the Directive, the ToC did not refer to any implementing provisions. The accompanying remarks by Iceland specify that no such articles were to be found in the Icelandic legislation.⁴⁰

³⁹ See p. 14 of the Implementation Report.

⁴⁰ See the remarks on p. 35 of the ToC.

80. In its letter of 29 September 2021, the Authority recalled that Article 2(3) of Act No 45/2007 provides for the obligation on the Directorate of Labour to provide assistance to competent authorities in other EEA States, when Iceland is the EEA State of establishment, whereas Article 13(8) of the same Act provides that the Directorate of Labour can request assistance from competent authorities in other EEA States when Iceland is the host EEA State. The Authority noted that both those provisions state that the cross-border assistance can be in the form of providing information or correspondence with the relevant undertaking, including as regards the recovery of fines. Apart from that, the Authority observed, nothing appears to be mentioned in these provisions about how the cross-border enforcement of financial administrative penalties and/or fines takes place, in which circumstances and on the basis of which principles. Moreover, it was observed that the above provisions only mention the recovery of fines but not the notification of decisions imposing a penalty and/or fine and did not appear to cover the situations described in Articles 16(3), 18 or 19(1) of the Directive. With regard to Articles 15a, 15b and 18 of Act No 45/2007 concerning daily fines and administrative penalties, the Authority noted that those provisions do not concern the cross-border enforcement of such penalties and/or fines.
81. In light of this, Iceland was invited to clarify how the above-mentioned provisions of Act No 45/2007 provide for a sufficient implementation of the relevant provisions of Chapter VI of Directive 2014/67, discussed above. Iceland was also asked to explain why no implementation was notified for Articles 16(3), 18 and 19(1) of the Directive. In the reply to the Request for Information, of 13 December 2021, the following explanations were put forward:

“Reference is made to the answer to question two regarding Article 2(3) and 13(8) of the Act and cooperation between EEA member states regarding fines. Articles 15a, 15b and 18 of the Act further outlines the fines which the Directorate of Labour may demand, that is daily fines, administrative fines and that all fines should be paid to the treasury. The Icelandic Government considers that the above-mentioned Articles should be interpreted together with the explanatory note to Act No 75/2018, amending the Act. In the explanatory note to Article 2 of the Act the cooperation between EEA member states is more detailed, there it states among others that the Directorate of Labour shall assist competent authorities in other members states regarding collecting of fines and in that context, administrative and daily fines are especially mentioned. In the explanatory note to the same Article it is also further explained how the cooperation should take place and deadlines regarding requests for information and other communications between EEA States. The same applies for the explanatory note regarding Article 13(8) of the Act. The Icelandic Government considers therefore that Articles regarding fines in 15a, 15b and 18 in the Act, should be interpreted together with Articles 3(2)⁴¹ and 13(8) of the Act concerning cross-border enforcement of such penalties and/or fines.

Regarding Articles 16(3)(2)⁴², 18 and 19 in the Directive reference is made to former coverage concerning Article 2(3) of the Act on cooperation between EEA States, requests of information with deadlines and general provisions in the Icelandic legislation regarding collection of public fines according to Act on Collection of Public Taxes and Fees No 150/2019. [...]”⁴³

82. In its letter of formal notice, the Authority recalled that Articles 2(3) and 13(8) of Act No 45/2007 only mention cross-border assistance due to recovery of fines as an example of assistance in the form of correspondence with the relevant undertaking. It was noted that the only thing that the preparatory works to these provisions clarify is that such assistance can be related to both administrative fines and daily fines. Moreover,

⁴¹ The Authority notes that this should presumably be Article 2(3).

⁴² The Authority notes that there is no such 16(3)(2) and that this should presumably be Article 16(3).

⁴³ See pp. 6-7 of Iceland’s letter of 13 December 2021.

although Articles 15a, 15b and 18 of Act No 45/2007 state that the Directorate of Labour can itself impose administrative and daily fines, those provisions do not refer to the cross-border enforcement of such fines, which is a different matter.

83. Moreover, the Authority noted that Iceland had not explained how Act No 150/2019 on Collection of Public Taxes and Fees is relevant for the cross-border enforcement of penalties and/or fines at issue here.
84. Consequently, even if the above provisions of Act No 45/2007 were read together, and in light of the preparatory works, the Authority could not see that they provide a duly implemented national legal basis for all the specific obligations and tasks to be undertaken by the Directorate of Labour, as the competent authority in Iceland, pursuant to the Directive. This applied in particular to the general principles governing requests to recover an administrative penalty and/or fine (Article 15(1) and 15(2) of the Directive) or to notify a decision imposing such a penalty and/or fine (Article 16(3) of the Directive), the conditions under which such requests are to be made, information to be provided to services providers and requesting authorities, suspension of the cross-border enforcement procedure and accrual of costs (Articles 18 and 19 of the Directive).
85. In its reply to the letter of formal notice, Iceland argued that all administrative penalties and/or fines within the Icelandic administration fell within the scope of Act No 150/2019 on Collection of Public Taxes and Fees. In case of collection of an administrative penalty and/or fine from a competent authority in another EEA member state (as in Article 15(1) and 15(2) of the Directive), the Directorate of Labour would assist that competent authority as stated in Article 2(3) of Act No 45/2007 and the Icelandic Administration would use its resources under Act No 150/2019, in collecting that administrative penalty and/or fine.⁴⁴
86. The Authority takes due note of the reassurances provided in the reply to the letter of formal notice but cannot see that they are of such a nature as to alter the conclusions set out therein.
87. As regards Article 15(1) of the Directive, the Authority emphasises that this provision establishes unequivocal and very specific obligations on the requested authority to recover an administrative penalty and/or fine (letter a) and to notify a decision imposing such a penalty and/or fine. As demonstrated above, those obligations are not reflected in the national provisions referred to by Iceland, and notably Articles 2(3) and 13(8) of Act No 45/2007.
88. As regards Article 15(2) of the Directive, the Authority stresses that the provisions contained therein also establish concrete, operational obligations on the requesting authority, notably as regards its compliance with relevant national law (first subparagraph); limiting the possibility to make such requests to situations where it is unable to recover or notify itself (second subparagraph); and barring such requests in case the penalty and/or fine as well as the underlying claim and/or the instrument permitting its enforcement in the requesting EEA State, are contested or challenged (third subparagraph). Here, also, as demonstrated above, those obligations are not reflected in the national provisions referred to by Iceland, and notably Articles 2(3) and 13(8) of Act No 45/2007.
89. The Authority holds that the provisions in Chapter VI of the Directive are of particular importance for the achievement of its objective of better enforcement of EEA posting rules. The Authority recalls that there are no general, EEA-wide rules on cross-border enforcement of financial administrative penalties and/or fines. That, the Authority

⁴⁴ See p. 2 of Iceland's reply to the letter of formal notice, of 3 October 2023.

contends, explains why it was decided to adopt such specific and operative obligations on national authorities in Chapter VI of the Directive.

90. In that respect, reference is made to the relevant recitals of the Directive:

- “(38)It is a matter of concern that there are still many difficulties for Member States to recover cross-border administrative penalties and/or fines and therefore the mutual recognition of administrative penalties and/or fines needs to be addressed.*
- (39)The disparities between the systems of the Member States for enforcing imposed administrative penalties and/or fines in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union.*
- (40)Effective enforcement of the substantive rules governing the posting of workers for the provision of services should be ensured by specific action focusing on the cross-border enforcement of imposed financial administrative penalties and/or fines. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite in order to ensure a higher, more equivalent and comparable level of protection necessary for the proper functioning of the internal market.*
- (41)The adoption of common rules which provide mutual assistance and support for enforcement measures and the associated costs, as well as the adoption of uniform requirements for the notification of decisions relating to administrative penalties and/or fines imposed for the non-respect of Directive 96/71/EC, as well as of this Directive, should resolve a number of practical cross-border enforcement problems and guarantee better communication and better enforcement of such decisions emanating from another Member State.”*

91. The Authority contends that the cited recitals lend strong support to its view that the provisions in Chapter VI of the Directive are of particular importance for the achievement of the Directive's overall objective of ensuring better enforcement of EEA posting rules.
92. Furthermore, the Authority observes that according to the Implementation Report, most EU member states have explicitly transposed Articles 13-19 of the Directive.
93. In light of the above, the Authority maintains its conclusion that Iceland has not sufficiently implemented Articles 15(1) and 15(2), 16(3), 18 and 19(1) of Directive 2014/67.

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 correctly implement Articles 6(2) and 6(5), 7(2), 7(3) and 7(4), 10(1) and 10(2), 11(1) and 11(5), 15(1) and 15(2), 16(3), 18 and 19(1) of Directive 2014/67, Iceland has failed to fulfil its obligations arising under Directive 2014/67 and under Article 7 of the EEA Agreement.

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,

For the EFTA Surveillance Authority,

Arne Røksund
President

Árni Páll Árnason
College Member

Nuscha Wieczorek
Responsible College Member

For Melpo-Menie Joséphidès
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Arne Roeksund, Sigrun Ingibjorg Gisladdottir.