

Brussels, 8 April 2026
Case No: 85761
Document No: 1510449
Decision No: 070/26/COL

Ministry of the Environment, Energy and Climate
Borgartún 26
105 Reykjavík
Iceland

Dear Sir or Madam,

Subject: Letter of formal notice to Iceland concerning a complaint regarding the incorrect implementation of Article 9a, second paragraph, of Directive 2011/92/EU – conflicts of interest

1 Introduction

By a letter dated 15 October 2020, the EFTA Surveillance Authority (“the Authority”) informed the Icelandic Government that it had received a complaint against Iceland regarding an alleged failure to adequately transpose or implement certain provisions of Directive 2011/92/EU *on the assessment of the effects of certain public and private projects on the environment*¹ (“EIA Directive” or “the Directive”) and alleged non-compliance with the EIA Directive. The complainant alleged, amongst other things, that the Icelandic Government had not properly or sufficiently implemented Article 9a of the EIA Directive as regards environmental impact assessments (“EIAs”).

Pursuant to its discretion in exercising its mandate,² the Authority has limited the subject matter of the present case to the incorrect implementation of Article 9a, second paragraph, of the EIA Directive.³

It follows from Article 9a, first paragraph, of the EIA Directive that EEA States are to ensure that the competent authority or authorities perform the duties arising from the Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest. Article 9a, second paragraph, sets out that when the competent authority is also the developer of a project subject to a permit procedure, EEA States are to at least

¹ The Act referred to at point 1a of Annex XX to the EEA Agreement. Incorporated into the EEA Agreement by the Decision of Joint Committee No 230/2012 of 7 December 2012 (OJ L 81, 21.3.2013, p. 32) which entered into force on 8 December 2012. The EIA Directive was revised by Directive 2014/52/EU, referred to in the same point of Annex XX to the EEA Agreement, by virtue of Joint Committee Decision No 117/2015 of 30 April 2015 (OJ L 211, 4.8.2014, p.1) which entered into force on 16 May 2017.

² According to settled case-law of the EFTA Court, the Authority enjoys wide discretion in deciding whether and how to pursue proceedings against an EEA EFTA State. The Authority alone is competent to decide whether it is appropriate to bring proceedings under Article 31 SCA for failure to fulfil the obligations under the EEA Agreement. See, for example, Order of the EFTA Court of 23 October 2013 in Case E-2/13, *Bentzen Transport v EFTA Surveillance Authority*, EFTA Ct. Rep [2013] p. 802, point 40, and further, the Order of the EFTA Court in Case E-13/10 *Aleris Ungplan AS v ESA* [2011] EFTA Ct. Rep. 3, point 26.

³ For clarity's sake, the Authority stresses that delimitation of the case does not indicate that the Authority considers other aspects of the implementation of the Directive into Icelandic law or in administrative practice to be in compliance with EEA law. It in no way restricts the Authority's future actions concerning the legal, administrative and/or factual issues arising from this or other of the Authority's cases or from future relevant developments in EU or EEA law.

implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from the EIA Directive.⁴

The complainant alleged that particularly municipalities are often in situations where they are both the developer of a project and the authority granting development consent. This dual role might raise doubts about its objectivity when it is required to weigh the environmental impact of a project against the socio-economic benefits it may entail in the context of granting development consent.

Based on the information and documents submitted, and an assessment of the current legislative framework in Iceland, the Authority is of the view that Article 9a, second paragraph, of the Directive has not been correctly implemented in Iceland.

2 Correspondence

On 12 January 2021 (Doc No 1169497), the Authority sent a request for information to the Icelandic Government. On 4 March 2021, Iceland replied (Doc No 1185107). On 5 May 2022 the Authority sent another request for information (Doc No 1274133). The Icelandic Government replied by letters dated 23 September 2022 (Doc No 1315891), 19 October 2023 (Doc No 1406475) and 8 November 2023 (Doc No 1418828).

The case was discussed at the package meetings between representatives of the Authority and of the Icelandic Government in 2021 (Doc No 1204495) and 2022 (Doc No 1294470).

On 7 May 2024 (Doc No 1420149), the Internal Market Affairs Directorate of the Authority (“the Directorate”) sent a pre-Article 31 letter to Iceland. In that letter, the Directorate took the preliminary view that Iceland has not taken the necessary steps to implement Article 9a, second paragraph, of the EIA Directive correctly into national law.

The Icelandic Government replied by a letter dated 1 November 2024 (Doc No 1495240), maintaining that it has established a system that fulfils the requirements of the EIA Directive.

The case was further discussed at the package meeting in Iceland on 6-8 May 2025 (Doc No 1535061). The Icelandic Government replied to the Authority’s follow-up letter by a letter of 23 September 2025 (Doc No 1563984).

3 Relevant EEA law

Article 7 of the EEA Agreement provides that EEA States are to make acts incorporated into the EEA Agreement part of their internal legal order. With regard to directives, the choice of form and method of implementation shall be left to the authorities of the EEA States. However, EEA States must ensure full application of directives, not only fact but also in law. Provisions of directives must be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty.⁵

Recital 2 of the EIA Directive provides:

⁴ See judgment of the Court of Justice of the European Union of 8 May 2025, *Provincie Oost-Vlaanderen and Sogent*, C-236/24, EU:C:2025:321, paragraph 38. See further Chapter 4 below.

⁵ Judgments of the EFTA Court of 22 July 2013, *Jan Anfinn Wahl v the Icelandic State*, E-15/12, [2013] EFTA Ct. Rep. 534, paragraphs 49 to 56; and 11 February 2014, *ESA v Iceland*, E-12/13, paragraphs 67 to 72.

“Pursuant to Article 191 of the Treaty on the Functioning of the European Union, Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes.”

Recital 6 of the EIA Directive sets out that principles for the assessment of environmental effects should be laid down with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.

Recital 7 of the EIA Directive provides:

“Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. That assessment should be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the public likely to be concerned by the project in question.”

Article 1(2)(f) of the EIA Directive defines ‘competent authority or authorities’ as follows:

“that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive,”

Article 1(2)g of the EIA Directive defines ‘environmental impact assessment’ as a process consisting of:

*“(i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);
(ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;
(iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;
(iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination;
and
(v) the integration of the competent authority’s reasoned conclusion into any of the decisions referred to in Article 8a.”*

Article 5 of the EIA Directive details the obligation on the developer to supply the necessary information for the assessment.

Article 6 of the EIA Directive sets out the obligation to provide authorities and the public the opportunity to participate in the decision-making.

Article 8 of the EIA Directive states that the results of consultations and the information gathered pursuant to Articles 5 to 7 shall be duly taken into account in the development consent procedure.

Article 8a of the EIA Directive as amended by Directive 2014/52/EU requires that the decision to grant development consent shall incorporate at least the following information:

“1. The decision to grant development consent shall incorporate at least the following information:

(a) the reasoned conclusion referred to in Article 1(2)(g)(iv);

(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

2. The decision to refuse development consent shall state the main reasons for the refusal.

[...]”

Article 9a, first paragraph, of the EIA Directive as amended by Directive 2014/52/EU states:

“Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.”

Article 9a, second paragraph, then sets out:

“Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.”

Article 1(11) of Directive 2014/52/EU inserted Article 9a to Directive 2011/92/EU. Recital 25 of Directive 2014/52/EU, clarifies the objective of Article 9a of the EIA Directive in the following terms:

“The objectivity of the competent authorities should be ensured. Conflicts of interest could be prevented by, inter alia, a functional separation of the competent authority from the developer. In cases where the competent authority is also the developer, Member States should at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions of those authorities performing the duties arising from Directive 2011/92/EU.”

Article 2 of Directive 2014/52/EU, read in the light of Joint Committee Decision No 117/2015, provides that the EEA States were to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive by 16 May 2017.

4 Relevant Case-Law

In the judgment in *Provincie Oost-Vlaanderen and Sogent*,⁶ the Court of Justice of the European Union (“CJEU”) clarified how Article 9a, first and second paragraph, of the EIA Directive are to be interpreted:

“30 [...] the need to ensure consistency in the application of the safeguards laid down in Article 9a of Directive 2011/92 presupposes that the competent authority can take a decision in an objective manner and does not find itself in a situation giving rise to a conflict of interest, in particular with regard to the developer who provides that authority with the information on the basis of which it must take a decision, both during the screening procedure and during the environmental impact assessment procedure.

[...]

⁶ Judgment of the CJEU of 8 May 2025, *Provincie Oost-Vlaanderen and Sogent*, C-236/24, EU:C:2025:321.

32 [...] the requirement to prevent conflicts of interest laid down in Article 9a of Directive 2011/92 pursues the objective of ensuring the objectivity of the competent authorities. In addition, that objective contributes to the essential objective of Directive 2011/92 which is to ensure that projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are subject to an assessment with regard to their environmental effects before consent is given. [...]

33 The effectiveness of Article 9a of Directive 2011/92 would be undermined if the objectivity of the competent authorities and the absence of conflicts of interest were not guaranteed at all stages of the performance of the duties entrusted to those authorities by that directive as regards both the screening and the subsequent assessment of the effects of a project on the environment.

[...]

37 Consequently, in accordance with the second paragraph of Article 9a, where the authority [performing a duty arising from the Directive] is also the developer of the project concerned, the Member States are to at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing that duty.

38 That appropriate separation must be organised in such a way that an administrative body internal to the authority competent to make that determination has real autonomy, meaning, in particular, that it is provided with administrative and human resources of its own and is thus in a position to perform its duty objectively (see, by analogy, judgment of 20 October 2011, *Seaport (NI) and Others*, C-474/10, EU:C:2011:681, paragraph 43)."

5 Relevant national law⁷

5.1 The 2021 EIA Act

The EIA Directive is implemented into the Icelandic legal order by Act No 111/2021 on the Environmental Impact Assessment of Project and Plans ("the 2021 EIA Act" or "the EIA Act").⁸

Article 3(1), point 5, of the EIA Act defines development consent (*leyfi til framkvæmda*) broadly as:

"Permits granted for a proposed project that falls under this Act and the activities associated with it, such as development consent under the Planning Act, building permits under the Structural Works Act,⁹ operating permits under the Health and Pollution Prevention Act,¹⁰ and other comparable permits that concern the main aspects of the project and/or activities and their environmental impact."

According to Article 6 of the EIA Act, the Minister of the Environment, Energy and Climate supervises matters covered by the Act. The Minister is assisted by the National Planning

⁷ All translations in this section are unofficial translations by the Authority.

⁸ Lög um umhverfismat framkvæmda og áætlana nr. 111/2021. The EIA Directive was, at the opening of this case, implemented by Act No 106/2006 on Environmental Impact Assessments (Lög um mat á umhverfisáhrifum nr. 106/2006) ("Act No 106/2006").

⁹ Lög um mannvirki nr. 160/2010.

¹⁰ Lög um hollustuhætti og mengunarvarnir nr. 7/1998.

Agency (*Skipulagsstofnun* “the NPA” or “the Planning Agency”). Article 6(2) then sets out that the role of the NPA includes:

- [...]
- c. to decide whether notifiable projects should be subject to an environmental assessment*
- [...]
- e. to give an opinion on assessment plans and environmental impact assessment of the project and the activities that accompany it,*
- [...].”

Article 17(1) of the EIA Act set out the process for environmental impact assessment of projects, consisting of the following steps:

- a. creation, presentation and processing of the evaluation plan,*
- b. preparation of the developer's environmental assessment report,*
- c. presentation and consultation of the environmental assessment report with those consulted and the public and, as appropriate, across national borders,*
- d. the Planning Agency's examination of the developer's environmental assessment report, as the case may be any additional information according to paragraph 2 [23. art.], together with comments from consulted parties and the public, and the Agency's opinion on the environmental assessment of the project,*
- e. that the Planning Agency's opinion on the environmental assessment of the project is used as a basis for processing applications for development consents.”*

Article 24 of the EIA Act concerns the opinion of the NPA on the environmental impact assessment of a project. It states that:

“Within seven weeks from the end of presentation of the developer's environmental assessment report according to Article 23, the Planning Agency shall give its reasoned opinion on the environmental assessment of the project, based on the environmental assessment report of the developer, comments made by consulted parties and the public and, as applicable, other available data concerning the environmental assessment of the project. The opinion shall consider the assumptions, methods and conclusions regarding the environmental impact of the project in the developer's environmental assessment report. It must also state the Agency's reasoned conclusion on the environmental assessment of the project and, as appropriate, conditions relating to countermeasures and monitoring addressed to licensees.”

Article 25 of the EIA Act prohibits issuing a development consent for a project that falls within the scope of the EIA Act until the Planning Agency's opinion on the environmental assessment of the project pursuant to Article 24 has been submitted or the decision of the Planning Agency pursuant to Article 19 that the project should not be subject to an environmental assessment.

On the procedure for granting development consent for projects subject to environmental impact assessment, Article 27(2) of the EIA Act states that when deciding whether to grant development consent for a project in accordance with Article 27(1), the authority responsible shall examine the developer's environmental assessment report on the project and use the Planning Agency's reasoned opinion on its environmental assessment as a basis.

Article 27(3) of the EIA Act mandates that:

“The authority granting development consent shall prepare a memorandum on the processing of the permit, providing a reasoned explanation of its consistency with the

conclusion of the Planning Agency's reasoned opinion on the environmental assessment of the project. If the Planning Agency has set conditions for countermeasures or monitoring, cf. Article 24, this shall be stated in the permit."

Article 30 of the EIA Act, entitled "Appeals" provides:

"Decisions of the Planning Agency on whether a development shall be subject to an environmental impact assessment pursuant to Article 20 and decisions of the competent authority granting a permit for development are subject to appeal to the Environment and Natural Resources Appeals Committee, unless special legislation provides otherwise. Standing, time limits for appeals, procedure and other matters relating to the appeal are governed by the Act on the Environmental and Natural Resources Appeals Committee."

5.2 The Planning Act and the Planning Regulation

Planning Act No 123/2010 ("the Planning Act"),¹¹ sets out certain rules on the granting of development consent.

Article 6 of the Planning Act, entitled "planning committees", provides as follows:

"Each municipality shall have a planning committee elected by the municipal council.

Planning committees handle planning matters, including the environmental assessment of organisational plans (skipulagsáætlun), under the supervision of the municipal council. The municipal council may, in a municipal resolution, delegate the authority to complete the processing of matters pursuant to this Act to the planning committee or other parties within the municipal administration, see Article 42 of the Local Authorities Act, No. 45/1998,¹² such as the processing of secondary plans (deiliskipulag) and the issuance of development consents. Processing of regional and municipal general plans (svæðis- og aðalskipulag) is, however, always subject to the approval of the municipal council.

The municipal council shall determine the number of members of the planning committee. The provisions of the Local Authorities Act shall apply to planning committees and their work, as applicable.

Municipalities may cooperate with neighbouring municipalities in the election of planning committees and the appointment of planning representatives."

Article 13 of the Planning Act provides that a development consent must be obtained from the municipal council for major projects that affect the environment and change its appearance, such as changes to land through soil or levelling, and other projects that fall under the [Act on Environmental Assessment of Projects and Plans].

Article 14 of the Planning Act sets out further rules for granting development consent for projects subject to environmental impact assessment. Article 14(1)-(3) states the following:

"It is not permitted to issue a development consent for a project in accordance with the Act on Environmental Assessment of Projects and Plans until the reasoned opinion of the Planning Agency on the environmental impact assessment is available or the agency's decision that the project is not subject to such assessment.

¹¹ Skipulagslög nr. 123/2010.

¹² See chapter 5.4 below.

When considering an application for development consent for a project subject to environmental impact assessment, the authority granting development consent shall examine the developer's environmental assessment report on the project and check whether the project is the one described in the assessment report. The authority granting development consent shall use the opinion of the Planning Agency on the assessment of the environmental impact of the project as a basis. The authority granting development consent must also prepare a memorandum on the processing of a permit in accordance with the provisions of the Act on Environmental Assessment of Projects and Plans.

The authority granting development consent must make the development consent subject to the conditions regarding countermeasures or monitoring that may appear in the Planning Agency's opinion to the extent that such conditions are not set in the licenses of other authorities according to special laws. At the same time, the authority granting development consent can attach to that project conditions set in accordance with the applicable organisational plans of the municipality or power line planning.”

The Planning Act is supplemented by Planning Regulation No 90/2013 (the “Planning Regulation”).¹³ In accordance with Article 1.1.(c) of that Regulation, one of its objectives is “to ensure legal certainty in the handling of planning matters so that the rights of individuals and legal entities are not disregarded even if the interests of the whole are taken as a guiding principle.”

Article 2.3. of the Planning Regulation foresees the possibility to set up planning committees in the following terms:

“Each municipality shall have a planning committee elected by the municipal council.

Planning committees handle planning matters, including the environmental assessment of organisational plans, under the supervision of municipal councils. The municipal council is authorised, in a municipal resolution, to delegate to the planning committee or other parties within the municipal administration the authority to complete the processing of matters pursuant to the Planning Act, cf. Article 42 of the Local Authorities Act, No 138/2011, such as the processing of secondary plans and the issuance of development consents. However, the processing of regional and municipal general plans is always subject to the approval of the municipal council.

The municipal council shall determine the number of members of the planning committee. Committee members and an equal number of their deputies are elected after each local government election. The provisions of the Local Authorities Act and the Administrative Procedures Act, as applicable, shall apply to planning committees and their work.

Municipalities are permitted to cooperate with neighbouring municipalities in the election of planning committees and the appointment of planning officers.

The main task of planning committees is to discuss policy in planning matters, take the lead in the preparation and amendments to organisational plans and discuss planning proposals. Planning committees are responsible for the processing, presentation and processing of the municipal general plan on behalf of the municipal council. Planning committees are responsible for the processing and

¹³ Skipulagsreglugerð nr. 90/2013.

presentation of the secondary plan and the preparation for the processing of the local plan, as well as for conducting neighbourhood presentations for minor changes to the local plan and for building and development consent permit applications in already built-up areas, where there is no local plan. They discuss comments on advertised planning proposals, make proposals to the local government for the final processing of planning proposals, provide opinions on whether projects requiring permits are in accordance with the organisational plan and monitor that projects subject to developing consent are in accordance with the approved municipal general plan and applicable secondary plans and legal provisions and regulations on planning matters.

The Planning Committee shall hold regular meetings, generally once a month. The Committee shall record the submissions received and the actions taken on them."

5.3 The Administrative Procedures Act

Chapter II of the Administrative Procedures Act No 37/1993 (the "Administrative Procedures Act") provides for rules on conflicts of interest for individuals part of the public administration.

Article 3 of the Administrative Procedures Act lists the grounds on which an employee or a committee member can be disqualified from handling a case, as the following:

1. if he is either a party to a case, or the spokesman or the representative of such a party;
2. if he is, or has been, a party's spouse, a relative in the descending or ascending line, whether natural or adoptive or by marriage, or a first cousin;
3. if he is related to a spokesman or a representative of a party in one of the ways described in sub-paragraph 2 of this Article;
4. when a complaint has come under review, if he has previously taken part in dealing with the case at a lower administrative level. The same shall apply to an official in whom are vested powers of supervision or inspection if he has previously been associated with the case in this capacity;
5. if the case concerns to a substantial degree either himself, his relatives pursuant to sub-paragraph 2 of this Article, his immediate superiors in their personal capacity, or an agency or a privately owned company for which he has responsibility;
6. if, finally, such circumstances obtain as are likely to cast reasonable doubt upon his impartiality.
7. The question of disqualification shall not, however, arise if what is at stake is negligible, if the nature of the case is such, or if the role of the official or board member in the handling of the case is so trivial as to rule out any danger of ulterior motives influencing the decision.

Article 4 of the Administrative Procedures Act provides that a "*person who is disqualified to handle a case may not participate in the preparation, handling or resolution of the case. ...*"

5.4 The Local Authorities Act

Article 20 of the Local Authorities Act No 138/2011 (the "Local Authorities Act") provides for rules on eligibility of individuals to participate in the handling and processing of individual cases:

“The eligibility of municipal council members, committee members and municipal employees to participate in the handling or processing of cases where an administrative decision is to be, or may be, made pursuant to the 2nd paragraph of Article 1 of the Administrative Procedures Act, No 37/1993, shall be subject to the provisions of the Administrative Procedures Act unless otherwise provided in this Act. However, the person concerned shall only be deemed conflicted if he or she was or has been the spouse of a party, a relative or sister-in-law of a party directly or indirectly or related to a party in the same way due to adoption, unless a stricter rule is set in the bylaws on management and meeting procedures. In such cases, a municipal employee shall not be disqualified due to the conflict of a superior if the nature of the case or the structure of the municipality's administrative system is deemed not to give rise to such a requirement.

In cases other than those pursuant to the 1st paragraph, a municipal council member, committee member or employee of a municipality must step aside when a case is being handled and resolved when it concerns him or his close relatives so specifically that it can generally be assumed that his will is affected to some extent. This rule also applies to the conclusion of contracts on behalf of a municipality.

Municipal council members are not disqualified when representatives are being selected for confidential work on behalf of the municipal council or when remuneration for such work is being determined.

Municipal council members or committee members who are also employees of the municipality and have as such participated in preparing or making a decision on a specific matter submitted to the local council or committee are always disqualified when the local council or committee discusses the matter. This does however not apply to the executive director (framkvæmdastjóri).

The fourth paragraph does not apply when the municipal council or the relevant committee discusses and processes the annual accounts, budgets, organisational plans and other general plans of the municipality, provided that the local government member or committee member does not have any special and significant interests over others in the processing of the relevant matter.

A municipal council member, committee representative or employee of a municipality who is aware of his or her qualifications or otherwise has doubts shall immediately bring this to the attention of the head, chairman of the committee or immediate superior.

The municipal council shall decide on the potential conflict of the municipal council member to the processing and deciding of individual matters. A municipal council member involved in the matter may participate in a vote on his or her qualifications. A committee shall decide on the qualifications of a committee member. A committee member involved in the matter may participate in a vote on his or her qualifications.

A municipal council member or committee member who is conflicted to process a matter may not participate in the processing of the matter or influence it in any other way and shall always leave the meeting room during its processing and processing.”

Article 42 of the Local Authorities Act, entitled “Delegation of the power of the municipal council to deal with matters in full” provides:

“In order to promote streamlining, efficiency and faster procedures, the municipal council may decide in a resolution on the management of the municipality to entrust the standing committee with the full processing of individual matters [...]

In the same manner and under the same conditions, the municipal council is authorised to entrust individual municipal employees with the full handling of cases. [...] [...]”

6 The Authority’s Assessment

6.1 The context of the environmental impact assessment procedure

The EIA Directive sets out a comprehensive procedure that aims to ensure that projects that are likely to have a significant impact on the environment are identified – and their environmental impact is assessed – before these projects are granted development consent.¹⁴

Article 1(2)(f) of the Directive defines ‘competent authority or authorities’ as *“that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive.”* Multiple competent authorities may therefore be entrusted with the obligations deriving from it. The phrase ‘competent authority’ in the Directive therefore applies simultaneously to different authorities tasked with duties under the Directive, such as whether a project should be subject to an environmental impact assessment and providing a reasoned conclusion of the environmental assessment of a project, like the Planning Agency,¹⁵ and those authorities granting developing consent, such as municipalities, depending on context.¹⁶

The process of assessing the environmental impact of a project consists of multiple phases. These include the submission of information by the developer on the environmental impact of a project,¹⁷ public consultation,¹⁸ and the assessment of the relevant information by the designated competent authority.¹⁹

Based on the assessment, the designated competent authority shall reach a reasoned conclusion on the environmental effects of the project.²⁰ Subsequently, the competent authority tasked with granting development consent should take into account that reasoned conclusion as well as all information gathered in the EIA process on the direct and indirect environmental effects of the project, at the earliest possible stage in all the technical planning and decision-making processes.²¹ Such information should be integrated into the development consent procedures²² before authorising, modifying or refusing consent of the

¹⁴ See Judgment of the EFTA Court of 21 May 2025 in case E-18/24, *The Norwegian State v Greenpeace Nordic, Nature and Youth Norway* (“Greenpeace”), paragraphs 46 to 56.

¹⁵ According to Article 6(2) and Article 20 of the Icelandic 2021 EIA Act, it is the role of the NPA to decide whether a project should be subject to an environmental impact assessment. According to Article 24(1) of the 2021 EIA Act, the reasoned conclusion of the NPA on the environmental assessment of a project and is to include, as appropriate, the conditions for countermeasures and monitoring addressed to the developer.

¹⁶ See e.g. Articles 8 and 8a of the Directive that state that the competent authority granting development consent must take into consideration the results of the consultations and the information gathered pursuant to Articles 5 to 7 of the Directive. In Iceland, Article 27(2) of the EIA Act for example provides that when deciding upon whether to grant development consent for a project in accordance with paragraph 1, the authority responsible, generally the relevant municipality where the project is located c.f. Article 13 of the Planning Act, shall examine the developer's environmental assessment report on the project and use the Planning Authority's reasoned opinion on its environmental assessment as a basis.

¹⁷ See Article 5(1) of the EIA Directive.

¹⁸ See Article 6 and Article 7 of the EIA Directive.

¹⁹ Article 8 of the EIA Directive.

²⁰ See Article 1(2)(g)(iv) of the EIA Directive.

²¹ See recital 2 of the EIA Directive.

²² Article 8a(1)(a) of the EIA Directive.

project, with the objective to avoid, reduce or offset its adverse environmental effects.²³ The Directive empowers the authority granting development consent to weigh evidence and arguments for and against a development proposal, including how much importance to assign to the foreseeable environmental factors and impacts of the project.

6.2 The obligation to ensure the objectivity of the competent authorities

Usually, the developer of the project is an economic operator, and the authority granting development consent a public authority. However, occasionally the authority granting development consent is also the developer of the project, for example when a municipality intends to build a new road or waste treatment installation.²⁴

Article 9a, first paragraph, of the EIA Directive sets out that EEA States are to ensure that the competent authority or authorities²⁵ perform the duties arising from the Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest. Objectivity cannot be assured if individuals or authorities involved in promoting a specific project are also tasked with overseeing or assisting in discharging duties under the Directive. The credibility of the entire EIA procedure is undermined unless there are clear rules to prevent conflicts of interest between the developer and those tasked with assessing the environmental impact of the project.

In that context, Article 9a, second paragraph, of the EIA Directive addresses the situation where the authority developing the project is also tasked with assessing its environmental impact:

“Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.”

The CJEU has clarified that “[t]hat appropriate separation must be organised in such a way that an administrative body internal to the authority competent to make that determination has real autonomy, meaning, in particular, that it is provided with administrative and human resources of its own and is thus in a position to perform its duty objectively.”²⁶

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. However, provisions of directives must be implemented with unquestionable binding force and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty.²⁷ Legal certainty is a fundamental principle of EEA law that requires rules of EEA law to be clear and precise, so that interested parties can ascertain their position in situations and legal relationships governed by EEA law.²⁸

²³ See e.g. judgment of the Court of Justice of the European Union (“CJEU”) of 29 July 2019, *Inter-Environnement Wallonie*, C-411/17, ECLI:EU:C:2019:622, paragraphs 82-83.

²⁴ See e.g., in the context of Iceland, the Icelandic Government’s reply of dated 8 November 2023 (Doc No 1418828), p. 2-3, to the Authority’s request for information letter of 5 May 2022 (Doc No 1274133).

²⁵ Article 1(2)(f) of the Directive defines ‘competent authority or authorities’ as “that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive.”

²⁶ Judgment of the CJEU of 8 May 2025, *Provincie Oost-Vlaanderen and Sogent*, C-236/24, EU:C:2025:321, paragraph 39.

²⁷ See Case E-15/12 *Jan Anfinn Wahl v Iceland*, paragraphs 49-51 and 56.

²⁸ See Joined Cases E-4/10, E-6/10 and E-7/10 *Liechtenstein and others v ESA*, paragraph 156; and Joined Cases E-17/10 and E-6/11 *Liechtenstein and VTM Fund Management v ESA*, paragraphs 141-142.

To ensure that the Directive is properly and effectively implemented in Iceland, and in line with the requirements of the principle of legal certainty, the Authority is therefore of the view that the functional separation requirement of Article 9a, second paragraph, of the EIA Directive should be explicitly transposed in national law.

6.3 The transposition of Article 9a of the EIA Directive in Icelandic law

The Icelandic Government has acknowledged that no statutory provision specifically transposes Article 9a, second paragraph, of the EIA Directive into Icelandic law. In its letter to the Authority of 28 September 2022,²⁹ the Icelandic Government stated:

“Iceland confirms that there is no provision under the Icelandic 2021 EIA Act or the Icelandic 2021 EIA Regulation which expressly and specifically relates to Article 9a of the EIA Directive and which expressly and specifically seeks to transpose Article 9a of the EIA Directive into Icelandic law.

Iceland confirms that there is no express statutory provision which specifically implements Article 9a of the EIA Directive into Icelandic law.”

In light of that statement and following an assessment of the current legislative framework in Iceland, the Authority is of the view that Article 9a, second paragraph, of the EIA Directive has not been correctly implemented in Iceland.

In its correspondence with the Authority,³⁰ the Icelandic Government expresses the view that it is not necessary to transpose Article 9a, second paragraph, of the EIA Directive explicitly into Icelandic law. To that effect, the Icelandic Government raised in essence three arguments.

First, the Icelandic Government argues that the independence of the decision-making is guaranteed by the fact that the responsibility for the reasoned opinion on the environmental impact of a project is assigned to the Planning Agency, a third party independent from the authority granting development consent. In its reply to the Directorate’s pre-Article 31 letter of 1 November 2024, the Icelandic Government stated that:

“It needs to be considered that the role of the Planning Agency in the process guarantees neutrality and that neutrality has been strengthened by law no. 111/2021 on the environmental assessment of projects and plans, where it is clearly stated that the conditions in the agency’s opinion are binding on developers and that it is the Planning Agency that makes the decision on the obligation to assess a project.”

In accordance with Article 6(2) of the EIA Act, the Planning Agency decides whether projects should be subject to an environmental assessment and gives its reasoned opinion on the environmental impact of the project. In accordance with Article 24 of the EIA Act, the Planning Agency’s reasoned opinion is based on the environmental assessment report of the developer, comments made by commenters and the public and, as far as possible, other available data concerning the environmental assessment of the project. In its reasoned opinion, the Planning Agency can set conditions aimed at mitigating or monitoring the environmental impact of a project or construction. In accordance with Article 27(3) of the Icelandic EIA Act, if the Planning Agency has set conditions for mitigating or monitoring the environmental impact, they must be made part of the permit.

²⁹ Doc No 1315891.

³⁰ These arguments have been made throughout the correspondence but have crystallised particularly in the reply from the Icelandic Government of 1 November 2024 to the Authority’s pre-Article 31 Letter, Document No 1495240, and the reply from the Icelandic Government of 23 September 2025 to the Authority’s Follow-Up Letter to the package meeting in Iceland on 6-8 May, Document No 1563984.

According to the Icelandic Government, this role of the Planning Agency means municipal councils no longer have a role in the EIA process as such. By virtue of Article 14 of the Planning Act and Article 27 of the EIA Act, the current role of municipal councils is only to incorporate the Planning Agency's reasoned opinion on the environmental effects of a project into the decision granting development consent, and to reproduce the conditions for mitigating or monitoring the environmental impact proposed by the Planning Agency, if any. According to the Icelandic Government, this role "*is not a conflicting function and in accordance with Article 9a[, second paragraph,] of the [EIA] Directive.*"³¹

The Authority disagrees with the Icelandic Government in this regard. The Authority notes that the Directive provides that multiple competent authorities may be entrusted with the obligations deriving from it.³²

Pursuant to Article 9a, first paragraph, objectivity must be ensured in respect of all those competent authorities, and at all stages of the performance of the duties entrusted to them under the Directive.³³ While some of the obligations laid down in the Directive, such as those in Articles 4(2)³⁴ and 8a³⁵, have been entrusted to the NPA, these are not to be confused with other duties under the Directive that another competent authority or authorities have been tasked with. Thus, if another competent authority or authorities have been tasked with deciding upon whether to grant development consent, the duties arising from the EIA Directive concerning the development consent procedure must, in line with Article 9a, also be performed objectively.

Crucially, the Planning Agency is not tasked with granting or refusing development consent.³⁶ By virtue of Article 13 of the Planning Act, for example, development consent (*framkvæmdaleyfi*) must be obtained from the municipal council for major projects that affect the environment and change its appearance and other projects that fall under the EIA Act.³⁷ Article 14 of the Planning Act then provides that, "*the authority granting development consent shall use the opinion of the Planning Agency [...] as a basis.*" The decision to grant development consent therefore remains within the power of the authority

³¹ See, in particular, Document No 1315891, p.4 and Document No 1495240, p.2.

³² Article 1(2)(f) of the Directive.

³³ Judgment of the CJEU of 8 May 2025, *Provincie Oost-Vlaanderen and Sogent*, C-236/24, EU:C:2025:321, paragraph 33.

³⁴ In accordance with Article 4(2) of the Directive, it is the role of the NPA to decide whether a project should be subject to an environmental impact assessment according to Article 6(2) and Article 20 of the Icelandic 2021 EIA Act. See footnote 16 above.

³⁵ Articles 8(a)(b) and 8(a)(4) of the EIA Directive, require that any environmental conditions, envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment by a project as well as, where appropriate, monitoring measures, are attached to a decision granting developing consent and be implemented by the developer in a binding manner. According to Article 24(1) of the 2021 EIA Act, the reasoned conclusion of the NPA on the environmental assessment of a project and is to include, as appropriate, the conditions for countermeasures and monitoring addressed to the developer. Such conditions are then to be included in the decision to grant development consent according to Article 27(3) of the 2021 EIA Act.

³⁶ As reflected in Article 3(1), point 5, of the EIA Act, development consent (*leyfi til framkvæmda*) is granted by different public authorities depending on the project. These include the municipal council under the Planning Act, building officers (*byggingafulltrúar*) and the Housing and Construction Authority projects at sea outside municipal boundaries, as well as for defence and security areas under the Structural Works Act No. 160/2010. All authorities responsible for granting development consent must objectively perform the duties arising from the EIA Directive for projects falling within its scope, given their potential environmental impact. However, in light of the Icelandic Government's response to the Authority's questions, and considering the central role of municipal councils in granting development consent (*framkvæmdaleyfi*) for major environmentally significant projects falling under the EIA Act, for which the Authority is aware of situations where municipalities are also simultaneously the developer, the analysis that follows focuses primarily on municipal councils.

³⁷ See also Article 2(1) of the Planning Regulation.

granting development consent, often the municipal council. Its discretion may be somewhat limited or exercised to a limited extent depending on the organisation of procedures in each municipality, but the decision-making power still often rests with the municipal council.

This is further confirmed by the preparatory works to Article 14 of the Planning Act. There, it is stated that “[a]s [the reasoned opinion by the Planning Agency] is the opinion of the Planning Agency on which the municipal council must take a position, it does not bind the hands of the authority responsible for granting the development consent.”³⁸ By virtue of Icelandic law, the Planning Agency’s reasoned opinion is thus not binding on the authority granting development consent.³⁹

The Authority therefore understands the requirement for the authority granting development consent to use the Planning Agency’s reasoned opinion “as a basis” as the transposition measure of Articles 8 and 8a of the EIA Directive.⁴⁰ In accordance with those provisions of the Directive, the competent authority granting development consent must *take into consideration* the results of the consultations and the information gathered pursuant to Articles 5 to 7 of the Directive, and must *incorporate* any reasoned conclusion by the competent environmental authority on the environmental impact of a project, into its decision to grant, modify or refuse development consent. In its correspondence with the Authority, the Icelandic Government itself makes the link between Article 8a(1)(a) of the EIA Directive on the one hand and Article 14 of the Planning Act and Article 27 of the Icelandic EIA Act on the other.⁴¹

The Planning Agency and authorities granting development consent, generally municipal councils, therefore perform distinct duties under the EIA Directive: the Planning Agency assesses the environmental impact, and the municipal council grants or denies development consent.

However, pursuant to Article 9a, first paragraph, of the EIA Directive, objectivity must be ensured in respect of *all* competent authorities performing one or more duties arising from the Directive. This has been explicitly confirmed by the CJEU in *Provincie Oost-Vlaanderen and Sogent* where the court stated that “*the effectiveness of Article 9a of the Directive would be undermined if the objectivity of the competent authorities and the absence of conflicts of interest were not guaranteed at all stages of the performance of the duties entrusted to those authorities by that directive.*”⁴²

The issue is precisely that authorities granting development consent, in particular the municipal councils, can in practice be developers of projects.⁴³

When the duty to grant or refuse development consent rests with the municipality, or another competent authority, that duty must therefore, in line with Article 9a of the EIA

³⁸ Informal translation by the Authority. Preparatory works available online at <https://www.althingi.is/altext/138/s/0742.html>.

³⁹ See e.g. the Icelandic Government’s reply of dated 23 September 2022 (Doc No 1315891), p. 4-5 and 7, to the Authority’s request for information letter of 5 May 2022 (Doc No 1274133).

⁴⁰ See e.g. the comments to Article 27 in the preparatory work to the EIA Act. The comments state that: “*the final step in the environmental assessment process, cf. Article 1, Paragraph 2, Point g of the EIA Directive, is that a reasoned conclusion on the environmental impact is used as the basis for the decision to grant a permit.*” Available at: <https://www.althingi.is/altext/151/s/1191.html>. This final step is reflected in Article 8 and 8a of the EIA Directive.

⁴¹ See the reply from the Icelandic Government of 1 November 2024 to the Authority’s pre-Article 31 Letter, p. 2 (Doc No 1495240).

⁴² Judgment of the CJEU of 8 May 2025, *Provincie Oost-Vlaanderen and Sogent*, C-236/24, EU:C:2025:321, paragraph 33. Emphasis added.

⁴³ See, e.g. Decision No 110/2023 (Landmannalaugar) of the Environmental and Natural Resources Board of Appeal (úrskurðarnefnd umhverfis- og auðlindamála) and the Icelandic Government’s reply of dated 8 November 2023 (Doc No 1418828), p. 2-3, to the Authority’s request for information letter of 5 May 2022 (Doc No 1274133).

Directive, also be performed objectively and impartially. If the municipality is both the developer and the authority granting development consent, the functional separation requirement of Article 9a, second paragraph, of the EIA Directive applies. This duty applies irrespective of whether other authorities, such as the Icelandic Environment and Energy Agency, are involved in granting other licences required for projects subject to EIA Directive requirements, in addition to the authority granting development consent.⁴⁴ Such separate procedures do not affect the obligations of those finally granting development consent to perform their duties under the EIA Directive objectively.

Second, the Icelandic Government asserts that existing laws, such as Article 20 of the Icelandic Local Authorities Act and Article 3 of the Icelandic Administrative Procedures Act, require individuals to act impartially.⁴⁵ By virtue of these rules, municipal employees and committee members facing conflicts of interest or lacking impartiality are generally disqualified from participating in decision-making.

The Authority notes that those rules of competence apply to *individuals* on account of their personal situation or personal relationships.⁴⁶ These rules do not specifically address the situation when the *authority itself* (as opposed to the individuals working for it) has conflicting functions, such as granting development consent to itself as the developer of a project. As all municipal employees and committee members work towards the same interests of the municipality, replacing individuals that have worked on the project by other individuals when granting development consent will not resolve the institutional conflict of interest.

There are no clear statutory provisions in Icelandic law on the institutional competence of national authorities (as opposed to the individuals working for them). Iceland has not submitted that such rules generally apply in Iceland on the basis of unwritten principles of administrative law, nor has the Authority identified any sources or documents suggesting that they do.⁴⁷ Therefore, the rules referred to by Iceland in its reply to the Authority's pre-Article 31 letter do not suffice to ensure an appropriate separation between conflicting functions of those authorities performing the duties arising from the EIA Directive.

Third, Iceland referred to the fact that the final decision on development consent is subject to judicial or administrative review under Article 30 of the EIA Act.⁴⁸

However, the Authority fails to see how this affects the objectivity of the competent authority granting development consent, such as a municipal council, when taking that decision, or its potential conflicts of interest. Article 9a, second paragraph, clearly requires the competent authority which grants development consent to have guarantees of its objectivity, and not merely the appellate bodies to whom that decision may be appealed.

Moreover, even if the decision to grant development consent is subject to judicial or administrative review, the risk is that complainants would be unable to effectively challenge the partiality of the municipal council based on an institutional conflict of interest. In the absence of a clear rule of national law transposing Article 9a of the EIA Directive and

⁴⁴ See e.g. Article 6 of the Hygiene and Pollution Control Act No 7/1998 (*Lög nr. 7/1998 um hollustuhætti og mengunarvarnir*) for polluting industries and and Article 4 of the Electricity Act No. 65/2003 (*Raforkulög nr. 65/2003*) for permission to construct and operate a power plants.

⁴⁵ See Iceland's reply of 1 November 2024 to the Authority's pre-Article 31 Letter, Document No 1495240, p.2.

⁴⁶ See Chapters 5.3 and 5.4 above.

⁴⁷ See Opinion of the Icelandic Parliamentary Ombudsman in case No 9629/2018: <https://www.umbodsmadur.is/alit-og-bref/mal/nr/8532/skoda/mal/>. See also: Decision No 110/2023 (Landmannalaugar) of the Environmental and Natural Resources Board of Appeal (úrskurðarnefnd umhverfis- og auðlindamála).

⁴⁸ See the reply from the Icelandic Government of 1 November 2024 to the Authority's pre-Article 31 Letter, Document No 1495240.

guaranteeing the independence of the competent authority, the obligation following from that provision does not create a grounds for appeal under national law and thus risks being unenforceable.

Whereas it is up to the Icelandic Government to remedy the identified breach of Article 9a, second paragraph, of the EIA Directive, the Authority notes that, by virtue of Article 42 of the Icelandic Local Authorities Act municipal councils have the *possibility* to delegate the power to grant development consent to the municipality's planning committee set up under Article 6 of the Icelandic Planning Act and Article 2.3. of the Icelandic Planning Regulation. Provided such a committee has "*real autonomy, meaning, in particular, that it is provided with administrative and human resources of its own and is thus in a position to perform its duty objectively*"⁴⁹, delegating the power to grant development consent to those committees could allow for the functional separation required by Article 9a, second paragraph, of the EIA Directive. However, it suffices to note that that delegation is currently merely a *possibility* provided by national law, and that there is no obligation to use that delegation whenever the municipal council finds itself in a situation of conflict of interest.⁵⁰ Moreover, as the planning committees are subordinate authorities with limited institutional autonomy, the Authority harbours doubts as to whether they could, under current conditions, fulfil the requirements of Article 9a, second paragraph, as clarified by the CJEU in its judgment in *Provincie Oost-Vlaanderen and Sogent*.⁵¹

In light of the above, the Authority has not been able to determine from its review of applicable national legislation in what other sufficiently clear and precise manner the provision has been transposed into Icelandic law. On the basis of the information currently available to it, the Authority is therefore of the view that Article 9a, second paragraph, of the Directive has not been correctly implemented in Iceland.

7 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that by failing to adopt the measures necessary to implement Article 9a, second paragraph, of Directive 2011/92/EU, Iceland has failed to fulfil its obligations under Directive 2011/92/EU, as amended by Directive 2014/52/EU, and under Article 7 EEA.

In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority requests that the Icelandic Government submits its observations on the content of this letter *within two months* of its receipt.

After the time limit has expired, the Authority will consider, in the light of any observations received from the Icelandic Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority

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College Member

⁴⁹ Judgment of the CJEU of 8 May 2025, *Provincie Oost-Vlaanderen and Sogent*, C-236/24, EU:C:2025:321, paragraph 38.

⁵⁰ See, to that effect, the reply from the Icelandic Government of 23 September 2025 to the Authority's Follow-Up Letter to the package meeting in Iceland on 6-8 May, Document No 1563984.

⁵¹ Judgment of the CJEU of 8 May 2025, *Provincie Oost-Vlaanderen and Sogent*, C-236/24, EU:C:2025:321.

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