

Case No: 78781  
Document No: 1316089  
Decision No: 092/23/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

of 5 July 2023

closing an own initiative case arising from an alleged failure by Iceland to fulfil its obligation under Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector

### THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

#### 1 Introduction

The European Maritime Safety Agency (“EMSA”) visited Iceland from 30 May to 1 June 2016, on behalf of the EFTA Surveillance Authority (“the Authority”) to establish the level of compliance by Iceland with the requirements of Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 *establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC*<sup>1</sup> (“the Directive”).

Following completion of the visit, EMSA produced a report (“the 2016 EMSA report”) on its findings dated 28 July 2016 (Docs No 814044 - 814046, and 814048 – 814055, EMSA Ref. 2016.INSP.AI.02.10.01.06). EMSA shared the 2016 EMSA Report with Iceland, and with the Authority. EMSA’s findings were divided into “Shortcomings” (a total number of twelve were found) and “Observations” (a total number of seven were made), concluding on various issues regarding the implementation of the Directive.

The Authority had previously opened a case to assess the conformity of Iceland’s implementation of the Directive (Case No 73426), and had in 2014 and 2015 discussed with the Icelandic Government several issues that the Authority had identified concerning the transposition and application of the Directive. In the light of EMSA’s 2016 Report, and as similar issues remained open in the conformity assessment case, the Authority decided in March 2017 to close Case No 73426, transferring the remaining issues to Case No 78781.

Case 78781 resulted in the opening of infringement proceedings against Iceland concerning the independence of the Safety Investigation Authority – Iceland (“SIA-Iceland”), and the follow-up to SIA-Iceland’s safety recommendations.

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<sup>1</sup> OJ L 131, p. 42. Act referred to at point 55c of Annex XIII to the EEA Agreement. As incorporated into the EEA Agreement by Joint Committee Decision No 062/2012, which entered into force on 1 May 2012.

The Authority concluded in its letter of formal notice dated 4 May 2021 (Doc No 1171782) that Iceland failed to adopt the measures necessary to implement correctly Article 8(1) and Article 15(1) of the Directive and Point 7 of the Annex to Commission Regulation (EU) No 1286/2011<sup>2</sup> (“the Common Methodology”), by failing to; (i) take adequate steps to prevent potential conflict of interest by the members of SIA-Iceland, and (ii) put in place a system to ensure that safety recommendations are followed up in a way that meets the requirements of the Directive and the Common Methodology.

## 2 Correspondence

On 30 August 2016 (Doc No 815497), the Authority requested the Icelandic Government to provide information, and where applicable a follow-up action plan, on the remaining issues from the conformity assessment and the findings identified in EMSA’s 2016 Report.

By email of 28 October 2016 (Doc No 824145), the Authority sent a reminder to Iceland. On the same day (Doc No 829753), the Icelandic Government informed the Authority of some delays and that a reply would be sent shortly. However, the Authority did not receive any further information from Iceland ahead of the 2017 package meeting.

The case was discussed at the package meeting on 8 June 2017 in Iceland (Doc No 861615).

By letter dated 3 August 2017 (Doc No 869302 / Your Ref: SRN17050077/30.18.2), the Icelandic Government shared with the Authority the adopted Regulation No 616/2017 on the investigation and prevention of maritime casualties and maritime accidents.<sup>3</sup>

On 21 February 2018, the Authority requested an update from the Icelandic Government on the five remaining shortcomings in the case (Doc No 898042).

By email of 4 April 2018 (Doc No 910792), the Icelandic Government informed the Authority of delays in replying to the Authority’s request for information. Iceland replied to the Authority’s request on 28 May 2018, providing clarifications on the remaining shortcomings identified in EMSA’s report (Doc No 915707 / SRN17050077/30.18.2).

The case was discussed at the package meeting held in Iceland on 6 June 2018 (Doc No 918168). After the 2018 package meeting, the Authority did not receive any information from Iceland. Indeed, no further communication was received before the case was discussed at the 2019 package meeting on 4 June 2019 (Document No 1076000).

By letter dated 29 January 2020 (Doc No 1111009 / SRN19070020/2.22), the Icelandic Government provided information clarifying points that had been raised at the 2019 package meeting. The Icelandic Government explained that it had not established written procedures on the possible conflict of interest of the members of the SIA-Iceland, which was not in line with the assurances the Authority had received in the 2018 package meeting.

Moreover, in the same letter, the Icelandic Government described the process of follow-up to the SIA-Iceland safety recommendations. In this regard, it stated that that safety “recommendations [from SIA-Iceland] that are not reacted to [by the addressees] are kept

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<sup>2</sup> Commission Regulation (EU) of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents developed pursuant to Article 5(4) of Directive 2009/18/EC of the European Parliament and of the Council, OJ L 328, p. 36. Act referred to in point 55cb of Annex XIII to the EEA Agreement. As incorporated into the EEA Agreement by Joint Committee Decision No 199/2012, which entered into force on 1 November 2012.

<sup>3</sup> Reglugerð nr. 616/2017 um rannsóknir og forvarnir gegn sjóslysum og sjóatvikum.

open”, and that “SIA-Iceland does not have powers to force other governmental bodies to make corrections”.

Based on the information provided by Iceland, by letter of 18 June 2020 (Doc No 1139011) the Authority requested technical assistance from EMSA to review the two remaining issues in the case, i.e. potential conflict of interest in members of the SIA-Iceland and the follow-up of SIA-Iceland safety recommendations. On 29 September 2020, EMSA provided the Authority with its assessment (Doc No 1155245) of the two remaining issues, analysing Iceland’s reply with reference also to the implementation of the Directive across the EEA. EMSA’s technical opinion was that Iceland was not fully implementing the Directive based on the information the Icelandic Government had provided up to that point.

On 4 May 2021 (Doc No 1171782) the Authority sent a letter of formal notice, concluding Iceland’s failure to adopt the measures necessary to implement correctly Article 8(1) and Article 15(1) of the Directive and Point 7 of the Common Methodology, (i) by failing to take adequate steps to prevent potential conflict of interest among the members of ISTB, and (ii) by failing to put in place a system to ensure that safety recommendations are followed up in a way that meets the requirements of the Directive and the Common Methodology.

The case was discussed at the package meeting in Iceland on 1 June 2021 (Doc No 1204495).

The Icelandic Government replied to the letter of formal notice 12 August 2021 (Doc No 1221111 / SRN19070020/2.22). In its letter, the Icelandic Government explained the relevant legislation on potential conflict of interest for members/employees of administrative authorities,<sup>4</sup> including SIA-Iceland. The Icelandic Government stated that SIA-Iceland’s practice is in line with the Icelandic legislation and that SIA-Iceland intends to update its written procedures (‘SIA-Iceland’s handbook’)<sup>5</sup> to reflect more explicitly the requirements of the legislation. Iceland also noted that the adoption of written procedures would not affect the applicability of the relevant legal provisions that already cover conflict of interest.

In regards to issue of the follow-up of safety recommendations, the Icelandic Government committed to amend Regulation 616/2017 to ensure that SIA-Iceland receives acknowledgement of the reception of a safety recommendation and that there is a follow-up when there is no response from the addressee. The Icelandic Government informed the Authority that it planned on amending the rules applying to the follow-up of recommendations in line with the Common Principles. Finally, the Icelandic Government noted in its letter that it planned on assessing possible amendments to ensure that the Ministry is tasked with following up in notifications that are received by the board.

Through informal correspondence, the Icelandic Government kept the Authority informed on its work to address the outstanding issues of the case, in particular the amendments to the implementing Regulation and the progress of updating SIA-Iceland’s handbook.<sup>6</sup>

On 29 April 2022 (Doc No 1285790), the Icelandic Government provided the Authority with a comprehensive update on the second issue in the case, namely the follow-up of safety recommendations.

As regards the issue of the practice on potential conflicts of interest, the Authority requested the Icelandic Government in 2022-2023<sup>7</sup> to provide the updated SIA-Iceland’s

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<sup>4</sup> The Icelandic Administrative Procedure Act No 37/1993, in particular Articles 3-5 thereof.

<sup>5</sup> *Rannsóknarnefnd samgönguslysa Verklagshandbók 3.7* (confidential).

<sup>6</sup> Doc Nos 1256809, 1268688, 1272408, 1283686, 1287155,

handbook including rules on conflict of interest, as promised in the reply to the letter of formal notice (Doc No 1221111). On 30 May 2023, the Icelandic Government shared the handbook, in its up to date form as a confidential document (Doc No 1376037).

### 3 Assessment

Out of the twelve shortcomings identified by EMSA in its Report of 2016, two remained unresolved by Iceland for more than five years, which led to the opening of infringement proceedings in May 2021. The two issues concerned the procedures on conflict of interest for members of the SIA-Iceland when investigating an accident case, and the follow-up to the recommendations of SIA-Iceland following an accident.

In its letter of formal notice of 4 May 2021,<sup>8</sup> the Authority concluded that Iceland had not taken adequate steps to prevent potential conflicts of interest among the members of the SIA-Iceland within the meaning of Article 8(1) of the Directive.

In its reply to the letter of formal notice,<sup>9</sup> the Icelandic Government provided clarifications regarding its legislation on potential conflicts of interest for accident investigation body members, as administrative bodies. It further stated that SIA-Iceland's procedures and administrative practice should comply with the Icelandic legislation. The reply to the letter of formal notice noted that the Icelandic Government had provided an incorrect interpretation of the law in Iceland in its letter dated 29 January 2020<sup>10</sup> stating that a member of SIA-Iceland participating in the investigation of an accident case could recuse themselves in case of conflict of interest, which the member would evaluate themselves.

More specifically, Article 7 of Act No. 18/2013 on the Investigation of Transport Accidents and Article 8 of Regulation No 616/2017 on the Investigation and Prevention of Accidents and Incidents in the Maritime Sector both refer to the Administrative Procedure Act No 37/1993. Article 3 of the Administrative Procedure Act establishes the grounds for disqualification of an official or a member of the board of a public authority, like SIA-Iceland, which include personal interest in the case in the form of family or other professional links with the parties concerned, earlier involvement in the case, other reasons for impartiality etc. Article 4 of the Administrative Procedure Act stipulates that a disqualified member of the board of a public authority may not take part in the preparation or the subsequent conduct and conclusion of the relevant case. Article 5 of the Administrative Procedure Act lays down the procedure through which the disqualification of a member of the board is to be decided upon. These provisions apply to SIA-Iceland and define how it should address such circumstances.

Section 2.3 of SIA-Iceland's handbook refers to the above mentioned legal provisions, and sets out the procedural steps for SIA Iceland to identify conflict of interest and exclude the relevant person from a case.

Having assessed the provisions the Icelandic Government brought to the Authority's attention in its reply to the letter of formal notice, and the content of the SIA-handbook acquired recently, the Authority can therefore conclude that the existing Icelandic legislation and administrative practice on conflict of interest satisfy the requirements of Article 8(1) of the Directive.

As regards the follow-up to the safety recommendations, the Authority had identified three issues with the follow-up of safety recommendations in Iceland. Namely, (1) follow-

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<sup>7</sup> Email of 2 May 2022 (Doc No 1287154), Email of 15 June 2022 (Doc No 1309005), Email of 10 August 2022 (Doc No 1309006), and Email of 22 May 2023 (Doc No 1374204).

<sup>8</sup> Doc No 1171782.

<sup>9</sup> Doc No 1221111.

<sup>10</sup> Doc No 1111009.

up is not ensured in all cases, (2) in cases where the safety recommendations are not followed by the addressee, no further action is taken by SIA-Iceland other than keeping the case open, and (3) once SIA-Iceland notifies the Ministry of its safety recommendations to which there is no follow-up, the Ministry does not take any action.

In its reply to the letter of formal notice, Iceland agreed with the Authority's interpretation of the rules both in EEA and in Icelandic law, and noted that Regulation No 616/2017 and the Handbook of SIA-Iceland would be amended to resolve all three of the above-mentioned issues. The Authority has received confirmation of both amendments.<sup>11</sup>

The Authority has assessed these amendments and concludes that these have remedied the failure to implement Article 15(1) of the Directive, in conjunction with the Common Methodology, in Iceland.

In light of the information and evidence provided by Iceland, it appears that the current legal framework and the corresponding administrative practice in Iceland now comply with the requirements laid down in the Directive. Should any relevant developments occur, the Authority may decide to revert to the matter.

There are, therefore, no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

The own-initiative case arising from an alleged failure by Iceland to comply with Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector is hereby closed.

For the EFTA Surveillance Authority

Arne Røksund  
President

Stefan Barriga  
College Member

Árni Páll Árnason  
Responsible College Member

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

*This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.*

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<sup>11</sup> Doc Nos 1285790, 1285792, 1285794 and 1289379.