

Brussels, 15 December 2021
Case No: 84705
Document No: 1251617
Decision No: 279/21/COL

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 breach of minimum safety requirements for tunnels in the Trans-
European Road Network**

1 Introduction

In the present reasoned opinion, the EFTA Surveillance Authority (“the Authority”) takes the view that Iceland has failed to fulfil its obligations under Articles 3(1), 9, and 11 of the Directive referred to at point 17i, Chapter II of Annex XIII of the EEA Agreement, *Directive 2004/54/EC of the European Parliament and of the Council of 29 April 2004 on minimum safety requirements for tunnels in the Trans-European Road Network*, OJ L 167, 30.4.2004, p. 39 (“the Directive”). The Directive was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 10/2006, which entered into force on 1 December 2006.

The Directive sets out minimum safety measures relating to the infrastructure and operation of tunnels with lengths of over 500m in the Trans-European Road Network (TERN). All tunnels are to be subject to the requirements regardless of whether the tunnels are in operation, under construction or at the design stage.

According to Article 3(1) of the Directive, the EU Member States and EEA EFTA States shall ensure that tunnels in their territory falling within the scope of the Directive meet the minimum safety requirements laid down in Annex I to the Directive. The Directive sets out a deadline of 30 April 2014¹ for implementation of the minimum safety requirements in tunnels that were in operation at the time the Directive entered into force. Additionally, the Directive requires that new tunnels that are opened to public traffic should meet the minimum safety requirements.

The Icelandic Government concedes that the requirements of Article 3(1) of the Directive have not been met for three tunnels in the TERN.

2 Correspondence

In a letter to the Icelandic Government, dated 24 January 2020, the Authority requested information concerning Minimum safety requirements for tunnels in the TERN in Iceland.² Noting that the Icelandic Government, to date, had not submitted any reports to the Authority pursuant to the reporting obligation under the Directive, the Icelandic Government was invited to provide information as to whether there are tunnels in Iceland that fall under the scope of the Directive. If confirmed, the Icelandic Government was invited to provide a detailed overview of these tunnels, key data for each tunnel and status on compliance with the Directive, including a time schedule for upgrading works for tunnels that do not comply with the Directive.

In its reply to the Authority, dated 2 March 2020, the Icelandic Government confirmed that there are four tunnels in the TERN in Iceland, of which one complied with the Directive.³ Additionally, the Icelandic Government provided a report on accidents in TERN tunnels in the past two years.

On 27 May 2020, as part of the Authority’s annual package meeting with Iceland, the Icelandic Government provided further information on the state of implementation of the Directive.

Based on all the information received and pursuant to Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority addressed a letter of formal notice to Iceland on 8 July 2020,⁴

¹ Article 11(6) of the Directive. The Icelandic Government has not indicated that the total tube length of TERN tunnels divided by the total length of the part of TERN located in Iceland exceeds the European average, which would consequently allow for an extension of the deadline for implementation until 30 April 2019, in accordance with Article 11(7).

² Doc. No 1109522.

³ Doc. No 1118017, your ref. SRN200010111/2.21.24.

⁴ College Decision 071/20/COL, Doc. No 1126452.

concluding that Iceland had failed to fulfil its obligations under Article 3(1), Article 9 and Article 11 of the Directive as regards minimum safety requirements in three tunnels falling under the scope of the Directive. In the same letter, with reference to Article 15(1) and (2) of the Directive, the Authority also drew the conclusion that Iceland has failed to submit I) reports on fires and accidents in TERN tunnels and II) information on the plans for refurbishment of tunnels falling within the scope of Article 11, every second year after the Directive was incorporated into the EEA Agreement. Additionally, the Authority invited the Icelandic Government to provide information on how the responsibilities and tasks of the Administrative Authority, as described in Article 4 of the Directive, are carried out.

On 28 October 2020, the Icelandic Government replied and provided updated information on the state of compliance, confirming that three tunnels do not meet the minimum safety requirements. The Icelandic Government also informed the Authority that the Icelandic Transport Authority (“ICETRA”) monitors compliance with the provisions on tunnel safety. However, ICETRA has not carried the full responsibilities and tasks of an ‘Administrative Authority’, as described in Article 4 of the Directive. Instead, that role has since 2015 been shared with the Icelandic Road and Coastal Administration, which operates three of the four tunnels in the TERN in Iceland. In order to grant the ICETRA the full responsibility and powers as an Administrative Authority, the Icelandic Government informed the Authority that amendments to Icelandic Regulation No 992/2007 were in preparation and expected to enter into force before end of 2020. Lastly, regarding the reporting obligations set out in the Directive, the Icelandic Government submitted a report on fires and accidents in TERN tunnels for the period from 1 December 2006 and to date, and furthermore, confirmed that ICETRA will submit future biannual reports to the Authority.⁵

In a letter dated 17 February 2021, the Authority invited the Icelandic Government to provide an update on the state of implementation of planned measures concerning the three tunnels that are not in compliance with the Directive, and to report on the status for the planned amendments to Icelandic Regulation No 992/2007.⁶

In its reply, dated 2 March 2021⁷, the Icelandic Government informed the Authority of the latest actions that had been taken by ICETRA concerning the refurbishment of the non-compliant tunnels. Regarding the work on amending Icelandic Regulation No 992/2007, it further explained that this task was still ongoing and anticipated to be completed within weeks.

Following the reply from the Icelandic Government, an exchange of correspondence between the Authority and Icelandic authorities took place, in which it was indicated that the non-compliant tunnels would be in compliance with the Directive by Summer 2022.⁸

On 1 June 2021, as part of the Authority’s annual package meeting with Iceland, Icelandic authorities provided information on the measures which had been taken to remedy certain issues concerning the three tunnels that are not in compliance with the Directive. In particular, the Icelandic authorities shared information about a risk analysis concerning emergency exits carried out in connection to one of the tunnels. Moreover, the Icelandic representatives confirmed that one tunnel would be in compliance with the Directive by the end of 2021. For the remaining two tunnels, ICETRA informed the Authority that it was assessing an action plan submitted by the tunnel operator that indicated full compliance with the Directive by 2024.

Following the package meeting, the Icelandic authorities submitted to the Authority the risk analysis described above.⁹

⁵ Doc. No 1160350, your ref. SRN20010111/2.21.24.

⁶ Doc. No 1181439.

⁷ Doc. No 1185517, your ref. SRN20010111/2.21.24.

⁸ Doc. No 1190033 (23 March 2021), Doc. No 1190175 (23 March 2021), Doc. No 1190176 (23 March 2021), Doc. No 1190285 (24 March 2021), Doc. No 1190375 (24 March 2021) and Doc. No 1193297 (7 April 2021).

⁹ Doc. No 1204651.

3 Relevant EEA law

The Directive, as adapted by the EEA Agreement, sets out a number of obligations on the EU Member States and the EEA EFTA States.

Article 3 paragraph 1 reads as follows:

“1. Member States [and EEA EFTA States] shall ensure that tunnels in their territory falling within the scope of this Directive meet the minimum safety requirements laid down in Annex I.”

Article 9, relating to tunnels whose design was not approved at the time of incorporation of the Directive into the EEA Agreement, reads as follows:

“1. Any tunnel whose design has not been approved by the responsible authority by 1 May 2006 [or as regards the EEA EFTA States, before 1 December 2006] shall be subject to the requirements of this Directive.

2. The tunnel shall be commissioned in accordance with the procedure laid down in Annex II.”

Article 11, relating to tunnels that were already in operation at the time of incorporation of the Directive into the EEA Agreement, reads as follows:

“[...]

6. The refurbishment of tunnels shall be carried out according to a schedule and shall be finished by 30 April 2014.

7. Where the total tube length of existing tunnels divided by the total length of the part of the trans-European road network located on their territory exceeds the European average, Member States [and EEA EFTA States] may extend the period stipulated in paragraph 6 by five years.”

Article 15, concerning the States obligation to submit reports, reads as follows:

“1. Every two years, Member States [and EEA EFTA States] shall compile reports on fires in tunnels and on accidents which clearly affect the safety of road users in tunnels, and on the frequency and causes of such incidents, and shall evaluate them and provide information on the actual role and effectiveness of safety facilities and measures. These reports shall be transmitted to the Commission [the Authority] by the Member States [EEA EFTA States] before the end of September of the year following the reporting period. The Commission [the Authority] shall make the reports available to all Member States [EEA EFTA States].

2. Member States [and EEA EFTA States] shall make a plan which includes a timetable for the gradual application of the provisions of this Directive to tunnels already in operation as described in Article 11 and notify it by 30 October 2006 [or as regards the EEA EFTA States, by 1 December 2006] to the Commission [the Authority]. Thereafter, Member States [EEA EFTA States] shall inform the Commission [the Authority] every two years of the state of implementation of the plan and of any changes made to it, until the end of the period referred to in Article 11(6) and (7).”

Points 2.3.3. to 2.3.8. of Annex I to the Directive, concerning escape routes and emergency exits, reads as follows:

“2.3.3. Emergency exits allow tunnel users to leave the tunnel without their vehicles and reach a safe place in the event of an accident or a fire and also provide access on foot to the tunnel for emergency services. Examples of such emergency exits are:

— direct exits from the tunnel to the outside,

- cross-connections between tunnel tubes,
- exits to an emergency gallery,
- shelters with an escape route separate from the tunnel tube.

2.3.4. Shelters without an exit leading to escape routes to the open shall not be built.

2.3.5. Emergency exits shall be provided if an analysis of relevant risks, including how far and how quickly smoke travels under local conditions, shows that the ventilation and other safety provisions are insufficient to ensure the safety of road users.

2.3.6. In any event, in new tunnels, emergency exits shall be provided where the traffic volume is higher than 2 000 vehicles per lane.

2.3.7. In existing tunnels longer than 1 000 metres, with a traffic volume higher than 2 000 vehicles per lane, the feasibility and effectiveness of the implementation of new emergency exits shall be evaluated.

2.3.8. Where emergency exits are provided, the distance between two emergency exits shall not exceed 500 metres.”

Point 2.8.3. of Annex I to the Directive, concerning lighting requirements, reads as follows:

“2.8.3. Evacuation lighting, such as evacuation marker lights, at a height of no more than 1,5 metres, shall be provided to guide tunnel users to evacuate the tunnel on foot, in the event of emergency.”

Point 2.10.3. of Annex I to the Directive, concerning requirements on emergency stations, reads as follows:

“2.10.3. Emergency stations shall be provided near the portals and inside at intervals which for new tunnels shall not exceed 150 metres and which in existing tunnels shall not exceed 250 metres.”

Point 2.11. of Annex I to the Directive, concerning water supply, reads as follows:

“2.11. Water supply

A water supply shall be provided for all tunnels. Hydrants shall be provided near the portals and inside at intervals which shall not exceed 250 metres. If a water supply is not available, it is mandatory to verify that sufficient water is provided otherwise.”

4 The Authority’s Assessment

The Authority notes that the Directive imposes a strict obligation of result on the EEA EFTA States to implement minimum safety measures in all tunnels falling under the scope of the Directive.

4.1 Information provided by Iceland

According to information provided in its letters dated 28 October 2020 and 2 March 2021, and the subsequent clarifications provided in exchanges with the Authority, the Icelandic Government has to date informed the Authority of the following:

- Four tunnels fall within the scope of the Directive, of which one fully conforms to all requirements set out in the Directive.
- Three tunnels do not fully conform to all requirements set out in the Directive. Of these, Vaðlaheiði tunnel falls under the scope of Article 9 of the Directive, and

Almannaskarð tunnel and Fáskrúðsfjörður tunnel fall under the scope of Article 11 of the Directive.

4.2 *Issues identified in the Authority's letter of formal notice*

Based on the information provided by the Icelandic Government at that time, the Authority identified, in its letter of formal notice of 8 July 2020, the following shortcomings in relation to the three non-compliant tunnels:

- Intervals between emergency stations in Almannaskarð tunnel and Vaðlaheiði tunnel, of 340 meters and 250 meters respectively, constituted a breach of point 2.10.3. of Annex I to the Directive.
- Water supply was not provided near the portals and inside the three tunnels, and no proof was provided indicating that verification has been carried out to ensure that sufficient water is provided otherwise, as required in point 2.11. of Annex I to the Directive.
- Evacuation lighting was not installed in Fáskrúðsfjörður tunnel and Almannaskarð tunnel, in accordance with point 2.8.3. of Annex I to the Directive.
- Safety shelters were provided in Vaðlaheiði tunnel, despite this not being allowed pursuant to point 2.3.4. of Annex I to the Directive. Moreover, no evidence was provided to demonstrate that emergency exits are not required in that tunnel, cf. point 2.3.5. of Annex I to the Directive.

4.3 *The Authority's assessment concerning intervals between emergency stations in Almannaskarð tunnel and Vaðlaheiði tunnel*

As set out in point 2.10.3. of Annex I to the Directive, tunnels in operation from 1 December 2006 are required to have emergency stations at intervals of maximum 150 meters. For tunnels already in operation before 1 December 2006, the interval shall not exceed 250 meters.

The intervals between the emergency stations in Almannaskarð tunnel and Vaðlaheiði tunnel, of 340 meters and 250 meters respectively, constitute a breach of point 2.10.3. of Annex I to the Directive, as intervals for Almannaskarð tunnel shall not exceed 250 meters and for Vaðlaheiði tunnel shall not exceed 150 meters.

The Icelandic Government has in its exchanges with the Authority indicated that emergency stations in Vaðlaheiði tunnel and Almannaskarð tunnel are expected to be implemented in accordance with the aforementioned requirement by end of 2021.¹⁰

The Authority notes that it has not yet received any confirmation from Icelandic authorities that this work has been completed, nor that the deadline is anticipated to be met for either of the two tunnels in question.

4.4 *The Authority's assessment concerning water supply in all three tunnels*

Water supply must be provided for all tunnels, in accordance with point 2.11. of Annex I to the Directive. Hydrants must be provided near the portals and inside the tunnels at intervals which shall not exceed 250 meters. If a water supply is not available, other means of providing water can be accepted if there is explicit verification that sufficient water is provided.

The Icelandic Government has in its exchanges with the Authority declared that it has reviewed and verified that there is sufficient water supply to Vaðlaheiði tunnel, Fáskrúðsfjörður tunnel and Almannaskarð tunnel.¹¹

¹⁰ As regards Vaðlaheiði tunnel, this was indicated in the package meeting in 2021, see Doc. No 1204495 p. 25. As regards Almannaskarð tunnel, see Doc. No 1185517, your ref. SRN20010111/2.21.24, p. 2.

Consequently, the Authority considers this requirement to have been met for all three tunnels in question.

4.5 *The Authority's assessment concerning evacuation lighting in Fáskrúðsfjörður tunnel and Almannaskarð tunnel*

Evacuation lighting at a height of no more than 1,5 meters must be provided to guide tunnel users to evacuate the tunnel on foot, in the event of emergency, in accordance with point 2.8.3. of Annex I to the Directive.

The Icelandic Government has in its exchanges with the Authority indicated that evacuation lighting in Fáskrúðsfjörður tunnel and Almannaskarð tunnel will be installed by 2024.¹²

As evacuation lighting is not currently provided in these two tunnels this constitutes a breach of point 2.8.3. of Annex I to the Directive.

4.6 *The Authority's assessment concerning safety shelters and emergency exits in Vaðlaheiði tunnel*

As regards equipment of shelters, point 2.3.4. of Annex I to the Directive sets out that shelters without exit leading to escape routes to the open shall not be built. The Icelandic Government has in its exchanges with the Authority declared that the safety shelters without exits leading to escape routes in the Vaðlaheiði tunnel are no longer in use as safety shelters.¹³

As regards emergency exits, point 2.3.6. of Annex I to the Directive, as amended by the EEA Agreement, sets out that emergency exits shall be provided in new tunnels where the traffic volume is higher than 2000 vehicles per lane.¹⁴ Considering that the traffic volume in the Vaðlaheiði tunnel currently is below 2000 vehicles per lane,¹⁵ this requirement does not apply.

Nevertheless, pursuant to point 2.3.5. of Annex I to the Directive, emergency exits shall be provided if an analysis of relevant risks, including how far and how quickly smoke travels under local conditions, shows that the ventilation and other safety provisions are insufficient to ensure the safety of road users.

The purpose of the emergency exits is to allow tunnel users to leave the tunnel without their vehicles and reach a safe place in the event of an accident or a fire and also provide access on foot to the tunnel for emergency services.¹⁶

The Icelandic Government has in its exchanges with the Authority declared that a risk analysis regarding the need for emergency exits has been assessed and accepted by ICETRA and subsequently emergency exits are not required in the Vaðlaheiði tunnel.¹⁷

¹¹ See Doc. No 1160350, your ref. SRN20010111/2.21.24, p. 2.

¹² The Icelandic Government first indicated completion in 2025, cf. Doc. No 1185517, your ref. SRN20010111/2.21.24, p. 2. Later, in the package meeting in 2021, it was indicated that steps had been taken to advance this work and that completion was anticipated by 2024, see Doc. No 1204495 p. 25.

¹³ See Doc. No 1185517, your ref. SRN20010111/2.21.24, p. 2.

¹⁴ An adaptation to the Directive, in point 17i of Annex XIII to the EEA Agreement, allows for an exception from this provision for tunnels shorter than 10 km and with traffic volume lower than 4 000 vehicles per lane if a risk analysis shows that the same or better overall safety can be obtained with alternative safety measures.

¹⁵ Statistics provided in the risk analysis (Doc. No 1204651) show that the annual average daily traffic in the tunnel was approximately 1 450 vehicles in 2016. These statistics take into account both seasonal variations in traffic and proportion of heavy goods vehicles. In 2035, the projected annual average daily traffic volume is expected at its highest to be around 1 630 vehicles on each lane, approximately 3 260 vehicles in total.

¹⁶ Point 2.3.3. of Annex I to the Directive.

¹⁷ See Doc. No 1185517, your ref. SRN20010111/2.21.24, p. 2.

Specifically, it has referred to a ventilation study¹⁸ and a subsequent risk analysis.¹⁹ The ventilation study sets out the adequate level of ventilation to ensure smoke extraction in the Vaðlaheiði tunnel, taking into account local conditions such as external and internal temperatures, wind and air resistance through the tunnel. The risk analysis covers the risks linked to the tunnel and risk reducing measures to ensure a sufficient level of safety for the road users.

The Authority recalls that no common methodology for risk analysis has been established under the Directive, and that it is for the EEA EFTA States to define a detailed and well-defined methodology for such analyses pursuant to Article 13(2) of the Directive. Nevertheless, the Directive sets out requirements on the content of such analyses. To this, the Authority notes that the analysis provided by Iceland takes into account elements such as design factors, traffic conditions, traffic characteristics and type, tunnel length and tunnel geometry as prescribed in Article 13 of the Directive. Moreover, the risk analysis and the ventilation study, overall takes into account the risk of how far and how quickly smoke travels under local conditions, as required by point 2.3.6. of Annex I to the Directive. Based on the evaluation of risks linked to the tunnel, and in particular with relation to accidents and fires, the risk analysis concludes that the level of safety for road users is sufficiently ensured by means of the ventilation system and other risk reduction measures.

The Authority takes note of the evidence provided by Icelandic authorities to demonstrate that safety of the road users is ensured in the Vaðlaheiði tunnel by means of safety measures other than emergency exits, and subsequently of the decision not to equip the tunnel with emergency exits, adopted in accordance with point 2.3.5. of Annex I to the Directive.

4.7 Conclusion

With reference to the issues described in sections 4.3 and 4.5 of this decision, the Authority takes the view that possibilities should be sought to advance the refurbishment works and to commit to a more ambitious time schedule. Moreover, temporary safety measures should be implemented, where possible, until corrective actions have been implemented.

Should alternative risk-reduction measures be accepted by Icelandic authorities and implemented on a permanent basis, the Authority expects these measures to be notified, either in accordance with Article 3(2) of the Directive or, insofar as it may concern for limited derogations within the meaning of point 1.2.1 of Annex I to the Directive, in accordance with that provision.

Considering the above, noting that three tunnels, of which one falls under the scope of Article 9 and two fall under the scope of Article 11 of the Directive, are currently not in compliance with the Directive, and observing that Iceland has failed to provide relevant and sufficient reasons which might preclude responsibility, the Authority concludes that Iceland has failed to fulfil its obligations under Article 3(1), Article 9 and Article 11 of the Directive.

In relation to the conclusion in the Authority's letter of formal notice concerning Iceland's failure to comply with the obligations under Article 15(1) and (2) of the Directive, the Icelandic Government has submitted to the Authority a report on fires and accidents in TERN tunnels for the period from 2006 and to date. Moreover, the Icelandic Government has shared with the Authority the state of implementation of the plan to ensure that all safety requirements are met for tunnels falling under the scope of Article 11. Subsequently, the Authority concludes, even though the past reports were not submitted

¹⁸ See attachment to Doc. No 1204651, 'Reyklosun VLHG' of 27 September 2020, conducted by Mannvit.

¹⁹ See attachment to Doc. No 1204651, 'Risk analysis VLHG' of April 2013, conducted by HOJ Consulting GmbH.

within the deadlines set out in the Directive, that Iceland's failure to fulfil obligations under Article 15 of the Directive is no longer a part of the present infringement case.

Lastly, in relation to the remarks in the Authority's letter of formal notice concerning the general application of the Directive and the responsibilities and tasks of the Administrative Authority, as described in Article 4 of the Directive, the Authority notes that the issues raised by the Icelandic Government concerning amendments to Icelandic Regulation No 992/2007 fall outside the scope of this reasoned opinion. This decision shall be without prejudice to assessments on and possible infringement procedures concerning Article 4 of the Directive.

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 ensure that:

- one tunnel falling within the scope of Article 9 of the Directive, and
- two tunnels falling within the scope of Article 11 of the Directive

comply with Directive 2004/54/EC on minimum safety requirements for tunnels in the Trans-European Road Network, Iceland has failed to fulfil its obligations under Articles 3(1), 9 and 11 of the Directive.

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 *three months* of its receipt.

Done at Brussels,

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Högni S. Kristjánsson
Responsible College Member

Stefan Barriga
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This document has been electronically authenticated by Bente Angell-Hansen, Melpo-Menie Josephides.