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Kigali 25. september 2016

Varðar: Frumvarp til laga um heimild til handa Landsneti hf. til að reisa og reka 220 kV raflínur frá Kröflustöð að Þeistareykjavirkjun og að iðnaðarsvæðinu á Bakka í Norðurþingi.

Lagt var fram á Alþingi á 145. löggjafarþingi 2015–2016, mál nr. 876, þingskjal 1696.

1 Inngangur

Frumvarp til laga um heimild til handa Landsneti hf. til að reisa og reka 220 kV raflínur frá Kröflustöð að Þeistareykjavirkjun og að iðnaðarsvæðinu á Bakka í Norðurþingi vekur upp margar spurningar. Frumvarpið beinist að einni sérstakri framkvæmd en mun þó hafa víðtæk áhrif á fjölda annarra mála og mun, ef verður að lögum, í þeim málum fella úr gildi lögbundinn rétt einstaklinga með lögvarða hagsmuni sem og umhverfisverndarsamtaka til að bera umhverfismat framkvæmda undir óháðan úrskurðaraðila. Frumvarpið, ef að lögum verður, mun því skerða rétt fjölda einstaklinga til réttmætrar málsmeðferðar.

Hér verður einunngis fjallað um þann þátt er snýr að lögum um umhverfismat framkvæmda nr. 106/2000 sem innleiða ákvæði evróputilskipunar um umhverfismat framkvæmda (Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment) í íslenskan rétt, samkvæmt EES samningnum. Íslandi er samkvæmt honum skylt að taka efni tilskipunarinnar upp í íslensk lög.

2 Lögvarinn réttur almennings

Ofangreind Evrópulöggjöf veitir almenningi víðtæk réttindi í tengslum við mat á umhverfisáhrifum með;

1. rétti til að koma að athugasemdum á hinum ýmsu stigum umhverfismatsins og
2. rétti einstaklinga sem málið varðar og umhverfisverndarsamtaka til að bera stjórnvaldsákvarðanir undir óháðan aðila eða dómstóla.

Umhverfismati lýkur ekki formlega fyrr en með stjórnvaldsákvörðun, sem veitir ofangreindum aðilum rétt til að bera ákvörðunina undir óháðan úrskurðaraðila (liður 2).

Þess misskilnings virðist þó gæta í umræðum um þetta mál á Íslandi að umhverfismati ljúki með *áliti* Skipulagsstofnunar og er í kafla 2.2 í almennum athugasemdum með frumvarpinu talað um að "matsferli sé lokið". Þetta virðist vera forsenda 3. gr. frumvarpsins. Álit Skipulagsstofnunar veitir ekki kærurétt, enda er það ekki stjórnsýsluákvörðun og stofnunin heimilar ekki framkvæmdir eða bannar. Sem áður segir líkur umhverfismati fyrst með þeirri stjórnvaldsákvörðun sem gefur aðilum með lögvarða hagsmuni færi á að láta reyna á réttmæti ferlsins í heild.

Samkvæmt núverandi lögum er því eina ákvörðunin sem hægt er að óska endurskoðunar á í öllu umhverfismatsferlinu framkvæmdaleyfi sveitarfélaganna (og eftir atvikum aðrar leyfisveitingar). Svona hefur þetta verið í heilan áratug og ætti því ekki að koma á óvart að aðilar með lögvarða hagsmuni eða umhverfisverndarsamtök sem telja að ekki hafi verið rétt að málum staðið í matsferlinu nýti sér þann rétt.

Íslensk stjórnvöld hafa staðfest þennan skilning á kæruheimild í umhverfismati og eru ýmis dæmi því til stuðnings. Má þar t.d. nefna leiðbeiningar Skipulagsstofnunar um umhverfismat framkvæmda sem og bækling Skipulagsstofnunar: Skipulag byggðar og mótun umhverfis (bls.4).

Einna skýrast kemur þó þessi skilningur íslenskra stjórnvalda fram í kærumáli hjá Eftirlitsstofnun EFTA (ESA) um vissa þætti í umhverfismati á Blöndulínu 3, en undirirtaður kærði afmarkaða þætti matsins til ESA. ESA tók kæruna til efnislegrar meðferðar. Í rannsókn ESA á framkvæmd laga um umhverfismat spurði stofnunin íslensk stjórnvöld meðal annars tveggja spurninga um kæruheimildir í umhverfismatsferlinu. Svar íslenskra stjórnvalda er hjálagt í fylgiskjali 1.

Í stuttu máli var spurt;

1. hvort álit Skipulagsstofnunar væri kæranlegt og , ef svo væri ekki,

2. hvort aðrar ákvarðanir **á síðari stigum í umhverfismatsferlinu** væru kæranlegar.

Til glöggvunar er vitnað hér beint í svar umhverfis- og auðlindaráðuneytisins til ESA frá 3. mars 2014:

> *'1. Where the National Planning Agency issues an opinion under Article 11 of the Environmental Impact Assessment Act No 106/2000 it is not possible to appeal against or challenge such an opinion. The reason is that it is indeed not a decision, but only an opinion which must be considered before a final decision is made, that is a decision on whether to issue a permit or not for the project in question.... '*
>
> *'2. All projects that are subject to an EIA are also subject to a permit (development consent, building permit or an operation permit) and the decision on issuing a permit can be appealed to a special ruling committee on issues regarding the environment and natural resources (Urskurðarnefnd umhverfis- og auðlindamála, www.uua.is). According to Act 130/2011 on the ruling committee everyone who has legal interests in the decision in question can appeal to the committee. In the case of decisions on permits for projects that fall within the scope of*

the EIA act non governmental organisations are considered to have sufficient legal interests, that is the right to appeal, if they have at least 30 members and the appeal in question is in line with the purpose of the organisation.'

Af þessum svörum sem og viðræðum ESA við umhverfis- og auðlindaráðuneytið á fundi ESA með íslenskum stjórnvöldum á Íslandi í maí 2014, þar sem ráðuneytið staðfesti að endurskoðun á framkvæmdaleyfi tæki einnig til endurskoðunar á umhverfismati eða svo vitnað sé í bréf ESA til undirritaðs dags 15. mars 2015 (fylgiskjal 2) ;

'... the Ministry of the Environment confirmed at the package meeting in Iceland in May 2014 that ***an appeal of a decision granting development consent would also include a review of the EIA*** *[í: umhverfismat]', (feitletrun mín)*

Komst ESA að þeirri niðurstöðu að þessar upplýsingar frá íslenskum stjórnvöldum staðfestu að réttur einstaklinga með lögvarða hagsmuni og félagasamtaka samkvæmt Evróputilskipuninni sem hefði verið tekinn er upp í íslenskan rétt samkvæmt EES samningnum, sé tryggður með kærurétti leyfisveitinga (þ.m.t. framkvæmdaleyfi sveitarfélaga). Umhverfismati ljúki því ekki samkvæmt íslenskum lögum ekki fyrr en með framkvæmdaleyfi og því sé íslensk löggjöf í samræmi við Evróputilskipunina. Fjórði kafli bréfs ESA til undirritaðs fjallar um réttinn til endurskoðunar og niðurstöðu ESA í ljósi ofangreindra svara umhverfis- og auðlindaráðuneytis

Ljóst er af framansögðu að eini möguleikinn samkvæmt íslenskum lögum fyrir einstaklinga með lögvarða hagsmuni og félagasamtök sem vilja láta reyna á lögmæti umhverfismats er að kæra framkvæmdaleyfi. Svo sem áður sagði er þetta ákvæði ekki nýtt heldur hefur það verið óbreytt um árabil, svo sem útskýringar íslenkra stjórnvalda frá árinu 2014 sýna.

3 Niðurstaða

Undirritaður gerir alvarlegar athugasemdir við ofangreint frumvarp. Ef það verður að lögum mun það afnema lögbundinn rétt þeirra sem kærðu framkvæmdaleyfin vegna fyrirhugaðra raflína frá Kröflu að Bakka til að fá lögmæti umhverfismats framkvæmda endurmetið af óháðum úrskurðaraðila. Hvergi fyrr í ferlinu öllu var hægt að krefjast endurskoðunar. Þessi réttur hefur verið til staðar í íslenskri löggjöf um árabil og er í fullu samræmi við hið lögbundna ferla um umhverfismat. Hvergi fyrr í ferlinu öllu er hægt að krefjast endurskoðunar óháðs úrskurðaraðila á umhverfismatinu.

Að auki er ekki vitað hver áhrif 3. gr. frumvarpsins ef hún yrði að lögum kynnu að verða á inntak kæruheimilda í öðrum sambærilegum málum þar sem framkvæmdaleyfi sveitarfélaga er eina stjórnvaldsákvörðunin sem hægt er að bera undir óháðan úrskurðaraðila. Í slíkum málum kynni ákvæðið að takmarka til langrar framtíðar möguleika fjölmargra einstaklinga með lögvarða hagsmuni og umhverfisverndarsamtök til að beita 61. gr. náttúruverndalaga í kærum vegna framkvæmdaleyfa.

Ljóst er að frumvarp þetta, ef verður að lögum, veikir mjög þær útskýringar og fullyrðingar sem íslensk stjórnvöld gáfu í ofangreindu kærumáli mínu hjá ESA um möguleika til endurskoðunar á umhverfismati. Augljóslega er í því frumvarpi sem nú liggur fyrir gengið þvert á útskýringar islenskra stjórnvalda í því máli.

Eðlilegt verður því að telja að ESA endurupptaki kærumálið sem fellt var niður í fyrra og meti útskýringar íslenskra stjórnvalda á nýjan leik í ljósi þess að í fyrsta máli þar sem reynir á endurskoðunarákvæðið í samræmi við lögformlega ferla og lýsingar íslenskra stjórnvalda, stendur til að úrskurðarnefndin verði tekin úr sambandi með lagasetningu áður en hún hefur náð að fjalla um málið.

Það skal upplýst hér að undirritaður hefur þegar vakið athygli ESA á frumvarpinu.

Algjör óvissa ríkir um á hvern hátt 3. gr. frumvarpsins myndi hafa áhrif á hugsanlega kröfu undirritaðs um endurskoðun hugsanlegs framkvæmdaleyfis fyrir Blöndulínu 3, ef og þegar til þess kemur. Sama á eflaust við um fjölmarga aðra með lögvarða hagsmuni í málum þar sem álit Skipulagstofnunar liggur fyrir. Hvergi er þó að finna í fylgiskjölum samantekt á áhrifum frumvarpsins á önnur mál, hversu mörg þau eru og hver áhrifin yrðu.

Ekki verður séð að gætt sé meðalhófs í þessu frumvarpi þar sem fyrir liggur að hægt er að fara aðrar og mun umhverfissvænni leiðir við flutning raforku frá kröflu að Hólasandi, og sneiða alveg hjá Leirhnjúkshrauni, og frá Þeistareykjum að Bakka. Eðlilegt er því að spyrja sig hvenær aðrir hagsmunir séu nægilega lítlivægir til að kæruheimilidin samkvæmt ofangreindum lögum sé ekki tekin úr sambandi með lagasetningu og hvernig tryggja eigi að viðlíka endurtaki sig ekki í hvert sinn sem látið er reyna á lögmæti umhverfismats samkvæmt lögboðnum kæruleiðum?

Undirritaður er fús að veita frekari upplýsingar og mæta fyrir nefndina í gegnum skype sé þess óskað.

Virðingarfyllst

Ólafur Valsson

Hólum, Öxnadal
601 Akureyri

Fylgiskjal 1: Bréf umhverfis- og auðlindaráðuneytis dags 3. mars 2014

Fylgiskjal 2: Niðurstaða ESA dags 15. mars 2015

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Reykjavík 3. mars 2014
Tilv.: UMH13020130/817-52

Reference is made to the EFTA Surveillance Authority's (hereinafter the Authority) letter, dated 22 January 2014 (case No 73390 / Event No 696522). In the named letter the Authority invited the Icelandic Government for clarification purposes to respond to two questions. The questions were:

> *1. Where the National Planning Authority issues an opinion under Article 11of the Environmental Impact Assessment Act No 106 of 25 May 2000, is it possible to appeal against or challenge such an opinion? If so, please explain which parties are able to launch such a legal challenge.*
>
> *2. Where it is not possible to challenge an opinion of the National Planning Authority directly, is there another opportunity at a later stage of the EIA procedure where such a challenge may be raised? If so, please explain which parties are able to launch such a legal challenge.*

The Ministry's answers are as follows:

1. Where the National Planning Agency issues an opinion under Article 11 of the Environmental Impact Assessment Act No 106/2000 it is not possible to appeal against or challenge such an opinion. The reason is that it is indeed not a decision, but only an opinion which must be considered before a final decision is made, that is a decision on whether to issue a permit or not for the project in question. The Ministry would like to point out that in the case of Annex II projects the National Planning Agency's decision on whether the project shall be subject to an EIA can be appealed.

2. All projects that are subject to an EIA are also subject to a permit (development consent, building permit or an operation permit) and the decision on issuing a permit can be appealed to a special ruling committee on issues regarding the environment and natural resources (Úrskurðarnefnd umhverfis- og auðlindamála, www.uua.is). According to Act 130/2011 on the ruling committee everyone who has legal interests in the decision in question can appeal to the committee. In the case of decisions on permits for projects that fall within the scope of the EIA act non governmental organisations are considered to have sufficient legal interests, that is the

right to appeal, if they have at least 30 members and the appeal in question is in line with the purpose of the organisation.

The Ministry apologises for the delay in replying to the Authority's questions. Please do not hesitate to contact the Ministry if any further assistance is needed.

On behalf of the Minister

Glóey Finnsdóttir

Glóey Finnsdóttir

Íris Bjargmundsdóttir

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Brussels, 30 March 2015
Case No: 73390
Document No: 752246

EFTA SURVEILLANCE AUTHORITY

Mr. Ólafur Valsson
Avenue des Villas 55a
1060 St Gilles
Brussels

Dear Mr Valsson

Subject: Complaint against Iceland concerning the application of the Environmental Impact Assessment Directive

1 Introduction

Reference is made to your previous correspondence with the Internal Market Affairs Directorate of the EFTA Surveillance Authority ("the Directorate"), in particular your written observations of 6 February 2015 to the Directorate's letter of 7 November 2014.

The Directorate would like to address the issues mentioned in your letter regarding the alleged failure of Iceland to comply with *Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment*[1] ("the Directive") in relation to the proposed construction of 155 km of gravel roads in connection with the construction of high voltage overhead electricity lines from Blanda power station to Akureyri, commonly referred to as the Blöndulína 3 Project ("the Project").

2 Relevant EEA Law

Article 3 of the Directive reads as follows:

> *The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12, the direct and indirect effects of a project on the following factors:*
>
> *(a) human beings, fauna and flora;*
> *(b) soil, water, air, climate and the landscape;*
> *(c) material assets and the cultural heritage;*
> *(d) the interaction between the factors referred to in points (a), (b) and (c).*

[1] The act referred to at point 1a of Annex XX to the EEA Agreement.

3 Assessment

3.1 Requirement to carry out an EIA in respect of the road construction

Points 7(b) and 7(c) of Annex I to the Directive clearly lay out the obligation to carry out an EIA in respect of substantial road projects, i.e. the construction of motor ways or new/ widened four lane roads. The decision whether to subject the construction of other roads which fall under Annex II of the Directive to an EIA, lies within the discretion of the States. As a matter of Icelandic law, an EIA is required for all new roads outside urban areas of more than 10km[2].

3.2 Scope of the assessment of the proposed construction of roads in the EIA

In your complaint and written observations of 6 February 2015, you allege that Iceland failed to comply with the Directive by failing to properly assess the environmental effects of the Blöndulína 3 Project in accordance with Article 3 of the Directive. Specifically, you allege that the opinion of the National Planning Agency ("the NPA")[3] did not conclude that the proposed road constructions should be subject to an environmental impact assessment under Act 106/2000 on Environmental Impact Assessments ("the Icelandic EIA Act"). In essence, you claim that the proposed road constructions were not sufficiently assessed in the environmental impact assessment for the Blöndulína 3 Project ("the EIA Report").[4]

3.2.1 Consideration of the factors referred to in Article 3 of the Directive

The Directorate notes that Article 3 of the Directive provides that the factors listed in points (a) to (d) shall be assessed in an appropriate manner and in the light of every individual case. Accordingly, all of the factors do not necessarily have to be assessed in every individual case, but only if warranted, depending on the nature of the project and the area in which it is located.

The Directorate observes that the EIA Report contains a multitude of references to the proposed roads construction. The composition of the EIA Report is governed by Article 9(2) of the Icelandic EIA Act and Article 18 of Regulation No 1123/2005 on the assessment of environmental effects[5]. Neither of those Articles provides a prescriptive list of all of the factors to be assessed, but rather state that any environmental factors that can possibly be affected by the project shall be assessed. Article 18 of Regulation No 1123/2005 provides for more detailed provisions on the content of the EIA.

In the present case, the EIA Report provides for a description of the proposed road construction. The roads will be constructed to connect the main roads to the sites where the pylons are to be erected. Although the necessity of the construction of the roads is apparent, their exact location has not been decided, as this will be dictated by practicalities when the construction of the Project has begun.[6]

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[2] Act 106/2000 on Environmental Impact Assessments, Annex 1 at point 10(ii).

[3] Opinion of the National Planning Agency of 29 January 2013, available under: http://www.skipulagsstofnun.is/media/attachments/Umhverfismat/928/201112007.pdf

[4] *Blöndulína 3 (220 kV) frá Blöndustöð til Akureyrar. Matsskýrsla.* November 2012. Available under: http://www.skipulagsstofnun.is/media/attachments/Umhverfismat/930/matsskyrsla.pdf ("the EIA Report")

[5] *Reglugerð um mat á umhverfisáhrifum.*

[6] The EIA Report, p. 31-32.

Section 6 of the EIA Report contains the assessment of the effects of the Project on a number of environmental factors. The effects of the Blöndulína 3 Project on the landscape is examined in section 6.2 of the EIA report. This section assesses the effects of the high voltage line as a whole, including the pylons and roads.[7] It does not specifically assess the roads on their own, but rather in relation to the pylons and the high voltage line, i.e. the Blöndulína 3 Project as a whole.

Furthermore, the EIA Report assess the Project's effects on geological formations, noting that the roads will lie outside of active volcanic zones.[8] Section 6.4 of the EIA Report concerns the effects of any constructions on nature reserves. It notes that the whole Project lies outside of any nature reserves.[9] The effects on flora are thoroughly assessed in section 6.5 of the EIA Report and Annex 3 to the EIA Report.[10] Section 6.6 of the EIA Report assesses the effects of the Blöndulína 3 Project on birdlife. This section does not specifically mention the roads, except indirectly regarding the construction of the high voltage line, stating that increased traffic and noise may disturb birdlife within the high voltage line's zone of influence.

Section 6.7 of the EIA report considers the effects on tourism and outdoor activity. This section notes that the construction of the roads may have a potential positive effect for tourism.[11] Section 6.8 of the EIA report concerns the effects on archaeology. This section states that when constructing pylons and roads, effort shall be made to bypass anything of archaeological value.[12] Section 6.9 of the EIA assesses the effects on bodies of water. This section notes, *inter alia*, that any construction of roads shall be kept at a minimum.[13]

Section 6.10 of the EIA Report, which examines any effect on land usage, states that the exact locations of the proposed road constructions and pylons have not been decided. In any case, there will be a negative effect on land usage, as arable land will be used for pylons and roads.[14] The Directorate also notes that accompanying the EIA Report are charts, showing the possible locations of the proposed road constructions.[15]

In light of the assessment of the proposed construction of the roads in the EIA, detailed above, the Directorate is of the opinion that the EIA Report has in fact assessed the factors referred to in Article 3 of the EIA Directive and other relevant environmental factors, in relation to the proposed road constructions in an appropriate manner taking into account the nature and location of the Blöndulína 3 Project. As such, the Directorate cannot accept your assertion, as set out in your letter of 6 February 2015, that, in the EIA, "*there is no assessment of the proposed road construction on 'landscape, archaeological relics [...] and land use*".

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[7] Note the terminology of the EIA Report: "*Helstu áhrif háspennulínunnar sjónrænt séð eru fyrst og fremst vegna mastra og slóðagerðar*", p. 68.
[8] The EIA Report, p. 71.
[9] See chart, the EIA Report, p. 74.
[10] The EIA Report, p. 76-84. See also Annex 3 to the EIA Report, available under: http://www.skipulagsstofnun.is/media/attachments/Umhverfismat/930/Vidauki_3_grodur.pdf
[11] The EIA Report, p. 95.
[12] The EIA Report, p. 105-107. "*Á framkvæmdatíma við reisingu mastra, gerð vegslóða og við efnistöku verður tekið tillit til staðsetningar minja og reynt að hlífa þeim eins og kostur er.*"
[13] The EIA Report, p. 111.
[14] The EIA Report, p. 114-116.
[15] *Blöndulína 3 (220 kV) frá Blöndustöð til Akureyrar. Matsskýrsla. Myndhefti,* p. 5-9, available under: http://www.skipulagsstofnun.is/media/attachments/Umhverfismat/930/Kortahefti.pdf

3.3 Scope of the NPA Opinion

As such, and considering the Directorate's view of the EIA Report above, the opinion of the NPA[16] does not appear to be in error or to have incorrectly applied Article 3 of the Directive. Under Article 11 of the Icelandic EIA Act, the NPA gives an opinion on, *inter alia*, whether an environmental impact assessment report fulfils the conditions of the Icelandic EIA Act. The NPA considered that the assessment of the proposed road constructions was sufficient.[17]

In its opinion, the NPA considered that the impact of the proposed road constructions were negative on a number of environmental factors, i.e. landscape, land use, flora, bird life and archaeologically important sites. The NPA also recognised that the exact location and scope of the proposed road constructions were uncertain and that further review under the Icelandic EIA Act might be necessary.

3.4 View of the Icelandic Government

During the package meeting which took place in Reykjavik on 19 May 2014, the representatives of the Icelandic Government made it clear that the EIA which had been conducted also covered the proposed construction of the roads. This was confirmed in writing, in its reply to the Directorate's request for information of 23 July 2014, which stated that the Icelandic Government confirmed that a full EIA was carried out in respect of the proposed road constructions.

Moreover, the Icelandic Government stated that in the event of wide ranging projects such as the Blöndulína 3 Project, that consist of a few individual elements, each of which could be subject to an EIA, a detailed joint assessment of these elements in one environmental impact assessment is required under the Icelandic EIA Act.

3.5 Conclusions on the scope of the EIA review

Having examined of the EIA Report in relation to the proposed road construction, the Opinion of the NPA and the statements of the Icelandic Government prior to issuing its pre-closure letter of 7 November 2014, the Directorate takes this opportunity to re-iterate that the proposed road construction relating to the Blöndulína 3 project were properly assessed in the EIA Report. The Directorate further underlines that Article 3 of the Directive does not lay down substantive rules in relation to the balancing of the environmental effects with other factors, nor does it prohibit the completion of projects which are liable to have negative effects on the environment[18].

The Directorate notes that in your written observations to the Directorate's letter of 7 November 2014, you criticize that the Directorate reliance on certain assertions of the Icelandic Government. As demonstrated above, the Directorate's assessment relies not only on the statements of the Icelandic Government, but also the examination of the EIA Report and the opinion of the NPA. Moreover, the Directorate considers that the complaint has not adduced any specific evidence which would call into question the Directorate's assessment

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[16] Opinion of the National Planning Agency of 29 January 2013, available under: http://www.skipulagsstofnun.is/media/attachments/Umhverfismat/928/201112007.pdf

[17] Opinion of the National Planning Agency of 29 January 2013, p. 47.

[18] See, to that effect, Case C-420/11 *Leth* [2013] ECLI:EU:C:2013:16, at paragraph 46.

nor disputed the factual accuracy of the information submitted by the Icelandic Government in a manner which would be capable of altering the Directorate's assessment.[19]

The Directorate further notes that, as discussed in more detail in section 4 of this letter, the Blöndulína 3 Project is also subject to a grant of development consent. The granting of development consent can be appealed to the Ruling Committee on issues regarding the environment and natural resources ("the Ruling Committee"). The Directorate notes that Article 14(1) of the Icelandic Planning Act prohibits the grant of development consent for a project until the NPA has given its opinion on the project's EIA.[20] It thus appears that, under Icelandic administrative law, an appeal against the grant of development consent would also include a review of the relevant EIA.

In light of the above, the Directorate is of the view that, based on its assessment of the case and in particular the EIA report and the opinion of NPA, it does not appear that Article 3 and Article 4(2) of the Directive have been infringed.

4 Issue of access to a review procedure

In your complaint and written observations of 6 February 2015, you contend that a review by the Ruling Committee of the grant of development consent does not entail a review of the EIA for the project granted development consent.

The Directorate notes that the NPA's opinion on an EIA, according to the Icelandic EIA Act, is not binding for the grant of any development consent. The NPA's opinion does however form an integral part of the development consent procedure. Article 14(2) of the Icelandic Planning Act states that when municipalities grant development consent, they shall adopt a reasoned position *vis-à-vis* the EIA[21]. In the view of the Directorate, it thus appears that the NPA's opinion on the EIA is not legally binding as regards the decision to grant development consent.

According to Article 4 of Act No 130/2011, a decision to grant development consent for a project that falls within the scope of the Icelandic EIA Act is a decision which can be appealed to the Ruling Committee. The Directorate considers that, under Icelandic administrative law, it appears that a review of the decision granting development consent would also entail a review of the EIA for that project. The reason for this is, that according to Article 14(1) of the Icelandic Planning Act, the NPA's opinion on a project's EIA is a prerequisite for the grant of development consent. Therefore, should development consent be granted for a project, without the NPA giving its opinion on the project's EIA in accordance with Article 11 of the Icelandic EIA Act, or the project's EIA were to be contrary

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[19] See, comparatively, Case T-106/95 *Fédération Française des Sociétés d'Assurances (FFSA) and Others v. Commission of the European Communities* [1997] ECLI:EU:T:1997:23, at paragraph 113 and Joined cases T-371/94 and T-394/94 *British Airways plc, Scandinavian Airlines System Denmark-Norway-Sweden, Koninklijke Luchtvaart Maatschappij NV, Air UK Ltd, Euralair international, TAT European Airlines SA and British Midland Airways Ltd v Commission of the European Communities* [1998] ECLI:EU:T:1998:140, at paragraphs 70-71.

[20] *Skipulagslög nr. 123/2010.* Article 14 states: "*Óheimilt er að gefa út leyfi fyrir framkvæmd samkvæmt lögum um mat á umhverfisáhrifum fyrr en álit Skipulagsstofnunar um mat á umhverfisáhrifum liggur fyrir eða ákvörðun stofnunarinnar um að framkvæmd sé ekki matsskyld.*"

[21] 2. mgr. 14. gr. Skipulagslaga nr. 123/2010: *"Við umfjöllun um umsókn um framkvæmdaleyfi vegna matsskyldrar framkvæmdar skal sveitarstjórn kynna sér matsskýrslu framkvæmdaraðila um framkvæmdina og kanna hvort framkvæmdin sé sú sem lýst er í matsskýrslu. Þá skal sveitarstjórn taka rökstudda afstöðu til álits Skipulagsstofnunar um mat á umhverfisáhrifum framkvæmdarinnar".*

to the Icelandic EIA Act, any such grant of development consent would be in violation of Article 14(1) of the Icelandic Planning Act. The Directorate is of the opinion that, under such circumstances, it would be open to the Ruling Committee to annul such a decision, if it would consider that an appropriate remedy.

Furthermore, under Article 2 of Act No 130/2011, the Ruling Committee is made up of several members that rotate after 4 years (5 years for the Chair). These members include lawyers and experts in various subjects related to the work of the Ruling Committee, such as in planning matters, construction issues, environmental matters, geology, energy and geological resources, and ecology. The Directorate takes the view that the Ruling Committee, which, under Article 3(2), is normally composed of three members when deciding upon specific cases (except in extensive cases where it is comprised of five members) has both the legal power and technical expertise necessary to review an EIA in relation to an administrative decision granting development consent. In addition, the Ministry of the Environment confirmed at the package meeting in Iceland in May 2014 that an appeal of a decision granting development consent would also include a review of the EIA.

In your written observations of 6 February 2015, you refer to certain cases in relation to the reviewability of the EIA. The Directorate notes that Case No 33/2009 of the former Ruling Committee on planning and construction issues (*úrskurðarnefnd skipulags- og byggingarmála)* was decided before Act No 130/2011 entered into force and that Case No 124/2012 was dismissed by the Ruling Committee on procedural grounds, *inter alia,* that the decision of the Icelandic Road and Coastal Administration was not a challengeable act.

In light of the above, the Directorate has been unable to establish that there has been a breach of Article 11 of the Directive.

5 Failure to provide information by the developer

In your letter of 6 February 2015, you dispute the finding of the Directorate that there has been no breach of the requirements to provide information under Article 5 of the Directive. The Directorate does not consider that your letter provides any additional facts or arguments that alter this conclusion and, as such, maintains its position that it has been unable to establish any breach of Article 5 of the Directive.

6 Conclusion

In view of the information available to the Directorate, Iceland appears to have complied with the provisions of the Directive. Moreover, the Directorate has been unable to establish that there has been an infringement of any other provision of EEA law on the basis of the facts in the present case. However, in light of your complaint and others received which raise similar issues, we have decided to open a broader investigation into the implementation of the Directive in Iceland, in particular as regards the appeals procedure as well as those aspects of the EIA process which can be appealed.

In light of this conclusion, the Directorate intends to propose that the EFTA Surveillance Authority close the case.

Yours sincerely

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Internal Market Affairs Directorate