Rökstutt álit Eftirlitsstofnunar EFTA (ESA), dags. 10. júlí 2013.

Siglingaöryggisstofnun Evrópu (EMSA) hafði áður gert 13 athugasemdir varðandi innleiðingu tilskipunar 2000/59/EB um aðstöðu í höfnum til að taka á móti úrgangi frá skipum í íslensk lög. Margar þessara athugasemda snéru að grundvallarskuldbindingum hvað varðar efnisatriði tilskipunarinnar svo sem að tryggt væri að fullnægjandi aðstaða væri til staðar í öllum höfnum fyrir móttöku úrgangs og enn fremur að tryggt væri að mengunarbótareglunni yrði fylgt með því að búa til hvata fyrir skipin til að losa úrgang í höfn fremur en í hafið.

Rökstuðningur ESA:

1. Ekki væri tryggt að farið væri yfir úrgangstilkynningar sem berast frá skipum líkt og d.liður 1. mgr. 12. gr. tilskipunarinnar kveði á um.
2. Íslensk stjórnvöld hafi hvorki óskað eftir úrgangstilkynningum né brugðist við slíkum tilkynningum þegar þær bárust og hafi því brugðist skyldum sínum skv. 1. mgr. 6. gr. og 2. mgr. 12. gr. tilskipunarinnar.
3. Íslensk stjórnvöld hafi hvorki komið á, né framfylgt eftirliti með fiskiskipum og skemmtibátum sem ekki mega flytja fleiri en 12 farþega, hvað varði viðkomandi ákvæði tilskipunarinnar.
4. Íslensk stjórnvöld hafi ekki framfylgt skyldu til að krefja skip um að losa úrgang í höfn sbr. 2. mgr. 7. gr. tilskipunarinnar, væri hætta á að skip losaði úrgang í hafið í þeim tilfellum er næsta viðkomuhöfn væri óþekkt eða að fullnægjandi aðstaða væri ekki til staðar í næstu viðkomuhöfn.
5. Íslensk stjórnvöld hafi ekki tryggt að fullnægjandi aðstaða fyrir móttöku úrgangs frá skipum væri til staðar í öllum höfnum líkt og kveðið væri á um í 1. mgr. 4. gr. tilskipunarinnar.
6. Íslensk stjórnvöld hafi ekki tryggt að öll skip sem kæmu til hafnar greiddu gjald, óháð notkun þeirra á aðstöðunni, sem svaraði til kostnaðar við rekstur móttökuaðstöðunnar líkt og kveðið væri á um í a. lið, 2. mgr. 8. gr. tilskipunarinnar.
7. Íslensk stjórnvöld hafi hvorki tryggt að upphæð gjaldsins né grundvöllur þess skv. 8. gr. tilskipunarinnar væri gerður greiðendum gjaldsins skýr og ljós því gjöldin fyrir móttöku og förgun úrgangs frá skipum voru ekki innheimt af hafnaryfirvöldum heldur voru þau innheimt af þriðja aðila.
8. Íslensk stjórnvöld hafi ekki tryggt að skipstjórar skipa sem kæmu til hafnar, losuðu allan úrgang í höfn í samræmi við 1. mgr. 7. gr. tilskipunarinnar.
9. Íslensk stjórnvöld hafi ekki tryggt að hægt væri að losa skólp í öllum höfnum.

Íslenskum stjórnvöldum var því næst veittur tveggja mánaða frestur frá dagsetningu álitsins til að ljúka fullnægjandi innleiðingu tilskipunarinnar. UAR hefur haldið stofnuninni upplýstri um framgang málsins með óformlegum jafnt sem formlegum hætti.

EFTA COURT

Action brought on 10 January 2014 by the EFTA Surveillance Authority against Iceland

(Case E-2/14)

An action against Iceland was brought before the EFTA Court on 10 January 2014 by the EFTA Surveillance Authority, represented by Xavier Lewis and Markus Schneider, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, B-1040 Brussels.

The EFTA Surveillance Authority requests the EFTA Court to:

1. **Declare that by failing to adopt, and/or to notify the EFTA Surveillance Authority forthwith of, the measures necessary to implement the Act referred to at point 56v of Annex XIII to the Agreement on the European Economic Area (Directive 2005/35/EC of *the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements),* as adapted to the Agreement by way of Protocol 1 thereto and by Joint Committee Decision No 65/2009 of 29 May 2009, within the time prescribed, Iceland has failed to fulfil its obligations under the Act and under Article 7 of the Agreement.**

2. **Order Iceland to bear the costs of these proceedings.**

Legal and factual background and pleas in law adduced in support:

- The application addresses Iceland's failure to comply, no later than 12 August 2013, with a reasoned opinion delivered by the EFTA Surveillance Authority on 12 June 2013, regarding that State's failure to implement into its national legal order Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements ("the Act"), as referred to at point 56v of Annex XIII to the Agreement on the European Economic Area, and as adapted to that Agreement by way of Protocol 1 thereto and by Joint Committee Decision No 65/2009 of 29 May 2009.

- The EFTA Surveillance Authority submits that Iceland has failed to fulfil its obligations under Article 16 of the Act, as adapted, and under

Article 7 of the EEA Agreement, by failing to adopt, and/or to notify the EFTA Surveillance Authority of, the measures necessary to implement the Act within the time prescribed.

Case handler: Andreas Breivik
Email: abr@eftasurv.int
Tel: +32(0)2 286 18 57

Brussels, 10 July 2013
Case No: 71708
Event No: 678037

EFTA SURVEILLANCE AUTHORITY

Icelandic Mission to the EU
Rond-Point Schuman 11
1040 Brussels

Subject: Reasoned Opinion

Dear Sirs

Please find attached a 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 the incorrect implementation by Iceland of Directive 2000/59/EC on port reception facilities.

Yours faithfully,

Nina Hoppe
Assistant, Legal and Executive Affairs

Enclosure:
Decision No: 293/13/COL

Case No: 71708
Event No: 674309
Dec. No: 293/13/COL

EFTA SURVEILLANCE AUTHORITY

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 the incorrect implementation by Iceland of Directive 2000/59/EC on port reception facilities

EFTA SURVEILLANCE AUTHORITY

1 Introduction

On 25 January 2010, the European Maritime Safety Agency ("EMSA") announced to the Icelandic Mission to the EU (EMSA Ref: B.1.1/MHU/ACR/DRI/2010/132) that it intended to visit Iceland, on behalf of the EFTA Surveillance Authority ("the Authority"), to assess the overall functioning and effectiveness of the system of Port Reception Facilities in Iceland, in respect of Directive 2000/59/EC of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues ("Directive 2000/59").

The visit took place between 28 June and 2 July 2010 at the premises of the Environment Agency of Iceland and the Icelandic Maritime Administration. In addition, the visit included the port authorities of Reykjavik and Akureyri, and the operators Eimskip, Gámaþjónustan hf. and Hreinsitækni ehf.

The visit was carried out under the framework of the "Policy for visits to Member States" as adopted by the Administrative Board of EMSA in 2004.

Following its visit, EMSA produced a report analysing the extent to which the port reception facilities system fulfils the specific provision of the Directive, and an overall view of the quality of the port reception facilities system ("the EMSA report").[1] The EMSA report identified 13 findings, consisting of 10 shortcomings and 3 observations. The relevant findings from the EMSA report will be cited under the sub-points of chapter 5 of this reasoned opinion.

2 Correspondence

By letter dated 1 December 2010 (Event No 579270) the Authority invited the Icelandic Government to provide information on each of the findings identified in the EMSA report by 15 January 2011. The case was discussed at the package meeting in Iceland in May 2011. Since the Icelandic Government had not yet responded to the Authority's letter of 1 December 2010, Iceland was invited to provide its observations and a corrective action to the Authority no later than 14 June 2011 (Event No 599481).

The Icelandic Government responded by letter of 27 June 2011 (UMH11040077/817-5), addressing the findings and proposing corrective actions, including an estimated implementation timeline stating that most of the findings would be rectified by the end of 2011.

By letter dated 12 September 2011 (Event No 607357), the Authority sought further clarifications from the Icelandic Government, specifically on three different provisions of Directive 2000/59, which the Authority considered that Iceland did not comply with, in law and/or in fact:

- Article 4(1)[2] - non-existence of adequate port reception facilities (finding No 7);

[1] See Report on the overall effectiveness of the system of Port Reception Facilities in Iceland in accordance with Directive 2000/59/EC, dated 22 November 2010.

[2] Unless indicated otherwise, "Articles"referred to in this letter of formal notice mean Articles of Directive 2000/59.

- Article 8(2)(a) – not requiring all ships to pay PRF fee when calling at ports (finding No 8); and
- Article 8(3) – lack of transparency in calculating waste handling fees (finding No 9).

By letter dated 10 October 2011 (your reference UMH10020025/24-1), the Icelandic Government appeared to acknowledge the above mentioned issues of non-compliance pointed out by the Authority.

Considering that the time frame indicated by the Icelandic Government to close these non-conformities was unsatisfactory, the Authority, on 18 November 2011, sent a pre-Article 31 letter (Event No 614359), inviting the Icelandic Government to provide up-dated information on the implementation status of the necessary measures to close all findings and observations; and in particular findings No 1-5 and 10 and observations No 1-3 with regard to which the Icelandic Government had already indicated that the necessary measures to close the findings would be completed before 1 January 2012.

Furthermore, the Icelandic Government was requested to reconsider the timeframe previously indicated as regards the closure of findings No 6-9.

The Icelandic Government responded by letter of 20 December 2011 (your reference UMH11040077/817-5), indicating, in essence, that none of the findings had yet been rectified, whereas substantial parts of the rectification depended on a bill to be proposed to Parliament in spring 2012.

The matter was discussed at the package meeting in Iceland on 8 June 2012. The Icelandic Government could at that stage not report any substantial progress on closing the non-conformities.

By letter dated 10 September 2012 (Event No 646057), the Authority invited the Icelandic Government to provide information on the actual rectification of the non-conformities by 10 October 2012.

By letter dated 10 October 2012 (your reference UMH11040077/817-5), the Icelandic Government stated that it expected to have detailed plans for correcting the majority of the shortcomings by the end of 2012. The Icelandic Government further informed the Authority that it had approved 21 Waste Reception and Handling Plans, and that the foreseen bill linked to substantial parts of the rectification would be proposed to the Icelandic Parliament in January 2013.

By letter dated 25 February 2013 (your reference UMH11040077/817-5), the Icelandic Government stated that it expected to have the majority of shortcomings rectified by the end of 2013. The Icelandic Government further informed that it had now approved 56 Waste Reception and Handling Plans, and that the foreseen bill linked to substantial parts of the rectification would be proposed to the Icelandic Parliament in March 2013.

On 13 March 2013, the Authority issued a letter of formal notice to Iceland for incorrect implementation of Directive 2000/59/EC (Event No 631519). The Icelandic Government was invited to submit its observations on the content of the letter of formal notice within two months.

Having received no reply within the given time-frame, the Authority informed the Icelandic Government accordingly by email of 29 May 2013 (Event No 673697) and invited the Icelandic Government to reply to the letter of formal notice.

The case was discussed at the package meeting in Iceland on 6 June 2013. The Icelandic Government informed the Authority that all shortcomings and observations listed in the letter of formal notice still remain open. The Icelandic Government was invited to inform the Authority of its progress and reply to the letter of formal notice no later than by 15 June 2013.

Nonetheless, the Authority has to date not received any reply to its letter of formal notice.

3 Relevant national law

According to Form 1 of 7 October 2004 as submitted by the Icelandic Government, Directive 2000/59 has been implemented into the Icelandic legal order by means of the following national measures:

- Act No. 33/2004 on the prevention of marine pollution;
- Act No. 47/2003 on ship inspections;
- Regulation No. 792/2004 on reception facilities for ship-generated waste;
- Regulation No. 801/2004 on the prevention of marine pollution by ship-generated waste;
- Regulation No. 527/1999 on the prevention of marine pollution by noxius liquid substances in bulk; and
- Regulation No. 715/1995 on the prevention of marine pollution from ships.

4 Relevant EEA law

Directive 2000/59/EC was incorporated as Point 56i of Annex XIII to the EEA Agreement by Joint Committee Decision No 77/2001 of 19 June 2001 which entered into force on 1 February 2002. The time limit for the EFTA States to adopt the measures necessary to implement the Act expired on 28 December 2002. The Directive has been amended by Directive 2002/84/EC, incorporated into the EEA Agreement by Joint Committee Decision No 178/2003 of 5 December 2003 which entered into force on 6 December 2003 and Commission Directive 2007/71/EC, incorporated into the EEA Agreement by Joint Committee Decision 136/201 of 10 December 2010 which entered into force on 11 December 2010.

In essence, Directive 2000/59 requires EEA States to establish mechanisms and plans for ship waste and pollution reception, and confers obligations upon EEA States to impose requirements on ships as regard waste deliveries, including payment of fees for ship generated waste.

The purpose of the Directive as amended is to improve availability and use of port reception facilities in order to reduce the amount of waste and pollution being discharged into the sea.

5 The Authority's assessment

The EMSA report made 13 different findings and observations with regard to which the Icelandic implementation and application of Directive 2000/59 fails to conform to

Iceland's obligations under that Directive. Several of these findings are linked to fundamental obligations under the regime established by Directive 2000/59, such as to ensure the availability of adequate PRFs in all Icelandic ports, development and implementation of waste reception handling plans; and to establish the polluter-pays-principle, intending to provide an incentive for delivery of waste at ports.

5.1 Non-compliance with Article 12.1.d of Directive 2000/59

Its Article 12(1)(d) states the following:

> *"Member States shall:*
> *ensure that the information notified by masters in accordance with Article 6 be appropriately examined;"*

The inspection revealed that the Environment Agency of Iceland was the designated authority in respect of Directive 2000/59. It was also granted the authority to delegate responsibility to regional or municipal environmental authorities but no such delegation had taken place. The Environment Agency of Iceland had no staff specifically dedicated to maritime issues and handled them on a case-by-case basis by its project officers.

The Icelandic Maritime Administration stated that all inspections of ships are under its authority and responsibility. The Port State Control section employs two staff members who cover all ports in Iceland. It was stated that special inspections in respect of Directive 2000/59 were not conducted and that waste notifications were not generally considered by the Port State Control officers.

In turn, there is a clear obligation on EEA State to examine waste notifications. According to the letter of 27 June 2011 from the Icelandic Government, this obligation to examine waste notifications is reflected in national Regulation No. 792/2004 on the reception of wastes from ships (Regulation No. 792/2004).

Against this background, it appears, no matter whether the obligations of Articles 12(1)(d) of Directive 2000/59/EC have actually been implemented into the Icelandic legal order or not, that those obligations in any event are not being enforced by the Icelandic maritime and environmental authorities.

As the Icelandic authorities have not ensured that waste notifications were appropriately examined, the Authority takes the view that Iceland has failed to fulfil its obligations under Article 12(1)(d) of Directive 2000/59.

5.2 Non-compliance with Articles 6(1) & 11(2)(a) of Directive 2000/59

Its Article 6(1) states the following:

> *"The master of a ship, other than a fishing vessel or recreational craft authorised to carry no more than 12 passengers, bound for a port located in the Community shall complete truly and accurately the form in Annex II and notify that information to the authority or body designated for this purpose by the Member State in which that port is located."*

Its Article 11(2)(a) reads:

> *"in selecting ships for inspection, Member States shall pay particular attention to:*
> *- ships which have not complied with the notification requirements in Article 6;*
> *- ships for which the examination of the information provided by the master in accordance with Article 6 has revealed other grounds to believe that the ship does not comply with this Directive;"*

The inspection revealed that vessels calling at Icelandic ports were required to submit waste notifications by way of Regulation No. 792/2004 on the reception of wastes form, but the requirement was not enforced by the maritime and environmental authorities of Iceland.

Regulation No. 792/2004 required that vessels calling at the ports of Iceland submit a waste notification prior to arrival. However, the Environment Agency of Iceland and the port authorities had not implemented this requirement and hence, the majority of the vessels did not submit a waste notification.

The Environment Agency of Iceland and the port authorities visited concurrently, stated that waste notifications were generally neither received nor requested from ships visiting Iceland although this was a requirement of Regulation No. 792/2004 as stated above.

Hence, the Icelandic authorities did not have access to waste notifications submitted by ships calling at Icelandic ports. Further, they did not review the few waste notifications that were provided by visiting ships, nor was this information taken into account when selecting vessels for inspection.

In its letter of 27 June 2011, the Icelandic Government acknowledged this shortcoming, which is partly linked to the fact that waste notifications are not received by the competent authorities, and that no system has been put in place to analyse and act upon such notifications.

Against this background it appears, no matter whether the obligations of Articles 6(1) and 11(2)(a) of Directive 2000/59 are actually implemented into the Icelandic legal order, that these obligations are in any event not being enforced by the Icelandic maritime and environmental authorities.

Accordingly, the Authority takes the view that, as the Icelandic authorities have failed to request and to act upon waste notifications, Iceland has failed to fulfil its obligations under Articles 6(1) and 11(2)(a) of Directive 2000/59.

5.3 Non-compliance with Article 11(3) of Directive 2000/59

Its Article 11(3) states the following:

> *"Member States shall establish control procedures, to the extent required, for fishing vessels and recreational craft authorised to carry no more than 12 passengers to ensure compliance with the applicable requirements of this Directive."*

The inspection revealed that it was not evident were control procedures were established in order to ensure that fishing vessels and recreational craft complied with the applicable requirements of the Directive.

The inspections of fishing vessels and recreational craft had in 2003 been sub-contracted to private inspection companies and classification societies. The majority of fishing vessels were now inspected by these private organisations with only a small number of older fishing vessels and most of the recreational craft remaining under the inspection regime of the Icelandic Maritime Administration. The Icelandic Maritime Administration had retained enforcement responsibility although it was not clear to what extent the private organisations were involved.

However, the Icelandic Maritime Administration stated that it conducted no inspections of these types of vessels and there was no objective evidence available to indicate that the fishing vessels and recreational craft registered in Iceland complied with the requirements of the Directive.

Accordingly, the Authority takes the view that, as the Icelandic authorities have failed to establish and enforce control procedures to ensure compliance with the relevant requirements under Directive 2000/59 for fishing vessels and recreational crafts, Iceland has failed to fulfil its obligations under Article 11(3) of that Directive.

5.4 Non-compliance with Articles 7(2) & 11(2)(c) of Directive 2000/59

Its Article 7(2) states the following:

> *"Notwithstanding paragraph 1, a ship may proceed to the next port of call without delivering ship-generated waste, if it follows from the information given in accordance with Article 6 and Annex II, that there is sufficient dedicated storage capacity for all ship-generated waste that has been accumulated and will be accumulated during the intended voyage of the ship until the port of delivery.*
>
> *If there are good reasons to believe that adequate facilities are not available at the intended port of delivery, or if this port is unknown, and that there is therefore a risk that the waste will be discharged at sea, the Member State shall take all necessary measures to prevent marine pollution, if necessary by requiring the ship to deliver its waste before departure from the port."*

Its Article 11(2)(c) reads:

> *"if the relevant authority is not satisfied with the results of this inspection, it shall ensure that the ship does not leave the port until it has delivered its ship-generated waste and cargo residues to a port reception facility in accordance with Articles 7 and 10."*

The inspection revealed that vessels were not directed to deliver their ship-generated waste when the next port of call was unknown.

The Icelandic Maritime Administration stated that as there were in general no waste notifications to review, and as the inspections did not include specific Directive issues, vessels were not directed to deliver ship-generated waste and/or cargo residues when the next port of call was unknown.

Vessels calling at Icelandic ports were required by Regulation No. 792/2004 to submit a waste notification prior to arrival, but this was not enforced. Furthermore, as there were almost no waste notifications to review, there was also no system implemented for doing

so. As a result, vessels were not requested or required to deliver all of their ship-generated waste prior to departure. This also meant that irrespective of the amount of waste carried on board, the available storage space for waste on board or whether adequate facilities were available at the intended port of delivery, or if that port was unknown, vessels were not ordered to deliver their ship-generated waste.

Against this background it appears, no matter whether the obligations of Articles 7(2) and 11(2)(c) of Directive 2000/59 are actually implemented into the Icelandic legal order, that these obligations are in any event not being enforced by the Icelandic maritime and environmental authorities.

Accordingly, the Authority takes the view that, as the Icelandic authorities have failed to direct vessels to deliver ship-generated waste, Iceland has failed to fulfil its obligations under Articles 7(2) and 11(2)(c) of Directive 2000/59.

5.5 Non-compliance with Article 4(1) of Directive 2000/59

Its Article 4(1) states the following:

> *"Member States shall ensure the availability of port reception facilities adequate to meet the needs of the ships normally using the port without causing undue delay to the ships."*

The inspection revealed that the Icelandic authorities had not ensured the availability of adequate port reception facilities in all Icelandic ports.

Icelandic ports are required by Regulation No. 792/2004 and Act No. 33/2004 to provide adequate port reception facilities. The Environment Agency of Iceland and the Icelandic Maritime Administration stated during the inspection that the authorities had not evaluated the adequacy of the port reception facilities provided by Icelandic ports.

Against this background it appears, no matter whether the obligation arising from Article 4(1) of Directive 2000/59 has actually been implemented into the Icelandic legal order, that Iceland has not ensured the availability of adequate port reception facilities in all Icelandic ports. In that regard, it is not decisive whether the Icelandic authorities had so far not received any complaints regarding the existing system as indicated by the Icelandic Government in its letter of 27 June 2011.

Accordingly, the Authority takes the view that, as the Icelandic authorities have failed to ensure the availability of port reception facilities adequate to meet the needs of the ships normally using the port without causing undue delay to the ships, Iceland has failed to fulfil its obligations under Article 4(1) of Directive 2000/59.

5.6 Non-compliance with Article 8(2)(a) of Directive 2000/59

Its Article 8(2)(a) states the following:

> *"all ships calling at a port of a Member State shall contribute significantly to the costs referred to in paragraph 1, irrespective of actual use of the facilities. Arrangements to this effect may include incorporation of the fee in the port dues or a separate standard waste fee. The fees may be differentiated with respect to, inter alia, the category, type and size of the ship:"*

The inspection revealed that not all vessels calling at the Port of Reykjavík contributed to the costs of operating the port reception facilities as only those vessels that delivered their ship-generated waste to the port reception facilities were charged.

The Port of Reykjavík stated that it was not involved in the handling of the ship-generated waste and charged no fee for such service. The collection, transportation, treatment, recovery and disposal of the ship-generated waste and cargo residues had to be arranged by the ships' agents and the waste handling contractors. This included the payment which was charged directly by the waste handling contractors to the ships that made use of their services.

The 'no-special-fee' applied by the Port of Akureyri only covered the delivery of MARPOL[3] Annex V solid wastes and vessels not under the Icelandic register of ships had to pay a direct fee for the delivery of MARPOL I oily waste.

The Port of Akureyri stated that it charged a waste fee to all ships calling at the port based on the principle of 'no-special-fee'. Fishing vessels were also charged unless the owner's company handled the ship-generated waste itself. The current manager of the port stated that the system had been in place when he started working there more than 12 years earlier. The waste fee covered the delivery of MARPOL Annex V types of solid waste only.

The Environment Agency of Iceland stated that it had no knowledge of the fee systems applied by the ports for the handling of ship-generated waste and cargo residues.

In its letter of 27 June 2011, the Icelandic Government accepted that the current system in Iceland is not in line with the Directive. In its letter of 10 October 2011, the Icelandic Government also indicated that amendments to the Icelandic legislation, including the relevant Parliamentary Act, are deemed necessary to be able to comply with their requirements of Article 8(2)(a).

The Authority takes the views that it is clear that the payment obligation under Article 8(2)(a) applies to all ships calling at the ports of an EEA State, irrespective of the actual use of waste reception facilities. The rule is based on the polluter pays- principle, and aims at providing an incentive for delivery of waste at ports, to so avoid the discharge of waste into the sea, *cf.* recital 14 to the Directive.

Based on the findings set out in the EMSA report, and the acknowledgements by the Icelandic Government, Iceland has not complied with the obligation in Article 8(2)(a) of Directive 2000/59. Moreover, the information provided by the Icelandic Government also indicates that amendments to the national legislation will be necessary in order to comply with the obligations arising from that Article.

Accordingly, the Authority takes the view that, as the Icelandic authorities have, in their own submission, failed to implement, and to ensure that all ships calling at an Icelandic port shall contribute significantly to the costs referred to in Article 8(1) of Directive 2000/59, irrespective of actual use of the facilities, Iceland has failed to fulfil its obligations under Article 8(2)(a) of that Directive.

[3] The International Convention for the Prevention of Pollution from Ships

5.7 Non-compliance with Article 8(3) of Directive 2000/59/EC

Its Article 8(3) states the following:

> *"In order to ensure that the fees are fair, transparent, non-discriminatory and reflect the costs of the facilities and services made available and, where appropriate, used, the amount of the fees and the basis on which they have been calculated should be made clear for the port users."*

The inspection revealed that the basis on which the waste fees had been calculated had not been made clear by the Associated Icelandic Ports to port users.

The waste handling contractors, for competition reasons, refused to disclose both their waste handling fees and the cost of waste handling for the purposes of the EMSA report. The ships' agents normally had a contractual agreement with one of them and provided the cost of the services to the vessel only upon request.

The Associated Icelandic Ports was not involved in setting the cost of the port reception facility services and published no such information. Hence, visiting vessels and other interested parties had no way of knowing the cost basis on which fees had been determined.

Hence, and contrary to the requirements of Article 8(3) of Directive 2000/59, the amount of the fees and the basis on which they have been calculated are not being made clear for the users of Icelandic ports. However, it follows from Article 8(3) that in order to, *inter alia*, ensure that the fees are fair and transparent, the amount of the fees, and the basis of which they have been calculated, should be made clear for the port users.

Accordingly, the Authority takes the view that, as the Icelandic authorities have failed to ensure that the amount of the fees and the basis on which they have been calculated are being made clear for the port users, Iceland has failed to fulfil its obligations under Article 8(3) of Directive 2000/59.

5.8 Non-compliance with Article 7(1) of Directive 2000/59

Its Article 7(1) states the following:

> *"The master of a ship calling at a Community port shall, before leaving the port deliver all ship-generated waste to a port reception facility."*

The inspection revealed that it was not ensured that vessels calling at Icelandic ports delivered their ship-generated waste to a port reception facility.

According to the EMSA report, the Icelandic maritime and port authorities stated that the Directive's requirement that all vessels deliver their ship-generated waste when calling at a port was not enforced in Iceland. In its letter of 27 June 2011, the Icelandic Government conceded this shortcoming.

Accordingly, the Authority takes the view that, as the Icelandic authorities have failed to ensure that the masters of ships calling at Icelandic ports deliver all ship-generated waste to a port reception facility, Iceland has failed to fulfil its obligations under Article 7(1) of Directive 2000/59.

5.9 Non-compliance with Articles 3 & 16(1) of Directive 2000/59

Its Article 3 states the following:

> *"This Directive shall apply to:*
> *(a) all ships, including fishing vessels and recreational craft, irrespective of their flag, calling at, or operating within, a port of a Member State, with the exception of any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service; and*
> *(b) all ports of the Member States normally visited by ships falling under the scope of point (a).*
>
> *Member States shall take measures to ensure that ships which are excluded from the scope of this Directive under point (a) of the preceding paragraph deliver their ship-generated waste and cargo residues in a manner consistent, in so far as is reasonable and practicable, with this Directive."*

Its Article 16(1) reads:

> *"Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 28 December 2002 and forthwith inform the Commission thereof.*
>
> *However, as far as sewage as referred to in Article 2(c) is concerned, the implementation of this Directive shall be suspended until 12 months after the entry into force of Annex IV to Marpol 73/78, while respecting the distinction made in this convention between new and existing ships."*

The inspection revealed that the requirements of Directive 2000/59 with respect to the handling of sewage had not been implemented even though MARPOL Annex IV had entered into force on 23 September 2003.

The Environment Agency of Iceland stated that Iceland had not ratified MARPOL Annex IV and Annex VI and, hence, in its opinion, the requirements of the Directive in respect of sewage could not be enforced.

In the view of the Authority it is not relevant for the present proceedings whether Iceland has ratified the respective Annexes to the MARPOL Convention, as its obligation with respect to handling of sewage arises directly from Directive 2000/59, and not from the underlying MARPOL Convention.

Accordingly, the Authority takes the view that, as the Icelandic authorities have failed to implement and to apply the requirements regarding the handling of sewage, Iceland has failed to fulfil its obligations under Articles 3 and 16(1) of Directive 2000/59.

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 Iceland has failed to fulfil its obligations arising from the Act referred to at point 56i of Chapter V of Annex XIII to the Agreement on the European Economic Area, *Directive 2000/59/EC of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues, as amended*), as adapted to the EEA Agreement by Protocol 1 thereto, as interpreted in light of Article 3 EEA.

Specifically, Iceland has failed to fulfil its obligations under the following Articles of the Directive: 3, 4(1), 6(1), 7(1), 7(2), 8(2)(a), 8(3), 11(2)(a), 11(2)(c), 11(3), 12(1)(d), 16(1).

Pursuant to the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority requires Iceland to take the measures necessary to comply with this reasoned opinion within *two months* following notification thereof.

Done at Brussels, 10 July 2013

For the EFTA Surveillance Authority,

Sverrir Haukur Gunnlaugsson
College Member

Xavier Lewis
Director