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Subject: Ministry of Transport and Local Government's response to ESA letter No 1207727  
date. 29 June 2021 – Case No 86978.

Reference is made to the EFTA Surveillance Authority's letter, dated 29 June 2021, regarding a request for information concerning the obligation of air carriers to inspect COVID-19 certificates in international flights to Iceland (Case No 86978, Document No 1207727).

In its letter, the Authority invited the Icelandic Government to comment on points raised in the letter regarding Law No 41 of 28 May 2021 amending Act No 60/1998 concerning obligations of air carriers due to COVID-19.

The first point raised concerns the assessment of the proportionality of the measures taken in Law No 41 of 28 May 2021 in tandem with Regulation No 650/2021. The Environment and Communications Committee (Umhverfis- og samgöngunefnd) introduced the bill in congress that became Law No 41 of 28 May 2021 amending Act No 60/1998 concerning obligations of air carriers due to COVID-19. The original bill proposed by the committee applied to Icelandic nationals as well but was changed to comply with paragraph 2 of Article 66 of the Icelandic Constitution which forbids denying Icelandic nationals entry into Iceland. The bill was discussed during the legislative process and the proportionality of the measures in question was assessed. The original bill as well as the majority committee opinion addressed the need and proportionality of the measures in question. It is important to limit the arrival of passengers that have COVID-19 to decrease the possibility of COVID-19 infections spreading to Icelandic society and starting new waves of infections. Less restrictive measures, like requiring all passengers who travel to Iceland to undergo quarantine, have been tried but they have not reached the intended objective of preventing passengers from spreading COVID-19, since many of them do not comply with quarantine rules. Therefore, the Icelandic Government believes that the measures in question are proportionate to the aim pursued, considering the ongoing COVID-19 global pandemic and the fact that the Icelandic Government has tried less restrictive measures that have not been as successful as intended.

Moreover, the need and proportionality of Law No 41 of 28 May 2021 in tandem with Regulation No 650/2021, which was adopted on the basis of the law, is ensured by a

stipulation that requires a revision of the Regulation at least every four weeks. The law establishes that the Minister of Transport and Local Government is authorized to issue rules concerning obligations of air carriers due to COVID-19 and that these rules shall be revised at least every four weeks, as previously said. Hence, the law itself does not oblige air carriers to inspect COVID-19 certificates, it rather authorizes the Minister to issue rules concerning obligations of air carriers due to COVID-19. The proportionality of the measures in question is therefore guaranteed since the Minister is obligated to revise the Regulation, that puts forth these obligations, every four weeks and change it, if need be or repeal it.

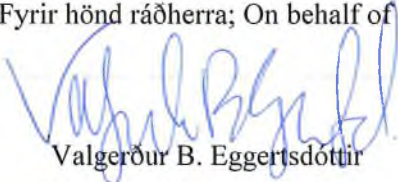
The proportionality is also ensured by the fact that the Minister does not need to issue rules to the fullest extent permitted by Law No 41 of 28 May 2021. The majority committee opinion emphasizes this and states that the Minister has the option to put forth less restrictive measures, for example, accept different documents instead of the ones specified in the law.

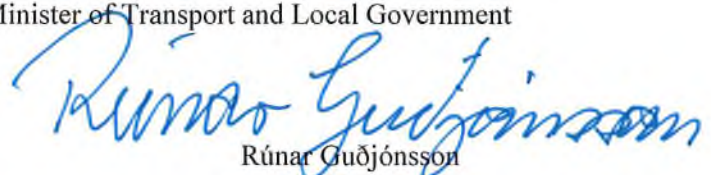
Furthermore, the Icelandic Government believes that the measures in question are not too burdensome for passengers. There is, overall, considerable access to the certificates that passengers are required to present and therefore, procuring such certificates does not put an undue burden on passengers. Most countries require passengers to present some form of documentation relating to COVID-19 to enter their countries, and therefore the Icelandic Government does not believe that it is imposing disproportionate requirements on passengers who wish to enter the country, by requiring them to provide certain documentation pertaining to COVID-19.

The second point raised regards the consequences for travellers denied boarding in the event of an erroneous assessment of the relevant COVID-19 documentation by the carrier. Firstly, it is not the air carriers' role to evaluate the veracity of the relevant documentation, as evidenced by the original bill. The veracity of the relevant documentation is evaluated at the Icelandic border. The obligations of the air carrier extends to checking whether the documents provided by passengers have the appearance of the relevant documentation and to verify the period of validity of the document and that the passenger's name is on the document as stipulated by Article 2 first sub-paragraph thereof of Regulation 650/2021. This means that if a passenger has a document that has the official appearance of the relevant documentation, he will not be denied boarding. The Icelandic Government can therefore not envisage the event of an erroneous assessment occurring. If it occurs, however, the air carrier who wrongly denies boarding is liable for the damages caused by the denied boarding. The right to compensation is decided on the culpa rule (liability based on negligence).

The third question concerns the distinction established by Law No 41 of 28 May 2021 between Icelandic nationals and all other passengers when it comes to denying boarding to passengers who do not have the relevant documentation. The requirement to deny boarding does not apply to Icelandic nationals. The original bill applied to Icelandic nationals but was changed to comply with paragraph 2 of Article 66 of the Icelandic Constitution which forbids denying Icelandic nationals entry into Iceland. The basis of the distinction is, therefore, the Icelandic Constitution's ban on denying Icelandic nationals entry into Iceland.

Fyrir hönd ráðherra; On behalf of the Minister of Transport and Local Government

  
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