



EFTA Surveillance Authority
Lemonia Tsaroucha
Rue Belliard 35
B-1040 B-1040 BRUXELLES
BELGIUM

SAMGÖNGU- OG
SVEITARSTJÓRNARRÁÐUNEYTIÐ

Sölvhólgötu 7 101 Reykjavík
sími:5458200 postur@srn.is srn.is

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Efni: Request for information concerning the obligation of air carriers to inspect COVID-19 certificates in international flights to Iceland

Reference is made to EFTA Surveillance Authority (ESA) letter dated 13 September 2021 requesting further clarifications to Iceland's reply of 10 August 2021.

1. Proportionality assessment

As previously stated, Iceland's objective as regards the obligation of air carriers to inspect COVID-19 certificates, is to safeguard public health in Iceland. As regards ESA's statement that Iceland has not demonstrated the proportionality of current travel restrictions to the aim pursued, Icelandic's view is that it cannot be required to positively prove that no other conceivable measure could enable the same objective. Constant evaluation of the obligations has been carried out, including regular stakeholder meetings, and a revision of *Regulation No 650/2021 on the obligation of air carriers to inspect COVID-19 certificates in international aviation* every four weeks. In these revisions, requirements have been amended as necessary to closely follow the latest developments confirmed by Icelandic health authorities. The outcome of this recurring evaluation, considering the COVID-19 situation in Iceland, constitutes in Iceland's view a proportionality test every four weeks.

The public non-compliance, Iceland referred to in its letter of 10 August 2021, was merely describing the situation Iceland was coping with when quarantine was one of the main means of hindering the spread of the COVID-19 disease into Iceland from international travelers. At that stage, public health authorities were constantly reassessing the situation and it seemed as quarantine was not sufficient in hindering the spread of COVID-19, as infection rates were rising in Iceland. Once COVID-19 tests and certificates of vaccination against COVID-19, or of previous infection, became an option, and relatively easy to access, this was considered by the Icelandic government to be less burdensome for travelers and more effective in hindering the disease from entering Iceland.

It must be noted that the measures set out in Regulation No 650/2021 are closely linked to requirements in *Regulation No 938/2021 on quarantine, isolation and testing at the Icelandic border*, which falls under the auspices of the Ministry of Health. Those

requirements have similarly been changing rapidly during the last couple of months, based on most recent health data.

Furthermore, as previously stated in the letter of 10 August 2021, most countries require passengers to present some form of documentation relating to COVID-19 to enter their countries. In that sense islands have more advantage in being able to control their borders, see for example current entry restrictions into the UK.

2. Denial of boarding under Article 4 of Regulation (EU) No 261/2004

According to ESA's letter, a blanket exemption from EEA rules should not be set out in national rules. While Iceland points to the fact that the provision's objective was to clarify the situation, Iceland takes note of the this point from ESA and will take this into consideration in the next revision of Regulation No 650/2021.

3. Discrimination against EEA nationals legally residing in Iceland

As stipulated in Iceland's letter of 10 August 2021 the basis for the distinction between Icelandic nationals and other passengers, is the Icelandic Constitution's ban on denying Icelandic nationals' entry into Iceland.

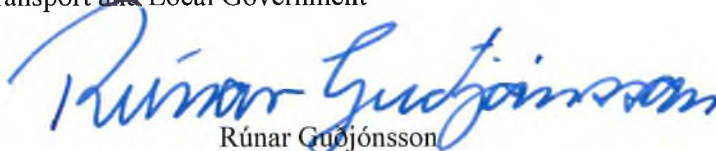
Originally the Icelandic Government's intention was to prohibit all entry into Iceland, in case of insufficient documentation. However, it was considered contrary to the Icelandic Constitution to ban Icelandic nationals to enter Iceland, and for this reason Icelandic nationals were exempted from the ban. The exemption was to be interpreted as narrow as possible, for the regulation's objectives to be achieved as far as possible.

In Iceland's view the principle in the EEA Agreement on safeguarding public health, should allow for a deviation from the rights and privileges stipulated in Articles 6 and 7 of Directive 2004/38/EC, under current extraordinary circumstances due to COVID-19.

In addition, according to Icelandic health authorities' assessment, individuals residing in Iceland are more likely to infect others than the average tourist, who does not have ties to Iceland. Based on that, the wider the exemption is, the more likely it is that COVID-19 infection rates will rise.

On behalf of the Minister of Transport and Local Government


Valgerður B. Eggertsdóttir


Rúnar Guðjónsson