



United Nations
Aarhus Convention Secretariat
Compliance Committee

Date 5 April 2024
Case Number URN24040041

Communication concerning compliance by Iceland (ACCC/C/2019/168)

A reference is made to UNECE's letter from 22 January 2024 where the Icelandic government and the communicants are invited to answer questions of the Compliance Committee concerning Iceland's compliance with Articles 6, 8 and 9 of the Aarhus Convention in connection with legislation on fish farming (ACCC/C/2019/168). The Icelandic government's answers regarding the questions are as follows.

1. Please provide an update regarding the allegations made in the communication submitted on 25 February 2019 in relation to article 21(2)c of the Fish Farming Act amended, including whether:
 - a. Article 21(2)c of the Fish Farming Act remains in force;
 - b. Any further temporary operating licenses have been granted under article 21(2)c of the Act since the submission of the communication;
 - c. There are any other updates you consider relevant for the Committee's assessment of the allegations in the communication.

1.a - Article 21(2)c of the Fish Farming Act no 71/2008 is still in force. Amendments were made to the Article with amendment Act no 28/2023 that came into force on 22 May 2023. Attached is an informal translation of Article 21 of the Fish Farming Act no 71/2008 with amendments.

1.b - No further temporary licenses have been granted under article 21(2)c of the Fish Farming Act since the submission of the communication. The only temporary licenses that have been granted to this day are the ones issued on 5 November 2018 to Artic Sea Farm hf. and Fjarðalax hf.

1.c - A reference is made to the Government letter to the Aarhus Compliance Committee, dated 20 May 2020. In part V of the letter attention is drawn to the fact that the EFTA Surveillance Authority (ESA) had issued a preliminary view in which the Authority considered Article 21(2)c to be in breach of the requirements of Directive 2011/92/EU on the assessment of the effects of certain public or private projects on the environment. It was the conclusion of the Authority that it accepted the necessity of a preliminary measure to be in place but pointed out that such measures can only be used in exceptional circumstances and, when an EIA has been conducted or rectified after issuing of a licence, the EIA must account for impacts from the beginning of

operation. In the letter the Government informed the Compliance Committee that the matter was being looked at in cooperation with ESA.

The outcome of that review was the aforementioned amendments of Article 21(2)c of the Fish Farming Act. Amended Article 21(2)c states that The Food and Veterinary Authority (MAST) may issue a temporary license under exceptional circumstances if there are good reasons for doing so, for up to one year. MAST also needs to ensure that the temporary operating license is subject to the conditions stipulated in Article 25(2) of Act on environmental assessment of projects and plans, no. 111/2021. The conditions of Article 25(2) of Act no 111/2021 are that the flaws of the EIA are to be corrected during the validity of the temporary license and the EIA must account for impacts from the beginning of operation. The temporary license is also open for public participation, and it can be challenged before the Environmental and Natural Resources Board of Appeal (ÚUA) by the public.

2. Did the public have an opportunity to comment on the new operating licences, including to comment on the report on alternatives issued on 16 May 2019, prior to the new operating licences being granted on 27 and 29 August 2019.

On 16 May 2019 the National Planning Agency (NPA) issued an opinion on Arctic Sea Farm and Fjarðalax report on alternatives (addition to the original Environmental Impact Statement from 2016) See: <http://www.skipulag.is/umhverfismat-framkvaemda/gagnagrunnur-umhverfismats/alit-skipulagsstofnunar/nr/1024#alit>.

A discussion of the report on alternatives procedure can be found in the NPA's opinion. According to the NPA's opinion on the report the initial environmental impact statement (EIS) was submitted to the NPA on 30 January 2019. Before submitting the EIS to the NPA the companies (Arctic Sea Farm and Fjarðalax) published the EIS in the Legal Gazette, two widespread newspapers and on the website of a local newspaper, calling for comments from the public. The report was also accessible at the offices of the Municipalities in question, the national Library of Iceland in Reykjavík and at the NPA's office and its website. An open introduction meeting for the public was held in the Municipality of Tálknafjörður. The companies also sought comments from relevant institutions, municipalities, and other appropriate parties. Comments on the report were received from municipalities, institutions and from the public.

A discussion of the procedure of the new operating licenses can be found in the explanatory notes to the two licenses to Arctic Sea Farm and Fjarðalax that were issued by MAST and the Environmental Agency of Iceland (UST). Here are links to the explanatory notes of the operating licenses:

Arctic Sea Farm operating license issued by MAST:

<https://www.mast.is/static/files/import/upplýsingar/greinargerð-tekstarleyfi-arctic-sea-farm-patreks-talknafirdi.pdf> (Chapter 4 - only in Icelandic)

Arctic Sea Farm license issued by UST on the basis of Act on Hygiene and Pollution Control no. 7/1998:

https://ust.is/library/Skrar/Einstaklingar/Mengandi-Starfssemi/Fiskeldi/%c3%81kv%c3%b6r%c3%b0un_starfsleyfi%20og%20greinarger%c3%b0%20ASF%20P%20og%20T.pdf (Chapter 3 on page 17 – only in Icelandic)

Fjarðalax operating license issued by MAST:

<https://www.mast.is/static/files/import/leyfi/greinargerð-mast-fjarðalax-rekstrarleyfi-patreks-talknafirdi.pdf> (Chapter 4 - only in Icelandic)

Fjarðalax license issued by UST on the basis of Act on Hygiene and pollution Control no. 7/1998:

<https://ust.is/library/Skrar/Einstaklingar/Mengandi-Starfssemi/Fiskeldi/Starfsleyfi%20Fjar%3%b0arlax%20%3%ad%20Patreks-%20og%20T%3%a1lknafir%3%b0i.pdf> (Chapter 3 on page 17 – only in Icelandic)

According to the explanatory notes of UST's proposal of new licence for Arctic Sea Farm the proposal was advertised and open for comments from the public from 7 June until 8 July 2019. For Fjarðalax the proposal for new operating licence was open for comments from the public from 14 June until 15 July 2019. The proposals were also sent to the municipalities in question, institutions and authorities and other stakeholders for comments, including stakeholders that had already put forward opinions on the original operating licences.

According to the website of MAST the proposals of new operating licences for Arctic Sea Farm and Fjarðalax were advertised on 5 July 2019 and the proposals were open for comments from the public until 2 August 2019, cf.: - <https://www.mast.is/is/um-mast/frettir/frettir/tillaga-a-rekstrarleyfi-arctic-sea-farm-i-patreks-og-talknafiri> and <https://www.mast.is/is/um-mast/frettir/frettir/tillaga-a-rekstrarleyfi-fjaralax-i-patreks-og-talknafiri>.

Both MAST and UST received comments from the public. A discussion of the comments put forward by the public can be found in the explanatory notes of all the licenses issued by MAST and UST, see links above.

3. Question no 3 was only directed to the communicants and therefore the Ministry will not reply.
4. Please provide in Icelandic, the full text of Act 71/2008 on Fish Farming, and an English translation of the following provisions of the Act;
 - a. Article 10;
 - b. The full text of Article 21, including Article 21(2)c.

The Act 71/2008 on Fish farming in Icelandic can be accessed on the Parliament's website on the following link: <https://www.althingi.is/lagas/nuna/2008071.html>. An informal translation in English of Article 10 and of the full text of Article 21 and Article 21(2)c of the Act on Fish Farming is also attached.

5. Please provide an English translation of the relevant paragraphs of the Reykjavik District Court's judgments in cases no E-252/2019 and E-253/2019 in which the Court sets out its reasons for rejecting the plaintiffs' claims in each case.

Attached is an informal English translation of relevant paragraphs of the Reykjavik District Court's judgment in case no E-252/2019. The conclusions of the judgment in case no E-253/2019 is identical.

6. Do you agree with the communicants' statement that, in accordance with the caselaw of the Supreme Court, a legal instrument or administrative decision that is no longer valid cannot be annulled by the courts.

It was the ruling of the Reykjavík District Court In cases no. E-252/2019 and E-253/2019 to dismiss the cases. According to the judgment the plaintiff lacked legally protected interests to be able to get the Ministers decision on issuing the temporary licenses annulled by the Court. The temporary licences had already been cancelled with the issuing of the new licenses, so the plaintiffs did not have legally protected interests in an annulment of the decisions of granting the temporary operation licenses since the licenses were no longer valid. The Government wants to point out that when the temporary licenses were cancelled the new licenses were issued simultaneously and the new licenses were open for appeal before the ÚUA.

7. Do you accept that, once the temporary operating licenses ended on 27 and 29 August 2019, there were no longer any domestic remedies through which the temporary operating licences could be challenged.

The Government points out that a temporary operating license is an interim measure. It is only valid for a limited period of time and is issued under strict conditions to rectify a procedural error or to bring a matter before a domestic court to prevent irrecoverable damage. A temporary license is based on the data and documentation gathered under previously conducted license procedures in which a public participation is granted on various stages. The previous conducted licenses were open for comments and were annulled by the UÚA. Regarding the new licenses the proposals of the new licenses and the rectification of the EIA were open for public participation and for comments in the same way as the previous conducted licenses. The Government would also like to point out that in the Icelandic civil procedural law the principle of legally protected interests is a fundamental principle. That means a claim shall be so couched that its resolution will have actual value for the parties' legal status. The jurisdiction of a court is limited to claims that a statute and domestic law cover and courts do not resolve legal questions.

When the temporary operating licenses ended on 27 and 29 August 2019 the licenses were no longer valid. The temporary licenses could not be a subject of the court rulings after they ended because parties do not fulfil the principle of legally protected interest. After the temporary operating licenses ended, they could not be challenged.

As mentioned in the response to question 1a and 1c above amendments have already been made to Article 21(2)c of the Fish Farming Act. According to the Act temporary license is open for public participation and can be challenged by the public before the ÚUA. The same amendments have been made to the Act on Hygiene and pollution Control, no. 7/1998.

8. On page 5 of its response dated 20 May 2020, the Party concerned states that "the Complainants who brought the initial operating licenses before the ÚUA were invited to submit their opinion on the draft of the temporary operating licenses." Please provide

further details regarding the opportunity to comment on the draft of the temporary operating licences:

- a. Were all members of the public, who submitted comments during the public participation on the original licenses, notified of their opportunity to comments on the temporary operating licences?
- b. What was the timeframe for members of the public to submit comments on the draft text of the temporary operating licences?
- c. In addition to the draft text of the temporary operating licences, were members of the public provided with any documentation regarding the potential environmental effects of the temporary operating licences?
- d. Is there a document setting out how members of the public's comments on the draft text of the temporary operating licences were taken into account in the final text of the temporary licences? If so, please provide the text of that document to the Committee, together with an English translation of the relevant parts thereof.

8.a – On 18 October 2018 all the complainants who brought the initial operating licenses before the ÚUA were invited to submit their opinion on the draft of the temporary operating licences.

8.b - The timeframe for the complainants was 26 October 2018.

8.c - Opinion of the NPA and MAST on the draft of the temporary operating licenses arrived at the ministry on 22 October and it was forwarded to the complainants the same day for comments. The opinions of the NPA and MAST discusses the potential environmental effects of the temporary operating licences.

8.d - In the explanatory notes to the temporary licenses there is a discussion on how the comments of the public was taking into account in the final decision. The comments put forward by the public were the same regarding both temporary licences. An English translation of the aforementioned relevant text in Arctic Sea Farm and Fjarðalax temporary licenses is attached.

9. Please confirm whether you agree with the communicants' factual submission, at pages 7-8 of the communication, that the 2018 amendments to the Fish Farming Act introduction article 21(2) c:
 - a. Were prepared by the Ministry of Agriculture and Fisheries;
 - b. Were passed into law by Parliament the day after the Ministry presented the bill to Parliament; and
 - c. Therefore, did not follow the normal legislative procedure set out on pages 3-4 of the Party concerned' s response dated 20 May 2020, including that they were prepared without any public participations' procedure.

9.a, b, c - According to the website of the Icelandic Parliament (<https://www.althingi.is/thingstorf/thingmalalistar-efir-thingum/ferill/149/189/?ltg=149&mnr=189>) the preparation of the amendments to the Fish Farming Act was in the hands of the Ministry of Agriculture and Fisheries. The bill was introduced to the Parliament on 9 October 2019 and was passed into law the same day. The bill did not follow the normal legislative procedure set out on pages 3-4 of the Government response letter dated 20 May 2020, due to the urgency of the matter.

10. Regarding access to review procedures to challenge temporary operating licenses granted pursuant to article 2(2)c of Act no 71/2008 on Fish Farming (the Fish Farming Act);

- a. Do you agree that such temporary operating licenses cannot be challenged before the Environmental and Natural Resources Board of Appeal (ÚUA)?
- b. Please explain the legal grounds on which environmental NGOs have standing to challenge the temporary operating licenses before the domestic courts.
- c. Building on your answers to question (b) above, please explain how such requirements for standing are in compliance with article 9 of the Convention and in particular the following sentence of article 9(2): "To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above".

10.a - When the communicant submitted its complaints in February 2019 the temporary operating licenses could not be challenged before the ÚUA. As mentioned in the response to question 1a and 1c above legislative amendments were made to the Fish Farming Act with Act no 28/2023 that came in to force on 22 May 2023. The amendments stipulate that the Food and Veterinary Authority is now respectively the issuer of a temporary operating license and that the license can be challenged by the public before the ÚUA. When the temporary licenses were issued to Fjarðalax and Arctic Sea Farm their licenses were issued by the Minister of Agriculture and Fisheries and the decision could not be challenged.

10.b - Environmental NGOs are considered to be parties to the administrative licensing procedures given they submit opinions on the proposed licence and therefore are eligible for bringing the matter to court. Attached is a translation of part of the conclusions of the Reykjavik District Court in case no E-252/2019 where the matter is specifically addressed.

10.c - Article 9(2) of the Aarhus Convention states:

"Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest

or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

According to Icelandic legislation, NGOs that meet the requirements referred to in article 2(5) of the Aarhus Convention are considered to have sufficient interest to challenge the substantive and procedural legality of any decision before the Environmental and Natural Resources Board of Appeal (ÚUA), act or omission subject to the provisions of article 6 of the Convention. According to the aforementioned ruling of the Reykjavík District Court in cases no. E-252/2019 and E-253/2019 and Article 60 of the Icelandic Constitution, parties that are considered to have legal standing in an administrative case can bring procedural matters regarding the case to the courts.

The Icelandic government believes that this is in full compliance with Article 9 of the Aarhus Convention.

On behalf of the minister

Magnús Guðmundsson
Director General

Steinunn Fjóra Sigurðardóttir
Director General