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The logo of the EFTA Surveillance Authority, featuring the text "EFTA SURVEILLANCE AUTHORITY" in white capital letters on a dark blue rectangular background.

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 a  
breach by Norway of the freedom to provide services**

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### 1 Introduction

By letter dated 12 August 2009, the EFTA Surveillance Authority (“the Authority”) informed the Norwegian Government that it had received a complaint against Norway regarding the Norwegian rules of registration taxation on the temporary import and use of foreign-registered rental cars by persons permanently resident in Norway.

The complaint was initially treated jointly with another complaint on the same issue in another case (Case 1893), which was closed by the Authority on 26 January 2011<sup>1</sup> after the Norwegian Government had adopted amendments to Regulation of 20 June 1991 No. 381 on the exemption from import duties and taxes for importation and temporary use of foreign-registered motor vehicles in Norway (*Forskrift av 20. juni 1991 nr. 381 om avgiftsfri innførsel og midlertidig bruk av utenlandsregistrert motorvogn i Norge*, hereinafter “Regulation No. 381”). However, that case and the amendments adopted by the Norwegian Government only concerned the rules on rental cars and not leased cars. Therefore, in the present case, the Authority is assessing the compliance of the Norwegian legislation on registration taxation for motor vehicles with EEA law with regard to leased cars.

On 21 March 2012, the Authority sent a letter of formal notice to Norway concluding that, by maintaining in force Section 15 of Act of 18 June 1965 No. 4, Section 1 of Act of 19 May 1933 No. 11 on Special Charges, Section 1(1) of Act of 19 June 1959 No. 2 on taxes for motor vehicles and boats, Section 1-1 of Regulation of 19 March 2001 No. 268 on registration tax for motor vehicles and Section 1, paragraph 4 and Section 5(c) of Regulation No. 381, which provide that a full amount of registration tax is due for foreign-registered leased motor vehicles temporarily imported by Norwegian residents to Norway, without the person having any right to an exemption or refund where the vehicle is neither intended to be used essentially in Norway on a permanent basis or in fact used in that manner, Norway has failed to fulfil its obligations arising from Article 36 of the EEA Agreement.

By letter of 23 May 2012, the Norwegian Government replied to the letter of formal notice, whereby it did not challenge the arguments or the conclusions by the Authority. On the contrary, in that letter, it recognised that the Norwegian system regarding the registration tax on leased motor vehicles imported and used on a temporary basis by Norwegian residents might be in conflict with the obligations arising from Article 36 of the EEA Agreement. The Norwegian Government, however, did not propose any amendments to rectify the breach and only stated that it had invited the Norwegian Customs and Excise Directorate to examine the issue and to propose any possible amendments.

On 11 June 2012, the Authority sent a letter to Norway inviting the Norwegian Government to present a timetable for the adoption of the necessary amendments to the relevant legislation in order to ensure its compatibility with the EEA Agreement.

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<sup>1</sup> College Decision 04/11.

By letter of 29 June 2012, the Norwegian Government replied to the Authority that it has given the Customs and Excise Directorate until 15 October 2012 to formulate an opinion on the matter and to make proposals for amendment. It was further stated in the letter that, given the substantial character of the necessary amendments and the significant financial implications for the State, the amendments would have to be adopted by the Norwegian Parliament and that, therefore, it was not possible to present a timetable for the adoption of the amendments.

The issue was also discussed at the package meetings in Oslo on 11 November 2011 and on 25 October 2012. At the meeting, the Norwegian Government stated that the consultation with the Customs and Excise Directorate did not result in any concrete ideas or proposals for amendment yet.

## 2 Relevant national law

Act of 19 May 1933 No. 11 on special charges (*Lov av 23. mai 1933 nr. 11 om særavgifter*).

Act of 19 June 1959 No. 2 on taxes for motor vehicles and boats (*Lov av 19. juni 1959 nr. 2 om avgifter vedrørende motorkjøretøyer og båter*).

Act of 18 June 1965 No. 4 on road traffic (*Lov av 18. juni 1965 nr. 4 om vegtrafikk*).

Regulation of 19 March 2001 No. 268 on registration tax for motor vehicles (*Forskrift av 19. mars 2001 nr. 268 om engangsavgift på motorvogner*).

Regulation of 20 June 1991 No. 381 on the exemption from import duties and taxes for importation and temporary use of foreign-registered motor vehicles in Norway (*Forskrift av 20. juni 1991 nr. 381 om avgiftsfri innførsel og midlertidig bruk av utenlandsregistrert motorvogn i Norge*, ("Regulation No. 381")):

Section 1, paragraph 4:

*"For the purpose of this regulation, a rental motor vehicle is a vehicle that is put at the disposal of the lessee for a certain amount of time in relation to a professional business activity and against remuneration. In case the rental agreement includes a purchasing option, the vehicle will not be considered a rental motor vehicle."*

Section 2:

*"Main rule*

*Tax-free import and temporary use of a foreign-registered motor vehicle in Norway is allowed for persons with permanent residence in another country, in accordance with Section 3.*

*The same right for import and use is granted to persons that have temporary residence in Norway in accordance with Section 4 or that have access to such import and use in accordance with the provisions laid down in the present regulation, in accordance with Section 5.(...)"*

## Section 5(c):

*“Rental motor vehicles*

*A person with permanent residence in Norway may import and temporarily use a foreign-registered rental motor vehicle in Norway. The total use in accordance with this provision may not exceed 42 days within a 12-months period.*

*(...)*

*A foreign-registered rental motor vehicle cannot be used in Norway by persons with permanent residence in Norway in accordance with this provision for more than 182 days within a 12-months period.”*

## Section 5(i):

*“Company cars*

*The regional customs office may grant a worker or a self-employed person who is permanently residing in Norway permission to use a specified foreign-registered motor vehicle if such is provided by an employer or a client established in another EEA State. A condition for such a permission is that the vehicle must be necessary for the performance of professional duties or assignments, and, furthermore, the motor vehicle may not be used essentially and permanently in Norway.*

*The motor vehicle will be considered to have been used essentially and permanently in Norway when it is used in Norway for 183 days or more within a 12-months period, and when, within the same 12-months period, it is used to a greater extent for private and business purposes in Norway rather than for business purposes abroad, measured in amount of kilometers.”*

**3 Relevant EEA law**

## Article 36(1) of the EEA Agreement:

*“Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended.”*

**4 The Authority’s Assessment**

As the Norwegian Government has not challenged the Authority’s arguments and conclusions, as expressed in the letter of formal notice of 21 March 2012, the arguments and conclusions for the purpose of the present reasoned opinion are in essence identical to those expressed in the letter of formal notice.

It follows from Section 15 of Act of 18 June 1965 No. 4 on road traffic that all motor vehicles used in Norway must in principle be registered in Norway.

It follows from Act of 19 May 1933 No. 11 on special charges, Act of 19 June 1959 No. 2 on taxes for motor vehicles and boats and the implementing provisions of these acts that, in principle, a one-off tax is due for every motor vehicle which is registered in Norway (registration tax).<sup>2</sup>

Regulation No. 381 contains provisions concerning exemptions from the registration tax, import duties and value added tax in connection with the importation and temporary use of foreign-registered motor vehicles.

Section 2 of Regulation No. 381 provides that the following groups of persons have the right to import foreign-registered motor vehicles to Norway tax-free and to use such vehicles in Norway on a temporary basis:

1. Persons who permanently reside in other countries than Norway;
2. Persons who temporarily reside in Norway; or
3. Persons who for other reasons are entitled to importation and use according to the provisions of the Regulation, cf. Section 5.

Hence, it follows from the aforementioned legislation that persons considered to be permanently resident in Norway are, in principle, not allowed to tax-free import and temporarily use a foreign-registered motor vehicle in Norway. Section 5 of Regulation No. 381, however, contains different exceptions to this main rule.

The conditions for the tax-free import and temporary use of foreign-registered motor vehicles by persons permanently resident in Norway in the event of car rental are included in Section 5(c) of the Regulation. That provision provides that persons with permanent residence in Norway can import and temporarily use a foreign-registered rental car tax-free in Norway provided that the use of the car does not exceed 42 days within a 12-month period and provided that the vehicle is not used more than 183 days in Norway within a 12-months period. This provision was introduced by amendment of 15 March 2010.<sup>3</sup>

However, Section 1, paragraph 4 of Regulation No. 381 provides that the Regulation is not applicable to motor vehicles with a sales option, *i.e.* leased motor vehicles, which is the subject of the present reasoned opinion. Therefore, foreign-registered leased cars temporarily imported to Norway by Norwegian residents remain in principle subject to the full registration tax from the moment they are used in Norway, regardless of their intended or *de facto* use in Norway, unless the importer has obtained the special permission for company cars in accordance with Section 5(i).

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<sup>2</sup> The legal basis for the registration tax in Norway is particular in the sense that the Norwegian Parliament adopts every year a decision imposing a special charge on owners of motor vehicles for the relevant budget year, including the registration tax, in accordance with Section 75(a) of the Norwegian Constitution (Kongeriget Norges Grundlov, av 17. Mai 1814), Section 1 of Act of 19 May 1933 No. 11 on Special Charges (Lov av 23. mai 1933 nr. 11 om særavgifter), Section 1(1) of Act of 19 June 1959 No. 2 on taxes for motor vehicles and boats (Lov om avgifter vedrørende motorkjøretøyer og båter av 19. juni 1959 nr. 2) and Section 1-1 of Regulation of 19 March 2001 No. 268 on registration tax for motor vehicles (Forskrift om engangsavgift på motorvogner av 19. mars 2001 nr. 268). For example, for the budget year 2011, such decision was adopted and incorporated into Chapter 5536 of Regulation of 25 November No. 1535 2010 (Forskrift av 25. november 2010 nr. 1535: Stortingsvedtak om særavgifter til statskassen for budsjetterminen 2011). This principle is also reflected in the decisions for other budget years.

<sup>3</sup> Regulation of 15 March 2010 No. 393 amending Regulation No. 381.

Article 36 of the EEA Agreement requires the abolition of any restriction that is liable to prohibit, impede or render less advantageous the activities of a provider of services established in another Member State where he lawfully provides similar services. This is so even if the restriction applies without distinction to national providers of services and to those of other Member States.<sup>4</sup> Furthermore, freedom to provide services is enjoyed both by providers and recipients of services.<sup>5</sup>

It follows from the Norwegian rules in question that EEA nationals who are considered to be permanently resident in Norway and who wish to temporarily import and use a foreign-registered leased car in Norway, in principle cannot do so without paying the full registration tax.

The Authority observes that taxation, in principle, falls outside the scope of the EEA Agreement. However, it follows from the case law of the EFTA Court and the Court of Justice of the European Union ("Court of Justice") that an EFTA State must exercise its taxation power consistently with EEA law.<sup>6</sup> This means, in principle, that taxation rules may not hinder individuals from buying goods or services in another EEA State or hinder service providers from providing services to customers in another EEA State.

It follows from the case law of the Court of Justice that an EEA State may levy a registration tax on a vehicle made available to a person residing in that State by a company established in another EEA State when the vehicle is intended to be used essentially in the first state on a permanent basis or in fact used in that manner.<sup>7</sup>

In addition, the Court of Justice ruled in Case *C-451/99 Cura Anlagen* that imposing a full registration tax is contrary to the principle of proportionality in so far as the aim which it pursues might be achieved by introducing a tax proportionate to the duration of the registration of the vehicle in the State where it is used, which would ensure there was no discrimination with respect to amortisation of the tax against vehicle leasing undertakings established in other Member States.<sup>8</sup> Therefore, only when the use of the car in Norway would cover the entire economic life left of the vehicle, a full registration tax would be justified. *A contrario*, in case the use in Norway does not cover the entire economic life left of the vehicle, only a registration tax which is proportional to the use in Norway is acceptable.

The Court of Justice confirmed this approach in Case *C-242/05 Van de Coevering*, where it ruled that the EU rules on free movement of services preclude national legislation of a Member State which requires a natural person established in that Member State who rents a vehicle registered in another Member State to pay the full amount of a registration tax when the vehicle is first used on the roads in the first Member State, without taking account of the duration of the use on those roads and without the person in question having any right to an exemption or a refund. An obligation to pay the full tax would, in any event, be considered disproportionate.<sup>9</sup>

<sup>4</sup> Case C-451/99 *Cura Anlagen* [2002] ECR I-3193, paragraphs 29-30.

<sup>5</sup> Case C-435/04 *Leroy* [2006] ECR I-4835, paragraph 11.

<sup>6</sup> Cf. e.g. Case E-1/03 *EFTA Surveillance Authority v. Iceland*, [2003] EFTA Court Report, 143, paragraph 26, Case C-464/02 *Commission v. Denmark*, [2005] ECR-I, 7929, paragraph 74 and C-451/99 *Cura Anlagen* [2002] ECR I-3193, paragraph 40.

<sup>7</sup> Case C-451/99 *Cura Anlagen*, cited above, paragraph 40, C-435/04 *Leroy*, cited above, paragraph 14 and in relation to company cars made available to workers Case C-464/02 *Commission v Denmark*, cited above, paragraphs 75-78, Case C-242/05 *Van de Coevering*, [2006] ECR-I, 5843, paragraph 24.

<sup>8</sup> Case C-451/99 *Cura Anlagen*, cited above, paragraph 69.

<sup>9</sup> Case C-242/05 *Van de Coevering*, paragraphs 32-33.

As stated above, it follows from the aforementioned Norwegian legislation that foreign-registered leased cars which are temporarily imported by Norwegian residents are in principle subject to the full registration tax from the moment they are used in Norway. The Authority concludes that this is not in line with the free movement of services, as the charge of a full registration tax is likely to hinder Norwegian residents from using leased car services offered by companies established in other EEA States and to hinder the latter from offering their services to Norwegian residents. In line with the case law of the Court of Justice, a full registration tax could only be justified in cases where a person permanently resident in Norway would lease a vehicle from a company established in another EEA State and the duration of the leasing contract would cover approximately the entire economic life left of the vehicle in question.<sup>10</sup>

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 Norway the opportunity of submitting its observations,

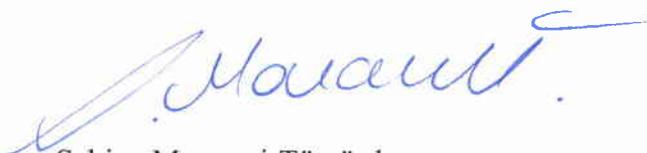
HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that by maintaining in force Section 15 of Act of 18 June 1965 No. 4, Section 1 of Act of 19 May 1933 No. 11 on Special Charges, Section 1(1) of Act of 19 June 1959 No. 2 on taxes for motor vehicles and boats, Section 1-1 of Regulation of 19 March 2001 No. 268 on registration tax for motor vehicles and Section 1, paragraph 4 and Section 5(c) of Regulation No. 381, which provide that a full amount of registration tax is due for foreign-registered leased motor vehicles temporarily imported by Norwegian residents to Norway, without the person having any right to an exemption or refund where the vehicle is neither intended to be used essentially in Norway on a permanent basis or in fact used in that manner, Norway has failed to fulfil its obligations arising from Article 36 of the EEA Agreement.

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 Norway to take the measures necessary to comply with this reasoned opinion within *two months* following notification thereof.

Done at Brussels, 21 November 2012

For the EFTA Surveillance Authority



Sabine Monauni-Tömördy  
College Member



Markus Schneider  
Acting Director

<sup>10</sup> For vehicles which are not new, account has to be taken of the depreciation in value of the vehicle for the purpose of calculating the registration tax.