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EFTA SURVEILLANCE  
AUTHORITY

Ministry of Transport and Communications  
Post box 8010 Dep  
0030 Oslo  
Norway

Dear Sir or Madam,

**Subject: Request for information concerning Norwegian rules defining 'temporary' passenger transport services**

Under EEA law, the conditions under which non-resident carriers may operate national road passenger transport services within a Member State are laid down in *Council Regulation (EC) No 12/98 of 11 December 1997*<sup>1</sup> ('the Regulation'). Article 1(1) of the Regulation reads:

*"Any carrier who operates road passenger transport services for hire or reward, and who holds the Community license provided for in Article 3a of Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (7), shall be permitted, under the conditions laid down in this Regulation and without discrimination on grounds of the carrier's nationality or place of establishment, temporarily to operate national road passenger services for hire or reward in another Member State, hereinafter referred to as the 'host Member State', without being required to have a registered office or other establishment in that State."*

It has come to the attention of the Internal Market Affairs' Directorate (hereinafter 'the Directorate') of the EFTA Surveillance Authority, that Norway is planning to adopt rules defining the notion of 'temporarily' operating national road passenger transport services for foreign operators on Norwegian territory and limiting it to a certain number of days. According to the Ministry of Transport and Communication's webpage<sup>2</sup>, carriers from other EEA countries will be allowed to operate passenger bus services for no more than 45 days in total per year, and for no more than 30 consecutive days. The new rules are foreseen to enter into force on 1 April 2012, according to the information on the Ministry's website.

Under Article 1 of Regulation 12/98, passenger cabotage service providers are granted the right to '*temporarily operate national road passenger services*' in another Member State,

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<sup>1</sup> *Council Regulation (EC) No 12/98 of 11 December 1997* laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ L 4, 8.1.1998, p. 10.)

<sup>2</sup> Cf. <http://www.regjeringen.no/nb/sub/europaportalen/nyheter-europaportalen.html?contentid=663786&id=449646>

referred to as the host Member State, without being required to have a registered office or other establishment in that State.

The ‘temporarily’ criterion in Article 1 of the Regulation is related to the general nature of the freedom to provide services, as laid down in the EEA Agreement Chapter 3, Article 36-39. Whereas Article 38 of the EEA Agreement precludes the direct applicability of the general services rules of the EEA Agreement to the transport sector, it follows from Article 47(2) EEA that the transport annex<sup>3</sup> to the EEA Agreement contains specific rules. To that effect, Article 1(1) of Regulation 12/98 extends the application of the principles set out by the general services rules in Chapter 3 of the EEA Agreement to the road passenger services falling under the scope of Regulation 12/98.

The Court of Justice of the European Union (hereinafter ‘the CJEU’) has dealt with the temporary nature of the freedom to provide services in several cases.

In *Schnitzer*<sup>4</sup> (emphasis added) the Court of Justice of the European Union held that: *‘No provision of the Treaty affords a means of determining, in an abstract manner, the duration or frequency beyond which the supply of a service or of a certain type of service in another Member State can no longer be regarded as the provision of services within the meaning of the Treaty.’* The situation at hand is regulated by Regulation 12/98, rather than the EEA Agreement provisions corresponding to the TFEU’s general rules on services. However, the Directorate finds no indication in the Regulation that such an automatic fixation of duration, for the purposes of determining the temporary nature of a service provision, should be evaluated differently from the general rules on services as set out by the EEA Agreement and the TFEU.

The duration of a service should not be used as the single parameter for determining whether it has a temporary character. As the CJEU held in *Gebhard*<sup>5</sup> (emphasis added), *‘[...] the temporary nature of the activities in question has to be determined in the light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity.’*

Case law also suggests that the evaluation of whether the provision of services is temporary must be undertaken on a case-by-case basis, not applying a fixed criterion. In *Schnitzer*<sup>6</sup> the CJEU also held that (emphasis added): *‘There is no typical period on the basis of which an activity may be classified as the provision of services. Where activities are of longer duration, that may indicate at most that it is rather activities covered by freedom of establishment that are involved, a question which must be assessed on a case-by-case basis.’*

The above mentioned preliminary observations of the Directorate, corresponds with the content of European Commission’s interpretative communication 2005/C 21/02 concerning the ‘temporarily’ criterion in the former EU road freight transport cabotage rules.<sup>7</sup> These rules had the same wording and ‘temporarily’ criterion that in Article 1(1) of

<sup>3</sup> The Act referred to at point 33b of Annex XIII to the EEA Agreement

<sup>4</sup> Cf. C-215/01 *Bruno Schnitzer* [2003] ECR I- 4847, at paragraph 31

<sup>5</sup> Cf. C-55/94 *Gebhard* [1995] ECR I-4165, at paragraph 27

<sup>6</sup> Cf. *Gebhard* at paragraph 19

<sup>7</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:021:0002:0007:EN:PDF>. This Communication directly concerns the interpretation of the former EU road freight transport cabotage rules and most notably the ‘temporary’ criterion.

Regulation 12/98. Its principles, however, apply similarly to road passenger cabotage services.

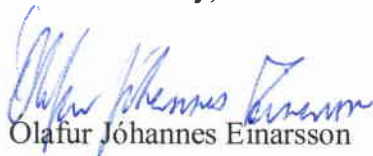
In light of the above, the Directorate invites the Norwegian Government to explain its legal considerations as regards the EEA compliance of the proposed new rules defining the notion of 'temporary'. If the Norwegian Government considers that different considerations apply than what is generally the case for the free movement of services because the matter falls within Regulation 12/98, it is invited to substantiate that point of view. Furthermore, the Norwegian Government is invited to provide its view on whether the planned rules constitute a restriction on the freedom to provide services granted in Regulation 12/98. If the Norwegian Government so considers, it is invited to provide a justification.

Moreover, the Norwegian Government is invited to submit the following information:

1. The relevant (draft) legal text,
2. Information on the background for the intention to adopt such rules (including references to any preparatory works),

The Norwegian Government is kindly invited to submit the above mentioned material so that it reaches the Directorate by 16 February 2012.

Yours sincerely,



Olafur Jóhannes Einarsson

Director  
Internal Market Affairs Directorate