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EFTA SURVEILLANCE  
AUTHORITY

Ministry of Transport  
PO Box 8010 Dep  
N-0030 Oslo  
Norway

Dear Sir or Madam,

**Subject: Letter of formal notice to Norway concerning Minimum safety requirements for tunnels in the Trans-European Road Network**

## 1 Introduction

Reference is made to the act referred to at point 17i, Chapter II of Annex XIII of the EEA Agreement, Directive 2004/54/EC of the European Parliament and of the Council of 29 April 2004 on minimum safety requirements for tunnels in the Trans-European Road Network, OJ. L 167, 30.4.2004, p. 39 (“the Directive”). The Directive was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 10/2006, which entered into force on 1 December 2006.

The Directive sets out minimum safety measures relating to the infrastructure and operation of tunnels with lengths of over 500 m in the Trans-European Road Network (TERN). All tunnels shall be subject to the requirements regardless of whether the tunnels are in operation, under construction or at the design stage. Based on the latest report from the Norwegian Government at least 64 tunnels in operation did not meet the requirements by the deadline set out in the Directive on 30 April 2019.

## 2 Correspondence

In 2007 and 2009, the EFTA Surveillance Authority (“the Authority”) received reports from the Norwegian Public Roads Administration, on planned measures on TERN tunnels in Norway (“the Planned Measures”).<sup>1</sup> The planned measures concerned tunnels already in operation and were submitted pursuant to the Norwegian Government’s obligation under Article 11(5) of the Directive. Moreover, on 28 October 2013 the Authority received a report regarding details on the operational program 2014-2017.<sup>2</sup> This report was submitted pursuant to Norwegian Government’s obligation under Article 15(2) of the Directive, which concerns implementation of the Planned Measures. Every two years, the EEA EFTA States are required to inform the Authority of the state of implementation of the plan and of any changes made to it.

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<sup>1</sup> Doc. No 453804 and Doc. No 540501, your ref. 2005/081677-089 and 2005/081677-130.

<sup>2</sup> Doc. No 688626, your ref. 11/1651.

In a letter to the Norwegian Government, dated 23 July 2015, the Authority accordingly requested further information concerning the report from Norway.<sup>3</sup> Specifically, the Norwegian Government was invited to provide updated information on the plan to implement the Directive.

Following a discussion at the package meeting which took place in November 2015, the Norwegian Government on 11 April 2016 submitted its report pursuant to Article 15(2) of the Directive.<sup>4</sup> In this report, the Norwegian Government gave an overview of the works that were being carried out on TERN tunnels falling within the scope of the Directive, and set out proposed plans for bringing those tunnels in line with the requirements of the Directive. The report stated that by 30 April 2019, Norway would most likely have 37 tunnels that would not be in full compliance with the Directive.

In a letter to the Norwegian Government, dated 10 October 2016, the Authority requested further information concerning the latest report from Norway.<sup>5</sup> Specifically, the Norwegian Government was invited to clarify the numbers of tunnels falling within the scope of the Directive, including the number of tunnels where it did not expect the April 2019 deadline to be met, and further details on the improvement plans for these tunnels.

In its reply to the Authority, dated 24 November 2016, the Norwegian Government confirmed that 37 tunnels were expected not to meet the April 2019 deadline, and that the delay would last no later than 2020/2021.<sup>6</sup>

The Norwegian Government sent the Authority a new report dated 17 January 2019.<sup>7</sup> This report was also submitted pursuant to Article 15(2). In this report, the Norwegian government stated that at least 64 tunnels would not be in full compliance with the Directive by the end of 2019.

### 3 Relevant EEA law

The Directive, as adapted by the EEA Agreement, sets out a number of obligations on the EU Member States and the EEA EFTA States.

Article 3 paragraph 1 reads as follows:

*“1. Member States [and EEA EFTA States] shall ensure that tunnels in their territory falling within the scope of this Directive meet the minimum safety requirements laid down in Annex I.”*

Article 9, relating to tunnels whose design was not approved at the time of incorporation of the Directive into the EEA Agreement, reads as follows:

*“1. Any tunnel whose design has not been approved by the responsible authority by 1 May 2006 shall be subject to the requirements of this Directive.  
2. The tunnel shall be commissioned in accordance with the procedure laid down in Annex II.”*

In case of tunnels in the EEA EFTA States, the applicable date in this relation is 1 December 2006, as that is the compliance date of the Directive within the EEA.

Article 10, relating to tunnels whose design had been approved but which were not open at the time of incorporation of the Directive into the EEA Agreement, reads as follows:

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<sup>3</sup> Doc. No 765774.

<sup>4</sup> Doc. No 801126, Doc. No 801127 and Doc. No 801128, your ref. 15/1923.

<sup>5</sup> Doc. No 820749.

<sup>6</sup> Doc. No 828239, your ref. 15/1923.

<sup>7</sup> Doc. No 1047362 and Doc. No 1047364, your ref. 15/1923.

*“1. In the case of tunnels whose design has been approved but which have not been opened to public traffic by 1 May 2006 [or as regards the EEA EFTA States, before 1 December 2006], the administrative authority shall assess their compliance with the requirements of this Directive, with specific reference to the safety documentation provided for in Annex II.*

*2. Where the administrative authority finds that a tunnel does not comply with the provisions of this Directive, it shall notify the Tunnel Manager that appropriate measures must be taken to increase safety and shall inform the Safety Officer.*

*3. The tunnel shall then be commissioned in accordance with the procedure laid down in Annex II.”*

Article 11 paragraphs 6 and 7, relating to tunnels that were already in operation at the time of incorporation of the Directive into the EEA Agreement, reads as follows:

*“6. The refurbishment of tunnels shall be carried out according to a schedule and shall be finished by 30 April 2014.*

*7. Where the total tube length of existing tunnels divided by the total length of the part of the trans-European road network located on their territory exceeds the European average, Members States [and EEA EFTA States] may extend the period stipulated in paragraph 6 by five years.”*

#### **4 The Authority’s assessment**

The Authority notes that the Directive imposes a strict obligation of result on the EEA EFTA States to bring all tunnels falling under the scope of the Directive into line with its provisions.

The latest report from Norway states that out of the 173 tunnels that fall within the scope of the Directive, 93 tunnels were in full compliance by the end of 2018. This includes all new tunnels falling within the scope of Article 9 and 10.

According to the report, 16 tunnels were expected to become compliant during 2019. The Authority does not possess any updated figures after the January 2019 report, leaving it unconfirmed whether the 16 tunnels that according to the Norwegian Government were expected to become compliant in 2019 have in fact become so.

Apart from these 16 tunnels, there are therefore a total of 64 tunnels expected not to be in compliance with the requirements set out in the Directive by the end of 2019. All 64 tunnels fall within the scope of Article 11 of the Directive.

The Norwegian Government stated in the 2019 report that 22 out of these 64 tunnels will be completed in 2020, and 21 out of the 64 tunnels will be completed in 2021. The report does not provide any explanation on why the refurbishments have not been completed.

As for the 21 remaining tunnels out of these 64 tunnels, the report provides some explanations as to why the works on the tunnels will not be completed by the end of 2021. The report (p. 2-3) states that:

- 6 tunnels are intended to be upgraded after a new road has been built in 2029<sup>8</sup>, the reason being that diversion of traffic during upgrading works in the tunnel will be difficult, as alternative routes will cause long detour.

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<sup>8</sup> A new road between Stanghelle and Arna will be in operation no later than 2029. 6 tunnels will be upgraded after the new road is in operation.

- 2 tunnels are intended to close due to construction of a new tunnel<sup>9</sup>. Limited improvements will be implemented. The report does not state the time for when the tunnels will close.
- 12 tunnels will not be fully upgraded, as construction of a new road is expected to start before 2024, most likely in 2022. The new road will become part of the TERN and replace these tunnels in the future<sup>10</sup>. The report states that the Norwegian Public Roads Administration has updated its risk analysis and is currently deciding which improvements should be done in these tunnels.
- One tunnel is intended to be upgraded in 2023, to avoid severe traffic congestion<sup>11</sup>.

Based on all the information received to date from the Norwegian Government, the Authority draws the following conclusion on the compliance of the tunnels in Norway with the Directive:

A total of 173 tunnels is reported to fall under the scope of the Directive, of which:

- 93 tunnels, including all new tunnels falling within the scope of Articles 9 and 10, are reported to be in full compliance with the Directive
- 16 tunnels, all falling under the scope of Article 11, are not yet confirmed to be in compliance with the Directive;
- 64 tunnels, all falling under the scope of Article 11, are reported not to be in full compliance with the Directive.

Based on the information from the Norwegian Government, the total tube length of TERN tunnels divided by the total length of the part of the TERN located in Norway exceeds the European average. Consequently, the deadline for implementation was extended for five years in accordance with Article 11 paragraph 7, and the deadline for complying with the Directive was 30 April 2019.

## 5 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that, by failing to ensure that tunnels falling within the scope of Article 11 comply with the Directive by 30 April 2019, Norway has failed to fulfil its obligations under Article 3(1) and 11 of the Directive.

In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority requests that the Norwegian Government submits its observations on the content of this letter *within two months* of its receipt.

After the time limit has expired, the Authority will consider, in the light of any observations received from the Norwegian Government, whether to deliver a reasoned

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<sup>9</sup> The project of a new tunnel east of Voss is prioritized in the National Transport Plan 2018-2029.

According to the National Transport Plan, the tunnels that are not in compliance are intended to be closed when the new tunnel is in operation. The plan, however, does not set out when the new tunnel will be in operation.

<sup>10</sup> The 12 TERN tunnels in Sørfold will still be used for diversion of traffic in case of incidents on the new road.

<sup>11</sup> The Fløyfjellstunnel is expected to be completed in 2023, as it cannot be closed for upgrading while some of the other tunnels in Bergen are being upgraded.

opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority

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