

Case No: 74881  
Document No: 1370718  
Decision No: 099/23/COL

## **EFTA SURVEILLANCE AUTHORITY DECISION**

of 19 July 2023

closing a complaint case arising from an alleged failure by Norway to comply with Article 31 of the EEA Agreement by maintaining in force certain rules on access to the Norwegian taxi services market

### **THE EFTA SURVEILLANCE AUTHORITY**

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

### **1 Introduction**

On 26 December 2013, the EFTA Surveillance Authority ("the Authority") received a complaint against Norway alleging that the system in the Oslo Municipality to regulate the access of new entrants to the taxi services market in Oslo could be violating EEA law.<sup>1</sup> The complaint referred to decisions of the Oslo Municipality to reject applications to establish a new taxi service in Oslo. Furthermore, according to the complaint, the Municipality imposed on independent taxi businesses to become members of so-called taxi centrals. Moreover, in supplementary information from the complainant, received by the Authority on 28 January 2014,<sup>2</sup> it was alleged that the number of available licences in a district was limited and that applications for new licences were treated on a "needs-based" analysis, i.e., the competent authority restricted the total number of available taxi licences in correspondence with the demand in each district. Furthermore, the complainant alleged that there were no objective criteria for assessing whether in a given situation there was a need for new taxi licences.

While the complaint pointed to the specific practice of the Oslo Municipality, the Authority examined more broadly the applicable Norwegian legislation and national practices on access to the market for the provision of taxi services. Based on the assessment, the Authority concluded that the relevant Norwegian legislation, which (1) contained a numeric limitation of licences (2) under conditions for granting new licences which were not objective, non-discriminatory and known in advance and (3) provided for an obligation for taxi licence holders to be affiliated to a dispatch central, constituted a breach of the fundamental freedom of establishment under the EEA Agreement.

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<sup>1</sup> [Document 695334](#).

<sup>2</sup> [Document 697128](#).

## 2 Correspondance

By letter dated 6 March 2014,<sup>3</sup> the Internal Market Affairs Directorate of the Authority (“the Directorate”) invited the Norwegian Government to submit information regarding the application of national legislation on access to the market for the provision of taxi services.

In its reply to the Directorate, dated 9 April 2014,<sup>4</sup> the Norwegian Government noted that the issues raised in the complaint resembled those addressed to the Authority in a previous complaint in 2011,<sup>5</sup> and referred, therefore, to two letters previously sent to the Authority dated 12 March 2012<sup>6</sup> and 14 May 2012<sup>7</sup>, setting out its reasoning for the rules on access to the Norwegian taxi services market. The matter was further discussed during the package meeting in Oslo on 16 October 2014.

By letter dated 8 July 2015,<sup>8</sup> the Directorate took the view that Norwegian rules on access to the taxi services market constituted a restriction of the freedom of establishment and that the restriction was not justified.

Norway replied by letter dated 30 September 2015,<sup>9</sup> claiming the provision of taxi services falls under the competence of the states, and in any event, that the restrictions in question were necessary and justified by proportionate overriding requirements in the public interest. The matter was further discussed at the package meeting in Oslo on 12 November 2015. The Norwegian Government sent a further letter on 18 January 2016,<sup>10</sup> maintaining its reasoning.

On 25 May 2016, the Authority issued a letter of formal notice,<sup>11</sup> in which it concluded that by maintaining in force rules on access to the taxi services market which provide for a system of prior authorisation, in the form of a licence, for establishing new taxi businesses, which (1) contains a numerical limitation of licences (2) under conditions for granting new licences which are not objective, non-discriminatory and known in advance and (3) provide for an obligation for taxi licence holders to be affiliated to a dispatch centre, Norway had failed to fulfil its obligations under Article 31 of the EEA Agreement.

The Norwegian Government, in its reply dated 3 August 2016,<sup>12</sup> contested the Authority’s conclusions. It reiterated that the provision of taxi services fall under the competence of the states and, therefore, that the Authority should close the case due to insufficient EEA interest. The Norwegian Government also claimed, because of the so-called standstill provision in Article 48 of the EEA Agreement, that it was not necessary to consider whether the Norwegian rules in question constituted a restriction of the freedom of establishment under Article 31 of the EEA Agreement. In any event, the Norwegian Government claimed that the relevant Norwegian legal framework was justified on grounds of public interest. The matter was further discussed at the package meeting in Oslo on 28 October 2016.

After examining the arguments from Norway, on 22 February 2017 the Authority issued a reasoned opinion.<sup>13</sup> In this letter, the Authority restated its conclusion that Norway had

<sup>3</sup> [Document 700930](#).

<sup>4</sup> [Document 705245](#), letter dated 9 April 2014 (reference 14/713).

<sup>5</sup> [Case 69474](#), opened in 2011 following receipt of a complaint against Norway concerning rules limiting access to the taxi service market. This case was closed by the Authority in 2012 upon a decision that there was insufficient EEA interest in pursuing the case further at that time.

<sup>6</sup> [Document 627756](#), letter dated 12 March 2012 (reference 12/248- MEK).

<sup>7</sup> [Document 634780](#), letter dated 14 May 2012 (reference 12/248).

<sup>8</sup> [Document 759724](#).

<sup>9</sup> [Document 774703](#), letter dated 30 September 2015 (reference 15/3147-).

<sup>10</sup> [Document 789047](#), letter dated 18 January 2016 (reference 15/3147-).

<sup>11</sup> Letter for formal notice, [Decision No 102/16/COL](#), document 791247.

<sup>12</sup> [Document 814115](#), letter dated 3 August 2016 (reference 15/3147).

<sup>13</sup> Reasoned opinion, [Decision No 041/17/COL](#), document 818034.

failed to fulfil its obligations under Article 31 of the EEA Agreement and required that the Norwegian Government take the measures necessary to comply with the reasoned opinion within the deadline outlined therein.

The Norwegian Government replied to the Authority's reasoned opinion by letter dated 11 December 2017.<sup>14</sup> In its letter, the Norwegian Government informed the Authority that it acknowledged that the numerical limitation of licences constituted a restriction for new operators wishing to access the taxi market. Furthermore, the Norwegian Government also underlined the importance of facilitating for innovative solutions based on new business models and new technology, and stated that the existing taxi legislation does not promote innovation to a satisfactory degree. Consequently, the Norwegian Government announced that it would prepare a consultation paper proposing to remove the numerical limitation in the taxi legislation throughout the country. The removal of the numerical limitation would also entail a removal of the rules on the allocation of licences. The Ministry would also propose a removal of the obligation to be affiliated with a dispatch central.

The Authority continued to monitor closely the legislative process in Norway and requested regular updates from the Norwegian Government.<sup>15</sup>

### 3 Measures taken by Norway

On 10 April 2019, the Norwegian Government submitted a legislative proposal to the Norwegian Parliament,<sup>16</sup> which then adopted it on 21 June 2019, amending the Norwegian Act on Professional Transport of 21 June 2002<sup>17</sup> ('the Professional Transport Act'). Subsequently, on 6 December 2019, the Norwegian Government published the relevant amendments to the Norwegian Regulation on Professional Transport of 26 March 2003<sup>18</sup> ('the Professional Transport Regulation').

The amendments to the Professional Transport Act and the Professional Transport Regulation (hereinafter "the taxi-reform") were initially intended to apply from 1 July 2020, but entered into force on 1 November 2020 following a short delay due to the Covid-19 pandemic.<sup>19</sup>

In its proposal for the legislative amendments, the Norwegian Government stated that "On 22 February 2017, ESA issued a reasoned opinion concerning the Norwegian taxi legislation. ESA is of the view that the numeric limitation, allocation of taxi licenses according to seniority and the counties own discretion, as well as the requirement to be affiliated to a dispatch centre, is in breach to the freedom of establishment under Article 31 of the EEA Agreement. ESA requires in the reasoned opinion that Norway implement necessary measures to comply with its opinion."<sup>20</sup>

The main changes to the legislation, as described in the summary of the legislative proposal,<sup>21</sup> were as follows:

- Removal of the numeric limitation on taxi licences, and with that the removal of the obligation affiliated with each licence to provide taxi services.

<sup>14</sup> [Document 887740](#), letter dated 11 December 2017 (reference 15/3147-).

<sup>15</sup> [Document 899709](#) (Presentation provided by Norway to ESA on 28 February 2018), [Document 912090](#) (Internal note of 2 May 2018 on information from Norway concerning the legislative process), [Document 918431](#) (Internal note of 14 June 2018 on information from Norway providing updates on the legislative process) and [Document 932201](#) (Information from Norway received 1 October 2018 concerning a public hearing on the amendments to the Norwegian taxi legislation).

<sup>16</sup> [Prop. 70 L \(2018–2019\)](#) Endringer i yrkestransportlova (oppheving av behovsprøvingen for drøsje mv.).

<sup>17</sup> Lov om yrkestransport med motorvogn og fartøy ([yrkestransportlova](#)), LOV-2002-06-21-45.

<sup>18</sup> Forskrift om yrkestransport med motorvogn og fartøy ([yrkestransportforskriften](#)), FOR-2003-03-26-401.

<sup>19</sup> [Document 1131751](#) (Letter from Norway informing ESA of the delay of the entry into force of the legislative amendments).

<sup>20</sup> See section 2.4 of Prop. 70 L (2018–2019).

<sup>21</sup> See page 5 of Prop. 70 L (2018–2019).

- Introduction of safeguard measures authorising the County Municipalities to award exclusive rights and/or compensation in order to ensure a satisfactory transport service within sparsely populated municipalities.
- Removal of competency requirements for taxi licence operators.
- Taxi licenses shall be issued for a period of ten years.
- Removal of the requirement to be affiliated to a taxi dispatch central, and introduction of an obligation for taxi operators to keep a record of all taxi journeys undertaken.
- Introduction of competency requirements for taxi drivers, and a requirement that a driver's licence must have been valid for at least two years in order for the holder to be allowed to drive a taxi.
- Amendment of an existing provision authorising County Municipalities to set conditions for taxi vehicles with regards to the environment.

As part of the taxi-reform, the Norwegian Government also signalled in its legislative proposal that it was considering further facilitation for innovative solutions in the taxi sector.<sup>22</sup> With reference to a report from a publicly appointed working group, it stated that work was being carried out to assess suitable alternatives to taximeters.

Subsequently, on 10 July 2020 the Norwegian Government issued a proposal for an amending Regulation to allow the use of alternatives to taximeters.<sup>23</sup> However, the national public consultation process had identified some shortcomings with the Government's proposal and the proposal was therefore withdrawn later that year.

A new proposal was published by the Norwegian Government on 24 September 2021, setting out a new Regulation on control equipment in taxis.<sup>24</sup> The technical rules therein were notified to the Authority on 14 October 2021.<sup>25</sup> The Authority issued comments to this notification on 17 January 2022, encouraging the Norwegian Government to ensure that the proportionality of the measures were adequately assessed and in particular to consider whether the aims pursued could be achieved by less restrictive means.<sup>26</sup> This proposal has to date not been adopted by the Norwegian Government.

On 11 May 2022, the Norwegian Government published a proposal to re-introduce, amongst other things, competency requirements and financial standing requirements for taxi licence holders.<sup>27</sup> The Government also announced that it had appointed a public committee tasked to assess the legal framework for taxis from a holistic perspective.<sup>28</sup> Subsequently, financial standing requirements for taxi license holders were re-introduced by the Norwegian Government in December 2022, notably with lower economical thresholds than those applied before the taxi-reform.<sup>29</sup> Moreover, on 9 May 2023 the

<sup>22</sup> Section 5.7.3 of Prop. 70 L (2018–2019).

<sup>23</sup> "Endringer i flere forskrifter for å legge til rette for kontrollutrustning som et alternativ til taksameter i drosje" published by the Norwegian Government on 10 July 2020. The proposal can be accessed through this hyperlink: <https://www.regjeringen.no/no/dokumenter/horing-endringer-i-flere-forskrifter-for-a-legge-til-rette-for-kontrollutrustning-som-et-alternativ-til-taksameter-i-drosje/id2722571/>

<sup>24</sup> "Forslag til ny forskrift om kontrollutrustning i drosje" published by the Norwegian Government on 24 September 2021. The proposal can be accessed through this hyperlink: <https://www.regjeringen.no/no/dokumenter/horing-forslag-til-regelverk-for-kontrollutrustning-i-drosje/id2872561/?expand=horingsbrev>

<sup>25</sup> See [Case 87570](#) concerning DTR 2021/9019/N – control equipment in taxis. This DTR was notified to the Authority pursuant to Directive (EU) 2015/1535 of the European Parliament and the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

<sup>26</sup> [Document 1263159](#) – Letter of 17 January 2022, comments by the Authority on DTR 2021/9019/N – control equipment in taxis.

<sup>27</sup> The legislative proposal can be accessed via this hyperlink: <https://www.regjeringen.no/no/dokumenter/horing-forslag-til-endringer-i-loyvekrav-for-drosje-mv/id2912266/>

<sup>28</sup> Press release from the Ministry of Transport can be accessed via this hyperlink: <https://www.regjeringen.no/no/aktuelt/nye-krav-i-drosjenaringen-horing-er-sendt-ut-og-et-utvalg-skal-se-pa-de-langsigtede-utfordringene/id2912278/>

<sup>29</sup> Forskrift om endring i yrkestransportforskriften, FOR-2022-12-01-2068.

Norwegian Parliament adopted the relevant amendments resulting in that taxi licence holders must fulfil certain competency requirements.<sup>30</sup>

## 4 Assessment

This section provides the Authority's assessment of the steps taken by Norway to comply with the Authority's reasoned opinion, in particular as regards the restrictions to the freedom of establishment concerning (1) a numerical limitation of licences, (2) conditions for granting new licences which are not objective, non-discriminatory and known in advance and (3) an obligation for taxi licence holders to be affiliated to a dispatch centre.

### 4.1 Relevant EEA law

As the Court of Justice of the European Union ("CJEU") and EFTA Court have consistently held, Article 31(1) of the EEA Agreement precludes any national measure which, even though it is applicable without discrimination on grounds of nationality, is liable to hinder or to render less attractive the exercise by EU and EEA citizens of the freedom of establishment.<sup>31</sup>

The concept of "restriction" for the purposes of Article 31(1) of the EEA Agreement covers measures taken by an EEA State which, although applicable without distinction, affect the access to the market for undertakings from other EU Member States or EEA EFTA States and thereby hinder intra-EEA trade.<sup>32</sup> Article 31(1) of the EEA Agreement also prohibits discriminatory national measures which do not distinguish upon nationality as such, but de facto have (indirect) discriminatory effects.<sup>33</sup> Furthermore, it prohibits rules which impede or render less attractive the exercise of the freedom of establishment, in particular through the application of a prior authorisation procedure.<sup>34</sup>

### 4.2 The restrictions of the freedom of establishment addressed in the reasoned opinion

In the reasoned opinion, the Authority did not challenge the requirement of a prior authorisation, but it took issue with the restriction of the freedom of establishment that followed from the numeric limitation of taxi licenses. According to the rules and principles applied at that time, the number of taxi licences available in each licence district was limited and new licences were awarded subject to a needs test, which meant that the competent authority in a licence district limited the number of taxi licences to a number corresponding to the (assumed) demand in the respective district. New licences were only granted when an existing licence became available (due to death or retirement), or when a new licence was issued by the authority. To determine the right level of supply for taxi services in a licence district, the competent authority in that district had to regularly carry out an analysis of the taxi industry. According to the Norwegian Government, this analysis was undertaken with the intention of finding the right correspondence between demand and supply for taxi services in the licence district.

Moreover, in the reasoned opinion the Authority also took issue with the rules that foresaw that applicants with at least two years' experience as full-time taxi drivers within the licence district would be given priority to licences that became available, provided that the provision of taxi services were exercised as their main occupation. The rules also

<sup>30</sup> Amendments to the Professional Transport Regulation, *Endringer i yrkestransportlova (fagkompetansekrav for drosjeløyvehavere og overtredelsesgebyr)*, Prop. 43 L (2022-2023), Innst. 294 L (2022-2023), Lovvedtak 52 (2022-2023) - <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=92977>

<sup>31</sup> Commission v Spain, C-400/08, EU:C:2011:172, para. 64; Yellow Cab Verkehrsbetrieb, C-338/09, EU:C:2010:814, para. 45.

<sup>32</sup> CaixaBank France, C-442/02, EU:C:2004:586, para. 11; Commission v Italy, C-518/06, EU:C:2009:270, para. 64.

<sup>33</sup> Case E-14/12 ESA v Liechtenstein, para. 28; Case E-8/04 ESA v Liechtenstein, para. 16.

<sup>34</sup> Citroën Belux NV v Federatie voor Verzekerings- en Financiële Tussenpersonen (FvF), C-265/12, EU:C:2013:498, para. 35; Analir and Others, C-205/99, EU:C:2001:107, para. 21; Commission v Italy, C-439/99, EU:C:2002:14, para. 22.



stipulated that the applicant with the longest service as a full-time taxi driver within the licence district would be awarded the available licence if several applicants fulfilled the relevant conditions. If a licence could not be awarded based on seniority, the decision was subject to the licensing authority's discretion. Available licences were to be publicly announced, and the relevant criteria to be considered were previous experience as a taxi driver, gained seniority, connection with the taxi profession in general and geographical conditions. If the applicant claimed that there were special circumstances which spoke in his or her favour these were to be considered as well.

In the view of the Authority, this system of allocating available licences effectively favoured existing taxi licence holders (incumbents) and precluded new operators seeking to obtain a taxi licence from entering the market. Criteria such as previous experience as taxi driver and gained seniority appeared to be discriminatory, as they clearly favoured existing taxi licence holders in a district over new entrants without there being any discernible legitimate justification. In the view of the Authority, these conditions did not satisfy the requirements set up by the CJEU and the EFTA Court for prior authorisation schemes, namely that they constitute objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion, so that it is not used arbitrarily.<sup>35</sup>

Lastly, in the reasoned opinion, the Authority took issue with the restriction of the freedom of establishment that followed from the obligation on taxi operators to be connected to a taxi dispatch central, including the corresponding requirements that followed from this affiliation. The Authority acknowledged that grounds of transport safety, as alleged by Norway, could in principle be relied upon as a justification for a restriction of the freedom of establishment. However, it noted that this restriction was not systematically imposed on all drivers in all districts. In some districts, dispatch centres were established, and the affiliation requirement existed, whereas in other districts, the licence was linked to the drivers' residence and no such requirement existed. Therefore, the Authority concluded that the national legislation did not pursue the stated objective of ensuring transport safety in a consistent and systematic manner and could therefore not be considered appropriate for attaining the objective.

### **4.3 Steps taken by Norway to comply with the Authority's reasoned opinion**

Following the Authority's reasoned opinion, the Professional Transport Act and the Professional Transport Regulation were amended, resulting in, amongst other things, that the numeric limitations for taxi licences and the needs test for the allocation of taxi licences was lifted.<sup>36</sup> Moreover, a taxi licence is no longer valid only within the licence district in which the operator is stationed.<sup>37</sup> Furthermore, taxi operators are no longer obliged to provide taxi services,<sup>38</sup> or to operate taxis as their main profession.<sup>39</sup> With the unlimited availability of taxi operating licences, criteria for awarding licences that appeared to have a discriminatory effect, in particular concerning priority for applicants pertaining to seniority and previous professional experience, and concerning the competent authorities discretion in cases where the applicant does fulfil those priority criteria, are no longer relevant and were therefore lifted as well.<sup>40</sup>

As the market is to determine itself the availability of taxi services to the public, the legislation has introduced measures to ensure that such services, classified by Norway as

<sup>35</sup> See e.g. Joined cases E-11/07 and E-1/08 *Olga Rindal and Therese Slinning v Staten v/Dispensasjons - og klagenemnda for bidrag til behandling i utlandet*, para. 48; *Canal Satélite Digital v Administración General Del Estado*, C-390/99 EU: C:2002:34, para. 35 and *Anallir and Others*, C-205/99, EU: C:2001:107, para. 37.

<sup>36</sup> See Section 9 of the Professional Transport Act, as provided at the time of the reasoned opinion, and Sections 37, 38 and 39 (repealed) of the Professional Transport Regulation.

<sup>37</sup> See Section 47 (repealed) of the Professional Transport Regulation.

<sup>38</sup> See Section 1 litra f of the Professional Transport Regulation, as provided at the time of the reasoned opinion.

<sup>39</sup> See Section 45 (repealed) of the Professional Transport Regulation.

<sup>40</sup> See Sections 43 and 44 (repealed) of the Professional Transport Regulation.

services of general interest, are provided in sparsely populated areas where they cannot be run commercially. Specifically, the county municipalities may award exclusive rights, or compensate financially those running public taxi services, in municipalities under their jurisdiction.<sup>41</sup> The exclusive rights areas shall be defined in alignment with the borders of the relevant municipalities. Nevertheless, the county municipalities are not authorised to grant exclusive rights in municipalities with a population of 20 000 or more and with a population density of 80 inhabitants per km<sup>2</sup> and above.<sup>42</sup> In municipalities with population and/or population density below these thresholds, exclusive rights can be awarded only when considered necessary. The legislation does not stipulate how to access the necessity of such awards, but some guidance can be found in the legislative proposal.<sup>43</sup> It lies within the discretion of the county municipalities to assess the need for awarding exclusive rights. Exclusive rights shall be awarded, for a period of maximum five years, through open tenders in accordance with the rules on public procurement.<sup>44</sup> Additionally, a decision to establish an exclusive rights area shall be implemented through a local Regulation, by which that the decision shall be preceded by a public consultation and be adopted in accordance with national administrative law.<sup>45</sup>

As regards the restriction pertaining to taxi dispatch centrals, the obligation for taxi operators to be affiliated to a dispatch central has been lifted.<sup>46</sup> However, as taxi dispatch centrals previously ensured a certain level of quality of taxi services, the legislation introduces for reasons of quality of services an obligation for taxi operators to track taxi journeys, and keep a record for a 60-days period thereof, showing from the start to the end of the journey the geographical positions during the transport.<sup>47</sup> The objective is to ensure the security of passengers and drivers, and to protect consumers. According to the Norwegian Government, these data were in the past collected and obtained by the taxi dispatch centrals.<sup>48</sup>

#### 4.4 Assessment

Based on the legislative amendments referred to above, it is the Authority's understanding that the licencing authorities can no longer establish numeric limitations on taxi operating licences nor set conditions based on which priority may be given to certain applicant for a licence. Moreover, taxi operators may define their own business models, without the restraints and conditions previously imposed by taxi dispatch centrals or thorough geographical limitations pertaining to the licences.

The provision authorising competent authorities to award exclusive rights in sparsely populated areas can potentially entail a restriction of the freedom of establishment in the areas where such rights are granted. However, as acknowledged by the Authority in the reasoned opinion, a limitation of licences can, under certain circumstances, be necessary to guarantee a satisfactory, round-the-clock supply in rural areas where taxis are often an indispensable means of transport and thereby serve a public interest. Ensuring that taxi transport services are permanently available serves the protection of consumers which in itself can constitute an overriding requirement justifying a restriction of the freedom of establishment. In the Authority's view, the measure appears suitable for attaining the objective of guaranteeing a satisfactory permanent supply of taxi transport services.

<sup>41</sup> See Section 9a of the Professional Transport Act

<sup>42</sup> See Section 48a of the Professional Transport Regulation. The thresholds were established based on a report from Oslo Economics in 2018, cf. Point 5.3.2.3 of Prop. 70 L (2018–2019). These indicators were found to be sufficient for the purpose of determining the level of commercial viability for taxi services. According to current figures, 35 out of 356 Municipalities have population and population density above the threshold and can therefore under no circumstances be subject to an exclusive rights scheme. The population of these 35 Municipalities represents approx. 44 % of the total population of Norway (figures obtained from Statistics Norway).

<sup>43</sup> See Point 5.3.2.5 of Prop. 70 L (2018–2019).

<sup>44</sup> Cf. Norwegian Public Procurement Act ("Anskaffelsesloven"), LOV-2016-06-17-73.

<sup>45</sup> Cf. Chapter VII of the Norwegian Public Administration Act ("Forvaltningsloven"), LOV-1967-02-10.

<sup>46</sup> See Section 46 (repealed) of the Professional Transport Regulation.

<sup>47</sup> See Section 9 paragraph 3 of the Professional Transport Act.

<sup>48</sup> See Point 5.8.1 of Prop. 70 L (2018–2019).

The Authority notes, however, that the threshold for determining in which municipalities exclusive rights can be awarded are generic, and that densely populated cities such as Tromsø and Bodø thereby fall within that threshold.<sup>49</sup> Nevertheless, the Authority understands that exclusive rights are only to be awarded following a mandatory necessity assessment and in accordance with the rules on public procurement. In this regard, it should be recalled that EEA rules on public procurement, in particular Directives 2014/23/EU<sup>50</sup> and 2014/24/EU<sup>51</sup>, apply. It follows from these Directives that the procurement rules are without prejudice to the freedom of the EU Member States and EEA EFTA States to define, in conformity with EEA law, services of general economic interest, their scope and the characteristics of the services to be provided, including any conditions regarding the quality of the service, in order to pursue their public policy objectives. On the basis that exclusive rights are to be awarded only when deemed necessary to ensure a satisfactory level of taxi transport services, based on open tenders, subject to the rules on public procurement, and for a limited period, the measure appears to be proportionate to the aim pursued.

The Authority notes that the responsibility to ensure that each decision for awarding exclusive rights is compliant with relevant EEA law lies with the county municipalities, and that this has to be assessed on a case-by-case basis.

The Authority further understands that that the lifting of the obligation for licence holders to be affiliated with a taxi dispatch central ensures operational freedom and equal treatment of taxi operators. By removing this obligation, taxi licence holders are granted the choice of providing their services on their own account, via taxi dispatch centrals or via other intermediaries.

As regards the requirement to track taxi journeys, the Authority acknowledges that this measure may be suitable to guarantee a minimal level of security and protection of consumers. Tracking of taxi journeys may prevent security incidents and can provide data necessary for investigating security incidents. Moreover, consumers become better equipped to file complaints pertaining to the quality of the services when records of journeys are temporarily available after the transport has been completed. With the understanding that detailed requirements concerning tracking of journeys will be outlined through an implementing regulation, the Authority does not consider the measure, as it currently stands, to be disproportionate. The Authority notes that any future requirements adopted by means of a regulation pursuant to this provision, e.g. concerning the storing or handling of personal data, must be compliant with relevant EEA law.<sup>52</sup>

## 5 Conclusion

In light of the above, the Authority concludes that the measures implemented by Norway to comply with the reasoned opinion appear to be in compliance with Article 31 of the EEA Agreement.

By letter of 13 March 2023,<sup>53</sup> the Directorate informed the complainant of its intention to propose to the Authority that the case be closed. The complainant was invited to submit

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<sup>49</sup> According to Statics Norway, in 2022, the Municipality of Tromsø has a population of 77 544 inhabitants, but the population density is 31,35 inhabitants per km<sup>2</sup>. Similarly, the Municipality of Bodø has a population of 52 803, but the population density is 40 inhabitants per km<sup>2</sup>.

<sup>50</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

<sup>51</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

<sup>52</sup> More details can be read in the Authority's letter of 17 January 2022, commenting on a proposal for a regulation on control equipment in taxis, cf. footnote 29.

<sup>53</sup> [Document 1187204](#)



any observations on the Directorate's assessment of the complaint or present any new information by 13 April 2023.

The complainant did not reply to that letter.

There are, therefore, no grounds for pursuing this case further.

This decision is, however, without prejudice to any future decision by the Authority to open a new case on the issue or related issues, including if any relevant developments occur in EU/EEA law or at the national level. In that context, the Authority notes in particular the white paper concerning taxi legislation, which was presented to the Norwegian Government by an expert group on 30 June 2023.<sup>54</sup>

HAS ADOPTED THIS DECISION:

The complaint case arising from an alleged failure by Norway to comply with Article 31 of the EEA Agreement, is hereby closed.

For the EFTA Surveillance Authority

Arne Røksund  
President

Stefan Barriga  
Responsible College Member

Árni Páll Árnason  
College Member

Melpo-Menie Joséphidès  
Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.*

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<sup>54</sup> The white paper is entitled NOU 2023: 22 - *På vei mot en bedre regulert drosjenæring* and is available at <https://www.regjeringen.no/no/dokumenter/horing-nou-2023-22-pa-vei-mot-en-bedre-regulert-drosjenaring-delutredning-i-fra-drosjeutvalget/id2987043/?expand=horingsnotater>.