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EFTA SURVEILLANCE AUTHORITY DECISION

of 30 March 2021

authorising Norway to grant exceptions from the application of Article 8 of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, due to the exceptional circumstances related to the Covid-19 outbreak

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to in point 24e in Annex XIII to the EEA Agreement,

Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulation (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (“the Act”),

as adapted to the EEA Agreement by Protocol 1 thereto, and in particular to Article 14(1) of the Act.

Whereas:

1. Relevant EEA law

Article 1 of the Act reads:

“This Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. [...]”

Article 4 of the Act reads:

*“For the purposes of this Regulation the following definitions shall apply:
[...]*

*(h) ‘weekly rest period’ means the weekly period during which a driver may freely dispose of his time and covers a ‘regular weekly rest period’ and a ‘reduced weekly rest period’: — ‘regular weekly rest period’ means any period of rest of at least 45 hours,
— ‘reduced weekly rest period’ means any period of rest of less than 45 hours, which may, subject to the conditions laid down in Article 8(6), be shortened to a minimum of 24 consecutive hours; [...]”*

Article 8 of the Act reads:

“1. A driver shall take daily and weekly rest periods.

[...]

8. Where a driver chooses to do this, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary. [...]”

Article 14 of the Act reads:

“1. Provided that the objectives set out in Article 1 are not prejudiced, Member States may, after authorisation by the Commission, grant exceptions from the application of Articles 6 to 9 to transport operations carried out in exceptional circumstances.

2. In urgent cases Member States may grant a temporary exception for a period not exceeding 30 days, which shall be notified immediately to the Commission.

3. The Commission shall inform the other Member States of any exception granted pursuant to this Article.”

2. Background

Under Article 14(1) of the Act, the EEA EFTA States may, provided that the objectives set out in Article 1 of the Act are not prejudiced, and after authorisation from the EFTA Surveillance Authority (“the Authority”), grant exceptions from the application of Articles 6 to 9 of the Act to transport operations carried out in exceptional circumstances.

According to Article 14(2) of the Act, the EEA EFTA States may, in urgent cases, grant a temporary exception for a period not exceeding 30 days, which is to be notified immediately to the Authority.

Due to the Covid-19 outbreak, many EU Member States and EEA EFTA States have adopted derogations to the driving and rest time rules under Article 14(2) of the Act.

Norway notified the Authority by letter dated 13 November 2020¹ that, as of 11 November 2020, a temporary exception under Article 14(2) of the Act from the rules on driving and resting times had been granted to drivers of vehicles transporting all types of goods. The exception period would remain valid until 11 December 2020.²

Before the end of the period for the temporary exception under Article 14(2) of the Act, by letter dated 2 December 2020,³ the Norwegian Ministry of Transport requested the Authority’s authorisation to grant a similar temporary exception under Article 14(1) of the Act to drivers of vehicles transporting all types of goods. By email of 4 December 2020,⁴ the Ministry provided the Authority with clarifications and the justification for the requested exception.

The request from the Norwegian Ministry of Transport, namely to allow the “possibility for the driver to take the regular weekly rest in a vehicle while undergoing quarantine, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary”, was approved by the Authority in Decision No. 149/20/COL of 10 December 2020.⁵ In the decision, the Authority took the view that the criteria laid down in Article 14(1) of the Act

¹ Doc. No 1163104.

² By letters dated 19 November 2020, the Authority notified Iceland, Liechtenstein and the European Commission of the exception granted by Norway. See Doc. No 1163923, Doc. No 1163950 and Doc. No 1163889.

³ Doc. No 1166789.

⁴ Doc. No 1167540.

⁵ Doc. No 1166971 (Decision No. 149/20/COL).

were met. However, the exception was authorised only until 1 February 2021, instead of 11 March 2021 as requested by the Norwegian Government, on the basis that the exception should not go beyond what is strictly necessary in order to achieve the objectives thereof. Instead, the Norwegian Government was informed of the possibility to request a prolongation of the exception before 1 February 2021.

By letter dated 25 January 2021,⁶ the Norwegian Ministry of Transport requested the Authority's authorisation for a prolongation of the temporary exception until 1 April 2021. Considering that the circumstances in Norway had not changed substantially since the Authority authorised the initial exception, the Authority approved the request for extending the derogation until 1 April 2021 in Decision No. 003/21/COL of 27 January 2021.⁷

As the extraordinary circumstances continue, the Norwegian Ministry of Transport on 24 March 2021 submitted a new request for a prolongation of the temporary exception until 1 June 2021.⁸

3. The Authority's assessment

The Authority recalls that Article 14(1) of the Act is an exception provision, which, according to its wording, only applies to transport operations carried out in exceptional circumstances.

In Decision No. 149/20/COL of 10 December 2020, the Authority took the view that transport operations in Norway affected by the Covid-19 outbreak can be considered as carried out in exceptional circumstances, within the meaning of Article 14(1) of the Act. Furthermore, the Authority concluded that the exception in question, namely to allow the *"possibility for the driver to take the regular weekly rest in a vehicle while undergoing quarantine, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary"*, did not appear to be discriminatory, nor did it confer any competitive advantages to professional transport undertakings concerned. Moreover, the Authority found that the exception did not run counter to the objectives set out in Article 1 of the Act, on improving road safety and protecting drivers' working conditions.

The same view was taken in Decision No. 003/21/COL, authorising Norway to extend the temporary derogation until 1 April 2021.

Considering that the circumstances in Norway have still not changed substantially since the Authority authorised the aforementioned exception, in particular as the requirements on travel quarantine for persons entering Norway continue to apply, and that the exceptional circumstances arising from the Covid-19 outbreak continue to have a significant impact on the conditions for carrying out road transport operations in Norway, the Authority acknowledges that continued flexibility is needed in relation to rest requirements for drivers of vehicles carrying any type of goods.

According to information provided by the Norwegian Government, 43 406 persons were registered as entering Norway while performing professional transport during the period from 28 January 2021 until 25 March 2021. In the period from 28 February 2021 until 25 March 2021, 10 935 persons were registered as undergoing quarantine in their vehicles. It is the view of the Authority that these figures, though they do not describe the actual number of persons entering Norway to carry out professional transport and being required to undergo quarantine, and furthermore, how many of those undergoing quarantine actually have made use of the temporary exception, they do indicate that the majority of persons entering Norway when carrying out professional transport do not intend to carry out their weekly rest period inside their vehicles on the basis of the Norwegian derogation.

⁶ Doc. No 1175404.

⁷ Doc. No 1175465 (Decision No. 003/21/COL).

⁸ Doc. No 1190370.

It is the view of the Authority that a prolongation of the exception would not be discriminatory or confer any competitive advantages, as it will continue to apply to all drivers, irrespective of their nationality, and to all transport operators irrespective of the nature of the transport.

As regards drivers' working conditions, the Authority acknowledges that the exception might have an impact on drivers' hygiene and well-being. However, drivers will only be able to use the exception in the period for which they are in travel quarantine. With the exception of drivers that enter Norway frequently and have to stay in travel quarantine upon each entry, a prolongation of the exception does not appear to have any added negative impact on working conditions for drivers, compared to the situation since the Norwegian authorities introduced the exception on 11 December 2020.

As for drivers that enter Norway on a regular basis, and which therefore might take the regular weekly rest period in vehicles in relation to each entry to Norway, it is the view of the Authority that the prolonged exception will not run counter to the objective on improving working conditions, as long as the exception is limited in time, and the drivers are left with an actual possibility of taking the regular weekly rest period in another place which offers them adequate and suitable accommodation. Nevertheless, the Authority highlights the importance of encouraging entities involved in cross border professional transport to refrain from repeatedly appointing the same drivers for these operations, to prevent the drivers from undergoing travel quarantine inside their vehicles every time they enter Norway, and to mitigate any possible negative impact the temporary exception might have on drivers rest periods.

As regards road safety, it is the view of the Authority that the exception does not run counter to the objective of improving road safety. However, the Authority encourages the Norwegian Government to continuously evaluate the temporary exception's impact on road safety, in particular in relation to drivers that enter Norway frequently and undergo travel quarantine inside their vehicles upon each entry.

In conclusion, the Authority takes the view that authorising the Norwegian Government, on the basis of Article 14(1) of the Act, to prolong an existing exception from the rule in Article 8(8) will not run counter to the objectives set out in Article 1 of the Act. The criteria laid down in Article 14(1) of the Act are met, and therefore, the request of the Norwegian Government to be authorised to grant the requested prolonged exception should be approved.

The Norwegian Government has declared that

HAS ADOPTED THIS DECISION:

1. The Kingdom of Norway may grant an exception from the application of Article 8(8) of the Act referred to at point 24e in Chapter II of Annex XIII to the EEA Agreement, Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, as adapted to the EEA Agreement by Protocol 1 thereto, in conformity with Article 14(1) of the Act, to drivers engaged in the carriage of goods, for the period between 1 April 2021 and 1 June 2021.
2. The Kingdom of Norway is authorised to exempt drivers of vehicles transporting all types of goods, for the time period described in Article 1, from the provision of Article 8(8) of Regulation (EC) No 561/2006, as follows:

- A driver may take the regular weekly rest in a vehicle while undergoing travel quarantine, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.

3. This decision is addressed to the Kingdom of Norway.

4. This decision shall enter into force upon notification to the Kingdom of Norway.

Done at Brussels, 30 March 2021

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Frank J. Büchel
College Member

Högni Kristjánsson
Responsible College Member

For Carsten Zatschler
Countersigning as Director,
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This document has been electronically authenticated by Bente Angell-Hansen, Michael Sanchez Rydelski.