

Case No: 89514
Document No: 1437240
Decision No: 044/24/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 27 March 2024

closing a complaint case arising from an alleged failure by Norway to comply with Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructure by collecting road tolls and using the revenues generated for public infrastructure other than roads

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 Background

On 4 October 2022, the EFTA Surveillance Authority (“the Authority”) received a complaint against Norway alleging that road tolls charged in Norway in general, and Vestlandet County in particular, are not in compliance with EEA law.¹

In essence, the Authority understands the complaint to concern, firstly, whether tolls can be collected on paid-off roads. Secondly, whether revenues generated from tolls can be spent to finance infrastructure other than roads, such as railway tracks. The Authority understands the complaint to concern tolls collected from all vehicles including passenger cars.

In addition, the complaint alleges *inter alia* that automatic road tolls violate EEA law by discriminating Norwegian-registered vehicles. According to the complainant, the circumstance that unpaid tolls can be forcibly collected from Norwegian-registered freight vehicles, but not foreign-registered ones, distorts the market to benefit international traffic.

It is not clear from the complaint which provisions of EEA law it relates to.

By letter of 2 November 2023,² the Internal Market Affairs Directorate of the Authority informed the complainant of its intention to propose that the case be closed. The complainant was invited to submit his observation or any further information by 2 December 2023. The complainant did not reply.

¹ Document No 1317760. The complaint also raised issues of purely internal matter, e.g. alleged unequal treatment of Norwegian counties in the context of allocation of state budget funds. These do not fall within the Authority’s mandate.

² Document No 1357466.

2 The Authority's discretion to pursue cases

Article 5(1)(a) of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA") confers on the Authority a mandate to ensure the fulfilment by the EEA EFTA States of their obligations under the EEA Agreement. To this end, Article 5(2) SCA empowers the Authority to adopt a range of measures.

According to settled case-law of the EFTA Court, the Authority enjoys wide discretion in deciding whether and how to pursue proceedings against an EEA EFTA State. The Authority alone is competent to decide whether it is appropriate to bring proceedings under Article 31 SCA for failure to fulfil the obligations under the EEA Agreement.³

Furthermore, any infringement proceedings brought by the Authority under Article 31 SCA should be concentrated so as to ensure the greatest impact for the functioning of the EEA Agreement, bearing in mind the resources of the Authority and having regard to alternative enforcement mechanisms available at national level.⁴

3 The Authority's position

The Authority considers the relevant act to be Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures ("the Directive").⁵ General principles of non-discrimination and proportionality under EEA law are also relevant.

As it currently applies under the EEA Agreement,⁶ the Directive regulates vehicle taxes, tolls and user charges imposed on vehicles weighing more than 3.5 tonnes.⁷ Hence, the current rules concern only heavy goods vehicles, as opposed to light duty vehicles such as passenger cars.

The complainant has not put forward any elements to indicate that tolls in Norway are discriminatory against international traffic within the meaning of EEA law.

The Directive has in the EU been amended by Directive (EU) 2022/362 of the European Parliament and of the Council of 24 February 2022 amending Directives 1999/62/EC, 1999/37/EC and (EU) 2019/520, as regards the charging of vehicles for the use of certain infrastructures ("the amending Directive"). The amending Directive adjusts certain provisions concerning imposition and collection of road tolls, and extends the scope of application to light duty vehicles, including passenger cars.

The amending Directive is currently pending incorporation into the EEA Agreement and it is uncertain when it will be applicable in the EEA EFTA States.

³ See, for example, Order of the EFTA Court of 23 October 2013 in Case E-2/13, *Bentzen Transport v EFTA Surveillance Authority*, EFTA Ct. Rep [2013] p. 802, point 40, and further, the Order of the EFTA Court in Case E-13/10 *Aleris Ungplan AS v ESA* [2011] EFTA Ct. Rep. 3, point 26.

⁴ As the European Commission has stated: "*Certain categories of cases can often be satisfactorily dealt with by other, more appropriate mechanisms at EU and national level. This applies in particular to individual cases of incorrect application not raising issues of wider principle, where there is insufficient evidence of a general practice, of a problem of compliance of national legislation with EU law or of a systematic failure to comply with EU law. In such cases, if there is effective legal protection available, the Commission will, as a general rule, direct complainants in this context to the national level.*" See "*EU law: Better results through better application*" (2017/C 18/02) paragraph 3, sub para 9. The same principles are applicable *mutatis mutandis* to the EEA legal order.

⁵ Act referred to at point 18a of Annex XIII to the EEA Agreement, as last amended by Directive 2011/76/EU of 27 September 2011.

⁶ The Directive was substantially amended in the EU by Directive (EU) 2022/362, which is still pending incorporation into the EEA Agreement.

⁷ Article 1 of the Directive in conjunction with Article 2(d).

On account of the Authority's limited resources and increased workload, and in an effort to pursue EEA law matters of principle in a timely manner, the Authority has identified a need to exercise a prioritisation of the issues it examines. Such prioritisation aims to ensure clarity for complainants in line with the principle of good administration, and to increase the Authority's efficiency and effectiveness in discharging its duties under the EEA Agreement and SCA.

It is the Authority's view that, engaging in an in-depth assessment of the area concerned at present, would not be the most effective use of its resources. Rather, the Authority considers it more beneficial to allocate those resources to assess the Member States' transposition and application of the relevant rules after the amending Directive enters into force in the EEA EFTA States.

In the light of the above, this case should not be prioritised at this point in time.

It is emphasised that the Authority's view as set out in the present Decision is a decision made upon policy grounds. It does not constitute any indication that the Authority considers that either national law or administrative practice are in compliance with EEA law.

Moreover, the present Decision in no way restricts the Authority's future actions concerning the legal, administrative and/or factual issues arising in or from the case closed.

By letter of 2 November 2023,⁸ the Directorate informed the complainant of its intention to propose that the case be closed. The complainant was invited to submit his observation or any further information by 2 December 2023. The complainant did not reply.

4 Conclusion

In the context outlined above, the Authority concludes, in the exercise of its discretion pursuant to Article 31 SCA, not to pursue the case further.

HAS ADOPTED THIS DECISION:

The complaint case arising from an alleged failure by Norway to comply with Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructure, is hereby closed.

For the EFTA Surveillance Authority

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President

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College Member

Árni Páll Árnason
Responsible College Member

For Melpo-Menie Joséphidès
Countersigning as Director,
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This document has been electronically authenticated by Arne Roeksund, Sigrun Ingibjorg Gisladdottir.

⁸ Document No 1357466.