

Brussels, 2 May 2024
Case No: 79575
Document No: 1424000
Decision No: 066/24/COL

Ministry of Infrastructure
Sölvhólgötu 7
101 Reykjavík
Iceland

Dear Sir or Madam,

Subject: Supplementary letter of formal notice to Iceland concerning provisions pertaining to taxi dispatch centrals

1 Introduction

The present letter concerns the rules in place for access to the taxi market in Iceland.

In 2017, the EFTA Surveillance Authority (“the Authority”) opened this own initiative case regarding access to the taxi market in Iceland (Case No 79575).

Having taken issue with the Icelandic legal framework at that time, which provided a limitation to the number of taxi operating licenses available in certain districts and, additionally, required taxi operators in certain districts to be affiliated with a dispatch central and to have taxi driving as a principal profession, the Authority delivered to Iceland a letter of formal notice on 20 January 2021¹ and, subsequently, a reasoned opinion on 10 November 2021², in which it concluded that those limitations constituted unjustified restrictions to the freedom of establishment enshrined in Article 31(1) of the EEA Agreement (hereinafter “Article 31(1) EEA”).

Following the reasoned opinion, the Icelandic Government undertook a revision of the legal framework for taxis in Iceland and, subsequently, a new legal act was adopted by the Parliament on 29 December 2022. That act entered into force on 1 April 2023. The act was supplemented by a national regulation on 30 March 2023. Following the changes enacted to the previous legal framework, the licencing authorities can no longer establish numeric limitations on taxi operation licenses. Moreover, taxi licence holders are no longer required to have taxi driving as their main profession.

As regards the obligation for certain taxi license holders to be affiliated with a dispatch central, that requirement has been maintained, although somewhat revised compared to the previous legal framework.

The Authority is of the view that the obligation in the current legislation on taxi operating license holders to be affiliated with or to hold an additional licence as a dispatch central continues to restrict the freedom of establishment under Article 31 of the EEA Agreement. Such restriction is not justified.

By the present supplementary letter of formal notice, the Authority is addressing Iceland’s continued failure to fulfil its obligations arising out of the EEA Agreement.

¹ College Decision 001/21/COL, Doc No 115319.

² College Decision 246/21/COL, Doc No 1210137.

2 Correspondence

By letter dated 12 January 2017 (Doc No 835163), the Authority informed the Icelandic Government that it had opened an own initiative case regarding the access to the taxi service market in Iceland and any possible restrictions thereto.

Following correspondence between the Authority and the Icelandic Government,³ on 20 January 2021 (Doc No 1153719), the Authority sent a letter of formal notice concluding that the Icelandic national measures on access to the market for the provision of taxi services constituted a restriction on the freedom of establishment under Article 31(1) of the EEA Agreement.

By letter of 23 March 2021 (Doc No 1190011 / your ref. SRN17040662/2.21.24), the Icelandic Government replied to the Authority's letter of formal notice. The Icelandic Government informed the Authority that a legislative proposal addressing the issues raised in the letter of formal notice had been submitted to the Parliament.

Following further correspondence with the Icelandic Government,⁴ particularly considering the absence of definitive actions to remedy the breaches identified, the Authority issued a reasoned opinion on 10 November 2021 (Doc No 1210137).

The Icelandic Government replied to the reasoned opinion by a letter dated 12 January 2022 (Doc No 1262283 / your ref. SRN21050033/30.18.2). In the reply, the Icelandic Government informed the Authority of its intention to revise the national legislation in question.

On 1 April 2023, Iceland implemented a new legislation concerning taxi operations.

Prior to that, in a meeting between the Authority and representatives of the Icelandic Government held on 22 March 2023, the Authority questioned the decision to maintain a dispatch central requirement and the justification thereof.

Subsequently, on 2 May 2023, the Authority sent a request for information (Doc No 1368999) concerning the dispatch central requirement. On 2 June 2023, the Icelandic Government replied to that letter (Doc No 1377019 / your ref. IRN22010040), stating that it was of the view that the measure of requiring taxi operating license holders to be affiliated with dispatch centrals improved public safety. Furthermore, it argued that the financial standing requirement for dispatch centrals was considered necessary in light of the centrals' role towards both consumers and taxi licence holders.

At the package meeting held in Iceland on 8 June 2023,⁵ the Authority again addressed its concerns regarding the revised requirements pertaining to dispatch centrals, noting that the information provided by the representatives of Iceland was not sufficient for assessing the justification of the measure.

By letter dated 28 September 2023 (Doc No 1401010 / your ref. IRN22010040/2.21.24), the Icelandic Government maintained its view that the revised requirements for dispatch centrals, being wholly within the sphere of influence of each applicant and not liable to deter or hinder any new operators from pursuing operating a dispatch central or a taxi service in Iceland, do not constitute a restriction on the freedom of establishment. Moreover, it continued, those requirements are objective, non-discriminatory, known in advance and justified as necessary and reasonable for attaining an objective of overriding public interest.

³ The relevant correspondence is referenced in the letter of formal notice of 20 January 2021 (Doc No 1153719).

⁴ The relevant correspondence is referenced in the reasoned opinion of 10 November 2021 (Doc No 1210137).

⁵ Minutes from that meeting are provided in Doc No 1379282.

3 Relevant EEA law

No secondary EEA legislation regulates the conditions under which local passenger transport-on-demand services⁶ are to be provided. In this context, “local passenger transport-on-demand services” are transport services with a car and a driver that are carried out on demand of the passenger, usually by a taxi or a private hire vehicle.⁷

Local passenger transport-on-demand services fall within the scope of the freedom of establishment under Article 31 EEA. Paragraph 1 of that provision reads:

“1. Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.”

4 Relevant national law

The former national legal framework concerning taxis, namely Act No. 134/2001 and Regulation No. 397/2002, with which the Authority took issue in the previous letter of formal notice and the subsequent reasoned opinion, has been replaced by new legislation.

As it currently stands, access to the taxi market in Iceland is governed by Act No. 120/2022 on taxis (hereinafter “the Taxi Act”) and Regulation No. 324/2023 on taxis (hereinafter “the Taxi Regulation”).

The national legislation establishes three types of authorisations, which are all interdependent with the taxi operating licence being the fundamental licence of the scheme. All the licence types are issued by the Icelandic Transport Authority.

- First, a taxi driving permit (hereinafter “**driving permit**”) is required for persons that wish to drive a taxi. Article 5 of the Taxi Act stipulates that, to obtain a permit, the driver must have sufficient professional competence, good repute taking into consideration whether the applicant has been sentenced to a custodial sentence or committed serious infringements of laws and regulations governing the profession, be of a minimum age of 21 and be a holder of a vehicle license category B/Far for at least three years.
- Second, a taxi operating license (hereinafter “**taxi license**”) is required for legal or natural persons that wish to operate taxi services, pursuant to Article 6 of the Taxi Act. As the general requirements for obtaining a taxi license fully encompass the conditions in Article 5, any individual holding a taxi license is exempted from obtaining a driving permit. However, in addition to the conditions pertaining to the driving permit, the applicant wishing to obtain a taxi license must be domiciled within the EEA, have a broader range of professional competences, be financially competent and be the registered owner or user of a vehicle registered in Iceland.
- Lastly, pursuant to Article 7 of the Taxi Act, a license is required for operating a dispatch central (hereinafter “**dispatch license**”). To obtain a dispatch license, the applicant must fulfil certain conditions set out in Article 6; be domiciled within the

⁶ Passenger transport-on-demand, meaning transport services with a car and a driver, which happen on demand of the passenger.

⁷ See Commission Notice on well-functioning and sustainable local passenger transport-on-demand (taxis and PHV), OJ 2022 C 62, p. 1.

EEA; and have a good repute and the professional competences described in that provision. Additionally, the applicant must have a sufficient financial standing. Moreover, it follows from Article 7 of the Taxi Act that a taxi license holder that operates one taxi of which he/she is the registered owner or user, is not required to be affiliated with a dispatch central.

As the Authority understands the revised taxi legislation and interdependency of the licences under the legislation, the prerequisite for operating a taxi in Iceland is to hold a taxi licence. If the taxi licence holder wishes to hire or procure additional drivers to drive any of the vehicles under his licence, the drivers are required to hold a driving permit, while operating licence holders are exempted from that requirement personally on the basis of the operating licence.

Finally, a taxi licence holder, which has a fleet of two or more vehicles in operation is required to either additionally hold a dispatch central licence or to be affiliated with a third party that operates a dispatch central. It should be noted that the legislation does not require the use of such intermediaries, e.g. for a curb side pickup or negotiated services.

Additionally, the following rules and principles have relevance for new applicants seeking to obtain a taxi license:

- Article 8 of the Taxi Act sets out the general obligations on the taxi licence holder, including that operations are carried out in accordance with good business practices, that the relevant vehicle(s) meet technical and quality standards, that the drivers thereof hold driving permits, that relevant information about the operations is registered in the Transport Authority's database, and that journeys are tracked and records thereof are kept for a period of 60 days.
- Article 9 of the Taxi Act provides that all taxis must be equipped with a taximeter. However, it is permitted to provide services without the use of a taximeter in circumstances where journeys are provided based on pre-agreed or fixed prices.
- Article 12 of the Taxi Act sets out that a taxi licence holder must be affiliated with a dispatch central. The dispatch central is obliged to organise its services in such way that consumers receive good and safe services. Additionally, the dispatch central has the duty of monitoring that affiliated taxi license holders comply with the Taxi Act and the Taxi Regulation. Moreover, the dispatch central may take up duties delegated to it by a taxi license holder.
- Article 13 of the Taxi Act provides that the Icelandic Transport Authority is responsible for monitoring that the activities of the licence holder are in accordance with applicable laws, regulations, and rules.
- Article 14 of the Taxi Act prescribes that the Icelandic Transport Authority and the Police are competent to assess any allegations of breaches of the legislation.
- Article 5 of the Taxi Regulation provides that a dispatch central must notify the Icelandic Transport Authority of any incidents that come to its attention relating to the affiliated taxi license holders' failure to comply with the Taxi Act and the Taxi Regulation. Additionally, the same provision stipulates that a dispatch central must have equity and funds equal to a sum of at least ISK 500 000 for the first vehicle, and ISK 100 000 for each subsequent vehicle affiliated to it.

5 The Authority's assessment

The Authority takes the view that the applicable Icelandic national legislation on access to the market for the provision of local passenger transport-on-demand services, more specifically the obligation on taxi license holders to be affiliated with or to hold an additional license as a dispatch central, as described under Section 4 above, restricts the freedom of establishment under Article 31(1) EEA. In the Authority's view, the restriction is not justified.

5.1 Measures that constitute restrictions under Article 31(1) EEA

Local passenger transport-on-demand services, which are by their very nature a private form of transport in the sense that service providers are not public entities, are not currently subject to harmonisation in the EEA. Consequently, EEA States are free to intervene and regulate as long as such national regulations comply with primary EEA law, which means, above all, respecting the freedom of establishment under Article 31(1) EEA.⁸

The requirements, to be affiliated with a dispatch centre in Iceland or to obtain the additional dispatch license, place a barrier to market access for foreign economic operators. This is the case notwithstanding the fact that the legislation in question applies irrespective of the nationality of the individuals concerned.

The concept of “restriction” for the purposes of Article 31(1) EEA covers measures taken by an EEA State which, although applicable without distinction, affect the access to the market for undertakings from other EEA States and thereby hinder intra-EEA trade.⁹ As the EFTA Court and the CJEU have consistently held, the freedom of establishment 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 national of other EEA States of the freedom of establishment. No form of *de minimis* rule exists in that regard.¹⁰ Article 31(1) EEA also prohibits discriminatory national measures which do not distinguish upon nationality as such, but *de facto* have (indirect) discriminatory effects.¹¹ 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.¹²

As an alternative option to the dispatch central affiliation, it follows from Article 11 of the legislation that taxi licence holders pursuing an independent economic activity that do not wish to be affiliated to a dispatch central must obtain a dispatch license themselves, whereby they must demonstrate financial standing of at least ISK 500 000 for the first affiliated vehicle and further ISK 100 000 for each additional affiliated vehicle. The exception from that obligation under Article 7(1) does not affect the conclusion of the Authority as in those circumstances, the operators are restricted to operate only a single vehicle without that limitation being justified any further. As a result, irrespective of how compliance with the legislation is reached, it results in a restriction under Article 31(1) EEA.

For the sake of clarification, the Authority notes that a requirement of a prior authorisation can in principle be compatible with Article 31(1) EEA.

In so far as such objectives are achieved through prior authorisation regimes, the Authority observes that such regimes must “*be based on objective, non-discriminatory criteria which are known in advance, so as to provide a framework for the exercise of the national authorities’ discretion, in order to ensure that that discretion is not exercised*”

⁸ As per Article 38 EEA, Article 36 EEA is not applicable to services in the field of transport, these being governed by the transport chapter in the EEA Agreement, meaning that there must be harmonisation first.

⁹ Judgment of 5 October 2004, *CaixaBank France*, C-442/02, EU:C:2004:586, paragraph 11; and judgment of 28 April 2009, *Commission v Italy*, C-518/06, EU:C:2009:270, paragraph 64.

¹⁰ Case E-9/20 *EFTA Surveillance Authority v Norway*, paragraph 77; Case E-14/15 *Holship Norge AS v Norsk Transportarbeiderforbund* [2016] EFTA Ct. Rep. 240, paragraph 115. See also judgment of 24 March 2011, *Commission v Spain*, Case C-400/08, ECLI:EU:C:2011:172, paragraph 64; and judgment of 22 December 2010, *Yellow Cab Verkehrsbetrieb*, Case C-338/09, ECLI:EU:C:2010:814, paragraph 45.

¹¹ Case E-14/12 *ESA v Liechtenstein* [2013] EFTA Ct. Rep. 256, paragraph 28; Case E-8/04 *ESA v Liechtenstein* [2005] EFTA Ct. Rep. 46, paragraph 16.

¹² Judgment of 19 May 2009, *Apothekerkammer des Saarlandes and Others and Neumann-Seiwert*, joined Cases C-171/07 and C-172/07, ECLI:EU:C:2009:316, paragraph 23; judgment of 10 March 2009, *Hartlauer*, C-169/07, ECLI:EU:C:2009:141, paragraphs 34, 35 and 38.

arbitrarily."¹³ At any rate, the Authority has, in the first place, doubts about whether those objectives can be relied upon in the present case. In the second place, if those objectives would be considered acceptable, the Authority is of the view that the measures in question are neither appropriate nor proportionate.

In conclusion, the Authority finds that the obligation on taxi licence holders to be affiliated with a dispatch central, by which taxi licence holders must be affiliated with a dispatch central or to obtain a dispatch license himself to preserve operational freedom, impedes or renders less attractive the exercise of the freedom of establishment, and thus constitutes a restriction within the meaning of Article 31(1) EEA.

Next, it must be examined whether these restrictions can nonetheless be justified.

5.2 Possible justifications

It is settled case law that restrictions on freedom of establishment which are applicable without discrimination on grounds of nationality may be justified by overriding reasons relating to the general interest, provided that the restrictions are appropriate for attaining the objective pursued and do not go beyond what is necessary for attaining that objective.¹⁴

The Authority acknowledges that the objective of ensuring transport safety and the objective of sound management of transport in principle can be relied upon as a justification for a restriction of the freedom of establishment.¹⁵

In this regard, it should be recalled that it is for the national authorities to demonstrate that a restrictive measure is appropriate for securing the attainment of the objective relied upon and does not go beyond what is necessary to attain it. The reasons which may be invoked by a State to justify a restriction must thus be accompanied by an analysis of the appropriateness and proportionality of the measure adopted by that State and by specific evidence substantiating its arguments.¹⁶

The Government of Iceland argues that the objective of the contested measure is to ensure that taxi services, which form part of the public transport system, are safe and of sufficient quality. Additionally, the Government notes that dispatch centrals for several years have had a pivotal role in ensuring supply and quality of taxi services, as well as being a supervisory component providing information and assistance to the Icelandic Transport Authority and to other public authorities, such as law enforcement and tax authorities.¹⁷

The dispatch central requirements are not applied consistently to all taxi licence operators as under Article 7(2) of the legislation, single-vehicle operators are not required to be affiliated with a dispatch central or to hold such a licence themselves. It is settled case-law that national legislation is only considered to be appropriate for guaranteeing attainment of the objective pursued if it genuinely reflects a concern to attain it in a

¹³ See judgment of 8 June 2023, *Prestige and Limousine SL*, C-50/21, ECLI:EU:C:2023:448, paragraph 86.

¹⁴ Case E-9/11 *ESA v Norway* [2012] EFTA Ct. Rep. 442, paragraph 83; Case E-3/05 *ESA v Norway* [2006] EFTA Ct. Rep. 102, paragraph 57. See also judgment of 24 March 2011, *Commission v Spain*, C-400/08, ECLI:EU:C:2011:172, paragraph 73; and judgment of 30 November 1995, *Gebhard*, C-55/94, ECLI:EU:C:1995:411, paragraph 37.

¹⁵ See judgment of 15 October 2015, *Grupo Itevelesa and Others*, C-168/14, EU:C:2015:685, paragraph 74 and the case-law cited.

¹⁶ Case E-12/10 *ESA v Iceland* [2011] EFTA Ct. Rep. 117, paragraph 57; judgment of 18 March 2004, *Leichtle*, C-8/02, CLI:EU:C:2004:161, paragraph 45; judgment of 13 April 2010, *Bressol and Others*, C-73/08, ECLI:EU:C:2010:181, paragraph 71; judgment of 10 February 2009, *Commission v Italy*, C-110/05, ECLI:EU:C:2009:66, paragraph 66; and judgment of 24 March 2011, *Commission v Spain*, C-400/08, ECLI:EU:C:2011:172, paragraph 75.

¹⁷ Cf. letter from the Government of Iceland dated 28 September 2023 (Doc No 1401010 / your ref. IRN22010040/2.21.24).

consistent and systematic manner.¹⁸ The Authority is, therefore, of the view that on the basis of the fact that the requirement on dispatch central affiliation of taxi licence holders is not applied in a consistent and systematic manner, it cannot be relied upon by the Icelandic State.

Even if the revised legislation would have been applied in a consistent and systematic manner, the Authority is of the view that the measure at any rate constitutes a non-justified restriction on the freedom of establishment and for the sake of clarity, will elaborate on that conclusion.

In particular, the national legislation in question makes the taxi licence holders' pursuit of activity subject to a condition that they be affiliated with a dispatch central. One exception is made for taxi operators that in their economic pursuit use only one vehicle, in which case such individuals can operate their own dispatch central without having to obtain the dispatch license under Article 7(1) of the taxi act. The Icelandic Government stated in a letter (Your ref. IRN22010040/2.21.24, our ref. Doc No 1377019) to the Authority's request for information concerning this distinction that "[...] consumers entrust the dispatch centre for establishing a link with an operating licence holder providing a safe taxi service that meets legal requirements. When directly contacting a licence holder operating a single vehicle, consumers exercise their own judgement with regard to selecting a suitable service provider offering a safe taxi service meeting legal requirements. As such, their situation is incomparable."

The Authority wishes to point out that the Icelandic Government has not presented any information on how this consumer perception has been established. Furthermore, the Authority is of the view that the conclusion of the Government of Iceland is factually incorrect. Firstly, as is recognised in the reply of the Government of Iceland, consumers can receive the services of taxis either through a dispatch central or by engaging directly with the taxi, e.g. via phone, curb side pickup or at taxi collection points. Secondly, the legislation does not make any distinction between the operating licences on the basis of fleet size. All taxi licence operators on the market operate under the same regulatory oversight and licences. Finally, the Icelandic Government has not presented any information why the mandatory affiliation for some operators is necessary to attain the aim which the Government pursues.

According to Articles 5 and 8 of the Taxi Act, there are strict requirements on taxi operators, which are monitored by the Transport Authority during the validity of the licence. Therefore, the Authority is of the view that the situation of operators, irrespective of number of vehicles they operate (one or more), is fully comparable.

The justification presented by the Icelandic Government as set out above is not sufficient in the view of the Authority to justify this restriction as it does not establish that this requirement is suitable or necessary to meet the stated aim.

Furthermore, even if the role of dispatch centrals would be to ensure supply and quality of taxi services, as well as being a supervisory component, the legislation does not put any such obligations on the dispatch centrals beyond the general obligation under Article 14 of the Taxi Act nor does it give dispatch centrals mandate to receive any information necessary to carry out such tasks.

With respect to whether the dispatch central affiliation requirement is necessary, the Icelandic Government has not sufficiently demonstrated that the objectives pursued could not be achieved, if at all required having regard to the foregoing considerations, with less restrictive measures. Having regard to the legislation, Article 12 of the Taxi Act and Article 5 of the Taxi Regulation provide that the dispatch central must be organised in a way that ensures provision of good and safe taxi services, and furthermore, that the dispatch central shall monitor that taxi licence holders affiliated with it comply with applicable rules.

¹⁸ See e.g. Case E-8/17 *Henrik Kristoffersen v the Norwegian Ski Federation*, paragraph 118 and judgment of 10 March 2009, *Hartlauer*, C-169/07, ECLI:EU:C:2009:141, paragraph 55.

In that regard, the Authority notes that there are at least three other procedures which already ensure this. First, that the requirement of prior authorisation of taxi licence holders by a public authority, pursuant to Article 6 of the Taxi Act and the continuous oversight under Article 13 of the same act, may already be appropriate to achieve, at least to some degree, the provision of good and safe taxi services.

Second, the objectives of safe and good quality of services appears also to be, at least partly, covered by Article 8 of the Taxi Act, which requires taxi licence holders to comply with good business practices, technical and quality standards, and to track and keep record of journeys.

Third, the objectives of ensuring safe and good quality of services, by obliging dispatch centrals to monitor the taxi licence holders' compliance with laws and regulation, are in essence a duplication of the controls to be carried out by the Icelandic Transport Authority pursuant to Article 13 of the Taxi Act. It follows from case law that such a duplication of controls which the dispatch central affiliation entails in combination with the controls already carried out in the context of the three other procedures referred to above cannot be regarded as necessary to attain the objective pursued.¹⁹

6 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that, by maintaining in force rules on access to the taxi services market which provide for an obligation for certain taxi license holders to be affiliated to or to hold an additional licence as a dispatch central, Iceland has failed to fulfil its obligation arising from Article 31(1) of the EEA Agreement.

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 Icelandic 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 Icelandic Government, whether to deliver a reasoned 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.

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

¹⁹ Ibid, paragraph 87.