

EFTA SURVEILLANCE AUTHORITY DECISION

of 10 December 2020

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 remains valid until 11 December 2020.²

However, as the extraordinary situation related to the Covid-19 outbreak continues, a need for further derogations to the driving and rest time rules remains necessary from 11 December 2020. The Norwegian Ministry of Transport has therefore, by letter dated 2 December 2020³, notified the Authority that it intends to grant a temporary exception under Article 14(1) of the Act to drivers of vehicles transporting all types of goods. By email of 4 December 2020⁴, the Ministry has provided clarifications on the requested exception.

The Norwegian Ministry of Transport proposes that, in addition to the possibility for a driver to take daily rest periods and reduced weekly rest periods away from base in a vehicle pursuant to Article 8(8) of the Act, 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"*.

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.

The objective of the exception is to ensure transport of goods during the circumstances related to COVID-19, by facilitating for drivers that, on entry into Norway, are under the obligation to stay in travel quarantine during their leisure time, but where they do not have the proper documentation for suitable accommodation at the time of the border crossing. Furthermore, the objective is to protect public health.

Drivers who must observe travel quarantine during their leisure time when crossing the border to Norway⁵ may with this exception make use of the option of taking their weekly rest in their vehicle if they do not have access to other suitable places to stay, or documentation thereof, while in travel quarantine.

The Norwegian Ministry of Transport has requested that the temporary exception shall apply from 11 December 2020 until 11 March 2021. Furthermore, the Ministry states that it continuously will reassess the need for the exception during this period, and keep the Authority informed accordingly. Moreover, the Ministry acknowledges the right of drivers to appropriate accommodation in general and underlines that this exception is reasoned by a need to ensure compliance with quarantine restrictions and to facilitate a practicable solution for professional drivers while they are quarantined.

3. The Authority's assessment

It is settled case-law of the European Courts that, in accordance with recital 17 and Article 1 of the Act, the Act seeks to improve the working conditions of employees in the road transport sector, to improve general road safety and to harmonise the conditions of competition in road transport.⁶

In this regard, 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. Accordingly, the provision has a narrow scope of application. In this respect, it is worth recalling that the Court of Justice of the European Union (CJEU) refused to allow a wide interpretation to the exceptions contained in the predecessors of the Act, holding that derogations are not to be interpreted in such a way as to extend their effects beyond what is necessary to safeguard the interests which they seek to secure.⁷

In line with this reasoning of the CJEU, the Authority takes the view that “exceptional circumstances” referred to in Article 14(1) of the Act may, *inter alia*, cover situations which by their very nature require a temporary relaxation or suspension of the rules on driving time, breaks and rest periods, such as situations that are caused by national emergency, health or security reasons, human or natural catastrophes.

The Authority acknowledges that the exceptional circumstances arising from the Covid-19 outbreak have a significant impact on the conditions for carrying out road transport operations in Norway. Given the need to ensure free circulation of all goods, while at the same time protecting public health, the Authority acknowledges that flexibility is needed in relation to rest requirements for drivers of vehicles carrying any type of goods.

In this regard, the Authority recalls that in the Communication from the European Commission of 23 March 2020, on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services, the Communication clarifies that, should there be a need

⁵ Section 5 and Section 6b of the Regulation of 27 March 2020 no. 470 relating to infection control measures etc. in connection with the coronavirus outbreak (COVID-19 Regulations).

⁶ Case C-102/16, *Vaditrans BVBA*, EU:C:2017:1012, paragraph 42 and the case law cited.

⁷ Case C-235/94 *Criminal proceedings against Alan Jeffrey Bird*, EU:C:1995:376, paragraph 10; Case C-387/96 *Criminal proceedings against Anders Sjöberg*, EU:C:1998:112, paragraph 14 and the case law cited.

to extend national exceptions beyond 30 days, the Commission will consider favourably such requests from Member States. The Commission also issued on 31 March 2020 a template to guide EU Member States on what measures are understood to be acceptable.

The notification submitted by Norway is based on the template issued by the European Commission, which was distributed by the Authority to the EEA EFTA States on 1 April 2020.

The Authority finds the Covid-19 outbreak to be an extraordinary, unforeseeable event of a significant scale, which requires taking specific action and measures in order to assist professional drivers in the road transport sectors. It is therefore the Authority's 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.

The proposed exception does not appear to be discriminatory, as it will apply to all drivers, irrespective of their nationality, upon entry to Norway. As the exception sought will apply to all transport operators irrespective of the nature of the transport, the proposed exceptions will not confer a competitive advantage to any of the professional transport undertakings concerned.

Furthermore, the exception does not appear to compromise working conditions. Although the proposed exception might have an impact on the quality of rest for drivers, drivers will not be able to use the extension beyond the period for which they are in travel quarantine. As for the impact on road safety, it is clearly stated which limits apply for drivers during the derogation period. Therefore, the substance of the proposed exception is not considered to run counter to the objective on improving road safety and protection of working conditions.

As regards the proposed duration of the exception, until 11 March 2021, however, the Authority takes the view that the proposed duration is too long. Taking into consideration that the consequences related to the exceptional circumstances, on which this exception is based, might change with amendments to national legislation concerning travel restrictions and quarantine requirements, and also taking into consideration the principle of proportionality, this exception should not go beyond what is necessary in order to achieve the objective thereof. Therefore, the Authority takes the view that a derogation should only be authorised for a shorter period of time, until latest 1 February 2021, with the possibility for the Norwegian Government to request a further extension of the exception before this date pursuant to Article 14(1) of the Act.

In conclusion, the Authority takes the view that authorising the Norwegian Government, on the basis of Article 14(1) of the Act, to grant an exception from the rule in Article 8(8) will not run counter to the objectives set out in Article 1 of the Act and the criteria laid down in Article 14(1) of the Act appear to be met. Therefore, the request of the Norwegian Government to be authorised to grant the requested exceptions to the provisions in the Act should be approved, but only for the period between 11 December and 1 February 2021.

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 11 December 2020 and 1 February 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, 10 December 2020

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Frank J. Büchel
College Member

Högni Kristjánsson
Responsible College Member

Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.