

## EFTA SURVEILLANCE AUTHORITY DECISION

of 3 June 2021

authorising Norway to grant an exception from the application of Article 6 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.

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 6 of the Act reads:

*“1. The daily driving time shall not exceed nine hours.  
However, the daily driving time may be extended to at most 10 hours not more than twice during the week.  
2. The weekly driving time shall not exceed 56 hours and shall not result in the maximum weekly working time laid down in Directive 2002/15/EC being exceeded.  
3. The total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.  
[...].”*

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.

By letter dated 4 May 2021,<sup>1</sup> Norway notified the Authority of a temporary exception granted under Article 14(2) of the Act. Due to a landslide at Steinvik in Tana, Finnmark, on the 19 April 2021 national county road 98 (Fv98) was closed. As a consequence, drivers engaged by Styro Nor AS (‘the operator’), a company that delivers fish crates to fishing industry in the affected area, were required to take a detour of 580 km, taking up to 13 hours, to deliver crates. Therefore, as of 23 April 2021, an exception from Article 6(1) of the Act was granted, allowing these drivers to extend the daily driving time to 13 hours three times a week.

However, the temporary exception expired on 23 May 2021. On 28 May 2021<sup>2</sup>, the Norwegian Government requested the Authority’s authorisation to grant a similar temporary exception under Article 14(1) of the Act for the drivers in question. The request was additionally substantiated by the Norwegian Government in an email<sup>3</sup> received 1 June 2021.

The Norwegian Government has put forward the request on the grounds that Fv98 remains closed and that, according to Norwegian authorities, the operator will not be able to transport the fish crates without the exception, by which also the local fishing industry would be forced to stop its activities. Additionally, the Norwegian Government writes that the operator has not been successful in its attempts to recruit new drivers, partly due to the general lack of drivers because of the Covid-19 pandemic. In order to ensure that the fish crates are delivered to the fishing industry in a timely manner during the fishing season, the Norwegian Government wishes to grant an exception from Article 6(1) of the Act, allowing the drivers in question to replace the maximum daily driving time of 9 hours with one of 13 hours three times a week. Though the road remains closed indefinitely, the

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<sup>1</sup> Doc. No 1199159 and Doc. No 1199161.

<sup>2</sup> Letter dated 27 May 2021, Doc. No 1203555.

<sup>3</sup> Doc. No 1204396.

Norwegian Government has requested that the exception apply until 15 June 2021 only, as the fishing season will come to an end by that date.

In the request, the Norwegian Government also highlights that it has made it clear to the operator that working conditions of drivers and road safety must not be compromised. Furthermore, drivers should not be expected to drive whilst tired. Moreover, the operator remains responsible for the health and safety of its employees and other road users.

### 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.<sup>4</sup>

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.<sup>5</sup>

In line with this reasoning of the CJEU, the Authority takes the view that "exceptional circumstances" 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, e.g. situations that are caused by national emergency, health or security reasons, human or natural catastrophes.

The Authority acknowledges that the exceptional circumstances related to the landslide in Tana, resulting in Fv98 having been closed, have a significant impact on road transport operations and on the industries in the affected region. Given the complex nature of supply chains and the need to ensure seasonal key economic activity in the area affected, the Authority acknowledges that flexibility is needed in relation to the daily driving limits for drivers of vehicles that, on a regular basis, carry out operations on Fv98 through the area affected by the landslide.

As regards the possible discriminatory effect of granting an exception only to drivers engaged by the operator in question, the Authority notes that, according to the Norwegian Government, no other operators have requested an exception in relation to the closure of Fv98. Furthermore, Norwegian authorities have no knowledge of other actors operating under the same circumstances in that market, which might be in need for a similar exception. The exception does therefore not appear to confer any competitive advantages on the operator. Nevertheless, should other actors apply for a similar exception on the same

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<sup>4</sup> CJEU, Case C-102/16, *Vaditrans BVBA*, EU:C:2017:1012, paragraph 42 and the case law cited.

<sup>5</sup> CJEU, Case C-235/94 *Criminal proceedings against Alan Jeffrey Bird*, EU:C:1995:376, paragraph 10; CJEU Case C-387/96 *Criminal proceedings against Anders Sjöberg*, EU:C:1998:112, paragraph 14 and the case law cited.

grounds as in the current case, the Authority emphasises that the Norwegian Government must seek to ensure equal treatment of those operators, and must consider the possibility of granting those exceptions, subject to the requirements in Article 14(1) of the Act.

As regards conditions for the workers concerned, it is the view of the Authority that the requested exception does not appear to compromise working conditions, as it clearly limits the daily driving times applied for the drivers during the derogation period. Moreover, the Authority takes into consideration the fact that the exception is valid only for a temporary period of time.

As for the impact on road safety, the Authority takes the view that the proposed exception is proportional. Although the proposed exception foresees an extension of the limit on daily driving time, drivers will not be able to use the extension more than three times in one week. Furthermore, the limit on maximum weekly driving time set out in the Act will continue to apply.

In the light of the above justifications, the Authority therefore takes the view that the requested exception does not appear to run counter to the objectives of the Act as enshrined in Article 1 thereof.

The Norwegian Government has confirmed that no exception is applied for the time being. Subsequently, the Authority understands that the request does not concern the period from 23 May 2021, when the previous temporary exception expired, and until the date of adoption of this decision. As regards the period for which the proposed exception will be valid, until 15 June 2021, the Authority considers the measure to be proportional. However, the exception shall cease to apply if Fv98 is reopened before that date.

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 6(1) of the Act, will not run counter to the objectives set out in Article 1 of the Act. Subsequently, the criteria laid down in Article 14(1) of the Act appear to be met. Therefore, the request of the Norwegian Government should be approved.

#### HAS ADOPTED THIS DECISION:

1. The Kingdom of Norway may grant an exception from the application of Article 6(1) 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 carrying fish crates for Styro Nor AS, for the period from the entry into force of this decision and until 15 June 2021 or, if Fv98 reopens before that date, until Fv98 reopens.
2. The Kingdom of Norway is authorised to exempt the drivers described in Article 1, and for the time period described therein, from the provision of Article 6(1) of Regulation (EC) No 561/2006, as follows:

- the maximum daily driving may be extended to 13 hours, three times a week.
- 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,

For the EFTA Surveillance Authority

Bente Angell-Hansen  
President

Frank J. Büchel  
College Member

Högni S. Kristjánsson  
Responsible College Member

For Carsten Zatschler  
Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Bente Angell-Hansen,  
Catherine Howdle.*