

Case No: 79575
Document No: 1210137
Decision No: 246/21/COL

REASONED OPINION

**delivered in accordance with Article 31 of the Agreement between the EFTA States
on the Establishment of a Surveillance Authority and a Court of Justice concerning
certain provisions of Icelandic law governing access of transport operators to the
market for taxi services and their compliance with Article 31(1) of the EEA
Agreement**

1 Introduction

By letter dated 12 January 2017 (Doc No 835163), the EFTA Surveillance Authority ("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. The Icelandic Government was invited to provide information on the legal framework regarding the taxi market in Iceland.

After having examined the case and having thus issued a letter of formal notice, the Authority considers that the Icelandic national measures on access to the market for the provision of taxi services constitute a restriction on the freedom of establishment under Article 31(1) of the EEA Agreement. The restriction is not justified.

2 Correspondence

By letter dated 28 March 2017 (Doc No 850365 / Your Reference; IRR17010280/2.13.22), the Icelandic Government replied to the Authority's letter of 12 January 2017. In its reply, the Icelandic Government explained the national measures regarding the taxi market in Iceland.

The case was discussed at the package meeting in Iceland on 8 June 2017. At this meeting, as summarised in the follow-up letter (Doc No 861615), the representatives of the Icelandic Government and the representative of the Authority discussed questions in details that were sent prior to the meeting (Doc No 861262). The representatives of the Icelandic Government agreed to send the Authority a letter, outlining the responses to the mentioned questions and its observations to other points discussed.

By email of 21 July 2017 (Doc No 870432), the Icelandic Government shared with the Authority a draft of the legislative amendments to increase the number of taxi permits.

By email of 3 September 2017 (Doc No 876407), the Icelandic Government informed the Authority of some delays in the reply to the follow-up letter. The Authority asked the Icelandic Government to provide an update on the reply to the follow-up letter by email of 4 October 2017 (Doc No 876392). On the same day (Doc No 876440), the Icelandic Government informed the Authority of some delays and an update would be sent shortly. By email the same day (Doc No 876441) the Authority welcomed receiving the relevant information before the end of October.

The reply by Iceland, dated 14 November 2017 (Doc No 882275 / Your Reference SRN17040662/2.21.24) provided a response to the Authority's questions at the package meeting. The Icelandic Government explained the numeric limitation and the determination of the maximum number of licences. In that response, the Icelandic Government did not consider that the current system in the taxi market constitutes an unjust barrier to the market. Further, the Icelandic Government considers the numerical limitation of licences to be justified if the measure is seen as a barrier to enter the market. The Icelandic Government also informed the Authority that a task group had been appointed to review the current national legislation on taxi services and assess EEA conformity.

By email of 15 March 2018 (Doc No 903077) the Icelandic Government informed the Authority that the task group's report would be delayed by few weeks.

On 12 April 2018 (Doc No 908867 / Your Reference SRN 17040662/2.21.24), the Icelandic Government provided the report on the taxi market in Iceland (Doc No 908873). Among the conclusions of the task group was that current numerical limitations and the

obligation to be affiliated with a dispatch centre constitute restrictions on new operators to the taxi market. Furthermore, the Icelandic Government informed the Authority that the taxi legislation would be amended based on findings of the task group. The Ministry of Transport and Local Government intended to submit a proposal to this effect to the Parliament in September 2019.

By email of 1 June 2018 (Doc No 916830) the Icelandic Government informed the Authority that the proposed legislative amendments had been put on the agenda of the joint meeting of all Permanent Secretaries in the Ministries of Iceland.

At the package meeting held in Iceland on 6 June 2018, as summarized in the follow-up letter (Doc No 918168), the representatives of the Icelandic Government provided an overview on the findings of the task group and explained the details of the proposed amendments to the taxi legislation. Furthermore, the representatives of the Icelandic Government outlined a timeline and next steps in the legislative process.

By email of 25 June 2018 (Doc No 1048926) the Icelandic Government informed the Authority that the Ministry's proposal was published for public consultation.

By email of 22 October 2018 (Doc No 935477), the Authority requested an update on the status of the legislative procedure regarding the proposed amendments to the taxi legislation. By email of 17 May 2019 (Doc No 1070052) the Icelandic Government informed the Authority that the proposed legislative amendments had been published again for public consultation and the plan was to submit the bill to the Parliament in November 2019.

The case was discussed at the package meeting in Iceland on 4 June 2019, as summarised in the follow-up letter (Document No 1076000).

By email of 17 October 2019 (Doc No 1093086), the Icelandic Government shared with the Authority a draft of the legislative amendments that had not yet been presented to parliament. On 18 October 2019 (Doc No 1093087) the Authority requested information concerning the legislative amendments. Iceland replied the same day (Doc No 1093088).

By letter dated 22 October 2019 (Doc No 1093018) the Authority set out its preliminary view that the domicile requirement of the proposal may constitute a restriction on the freedom of establishment.

In November 2019, the Minister of Transport and Local Government submitted an updated version of the bill to the Parliament, but was not voted on at that time due to time restrictions.

The case was discussed at the virtual package meeting on 28 May 2020, as summarized in the follow-up letter (Doc No 1133598). Following the discussion, the Icelandic Government sent a supplemental letter on 9 June 2020 (Doc No 1137234 / Your Reference SRN20040056/30.18.2).

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 constitute 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 the legislative proposal, which had been submitted to the Parliament for the second time, would address the issues raised in the letter of formal notice.

The matter was further discussed at the virtual package meeting on 1 June 2021 (Doc No 1204495). At the meeting the Icelandic Government was uncertain whether the proposal would pass during the current session (151th Session of the Parliament). If the legislative proposal would not be adopted as law it would be resubmitted to the Parliament during the next Parliamentary session for the third time. The Icelandic Government agreed to update the Authority of the outcome of the legislative proposal before the end of June 2021.

By letter of 7 October 2021 (Doc No 1233162 / Your Ref. SRN21050033/30.18.2) the Icelandic Government informed the Authority that the proposal was on the list of proposals to be presented during the Parliament's upcoming session.

The Authority has not received further information from Iceland.

3 Relevant national law

The case concerns the Icelandic national legislation on the access to the taxi services market in Iceland. The provisions in question are contained in the Act on taxis No. 134/2001 ("the Taxi Act")¹ and Regulation No. 397/2002 on taxis ("the Taxi Regulation")².

The following rules and principles apply to new applicants seeking to obtain a professional transport license:

- According to Article 3(1) of the Taxi Act, all taxis operating in restricted areas³ pursuant to Article 8, shall be connected to a taxi dispatch central, which has been authorised by the Icelandic Transport Authority.
- Article 5 of the Taxi Act lays down the general requirements for obtaining a taxi licence. In order to obtain the licence, an applicant must, inter alia, have sufficient professional competence, be a registered owner of a vehicle or be registered as an operator of a vehicle owned by a leasing company, pursue taxi driving as a main profession, not have been sentenced to a custodial sentence or committed serious and repeated infringements of laws and regulations governing the profession and be financially competent.
- According to Article 6 of the Taxi Act, obtaining a taxi licence is a condition for providing taxi services. Taxi licences are issued by the Icelandic Transport Authority. Taxi licences are tied to the name of the holder, who is unauthorised to sell a licence, rent it out or allocate it to a third party in any other way, cf. Article 6(2) of the Taxi Act.
- According to Article 8 of the Taxi Act, the number of taxi licences shall be restricted in certain districts based on recommendations by the Transport Authority, relevant municipal governments, local authorities and taxi driver unions. Exemptions from the above requirements may be granted in those districts where the number of taxi licences is not restricted, cf. Article 8(3) of the Taxi Act.
- Article 4 of the Taxi Regulation specifically provides for a maximum number of licences in each restricted district. Accordingly, the relevant ministry shall review the number of licences in each restricted district and take appropriate action if there is a

¹ Lög nr. 134/2001 um leigubifreiðar.

² Reglugerð nr. 397/2002 um leigubifreiðar.

³ Article 4 of the Regulation describes the restricted areas as follows: "I. Reykjavík, Kópavogi, Hafnafirði, Garðbæ, Seltjarnesi, Mosfellsbæ, Bessastaðahreppi, Reykjanesbæ, Miðnes-, Gerða- og Vatnsleysustrandarhreppi. Hámarkstala er 580 atvinnuleyfi. II. Akureyri. Hámarkstala er 22 atvinnuleyfi. III. Árborg. Hámarkstala er 8 atvinnuleyfi."

significant imbalance between supply and demand of licences. Further indication on which factors are taken into account when evaluating the need for new taxi licences is not provided. It should be noted that the number of taxi licences has been increased by 10 new taxi licences in the restricted districts since 1995.⁴

- Pursuant to Article 8 of the Taxi Act and Article 6 of the Taxi Regulation, the allocation of the available licences in restricted districts shall be based on previous experience of the applicant as a cab driver. If an applicant for a licence in a restricted district already holds a licence in another restricted district, the applicant shall be considered equal to other applicants as regards driving time. However, a driver cannot hold more than one licence at the same time, therefore, the former licence expires when a licence is issued for the new district. If an applicant who already holds a taxi licence but from an unrestricted district applies for a licence in a restricted district, he or she will not be considered to have the same experience as a taxi driver who holds a licence in a restricted district. According to Article 6(2) of the Taxi Regulation, an applicant in that situation will be considered to hold 100 days of experience for every year of work as a taxi driver.

4 Relevant EEA law

No secondary EEA legislation exists laying down rules regarding the access to the market of providing taxi transport services.

Article 31(1) of the EEA Agreement provides:

"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."

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 taxi services, as described under Section 3 above, constitutes a restriction on 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

As the Court of Justice of the European Union ("CJEU") and EFTA Court have consistently held, Article 31(1) EEA 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 EEA citizens of the freedom of establishment.⁵

⁴ Report of a task group on the taxi market in Iceland (Doc No 908873), March 2018, p 11.

⁵ Case E-14/15, *Holship Norge AS v Norsk Transportarbeiderforbund*, [2016] EFTA Ct. Rep. 240, para 115. See also Case C-400/08, *Commission v Spain*, ECLI:EU:C:2011:172, para. 64; Case C-338/09, *Yellow Cab Verkehrsbetrieb*, ECLI:EU:C:2010:814, para. 45.

National legislation which makes the establishment of an undertaking from another EEA State conditional upon the issue of prior authorisation constitutes a restriction, since it is capable of hindering the exercise by that undertaking of its freedom of establishment, by deterring or even preventing it from freely pursuing its activities through a fixed place of business.⁶

The national legislation in question requires private operators to obtain prior authorisation in order to operate a taxi transport service and therefore constitutes a restriction of the freedom of establishment ("the restrictive measures"). This is the case notwithstanding the fact that the legislation in question applies irrespective of the nationality of the persons concerned.⁷

At the outset, it should be noted that the Icelandic Government no longer disputes that the current legislation in question constitutes a restriction on new operators who wish to access the taxi market and that it is necessary to abolish restrictions under the Icelandic legislation.⁸

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

However, the Authority is concerned with the restriction of the freedom of establishment that follows from the numerical limitation of available taxi licences. Under the restrictive measures, a licence for the establishment of a new taxi business will only be granted under very specific conditions that are outside the sphere of influence of the individual seeking to obtain a licence. The Authority finds that these conditions do not satisfy the requirements set up by the European Courts for prior authorisation schemes, namely that they constitute objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion, so that it is not used arbitrarily.⁹

Article 8 of the Taxi Act does not prescribe how the number of taxi licences in restricted districts is to be determined nor has the number of issued licences grown in any relation to the population development.¹⁰ Furthermore, applications for a taxi service driver's licence will be considered only if and when there is an available (free) licence in that area.

This system of allocating new licences under the restrictive measures set out in Article 6 of the Taxi Regulation, effectively favours existing taxi licence holders (incumbents) and precludes new operators seeking to obtain a taxi licence from entering the market.

⁶ Joined Cases C-171/07 and C-172/07, *Apothekerkammer des Saarlandes and Others* (C-171/07) and *Neumann-Seiwert* (C-172/07), ECLI:EU:C:2009:316, para. 23; Case C-169/07, *Hartlauer*, ECLI:EU:C:2009:141, paras. 34, 35 and 38.

⁷ Case C-400/08, *Commission v Spain*, ECLI:EU:C:2011:172, para. 64; Case C-338/09, *Yellow Cab Verkehrsbetrieb*, ECLI:EU:C:2010:814, para. 45.

⁸ In its letter of 12 April 2018 (Doc No 908867), the Icelandic Government informed the Authority that, based on the task group's findings, the taxi legislation would be amended. The Icelandic Government informed the Authority that legislative amendments would be presented to the Parliament in September 2019. The Icelandic Government informed the Authority during the Package meeting held in 2020 that the proposal had not been voted on before end of session of the Parliament and would be presented again to the Parliament in September 2020. To the knowledge of the Authority, the Icelandic legislation has not yet been revised.

⁹ Case E-11/07 and E-1/08, *Olga Rindal and Therese Sløning v Staten v/Dispensasjons- og klagenemnda for bidrag til behandling i utlandet*, [2008] EFTA Ct. Rep. 320, para 48. See also Case C-390/99, *Canal Satélite Digital*, ECLI:EU:C:2002:34, para. 35 and Case C-205/99, *Analir and Others*, ECLI:EU:C:2001:107, para. 37.

¹⁰ According to information published by Register Iceland, the population in the greater Capitol area of Iceland has grown by almost 39% between 1998 and 2019 while the number of licences available in the restricted area 1, which is largely covered by those municipalities, has only gone up by 10 licences or less than 2%.

Criteria such as seniority and previous professional experience operating a taxi in the relevant district appear to be, *prima facie*, discriminatory, as they clearly favour existing taxi operators in a district over new entrants without there being any discernible legitimate justification.

The Authority further finds the seemingly uncircumscribed residual discretion on the part of the competent authority under Articles 5 and 8 of the Taxi Act to be restrictive. This applies for example in cases where experience of the applicants for a licence do not permit to identify the candidate to whom the licence should be awarded. The Authority notes that in Joined Cases C-570/07 and C-571/07, concerning the application by Spanish pharmacists for new licences, the CJEU held that national rules whereby licences for the establishment of new pharmacies are to be granted in accordance with an order of priority in which precedence is given to pharmacists who have pursued their professional activities within the province, constituted unjustified unequal treatment,¹¹ as they, *de facto*, favour national pharmacists over those from another Member State. The same applies with regard to the Icelandic legislation on taxi licences in question. This legal framework has the potential to deter and prevent new operators from establishing a new taxi business and constitutes a restriction. Furthermore, under Article 3 of the Taxi Act, taxi drivers operating in restricted districts where there is an obligation upon taxi service providers to be connected to a taxi dispatch central, including the corresponding requirements that follow from this affiliation and the requirement under Article 5(3) of the legislation that a licence holder must have taxi driving as his or her principal profession. These requirements constitute additional restrictions on the freedom of establishment.

In conclusion, the Authority finds that the restrictive measures of the legislation governing the access of transport operators to the taxi services market, constitute a restriction of the freedom of establishment. As a result of these provisions, the number of taxi services available in restricted districts is limited and transport operators seeking to establish themselves in a restricted district are impeded from doing so. The Icelandic licensing scheme impedes or renders less attractive the exercise of the freedom of establishment, cf. Article 31(1) EEA.

Next, it must be examined whether this restriction can nonetheless be justified.

5.2 Justifications of possible restrictions

According to established case law of the EFTA Court and CJEU, all restrictions on fundamental freedoms such as the freedom of establishment must be justified by overriding reasons in the public interest.¹² It is settled law that restrictions on freedom of establishment, even if applicable without discrimination on grounds of nationality, cannot be justified unless the restrictions (1) serve overriding reasons in the public interest, (2) are suitable for securing attainment of the objective pursued and (3) do not go beyond what is necessary for attaining that objective.¹³

The Authority recalls that grounds of purely economic nature cannot constitute an overriding reason in the public interest justifying a restriction on a fundamental freedom and may thus not serve as a justification in this regard.¹⁴ Furthermore, national legislation

¹¹ Joined Cases C-570/07 and C-571/07, *Blanco Perez and Chao Gomez*, ECLI:EU:C:2010:300, paras. 122-125.

¹² Case E-9/11, *ESA v Norway*, [2012] EFTA Ct. Rep. 442, para. 83; Case E-15/11, *Arcade Drilling AS*, [2012] EFTA Ct. Rep. 676, para. 82; Case E-3/06 *Ladbrokes*, [2007] EFTA Ct. Rep. 86, para. 41; Case E-8/04, *ESA v Liechtenstein*, [2005] EFTA Ct. Rep. 46, para. 23.

¹³ Case E-3/05, *ESA v Norway*, [2006] EFTA Ct. Rep. 102, para. 57. See also Case C-400/08, *Commission v Spain*, ECLI:EU:C:2011:172, para. 73; Case C-55/94, *Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, ECLI:EU:C:1995:411, para. 37.

¹⁴ Case C-400/08, *Commission v Spain*, ECLI:EU:C:2011:172, para. 74; Case C-338/09, *Yellow Cab Verkehrsbetrieb*, ECLI:EU:C:2010:814, para. 51; Case C-254/98, *TK-Heimdienst*,

is appropriate for ensuring attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner.¹⁵ In addition to being suitable, any restriction must not go beyond what is necessary in order to attain its overriding public interest objective.¹⁶

The Authority cannot see that the Icelandic Government has put forward any possible justifications for its restriction and it has essentially acknowledged that the national legislation at issue is not compatible with the EEA Agreement and needs to be amended.

In this regard, 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 in order 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.¹⁷

As the Icelandic Government has not put forward any possible justification grounds and has not taken appropriate steps to rectify the situation, the Authority must conclude that the Icelandic legislation governing the operations of taxi vehicles is not justified by overriding reasons in the public interest.

Consequently, the Authority concludes that Iceland has failed to fulfil its obligation under Article 31(1) EEA.

FOR THESE REASONS,

THE EFTA SURVEILLANCE AUTHORITY,

pursuant to the first paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and after having given Iceland the opportunity of submitting its observations,

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that, by maintaining rules on access to the taxi services market which provide for a system of prior authorisation, in the form of licence, for establishing a new taxi businesses, which (1) contains a numerical limitation of licences (2) under conditions for granting new licences which are neither objective, non-discriminatory nor known in advance, (3) provide for an obligation for certain taxi licence holders to be affiliated to a dispatch central and (4) require licence holders to have taxi driving as their main profession, Iceland has failed to fulfil its obligation arising from Article 31(1) of the EEA Agreement

ECLI:EU:C:2000:12, paras. 32-33; Case C-456/10, *ANETT*, ECLI:EU:C:2012:241, para. 53; Case C-109/04, *Kranemann*, ECLI:EU:C:2005:187, para. 34.

¹⁵ Case C-169/07, *Hartlauer*, ECLI:EU:C:2009:141, para 55.

¹⁶ Case C-302/97, *Konle*, ECLI:EU:C:1999:271, para. 40; Case C-452/01, *Ospelt and Schlössle Weissenberg*, ECLI:EU:C:2003:493 para. 38-40; Case C-400/08, *Commission v. Spain*, ECLI:EU:C:2011:172, para. 73; Case C-442/02, *CaixaBank France*, ECLI:EU:C:2004:586, para. 17; Case C-169/07, *Hartlauer*, ECLI:EU:C:2009:141, para. 44.

¹⁷ Case E-12/10 *ESA v Iceland*, [2011] EFTA Ct. Rep. 117, para. 57; Case C-8/02, *Leichtle*, ECLI:EU:C:2004:161, para. 45; Case C-73/08, *Bressol and Others*, ECLI:EU:C:2010:181, para. 71; Case C-110/05, *Commission v Italy*, ECLI:EU:C:2009:66, para. 66; Case C-400/08, *Commission v. Spain*, ECLI:EU:C:2011:172, para. 75.

Pursuant to the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority requires Iceland to take the measures necessary to comply with this reasoned opinion within *two months* of its receipt.

Done at Brussels,

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Högni S. Kristjánsson
College Member

Stefan Barriga
Responsible College Member

Melpo-Menie Joséphidès
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This document has been electronically authenticated by Bente Angell-Hansen, Melpo-Menie Josephides.