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EFTA SURVEILLANCE
AUTHORITY

OPINION BY THE EFTA WORKING GROUP ON TRANSPORT ASSISTING THE
EFTA SURVEILLANCE AUTHORITY ON AN APPLICATION FOR AN
EXEMPTION FROM RULES ON WORKING TIME AND REST PERIODS
PURSUANT TO REGULATION 561/2006

The Working Group on Transport assisting the EFTA Surveillance Authority (hereinafter “the Working Group”), set up by Decision of the Standing Committee of the EFTA States No 9/94 of 7 March 1994, has examined an application from Iceland (hereinafter “the application”) concerning exemptions from Articles 6-8 of the Act referred to at point 24e of 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*) (hereinafter “the Act”). The application was lodged on 11 April 2008 pursuant to Article 14 of the Act. On 12 June 2008, the Authority sent a request for further information to Iceland concerning, *i.e.*, issues pertaining to the Government’s understanding of the concept ‘exceptional circumstances’. A reply was sent to the Authority by letter dated 26 August 2008.

The application from Iceland concerns exemptions from the following requirements, on maximum driving time, laid down in the Act:

- (a) Extending the daily driving time on long-distance routes, exceeding 400 km, from the requirement, laid down in Article 6.1 of the Act, from nine to ten hours, and from 10 hours to 11 hours up to twice a week. The total accumulated driving time shall not exceed 90 hours.
- (b) On the route between Reykjavík and Freysnes, Iceland requests to extend the driving period, as stipulated in Article 7 of the Act, from four and a half hours to five hours before the driver is obliged to take a break.
- (c) For drivers of vehicles used for the carriage of passengers, other than those used on regular passenger services, Iceland requests to postpone the weekly 24-hour rest period, as stipulated in Article 8 of the Act, until after twelve 24-hour periods.
- (d) To extend the driving period of four and a half hours, as laid down in Article 7 of the Act, to six hours when carrying passengers by coach between points outside the metropolitan area and the international airport at Keflavik.

Article 14.1 of the Act, as adapted by the EEA Agreement by Protocol 1 thereto, provides that EFTA States may, after prior authorisation by the Authority, “... *grant exceptions from the application of Articles 6 to 9 to transport operations carried out in ‘exceptional circumstances.’*” Such exemptions may only be granted provided that the objectives set out

in Article 1 of the Act, are not prejudiced. These objectives are to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and improve working conditions and road safety.

Article 14.1 provides for the possibility of granting exemptions from the general rules of the Act. As an exemption, Article 14.1 is, in accordance with recognised rules of legal interpretation, to be interpreted narrowly. The first issue to be resolved when examining this provision is to determine how to construe the concept '*exceptional circumstances*'. The Working Group considers that the concept should be understood as applying to those situations which, by their very nature, require some quick and temporary relaxation or suspension of the drivers' hours rules, such as a national emergency, health or security reasons, or human or natural catastrophe. The concept does not encompass routine, long-term, established and regular activities.

Iceland has argued that the circumstances are exceptional in general as the country is diversely populated and with no alternative mode of transport for goods and passengers. In its letter of 26 August 2008, the Icelandic Government stated that "*with land area of approximately 103.000 km² and 2.95 inhabitants per km² on average it can be argued with reference to Art. 14.1 that circumstances for transport by road in the countryside in Iceland are on the whole exceptional compared to the transport infrastructure found in other Member States of the EEA area.*" Iceland has not argued that any situation has arisen which by its nature requires a quick and temporary relaxation of the rules. With reference to the above the Working Group considers that the factors referred to by Iceland cannot fall within the concept of exceptional circumstances under Article 14.1 of the Act.

Furthermore, the Working Group observes that in Article 13.3 of the Act there is a specific exemption provision regarding sparsely populated areas. When this provision was introduced by the Commission in the amended proposal for a Regulation, it was stated:

*"... for areas where population density is particularly sparse, other road users less prevalent and hence road safety less an issue (paragraph 3), the Commission is prepared to recognise and authorise a special derogation in specific well justified cases."*¹

In the opinion of the Working Group, this also demonstrates that the fact that an area is sparsely populated cannot in itself be regarded as exceptional circumstances under Article 14.1 of the Act. Article 13.3 was specifically meant to provide for exemptions to the extent the legislator considered it is justified to derogate from the general rules of the Act on that basis.

Since the condition of exceptional circumstances as laid down in Article 14.1 of the Act is not met for any of the exemptions requested by Iceland, exceptions from the application of Articles 6 to 9 of the Act, cannot be granted on the basis of that Article. As this is the case, it is not necessary to examine whether other conditions of Article 14.1 of the Act are fulfilled.

Nevertheless, the Working Group notes that one of those conditions is that the objective of the Regulation to improve road safety is not prejudiced. In the opinion of the Working Group the Icelandic Government has, in its submissions, not been able to demonstrate that if the requested exemptions would be granted, road safety would not be prejudiced.

¹ COM(2003) 490 final, page 11

According to the application, the Confederation of Icelandic Employers, together with three of its constituent federations, the Icelandic Travel Industry Association, the Special Workers in Iceland and the Icelandic Confederation of Workers have requested the Icelandic Government to ask for certain exemptions under Article 14 of the Act. However, one of the labour unions of drivers affected by the changes in working time, Bifreiðastjórafélagið Sleipnir, has declared opposition to any exemptions from the Act which they consider to the detriment of road safety and working practices.

In conclusion, the Working Group, therefore, agrees with the Authority's intention, to reject Iceland's request for exemptions from the requirements laid down in Articles 6-8 of the Act, as adapted by the EEA Agreement by Protocol 1 thereto, as requested in Iceland's letter dated 11 April 2008.

Attachments:

1. Letter of 11 April 2008, from the Icelandic Government concerning the request by the Ministry of Transport, Communications and Municipal Affairs of Iceland to apply for exemptions from certain requirements of EC Regulation No. 561/2006 regarding driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road.
2. Request for information of 12 June 2008 by the Authority, concerning the application by the Ministry of Transport, Communications and Municipal Affairs of Iceland for exemptions from certain requirements of EC Regulation No. 561/2006 regarding driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road.
3. Request for information of 28 July 2008, concerning Iceland's application for exemption from Regulation (EC) 561/2006.
4. Letter of 26 August 2008, concerning a request by Icelandic authorities for certain exemptions from EC Regulation 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport.
5. Letter of 4 September 2008, concerning application from Iceland concerning exemption from 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.
6. Letter of 19 September 2008, concerning additional information concerning a request by the Icelandic Government for exemptions based on Article 14 of the EC Regulation No 561/2006 regarding driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road, your letter of 28 July 2008.