

Norges Lastebileier-forbund NHO Transport og Logistikk Fjellregionenes interkommunale Avfallsselskap

Behandlende enhet: Saksbehandler/telefon: Vår referanse: Deres referanse: Vår dato: Vegdirektoratet Kamilla Mjøs / 22073722 18/148681-13 27.09.2018

Dispensasjon fra kjøre- og hviletidsregler i forbindelse med Trident Juncture

Vegdirektoratet viser til søknader om dispensasjon fra kjøre- og hviletidsbestemmelsene fra Norges Lastebileier-forbund, NHO Transport og Logistikk og Fjellregionens Interkommunale Avfallsselskap. Søknadene er datert henholdsvis 29. juni, 2. august og 17. september 2018.

Fordi alle søknadene er begrunnet i samme omstendigheter, fatter Vegdirektoratet et samlet vedtak om å innvilge dispensasjon.

Denne dispensasjonen skal ikke bare gjelde for de som har søkt om dispensasjon, men alle aktører som driver transport i de berørte områdene og som blir påvirket av øvelsen. Av hensyn til effektiv kontroll av kjøre- og hviletid, anbefaler vi at en kopi av vedtaket medfølger de kjøretøyene som benytter seg av unntaket.

1 Vedtak

Vegdirektoratet har innvilget søknaden og fatter følgende vedtak:

Vegdirektoratet innvilger dispensasjon fra kjøre- og hviletidsreglene på følgende vilkår:

- 1. Dispensasjonen gjelder i følgende periode: **26. september til og med 7. desember 2018**
- 2. Dispensasjonen gjelder for alle sjåfører som driver transport i Østfold, Oslo, Akershus, Hedmark, Oppland, Møre- og Romsdal og Trøndelag og som er berørt av øvelsen
- 3. Det innvilges dispensasjon fra forordning (EF) 561/2006 artikkel 6:
 - a) Daglig kjøretid kan være på maksimalt 10 timer, og utvides til 11 timer to ganger i uken

Org.nr: 971032081

- b) Ukentlig kjøretid kan være på maksimalt 60 timer og skal ikke medføre overtredelse av samlet ukentlig arbeidstid etter forskrift 10. juni 2005 nr. 543 § 13
- c) Sammenlagt kjøretid i løpet av to på hverandre følgende uker kan være på maksimalt 100 timer
- 4. Det innvilges dispensasjon fra forordning (EF) 561/2006 artikkel 4 bokstav g) og artikkel 8 nr. 4:
 - a) En fører kan ha høyst tre reduserte døgnhviler på minst 8 timer mellom to ukehviler
 - b) Reduserte døgnhviler som nevnt i punkt 4 a) må kompenseres i henhold til kompensasjonsreglene i forordning (EF) 561/2006 artikkel 8 nr. 6.

Dette er et enkeltvedtak som kan påklages, jf. forvaltningsloven § 28.

Nedenfor følger en begrunnelse vedtaket.

2 Sakens bakgrunn

Norges Lastebileier-forbund og NHO Transport og Logistikk sendte i månedsskiftet juni/juli søknader på vegne av deres respektive medlemmer om unntak fra kjøre- og hviletidsreglene. Begge søknadene var begrunnet med at NATOs militærøvelse Trident Juncture utgjorde ekstraordinære omstendigheter som medførte behov for unntak fra visse bestemmelser.

Da disse søknadene omhandler et lengre tidsrom enn det Vegdirektoratet har myndighet til å innvilge dispensasjon fra, ble det sendt en anmodning til EFTAs overvåkingsorgan ESA om autorisasjon til å innvilge søknadene. I etterkant av anmodningen har Vegdirektoratet mottatt ytterligere én søknad fra Fjellregionen Interkommunale Avfallsselskap begrunnet i de samme omstendighetene, nemlig NATOs øvelse.

ESA har fattet sin beslutning (College Decision No 081/18/COL), hvor Norge gis autorisasjon til å innvilge dispensasjon fra deler av kjøre- og hviletidsreglene på nærmere angitte vilkår, jf. vedlagte beslutning fra ESA. Beslutningen innebærer at Vegdirektoratet har formelt rettslig grunnlag til å innvilge dispensasjon.

3 Rettslig grunnlag

Reglene om kjøre- og hviletid, samt unntakene fra reglene, står i kjøre- og hviletidsforordningen (EF) 561/2006 (forordningen). Forordningen gjelder som norsk forskrift, jf. forskrift 2. juli 2007 nr. 877 om kjøre- og hviletid for vegtransport i EØS § 1 (forskriften). Etter forskriften § 2 kan Vegdirektoratet gjøre unntak fra forordning 561/2006 i den utstrekning forordningen tillater det. Det er forordningen artikkel 14 som angir rammene for slikt unntak.

Adgangen til å gi dispensasjon etter artikkel 14 er veldig snever. Vegdirektoratets adgang til å innvilge dispensasjon på selvstendig grunnlag gjelder bare i hastetilfeller og for et tidsrom på høyst 30 dager. Vilkårene for slikt unntak er at transporten utføres under «ekstraordinære omstendigheter» og at det er forenlig med formålene fastsatt i artikkel 1.

Ved unntak ut over 30 dager må det sendes en søknad til EU-kommisjonen (for Norges del til EFTAs overvåkingsorgan (ESA).

Ordlyden «ekstraordinære omstendigheter» peker på at transporten må være av en slik art eller et slikt omfang at det er særdeles vanskelig å gjennomføre transporten i samsvar med reglene om kjøre- og hviletid. Det at transporten under normale omstendigheter er vanskeligere og/eller dyrere å gjennomføre som følge av bestemmelsene om kjøre- og hviletid, er ikke tilstrekkelig grunnlag for å innvilge dispensasjon.

4 Vegdirektoratets vurdering

Vegdirektoratets vurdering er at konsekvensene og omfanget av NATOs øvelse medfører at transporter som blir berørt av dem gjennomføres under slike ekstraordinære omstendigheter som forordningen artikkel 14 gir anvisning på. I tråd med ESAs beslutning, har vi fattet vedtak om dispensasjon. Dispensasjonen gjelder med de begrensningene vi har angitt i punkt 1.

Seksjon for tilsyn og kontroll Med hilsen

Henning Harsem Avdelingsdirektør

Kamilla Mjøs

Dokumentet er godkjent elektronisk og har derfor ingen håndskrevne signaturer.

Case No: 82419

Document No: 925390 Decision No: 081/18/COL



EFTA SURVEILLANCE AUTHORITY DELEGATED DECISION

of 6 September 2018

authorising Norway to grant exceptions from the application of Articles 6(1), 6(2), 6(3) and Article 8(4) 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 at point 24e in Chapter II of Annex XIII to 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 3820/85¹ ("the Act")

as adapted to the EEA Agreement by Protocol 1 thereto, and in particular 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: [...]

¹ OJ L 102, 11.4.2006, p. 1.



(g) 'daily rest period' means the daily period during which a driver may freely dispose of his time and covers a 'regular daily rest period' and a 'reduced daily rest period':

- 'regular daily rest period' means any period of rest of at least 11 hours. Alternatively, this regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least nine hours,

- 'reduced daily rest period' means any period of rest of at least nine hours but less than 11 hours;

[...]"

Article 6 of the Article 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.

4. Daily and weekly driving times shall include all driving time on the territory of the Community or of a third country. [...]"

Article 8 of the Act reads:

"1. A driver shall take daily and weekly rest periods.

- 2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver shall have taken a new daily rest period. If the portion of the daily rest period which falls within that 24 hour period is at least nine hours but less than 11 hours, then the daily rest period in question shall be regarded as a reduced daily rest period.
- 3. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period.
- 4. A driver may have at most three reduced daily rest periods between any two weekly rest periods.
- 5. By way of derogation from paragraph 2, within 30 hours of the end of a daily or weekly rest period, a driver engaged in multi-manning must have taken a new

daily

rest period of at least nine hours.

- 6. In any two consecutive weeks a driver shall take at least:
 - two regular weekly rest periods, or
 - one regular weekly rest period and one reduced weekly rest period of at least 24 hours. However, the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question.

A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period."

Article 14(1) of the Act reads:

"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 The request from the Norwegian Government

By letter dated 23 July 2018 (Doc No 925302), the Norwegian Government sent a request to the Authority asking for authorisation to grant exceptions from the application of the provisions in Articles 6 and 8 of the Act. The exceptions are sought in the light of the forthcoming NATO military exercise Trident Juncture 2018 that Norway will be hosting in the period between 10 September and 7 December 2018. Pursuant to the request, any decision to grant an exception from the rules of the Act shall apply to all drivers engaged in the carriage of goods and passengers by road that are affected by the military exercise.

2.1 Background of the request

In its request, the Norwegian Government explained that the Trident Juncture exercise is expected to be the largest military exercise held on Norwegian territory since the end of the cold war. The exercise would include approximately 40,000 participants, 130 aircraft and 60 vessels from more than 30 nations.

According to the Norwegian Government, the military exercise will impact the road transport in three different stages. The first stage, from 10 September to 24 October 2018, will be dedicated to the transportation of personnel and equipment. The second stage, from 25 October to 7 November 2018, will be dedicated to the main drill and the third stage, from 8 November to 7 December 2018, will be dedicated to the transportation of personnel and equipment out of the areas. According to the Norwegian Government, the activity level will be most intense in the months of October and November and it is assumed that the need for an exception will be highest in these months.

The Norwegian Government further contends that the impact on traffic will mostly consist of delays and traffic jams due to the temporary closure of specific roads and the resulting increase in traffic on other roads (including traffic caused by vehicles with low maximum authorised speed). In addition, the Norwegian Government explains that during these periods, road users will need to pay particular attention because of increased traffic caused by vehicles with driveability that is different than that of regular vehicles. The Norwegian Government specifies that the following areas will be subject to a high traffic activity level during the months of October and November: Østfold, Oslo and Akershus, Hedmark, Oppland, Møre- and Romsdal and Trøndelag.

The Norwegian Government bases the necessity of granting exceptions from the rules on driving times and resting periods on the fact that the NATO exercise will inevitably lead to traffic delays and detours that will affect road users in the areas concerned.

2.2 Proposed exceptions and justification

The proposed request for authorisation concern the grant of exceptions from the rules in Articles 6 and 8 of the Act. With regard to the request for an authorisation to grant an exception from the provisions Article 6 of the Act, the Norwegian Government requests that drivers may be granted the following rights:

- To extend the daily driving time referred to in Article 6(1) of the Act by one hour, so that drivers may drive up to ten hours a day, and be allowed to extend the daily driving time to eleven hours in line with the provisions in the second paragraph of Article 6(1) of the Act;



- To extend the weekly driving time referred to in Article 6(2) of the Act by four hours, so that at driver may drive a maximum of 60 hours a week;
- To extend the total accumulated driving time during any two consecutive weeks referred to in Article 6(3) of the Act by ten hours, so that a driver may drive a total of 100 hours in any two consecutive weeks.

In addition, with regard to the request for an authorisation to grant an exception from the provisions in Article 8 of the Act, the Norwegian Government requests that where drivers have exhausted the possibilities in the aforementioned extension under Article 6 of the Act, drivers may be granted the following right:

- To grant an exception from the rules on reduced daily rest periods in Articles 4(g) and 8(4) of the Act, so that drivers may take a reduced daily rest period of eight hours, on the condition that they fully compensate the reduction in line with the rules set out in article 6(8) of the Act.

In support of the view that the military exercise constitutes an "exceptional circumstance" within the meaning of Article 14(1) of the Act, the Norwegian Government submits that the high number of participants and the equipment involved in the exercise is unprecedented in modern time. The Norwegian Government argues that the exercise will in itself have a significant impact on road transport in the affected areas. The Norwegian armed forces have put in a significant effort to inform affected truck drivers and the general public on how the drill will affect them. Furthermore, the Norwegian Government takes the view that granting the proposed exceptions would not prejudice the objectives set out in Article 1 of the Act. In this regard, the Norwegian Government stresses that the exceptions would apply to all drivers conducting transport activities in the affected areas, which according to the Norwegian Government would mean that competition would not be affected by the exception. Moreover, the Norwegian Government contends, granting an extension of the allowed daily driving periods would not adversely affect the working conditions of drivers and would not compromise road safety. In this regard, the Norwegian Government submits that the proposed limits on the maximum weekly driving times (60) and on the accumulated driving time during two consecutive weeks (100) will ensure that a driver cannot use the extension many days in a row, and that the driver must compensate the extension with shorter days to meet the requirements.

3 The Authority's assessment

In its request, the Norwegian Government invokes a number of arguments to underpin its argument that the NATO military exercise, given its scale and impact, constitutes an "exceptional circumstance" within the meaning of Article 14(1) of the Act which qualifies for an exception from the rules on driving and resting time in Articles 6 and 8 of the Act.

The conditions for authorising the requested exceptions are set out in Article 14(1) of the Act as follows:

"Provided that the objectives set out in Article 1 are not prejudiced, Member States may, after authorisation by the Authority, grant exceptions from the application of Articles 6 to 9 to transport operations carried out in exceptional circumstances."

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.²

In this regard, the Authority recalls that Article 14(1) is an exception provision, which according to its very 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.³

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. In contrast, long-term, established and regular commercial transport operations are generally not regarded as being carried out under "exceptional circumstances" within the meaning of Article 14(1) of the Act.

The Authority acknowledges that the NATO Trident Juncture 2018 military exercise will have a significant impact on the conditions for carrying out road transport operations in the affected areas. It is one of the largest military exercises ever held in Norway, involving over 40,000 participants, 130 aircraft and 60 vessels from more than 30 nations. The purpose of the exercise is to test the whole military chain, from troop training at the tactical level, to command over large forces. Norway is hosting and organising the exercise.

The Authority understands that the impact of the military exercise on traffic will mostly consist of delays and traffic jams due to temporary closures of roads and the resulting necessity for drivers to make detours and to use alternative routes, which will lead to increased transport activities on otherwise less frequented roads. This impact will be enhanced by the higher number of slower vehicles with low maximum authorised speed and

vehicles with different driveability than passenger cars.

The Authority acknowledges that the exercise and its scale are a rare occurrence, which requires taking specific action and measures in order to assist professional drivers and others employed in the road transport sectors.

The proposed exceptions do not appear to have a negative effect on competition. The exceptions requested to be authorised will only apply on the territory of Norway, and are not likely to influence the conditions of competition for inland transport in the internal market. As the exceptions 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. As the impact of the NATO military exercise on road transport will affect all professional transport operators in the

² CJEU, Case C-102/16, Vaditrans BVBA, EU:C:2017:1012, paragraph 42 and the case law cited.

³ 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.



same way, the Authority takes the view that the exceptions shall equally be available to all transport operators and not be reserved to transport operators in particular sectors.

Consequently, the conditions for competition between domestic actors and transporters not established in Norway will remain equal and not be distorted by granting the exceptions. Furthermore, the exceptions do not appear to compromise working conditions. As for the impact on road safety, the Authority takes the view that the proposed exceptions are proportional. Although the proposed exceptions foresee extensions of the limits on weekly driving times and accumulated driving times during consecutive weeks, drivers will not be able to use the extensions for many days in a row, and they are obliged compensate the extensions with shorter driving times during other days in order to meet the requirements. In the light of the above justifications, the requested exceptions do not appear to run counter to the objectives of the Act as enshrined in Article 1 thereof.

Given the scale of the NATO military exercise and its rare occurrence in a particular EEA State, the Authority is of the opinion that the transport operations in Norway affected by the exercise can be considered as carried out in exceptional circumstances, within the meaning of 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 exceptions from the rules in Article 7, Article 8(4) and Article 8(6) of the Act, 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.

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Norway may grant exceptions from the application of Articles 6(1), 6(2), 6(3) and Article 8(4) 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 and passengers by road that are affected by the impact of the NATO military exercise Trident Juncture, for the period between 10 September and 7 December 2018.

Article 2

The Kingdom of Norway is authorised to exempt drivers for the limited time period described in Article 1 from the provisions of Article 6(1), 6(2) and 6(3) of Regulation (EC) No 561/2006, as follows:

(a) The daily driving time shall not exceed ten hours. However, the daily driving time may be extended to at most eleven hours not more than twice during the week.



- (b) The weekly driving time shall not exceed 60 hours and shall not result in the maximum weekly working time laid down in Directive 2002/15/EC being exceeded.
- (c) The total accumulated driving time during any two consecutive weeks shall not exceed 100 hours.

Article 3

The Kingdom of Norway is authorised to exempt the drivers for the limited time periods described in Article 1 from the provisions of Article 4(g) and 8(4) of Regulation (EC) No 561/2006 as follows:

- (a) Drivers may have at most three reduced daily rest periods of at least eight hours between any two weekly rest periods.
- (b) A reduction of the daily rest periods as described in paragraph (a) must be fully compensated in line with the requirements laid down in Article 8(6) of Regulation (EC) No 561/2006.

Article 4

This Decision is addressed to the Kingdom of Norway. It is authentic in the English language.

Article 5

This Decision shall enter into force upon notification to the Kingdom of Norway.

Done at Brussels, 6 September 2018

For the EFTA Surveillance Authority, acting under <u>Delegation Decision No 60/18/COL</u>,

Bente Angell-Hansen President

> Carsten Zatschler Countersigning as Director, Legal and Executive Affairs

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

mpel)	Melding om rett til å klage over
	forvaltningsvedtak
	(Forvaltningsloven § 27 tredje ledd)
	(2) Dato
(3) Mottaker (navn og adresse)	(4) Klageinstans
	Samferdselsdepartementet
pplysninger hvis De ønsk	ker å klage over vedtak De har fått underretning om.
De har rett til å klage over	r vedtaket.
	dvs. det organet som er ført opp i rubrikk (1). Hvis vi ikke tar den til klageinstansen, jf. rubrikk (4).
klagen er postlagt før frist oss om De har klaget i ret Dersom De klager for sen	ter fra den dag De mottar dette brevet. Det er tilstrekkelig at den går ut. Dersom De klager så sent at det kan være uklart for t tid, bør De oppgi datoen for når De mottok dette brevet. t, kan vi se bort fra klagen. De kan søke om å få forlenget ti årsaken til at De ønsker det.
	har begrunnet vedtaket vårt, kan De kreve en slik begrunnelse efrist blir da regnet fra den dagen De mottar begrunnelsen.
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	kan vedtaket vanligvis gjennomføres straks. De kan imidlertid omføringen av vedtaket til klagefristen er ute eller til klagen er
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fritt rettsråd. Vanligvis gj Deres advokat kan gi nær Deres fordel, kan De etter som har vært nødvendige	tet utgifter til nødvendig advokathjelp etter reglene om elder visse inntekts- og formuesgrenser. Fylkesmannen eller mere opplysninger om dette. Hvis vedtaket er blitt endret til r forvaltningsloven ha krav på å få dekket vesentlige kostnader for å få endret vedtaket. Klage- vil orientere Dem om retten til å kreve slik dekning.
kan De klage til Stortinge nen). Sivilombudsmanner vurdering av hvordan der det er gjort eventuelle fei saker som er avgjort av K	vært utsatt for urett fra den offentlige forvaltnings side, ets ombudsmann for forvaltningen (Sivilombudsmann kan ikke selv endre vedtaket, men kan gi sin in offentlige forvaltning har behandlet saken, og om il eller forsømmelser. Dette gjelder likevel ikke i kongen i statsråd. Dersom De nå får Deres klage ongen er klageinstans, kan De derfor ikke senere ombudsmannen.
	pplysninger hvis De ønsk De har rett til å klage over Klagen sender De til oss, klagen til følge, sender vi Klagefristen er tre - 3 - uk klagen er postlagt før frist oss om De har klaget i ret Dersom De klager for sen fristen, og da må De oppg Dersom De mener vi ikke før fristen går ut. Ny klag De må presisere hvilket vedtak De klage årsaken til at De klage den eller de endringer eventuelt andre opplys Klagen må undertegnes. Selv om De har klagerett, søke om å få utsatt gjenne avgjort. Med visse begrensninger dette finnes i forvaltnings oss, jf. rubrikk (1). De vil framgangsmåten og om re De kan søke om å få dekt fritt rettsråd. Vanligvis gj Deres advokat kan gi nær Deres fordel, kan De etter som har vært nødvendige instansen (jf. rubrikk (4)) Hvis De mener at De har kan De klage til Stortinge nen). Sivilombudsmanner vurdering av hvordan der det er gjort eventuelle fei saker som er avgjort av K avgjort i statsråd fordi Ko