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Reference is made to the Authority's Letter of formal notice concerning national rules defining "temporary cabotage" passenger transport services, dated 4th of May 2022.

In the Authority's letter, the Authority requests that the Icelandic Government submits its observations on the content of the letter. According to the letter, the durational limitation to the right to provide temporary national road passenger services in Iceland is of particular concern to the Authority.

As the Authority points out, there is no case law that interprets the notion of "temporary" cabotage passenger services. The Authority however refers to "relevant case law" when concluding that Icelandic rules on temporary cabotage passenger services constitute an infringement of the freedom to provide services specified in Article 15 of Regulation 1073/2009.

In the LOFN, reference is made to the CJEU's judgement in Case C-215/01. The Government is of the opinion that the case in question cannot be seen as comparable to Case C-215/01, i.a. as said case revolved around a question referred to the court for a preliminary ruling regarding the compatibility with EC law when undertakings from one member state, where they fulfil conditions for carrying on a commercial activity, are required to satisfy further conditions in order to carry on activity in another member state. The case involved the issue of defining when a business is considered established in a member state. The case in question regarded construction work and as the court notes, construction of large buildings may take place over several years. The services in question in Case C-215/01 are not comparable to temporary passenger transport operations. In the LOFN, reference is made to the CJEU's judgement in Case C-55/94 as well. As stated in the CJEU's judgement, temporary nature of the provision of services (...) is to be determined in the light of its duration, regularity, periodicity, and continuity. Law no. 28/2017 takes all those matters into account by setting a structure for determining when cabotage passenger transport is in fact temporary but not permanent. The law provides guidance by stating that cabotage passenger transport is not to be considered temporary if provided for more than 10 consecutive days in a calendar month and that at least two days shall pass between a temporary cabotage operation before the next one begins. Without clear guidelines written into law, it is impossible to determine in a consistent manner when a cabotage passenger transport operation is being carried out temporarily or if it is a permanent passenger transport operation. By passing legislation entailing a clear definition of what constitutes "temporary" cabotage passenger

operations, the Icelandic Government has avoided the risk of decisions being made in an arbitrary manner and provided for a system of consistency when handling cases of temporary cabotage passenger services.

It must be emphasized that both Case C-55/94 and Case C-215/01 deal with the general service rules of the TFEU and the boundary between those rules and the rules relating to the right of establishment. As the Government has previously pointed out, article 38 of the EEA agreement precludes direct applicability of the general service rules of the agreement to the transport sector. Furthermore, the European Commission has stated in the *Commission Notice on well-functioning and sustainable local passenger transport-on-demand (taxis and PHV) 2022/C 62/01* that Article 56 of TFEU on the freedom to provide services is not applicable to transport services. Transport services are however covered by the scope of the freedom of establishment enshrined in Article 49 TFEU.

Regarding the principle of proportionality, the Government is of the opinion that the definition that is found in national law defining “temporary” cabotage passenger operations is well within the Governments margin of appreciation. Regarding the issue of regularity, periodical nature or continuity, the Government must stress that the Icelandic legislation in question takes those matters into account when determining if cabotage passenger transport is temporary within the meaning of the law. The same rules apply to all carriers as every carrier has the opportunity to obtain a licence to operate permanently in Iceland in accordance with Article 3(1). The rules are there for the general interest of the public to make sure that all carriers that permanently provide passenger transport abide by the same rules. The rules are suitable and necessary to obtain the objective of making a clear distinction between permanent and temporary cabotage passenger transport to provide for consistency in the conditions for carrying out regular services. Finally the rules take in to account the principle of proportionality by i.a. providing carriers the opportunity to engage in temporary cabotage passenger transport for up to 1/3 of a calendar year.

Iceland does not recognise that the national legislation in question constitutes a restriction on the freedom to provide services granted in Regulation 1073/2009 and considers the legislation to be in full compliance with the EEA-agreement.



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Fyrir hönd ráðherra



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