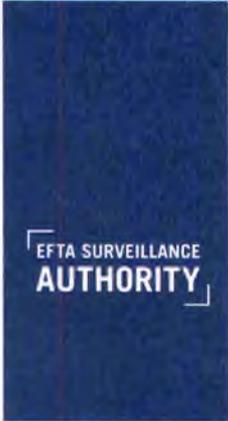


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EFTA SURVEILLANCE
AUTHORITY

Icelandic Ministry of the Interior
Sölvhólgata 7
150 Reykjavík
Iceland

Dear Sir or Madam,

Subject: Request for information regarding access to taxi service market in Iceland

The Authority hereby informs the Icelandic Government that the Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority has recently opened an own-initiative case regarding the taxi services market in Iceland, more precisely the conditions for access to that market and any possible restrictions thereto.

In this context, the Directorate kindly requests the Icelandic Government to provide it with information on the legal framework regarding the taxi market, as specified further in this letter.

1 Legal background: access to taxi services market in Iceland

To the Directorate’s knowledge, the taxi services market in Iceland is regulated by the following acts:

- *Lög um leigubifreiðar*, 134/2001 (Act no 134/2001 on taxis) (“Taxi Act”)
- *Reglugerð nr. 397/2003 um leigubifreiðar* (Regulation no 397/2003 on taxis) (“Taxi Regulation”).

According to Article 6 of the Taxi Act, obtaining a taxi licence is a condition for providing taxi services. 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. However, a surviving spouse is authorised to use the licence for three years after the passing of the licence holder. Provided there is no surviving spouse, the licence holder’s estate may use the licence for three months after his or her passing. The licence shall be renewed every five years.

Article 5 of the Taxi Act lays down the requirements for obtaining a taxi licence. In order to obtain a taxi licence an applicant must, inter alia, have sufficient professional competence, be a registered owner of a passenger car, 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.

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. 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.

In the Directorate's understanding, the Taxi Act does not specify how the number of available taxi licences in restricted districts shall be determined. Article 4 of the Taxi Regulation specifically provides for a maximum number of licences in each restricted district and provides some clarification on how these maximum numbers are determined. Accordingly, the relevant ministry shall review the number of licences in each restricted district and take appropriate action if there is a significant imbalance between supply and demand of licences. However, it appears that the Taxi Regulation does not specify further the factors that shall be taken into account when evaluating the need for new taxi licences.

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 the new licence is issued in 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.

According to Article 3(1) of the Taxi Act, all taxis operating in restricted areas shall be connected to a taxi dispatch central, which has been authorised by the Icelandic Transport Authority. Taxi drivers in unrestricted areas are not required to be members of a taxi dispatch central.

2 Legal assessment

Based on the above, the Directorate notes that access to the taxi services market in Iceland is restricted in specific districts, by way of limiting the number of available taxi licences in these districts. The numerical restriction of licences is based on a balance of supply and demand of licences. The allocation of licences in restricted districts is based on previous experience of the applicant as a taxi driver. When evaluating an application for a taxi licence in a restricted area, applicants which have been operating in unrestricted districts are not considered to have the same experience as drivers operating in restricted districts. Furthermore, the requirement of being affiliated to a taxi dispatch central in restricted districts potentially constitutes a further restriction.

The Directorate notes that the European Courts have repeatedly held that national measures which impede or render less attractive the exercise of the freedom of establishment within the meaning of Article 49 TFEU, e.g. through the application of a prior authorisation

procedure, are to be considered restrictions to the freedom of establishment.¹ Hence, a requirement for taxi services operators to obtain an authorisation prior to commencing services may constitute a restriction on the freedom of establishment.

Furthermore, the Directorate notes that, in a case concerning a national rule limiting the number of shopping centres in Spain (Case C-400/08 *Commission v Spain*), the Court of Justice of the European Union (CJEU) has held that numeric, needs based-limitations (based on assumed demand and supply or market shares) constitute a restriction on the freedom of establishment.² Similarly, in the Case C-338/09 *Yellow Cab*, the Court ruled that national legislation which requires authorisation to be obtained in order to operate a tourist bus service, constitutes, in principle, a restriction on the freedom of establishment, in that it seeks to restrict the number of service providers, notwithstanding the alleged absence of discrimination on grounds of the nationality of the persons concerned.³ In this regard, it is not decisive whether the national measures in question are indistinctly applicable as regards nationality.⁴ Discriminatory national measures, including measures which do not distinguish upon nationality as such, but *de facto* have discriminatory effects (indirect discriminatory), are prohibited, cf. Article 31(2) and Article 4 EEA.⁵

It is established case law that a restriction on one of the fundamental freedoms of the EEA Agreement can be justified only if the State concerned can show that the relevant measures pursue a legitimate objective in the public interest. Such national measures must also be appropriate for securing attainment of the objective pursued (suitability), and not go beyond what is necessary in order to achieve the legitimate objectives.⁶ Purely economic considerations 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.⁷

3 Questions

In the light of the above, and in order for the Directorate to assess the legal situation regarding access to the taxi services market in Iceland, the Icelandic Government is kindly invited to provide the following information:

1. Please specify the criteria that are applied under Icelandic law to assess the application of a new entrant to the taxi services market. Please explain how these criteria are applied in an objective, transparent and non-discriminatory manner.
2. Please specify which factors are to be taken into account when determining the maximum number of licences in restricted districts and how these factors are applied in practice.

¹ See *inter alia* Cases E-2/06 *EFTA Surveillance Authority v. Norway*, EFTA Court Report p.164, paragraph 64; ECJ, Case C-439/99 *Trade fair*, paragraph 22; Case C-55/94 *Gebhard*, paragraph 37; Case C-255/97 *Pfeiffer* [1999] ECR I-2835; Case C-326/07 *Commission v. Italy*, paragraph 56-57.

² Case C-400/08 *Commission v Spain*, paragraph 65.

³ Case C-338/09 *Yellow Cab Verkehrsbetrieb*, paragraph 45.

⁴ Cf. Case C-400/08 *Commission v Spain*, paragraph 64; Case C-338/09 *Yellow Cab Verkehrsbetrieb*, paragraph 45.

⁵ Cf. Case C-570/07 *Blanco Pérez and Chao Gómez*, paragraphs 117-119.

⁶ ECJ, Case C-302/97 *Konle*, paragraph 40; Case C-452/01 *Ospelt*, paragraphs 38-40; Case C-400/08 *Commission v. Spain*, paragraph 73; Case C-442/02 *Caixa Bank France*, paragraph 17; Case C-169/07 *Hartlauer*, paragraph 44.

⁷ ECJ, Case C-400/08 *Commission v. Spain* paragraph 74; Case C-338/09 *Yellow Cab Verkehrsbetrieb*, paragraph 51; Case C-254/98 *TK-Heimdienst*, paragraphs 32-33; Case C-456/10 *ANETT*, paragraph 53.

3. Please explain whether the authorities, in deciding on the licence of a new entrant to the taxi services market, enjoy any discretion and, if so, whether and how the exercise of this discretion is circumscribed by law.
4. Please explain whether restrictions following from the numerical limitation of taxi licences in restricted districts are justified by legitimate objectives in the public interest, taking into account the principle of proportionality.
5. Please indicate how the licensing scheme is applied in practice as regards foreign applicants compared to national applicants.
6. Please specify whether taxi licences holders in Iceland are subject to an obligation to be affiliated with specific taxi dispatch centrals and whether licence holders as well as applicants for a new licence are free to choose the dispatch central they want to be affiliated with.

Yours faithfully,

Astríður S. Þorsteinsdóttir

Ástríður Scheving Thorsteinsson
Deputy Director
Internal Market Affairs Directorate