Case No: 87754
Doc No: 1325668
15 December 2022

Package Meeting in Norway
27-28 October 2022

Follow-up letter

Veterinary matters
(Annex I)

Responsible case handlers: Aleš Brecelj

1. Mission to Norway on animal welfare during transport (Case No 81384)

The meeting was attended by:

- Kristin Nummedal, Odd Anders Nilsen and Brit Malin Lyshagen-Johansen from the Ministry of Agriculture and Food;
- Yngvild Vollen Steiro from the Ministry of Trade, Industry and Fisheries;
- Stig Atle Vange from the Ministry of Health and Care Services;
- Inge Erlend Nesset, Torunn Knævelsrud and Hege Bysheim from the Norwegian Food and Safety Authority ('the NFSA');
- Silje Aalund Lødemel from the Norwegian Public Roads Administration; and
- Aleš Brecelj, Janne Britt Krakhellen and Craig Simpson from the EFTA Surveillance Authority ('the Authority').

The Authority performed an audit to Norway on animal welfare during transport in April 2018.

The representatives of the Authority summarised the status of the case based on the Norwegian reply to the Authority's follow-up letter dated 6 June 2022 (your ref. 2018/48291, Doc No 1066834).

The Norwegian Government informed the Authority that they provided additional information regarding open recommendations on 21 October 2022 (your ref. 14/1811, Doc No 1322882) and provided information on the status of the open recommendations:

- Regarding recommendation no. 1 which requests the competent authorities to ensure that staff performing official controls receive appropriate training enabling them to undertake their duties competently and to carry out official controls on transport of live animals in a consistent manner and that they receive regular additional training as necessary, the Norwegian Government

stated that the work is in progress and a storyboard for training is being developed by the help of external consultants. The e-learning training is planned to start by the end of this year;

- Regarding recommendation no. 2 which requests the competent authorities to ensure that their staff are duly trained and equipped to check tachographs and SNS data, the Norwegian Government stated that it has been concluded that the Norwegian Animal Welfare Act provide sufficient legal basis for the NFSA both to collect and to process any information needed to perform official controls on animal welfare, including access to information available on tachographs in the vehicles transporting animals. The Norwegian Public Roads Administration representative confirmed that they will provide assistance in developing a training programme for the relevant NFSA officials. The NFSA confirmed that the training programme also will comprise a module on how to assess Satellite Navigation Systems data which are required to be collected on board of vehicles transporting animals on long distances.

The Norwegian Government is invited to confirm to the Authority in writing, ***by 30 January 2023 at the latest****, (i) the further steps, and their associated timelines, for training programme as per recommendation no. 1 for the NFSA staff to perform effective official controls on animal welfare at the time of transport; (ii) the further steps, and their associated timelines regarding training and equipment to assess the information available on tachographs; (iii) confirm the involvement of and commitment of the Norwegian Public Roads Administration in preparation of the abovementioned training programme; and (iv) confirm that the training programme will include a module on checks of Satellite Navigation System data and the associated timelines for this (preparation and implementation).*

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Follow-up letter

Veterinary and Phytosanitary Matters / Foodstuffs
(Annex I / Annex II, Chapter XII)

Responsible case handlers: Craig Simpson

1. *Incorrect application of certain requirements concerning official controls of consignments in transit and/or transhipment and the customs-approved treatment or use of such consignments (Case No 85428)*

The meeting was attended by:

- Cathrine Steinland and Anne Felde Doser from the Ministry of Agriculture and Food;
- Yngvild Vollen Steiro from the Ministry of Trade, Industry and Fisheries;
- Stig Atle Vange from the Ministry of Health and Care Services;
- Henriette Strandskogen Hjort and Unni Raadim from the Ministry of Finance;
- Elisabeth Wilman, Marit Forbord, Elin Borgen and Ian Burman from the Norwegian Food and Safety Authority ('the NFSA');
- Ylva Vorkinn, June Nesse and Bjørn Martin Nilsen from Norwegian Customs ('Customs'); and
- Craig Simpson, Janne Britt Krakhellen and Aleš Brecelj from the EFTA Surveillance Authority ('the Authority').

The representatives of the Authority summarised the status of the case based on the Norwegian Government's letter dated 3 January 2022 responding to the Authority's letter of formal notice (Doc No 1260159, Ministry of Agriculture and Food ('Ministry') reference 21/385-) and the information subsequently provided by the Ministry in its emails to the Authority dated 16 August 2022 (Doc No 1310242) and 16 September 2022 (Doc No 1325520).

The representatives of the Norwegian Government confirmed that pending customs legislation requiring a declaration to be lodged prior to the placing under a customs procedure of consignments of products of animal origin in transit and/or transhipment ('the declaration requirement') would be implemented from 1 January 2023. The declaration requirement would permit Customs to verify that such consignments ('relevant consignments') are accompanied by a duly finalised Common Health Entry Document ('CHED') certificate and have been the subject of official controls by the NFSA. A second public consultation on amendments to the declaration requirement (introduced following the initial March 2022 consultation) was scheduled to end on 1 November 2022.

The representatives of the Norwegian Government explained that no specific technical measures had yet been taken to ensure improved cooperation and exchange of information between Customs and the NFSA regarding official controls of relevant consignments and no timeline was indicated in this regard. However, changes to relevant IT systems to enable reciprocal access to, and timely exchange of, relevant information pursuant to Article 75(1) of the Official Controls Regulation (EU) 2017/625 were being implemented through joint efforts of Customs and the NFSA's IT departments. Access by Customs to the Trade and Control Expert System New Technology module of the Integrated Management System for Official Controls ('TRACES NT') pursuant to Article 38(1)(a) of IMSOC Regulation (EU) 2019/1715 would be enabled by the end of 2022 and a related TRACES NT training for some Customs officials had already taken place. Formal access by the NFSA to the TVINN database had already been granted, however, technical issues (absence of a secure data line) currently prevent the NFSA from accessing the TVINN customs electronic database.

Representatives from Customs confirmed that where checking a declaration reveals that a relevant consignment is not accompanied by a CHED or that the CHED has not been duly finalised by the NFSA in IMSOC, Customs immediately informs the NFSA pursuant to Article 57(1) and (3) of the Official Controls Regulation (EU) 2017/625 in order that the NFSA may take necessary measures.

The Norwegian Government is invited to confirm to the Authority in writing, ***by 30 January 2023 at the latest****, (i) the further steps, and their associated timelines, for enabling technical access by Customs to TRACES NT and by the NFSA to the TVINN customs electronic database and providing training relating to the use of these IT systems; (ii) additional measures (other than the anticipated changes to IT systems), and their associated timelines, for improving cooperation and exchange of information between Customs and the NFSA; and (iii) the actions taken by Customs where it identifies through checking a customs declaration that a relevant consignment is not accompanied by a CHED or that the CHED has not been duly finalised by the NFSA in the IMSOC, including the timing and medium of any related communications with the NFSA.*

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Follow-up letter

Technical Barriers to Trade / Technical regulations
(Annex II)

Responsible case handlers: Guðlaug Jónasdóttir

1. *Fulfilment of notification obligation under Directive 98/34/EC in Norway (2018) (Case No 86113)*

The meeting was attended by:

- Hanne Lene Løvseth and Ingrid Selvik from the Ministry of Trade, Industry and Fisheries; and
- Guðlaug Jónasdóttir and Hrafnhildur Kristinsdóttir from the Authority.

Reference was made to Directive 98/34 (*Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations,* as amended and as adapted by the EEA Agreement) and in particular to its Articles 8 and 9 concerning the obligation of the EFTA States to immediately communicate to the Authority any draft technical regulation, as defined by that Directive, and to postpone their adoption for a period of three months, except in the special cases referred to in the Directive. Reference was also made to Directive 2015/1535 which repealed Directive 98/34/EC.

Reference was made to the previous correspondence in the case, in particular the Norwegian Government's reply to the Authority's request for information (Doc No 1184180, your ref. 18/3306-61) dated 26 February 2021, concerning FOR-2018-06-20-923 – *Forskrift om helikopter offshoreoperasjoner*. In the letter, the Norwegian Government maintained that the requirements relating to offshore helicopter operations are not EEA relevant as they fall outside of the geographical scope of the EEA Agreement.

The representatives of the Authority expressed that it had been the Authority's view that where the flights are operated was not of relevance in terms of the notification obligation under Directive 98/34/EC. What was of importance is whether a regulation contains requirements to products that are placed on the Norwegian market.

Further, the representatives of the Authority informed the representatives of the Norwegian Government that it was also looking into whether the exception under 10 of Directive 98/34/EC concerning the use of safeguard clauses could be applicable in the case. Reference was made to the safeguard clause in Article 14 of Regulation (EC) No 216/2008 on common rules in the field of civil aviation and establishing a

European Aviation Safety Agency. However, the Authority had not received a notification pertaining to the use of the safeguard clause as is required by that Article. Therefore, it was difficult to assert that the rules fell under the exception in Article 10 of Directive 98/34/EC.

Lastly, the notification of technical regulations in Norway in general was discussed, as well as a revision currently taking place within the Authority as regards the processing of draft technical regulations and the new developments concerning the EU TRIS platform.

The Norwegian Government is invited to inform the Authority of its views as regards the applicability of Regulation (EC) No 216/2008 and in particular its Article 14 to offshore helicopter operations, ***by 30 January 2023****.*

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Follow-up letter

Energy
(Annex IV)

Responsible case handlers: **Anne De Geeter**
Ada Gimnes Jarøy

1. *Conformity assessment of Directives 2009/72 and 2009/73 for Norway (Case No 84737)*

The meeting was attended by:

- Olav Boge, Lasse Morten Vannebo, Kaja Remme and Kristin Thorvaldsen from the Ministry of Petroleum and Energy;
- Tone Aartun Hostvedt from the Ministry of Foreign Affairs; and
- Marco Uccelli, Anne De Geeter and Ada Gimnes Jarøy from the Authority.

At the meeting, the representatives of the Authority and of the Norwegian Government exchanged on the implementation of Directives 2009/72/EC and 2009/73/EC. The Authority stressed the importance of ensuring conformity for the credibility of Norway's participation to the internal energy market.

The representatives of the Authority and of the Norwegian Government agreed to have a close dialogue in this frame, and to undertake regular exchanges moving forward.

The participation of the Norwegian regulatory authority, NVE-RME, to such exchanges, was also seen as relevant.

The representatives of the Norwegian Government and of the Authority committed to pursue a close dialogue and regular exchange on the implementation of Directive 2009/72/EC and 2009/73/EC.

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Follow-up letter

Free movement of persons
(Annex V)

Responsible case handlers: **Hrafnhildur Kristinsdóttir (Items 1-4)**
Ómar Berg Rúnarsson (Items 1-4)
Ciarán Burke (Item 5)

1. *Own initiative case concerning assessment of marriages of convenience in Norway (Case No 78450)*

The meeting was attended by:

- Cathrine Opstad Sunde, Mariann Nilsen, Cathrine Cappelen Nielsen and Kalyani Rushanth from the Ministry of Labour and Social Inclusion;
- Hanne Brusethaug and Sara Risberg from the Directorate of Immigration;
- Camilla Warmøy, Sissel Fleicher Hauff and Anders Asheim from the Immigration Appeals Board; and
- Hrafnhildur Kristinsdóttir, Ómar Berg Rúnarsson, Maria Moustakali and Erlend Leonhardsen from the Authority.

The representatives of the Authority made a reference to previous correspondence in the case, in particular since the last year's package meeting.

The representatives of the Authority explained that the Authority had concerns about the practice of the immigration authorities and the case law of Norwegian courts, whereby the genuineness of the marriage did not seem to be a necessary element of the assessment of marriages of convenience under EEA law. The representatives of the Authority also noted that there were doubts as to whether the new Circular would be sufficient to solve the problems raised.

The representatives of the Norwegian Government, however, maintained that, in their view, the practice of the immigration authorities had been in line with EEA law, also before the adoption of the new Circular. It was explained that the genuineness of the marriage had been a part of the assessment, albeit not necessarily mentioned in writing in the decisions. The representatives of the Norwegian Government also explained that the aim of the new Circular had not been to change the practice of the UDI but merely to clarify the practice and guide the UDI in their legal assessment and the structure of their decisions. As regards the case law of Norwegian courts, the representatives of the Norwegian Government maintained that the Supreme Court judgment following up after the EFTA Court judgment in *Kerim* was in line with the latter, as the Supreme Court made references to specific paragraphs of the EFTA Court judgment.

The representatives of the Authority explained that, although the Norwegian Supreme Court did make references to specific paragraphs of the EFTA Court judgment in *Kerim*, the methodology adopted by the Supreme Court did not appear to involve any assessment of the genuineness of the marriage, as one of the necessary elements of the assessment of a marriage of convenience. In that context, the representatives of the Authority also made a reference to Norway's letter of 6 October 2021, where it was acknowledged that the Supreme Court in *Kerim* did not find it necessary to engage in a separate assessment of the genuineness of the marriage. The representatives of the Authority also made a reference to the judgment of the Court of Appeal in case LB-2020-142313, decided after the *Kerim* judgments, where it was specifically stated that a marriage was a marriage of convenience if the main purpose had been to obtain an immigration advantage, even if there was some genuineness/reality to the marriage/relationship.

The Norwegian Government is invited to send the Authority copies of: (1) decisions of the UDI and/or UNE that clearly apply the method of assessing the genuineness of the marriage; (2) decisions of the UDI and UNE in the case which led to the judgment in LB-2020-142313 (including UNE's decision after the judgment); and (3) decisions of UDI and/or UNE concerning marriages of convenience based on the new Circular (once such decisions have been adopted). The Norwegian Government is also invited to comment on the judgment of the Court of Appeal in case LB-2020-142313 and how the approach adopted there in relation to the genuineness of the marriage fits with the practice of the immigration authorities and the new Circular. Please provide the requested information ***by 30 January 2023****.*

2. *Complaint against Norway concerning children's residence rights under EEA law (Case No 84397)*

The meeting was attended by:

- Cathrine Opstad Sunde, Mariann Nilsen, Cathrine Cappelen Nielsen and Kalyani Rushanth from the Ministry of Labour and Social Inclusion;
- Marie Munthe-Kaas from the Ministry of Foreign Affairs;
- Hanne Brusethaug and Sara Risberg from the Directorate of Immigration;
- Camilla Warmøy and Sissel Fleicher Hauff from the Immigration Appeals Board; and
- Hrafnhildur Kristinsdóttir, Ómar Berg Rúnarsson and Erlend Leonhardsen from the Authority.

The representatives of the Authority made a reference to previous correspondence in the case, in particular since the last year's package meeting.

The representatives of the Authority welcomed the clarification that Norway acknowledges that EEA national children can enjoy a right of residence under Article 7(1)(b) of Directive 2004/38 but expressed concerns about Norway's approach that those children cannot be accompanied by their third-country national primary carers.

The representatives of the Norwegian Government clarified that EEA national children have since 2016 been registered by the police as having a right of residence in Norway under Article 7(1) of the Directive. It was further explained that UNE has now changed its position and agrees that EEA national children can enjoy an independent right of residence under EEA law. The representatives of the Norwegian Government also confirmed that it is the view of the Norwegian Government as well as UDI and UNE that children can fulfil the condition of sufficient resources in Article 7(1)(b) of the Directive through their parent(s). It was further explained that UDI's guideline RUDI-2011-37 had been amended on 25 May 2022 in relation to the condition of sufficient resources.

As regards the issue of whether EEA national children can be accompanied by their third-country national primary carer(s), the representatives of the Norwegian Government did not want to comment further on Norway's position on that matter and referred to Norway's letter of 11 October 2022 (Doc No 1320742 / your ref. 19/4032-).

The representatives of the Authority summarised the Authority's position on that issue, emphasising *inter alia* that the right of residence of EEA national children under Article 7(1)(b) of Directive 2004/38 has to be interpreted and applied in line with fundamental rights, including the right to family life and the child's best interests, and without depriving the children's right of any useful effect.

With regard to the follow-up of the EFTA Court judgment in *Q and Others* concerning the right of residence of children and their primary carer(s) on the basis of Article 10 of Regulation 492/2011, the representatives of the Authority explained that, even if the Regulation had been incorporated into the Norwegian legal order "as such", the Norwegian Government would now need to take measures to ensure that the practice in Norway is in compliance with the Regulation, as interpreted by the EFTA Court.

The representatives of the Norwegian Government explained that the Ministry was looking into this issue and would engage with the immigration authorities on the practical steps to be taken. It was emphasised that this was an important legal issue that would be given high priority. In the meantime, new applications for residence cards on this basis would presumably be dealt with under Directive 2004/38.

The Norwegian Government is invited to explain which measures it intends to take in order to ensure that Norwegian legal order is in compliance with the EFTA Court judgment in Q and Others. Please also provide a timeline in relation to the work to be undertaken. Please provide the requested information ***by 30 January 2023****.*

3. *Complaint concerning Norway's application of the requirement of comprehensive sickness insurance under Directive 2004/38 (Case No 85597)*

The meeting was attended by:

- Cathrine Opstad Sunde, Mariann Nilsen, Cathrine Cappelen Nielsen and Kalyani Rushanth from the Ministry of Labour and Social Inclusion;
- Hanne Brusethaug and Sara Risberg from the Directorate of Immigration;
- Camilla Warmøy and Sissel Fleicher Hauff from the Immigration Appeals Board; and
- Hrafnhildur Kristinsdóttir, Ómar Berg Rúnarsson, Maria Moustakali and Erlend Leonhardsen from the Authority.

The representatives of the Authority made a reference to previous correspondence in the case and noted also that the complainant was currently pursuing proceedings against the Norwegian State before domestic courts (a leave to appeal to the Norwegian Supreme Court was currently pending). The representatives of the Authority also explained that in addition to analysing Norway's application of the comprehensive sickness insurance cover requirement in the so-called 'return situation', the Authority was also examining what constituted such an insurance in Norway within the meaning of Article 7(1)(b) and (c) of Directive 2004/38.

The representatives of the Norwegian Government explained that due to the ongoing court proceedings in Norway, they could not comment on the issue concerning Norway's application of the sickness insurance requirement in a 'return situation'. The representatives of the Authority explained, however, that it was their preliminary view that the judgment of the Borgarting Court of Appeal dated 5 September 2022 (21-083091ASD-BORG/03) did not seem to be in compliance with EEA law or the case law of the CJEU and the EFTA Court. However, the Authority would wait and see if the case would be dealt with by the Supreme Court.

As regards the issue of what constitutes a comprehensive sickness insurance cover in Norway, the representatives of the Norwegian Government noted that up until recently, it had only been possible to fulfil this requirement with a private sickness insurance. However, the representatives of the Norwegian Government clarified that they were currently looking into this issue, also in light of recent judgments from the CJEU, according to which membership in the public insurance scheme is sufficient, subject to certain conditions. The representatives of the Norwegian Government noted, however, that it was difficult to verify whether someone was affiliated to the Norwegian insurance scheme, since no specific document was issued as proof of membership.

The Norwegian Government is invited to provide the Authority with a timeline in relation to the work to be undertaken concerning the fulfilment of the comprehensive sickness insurance cover requirement in Norway pursuant to Article 7(1)(b) and (c) of Directive 2004/38. Please also clarify whether applications for residence permits have been rejected by the immigration authorities in the past because the applicant did not have a private sickness insurance although he/she was affiliated to the Norwegian insurance scheme, and, if so, in how many cases? Moreover, the Authority would welcome a further explanation as to why it is difficult for the immigration authorities to verify whether a person is affiliated to the Norwegian insurance scheme. Please provide the requested information ***by 30 January 2023****.*

4. Own initiative case concerning Norway's expulsion practice for petty crimes (Case No 87300)

The meeting was attended by:

- Lene M. Knudsen and Kirsti Sveen Torjesen from the Ministry of Justice;
- Hanne Brusethaug and Sara Risberg from the Directorate of Immigration;
- Camilla Warmøy and Sissel Fleicher Hauff from the Immigration Appeals Board; and
- Hrafnhildur Kristinsdóttir, Ómar Berg Rúnarsson, Maria Moustakali and Erlend Leonhardsen from the Authority.

The representatives of the Authority referred to previous correspondence in the case, in particular the letter from the Norwegian Government dated 6 October 2022 (Doc No 1319614 / your ref. 15/1261), where the Authority was informed of the withdrawal of Circular GI-02/2013. The representatives of the Norwegian Government explained that the Circular had been withdrawn by letter of 29 September 2022 to the UDI and the Police. It was further explained that the Circular had been withdrawn due to various reasons, for example because it included outdated references to provisions in the Criminal Code. Also, it was considered necessary to take into account recent case law of Norwegian courts and comments received from the Authority. It was further noted by the representatives of the Norwegian Government that it was up to the UDI and the Police to establish the new practice and that the UDI had requested the Police to prepare a new report on minor criminal offences.

The representatives of the Norwegian Government noted however, that the practice which was based on the Circular had, in their view, been fully in line with EEA law, even in cases where EEA nationals had been expelled for a single minor criminal offence, such as shoplifting. At the same time, the representatives of the Norwegian Government also clarified that by withdrawing the Circular, the Ministry had now indicated that that practice should change. The representatives of the Norwegian Government also confirmed that the national courts and UNE had not been bound by the Circular and it was difficult to estimate how the withdrawal would affect their practices.

The representatives of the Authority explained that, in their view, it appeared that the practice which was based on the Circular had not been in compliance with EEA law, in particular in cases where the EEA national had only committed a single minor criminal offence. It seemed that in such cases in particular, the requirements for expulsions according to EEA law had not been fulfilled.

The representatives of the Norwegian Government also noted that since November 2021, there had been 29 cases where the Circular had been used. Under the present situation, however, the UDI would not issue an expulsion decision to someone who would have fallen under the Circular's scope. The representatives of

the Norwegian Government also noted that the Court of Appeal had delivered a relevant judgment in March 2022.

While the representatives of the Authority welcomed the fact that the Circular had been withdrawn and that a new practice would be established, they also shared concerns about how time-consuming the whole process had been. It had taken the Norwegian Government more or less a year to reach a decision to withdraw the Circular and the work on establishing the new practice had just been launched recently. Thus, and because of the seriousness of the matter, the representatives of the Authority encouraged the representatives of the Norwegian Government to establish the new practice as soon as possible, without further delays.

The Norwegian Government is invited to provide the Authority with an update as regards how the new expulsion practice will be established and what it will involve, including a timeline on the way forward. The Government is also asked to clarify how the immigration authorities will deal with expulsion cases concerning minor criminal offences until the new practice has been established. Moreover, the Norwegian Government is invited to provide the Authority with redacted copies of the UDI's and UNE's decisions in the 29 cases that were based on the Circular since November 2021, where the person was expelled for only one minor criminal offence. Lastly, the Government is invited to provide the Authority with a copy of the abovementioned judgment of the Borgarting Court of Appeal. Please provide the requested information ***by 30 January 2023****.*

5. Own initiative case concerning Norwegian restrictions upon entry on the basis of COVID-19 (Case No 85895)

The meeting was attended by:

- Inga H. Gundersen from the Ministry of Justice;
- Marianne Sælen from the Ministry of Health and Care Services; and
- Ciarán Burke and Kyrre Isaksen from the Authority.

At the outset, representatives of the Authority thanked the representatives of the Norwegian Government for facilitating the meeting. They further drew attention to previous correspondence in the case, notably the Authority's letter of formal notice of 26 May 2021 (Doc No 1199663) and the Norwegian Government's reply of 7 July 2021 (Doc No 1213206, your ref. 20/5816). The case was also discussed at the package meeting in Oslo in October 2021.

The representatives of the Authority noted that the pandemic had eased somewhat since the last formal correspondence, and that the measures dealt with in the letter of formal notice had been withdrawn. The representatives of the Authority therefore began by enquiring whether there had been any court judgments or decisions of administrative bodies concerned with the measures adopted by Norway during the COVID-19 pandemic.

The representatives of the Norwegian Government stated, first of all, that they had little information concerning criminal cases. However, there had been some civil cases. In particular, on 6 April 2022, the Supreme Court had ruled in favour of the state on the legality of quarantine restrictions in a case involving owners of holiday homes in Sweden. It was noted that this case is reported in full, in English, on the Supreme Court's website. The case concerned free movement of capital, and in this regard was deemed to comply with the EEA Agreement. The fact that Norway had chosen a high degree of protection of public health, and the margin of discretion allowed to EEA states in such circumstances, were crucial deciding factors in the case in question.

The representatives of the Norwegian Government also drew attention to a judgment of the Oslo District Court of 23 February 2022. This case concerned the requirement for an individual who returned home from a holiday in Spain to stay at a quarantine hotel. The court did not see it as necessary to determine whether the case concerned the free movement of persons, or the free movement of services, as in practice, the same test is applicable in either case. Moreover, whether the case needed to be appraised on the basis of primary or secondary EEA law was also seen as irrelevant. Again, the court cited the high level of protection of public health, and the margin of discretion as important factors to be considered. Discrimination was also discussed in the case, as the person in question was ordinarily resident in Spain, but the court said that exemptions from quarantine did not necessarily need to be determined on the basis of who fell into the group with greatest risk. Rather, workers could be prioritised, as they were necessary to keep the country going.

The representatives of the Authority noted that the reasoning in the last case could seem to contradict the reasoning expressed in the Authority's letter of formal notice, and that they would read these cases carefully.

The representatives of the Norwegian Government next mentioned a criminal case from the Sivating Court of Appeal of 6 July 2022. This case again dealt with the duty to stay in a quarantine hotel during entry quarantine. It was held that this requirement was not, of itself, contrary to the EEA Agreement. Here, the Authority's letter of formal notice was referred to in the judgment of the court, while the court further held that it was not unreasonable favouritism to make exceptions for those undertaking "necessary journeys".

The representatives of the Authority next enquired whether there had been any cases in relation to entry restrictions (as distinct from quarantine). The representatives of the Norwegian Government stated that they were not aware of any such cases.

The representatives of the Authority asked whether there were any administrative redress schemes available for those affected by measures undertaken on the basis of COVID-19. The representatives of the Norwegian Government said that there were not.

The representatives of the Authority thanked the representatives of the Norwegian Government for their time and co-operation, and noted that they would welcome details of any further cases or relevant related incidents as they arose.

The Authority will continue to assess the case, and will determine the next steps to be taken in due course.

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Package Meeting in Norway
27-28 October 2022

Follow-up letter

Social Security
(Annex VI)

Responsible case handler: Per-Arvid Sjøgård

1. Exportability of sickness benefits in cash (Case No 84329)

The meeting was attended by:

- Erik Dæhli, Kine Lillefjære Sætre, Ida Karine Kjelsberg, Hanna Rummelhoff and Anette Storhaug Sørensen from the Ministry of Labour and Inclusion;
- Jon Anders Godeseth Lunde from the Ministry of Justice;
- Maria Elizabet Aspen and Gry Helen Skaug from the Directorate of Labour and Welfare; and
- Stefan Barriga (College Member), Per-Arvid Sjøgård and Marte Brathovde from the Authority.

The representatives of the Norwegian Government reiterated its commitment to ensure that the rights accorded by EEA law are accessible and clearly provided for by national law.

The representatives of the Norwegian Government provided a presentation on the legislative amendments tabled on 1 April 2022 (Prop. 71 L), which could be split into five categories. The Authority suggested that, as appropriate, that presentation include relevant amendments tabled by the parliamentary committee in charge the day before the meeting took place.

By way of a preliminary remark, it was recalled that the legislative proposal was based on the Norwegian Official Report ("NOU") delivered by the Fredriksen-Committee. The NOU proposed changes to three national acts, namely the National Insurance Act ("NIA"/ *Folketrygdloven*), the Cash for Care Act (*kontantstøtteloven*) and the Child Benefits Act (*barnetrygdloven*). The legislative proposal had a wider scope, suggesting amendments to a much higher number of acts.

First, as regards the requirement to "stay in Norway" as a condition for entitlement to the benefits at issue, the legislative proposal would clarify that stays within the EEA should be equated to stays in Norway. The proposal was worded slightly different than that of the Fredriksen-Committee, referring directly to stays in other EEA States. The parliamentary committee in charge had agreed to this approach.

Secondly, the proposal would have the effect of transposing Regulation 883/2004 and other secondary EEA legislation into national law by an act of parliament, as

opposed to by a national implementing regulation as was currently the case. This would be done by inserting a reference into the National Insurance Act.

Additionally, while the Fredriksen-Committee had suggested to include a provision stating that national provisions in conflict with EEA law would be set aside, the legislative proposal had opted for a solution focussing on the obligation to interpret and apply national law in line with EEA law. However, the parliamentary committee had inserted an amendment more in line with the proposal of the Fredriksen-Committee. The representatives of the Authority questioned the reluctance to insert a clear conflict rule.

Moreover, the parliamentary committee had concluded that the NIA should also contain a reference to the main part of the EEA Agreement and notably the fundamental freedoms.

Third, the proposal included a number of so-called "international law markers" (*folkerettsmarkører*), in order to raise awareness of the possible relevance of EEA law when applying national legislation in the area of social security. As regards the transitional benefit (overgangsstønad) in chapter 15 NIA, the proposal had not – contrary to the Fredriksen-Committee – suggested any such markers therein due to the Government's view, at the time, that the benefit fell outside the scope of Regulation 883/2004. The parliamentary committee advised that a separate legislative proposal be tabled in order to ensure that also chapter 15 NIA complies with EEA law.

Fourth, the legislative proposal would introduce a revised provision in the NIA on the purpose of that act, clarifying that it *inter alia* aimed at facilitating free movement within the EEA.

Fifth, the proposal envisaged that a specific provision be included in the NIA concerning the general duty incumbent on national authorities to provide adequate information to the public.

The representatives of the Government confirmed that the parliamentary committee had also requested the Government to revert to it with a clarification on the relationship between the provisions of the NIA and EEA law.

Finally, a brief discussion on the application of activity requirements in connection with the Norwegian work assessment allowance took place.

The Authority will continue to assess the case, and will determine the next steps to be taken in due course.

2. *Remedies for individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits (Case No 85884)*

The meeting was attended by:

- Ragnar Trøite and Camilla Landsverk from the Ministry of Labour and Inclusion and Haakon Hertzberg from the Directorate of Labour and Welfare; and
- Stefan Barriga (College Member), Per-Arvid Sjøgård and Marte Brathovde from the Authority.

The representatives of the Authority recalled that by a letter dated 25 November 2020, the Norwegian Government had been informed of the opening of an own initiative case to examine the measures taken by Norway in order to ensure appropriate remedies for individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits in cash (Doc No 1163586), c.f. also case 84329 referred to above. Reference was further made to previous correspondence in the case and the discussions which took place at the package meeting in 2021.

The representatives of the Norwegian Government provided a comprehensive presentation of the measures taken in order to identify all individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits in cash.

As regards decisions adopted prior to 2010, the representatives of the Norwegian Government recalled that it had proven highly challenging to identify potentially affected individuals due to the IT systems in place at the time, poor registration practice and challenges related to privacy. To date, for the period between 1994 and 2010, Norway had identified 340 individuals affected by the wrongful application of EEA law.

Following a question raised by the Authority, the representatives of the Norwegian Government elaborated on what privacy challenges arose in the search for individuals affected by decisions adopted prior to 2010.

As regards compensation for economic loss, the representatives of the Norwegian Government informed the Authority that 170 applications had been received whereof approximately 70 had been granted.

The representatives of the Norwegian Government confirmed that there were no further, specific measures foreseen in this matter.

The Authority will continue to assess the case, and will determine the next steps to be taken in due course.

3. Transitional benefit for single parents (overgangsstønad) (Case No 86218)

The meeting was attended by:

- Cathrine Opstad Sunde and Mona Martinsen from the Ministry of Labour and Inclusion; and
- Per-Arvid Sjøgård and Marte Brathovde from the Authority.

The representatives of the Authority recalled its letter of 10 February 2021, in which it had observed that the eligibility conditions to fulfil in order to receive the transitional benefit, c.f. *inter alia* Section 15-5 of the NIA, appeared to bring that benefit within the scope of Regulation 883/2004 (Doc No 1175938).

The representatives of the Norwegian Government reiterated that, following the EFTA Court's judgement in Case E-2/22 and the ensuing ruling of the National Insurance Court, the government's position was now that the transitional benefit for single parents was covered by the material scope of Regulation 883/2004.

While the Frediksen-Committee had concluded that chapter 15 NIA might contain some benefits falling within the scope of Regulation 883/2004 and others which did not, the representatives of the Norwegian Government now held that all benefits in that chapter were covered by Regulation 883/2004.

The representatives of the Norwegian Government confirmed that the government would table a legislative proposal amending chapter 15 NIA. Currently, it was envisaged to introduce certain markers of international law (c.f. case 84329 above), while not amending the currently applicable requirement to "stay in Norway". The representatives of the Authority seriously questioned that approach, noting that it was liable to create a state of ambiguity and legal uncertainty in breach of Article 3 EEA. Reference was made to the Authority's reasoned opinion in Case No 84329.

The representatives of the Norwegian Government reiterated its commitment to ensuring appropriate remedies to all individuals affected by the misapplication of EEA law.

Finally, a discussion on the relationship between EEA secondary legislation and the fundamental freedoms took place.

The Authority will continue to assess the case, and will determine the next steps to be taken in due course.

4. *The award of a supplement pursuant to Article 58 of Regulation 883/2004 (minimum benefit) (Case No 84870)*

The meeting was attended by:

- Dag Holen, Trine Homble and Ida Kjelsberg from the Ministry of Labour and Inclusion; and
- Per-Arvid Sjøgård and Marte Brathovde from the Authority.

The representatives of the Authority recalled that Article 58 of Regulation 883/2004 determines that if the legislation of the EEA State of residence makes provision for a minimum benefit, the benefit payable by that State shall be increased by a supplement equal to the difference between the total benefits payable by the various EEA States to whose legislation the beneficiary was subject and that minimum benefit.

It was further recalled that by way of a letter dated 24 February 2020, the Authority informed the Norwegian Government that it had opened an own-initiative case to examine the application of Article 58 of Regulation 883/2004 concerning the award of a supplement to pensions in Norway (Doc No 1115996).

The question was whether the Norwegian minimum pension (*minstepensjon*), minimum pension level (*minste pensjonsnivå*), guarantee pension (*garantipensjon*) and minimum invalidity benefit (*uføretrygd*) constitute such "minimum benefits" within the scope of Article 58 of Regulation 883/2004, with the ensuing obligation to award a supplement to certain pensioners.

With reference to the questions raised prior to the meeting, the representatives of the Norwegian Government informed the Authority that 94 individuals had been affected by the change in administrative practice in 2013, in the sense that they would no longer receive the supplement disbursed up to that point in time. 64 of those individuals were receiving a supplement to their invalidity benefit, while 30 individuals received a supplement to their old-age retirement pension. 31 of those individuals were Norwegian citizens.

The representatives of the Authority recalled one of the questions submitted prior to the meeting: Among the total number of Norwegian citizens entitled to a minimum pension level, how many of those qualify for the full minimum pension level (40 years insurance period) and how many of those qualify only for a significantly reduced minimum pension level (e.g., 5 years insurance period and less)?

The representatives of the Norwegian Government informed the Authority *inter alia* that there were, as per July 2022, 87,366 persons receiving a "minimum" invalidity benefit. 71,252 of those were Norwegian citizens with full "minimum" pension, i.e. with 40 years' insurance period. As regards old-age pensioners, there were 139,883 persons receiving a "minimum" old-age retirement benefit, of which 107,986 were Norwegian citizens with full "minimum" pensions, i.e. with 40 years insurance period.

The representatives of the Norwegian Government recalled that Norwegian pensions, such as the basic and supplementary pension (or their equivalent) are exported according to national legislation, considered pro rate benefits according to (EC) Regulation 883/2004. Provided the "minimum" benefits referred to above were categorised as Article 58 benefits, as benefits that according to the Regulation are paid to persons residing in Norway, the Norwegian Government might have to reassess their exportability under Regulation 883/2004.

The Authority will continue to assess the case, and will determine the next steps to be taken in due course.

5. Access to in-patient treatment in other EEA States from Norway (Case No 72376)

The meeting was attended by:

- Pia Grude, Geir Helgeland and Marie Nygren from the Ministry of Health and Care Services and Lisbeth Smeby from the Directorate of Health; and
- Stefan Barriga (College Member), Melpo-Menie Joséphidès (Director), Jónína Sigrún Lárusdóttir (Director), Maria Moustakali, Per-Arvid Sjøgård, Marte Brathovde and Erlend Leonhardsen from the Authority.

The representatives of the Authority recalled that the case concerns the general rules and the system in place in Norway for access to hospital treatment in other EEA States ("in-patient treatment"). By several letters sent in the period 2009-2013, the Authority informed the Norwegian Government that it had received complaints against Norway regarding access to in-patient medical treatment in other EEA States.

Accordingly, the representatives of the Norwegian Government provided the Authority with data pertaining to individuals seeking healthcare in another EEA State based on Article 20 of Regulation 883/2004. Hereunder, the Authority was presented a document showing *inter alia* the number of applications, approvals, and rejections in the period 2014-2021. The document also provided detail on the various reasons for rejecting applications.

On that basis, the Authority observed a steep decline in the numbers of applications as of the year 2016. Moreover, the Authority noted that the number of approvals was remarkably low.

The representatives of the Authority invited the representatives of the Norwegian Government to share information on the number of patients having gone abroad to receive healthcare, following the "PRA-route". In reply, the Authority was informed that for the years 2016 and 2017, about 300 applications for healthcare abroad were received of which approximately 250 were approved. In 2017, 417 applications were lodged of which 307 were approved.

The Authority invited the representatives of the Norwegian Government to clarify what proportion of those applications and approvals related to third countries on the one hand and, on the other hand, to countries within the EEA (see relevant follow-up action below).

Followed an exchange and discussion concerning what the Authority perceived as "channeling" of patients through the PRA-route rather than Article 20 of Regulation 883/2004. The representatives of the Norwegian Government clarified *inter alia* that, when national authorities early on understood that the conditions under the PRA-route were satisfied, the patient was not redirected to Helfo who administered the process under Article 20 of Regulation 883/2004.

Next, the Authority referred to the issue of split competence to handle or review complaints, as detailed further in its supplementary reasoned opinion of 20 October 2022 (Doc No 1311515). Notably, the PRA and the related national Prioritisation Regulation provided for an appeals and procedural structure whereby the competence to apply the tests under Article 20 were split between the County Governor and the Appellate Body for Treatment Abroad.

On that point, the representatives of the Norwegian Government were surprised to learn that the competence would be split between the two national authorities in question. The Authority encouraged Norway to clarify when replying to the supplementary reasoned opinion referred to above.

The representatives of the Authority recalled that it had reviewed more than 200 administrative decisions, revealing that EEA rules had in practice not been applied correctly or considered. The representatives of the Norwegian Government invited the Authority to share those decisions, if feasible.

With regard to patients having applied to receive healthcare abroad pursuant to the "PRA-route", Norway is invited to clarify the proportion of applications, approvals and rejections which relate to treatments within the EEA and in third countries.

The Authority is invited to share, if possible, examples of administrative decisions revealing that EEA rules have not been applied correctly or considered.

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Follow-up letter

Professional Qualifications (Hybrid meeting)
(Annex VII)

Responsible case handler: Bernhard Zaglmayer (remote)

1. *Complaint case against the Norwegian Government on the recognition of Danish medical training (Case No 81670)*

The meeting was attended by:

- Synnøve Roald (remote), Elisabeth Vigerust and Kjersti Gauden (remote) from the Norwegian Ministry of Health and Care Services;
- Knut Astad from the Norwegian Ministry of Education and Research;
- Bernhard Zaglmayer (remote) and Marte Brathovde from the Authority.

At the outset of the meeting, the representatives of the Authority explained that the complaint had been submitted by Danish students' representatives in February 2018 and concerned specifically the access to specialist medical training in Norway of applicants that have finalised the Danish medical studies (cand. med.) but have not done the practical traineeship (KBU). The focus of the case lies on the situation after the end of the transitional arrangements of the reform of the "*turnus*" programme in Norway that were in place until 31.12.2018.

The case had been put on hold due to the request for an advisory opinion before the EFTA Court, E-3/20 *Lindberg,* that was decided on 25 March 2021. On 1 July 2021, the Norwegian Directorate of Health published on its website the information that it would consider applications from Danish graduates of medical studies and grant them access to specialist medical training. The conditions under which this would take place was the subject of the discussion of this meeting.

The representatives of the Norwegian Government explained that in the current situation graduates from Denmark who have finalised their medical studies are recognised in Norway on the basis of judgment E-3/20 *Lindberg*, receive authorisation as doctors and have, consequently, access to specialist medical training in Norway. However, as Article 25(4) of the Directive 2005/36/EC on the recognition of professional qualifications, as amended by Directive 2013/55/EU (hereinafter referred to as "PQD"), requires, a specialist diploma could only be issued in Norway if the student gets the LIS 1 programme acknowledged from Denmark as equivalent to KBU, and thus would fulfil the requirement of having obtained a diploma from Denmark as listed in Annex V, point 5.1.1 to PQD.

The representative of the Authority explained that Article 25 PQD has to be read in a rather functional (teleological) than a strictly grammatical way. This approach is in line with settled case law of the European Courts stating that it is necessary to consider not only the wording of an EU/EEA law provision, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see Case C-700/20, *London Steam-Ship*, paragraph 55). The origins and history of a provision of EU law may also provide information relevant to its interpretation (see Case C-603/20PPU, *SS*, paragraph 37).

In this context, under the PQD, there are other instances where access to specialist medical training should be allowed, even though no diploma from Annex V, point 5.1.1. PQD is available. Such instances are for instance diplomas of graduates from countries outside the EEA (as recognised under Article 2(2) PQD in the first entering EEA State) and diplomas acquired before the accession of a State to the EU/EEA, the recognition of which was based on the principle of acquired rights under Article 23 PQD. Although these diplomas will never be listed in Annex V to PQD, the professionals are granted access to the market and also to specialist training, as the qualifications are considered as equivalent to the ones listed in Annex V and should therefore also grant the same rights.

The Court of Justice of the EU and the EFTA Court have added another instance from outside the PQD, namely the recognition of a "not fully acquired" professional qualification as set out in Annex V PQD based on a recognition in light of the fundamental freedoms, i.e. Article 28 and 31 EEA (see Cases E-3/20 and C-166/20), that should also allow for access to specialist medical training. Consequently, it is the view of the representatives of the Authority that Article 25(4) PQD does not formally limit the right of obtaining a specialist medical diploma to students possessing a training listed in Annex V, point 5.1.1, but it depends on whether a diploma or a recognition decision have equivalent effect. Therefore, Article 25(4) PQD would not require that training (LIS 1) has to be first recognised in Denmark by a specialist medical student for Norway to be allowed to issue a specialist medical diploma. It is suggested to reflect that either in the Specialist Regulation (FOR-2016-12-08-1482) or at least in an administrative circular.

Having said that, doctors who do not obtain a "full" diploma, as set out in Annex V, point 5.1.1, will never be able to make use of automatic recognition of their basic medical training in other EEA States. This should be communicated to doctors being recognised in Norway based on the *Lindberg* judgment. In this context, it would be recommendable for Danish doctors to have LIS 1 recognised in Denmark, and hereby acquire the full diploma from Denmark, so that they can in the future make use of Article 21 PQD on the automatic recognition of their basic medical training in other EEA States.

The second question discussed at the meeting was how graduates coming from another EEA State, which has a separate practical training programme in addition to medical studies that is of similar nature as LIS 1, have to be placed for the access to specialist training in Norway, in other words whether they have access only to LIS 1 or directly to LIS 2.

The representatives of the Norwegian Government considered that education was the competence of the EEA States. Norway can therefore determine how to organise its national education system and how to place students in that system. In addition, they considered that the Danish KBU cannot be considered equal in terms of learning outcomes and organisation. What complainants often forget when they argue that these programmes are close to identical, is that LIS 1 had two revisions since it was transformed from "*turnus"* to "LIS 1" and that it has substantially changed, not the least also to be in line with Article 25(3) PQD. That article contains specific requirements that have to be met by medical specialist training.

The representatives of the Authority explained that even if specialist medical training was considered to be education in a public education system, EEA law would apply nevertheless in form of the principle of equal treatment (see i.e. Case C-76/05 *Schwarz and Gootjes-Schwarz*, paragraphs 70 and 99). Therefore, in one way or the other, it has to be assessed in substance whether the training acquired in another EEA State would meet the learning outcomes of LIS 1 and thus the applicant would be entitled to directly join LIS 2.

The Norwegian representatives mentioned that such individual assessment would in fact already take place based on Section 32 of the Specialist Regulation. However, it is feared that such individual assessments would potentially allow for recognition of parts of LIS 1 and then applicants would only need to do parts of LIS 1. That would be problematic to guarantee that the positions are filled and would not create staff shortages for hospitals, in particular, in the countryside. They might face vacant positions for short periods where they cannot find new candidates on short notice for a short period of time. Moreover, as LIS 1 is in general a 'bottleneck' (there are always more applicants than 'open' positions), a more differentiated approach for doing only parts of LIS 1 could even not be to the interest of the applicants, as the potential employers (hospitals) would rather opt for doctors with a full LIS 1 period than risking of having staff shortages due to short stays of applicants.

The representatives of the Norwegian Government asked whether case E-3/20 *Lindberg* would also have to be applied for students who have not finished their cand.med. studies in Denmark. The representatives of the Authority replied that this is not the case, as in the field of education in a public system the fundamental freedoms do not apply (see Cases 263/86 *Humbel* and C-109/92 *Wirth*). The general principle of equal treatment would apply though (see e.g. combined Cases C-11/06 and C-12/06, *Morgan and Bucher*, paragraph 24).

The Norwegian Government is hereby invited to explain, ***by 31 January 2023****, which approach it is envisaging to take for granting access to specialist training and for issuing specialist diplomas of students having done all or parts of their basic medical training abroad. The Norwegian Government is also invited to explain the relevant provisions of the Specialist Regulation (FOR-2016-12-08-1482), i.e. Section 19 and 32, and in how far they would be amended.*

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Follow-up letter

Freedom of establishment
(Annex VIII)

Responsible case handlers: **Ciarán Burke (Items 1-3)**
Ómar Berg Rúnarsson (Item 1)
Gunnar Örn Indriðason (Item 1)

1. Complaint from WizzAir against Norway (Case No 86180)

The meeting was attended by:

- Lovise Aspunvik and Erik Mathisen from the Ministry of Trade, Industry and Fisheries;
- Tone Hostvedt Aarthun from the Ministry of Foreign Affairs; and
- Ciarán Burke, Gunnar Örn Indriðason, Ómar Berg Rúnarsson, Maria Moustakali, and Kyrre Isaksen from the Authority.

At the outset, representatives of the Authority drew attention to previous correspondence in the case, notably the Authority's request for information of 19 February 2021 (Doc No 86180), asking that the Norwegian Government respond to three questions, namely: whether municipalities or e.g. state-owned companies, have threatened or actually decided to boycott the complainant, with respect to domestic flight routes in Norway; when and how such measures were taken, by whom and, in particular, what was their prescribed aim; and whether such actions are compatible with Article 31 EEA and/or Article 36 in conjunction with Regulation 1008/2008.

The Norwegian Government replied to the Authority's request for information on 19 April 2021 (Doc No 1195325, your ref. 21/1502). There, it was stated that several municipalities and state-owned enterprises had resolved not to co-operate with the complainant.

The representatives of the Authority noted that the case was discussed at the Package Meeting in Oslo on 28-29 October 2021. Thereafter, the Norwegian Government sent the Authority additional information via a letter of 22 December 2021 (Doc No 1259884, your ref. 21/5553-16), including a copy of the ruling of Agder County Court of 7 October 2021.

The representatives of the Authority noted that, given that it had been some time since there has been correspondence in the case, they would like to first enquire as to whether the facts in relation to the position of the municipalities and state-owned companies had remained static since the last correspondence exchanged. The

representatives of the Norwegian Government stated that there had been no evolution in terms of the facts of the case. They further noted that Wizzair had since withdrawn from the domestic market, and that in this regard, the Ministry does not have any further information, but that it would seem unlikely that the municipalities have done anything further.

The representatives of the Authority noted that Regulation 1008/2008 does not make any distinction between domestic services and intra-EEA flights, and that Wizzair is still operating in the Norwegian market, albeit not flying domestic routes.

The representatives of the Norwegian Government noted that it was very unlikely that people working for municipalities would travel internationally, and that the types of declarations issued by the municipalities were very diverse indeed, and many could be seen as participation in public discourse rather than binding acts with legal consequences.

The representatives of the Authority noted that there need not be a causative effect between a restrictive measure and a party operating or not within a market. Even measures that theoretically might make it less desirable for such parties to operate can be problematic.

The representatives of the Authority noted that the response of the Norwegian Government to the Authority's request for information failed to answer the Authority's third question, namely whether such actions are compatible with Article 31 EEA and/or Article 36 in conjunction with Regulation 1008/2008 in any detail, and invited the Norwegian Government to elaborate its views on this point.

The representatives of the Norwegian Government stated that given the multiplicity of declarations made by municipalities and their diversity, it was difficult to give concrete answers, and that this would entail a lot of work.

The representatives of the Authority agreed that this was the case, but that the Authority would need an assessment under Art 31 and/or 36 EEA. The Authority would thus need more information on justification and compatibility. It is for the Norwegian Government to assess the justification and take a position on this, and as such, Norway has to present its view on the legitimacy.

The representatives of the Norwegian Government asked whether it was possible to narrow the scope. It was suggested that similar resolutions could be 'grouped' together, in order to obviate the necessity for an individual assessment of each one. The representatives of the Authority were agreeable to this suggestion.

The representatives of the Authority thanked the representatives of the Norwegian Government for their time and co-operation, and noted that they looked forward to receiving additional analysis from the Norwegian Government as agreed.

The Norwegian Government is invited to provide the Authority with a detailed analysis of the compatibility of the various declarations and other measures adopted by municipalities and other actors with EEA law. This can be simplified by "grouping"

similar declarations together and constructing a typology, rather than via individual analysis of each declaration.

The Norwegian Government is requested to provide this information so that it reaches the Authority ***by 30 January 2023****.*

2. Own-initiative case concerning Norwegian rules on group contributions and the final loss exception (Case No 81849)

The meeting was attended by:

- Frode Kristiansen and Linn Bruskerud from the Ministry of Finance; and
- Ciarán Burke and Maria Moustakali from the Authority.

At the outset, representatives of the Authority thanked the representatives of the Norwegian Government for facilitating the meeting. They further drew attention to previous correspondence in the case, notably Norway's email of 10 October 2022 (Doc No 1320094), informing the Authority that the relevant rules had indeed been amended, and a final loss exception had been incorporated into Norwegian law.

This followed previous correspondence in the case, and in particular, Norway's letter dated 16 May 2018 (Doc No 914029, your ref. 14/3063 SL KAAS/KR), confirming that the Norwegian Taxation Act did not contain a "final loss exception". The Norwegian Government had repeatedly informed the Authority that it intended to incorporate a "final loss exception" directly in the relevant provisions of the Norwegian Taxation Act.

The representatives of the Authority noted that Norway had supplied the information concerning the new provisions after the Discussion Points had been sent out for the 2022 Package Meeting, and that this had necessitated submitting extra questions for this meeting in advance, albeit at a rather late juncture.

The representatives of the Authority noted that the conditions set out by section 10-5 of the Norwegian Taxation Act (as amended) provide that a company can claim tax reduction for a group contribution made to a subsidiary in another EEA state, if the contribution covers a final loss, where that subsidiary corresponds to a company that falls under the Norwegian Taxation Act Section 10-1 (2), and is 'domiciled, actually established, and has been engaged in economic activity in another EEA state'. The representatives of the Authority enquired as to the relationship between 'domiciled' and 'actually established' in this regard, and how the two notions may be distinguished.

The representatives of the Norwegian Government explained that this distinction is replicated in the rules to prevent wholly artificial arrangements, and reflects a model that has been in existence for some time and that works well in practice.

The representatives of the Authority noted that is clear from the wording of the amended provisions that the subsidiary in question must be 'domiciled, actually established, and has been engaged in economic activity' in the same EEA state.

They then enquired as to the rationale for a subsidiary that is domiciled, established and engaged in economic activity within the EEA, but not necessarily all in the same state, being excluded from the regime in question.

The representatives of the Norwegian Government noted that it is provided in the *travaux préparatoires* to the legislative provisions in question that the same conditions are used here as in other areas of tax law in Norway, for example in relation to the NOKUS CFC rules, and as such, the provisions should be interpreted in the same manner. It is for consistency's sake that the same formulation is used in the context of the final loss exception.

The representatives of the Authority noted that a further condition in this regard prescribes that the parent company, at the end of the year for which the group contribution is provided, must own more than 90% of the shares and voting rights in the subsidiary. Deductions for group contributions are not granted if the parent company owns the subsidiary through a company that is domiciled in another foreign state than the subsidiary (Section 10-5, paragraph 3). However, for group contributions made within Norway, there is no rule of direct ownership. They enquired as to the rationale for this distinction.

The representatives of the Norwegian Government answered that, if a subsidiary is owned via a third country entity, it could make it possible for the group to choose in which state it could deduct losses. There would also be an increased risk of double taxation. The representatives of the Norwegian Government also drew attention to Case C-608/17 *Holman*.

The representatives of the Authority noted that an additional condition in relation to the above provides that the deduction cannot exceed the lowest value of the deficit, as calculated pursuant to Norwegian tax rules and the tax rules of the subsidiary's home state, respectively. The calculation is made on the basis of the situation at the end of the income year for which the group contribution is made. Deficits incurred after this time are not taken into account. Deficits which have arisen before the 90 % ownership condition have been fulfilled cannot be deducted (Section 10-5, paragraph 5). They asked the representatives of the Norwegian Government to explain the rationale behind the temporal and ownership requirements in question.

The representatives of the Norwegian Government answered that the rationale is that the liquidation process has started immediately after the end of the year, whereas the company might not be a part of the group at the end of the year otherwise. As such, this cannot be viewed in isolation from the liquidation rules. The temporal ownership requirement therefore protects against transfer of ownership within the group before liquidation. This would fulfil the same rationale as the previously discussed provision, namely preventing that groups can choose where to deduct losses.

The representatives of the Authority thanked the representatives of the Norwegian Government for their time and co-operation, and noted that they welcomed the recent legislative amendments. They stated that they would make a further assessment of the provisions in question in due course, and would then decide on whether to pursue further steps, if any, in the case.

The Authority will continue to assess the case, and will determine the next steps to be taken in due course.

3. Own initiative case concerning authorisation requirements to set up subsidiaries of Norwegian financial institutions in other EEA States (Case No 78022)

The meeting was attended by:

- Zarah Boone and Atoofah Naqvi from the Ministry of Finance;
- Vilde Hauan from the Ministry of Foreign Affairs; and
- Ciarán Burke, Maria Moustakali, and Kyrre Isaksen from the Authority.

At the outset, the representatives of the Authority drew attention to previous correspondence in the case, notably the Authority's reasoned opinion (Doc No 1120918). This reasoned opinion maintained the view expressed in the letter of formal notice, that by maintaining in force an authorisation requirement, such as that one established in Section 4-1 first paragraph of the FIA, Norway is in breach of Directives 2013/36/EU, 2009/138/EC, 2003/41/EC, (EU) 2015/2366 and 2009/110/EC and/or of Article 31 EEA.

After repeated extensions of the time-limit, on 9 December 2020, the Norwegian Government replied to the reasoned opinion (Doc No 1168066, your ref. 16/39). In its reply, Norway re-iterated its view that the authorisation requirement contributes to the legitimate goal of safeguarding financial stability in Norway.

On 7 July 2022, the representatives of the Norwegian Government wrote to the Authority to state that, as of 1 June 2022, the relevant provisions of Section 4-1 of the FIA had been amended (Doc No 1301145). The form that these amendments took ultimately largely reflected the proposed amendments discussed with the Authority previously.

After having assessed the Norwegian provisions at issue, and in particular, the amendments made by the Norwegian Parliament, which entered into force on 1 June 2022,[1] the representatives of the Authority noted that they maintained their view that a *de facto* authorisation requirement, such as the one established in Section 4-1, paragraphs 1-5 of the Norwegian Financial Institutions Act ("the FIA")[2], is in breach of Directives 2013/36/EU[3], 2009/138/EC[4], 2003/41/EC[5], (EU)2015/2366[6] and

[1] The Act was amended by Act 18 June 2021 no. 100 (in force 1 June 2022 according to res. 6 May 2022 no. 807.

[2] *Lov om finansforetak og finanskonsern (finansforetaksloven) av 10. april 2015 No 17.*

[3] Directive 2013/36/EU, which was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 79/2019 (which entered into force in the EEA EFTA States on 1 January 2020, incorporated at point 14 of Annex IX of the EEA Agreement), replaced Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 *relating to the taking up and pursuit of the business of credit institutions (recast)* (OJ L 177, 30.6.2006, p. 1, and EEA Supplement No 59, 24.10.2013, p. 64), incorporated at point 14 of Annex IX of the EEA Agreement by Decision of the EEA Joint Committee No 65/2008 (OJ L 257, 25.9.2008, p. 27). Directive 2006/48/EC had formed the legal basis for much of the legal argumentation advanced by both the Authority and Norway in previous correspondence. However, as the provisions of both directives on the points

2009/110/EC[7] and/or constitutes an unjustified restriction on the freedom of establishment, in breach of Article 31 of the Agreement on the European Economic Area ("the EEA Agreement"), and that the amendments to the legislation in question do not fundamentally alter the situation in respect of the breaches to the EEA Agreement set out in the Reasoned Opinion.

The representatives of the Authority noted that the Authority had already expressed the view to the Norwegian Government that the amendments proposed to the legislation would not fundamentally alter its effect – substituting an authorisation scheme for a *de facto* authorisation scheme. They therefore asked whether the arguments of the Norwegian Government justifying the new legislation were in any way different from those justifying the previous legislation, as expressed in the reply to the Authority's reasoned opinion.

The representatives of the Norwegian Government noted that they had recently received the Authority's supplementary letter of formal notice, setting out the Authority's opinion with respect to the amended provisions. The representatives of the Norwegian Government noted that they did not agree with the Authority's assessment, and that the new rules were, in their view, very different, essentially amounting to a safety measure to be used only in extreme cases. The procedures involved were intended to create increased legal certainty for all parties involved, and this model was not at all like the previous authorisation requirement.

The representatives of the Norwegian Government further noted that they would prefer to reply in greater detail to the issues set out in the supplementary letter of formal notice in writing, and that in principle, they were open to making further adjustments to the provisions. It was therefore their intention to use the present meeting to ask questions. In particular, they asked the Authority whether they accepted that the group supervisor could have legitimate interests in intervening in particular cases, and whether it was relevant at which point in time this might happen.

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at issue are largely substantively identical, references to previous correspondence in the present letter apply the reasoning based upon Directive 2006/48/EC to Directive 2013/36/EU, *mutatis mutandis.*

[4] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 *on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast)* (OJ L 335, 17.12.2009, p. 1, and EEA Supplement No 76, 17.12.2015, p. 987), incorporated at point 1 of Annex IX of the EEA Agreement by Decision of the EEA Joint Committee No 78/2011 (OJ L 262, 6.10.2011, p. 45).

[5] Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 *on the activities and supervision of institutions for occupational retirement provision* (OJ L 235, 23.9.2003, p. 10, and EEA Supplement No 39, 16.7.2009, p. 439), incorporated at point 30cb of Annex IX of the EEA Agreement by Decision of the EEA Joint Committee No 88/2006 (OJ L 289, 19.10.2006, p. 26). The directive has been replaced by Directive (EU) 2016/2341, which has not yet been incorporated into the EEA Agreement.

[6] Directive (EU) 2015/2366, which was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 165/2019 replaced Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 *on payment services in the internal market* (OJ L 319, 5.12.2007, p. 1, and EEA Supplement No 10, 20.2.2006, p. 26), incorporated at point 16e of Annex IX of the EEA Agreement by Decision of the EEA Joint Committee No 114/2008 (OJ L 339, 18.12.2008, p. 103).

[7] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 *on the taking up, pursuit and prudential supervision of the business of electronic money institutions* (OJ L 267, 10.10.2009, p. 7, and EEA Supplement No 49, 27.8.2015, p. 332), incorporated at point 15 of Annex IX of the EEA Agreement by Decision of the EEA Joint Committee No 120/2010 (OJ L 58, 3.3.2011, p. 77).

The representatives of the Authority replied that while there might well be legitimate interests in intervening, such interventions could only take place in circumstances and to the extent contemplated in the relevant primary and secondary legislation under EEA law.

The representatives of the Norwegian Government next asked whether a 'pure' notification requirement would be an issue.

The representatives of the Authority replied that in principle, this might not be an issue (for example if it amounted to cc'ing the Norwegian FSA when submitting a notification to the EEA State of the subsidiary). However, if the notification requirement was so burdensome as to have any restrictive or disincentive effect, this would be a problem. As such, the Authority would need to assess any notification requirement when given a detailed outline of same.

The representatives of the Authority noted that the revised legislation includes the terms "special risk", and "difficult to supervise the group". These terms are not defined by the legislation, and this runs counter to legal certainty.

The representatives of the Norwegian Government noted that these terms are employed in Article 21(A) of the CRD, and the meaning here should be broadly the same.

The representatives of the Authority noted that they had sent a supplementary letter of formal notice, and were likely to pursue the case further. They also noted that it would be possible to pursue the original breach in the EFTA Court, as Norway had not amended the legislation within two months of receipt of the Reasoned Opinion.

The representatives of the Authority thanked the representatives of the Norwegian Government for their time and co-operation, and noted that they were looking forward to receiving a reply to the letter of formal notice, after which they would make a determination as to the next steps that should be taken in the case.

The Authority will assess the Norwegian Government's reply to the letter of formal notice, and will determine the next steps to be taken in the case.

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Follow-up letter

Financial Services
(Annex IX)

Responsible case handlers: **Marianne Arvei Moen (Item 1)**
Erlendur Halldór Durante (Items 1–5)
Marta Margrét Rúnarsdóttir (Items 2–5)

1. *Complaint concerning the non-application of EEA law on prospectuses by the Norwegian courts (Case No 87218)*

The meeting was attended by:

- Tonje Skjeie and Åse Natvig from the Ministry of Finance;
- Marthe KF Dystland from the Ministry of Justice;
- Lars Jacob Braarud and Rolf Anders Nicolaissen from the Financial Supervisory Authority;
- Troels Bjerre Leming from the Ministry of Foreign Affairs; and
- Marianne Arvei Moen, Erlendur Durante and Erlend Leonhardsen from the EFTA Surveillance Authority ('the Authority').

The case concerns a complaint received by the Authority on 7 July 2021, claiming that Norwegian courts have failed to apply sector-specific EEA law which sets out disclosure requirements in relation to publishing prospectuses of securities offered to the public or admitted to trading on regulated markets (Regulation (EC) 809/2004 and Prospectus Directive 2003/71 both now repealed).

Reference was made to the request for information (RQI) submitted by the Authority on 9 December 2021 and the reply of the Ministry of Finance of 1 March 2022.

First, the Ministry explained that the prospectus rules are aimed at ensuring investor protection and market efficiency, with reference to the main purpose in recital 7 of the Prospectus Regulation. To ensure the application of the rules, the Norwegian FSA is the authority competent for the control and review of prospectuses, both in material and procedural aspects. The FSA ensures that the duty to publish a prospectus is complied with, and sanctions are available in case of breach. The FSA investigates incorrect information in prospectuses. Furthermore, publications ensure awareness of the rules and how the rules are applied in fact.

Concerning possible remedies available for individuals in case of breaches, the Ministry stated that the FSA could be notified, and it could decide to follow-up based on their available remedies, which are set out in the Norwegian Securities Trading Act. The Ministry provided relevant examples from the FSA's practice.

Concerning civil remedies, reference was made to the various civil remedies listed in the Reply. The Authority asked whether the FSA had considered intervening in relevant civil cases as amicus curiae before Norwegian courts pursuant to Sections 15-7 or 15-8 of the Norwegian Dispute Act in order to opine on matters within its sphere of competence. The FSA stated that they are not aware of any such solution having been discussed. The Authority mentioned that the Competition Authority is as an example where it has been provided such intervention power. The FSA and the Authority suggested having further informal exchange of information on this point.

In addition, the Ministry emphasised that there are no rules on liability in the Norwegian Securities Trading Act. The Ministry referred to the possibility of settling claims pursuant to the Norwegian Civil Disputes Act. In the Civil Disputes Act, there are provisions which allow public bodies to declare third party intervention in disputes. Furthermore, the Ministry can give written briefs. The Ministry further noted that it is not considered necessary to give specific rules on civil liability.

The ESMA liability questionnaire from 2014 was also discussed at the meeting. The Ministry emphasised that new rules have entered into force amending the sanctions after the ESMA questionnaire. The Ministry agreed to provide written feedback on how the answers in the questionnaire apply today.

Finally, the Authority asked what consequences there should be in a civil case for not publishing a prospectus. The Ministry replied that the question pertains to civil liability and is therefore beyond its responsibility. The Ministry referred to the general assessment by the courts, and that the specific cases must be assessed based on the specific facts.

The Norwegian Government is kindly invited to provide comments in writing to the topics discussed at the meeting by 1 February 2023.

2. Conformity Assessment of Directive 2015/849 (AMLD IV) (Case No 84351)

The meeting was attended by:

- Marthe KF Dystland, Jon Lunde and Kjersti Lehmann from the Ministry of Justice;
- Tonje Skjeie, Åse Natvig, Ingrid Stray Reutz and Atoofah Naqvi from the Ministry of Finance;
- Anne Mette Wadman from the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim);
- Henriette Rinvik Spinnangr from the Supervisory Council for Legal Practice;
- Troels Bjerre Leming from the Ministry of Foreign Affairs; and
- Erlendur H. Durante, Marco Uccelli and Marta M. Rúnarsdóttir from the Authority.

Reference was made to the Authority's conformity assessment of the implementation of AMLD IV, its request for information of 21 July 2022 (Doc No 1302977) and the Norwegian Government's response of 14 October 2022 (Doc No 1321221) ("**the RQI**

Response"). Having carried out a preliminary assessment of the RQI Response, the representatives of the Authority's Internal Market Affairs Directorate invited the representatives of the Norwegian Government to further elaborate on selected points.

In particular, the representatives of the Authority explained the need to ensure that provisions of Directives are implemented in a way which ensures that individuals are made fully aware of their rights and obligations. Mindful of the Norwegian Government's reliance on the distinction between obligations placed solely on states and those which concern individuals, the representatives of the Authority noted the apparent relevance of Articles 7, 46, 48, 60 and 61 AMLD IV for individuals and invited the representatives of the Norwegian Government to provide their observations. The representatives of the Norwegian Government explained that the Ministry of Justice was working on new guidelines on how to implement EEA rules which might have future implications. It was further explained that the Norwegian Government intends to provide the Authority with an updated table of correspondence to reason how the identified provisions of AMLD IV had been implemented into the Norwegian legal order.

Moreover, the representatives of the Authority explained potential legal certainty issues concerning the implementation of the definitions of 'senior management', as set out in Article 3(12) AMLD IV, 'business relationship', as set out in Article 3(13) AMLD IV, and 'group', as set out in Article 3(15) AMLD IV, and invited the representatives of the Norwegian Government to further elaborate on the RQI Response. The representatives of the Norwegian Government requested to revert at a later stage.

In addition, the representatives of the Authority noted with concern the apparent exclusion of non-Norwegian undertakings engaged in insurance mediation that is not reinsurance broking for the purposes of performing as third parties for meeting customer due diligence requirements. The representatives of the Norwegian Government were invited to further elaborate on the reasoning for this exclusion. The representatives of the Norwegian Government requested to revert at a later stage.

Finally, the representatives of the Authority asked the representatives of the Norwegian Government to provide information on the timeline for establishing a central beneficial ownership register. The representatives of the Norwegian Government explained that it was planned for the Register to be up and running early 2023 and invited to provide further information on this development in writing.

***By 4 January 2023**, the Norwegian Government is kindly invited to provide the Authority with an updated table of correspondence containing its reasoning for how the AMLD IV provisions identified in the request for information have been implemented into the Norwegian legal order, with particular focus on Articles 7, 46, 48, 60 and 61 AMLD IV. Moreover, the Norwegian Government is invited to provide the Authority with further information on the progress and timeline for establishing a central beneficial ownership register. Following assessment of additional input from the Norwegian Government, the Authority intends to issue a supplementary request for information.*

3. IRB calculations in Norway (Case No 88178)

The meeting was attended by:

- Jens Christian Werring-Westly, Thormod Tho, Katharina Markhus from from the Ministry of Finance;
- Bjørn Andersen and Inga Baadshaud Eide from the Financial Supervisory Authority; and
- Erlendur H. Durante, Marco Uccelli and Marta M. Rúnarsdóttir from the EFTA Surveillance Authority ('the Authority').

Reference was made to the Authority's Request for information (Doc No 1303403) of 21 October 2022 to Norway, wherein the Authority raised some questions relating to rules (n. circular) issued by the Norwegian FSA on requirements for internal ratings-based (IRB) models "*Circular 3/2021 Requirement for IRB models for banks, mortgage companies and finance companies*". The circular applies to banks, mortgage companies and finance companies, and was published on 16 June 2021 (in Norwegian on 9 June 2021).

The Internal Market Affairs Directorate is performing an initial assessment on whether certain rules found in the circular go beyond the current applicable EEA law, including but not limited to *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms* (CRR), as amended and incorporated into the EEA Agreement.

While noting that the time limit to respond to the Request for Information had not passed the representatives of the Authority's Internal Market Affairs Directorate explained the background and the questions raised and invited the representatives of the Norwegian Government to share their initial observations.

The representatives from the FSA explained the background and nature of the circular. Then Norwegian rules relating to IRB models were explained in more general terms. Specific issues pertaining to IRB models were briefly touched upon, including regarding Section 2.1.1-2.1.2., Sections 4.2-4.3, Section 4.5 and Section 5.1 of the circular.

The Authority is currently assessing the Norwegian Government's response of 25 November 2022.

4. Assessment of acquisitions and increase of holdings in the financial sector (Directive 2007/44) (Case No 77973)

The meeting was attended by:

- Jens Christian Werring-Westly, Ingrid Hertzberg and Katharina Markhus from the Ministry of Finance; and

- Erlendur H. Durante, Marco Uccelli, Marta M. Rúnarsdóttir, Erlend Leonhardsen and Ómar Berg Rúnarsson from the Authority.

Reference was made to the previous correspondence in the case, in particular the Authority's letter of formal notice dated 15 March 2017 (Doc No 817335), and the Authority's Supplementary Letter of Formal Notice of 28 September 2022 (Doc No 1303403) where the Authority concluded that Norway had failed to fulfil its obligations arising from currently applicable fully harmonised EEA rules concerning the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.

While noting that the time limit to respond to the letter of formal notice had not passed, the representatives of the Authority's Internal Market Affairs Directorate invited the representatives of the Norwegian Government to share their observations on the letter of formal notice and the expected timeline for approval and entry into force of the proposed legislative amendments.

The representatives of the Norwegian Government reconfirmed their commitment to consider changes to the national legislation. The reason for its delay were mainly due to human resources issues within the Ministry of Finance. At the meeting, the Government then informed the Authority that it had expected to circulate legislative proposals for consultation with regard to the issue sooner rather than later but indicated no specific timeline with regard thereto.

The Authority is currently assessing the Norwegian Government's response to the letter of formal notice, received in November 2022.

5. Complaint concerning the incorrect application of Directive 2009/138 (Solvency II) (Case No 85119)

The meeting was attended by:

- Jens Christian Werring-Westly, Ingrid Hertzberg and Katharina Markhus from the Ministry of Finance; and
- Erlendur H. Durante, Marco Uccelli, Marta M. Rúnarsdóttir, Ómar Berg Rúnarsson and Erlend Leonhardsen from the Authority.

Reference was made to the Authority's letter of formal notice of 28 September 2022 (Doc No 1308730) where the Authority concluded that Norway had failed to fulfil its obligations arising from fully harmonised EEA rules concerning the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.

While noting that the time limit to respond to the letter of formal notice had not passed, which was subsequently extended to 4 January 2023 at request of the Norwegian Government (Doc No 1327426), the representatives of the Authority's Internal Market Affairs Directorate invited the representatives of the Norwegian Government to share their initial observations on the letter of formal notice.

The representatives of the Norwegian Government maintained the view that the dispersed ownership policy, as defined in the letter of formal notice, was working well in Norway. Moreover, that research into the impact of different kinds of ownership structures on the governance of financial institutions supported continued reliance on the dispersed ownership policy.

The representatives of the Norwegian Government further noted that the dispersed ownership policy applied at the time of initial authorisation of insurance undertakings and banks. Extension of this practice to also cover subsequent acquisitions or increases of qualifying holdings was intended to ensure that the policy would not be circumvented.

The representatives of the Norwegian Government indicated a willingness to consider alternative structures for the assessment of potential acquirers of qualifying holdings in insurance undertakings and banks but only if the goal of preventing circumvention of the dispersed ownership policy could be ensured. The representatives of the Authority made clear that it was the responsibility of the Norwegian Government to ensure the effective application of fully harmonised EEA rules.

*The Norwegian Government was kindly invited to respond to the letter of formal notice **by 28 November 2022**.Upon request of the Norwegian Government, the Authority has subsequently granted an extension of the deadline until 4 January 2023.*

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Package Meeting in Norway
27-28 October 2022

Follow-up letter

Freedom of movement of services
(Annex X)

Responsible case handlers: **Per-Arvid Sjøgård**
Ciarán Burke

1. Reimbursement of costs related to cross-border healthcare (Case No 85598)

The meeting was attended by:

- Tone Hobæk, Pia Grude and Marie Nygren from the Ministry of Health and Care Services and Gaute Neby from the Directorate of Health; and
- Maria Moustakali, Per-Arvid Sjøgård, Ciarán Burke and Marte Brathovde from the Authority.

Reference was made by the representatives of the Authority to previous correspondence on the matter, including its own letter of 30 September 2020 in which it raised a series of questions with a view to examining whether national law complied with Directive 2011/24 on patients' rights (Doc No 1152080).

The representatives of the Authority's Internal Market Affairs Directorate provided its preliminary assessment of the compatibility of certain elements of Norwegian law with EEA law. First, with regard to the limitation of reimbursement to 80% of the relevant national DRG-cost, such an administrative practice appeared to be in breach of Article 7(4) of the Directive. Secondly, the strict application of the national legislation's generic deadline to cross-border healthcare seemed to be at odds with *inter alia* the principle of proportionality as expressed by Article 9(1) of the Directive. Finally, the translation requirements applicable to claims relating to cross-border healthcare appeared to be in breach of *inter alia* Articles 9(1) and 9(2) of the Directive.

As regards the national translation requirements, the representatives of the Norwegian Government stated that the requirement that translations shall as a rule be provided by a state authorised translator, was not necessary to maintain. To that effect, the relevant circular had been amended and equivalent changes to the national implementing regulation were foreseen. It was not possible for the representatives of the Norwegian Government to confirm whether the application form still referred to the requirement of obtaining translations from a state authorised translator.

The representatives of the Authority observed that if it was written down anywhere, such as in an application form, that a state authorised translator was required, this

could create an unjustified restriction, regardless of whether that rule was followed in practice, as it may create the expectation for individuals that if they do not employ such a translator, they will not receive compensation.

As regards the strict application of the national legislation's generic deadline for submitting claims to cross-border healthcare, the representatives of the Norwegian Government recalled that the very same legislation provided for an exemption where the applicant failed to meet that deadline. Moreover, the Authority was informed that the clock started running on the day of treatment also in purely domestic situations. The Authority noted that, even in such a case, upholding such a practice might be in breach of the Directive.

As regards the limitation of reimbursement of cross-border healthcare to 80% of the relevant national DRG-cost, the representatives of the Norwegian Government provided further explanations on the "guest-settlement" which takes place between the regional health authorities in Norway when a patient is treated in another region than their "home region", a practice which in turn formed the background for limitation at issue.

Concerning the expenses included in the national DRG-cost but deducted for the purpose of the "guest settlement" and cross-border healthcare, the Authority recalled that Norway had in previous correspondence cited the hospital sector's administrative expenses, preparedness, and emergency costs as examples. As the marginal cost of one individual treatment was not considered to have any impact on such costs, they were deducted. The representatives of the Norwegian Government added that salary costs and common charges were further examples of such expenses.

The representatives of the Norwegian Government explained that each regional health authority in Norway is funded, on an approximately 50:50 basis, by block grants, on the one hand, and by DRG, on the other, with both ultimately being disbursed from the central authorities to the regional authorities. The block grants are distributed on the basis of the population of the region, and are de facto disbursed at the beginning of each year on this basis. The DRG is disbursed de facto at the end of each year, on the basis of the number of operations that have taken place involving inhabitants of that health region, regardless of where the latter have taken place.

With respect to the guest settlement scheme, if an individual who is resident in one region goes to another region and receives an operation there, his or her home region's health authority will pay 80% of the cost of this operation to the health authority of the region in which the operation took place.

As regards the national translation requirements, the Norwegian Government is invited to provide the Authority with the currently applicable circular, the currently applicable application form, and to inform the Authority of any relevant progress in amending the national implementing regulation before ***30 January 2023****.*

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Package Meeting in Norway
27-28 October 2022

Follow-up letter

Telecommunications services / Data Protection
(Annex XI)

Responsible case handlers: Anna Wrzesniak (Item 1)
Ciarán Burke (Item 2)

1. *Enforcement of ex-ante regulation in Norway pursuant Directives 2002/21/EC and 2002/19/EC (Case No 86799)*

The meeting was attended by:

- Christina Christensen and Karin Skyllingstad from the Ministry of Local Government and Regional Development;
- Kenneth Olsen and Line de Lange Nilsen from the Norwegian Communications Authority (Nkom); and
- Anna Wrzesniak and Gunnar Örn Indriðason from the Authority.

The parties discussed the Authority's request for information to Norway (Doc No 1303455) and Norway's reply of 22 September 2022 (Doc No 1314940, your ref. 22/5648-4).

The representatives of the Authority explained that enforcement of obligations imposed by Nkom on undertakings with significant market power ("SMP") as well as timely resolution of disputes and appeals is a pre-condition for effective competition in line with regulatory objectives put forward in Article 8 of the Framework Directive. In particular, Nkom should closely monitor implementation of its market decisions and if needed make use of its powers to impose fines/order corrective actions on the SMP operator without undue delay.

In addition, representatives of the Authority underlined that resolutions of dispute can exceed the statutory four-month period stipulated in Article 20 of the Framework Directive only in exceptional circumstances which are based on clearly defined criteria and communicated to the complainants.

The representatives of the Norwegian Government explained that the case raised points of principle concerning the limits of the two exemptions relied upon by the Norwegian Government. In the Authority's view, those limits had been exceeded in the case of Midtre Namdal Avfallsselskap IKS ("MNA").

The representatives of the Norwegian Government explained an exceptional workload in the recent years and lack of sufficient resources. However, they

indicated that organisational changes have been made internally and Norway considers issues raised by the Authority as priority and will do its most to tackle the backlog of dispute and appeal cases promptly as well as provide the Authority with steps taken to ensure enforcement of adopted market decisions.

***By 30 January 2023**, the Norwegian Government is invited to provide the Authority with:*
- An explanation of concrete steps taken to ensure enforcement of market decisions, including reporting obligation of the SMP undertaking,
- A list of criteria that will be assessed when deciding of exceptional circumstances justifying longer dispute resolution times,
- A clear timeline for deciding on pending disputes and appeals.

2. *Own initiative case concerning NAV's processing of IP addresses (Case No 88929)*

The meeting was attended by:

- Camilla Landsverk and Jens Wother from the Ministry of Labour and Social Inclusion;
- Hanne Beate Vatnedal and Ingeborg Aas from the Directorate of Labour and Welfare;
- Ingeborg Collett from the Ministry of Foreign Affairs; and
- Ciarán Burke, Maria Moustakali and Marte Brathovde from the Authority.

At the outset, representatives of the Authority drew attention to previous correspondence in the case, notably the Authority's request for information to Norway of 31 August 2022 (Doc No 1308820). Therein, the Authority had requested that the Norwegian Government clarify the position, current and past practices of the Norwegian Labour and Welfare Administration ("NAV") in relation to the processing and storing of Internet Protocol addresses ("IP addresses") of individuals sending employment status forms to the NAV. The Norwegian Government was invited to submit the above information, as well as any other information it deemed relevant to the case, so that it reached the Authority by 31 October 2022.

The representatives of the Authority noted that, based upon information they had as well as their own investigations, the Authority understands that, in order to be registered as a jobseeker and to receive unemployment benefits, work assessment allowance and employment scheme benefits, an employment status form must be sent by jobseekers or other persons in receipt of benefits (who are obliged to register with the NAV) every fourteen days.[8] The Norwegian NAV Commission's 2020 Report[9] makes it clear that the NAV exercised control over whether jobseekers and persons in receipt of work assessment allowance and employment scheme benefits were in fact present in Norway through the use of technological tools that tracked IP addresses. The Report further notes that residence/stay elsewhere in the EEA area

[8] https://www.nav.no/en/home/benefits-and-services/employment-status-form-how-do-you-use-it
[9] NOU 2020: 9 - Blindsonen — Gransking av feilpraktiseringen av folketrygdlovens oppholdskrav ved reiser i EØS-området, available at https://www.regjeringen.no/no/dokumenter/nou-2020-9/id2723776/?ch=2

than Norway alone has formed the basis for a decision to suspend or reclaim benefits, without further assessment of whether the residence/stay abroad has prevented follow-up in the specific case.

The representatives of the Authority noted that the deadline for receipt of a reply to the Authority's request for information coincided almost exactly with the date of the Package Meeting, and as such undertook to discuss the questions listed in the request for information.

The representatives of the Authority noted that it was their understanding that IP addresses were collected and retained when persons sent in their employment status form, and that these addresses were used for control purposes. The representatives of the Authority therefore enquired whether this the sole purpose for which these addresses were used, and what was the legal basis for such processing, under Directive 95/46/EC, and under the GDPR.

The representatives of the Norwegian Government noted that the first possibility that individuals had to send in their employment status forms was in 2001, and that this was initially used for security purposes. In circumstances in which doubts were raised concerning the identity or location of a person, and the official tasked with handling the case had suspicions in this regard, the IP address might then be used for control purposes. The representatives of the Norwegian Government noted that the practice in question – and indeed, the underlying system – had changed in 2019, and all previously stored IP addresses were then deleted. However, the new system still contains what was termed a "legal log", containing all the employment status forms that were sent in.

The representatives of the Authority next enquired for how long IP addresses were stored, and what was the legal basis for their storage. In addition, they enquired how this time limit was determined.

The representatives of the Norwegian Government replied that between 2005 and 2019, all IP addresses collected were stored. In 2018, there had been a change to the submission system for employment status forms, which facilitated their electronic submission. At this point, a data protection impact assessment was conducted, and it was concluded that the then-operable system in which IP addresses were collected was not compatible with data protection law. As such, the practice was halted, as it was determined that there was no legal basis for such an activity. This was applicable in respect of a range of benefits, including for example work assessment allowance and unemployment benefit.

The representatives of the Authority then enquired whether the practice change after the entry into force of the GDPR in the EEA on 20 July 2018, and so, what was the legal reasoning for the change.

The representatives of the Norwegian Government replied that the practice had indeed changed, as the legitimate public interest ground under the previous directive had elapsed. At this point, however, no information was provided to the data subjects *en masse*. However, in decisions involving individual data subjects, the NAV did not hide the fact that IP addresses had been tracked and used.

The representatives of the Norwegian Government further noted that the information collected had also been shared with the police in criminal prosecution cases, *inter alia*, for fraud. However, they noted that this was usually not the only information in a particular case. The representatives of the Norwegian Government further added that there was no systematic perusal of IP addresses. Rather, a degree of suspicion about a particular individual would be required before his or her IP address would be checked.

The representatives of the Authority then enquired whether the Norwegian Data Protection Authority ("DPA") had been informed about this practice, and whether data subjects were notified individually at the same time as the DPA that their personal data had been processed or was being processed.

The representatives of the Norwegian Government stated that no information had been provided to data subjects individually or collectively at the time. Information was distributed to individuals in March 2022, however, or possibly early October 2022 (it was difficult to determine due to an IT issue). In addition, information was provided to individuals concerning five cases that had occurred since 11 March 2018 in which IP addresses had been collected. These addresses had been shared with the police in fraud investigations. 6 May 2019 was the most recent instance of this practice. The DPA was also informed in this instance. The representatives of the Norwegian Government noted that there had been six further cases after this date, which had resulted in one conviction, but not on the basis of the usage of IP addresses.

The representatives of the Authority then enquired as to approximately how many persons were affected by the processing of their personal data in this manner.

The representatives of the Norwegian Government said that, for cases prior to 2005, they had no information to share. Between 2005 and 2019, 83,000,000 IP addresses had been stored, relating to 1,500,000 individual data subjects. In this regard, the representatives of the Norwegian Government were keen to emphasise that the usage of IP addresses was just one step in building a case.

The representatives of the Authority then asked how many (formal or informal) enquiries and complaints had been received in relation to this issue by the Norwegian Government and/or the NAV.

The representatives of the Norwegian Government stated that they were not aware of many enquiries or complaints. The issue in question had been reported on in the media at least twice, and the practice of the NAV had also been in the media in the past. The lawyers of those arrested had been in touch on a number of occasions.

The representatives of the Authority then enquired as to what had supplanted the previous practice (of collecting IP addresses) since it had been determined that there was no legal basis for doing so.

The representatives of the Norwegian Government replied that individuals can now log in to the online portal with their Bank ID (rather than a username and password),

which is seen to represent a more secure form of identification. Rather than using IP addresses, NAV now has access to the currency transaction register, which gives information concerning how and where people make transactions, either in Norway or abroad. Normally, however, suspicion in still required to check this register. The representatives of the Norwegian Government were unsure whether data subjects had been informed of this practice, and if so, how.

The representatives of the Authority noted that this was the first time that they had heard about such a practice, but that in principle, accessing an individual's banking transactions could in fact provide more information about them than their IP address, and might thus be a grosser invasion of privacy in some circumstances.

The representatives of the Authority thanked the representatives of the Norwegian Government for their time and co-operation, and noted that they looked forward to receiving the reply to their request for information.

The Norwegian Government is invited to provide the Authority with a detailed update as regards how the NAV has processed personal information since 2019, and in particular how the collection of banking transactions has replaced the collection of IP addresses. Please provide details of how this functions in practice, the role of suspicion in the process, details of any information shared with the police, and compliance of present practice with the GDPR.

The Norwegian Government is requested to provide this information so that it reaches the Authority ***by 30 January 2023****.*

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Package Meeting in Norway
27-28 October 2022

Follow-up letter

Transport
(Annex XIII)

Responsible case handlers: **Kadus Basit (Item 1)**
Lemonia Tsaroucha (Item 2)
Gunnar Örn Indriðason (Items 3 and 4)

1. *Minimum safety requirements for tunnels in the Trans-European Road Network (TERN) – Norway (Case No 84698)*

The meeting was attended by:

- Sonja Lindqvist and Siri Hall Arnøy from the Ministry of Transport;
- Even Mortensen from the Norwegian Public Roads Administration; and
- Kadus Basit and Lemonia Tsaroucha from the Authority.

On 3 December 2020 (Doc No 1160732), the Authority issued a reasoned opinion, in which it concluded that Norway had failed to ensure that all tunnels with lengths of over 500m in the Trans-European Road Network (TERN) complied with the minimum safety requirements of Directive 2004/54/EC by the deadline set out therein. For tunnels that were already in operation at the time of the entry into force of the Directive, the deadline for refurbishment of those tunnels expired on 30 April 2019. At the time of the reasoned opinion, 68 tunnels were not in compliance with the minimum safety requirements.

At the meeting, the parties discussed the measures taken by Norway to comply with the Authority's reasoned opinion.

The representatives of the Norwegian Government presented the plans and expected timelines for the full upgrade of the TERN-tunnels in question. The information provided during the meeting indicated that at the end of 2022, the number of tunnels still to be upgraded will be reduced to a total of 45 tunnels (one number higher than what had been the initial plan). Moreover, the Norwegian representatives informed the Authority that the current proposal for the national budget of 2023 entailed postponing some relevant road infrastructure projects originally planned to start next year due to financial restraints. However, the representatives of the Norwegian Government emphasised that the Norwegian Government's strategy for ensuring compliance with the reasoned opinion remained unchanged, and that, provided that the budget proposal is adopted by the Norwegian Parliament, the postponement will not affect the original planned date for compliance with the Directive.

The representatives of the Norwegian Government also provided information on specific tunnels, including information on alternative safety measures for tunnels that have yet to be refurbished. They also confirmed that, based on the current traffic volume, the Oslofjordtunnel fulfils the requirements of the Directive.

The Norwegian Government will submit to the Authority:
*- A copy of the presentation given at the meeting **(by 30 January 2023)**;*
*- A detailed list of the tunnels yet to comply with the Directive. This list will include (i) state of compliance with all the minimum safety requirements of the Directive, in particular the requirements concerning lay-bys and emergency exits, (ii) information on what stage in the process of refurbishment each tunnel is currently at, including information, where relevant, on necessary planning, approvals of plans, financial commitments and ongoing work, (iii) where relevant, hyperlinks to online information form national authorities where the progress for each tunnel can be followed, and (iv) information on the compensatory safety measures implemented or planned to be implemented in each tunnel for the period before upgrade is started **(by 30 January 2023)**;*
***-** Information on how the compliance with point 2.3.5 of Annex I to the Directive, on the provision of emergency exits based on a risk analysis, is implemented in relation to the tunnels in question **(by 30 January 2023)**;*
***-** Information on the national budget and, subsequently, the final commitments pertaining to the refurbishment works planned for 2023 **(by 31 January 2022**).*

2. EMSA visit to Norway – Port State control (Case No 83735)

The meeting was attended by:

- Siv Christin Gaalaas from the Ministry of Trade, Industry and Fisheries; and
- Lemonia Tsaroucha and Kadus Basit from the Authority.

The European Maritime Safety Agency ("EMSA") conducted a visit in Norway between 1 and 4 October 2019, on behalf of the Authority, to monitor the implementation of Directive 2009/16/EC on *port State control*. After the visit, EMSA produced a report on its findings dated 19 December 2019, which it shared with the Authority (Doc No 1111247 / EMSA ref. INSP.PSC.2018-AS7096).

In the Authority's follow-up to the EMSA visit in 2019, through correspondence with Norway in the last two years, it has become clear that one issue identified as a recurrent shortcoming by EMSA has not been resolved by Norway. This concerns the system of penalties in Norway, which does not cover all breaches of the Directive as required under Article 34 thereof.

On 9 July 2021 (Doc No 1171237), the Authority requested an update on the progress made by the Norwegian Government to address the remaining shortcomings identified in EMSA's report, in particular, the necessary legislative amendments required to implement penalties for all breaches of the Directive. By a letter dated 11 August 2021 (Doc No 1220717, your ref. 2019/54870-26), the

Norwegian Government was still unable to provide the Authority with a concrete timeline on the legislative proposal to amend the national legislation.

On 21 September 2022, the Authority issued a letter of formal notice against Norway (Doc No 1257113), concluding that by failing to ensure that all violations of national provisions implementing the Directive are subject to appropriate penalties under national law, Norway has failed to fulfil its obligations arising from Article 34 of the Directive.

At the meeting, the Norwegian Government informed the Authority of the developments with the draft bill amending the Ship Safety and Security Act of 2007. The amending bill had been through public consultation closing in September 2022, and it was expected to be submitted to the Norwegian Parliament in the spring or early summer of 2023. The Norwegian Government noted that the proposed amendments were addressing the main concern raised in the LFN of the Authority on penalties for breaches of the Directive.

In addition, the Authority and the Norwegian Government discussed the points concerning pilots (Article 23) and Actual Time of Arrival/Actual Time of Departure (Article 24) of the Directive.

*Norway will reply to the Authority's LFN **by 21 November 2022** providing all necessary information. The Authority will assess the reply and get back to Norway with any comments, taking into account the expected date of submission of the draft bill to the Parliament.*

3. *Complaint regarding implementation of Directive 96/67 on ground handling (fuel services) at Oslo airport (Case No 74566)*

The meeting took place virtually on 11 November and was attended by:

- Morten Foss from the Ministry of Transport; and
- Gunnar Örn Indriðason from the Authority.

By a letter dated 7 November 2013 (Doc No 688473), the Authority informed the Norwegian Government that it had received a complaint against Norway regarding access to self-handling of fuel and oil at Oslo Airport. Following correspondence between the Authority and the Norwegian Government in 2013 and 2014, the Authority issued a letter of formal notice on 17 June 2015 (Doc No 755811). In this letter, the Authority concluded that the arrangements imposed by *Oslo Tankanlegg AS* ("OLT") on airport users at Oslo Airport, i.e. the obligation to become a shareholder of OLT, in order to be granted access to centralised infrastructure and airport installations (fuel-distribution system and related airport installations), except for the self-handling of into-plane fuelling, did not comply with the requirements laid down in Article 6(1), Article 7(1), Article 8(2) and Article 16(1) of Directive 96/67/EC on access to the ground handling market at Community airports ("the Directive").

Following the letter of formal notice, the Authority and the Norwegian Government had regular correspondence regarding the applicable arrangements at Oslo Airport and measures taken to remove the shareholder requirement.

On 10 May 2022, the Authority issued a supplementary letter of formal notice due to the failure of taking further measures to ensure full implementation of the Directive in Norway (Doc No 1211425).

The Norwegian Government replied to the supplementary letter of formal notice by a letter dated 1 July 2022 (Doc No 1300398, your ref. 15/137) where it acknowledged that the abovementioned arrangements at Oslo Airport constituted a breach of the Directive and would provide further information on the progress of reaching full compliance by 1 October 2022.

The representative of the Authority thanked the representative of the Norwegian Government for the update sent on 27 September (Doc No 1315690, your ref. 15/137). The representatives of the Authority and of the Norwegian Government discussed the substance of the letter. Furthermore, they discussed the intended measures that the Norwegian CAA has notified Avinor of and the timeline of the administrative decision of the CAA and for implementation of local rules at Oslo Airport. The representative of the Norwegian Government informed the representative of the Authority that it would be in a position in the coming weeks, and no later than the deadline stated in the update sent on 27 September, to inform the Authority on the progress and to provide more detailed information on the timeline.

Norway will inform the Authority ***as soon as possible and no later than 31 January 2023*** *on the progress of the case and of measures adopted by the Norwegian CAA.*

4. Public Service Obligations and tender on regional air services in Northern Norway (Case No 87007)

The meeting was attended by:

- Andreas Neumann and Anja Siverts from the Ministry of Transport; and
- Gunnar Örn Indriðason and Lemonia Tsaroucha from the Authority.

On 30 September 2021, the Authority published in the Official Journal of the European Union a notice for an invitation to tender procedure for the operation of scheduled regional air services in Northern Norway from 1 April 2022 to 31 March 2024. On 11 March 2022, the Ministry of Transport informed the Authority of the selection of operators for the routes (Doc No 1275011).

After receiving the information on the tender, the Authority identified certain requirements for the operation of the PSO routes that were new when compared to most recent previous tenders.

According to Article 16 of the Regulation, the fixed standards imposed on the route subject to a public service obligation shall be set in a transparent and non-discriminatory way and according to Article 16(3), it is for the EEA EFTA States to assess the necessity and adequacy of an envisaged public service obligation, having regard to the criteria mentioned in that provision.

On 8 April 2022, the Authority therefore requested further information and justification for these operational requirements (Doc No 1237711). Namely, the requirement to correspond with flights to and from (1) Tromsø and (2) Oslo, (3) the requirement for specific references in ILO Conventions No 87 and 89, (4) the requirement to offer interline services to domestic connections, and (5) to facilitate unsupervised travel of children over the age of five.

On 9 May 2022, the Authority received a reply from the Ministry of Transport (Doc No 1288246, your ref. 21/1702) where the Government presented its justification for these operational requirements.

The representatives of the Authority thanked the representatives of the Norwegian Government for the information already provided and the opportunity to discuss the matter in more details. The representative of the Authority also stressed that at this point it was trying to understand the operational necessity of the recently introduced requirements and the operation of the PSO routes in Norway. The representatives of the Norwegian Government also provided further information on the questions submitted before the meeting.

As regards the first question on the requirement to correspond with flight schedules to and from Oslo and Tromso, the representatives of the Norwegian Government informed the Authority that this requirement had already been in place and the justification was to ensure access to services available at destinations beyond the PSO route.

As regards the second question, the representatives of the Norwegian Government informed the representatives of the Authority that this policy was not applied horizontally for all modes of transport since for other modes collective agreements were applicable, and therefore the Government decided to apply the public procurement guidelines to stress the importance of these fundamental rights but not to restrict access to the Norwegian market. Furthermore, the Government policy is that social and labour rights are respected, and that procurement policy should be used to address social dumping.

As regards the third question on the requirement to offer interline services to passengers, the representatives of the Norwegian Government informed the representatives of the Authority that this requirement was something passengers had requested frequently and was intended to improve the quality of travel for passengers with destinations beyond the PSO route. They also noted that according to their information, similar requirements were in place in both Finland and Sweden.

The representatives of the Authority stated that in general, operational requirements for PSO’s should be limited to what is necessary to ensure the service and the quality level set, for example as regards frequency and capacity. As this was a

regulatory task and part of the general monitoring of PSO's, the Authority had not concluded on any breach, but it still had some concerns for the interline requirement and for the ILO references, the Authority would look into this further, and provide further guidance to the Norwegian Government.

The representatives of the Norwegian Government also informed the Authority of the preparation of next tender of air routes to take place in 2023. The representatives of the Authority welcomed the information and asked to be informed informally in advance to facilitate for the processing of the notifications.

The Authority will provide guidance to Norway on the interline and ILO requirements ***before 30 January 2023****.*

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Follow-up letter

Procurement
(Annex XVI)

Responsible case handlers: Rachel Harriott

1. *Complaint against Norway concerning the award of exclusive rights for collection and treatment of waste (Case No 78085)*

The meeting was attended by:

- Mona Aarhus, Olve Klepp, Beate Berglund Ekeberg and Gabrielle Østern from the Ministry of Climate and Environment;
- Margrét Gunnarsdóttir from the Ministry of Trade, Industry and Fisheries;
- Vilde Hauan from the Ministry of Foreign Affairs; and
- Rachel Harriott, Frederik De Ridder and Kyrre Isaksen from the Authority.

The parties discussed the Authority's reasoned opinion of 28 September 2022 (Decision No 181/22/COL; Doc No 1281581).

The representatives of the Authority explained that the case raised points of principle concerning the limits of the two exemptions relied upon by the Norwegian Government. In the Authority's view, those limits had been exceeded in the case of Midtre Namdal Avfallsselskap IKS ("MNA").

The representatives of the Norwegian Government raised questions concerning the Authority's reference in the reasoned opinion to Article 12 of Directive 2014/24/EU on public contracts between entities within the public sector. The representatives of the Authority explained that the intention was to make clear that there are lawful ways in which arrangements can be made within the public sector without a tender process, but the relevant conditions have to be met. If Article 12 were to be relied upon in the case of MNA, the Authority would examine the details of how those conditions were argued to be complied with.

More generally, the representatives of the Norwegian Government queried the timing of the Authority's next steps. The representatives of the Authority clarified that the Authority's priority was to ensure compliance and so would act reasonably and engage in further dialogue with the Norwegian Government where appropriate. However, the representatives of the Authority also noted that the points of principle raised in the case meant that further action against other similar situations (should they exist) could not be ruled out, even if the situation with MNA were to be resolved.

*The Norwegian Government was invited to respond to the Authority's reasoned opinion by the stated deadline of **28 November 2022**. At the time of finalising this letter, this has been received.*

2. *Complaint concerning Norwegian practices regarding confidential documents in procurement claims (Case No 87544)*

The meeting was attended by:

- Marie Wiersholm, Monica Wroldsen, Margrét Gunnarsdóttir, Nina Bjørneby Klefstad and Joachim Isaksen Simonsen from the Ministry of Trade, Industry and Fisheries;
- Steinar Bore Træet from the Ministry of Justice; and
- Rachel Harriott and Frederik De Ridder from the Authority.

The parties made reference to the Authority's letter of 11 October 2022 (Doc No 1271800). The representatives of the Authority explained that the Authority's Internal Market Affairs Directorate had set out its analysis of the issue at an early stage, notwithstanding that there were some specific points of doubt, in order to make its current understanding and position clear and facilitate dialogue with the Norwegian Government.

The representatives of the Norwegian Government provided a detailed explanation of how the Norwegian civil procedure rules work as regards access to confidential information, elaborating in particular on the specific points of doubt referred to in the Authority's letter of 11 October 2022. The representatives of the Authority additionally queried whether a court can impose additional measures in the event that confidential information is to be presented in a case; the representatives of the Norwegian Government indicated that they would look into this point.

The representatives of the Norwegian Government indicated it was too early for them to give comments on the points of doubt raised in the Authority's letter of 11 October 2022 concerning the compliance of the Norwegian system with the requirements of EEA law.

*The Norwegian Government was invited to respond to the Authority's letter of 11 October 2022 by the stated deadline of **30 November 2022**. The representatives of the Authority requested that this response be as comprehensive as possible to enable the Authority to fully assess the issues raised in the case. At the time of finalising this letter, this has been received.*

3. *Restrictions on subcontracting in the field of public procurement in Norway (Case No 84262)*

The meeting was attended by:

- Marie Wiersholm, Monica Wroldsen, Margrét Gunnarsdóttir, Nina Bjørneby Klefstad and Joachim Isaksen Simonsen from the Ministry of Trade, Industry and Fisheries;
- Ingrid Finsland, Sofia Sanner and Ellen Dannevig Abrahamsen from the Ministry of Labour and Social Inclusion;
- Fredrik Bergsjø from the Ministry of Foreign Affairs; and
- Árni Páll Árnason (College Member), Jónína Sigrún Lárusdóttir (Director), Melpo-Menie Joséphidès (Director), Rachel Harriott, Frederik De Ridder, and Kyrre Isaksen from the Authority.

The representatives of the Norwegian Government presented various information relating to the wider context in which the subcontracting rules apply, including the effect of the rules in practice. This information included a report from a consultancy on how public procurement contributes to seriousness; the Ministry of Labour and Social Inclusion's action plan against social dumping and work-related crime; and information obtained from economic operators and contracting authorities, including in the context of the Government's work on the "Norwegian model".

The parties briefly discussed possibilities for contracting authorities to take alternative measures in order to combat work-related crime (rather than limiting subcontracting) and how such approaches could fit into the overall public procurement framework.

The Norwegian Government gave an update on the Norwegian model, indicating that proposals would be published for consultation in early November.

At the meeting, the Norwegian Government agreed to summarise the information presented in a written communication to the Authority by 30 November 2022. At the moment of finalising this letter, the Authority has not received this information. The Norwegian Government is invited to provide the information at the earliest convenience.

It was also agreed that the parties would meet again after publication of the consultation on the Norwegian model so the Norwegian Government could provide more information on that work and to follow up on the points discussed at the meeting. This meeting took place on 1 December 2022

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Follow-up letter

Labour law
(Annex XVIII)

Responsible case handler: Hrafnhildur Kristinsdóttir

1. *Complaint against Norway concerning deportation of a third-country national sent to Norway by a temporary work agency in another EEA State (Case No 80810)*

The meeting was attended by:

- Cathrine Opstad Sunde, Stefanie Pettersen and Kalyani Rushanth from the Ministry of Labour and Social Inclusion; and
- Hrafnhildur Kristinsdóttir and Ómar Berg Rúnarsson from the Authority.

The representatives of the Authority referred to previous correspondence in the case and welcomed the proposal to amend Section 19-8 of the Immigration Regulation which had been on public consultation.

The representatives of the Norwegian Government stated that the deadline for submitting comments to the proposal expired on 27 September 2022 and gave an update on the comments that had been received. The representatives of the Government explained that 11 statements had been received but only four substantive comments, all from Norwegian Government agencies (the Police Directorate, the Tax Administration, UDI and NAV) which supported the proposal.

The representatives of the Norwegian Government noted that a recommendation to the Minister was being finalised and that the aim was to adopt the proposal before the end of the year. It was also explained that the UDI had amended their practice already in 2019 in light of this case and in line with the current proposal. It was thus the UDI's assessment that the proposal would not involve changes in case handling, although the relevant Circular would be updated.

The Norwegian Government is invited to keep the Authority updated in relation to the adoption of the proposal to amend Section 19-8 of the Immigration Act. Please provide information on the status of the proposal ***by 30 January 2023***.

2. *Complaint against Norway concerning the right to paid annual leave (Case No 84481)*

The meeting was attended by:

- Mona Næss and Anne Karine Plahter from the Ministry of Labour and Social Inclusion; and
- Hrafnhildur Kristinsdóttir, Ómar Berg Rúnarsson and Maria Moustakali from the Authority.

The representatives of the Authority referred to previous correspondence in the case and explained shortly the concerns that the current Norwegian system of paid annual leave raises.

The representatives of the Norwegian Government informed the representatives of the Authority that an assessment of the current system had been taking place within the Ministry in light of the Authority's enquiries in this case and in light of the CJEU case law which *inter alia* states that the right to paid annual leave is a particularly important principle of EU social law.

The representatives of the Norwegian Government explained that it would be proposed to the Minister to amend the Norwegian Holiday Act introducing a new system of paid annual leave built on the same principles as the Danish model (although not identical). It was explained that a formal decision had not been adopted yet but if the proposal would be approved at the political level, the social partners would be consulted to work on the practical arrangements and this process would take time.

The representatives of the Authority welcomed this step taken by the Ministry.

The Norwegian Government is invited to provide the Authority with more detailed information in relation to the intended process of proposing to amend the Norwegian Holiday Act, including a timeline for the way forward. Please provide the requested information ***by 30 January 2023***.

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Follow-up letter

Consumer Protection
(Annex XIX)

Responsible case handler: Frederik De Ridder

1. Complaint regarding interest-free credit agreements (Case No 89005)

The meeting was attended by:

- Āryanāyaka H. E. Kaiser from the Norwegian Ministry of Justice and Public Security; and
- Frederik De Ridder and Erlendur H. Durante from the Authority.

On 4 August 2022, the Authority's Internal Market Affairs Directorate sent Norway a request for information (Doc No 1305348) to enquire about the objectives underpinning the difference in treatment between providers of interest-free credits following from the Finansavtaleloven as revised in 2020 (LOV-2020-12-18-146). The Norwegian Government replied to this request for information on 27 October 2022 (Doc No 1324042, your ref. 20/3280 - HEA).

At the meeting on 28 October 2022, the representative of the Norwegian Government elaborated on the regulatory choices made in the process of revising the Finansavtaleloven, and placed the legislation in its wider regulatory context. The representatives of the Authority asked follow-up questions, amongst others regarding the difference between payment deferral provided by on-line and off-line sellers.

The Authority will consider the reply of the Norwegian Government of 27 October 2022 in light of the clarifications provided by the representative of the Norwegian Government at the meeting.

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Follow-up letter

Environment
(Annex XX)

Responsible case handlers: **Kristine Aaland (Item 1)**
Anne De Geeter (Items 1 and 2)
Ada Gimnes Jarøy (Items 1 and 2)
Marcus Navin-Jones (Items 3–6)

1. CCS - Storage permit (Case No 88278)

The meeting was attended by:

- Alexander Engh and Christian Bredvei Gusland from the Ministry of Petroleum and Energy;
- Natalie Winger, Gabrielle Østern and Malin Fosse from the Ministry of Climate and Environment;
- Tonje Eilertsen and Rebekka Dischington from the Norwegian Environment Agency; and
- Anne De Geeter, Ada Gimnes Jarøy, Kristine Aaland and Marcus Navin-Jones from the Authority.

At the meeting, the representatives of the Norwegian Government provided an update on the development of the Longship project. The construction of facilities at both the Norcem capture and Northern Lights storage plants are ongoing, and are expected to be completed by August 2024. The constructions at the second capture plant, Hafslund Oslo Celsio (previously named Oslo Fortum Varme), have recently started and are expected to be completed in 2026. With the letter of intent between Northern Lights' and Yara, the CO_2 storage volumes for the first phase of the Longship project have also been secured and the commercial terms are currently being negotiated.

As regards Northern Lights' application for a CO_2 storage permit, required under the CCS Directive, the representatives of the Norwegian Environment Agency informed the Authority that the submission is expected in December 2022, and that all documents would be translated into English for being made available to the Authority. The Norwegian Environment Agency committed to double check, and confirmed since by e-mail to the Authority of 2 November 2022 (Doc No 1324758).

The representatives of the Authority had also raised some questions on the implementation of the CCS Directive's provisions concerning third-party access to transport networks and storage sites, to which it provided further background. It was agreed at the meeting that the representatives of the Norwegian Government will

come back to the Authority on these questions. At this stage of the Longship project, the representatives of the Norwegian Government explained that no requests for access to Northern Lights' facilities have been made yet.

The representatives of the Norwegian Government will come back to the Authority with responses to its questions on the implementation of the CCS Directive's provisions concerning third-party access. The representatives of the Authority and of the Norwegian Environment Agency will also keep in close contact on the upcoming storage application from Northern Lights.

2. Management of waste from extractive industries (Case No 80563)

The meeting was attended by:

- Ida Røstgaard, Nora Charlotte Hein Stamsø, Gabrielle Østern, Malin Fosse and Agnethe Dahl from the Ministry of Climate and Environment;
- Harald Sørby, Harald Ankerstad and Roar Gammelsæter from the Norwegian Environment Agency; and
- Anne De Geeter, Ada Gimnes Jarøy and Marcus Navin-Jones from the Authority.

Ahead of the meeting, the Norwegian Government submitted to the Authority a letter (of 24 October 2022) providing an update on its review of the Norwegian legislation implementing the Mining Waste Directive (Doc No 1323078). It also enclosed a draft regulation and a table of correspondence (Doc Nos 1323076 and 1323080).

At the meeting, the representatives of the Norwegian Government explained to the representatives of the Authority its approach taken for the ongoing review of the national legislation, in which it has looked into possible amendments taken into account the Authority's preliminary views as set out in its Pre-Article letter of 6 October 2021 (Doc No 1193682), in dialogue between the relevant ministries (the Ministry of Climate and Environment, the Ministry of Trade, Industry and Fisheries, and the Ministry of Petroleum and Energy). They also presented the preliminary outcomes of its review. The representatives of the Norwegian Government explained that they have found it beneficial to make amendments to the existing legislation and, to that effect, are in the process of drafting a new regulation. The review process and finalisation of the new regulation is expected to be completed by the summer of 2023.

The representatives of the Authority thanked the representatives of the Norwegian Government for the thorough review it has initiated of the national legislation, and for the progress being made to ensure conformity with the Mining Waste Directive.

The representatives of the Authority and of the Norwegian Government agreed to keep in contact for the finalisation of the review process. The representatives of the Norwegian Government also invited the Authority to provide its views on the draft regulation.

The representatives of the Norwegian Government and of the Authority will keep in contact for the finalisation of the ongoing review of the Norwegian legislation implementing the Mining Waste Directive. The representatives of the Authority welcome the opportunity to provide their views in this process and will seek to give its feedback on the draft regulation ***by the end of January 2023****.*

3. Norway, Water Framework Directive, Review of Norway's River Basin Management Plans (Case No 77582)

The meeting was attended by:

- Lindis Nerbø, Tor Simon Pedersen, Gabrielle Østern, and Agnethe Dahl from the Ministry of Climate and Environment;
- Anja Skiple Ibrekk and Hege Hartveit from the Ministry of Petroleum and Energy;
- Heidi Holmelin, Anders Iversen from the Norwegian Environment Agency; and
- Marcus Navin-Jones and Ada Gimnes Jarøy from the Authority.

At the meeting, reference was made to the requirements contained in Directive 2000/60/EC establishing a framework for action on water policy ("WFD") for EEA EFTA States to provide the Authority River Basin Management Plans ("RBMPs") for review every 6-year period. The representatives of the Authority informed the representatives of the Norwegian Government that the Authority was in the process of establishing systems and procedures to ensure the latest round of RBMPs would be fully reviewed, relying on, in part, the assistance of consultants. The representatives of the Authority also noted that the latest round of RBMPs were now due for submission and review.

The representatives of the Norwegian Government informed the representatives of the Authority that the RBMPs had been adopted and the result would be shared at the National Water Conference on 31 October 2022.

The representatives of the Norwegian Government informed the representatives of the Authority of some of the general trends and facts identified in the latest RBMPs. More specifically, the representatives of the Norwegian Government informed the representatives of the Authority, amongst other things, that:

(1) The overall number of water bodies in Norway declared as Heavily Modified Water Bodies (and therefore not, according to the Norwegian representatives, required to achieve GES/GCS) has increased, although this is, according to the Norwegian representatives, due in part to the fact that Norway has now subdivided certain water bodies – and thereby created 'new' water bodies (which were not identified in previous RBMPs).

(2) There are a significant number of water bodies which are still identified as «unknown» or «undefined» as regards chemical status in the new RBMPs. According to the Norwegian representatives, approximately 92% of water bodies in Norway are now defined in the new RBMPs as «unknown» or «undefined» as

regards chemical status. The representatives of the Norwegian Government explained that one of the reasons is likely due to the lack of reporting/field data collected from the water bodies. The representatives of the Norwegian Government offered to provide the Authority a presentation explaining the current monitoring programme in place in Norway.

Representatives of the Norwegian Government are kindly invited to provide the Authority with the new RBMPs for review by the end of January 2023.

4. *Water Framework Directive – Concerns regarding deterioration of water bodies due to disposal of mining waste including chemicals/materials of concern (Case No 86194)*

The meeting was attended by:

- Gabrielle Østern, Malin Fosse, Agnethe Dahl, Tor Simon Pedersen, Solveig Paulsen, Lindis Nerbø from the Ministry of Climate and Environment;
- Anders Iversen Heidi Holmelin and Harald Sørby from the Norwegian Environment Agency; and
- Marcus Navin-Jones, Kyrre Isaksen, Marco Uccelli, Anne De Geeter and Ada Gimnes Jarøy from the Authority.

Reference was made to the relevant correspondence and interaction between representatives of the Authority and representatives of the Norwegian Government regarding this case.

The representatives of the Authority informed the representatives of the Norwegian Government of the latest developments concerning this case, including the input from stakeholders following the publication of the Call for Information. Representatives of the Authority also informed the representatives of the Norwegian Government that the consultant appointed by the Authority to review the technical information in this case, was intending to provide a copy of the draft report to the Authority within the coming months. The representatives of the Authority explained that, once finalised, the report could be shared with Norway.

At the meeting, there was a discussion concerning the reply to the request for information (Doc No 1267378, your ref. 12/3553), in particular the responses to the questions regarding the transposition and implementation of Article 4(7) of the WFD into Norwegian national law. The representatives of the Norwegian Government recognised that there could be a need to improve the transposition of Article 4(7) of the WFD, particularly Article 4(7)(c) of the WFD, into Norwegian national law.

As soon as the Technical Report is finalised, the Authority will decide on the next steps and inform the representatives of the Norwegian Government accordingly.

The representatives of the Norwegian Government are kindly invited to provide an update on the outcome and conclusions of the assessment of the

transposition of Article 4(7) of the WFD into Norwegian national law by the end of January 2023.

5. *Water Framework Directive – Norwegian national controls over operators of installations (including hydroelectric power plants) impacting water bodies, licensing rules, threatened extinction of wild salmon (Case No 88013)*

The meeting was attended by:

- Lindis Nerbø, Tor Simon Pedersen and Malin Fosse from the Ministry of Climate and Environment;
- Anja Skiple Ibrekk, Maren Lervik, Katrin Lervik, and Hege Hartveit from the Ministry of Petroleum and Energy;
- Heidi Holmelin and Anders Iversen from the Norwegian Environment Agency; and
- Marcus Navin-Jones, Marco Uccelli, Anne de Geeter and Ada Gimnes Jarøy from the Authority.

At the meeting, reference was made to the relevant correspondence and interaction between representatives of the Authority and representatives of the Norwegian Government regarding this case.

The representatives of the Norwegian Government provided an overview of the response to the request for information.

The representatives of the Authority noted the statement in the reply to the request for information that "*The Norwegian licence system is the single most important legal measures to control the behaviour of the hydropower operator*". In light of this, the Authority queried what legal controls were in place in Norway to control the behaviour of operators that are not legally required to obtain/retain a licence. Representatives of the Norwegian Government stated that operators who are not currently required to have a licence – can be 'summoned' to obtain a licence, but, pursuant to Norwegian national law, there would need to be legal grounds to summon those operators to obtain a licence – specifically there would need to be a danger to the environment. Representatives of the Authority pointed out that, pursuant to the WFD, Norway was required to have a system of legal controls in place to, amongst other things, ensure water bodies do not deteriorate.

Representatives of the Authority queried whether there were any specific and express provisions contained in the licences granted to operators of hydropower plants in Norway, which specifically referenced and referred to the requirements under the WFD, in particular the environmental objectives – and which enabled the Norwegian authorities to revoke or cancel licences, due to adverse impacts upon the water bodies leading to a breach of the WFD environmental objectives. Representatives of the Norwegian Government stated that some licences make reference to Article 4(7) of the WFD, but that, in any event, licences in Norway would generally refer to national law provisions, not EEA/EU law provisions.

Representatives of the Norwegian Government offered to provide the representatives of the Authority more information, including a visit and/or presentation of hydroelectric power plants in Norway, to provide more insight into this area.

The representatives from the Authority will review the response to the request for information in more details and on the basis of the explanations provided at the meeting and decide on the next steps.

6. *SEA and EIA Directives – Court practice, Implementation and conformity with requirement to conduct environmental assessments (EAs) / environmental impact assessments (EIAs) (Case No 86939)*

The meeting was attended by:

- Gabrielle Østern, Malin Fosse, Agnethe Dahl, Marthe Lindberg and Bjørn Bugge from the Ministry of Climate and Environment;
- Lina Frogner Orre from the Ministry of Local Government and Regional Development;
- Ingeborg Stene and Carl Fredrik Ekeberg from the Ministry of Petroleum and Energy;
- Emil Moss Skjelland from the Ministry of Justice;
- Tone Hostvedt Aarthun from the Ministry of Foreign Affairs; and
- Marcus Navin-Jones, Marco Uccelli, Anne de Geeter and Ada Gimnes Jarøy from the Authority

Reference was made to the relevant correspondence and interaction between representatives of the Authority and representatives of the Norwegian Government regarding this case.

The representatives of the Norwegian Government informed the representatives of the Authority that a draft report prepared by the Ministry of Climate and Environment and currently under review by the other Ministries, would enable Norway to reply to certain questions raised by the Authority which are still unanswered. The objective of the report is to assess whether the current legal framework in Norway is aligned with the requirements set out in the SEA and EIA Directives and to rectify any issues of potential concern. At the meeting, representatives of the Authority also noted that the Norwegian Ministry of Climate and Environment was supporting initiatives involving judicial development and awareness of EEA/EU environmental law issues, such as those through the EUFJE.

*The Norwegian Government is kindly invited to communicate to the Authority **by the end of January 2023** at the latest: (1) the plan or proposal to address the issues of potential concern in this area; and (2) the responses to the questions set out in the request for information of 4 November 2022.*

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Follow-up letter

Environment, Climate change and Energy

Responsible case handlers: **Kristine Aaland**
Anne De Geeter
Ada Gimnes Jarøy

1. Preparation for the Fit for 55 Package

The meeting was attended by:

- Anne Gislerud, Dag Svarstad and Johannes Opsahl from the Ministry of Climate and Environment;
- Trine Berntzen and Carina Lillestøl from the Norwegian Environment Agency;
- Kristin Thorvaldsen, Anne-Mette Hilmen, Lisa Maria Løvold from the Ministry of Petroleum and Energy;
- Tone Aartun Hostvedt from the Ministry of Foreign Affairs; and
- Marco Uccelli, Anne De Geeter and Kristine Aaland from the Authority.

The representatives of the Authority recalled the purpose of the meeting, namely to facilitate a good collaboration and exchange of information between the Authority and the Norwegian Government in the preparations for the Fit for 55 Package, so as to ensure its best and swift implementation when appropriate.

The representatives of the Authority and the representatives of the Norwegian Government welcomed this opportunity for an initial exchange on the Fit for 55 Package and agreed on the usefulness of a continuous dialogue on these matters.

In the meeting, the representatives of the Norwegian Government gave a presentation on the Norwegian Government's preliminary assessment of the Fit for 55 Package, including on potential challenges relating to the timelines for the EEA EFTA States and for the expected tasks of the Authority. The Norwegian Government shared their presentation with the Authority after the meeting.

The representatives of the Norwegian Government and of the Authority agreed on having continued discussions to prepare for their respective tasks in the frame of the Fit for 55 Package, without prejudice to the pending legislative processes under the EEA Agreement.

The representatives of the Norwegian Government and of the Authority committed to pursuing a close dialogue and regular exchange on the preparations for the Fit for 55 Package.

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Follow-up letter

UK/EEA Separation Agreement

Responsible case handler: Ciarán Burke

1. Separation Agreement (Case No 88758)

The meeting was attended by:

- Jiri Klaska, Cathrine Opstad Sunde, Kalyani Rushanth, Stefanie Pettersen, and Trine Homble from the Ministry of Labour and Social Inclusion;
- Gunhild Bolstad from the Ministry of Justice;
- Charlotte Mysen from the Directorate of Immigration;
- Stein Iversen from the Ministry of Foreign Affairs; and
- Ciarán Burke from the Authority.

At the outset, the representatives of the Authority drew attention to previous correspondence in the case, notably that on 23 May 2022, the Authority completed its first Annual Report (Doc No 1290490) in accordance with Article 64(3) of the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union ("the Separation Agreement/the Agreement"), and Article 2 of Protocol 9 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Surveillance and Court Agreement"/"SCA"). This report was submitted to the Joint Committee established under the Separation Agreement at a meeting of 8 June 2022.

The representatives of the Authority noted that very few cases had been brought to its attention in relation to either 'divergent' or 'transitional' issues. This may perhaps be interpreted as evidence that the Agreement has been implemented effectively in the EEA EFTA States, and that there are no issues under these heads. However, it may also be interpreted as entailing that UK nationals and their families falling under the scope of the Separation Agreement are not aware of avenues of redress open to them via the Authority under the Agreement, or indeed, their rights under the Agreement.

The representatives of the Norwegian Government noted that they had taken note of the Authority's remarks in the Annual Report and at the meeting in London, and had updated the terminology used online and elsewhere, with "UK nationals" supplanting

"British citizens" in order to reflect the personal scope of the Separation Agreement. They noted that they had undertaken several meetings with UK nationals living in Norway, before the end of the Transitional Period, in order to address concrete issues. They had also established a very productive system of co-operation and information exchange with the British Embassy in Oslo, with a lot of information made available to UK nationals in advance. In addition, it was noted that Norwegian administrative law obliged the authorities in question to answer every enquiry and other element of correspondence received, which meant that individual UK nationals had many avenues to gain insight and information.

The representatives of the Authority noted that Article 35 of the Agreement, entitled "Publicity" imposes an obligation on the EEA EFTA States and the UK to disseminate information and create awareness of the Agreement, and enquired as to steps the Norwegian Government has taken to comply with this provision.

The representatives of the Norwegian Government noted that they were very much aware of the obligations imposed by Article 35. They noted that, as had been discussed at the London meeting, all relevant information concerning Brexit and related issues was available on the NAV, the UDI, and Government websites. Most of the information was available in English. Most of this information had also been distributed to all municipalities, as well as the local offices of ministries. Further, a circular on case handling procedures had been distributed to UDI and NAV for the purposes of illustrating how cases involving UK nationals should be handled.

The representatives of the Norwegian Government noted that, in practice, there was a small chance that a small number of people in Norway were not 'in the system', but that this was not likely to be a big problem in practice, and a flexible approach would be applied in such circumstances.

The representatives of the Norwegian Government further noted that they had a good relationship with the Norwegian Confederation of Enterprises, and that there was therefore a lot of information in the private sector concerning the rights of UK nationals under the Separation Agreement as well. As such, there were few overall challenges.

The representatives of the UDI noted that information had been provided on the UDI website for UK nationals, and that there was also a FAQ section. The UDI had received a lot of enquiries from both UK nationals and third-country nationals related to Brexit issues, and this had generated a large workload, but also valuable experience. UDI had worked closely with the British embassy, and had helped to establish and curate several Facebook groups for UK nationals. This had also involved Facebook Live sessions, organised by the embassy, and attended by the UDI. An information film had also been recorded. 21,000 had applied for status under the Separation Agreement, including UK nationals and third country national family members. This number had since effectively risen to 22,000.

The representatives of the Norwegian Government noted that complaints by UK nationals were handled in the same way as Chapter 13 of the Immigration law, implementing Directive 2004/38/EC under the EEA Agreement. They noted that certain issues had arisen in circumstances in which UK nationals had applied for

permanent residency and were refused it, but in such circumstances, the individuals involved were in any case granted temporary residency. It was further noted that in practice, when there is no doubt as to an individual's identity and status, (local) police can grant permits. It is only in circumstances in which suspicion arises that it is necessary for the UDI to become involved.

The representatives of the Norwegian Government noted that a few cases had arisen in which third country national family members had fallen outside the scope of the Separation Agreement. However, these were both clear cases, and very rare. Overall, there had been very few complaints. NAV, specifically, had received fewer than ten complaints, and very few that had any substance. Flexibility had been applied in circumstances in which there was doubt as to whether individuals came within the scope of the Separation Agreement. The policy in this regard seemed to be that if there was doubt, people should be given the benefits.

The representatives of the Authority thanked the representatives of the Norwegian Government for their time and co-operation, and noted that they were very pleased to see the Separation Agreement being implemented so faithfully in Norway. They noted that they would need to keep an active case open on this issue for monitoring purposes, but that at present, there were no substantive issues arising.

The Authority will keep a monitoring case open concerning the Separation Agreement, though as noted, there are no issues apparent at present.