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EFTA SURVEILLANCE
AUTHORITY

The Ministry of Climate and Environment
Post-box 8013 Dep
NO-0030 Oslo
Norway

Dear Mrs Sæverud,

Subject: Inquiry by the Norwegian Government regarding the possibility of introducing a measure requiring that all biofuels sold in Norway have to be in conformity with the sustainability criteria in the Fuel Quality and the Renewable Energy Directives

1 Introduction

By letter dated 18 April 2017 (your ref.: 15/63), the Norwegian Government requested the EFTA Surveillance Authority (“the Authority”) to provide guidance on whether Norway could introduce a measure which would require all biofuels sold in Norway to be in conformity with the “sustainability criteria”.

It is worth recalling that, according to the institutional framework set up by both the EEA Agreement and the Agreement between the EEA EFTA States on the establishment of a Surveillance Authority and a Court of Justice (“SCA”), and to the functions attributed to the diverse bodies foreseen therein, the competence of the Authority is limited to monitoring the correct implementation and application of EEA law in the EEA EFTA States. Only the EFTA Court is entitled to interpret EEA law with regard to the EEA EFTA pillar¹. Against this background, the Internal Market Affairs Directorate of the Authority (“the Directorate”) notes that the drafting of a legal opinion on the interpretation of EEA rules on a measure which has not been adopted yet upon the request of an EEA EFTA State cannot be regarded as being covered by the Authority’s mandate.

The Directorate also notes that Directive 98/34/EC² sets forth procedures to be followed when EEA EFTA States intend to adopt regulations that may create technical barriers to trade.

¹ According to Article 108(2) of the EEA Agreement and Article 34 SCA, the EFTA Court has jurisdiction to rule on the interpretation of the EEA Agreement applicable in the EEA EFTA States.

² 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, incorporated into the EEA Agreement by Joint Committee Decision No 146/99 which entered into force for the EEA EFTA States on 5 November 1999.

Having regard to the limitations and statements set out above, and in the spirit of loyal cooperation with the national administrations, the Directorate wishes to provide the Norwegian Government with some guidance, regarding the EEA legislation regulating the biofuels market and the case-law related to the balance between the free movement of goods and the protection of the environment.

2 EEA Secondary Legislation on Biofuels

2.1 The Fuel Quality and the Renewable Energy Directives

The EEA secondary legislation which will primarily regulate the Norwegian biofuels market is the “Fuel Quality Directive”³ and the “Renewable Energy Directive”⁴.

Biofuel is defined in Article 2(i) of the Renewable Energy Directive as liquid or gaseous fuel for transport produced from biomass. Biomass is defined in Article 2(e) of the Renewable Energy Directive as the biodegradable fraction of products, waste and residues from biological origin. In accordance with Article 2(9) of the Fuel Quality Directive, biofuel should have the same meaning as in the Renewable Energy Directive for the purpose of the Fuel Quality Directive.

The Renewable Energy Directive sets binding overall targets for renewable energy. According to Annex I of the Renewable Energy Directive, each Member State has a target to reach by 2020 a certain share of renewable energy in gross final consumption. Joint Committee Decision No 162/2011 incorporated the Renewable Energy Directive into the EEA Agreement. The overall target set in this Joint Committee Decision for Norway is 67.5% renewable energy by 2020. Furthermore, Article 3(4) of the Renewable Energy Directive sets out a mandatory target of 10% for renewable energy in all forms of transport by 2020.

The Fuel Quality Directive sets technical specifications for transport fuels and a target for the reduction of life greenhouse gas emissions. The target set is a 6% reduction of life greenhouse gas emissions from transport fuels by December 2020. Article 7(b) of the Fuel Quality Directive provides for sustainability criteria for biofuels and regulates that it is only biofuels which fulfil the sustainability criteria that can be included when calculating the reduction of greenhouse gas emissions in a Member State. Article 7(b) of the Fuel Quality Directive on sustainability criteria reflects Article 17 of the Renewable Energy Directive.

³ Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC as amended by Directive 2009/30/EC (“the Fuel Quality Directive”). This Directive was incorporated into the EEA Agreement by Joint Committee Decision No 270/2015 on 30 October 2015 and entered into force for the EEA EFTA States on 1 November 2015.

⁴ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (“the Renewable Energy Directive”) This Directive was incorporated into the EEA Agreement by Joint Committee Decision No 162/2011 on 19 December 2011 and entered into force for the EEA EFTA States on 20 December 2011.