

Case No: 78465
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Decision No: 089/18/COL

EFTA SURVEILLANCE
AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

of 10 October 2018

closing a complaint case arising from an alleged failure by Norway to comply with Articles 11 and 31 of the EEA Agreement by introducing DAB technology and closing the FM radio network

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

1 Introduction and previous correspondence

On 22 December 2015, the EFTA Surveillance Authority (“the Authority”) received a complaint against Norway, alleging that Norway restricts the free movement of goods and the freedom of establishment arising from the closure of the FM network and the introduction of digital audio broadcasting (“DAB”) technology¹ for radio broadcasting in Norway.²

On 23 February 2016, the Authority sent a request for information to Norway.³ The Norwegian Government replied to the request for information by letter of 18 March 2016.⁴ On 9 June 2016,⁵ the Authority sent a supplementary request for information and by letter of 24 June 2016, Norway provided the requested information.⁶ The case was discussed at the package meeting in Oslo in October 2016 and following that meeting, the Norwegian Government submitted additional information by letter dated 14 February 2017.⁷

By letter of 13 March 2017,⁸ the Internal Market Affairs Directorate of the Authority (“the Directorate”) informed the complainant of its intention to propose to the Authority that the case be closed. The complainant was invited to submit any observations on the

¹ The migration process from analogue to digital broadcasting, also referred to as ‘switchover’, begins with the introduction of digital and ends with the switch-off of analogue broadcasting.

² Doc No 786483.

³ Doc No 793846.

⁴ Doc No 798704.

⁵ Doc No 805485.

⁶ Doc No 809809.

⁷ Doc No 842154.

⁸ Doc No 838532.

Directorate's assessment of the complaint or present any new information by 18 April 2017. The complainant replied by letter of 10 May 2017.⁹

On 9 October 2017, the Authority sent a supplementary request for information to Norway.¹⁰ The case was discussed at the package meeting in Oslo in October 2017 and the Norwegian Government replied to the request for information by letter of 2 November 2017.¹¹ On 13 December 2017, the complainant submitted additional information to the Authority,¹² as a response to Norway's letter of 2 November 2017. On 11 July 2018, the Authority sent an additional request for information to Norway¹³ and a response was received on 24 September 2018.¹⁴

2 National framework

On 4 February 2011, the Ministry of Culture issued a report (white paper) regarding digitisation of the radio network in Norway.¹⁵ The report included a recommendation to close the FM network in 2017, provided that the following criteria were fulfilled before 1 January 2015:

- The radio service offered by NRK must have a digital coverage equal to the current P1-coverage in the FM network.
- The commercial part of the DAB network must be extended to at least 90 per cent of the population.
- The digital radio service must represent an added value for the listeners.
- There must be reasonably priced and technically adequate solutions for radio reception in cars.
- At least half of radio listeners must daily listen to a digital radio platform.

The Government, in the meeting of the Norwegian Council of State on 4 February 2011, approved the report.¹⁶ The report was sent to the Parliament, where all parties, except the Progress Party (*FrP*), endorsed the main conclusions of the report on 19 May 2011.¹⁷

On 16 April 2015, the Government announced that it had decided to close the FM network in 2017, although the FM network would still be available to certain local radio stations at least until 31 December 2021. The Government has not taken any decision yet with respect to whether local radio may continue for a longer period.

On 17 April 2015, a new report (white paper) from the Ministry of Culture was adopted by the Norwegian Council of State,¹⁸ concluding that the criteria set out in the report of 4 February 2011 were fulfilled. This conclusion was based on reports and assessments by the Norwegian Media Authority (*Medietilsynet*) and the Norwegian Communications Authority (*Nkom*).

⁹ Doc No 877062.

¹⁰ Doc No 877045.

¹¹ Doc No 881043.

¹² Doc No 888592.

¹³ Doc No 923868.

¹⁴ Doc No 930882.

¹⁵ Meld. St. 8 (2010-2011).

¹⁶ See page 5 of the report, where it is stated that it is approved by the Government: “*godkjend i statsråd same dagen (Regjeringa Stoltenberg II)*”.

<https://www.regjeringen.no/contentassets/3c57cc88589b4854b4d0c632cceb468/nn-no/pdfs/stm201020110008000dddpdfs.pdf>

¹⁷ <https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Vedtak/Sak/?p=49273>

¹⁸ Meld. St. 24 (2014-2015). See the first page of the report, where it is stated that it is approved by the Government: “*godkjent i statsråd same dag (Regjeringa Solberg)*”.

<https://www.regjeringen.no/contentassets/746f1978ed9842fba7d0bc991fa7ca14/nn-no/pdfs/stm201420150024000dddpdfs.pdf>

The report was discussed and endorsed in Parliament on 16 June 2015.¹⁹ In addition, the Parliament passed the following resolution:

“The Parliament asks the Government to coordinate the closing of FM in 2017 so that the closing of commercial local radio in the large city areas take place at the same time as the regional closing of the national commercial channels, and take initiative to prolong the licences accordingly where this is necessary.”

3 The Authority’s assessment

3.1 Digital broadcasting in the EU

The European Commission supports digitisation of broadcasting services. In a Communication of 2003,²⁰ the Commission clearly stated that *“Replacing analogue broadcasting with a system based on digital techniques presents huge advantages in terms of more efficient spectrum usage and increased transmission possibilities; these will lead to new services, wider consumer choice and enhanced competition.”* Digital broadcasting allows for compressing data which leads to more efficient use of network capacity than in the case of analogue signals in that more radio services can be offered for the same given bandwidth.

The Commission underlines that there is no harmonisation requirement at the EU level of the switchover process and therefore the migration policy and the switch-off date is a decision left to the judgement of national or regional authorities. In this context, the Commission set out a guide for Member States on the migration to digital radio and television transmission in a consumer-friendly fashion.

Moreover, the recent Commission proposal for a Directive establishing the European Electronic Communications Code²¹ introduces new provisions requiring radio sets integrated in new passenger cars in the EU to at least be capable of digital terrestrial radio reception. The transition to the digital radio is promoted in a manner similar to that for television broadcasting in the past.

3.2 The regulatory framework for electronic communications and audiovisual media policy

Directive 2002/21/EC *on a common regulatory framework for electronic communications networks and services* (“the Framework Directive”)²² imposes an obligation on national regulatory authorities to ensure the effective management of radio frequencies. The assignment of radio frequencies is to be based on objective, transparent, non-discriminatory and proportionate criteria and in accordance with policy objectives and regulatory principles.²³

¹⁹ <https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Vedtak/Sak/?p=62518>

²⁰ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the transition from analogue to digital broadcasting (from digital 'switchover' to analogue 'switch-off') [SEC(2003)992]; COM/2003/0541 final. <https://ec.europa.eu/digital-single-market/en/news/commission-communication-transition-analogue-digital-broadcasting-digital-switchover-analogue>

²¹ Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast); COM/2016/0590 final - 2016/0288 (COD)

²² Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ L 108, 24.4.2002, p. 33), incorporated into the EEA Agreement at point 5cl of Chapter I of Annex XI by Decision of the EEA Joint Committee No 11/2004 of 6 February 2004.

²³ Articles 8 and 9(1) of the Framework Directive.

Furthermore, Directive 2002/20/EC *on the authorisation of electronic communications networks and services* (“the Authorisation Directive”)²⁴ stipulates that Member States are to grant rights of use for radio frequencies to any undertaking providing or using services under the general authorisation, subject to rules ensuring efficient use of resources and without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives. Rights are to be granted through open, transparent and non-discriminatory procedures.²⁵ In doing this, Member States are to take into consideration, *inter alia*, benefits for users, and to develop competition and selection criteria, which must be objective, transparent, non-discriminatory and proportionate, in view of the policy objective of the Framework Directive.

Article 1(3) of the Framework Directive *on the scope and aim of the regulatory framework for electronic communications* states that “*this Directive as well as the Specific Directives are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.*”

3.3 Norway’s policy framework relating to the digital switchover

The Norwegian Government stresses that the regulation of audiovisual policy and content aims at achieving general interest objectives, such as the freedom of expression and information, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors.

The Norwegian Government has argued that its decision to digitise radio in Norway pursues such general interest objectives, namely to promote greater competition and increased media pluralism, thereby providing greater choice.

The Norwegian Government emphasises that the Framework Directive provides a strong legal basis for taking into account general interest objectives, in particular, media pluralism, cultural diversity and consumer protection.

The Norwegian Government is therefore of the view that the decision to limit the number of licences for broadcasting in the FM band is consistent with the Framework Directive and the Authorisation Directive, as it is to be seen in the context of the benefits gained from the digital switchover.

In its letter dated 18 March 2016, the Norwegian Government underlined that the primary goals of the digitisation of radio are to promote greater competition and to ensure increased diversity and increased content in broadcasting. Moreover, the Government submitted that its overarching approach in all relevant white papers has been to refrain from adopting a specific technology, but rather to facilitate the digitisation process by establishing criteria for the switch-off of the FM network, leaving the choice of technology to the industry. The Norwegian Government noted that the coverage criteria were not linked to a specific digital technology, but defined in terms of “digital coverage”. In addition, the Norwegian Government pointed out that licences for the testing of several other digital technologies had been issued and, accordingly, stated that it considered that it had not discriminated against other digital radio technologies.

²⁴ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ L 108, 24.04.2002, p. 21), incorporated into the EEA Agreement at point 5ck of Chapter I of Annex XI by Decision of the EEA Joint Committee No 11/2004 of 6 February 2004.

²⁵ Articles 5(2) and 7 of the Authorisation Directive.

In its letter of 21 September 2018, the Norwegian Government indicated that the DAB network covers a larger percentage of the population than the FM network. In addition, the switchover increased the range of radio services available to the population in rural areas from 2-3 services under the FM regime to 15-30 using the DAB network.

In the view of the Norwegian Government, the objectives of migration have been achieved: the population, in particular in rural areas, has access to a wider range of radio services, competition has been enhanced and the DAB network has proven to be more robust than the FM network and allows for larger coverage. Furthermore, the Norwegian Government considers that the DAB network has contributed positively to public security measures and has improved the national alert system compared to how it was under the FM network.

The Authority notes that allocation of DAB spectrum is not subject to EU/EEA harmonisation. As such, it falls within the discretion of the EEA States to decide how to manage frequencies for radio or television.

However, national regulatory authorities are expected to efficiently manage the spectrum to support optimal use, in order to maximise economic and social welfare and increase competition. Use of the entire FM band between 87.5 MHz and 108 MHz is currently reserved for FM broadcasting through international agreements.

The Authority notes that the migration from analogue to digital radio in Norway was announced in 2015 and accepts the argumentation put forward by the Norwegian Government justifying the switchover in a part of the country. Furthermore, the Authority considers that the migration process has been conducted in a transparent way and that the market players had enough time to adapt to proposed changes. Moreover, the switchover took place after the Government's analysis of the fulfilment of the criteria established in 2011.

Furthermore, the Authority recognises that the principle of technological neutrality foreseen in Article 8(1) of the Framework Directive does not amount to an absolute obligation imposed on EEA States. In this respect, the Authority refers to the wording of Article 8(1) and to recital 18 in the preamble to the Framework Directive, which reads as follows:

“The requirement for Member States to ensure that national regulatory authorities take the utmost account of the desirability of making regulation technologically neutral, that is to say that it neither imposes nor discriminates in favour of the use of a particular type of technology, does not preclude the taking of proportionate steps to promote certain specific services where this is justified, for example digital television as a means for increasing spectrum efficiency.”

As explained above, the introduction of digital broadcasting has increased spectrum efficiency.

Against this background, the Authority considers that the measures taken by the Norwegian Government in respect of migration from FM to DAB radio technology in Norway do not appear to infringe the regulatory framework for electronic communications, in particular the Framework Directive and the Authorisation Directive.

3.4 Free movement of goods

Restriction

The complainant has submitted that the closure of the FM radio network constitutes a restriction on the free movement of goods, contrary to Article 11 of the EEA Agreement

(“EEA”). In the complaint, it is argued that the closure of the FM radio network would render FM radios to be used in homes and in cars useless in the larger cities from 2017 and in the remaining parts of Norway from 2022. In addition, it is submitted that in practice, it would be prohibited to use FM broadcasting equipment. According to the complainant, the closure of the FM radio network is comparable to the ban on the use of personal watercraft considered by the Court of Justice of the European Union (“the CJEU”) in the *Mickelsson* case.²⁶

In its letter dated 18 March 2016, the Norwegian Government stated that no decision had been taken as to whether or not the 215 licences for local radio broadcasting on the FM network would be renewed after 2022. This was affirmed in the Norwegian Government’s letter dated 14 February 2017 by the following statement:

*“There are currently no plans to phase out the remaining FM-licenses after 2022.”*²⁷

Thus, according to the Norwegian Government, the only local radio broadcasting licences to be phased out as a result of the decision to migrate from FM to DAB radio technology are the 23 licences for commercial local radio broadcasting on the FM network in the four biggest cities in Norway, *i.e.* Oslo, Bergen, Trondheim and Stavanger.²⁸

Against this background, the Authority considers that the migration from FM to DAB radio technology in Norway cannot be considered to be comparable to the *Mickelsson* case. As a starting point, the Authority notes that no prohibition on the use of FM radios or on FM radio equipment has been introduced or is foreseen by the Norwegian Government. This lack of a prohibition distinguishes the situation in the present case from the situation that gave rise to the *Mickelsson* case and to additional case law concerning the scope of Article 11 EEA as regards restrictions on product use.²⁹

Moreover, given that the migration from FM to DAB radio technology will not have any impact on the 215 licences for local radio broadcasting on the FM network outside the four largest cities in Norway, the Authority considers that the migration will not render FM radios or FM broadcasting equipment useless. Consequently, the migration from FM to DAB radio technology does not impede the access of such products to the Norwegian market.

The Authority appreciates that the 215 licences will expire in 2022. Nevertheless, the migration from FM to DAB radio technology does not encompass any decision as to whether these FM licences will be phased out or renewed after 31 December 2021. Given the uncertainty regarding the continuation of FM radio broadcasting, the Authority considers that the potential effects of the migration in terms of market access for FM radios and for FM broadcasting equipment is, at this point in time, too hypothetical and uncertain to conclude that the migration from FM to DAB radio technology constitutes a restriction pursuant to Article 11 EEA.

Subsequent to the submission of the Directorate’s pre-closure letter, the complainant provided further arguments in support of its contention that the migration constitutes a restriction on the free movement of goods.³⁰ The complainant contended that the closure of the FM in the largest cities does render FM car radios practically useless, as those 23

²⁶ Case C-142/05 *Åklageren v Percy Mickelsson, Joakim Roos*, EU:C:2009:4273.

²⁷ See page 7 of the letter.

²⁸ See letter from the Norwegian Government of 18 March 2016 (Doc No 798704).

²⁹ See Cases C-110/05 *Commission v Italian Republic*, EU:C:2009:519 and C-265/05 *Commission v Portuguese Republic*, EU:C:2008:2245.

³⁰ See letters of 10 May 2017 (Doc No 877062) and of 13 December 2017 (Doc No 888592).

licences account for 48% of total radio listening time, the four largest cities represent 30% of the total population and the so-called niche or community local radio stations in the big cities do not represent a real listening alternative on the FM band. Furthermore, the complainant submitted that, in practice, there is a prohibition on using new FM radio broadcasting equipment, as the remaining 215 local radio licences have been prolonged on existing terms and those radio stations are severely deterred from investing in or purchasing FM radio broadcasting equipment.

However, as noted by the Norwegian Government in its letter of 2 November 2017, the decision not to renew FM licence only applies to commercial radio stations in direct competition with national broadcasters in the big cities and there is no *de facto* prohibition against FM car radios. Moreover, the coverage on local FM has improved after the national broadcasters switched off their transmissions and the Norwegian Communications Authority will allow technical improvements provided that the total population coverage does not increase.

In light of this, the additional arguments submitted on behalf of the complainant thus do not alter the Authority's view that the migration from FM to DAB radio technology does not constitute a restriction on the free movement of goods under Article 11 EEA.

Justification and proportionality

Even if the migration from FM to DAB radio technology were to be considered as a restriction under Article 11 EEA, the Authority considers that such a restriction would be justified on the basis of the case-law on mandatory requirements established by the CJEU and the EFTA Court. In this regard, the Authority notes that the migration from FM to DAB radio technology is non-discriminatory, *i.e.* foreign and domestic products are treated equally.

As regards the justification for the alleged restrictions on the free movement of FM radios and FM broadcasting equipment, the Norwegian Government has, in its letter dated 18 March 2016, indicated that the primary goals of the migration are to promote greater competition and ensure increased media pluralism and increased content. By increasing the number of radio channels significantly, *i.e.* on the national level from two to between 40 and 60, and on the local level from a handful to between 15 and 20 in each region, the migration from FM to DAB radio technology is likely to increase competition and diversity.

In the Authority's view, the Norwegian Government's reasoning for migrating from FM to DAB radio technology is valid and is likely to bring positive developments for the market players and for the consumers.³¹ Against this background, the Authority considers that any potential restriction on the free movement of FM radios and FM broadcasting equipment can be justified on grounds of media diversity as established by the CJEU in its case-law,³² on the condition that the migration from FM to DAB radio technology can be considered to be proportionate.

In this regard, the question is whether the migration from FM to DAB radio technology is suitable and necessary. In other words, it must be demonstrated that the migration is fit for purpose and that its objectives could not have been achieved through other means which would be less restrictive for the free movement of goods.

In terms of suitability, the Authority observes that the migration will multiply the number of potential radio channels in Norway, which in turn is likely to lead to increased

³¹ See in that context the Commission's communication from 2003, discussed in Chapter 3.1.

³² See e.g. Case C-368/95 *Vereinigte Familiapress Zeitungsverlags-und Vertriebs GmbH and Heinrich Bauer Verlag*, EU:C:1997:3689, paragraph 18.

competition between market players. Ultimately, enhancing competition is expected to result in more and better content being made available to the consumers.

In its letter of 10 May 2017, the complainant argued that the migration is not suitable to meet the goal of media diversity as it does not fulfil the goal of increased competition, since the radio stations are still owned by the same operators, even though the number of radio stations has increased. In response, the Norwegian Government stated in its letter of 2 November 2017 that competition will rather be tougher than before because of the increased capacity and opportunities for establishing new radio channels. According to the Norwegian Government, figures show that five national radio channels have lost market shares due to increased competition on DAB and that digitisation has also considerably reduced the dominant position of NRK.

In this regard, the Authority agrees with the Norwegian Government and maintains the view that the migration from FM to DAB radio technology is suitable to meet the objectives of media diversity.

With regard to the necessity of the measure, the Norwegian Government, in its letter of 18 March 2016, explained that due to the high cost of maintaining the FM network and the relatively high cost of establishing the DAB network, the digitisation of radio technology in Norway is dependent upon a swift and coordinated plan for analogue switch-off where all national broadcasters and major commercial local radios end their transmissions on the FM network at the same time. In its letter dated 14 February 2017, the Norwegian Government stated that for NRK and the two national commercial broadcasters, the additional costs incurred for simultaneous transmission on both the FM and DAB networks would amount to some 200 million NOK per year until 2019. Beyond 2019, the national FM networks would require extensive maintenance and upgrade, which would increase costs considerably.

In addition, the Norwegian Government indicated in its letter of 18 March 2016 that the DAB technology is much more cost-effective than FM technology, because it decreases the number of transmitters necessary to cover the Norwegian territory from 3000 to 952.

By letter of 10 May 2017, the complainant submitted that the measure is not necessary since allowing local radio stations (also in the big cities) to utilise the FM band and to potentially invest in radio broadcasting equipment to improve their services does not represent a cost to the national broadcasting entities or the Norwegian Government. However, as noted by the Norwegian Government in the letter of 2 November 2017, although continued broadcasting on FM does not represent a direct cost to the Norwegian State or the national broadcasters, it would have harmful effects on the market and the possibilities of digitisation.

Against this background and also taking into account that the migration from FM to DAB radio technology does not comprise any prohibition on the use of FM radios or FM broadcasting equipment, the Authority considers that, even if the migration were to be considered a restriction on the free movement of goods, it would be justified and proportionate, as it could not have been achieved by other (less restrictive) means.

In the light of the above, and concerning the issues raised by the complainant, the Authority considers that the measures taken by the Norwegian Government in respect of migration from FM to DAB radio technology in Norway do not appear to infringe Article 11 EEA.

3.5 Freedom of establishment

As a starting point, the Authority notes that entrants to the national Norwegian radio broadcasting market will be required to broadcast on the DAB network, in order to obtain a licence to broadcast radio.³³

In its letter dated 18 March 2016, the Norwegian Government argued that the migration from FM to DAB radio technology will greatly improve the possibility of market entry for commercial radio stations. Additional information was provided in the Norwegian Government's letter of 24 June 2016,³⁴ in which it was explained that under the FM licensing regime, the only possibility for market entrants was to purchase one of the existing licences or to wait for the publication of a tender which took place at 7-year intervals. The commercial radio licences in the FM network were awarded on the basis of "beauty contests" which, according to the Norwegian Government, were criticised by the industry for being unpredictable. Upon migration, all radio stations that have entered into an agreement with the holder of the facility licences will automatically be assigned a broadcasting licence. In order to prevent the holders of the facility licences from abusing their position as gatekeepers, the facility licensees are under an obligation to give radio broadcasters access to the DAB network on non-discriminatory terms.

In terms of costs, the Norwegian Government indicated in its letter dated 14 February 2017, that, although DAB transmitters are more expensive to buy than FM transmitters, it has to be taken into consideration that DAB transmitters can deliver several different channels, whereas an FM transmitter can only deliver one channel. Consequently, in cities where it is possible for several channels to share the same DAB transmitter, the transmission costs will normally be lower for DAB than FM.

On the whole, the Norwegian Government takes the view that the migration from FM to DAB radio technology will reduce the barriers for establishment of new radio broadcasters in Norway.³⁵

Nonetheless, it is recalled that, according to established case law of the CJEU and the EFTA Court, "*all measures which prohibit, impede or render less attractive the freedom of establishment must be regarded as obstacles*".³⁶ The Authority considers that it cannot be excluded that the requirement to broadcast on the DAB network rather than on the FM network may make it less attractive for certain radio broadcasters to establish a business in Norway. The migration from FM to DAB radio technology is thus considered as falling within the scope of the freedom of establishment.

The fact that the migration does not seem to discriminate, *i.e.* that it requires all broadcasters, regardless of their nationality, to broadcast on the DAB network, does not bring the measure outside the scope of Article 31 EEA.

³³ In its letter dated 14 February 2017, the Norwegian Government stated that outside the big cities, the Norwegian Media Authority will award FM licences to market entrants provided that there is no local radio broadcaster in the area or that there is available capacity in the local FM network.

³⁴ Doc No 809809.

³⁵ By way of example, the Norwegian Government has in its letter dated 14 February 2017, referred to the market entry of the London-based radio *Panjab Radio* broadcasting in the local radio block.

³⁶ Case C-55/94 *Gebhard*, EU:C:1995:411, paragraph 37, and Case C-442/02 *Caixabank France*, EU:C:2004:586, paragraph 11.

However, it is the Authority's assessment that the potential restriction under Article 31 EEA, can be justified for the same overriding reasons as set out above in relation to the free movement of goods.³⁷

In the light of the above, and concerning the issues raised by the complainant, the Authority considers that the measures taken by the Norwegian Government in respect of migration from FM to DAB radio technology in Norway do not appear to be incompatible with the obligations set out in Article 31 EEA.

As noted above, the complainant submitted additional comments following the Directorate's pre-closure letter. However, the Authority does not consider that these additional arguments alter the conclusions set out in the Directorate's pre-closure letter of 13 March 2017.

There are, therefore, no grounds for pursuing this case further.

This decision does not preclude the Authority from opening a new case on this or a related issue in light of further developments.

HAS ADOPTED THIS DECISION:

The complaint case arising from an alleged failure by Norway to comply with Articles 11 and 31 of the EEA Agreement, is hereby closed.

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Frank J. Büchel
College Member
Responsible College Member

Högni Kristjánsson
College Member

Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

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

³⁷ It is established case law that restrictions of the right of establishment can be justified on other grounds than those foreseen in 33 EEA (corresponding to Article 52 TFEU). See e.g. Case C-55/94 *Gebhard*, EU:1995:4165, paragraph 37.