

Brussels, 4 November 2019
Case No: 84329
Document No: 1094489

EFTA SURVEILLANCE
AUTHORITY

Ministry of Labour and Social Affairs
Postboks 8019 Dep
0030 Oslo
Norway

Dear Sir/Madam,

Subject: Request for Information concerning the exportability of Norwegian sickness benefits, work assessment allowance and care allowance

On 28 October 2019, during a press conference, Anniken Haugli, the Norwegian Minister of Labour and Social Affairs, stated that the rights of Norwegian residents to export three types of social benefits i.e. sickness benefit (*sykepengen*), work assessment allowance (*arbeidsavklaringspenge*) and care allowance (*pleiepenge*) to other EEA countries had been wrongfully applied in Norway since 2012. During the press conference, it was stated that, to date, they had become aware of some 2400 decisions concerning Norwegian residents which had been made without taking due account of EEA law. Moreover, there had been 48 cases which resulted in criminal convictions, including 36 cases of imprisonment, the longest being eight months, because of linked prosecutions regarding social security fraud and reimbursement claims from the Norwegian Labour and Welfare Administration (NAV).

Following the press conference of 28 October 2019, the Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) has opened an own initiative case to examine Norwegian legislation and practice regarding the application of Article 21 of Regulation 883/2004¹.

For the purpose of this examination, the Directorate requests the Norwegian Government to provide the following information and explanations:

1. Please explain what measures have now been taken by Norway to ensure the correct application of Regulation 883/2004 in the future and in respect of ongoing cases.
2. Please explain how Norway plans to identify those individuals who have been affected by the wrongful application by the Norwegian Authorities of Regulation 883/2004, and potentially its predecessor.
3. Please explain how Norway intends to ensure that it provides appropriate remedies for those individuals who have suffered as a result of the wrongful application of EEA law in relation to the export of benefits.

¹ Decision of the EEA Joint Committee No. 76 /2011 of 1 July 2011, which entered into force in the EEA on 1 June 2012.

4. Please confirm whether the practice and underlying national legislation in breach of Article 21 of Regulation 883/2004 only concern the following types of benefits: sickness benefit (*sykepenger*), work assessment allowance (*arbeidsavklaringspenger*) and care allowance (*pleiepenger*).
5. According to Minister Haugli, the incorrect practice started in June 2012, when Regulation 883/2004 entered into force in the EEA EFTA States. Does the Norwegian Government consider that the principle of exportability of sickness benefits in cash provided for in Regulation 1408/71, the previous version of Regulation 883/2004, fundamentally differs from the current legal situation, if so, please explain the reasoning behind this.
6. In the context of a complaint case (Case No 77886) concerning the exportability of a work assessment allowance for a person wanting to move residence from Norway to Sweden, representatives of the Authority received the following reassurances from the Norwegian Government concerning potentially conflicting national legal provisions when they met to discuss the case in 2017²:

“The representatives of the Authority noticed that the Norwegian National Insurance Act (NIA) only foresees the possibility to export the WAA for persons, staying abroad (“persons may also be granted WAA during a limited period of residence abroad” ...), but not for people, who have their residence abroad. The representatives of the Authority asked the representatives of the Norwegian Government how they think this provision could be conciliated with Article 21.1 of Regulation 883/2004 on the export of cash benefits, covering both stay and residence abroad. The representatives of the Norwegian Government explained that the Norwegian legislation does cover both situations as Regulation 883/2004 applies even though the NIA does not cover all its provisions. When a Norwegian legal provision is in conflict with Regulation 883/2004, Regulation 883/2004 prevails as there is a horizontal Norwegian law implementing Regulation 883/2004.”

7. In light of the above, please explain why national rules securing priority of EEA law, such as Section 1(3) of the national regulation transposing Regulation 883/2004,³ or alternatively the priority rule in Section 2 of the EEA Act,⁴ were not applied to the cases discussed at the press conference?
8. Please provide details on and specific references to national legislation including the National Insurance Act or any other linked acts or regulations, as well as any relevant circulars (*rundskriv*), which are in conflict with Article 21 of Regulation 883/2004 as incorporated into Norwegian legal order.
9. Please describe and explain the nature of the restrictions on the exportability of cash benefits in the relevant Norwegian legislation. In particular, the Norwegian Government is invited to elaborate on:
 - a. The substantive content of the criteria linked to *stay in Norway*, and notably to which extent the criterion limits *stay* or *residence* in other EEA States. Please explain the differences, if any, between “stay” and “residence” situations.

² Page 13 of the follow-up letter to the package meeting of 2017, Doc No 878916, accessible under the following hyperlink: <http://www.eftasurv.int/da/DocumentDirectAction/outputDocument?docId=4392>

³ Section 1(3) of FOR-2012-06-22-585

⁴ Section 2 of the EEA Act, LOV-1992-11-27-109

- b. Whether there is in fact a prior authorisation mechanism in place for such *stays* in other EEA States pursuant to the applicable national legislation and/or relevant administrative practice.
 - c. Whether there is in fact a prior authorisation mechanism in place for *residence* in other EEA States pursuant to the applicable national legislation and/or relevant administrative practice.
10. Can Norway please explain the system of penalties for breaches of social security regulations, in particular those related to Article 21 of Regulation 883/2004. Can Norway confirm that any penalties imposed on individuals comply with the principle of proportionality.
11. The Norwegian Government is invited to elaborate on and confirm whether EEA nationals, including permanent residents and their family members have been expelled due to non-compliance with the above mentioned provisions of the National Insurance Act and/ or subsequent criminal proceedings against them in that context. Please also explain how the requirements of Article 28 of Directive 2004/38/EC were fulfilled in those cases.

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *4 December 2019*. The Authority may revert with additional questions as the case progresses.

Yours faithfully,

Gunnar Thor Pétursson
Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Gunnar Thor Petursson.