

Case No: 75406
Document No: 1088217
Decision No: 092/19/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 11 December 2019

to bring a matter against Norway before the EFTA Court in accordance with Article 31(2) of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice

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(2) thereof,

Whereas:

By letter of 14 May 2014 (Doc No 707765), the Authority informed the Norwegian Government that it had opened an own-initiative case regarding EEA nationality and/or residency requirements in Norwegian company law. In that letter, the Authority invited Norway to provide clarifications as concerns EEA nationality and/or residency requirements of natural persons contained in certain Norwegian acts.

After having examined the clarifications provided by the Norwegian Government ¹, on 4 November 2015 (Doc No 773674), the Authority issued a letter of formal notice to Norway. In this letter, the Authority, *inter alia*, concluded that, by maintaining in force EEA nationality and/or residency requirements such as Sections 6-11 and 6-36 of the Act on Public Limited Companies ², Section 6-11 of the Act on Private Limited Companies ³ and Sections 7-5 and 8-4(5) of the Financial Undertakings Act ⁴, Norway had failed to fulfil its obligations arising from Articles 31 and 28 of the EEA Agreement, Article 2 of the Eleventh Directive ⁵ and Article 1(1) of Regulation (EU) No 492/2011 of the European Parliament and of

¹ By letters of 6 June 2014 (ref. 14/5408-2, Doc No 726094) and 11 December 2014 (ref. 14/5408-4, Doc No 733928), as well as at the package meeting on 16 and 17 October 2014 (see the follow-up letter to the package meeting, Doc No 726564).

² Act of 13 June 1997 no. 45 (*Allmennaksjeloven*).

³ Act of 13 June 1997 no. 44 (*Aksjeloven*).

⁴ Act of 10 April 2015 no. 17 (*Finansforetaksloven*), entered into force on 1 January 2016.

⁵ Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (OJ L 395, 30.12.1989, p. 36), incorporated at point 8 of Annex XXII of the EEA Agreement.

the Council of 5 April 2011 *on freedom of movement for workers within the Union*⁶.

The case was discussed at the package meeting in Oslo on 12 and 13 November 2015⁷.

The reply to the letter of formal notice was submitted by the Norwegian Government by letter of 18 February 2016 (ref. 14/5408, Doc No 793636). In its reply, the Norwegian Government stated that it appreciated the Authority's view and that it would assess if and, to the extent necessary, how Norwegian law needs to be amended.

Having received no further information concerning potential legislative amendments, on 12 October 2016 (Doc No 816628), the Authority issued a reasoned opinion to Norway where it maintained its conclusions set out in the letter of formal notice.

The case was discussed at the package meeting in Norway on 27 and 28 October 2016⁸.

On 13 February 2017, Norway replied to the reasoned opinion, stating that the Norwegian Government would assess and propose alternative legislation (ref. 14/5408- 21, Doc No 841508).

At the package meeting in Norway on 26 and 27 October 2017⁹, the representatives of the Norwegian Government informed the Authority that a decision had been taken in the Government to amend the relevant legislation, *i. e.* to remove the EEA nationality and/or residency requirements, but that an alternative legislation had not been drafted yet, as different frameworks were being assessed involving several ministries. The representatives of the Norwegian Government informed the Authority that they hoped the draft legislation could be ready in spring 2018.

At the package meeting on 25 and 26 October 2018¹⁰, the representatives of the Norwegian Government informed the Authority that the drafting of the legislative proposals necessary to comply with the reasoned opinion was being finalised and the proposals would be published for public consultation in November or December 2018, with the aim of submitting them to the Parliament in Spring 2019. In February 2019, the Ministry informed the Authority that the work on the draft proposals was still ongoing with the aim to publish it for public consultation before Easter 2019 (Doc No 1053463).

In the most recent letter from Norway of 22 August 2019 (ref. 14/5408-36, Doc No 1084567), it was indicated that the legislative proposals would still contain certain residency requirements.

This was confirmed at the package meeting in Norway on 24 and 25 October 2019¹¹.

⁶ Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 *on freedom of movement for workers within the Union* (OJ L 141, 27.5.2011, p. 1, EEA Supplement No 54, 27.9.2012, p. 299), incorporated at point 2 of Annex V of the EEA Agreement by Decision of the EEA Joint Committee No 52/2012 of 30 March 2012 (OJ L 207, 2.8.2012, p. 32).

⁷ See the follow-up letter to the package meeting, Doc No 781498.

⁸ See the follow-up letter to the package meeting, Doc No 824382.

⁹ See the follow-up letter to the package meeting, Doc No 878916.

¹⁰ See the follow-up letter to the package meeting, Doc No 1052976.

¹¹ See the follow-up letter to the package meeting, Doc No 1096584.

The Authority therefore considers that the matter should be brought before the EFTA Court.

HAS ADOPTED THIS DECISION:

1. Proceedings should be commenced before the EFTA Court to seek a declaration that by maintaining in force EEA nationality and/or residency requirements such as the requirements laid down in Sections 6-11 and 6-36 of the Act on Public Limited Companies, Section 6-11 of the Act on Private Limited Companies and Sections 7-5 and 8-4(5) of the Financial Undertakings Act, Norway has failed to fulfil its obligations arising from Articles 31 and 28 of the EEA Agreement, Article 2 of the Eleventh Directive and Article 1(1) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 *on freedom of movement for workers within the Union*.
2. The Director of Legal and Executive Affairs is instructed to seize the EFTA Court, liaising with the Internal Market Affairs Directorate and subject to control by the competent College Member, and to represent the EFTA Surveillance Authority before the EFTA Court in these proceedings.

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Frank J. Büchel
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.*