

Case No: 72376
Document No: 1095594
Decision No: 091/19/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 18 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 dated 21 September 2012 (Doc No 646171), the EFTA Surveillance Authority (“the Authority”) informed the Norwegian Government that it had opened an own initiative case regarding the applicable legislation in Norway to authorisations and reimbursements for medical treatment in other EEA States. On 14 May 2014, after assessing the issue, the Authority issued a letter of formal notice (Doc No 692126, hereinafter referred to as the “initial letter of formal notice”) to Norway, concerning the Norwegian criteria for access to in-patient treatment in other EEA State. In that letter, the Authority concluded that Norway had failed to comply with its obligation under Article 36 of the Agreement on the European Economic Area (“the EEA Agreement”) and/or Article 20 of Regulation 883/2004/EC on the coordination of social security systems.

The Norwegian Government replied to the initial letter of formal notice on 18 August 2014 (ref. 12/5292, Doc No 718533). In that letter, the Government stated *inter alia* that it would resolve a particular issue concerning reimbursement for in-patient treatments by amending Regulation No 1466/2010 on reimbursement of healthcare services received in another EEA State. Afterward, the case was discussed at the package meeting in Norway in October 2014. Despite the adoption of changes brought by the new legislation in Norway, the Authority was still of the view that, in several respects, the Norwegian criteria for access to in-patient treatment abroad were not in line with EEA law.

On 1 September 2015, the Patients’ Rights Directive 2011/24/EU entered into force for the EEA EFTA States. The case was discussed again during the package meeting in Norway in November 2015. Subsequently, the Authority issued a supplementary letter of formal notice to Norway (Doc No 772442) in which the Authority’s outstanding issues with the domestic legislation were

outlined, in light also of the Patients' Rights Directive. The Norwegian Government replied to this letter on 3 May 2016 (Doc No 803414). The case was further discussed at the package meeting in Norway in November 2016.

On 20 September 2017, the Authority delivered a reasoned opinion to Norway (Doc No 828764). Whereas the Authority welcomed several legislative changes in Norway, in particular with a view to implementing the Patients' Rights Directive, the Authority took the position that Norwegian legislation was still not compatible with EEA law. Therefore, the Authority concluded in the reasoned opinion that, by maintaining in force provisions such as Section 2-1b(2) and (5) of the Act of 2 July 1999 No 63 relating to Patients' Rights and Sections 2, 3 and 6 of the Regulation of 1 December 2000 No 1208 concerning prioritisation of health care services and the right to treatment abroad, Norway, had failed to fulfil its obligations arising from Article 20 of Regulation 883/2004, Directive 2011/24 and Article 36 EEA.

By letter dated 19 January 2018 (ref. 16/155, Doc No 894509), the Norwegian Government sent the Authority its responses to the reasoned opinion, in which it informed the Authority that it did not share the Authority's view and maintained the position that the disputed legislation in Norway was compatible with EEA law. Nonetheless, in that letter the Government also stated that it was considering measures which could be taken in order to accommodate the Authority's concerns. The Authority's Internal Market Affairs Directorate sent a letter commenting on that letter on 26 February 2018, welcoming potential legislative proposals aimed at remedying the breach identified in the Authority's reasoned opinion, and inviting the Norwegian Government to inform it of any further steps which it had taken or intended to take (Doc No 899934).

In two subsequent letters, dated 11 April (ref. 16/155, Doc No 908910) and 15 June 2018 (ref. 16/155, Doc No 918787), the Norwegian Government maintained its previous position, i.e. that the Norwegian legislation was in line with EEA law, while also providing the Authority with information on legislative proposals presented to Parliament, aimed at remedying the breach identified in the Authority's reasoned opinion. The proposal was adopted by Parliament on 17 December 2019 but has not yet entered into force. Furthermore, Regulation of 1 December 2000 No 1208 concerning prioritisation of health care services and the right to treatment abroad as well as relevant administrative circulars will also have to be amended in order to fully remedy the breach.

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 to the effect that Norway, by maintaining in force provisions such as Section 2-1b(2) and (5) of the Act of 2 July 1999 No 63 relating to Patients' Rights and Sections 2, 3 and 6 of the Regulation of 1 December 2000 No 1208 concerning prioritisation of health care services and the right to treatment abroad, has failed to fulfil its obligations arising from Article 20 of Regulation 883/2004, Directive 2011/24 and Article 36 EEA.
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,
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This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.