

Case No: 86180
Document No: 1397742
Decision No: 138/23/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 11 October 2023

closing a complaint case against the Norwegian Government concerning alleged
boycott of Wizz Air

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

On 22 December 2020, the EFTA Surveillance Authority (“the Authority”) received a complaint against the Norwegian Government. This complaint alleged that several public and private entities in Norway had taken actions to boycott Wizz Air’s domestic flight routes in Norway in breach of the provisions of the Agreement on the European Economic Area (“the EEA Agreement”), that is Article 31 on the right to establishment and Article 36 on the freedom to provide services.

Article 5(1)(a) of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”) confers on the Authority a mandate to ensure the fulfilment by the EFTA States of their obligations under the EEA Agreement. To this end, Article 5(2) SCA empowers the Authority to adopt a range of measures.

According to settled case-law of the EFTA Court, the Authority enjoys wide discretion in deciding whether and how to pursue proceedings against an EFTA State. The Authority alone is competent to decide whether it is appropriate to bring proceedings under Article 31 SCA for failure to fulfil the obligations under the EEA Agreement.¹

Furthermore, any infringement proceedings brought by the Authority under Article 31 SCA should be concentrated so as to ensure the greatest impact for the functioning of the EEA Agreement, bearing in mind the resources of the Authority and having regard to alternative enforcement mechanisms available at national level.²

¹ See, for example, Order of the EFTA Court of 23 October 2013 in Case E-2/13, *Bentzen Transport v EFTA Surveillance Authority*, EFTA Ct. Rep [2013] p. 802, point 40, and further, the Order of the EFTA Court in Case E-13/10 *Aleris Ungplan AS v ESA* [2011] EFTA Ct. Rep. 3.

² As the European Commission has stated: “*Certain categories of cases can often be satisfactorily dealt with by other, more appropriate mechanisms at EU and national level. This applies in particular to individual cases of incorrect application not raising issues of wider principle, where*

2 The Authority's action concerning the complaint

On 19 February 2021 (Doc No 1175298) the Internal Market Affairs Directorate of the EFTA Surveillance Authority ("the Directorate") requested information from the Norwegian Government on the issue raised by the complaint.

The Norwegian Government replied by a letter dated 19 April 2021 (Doc No 1195325).

The case was discussed at the 2021 package meeting in Norway. In a follow-up letter to the package meeting, dated 26 November 2021 (Doc No 1247323), the Authority requested some further information on the case.

In its reply to the Authority's follow-up letter to the package meeting, dated 22 December 2021 (Doc No 1259884), the Norwegian Government provided the Authority with the requested information.

The case was again discussed at the 2022 package meeting in Norway, with the Authority requesting further information on the case in a follow-up letter dated 15 December 2022 (Doc No 1325668).

The Norwegian Government provided the Authority with the requested information in letters dated 27 January 2023 (Doc No 1348197) and 17 March 2023 (Doc No 1361692).

3 The Authority's assessment

On account of the Authority's limited resources and increased workload, and in an effort to pursue EEA law matters of principle in a timely manner, the Authority needs to exercise a strict prioritisation of the issues it examines. Such prioritisation aims to ensure clarity for complainants in line with the principle of good administration, and to increase the Authority's efficiency and effectiveness in discharging its duties under the EEA Agreement and SCA.

After examination of the case, the Authority is of the view that it is not possible to allocate the resources required to pursue an infringement procedure. In the light of the above, this case cannot be prioritised.

By letter of 11 July 2023 (Doc No 1382930), 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 Internal Market Affairs Directorate's assessment of the complaint or present any new information by 31 August 2023.

The complainant did not reply to that letter.

It is emphasised that the Authority's view as set out in the present Decision is a decision made upon policy grounds alone. It does not constitute any indication that the Authority considers that either national law or administrative practice are in compliance with EEA law.

there is insufficient evidence of a general practice, of a problem of compliance of national legislation with EU law or of a systematic failure to comply with EU law. In such cases, if there is effective legal protection available, the Commission will, as a general rule, direct complainants in this context to the national level." See "EU law: Better results through better application" (2017/C 18/02) paragraph 3, sub para 9. The same principles are applicable *mutatis mutandis* to the EEA legal order.

Moreover, the present Decision in no way restricts the Authority's future actions concerning the legal, administrative and/or factual issues arising in or from the case closed.

4 Conclusion

In the context outlined above, the Authority concludes, in the exercise of its discretion pursuant to Article 31 SCA, not to pursue the case further.

HAS ADOPTED THIS DECISION:

The complaint case against the Norwegian Government concerning alleged boycott of Wizz Air, is hereby closed.

For the EFTA Surveillance Authority

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President

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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.