

Case No: 93011
Document No: 1537245
Decision No: 094/25/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 25 June 2025

closing a complaint case against Norway on exit taxation

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 17 October 2024, the EFTA Surveillance Authority (“the Authority”) received a complaint against Norway concerning its exit tax rules. In a letter dated 18 February 2025, the complainant’s law firm provided additional comments to the initial complaint regarding the incompatibility of the exit taxation rules with the EEA Agreement.

According to the complaint, the exit tax rules outlined in the Norwegian Tax Act¹ on unrealised capital gains for natural persons are in breach of the provisions of the EEA Agreement on the free movement of persons (Article 28), freedom of establishment (Article 31), and free movement of capital (Article 40). In this regard, the complaint particularly highlights that, according to existing rules, the tax levy is calculated on the value of shares at the time when the natural person relocates to another EEA State, without the possibility to re-evaluate the value of the shares if the person defers payment of the tax obligation and disposes of the shares at a later time, even if the value of the representative shares has decreased significantly.

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 EEA 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 EEA EFTA State. The

¹ Lov 26. mars 1999 nr. 14 om skatt av formue og inntekt (skatteloven), hereby “the Tax Act”.

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.²

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.³

2 The Authority's assessment

The Authority takes the view that, in terms of prioritisation and efficiency, it is in principle better to avoid having several cases open on the same legal issue or subject matter.

Accordingly, it is appropriate to rationalise the number of cases by designating one case for each issue as a "lead case" and designating any other cases covering the same issue as "linked cases" and closing the latter.

This approach to case handling is, furthermore, intended to ensure that relevant allegations from all complainants and/or stakeholders relating to the same legal issue or issues are assessed collectively in an efficient and effective manner by handling them in the lead case.

The Authority has ascertained that the issues raised in the present case are the same as those addressed in Case No 93706.

The Internal Market Affairs Directorate ("the Directorate") has informed the complainant of its intention to propose to the Authority that the case relating to their complaint be closed, and the legal issues therein taken forward under Case No 93706 as a lead case.

The complainant was invited by letter to submit any observations on the Directorate's assessment or present any pertinent new information by 16 March 2025. The complainant was also notified that the information set out in their complaints and other correspondence would be used by the Authority as evidence to establish the factual and legal issues addressed in the lead case. Moreover, the complainant was informed by the Directorate as to how they could submit additional evidence in the future.

The complainant did not reply to that letter.

3 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.

² 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.

³ 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 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.

HAS ADOPTED THIS DECISION:

The complaint case against Norway on exit taxation, is hereby closed.

For the EFTA Surveillance Authority,

For Arne Røksund
President

Stefan Barriga
Responsible College Member

Árni Páll Árnason
College Member

Melpo-Menie Joséphidès
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Stefan Barriga, Melpo-Menie Josephides.