

EFTA SURVEILLANCE AUTHORITY DECISION

of 7 July 2021

closing a number of complaint cases against the Norwegian Government concerning administrative practices restricting import into Norway of stray dogs

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:

Between 20 June and 7 November 2018, the EFTA Surveillance Authority ('the Authority') received a number of complaints against the Norwegian Government (Docs No 920825 (Case 82283), No 919011 (Case 82324), No 924285 (Case 82405), No 1037330 (Case 82770) and No 1013769 (Case 82771)) (together referred to as 'the complaints') stating that the following administrative practices adopted by the Norwegian Food Safety Authority ('NFSA') since 1 July 2018 (noted on the NFSA's website and Facebook pages)¹ ('the administrative practices') are contrary to EEA law:

- a natural person bringing a stray dog into Norway must provide documentary evidence that that dog has been under his/her ownership and control for at least six months before entering Norway ('the administrative practice concerning minimum duration of ownership'); and
- stray dogs are no longer considered as animals that may be traded under the EEA rules on commercial movement of dogs ('the administrative practice prohibiting trade of stray dogs').

1 Correspondence

By letters dated between 11 July and 4 December 2018 (Docs No 923568 and No 923577 (Case 82283); No 923638 and No 923646 (Case 82324); No 925107 and No 925122 (Case 82405); No 1040737 and No 1040738 (Case 82770), and No 1040743 and No 1040744 (Case 82771)), the Authority's Internal Market Affairs Directorate ('Directorate') acknowledged receipt of the respective complaints.

¹ https://www.mattilsynet.no/language/english/animals/travelling_with_pets/requirements_for_the_import_of_stray_dogs_have_been_tightened_up.32294

<https://www.ntbinfo.no/pressemelding/mattilsynet-stanser-muligheten-til-a-importere-gatehunder?publisherId=10773547&releasId=17393207>

<https://www.facebook.com/notes/mattilsynet-reise-med-kj%C3%A6ledyr/gatehunder-og-smitterisiko/1690448310992848/>

https://www.facebook.com/mattilsynetreisemeddyr/?hc_ref=ARQFtjhi_eBEXzX4K4zjz8XI0SPN%20M47j6qs06em5cu4H8q1HYZqbAV7G6ROMBfenGq0&fref=nf

By letters dated between 11 July and 4 December 2018 (Docs No 923664 (Cases 82283 and 82324), No 925129 (Case 82405), No 1040739 (Case 82770) and No 1040745 (Case 82771)), the Directorate informed the Norwegian Government of the Directorate's receipt of the complaints and requested it to specify the legal basis for the administrative practices.

By letter dated 31 August 2018 (Doc No 928374) ('letter of 31 August 2018'), the Norwegian Government responded that, in its view, the following EEA Acts ('the relevant EEA legislation') do not apply to stray dogs:

- Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 *on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003*,² as adapted to the Agreement on the European Economic Area ('EEA Agreement') by the specific and the sectoral adaptations referred to in Annex I to that Agreement ('Regulation (EU) No 576/2013'); and
- Council Directive 92/65/EEC of 13 July 1992 *laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC*,³ as amended and as adapted to the EEA Agreement by the specific and the sectoral adaptations referred to in Annex I to that Agreement ('Directive 92/65/EEC').

Regarding the administrative practice concerning minimum duration of ownership, the Norwegian Government maintained that Regulation (EU) No 576/2013 does not regulate the non-commercial movement into a State of the European Economic Area ('EEA State') of a newly acquired pet animal of unknown or dubious origin which has not been under the owner's care for a certain duration prior to the non-commercial movement and thereby carries a higher risk to animal or public health than a kept animal. The Norwegian Government further maintained that the Regulation applies only where the non-commercial movement of a pet animal both to and from a country relates (for both movements) to the movement of the same pet owner.

Regarding the administrative practice prohibiting trade of stray dogs, the Norwegian Government maintained that stray dogs could not meet certain requirements for commercial movement stipulated under Directive 92/65/EEC and should therefore be considered outside the scope of that Directive. The requirements in question included that the animal be kept under controlled conditions for a minimum length of time prior to commercial movement to ensure that it does not constitute a health risk and the inclusion of certain information in the certificate accompanying the animal during the commercial movement.

² The Act referred to at Point 10 of Part 1.1 of Chapter I of Annex I to the EEA Agreement, incorporated into Norwegian legislation by the Regulation of 19 May 2016 No 542 concerning non-commercial movement of pets ('Forskrift 19. mai 2016 nr. 542 om ikke-kommersiell forflytning av kjæledyr'). Notwithstanding the repeal of Regulation (EU) No 576/2013 from 21 April 2021 under Article 270(2) of the Act referred to at Point 13. of Part 1.1. of Annex I to the EEA Agreement (Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 *on transmissible animal diseases and amending and repealing certain acts in the area of animal health*), Article 277 of that Act states that Regulation (EU) No 576/2013 shall continue to apply until 21 April 2026 in respect of non-commercial movement of pet animals.

³ The Act previously referred to at Point 9 of Part 4.1 and Point 15 of Part 8.1 of Chapter I of Annex I to the EEA Agreement, implemented in Norway by the Regulation of 20 February 2004 No 464 on animal health conditions for the import and export of live animals, semen, eggs and embryos ('Forskrift 20. februar 2016 nr. 464 om dyrehelsemessige vilkår for import og eksport av levende pattedyr, fugler, reptiler, amfibier og bier'). Directive 92/65/EEC was repealed and replaced with effect from 21 April 2021 by the Act referred to at Point 13. of Part 1.1. of Annex I to the EEA Agreement (Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 *on transmissible animal diseases and amending and repealing certain acts in the area of animal health*).

By pre-Article 31 letter dated 4 April 2019 (Doc No 1050167), the Directorate informed the Norwegian Government of its preliminary conclusion that the administrative practices concerning minimum duration of ownership and prohibiting trade of stray dogs were without legal basis and constituted an infringement of, respectively, Article 4 of Regulation (EU) No 576/2013 and Article 3 of Directive 92/65/EEC.

In its letter, the Directorate stated that, on the basis of information published on the NFSA's website,⁴ it understood the references to "stray dog" and "street dog" in the Norwegian Government's letter of 31 August 2018 to be synonymous and to mean:

- ownerless dogs outside of Norway, whether from dog shelters, relocation units or feral/roving dogs;
- former ownerless dogs from "foster homes" outside of Norway intended for further adoption or dissemination; and
- dogs with an unknown background not falling in either of the above categories.

Regarding the administrative practice concerning minimum duration of ownership, the Directorate stated that, contrary to the Norwegian Government's position, the non-commercial movement into an EEA State of a newly acquired dog which has not been under the owner's care for a minimum duration prior to the non-commercial movement is within the scope of Regulation (EU) No 576/2013. That Regulation does not stipulate any minimum duration of ownership of the animal prior to non-commercial movement or require that the non-commercial movement of a pet animal both to and from a country relate (for both movements) to the movement of the same owner.

Regarding the administrative practice prohibiting trade of stray dogs, the Directorate stated that the fact that it may not be possible, in the case of certain stray dogs, to ascertain information required to be included in the accompanying certificate did not constitute a legal basis for prohibiting the commercial movement of stray dogs in general. The Directorate noted that the NFSA may verify the health status of individual dogs and their compliance with relevant EEA legislative requirements (including the provision of correct information in the accompanying health certificate) by undertaking checks where non-compliance is suspected and taking administrative measures where it is established. Safeguard measures might also be adopted where the relevant legislative conditions are met. The Directorate further noted that Directive 92/65/EEC did not generally require that dogs be kept under controlled conditions for a minimum period prior to being traded to ensure that they do not constitute a health risk.

By letter dated 30 August 2019 (Docs No 1085414 and No 1085416), the Norwegian Government responded to the Directorate's pre-Article 31 letter stating that, in its view,

⁴ https://www.mattilsynet.no/language/english/animals/travelling_with_pets/tougher_requirements_for_the_import_of_stray_cats_and_dogs.32294 stated:

'What is a stray dog?

Stray dog is a term that covers several kinds of dog, including:

- *Dogs from shelters*
- *Ownerless dogs*
- *Dogs with an unknown background.*

https://www.mattilsynet.no/dyr_og_dyrehold/import_og_eksport_av_dyr/import_av_kjaledyr_og_konkurranse_dyr/kommersiell_import_av_hund_katt_og_ilder/kommersiell_import_av_hund_katt_og_ilder_fra_tredjjetater_og_omraader_utenfor_eos.7250 stated:

'Street Dogs...

Animals covered by the following definition cannot be admitted commercially to Norway:

The term "street dogs" includes

- *foreign, ownerless dogs, including shelter dogs/dogs from relocation units*
- *former ownerless dogs from different types of "foster home" intended for further adoption/dissemination, free dogs*
- *stray and roving dogs.'*

stray dogs⁵ and former stray dogs from stray dog shelters were neither “*pet animals*” within the meaning of Regulation (EU) 576/2013⁶ nor within the scope of Directive 92/65/EEC due to their inferior health status and the higher potential risk of their spreading contagious diseases compared to kept animals. On this basis, the Norwegian Government concluded that the administrative practices did not constitute an infringement of the relevant EEA legislation and that the legal basis for the administrative practices was, in the absence of relevant EEA harmonised legislation, national law.

At the package meeting which took place on 25 October 2019, the Authority informed the Norwegian Government that its letter dated 30 August 2019 had not altered the Authority’s view that the relevant administrative practices were without legal basis and infringed the relevant EEA legislation.

In the follow up letter to the package meeting dated 25 November 2019 (Doc Nos 1096584 and 1098257), the Authority invited the Norwegian Government to explore alternative solutions for addressing health risks associated with cross-border movement of stray dogs into Norway which have a legal basis.

By letter dated 27 February 2020 (Doc No 1117451), the Norwegian Government reiterated its opinion that there is no harmonised EEA legislation regulating stray dogs, that the legal basis for the administrative practices was national law and that it did not therefore consider it necessary to consider alternative solutions for addressing health risks associated with cross-border movement of stray dogs into Norway.

2 Assessment

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) of the SCA empowers the Authority to take decisions in cases provided for in that Agreement and in the EEA Agreement.

According to the settled case law of the EFTA Court, the Authority enjoys a wide discretion in deciding how, and whether to, pursue proceedings against an EEA 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.⁷

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 available resources of the Authority.

It is the Authority’s view that the subject matter of the complaints, being limited to stray and former stray dogs only, does not justify the resources required to pursue infringement

⁵ Page 1 of the letter dated 30 August 2019 (Doc No 1085414):

“There is no statutory definition of the term “stray dog”. In our interpretation, we have used the OIEs definition with some adjustments connected to health issues....Stray dog means any dog not under direct control by a person or not prevented from roaming. There are three types of stray dog: - free-roaming owned dog not under direct control or restriction at a particular time; - free-roaming dog with no owner; - feral dog: domestic dog that has reverted to the wild state and is no longer directly dependent upon humans for successful reproduction.”

⁶ Article 3(b) of Regulation (EU) No 576/2013 states that: ‘*pet animal*’ means an animal of a species listed in Annex I accompanying its owner or an authorised person during non-commercial movement, and which remains for the duration of such non-commercial movement under the responsibility of the owner or the authorised person;’

⁷ 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.

proceedings in the relevant cases and that such resources should rather be redirected to cases with greater significance for the functioning of the EEA Agreement.

In view of these considerations, and notwithstanding the preliminary conclusion of the Internal Market Affairs Directorate that the administrative practices are contrary to EEA law, the Authority has decided, in exercise of its discretion under Article 31 of the SCA, to deprioritise the relevant cases.

For the avoidance of doubt, the present decision does not constitute, and should not be interpreted as, a conclusion that the administrative practices are compliant with the relevant EEA legislation.

3 Conclusion

In light of the above, the Authority concludes that it should not pursue the relevant cases further.

By letter dated 31 May 2021 (Doc No 1198351), the Internal Market Affairs Directorate informed each of the complainants of its intention to propose to the Authority that the relevant case be closed. The complainants were invited to submit any observations on the Directorate's assessment of the relevant complaint or present any new information by 25 June 2021.

None of the complainants replied to that letter.

There are, therefore, no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

The complaint cases against the Norwegian Government concerning administrative practices restricting import into Norway of stray dogs are hereby closed.

Done at Brussels,

For the EFTA Surveillance Authority

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President

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This document has been electronically authenticated by Bente Angell-Hansen, Melpo-Menie Josephides.