

Cases No: 77973 and 85119
Document No: 1466043
Decision No: 113/24/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 10 July 2024

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

concerning Norway's breach of

Articles 22 and 23 of Directive 2013/36/EU, as amended by Directive 2019/878; and Articles 57, 58 and 59 of Directive 2009/138/EC

by maintaining in force provisions of national law and an administrative practice that are contrary to those provisions

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 ("SCA"), in particular Article 31(2) thereof,

Whereas:

In the procedure leading up to this Decision, the EFTA Surveillance Authority ("the Authority") has for its internal purposes pursued two separate cases against Norway concerning Norway's implementation and application of EEA rules on acquisitions and increases of qualifying holdings in credit institutions, regulated by Directive 2013/36/EU¹ as amended by Directive 2019/878,² and insurance undertakings, regulated by Directive

¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 *on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms*, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), incorporated into the EEA Agreement at point 14 of Annex IX to the Agreement by Decision of the EEA Joint Committee No 79/2019 of 29 March 2019. No specific adaptations are included for the relevant provisions within the EEA. The compliance date was 1 January 2020.

² Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU *as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures* (OJ L 150, 7.6.2019, p. 253), incorporated into the EEA Agreement at point 14 of Annex IX to the Agreement by Decision of the EEA Joint Committee No 383/2021 of 10 December 2021. No specific adaptations are included for the relevant provisions within the EEA. The compliance date was 11 December 2021. Subsequent references to Directive 2013/36/EU should be understood as referring to the Directive as amended by Directive 2019/878.

2009/138/EC.³ For the sake of good order and efficiency the two cases have been joined in the present Decision. However, this background makes it appropriate to account for the procedural steps taken separately.

Implementation of EEA rules

On 30 September 2015,⁴ the Authority informed Norway that it had opened an own initiative case and requested information on Norway's practices regarding the assessment of proposed acquisitions and increases of qualifying holdings in the financial sector.

Norway replied on 4 November 2015⁵ and 7 January 2016,⁶ providing information about its practices regarding insurance undertakings and credit institutions.

On 12 February 2016,⁷ the Authority requested Norway to provide further information on provisions of national law setting out the criteria for suitability assessment of acquirers of qualifying holdings. On 21 March 2016,⁸ Norway replied to the Authority's request for information.

By a letter of formal notice of 15 March 2017,⁹ the Authority concluded that Articles 19a of Directive 2006/48/EC,¹⁰ as amended by Directive 2007/44/EC, and Article 59 of Directive 2009/138/EC were incorrectly implemented into national law regulating credit institutions and insurance undertakings.

On 15 June 2017,¹¹ Norway submitted its reply where it recognised that an adjusted wording of the national law would better reflect the meaning of the EEA law and noted that that the matter would be considered.

On 28 September 2022,¹² the Authority issued a supplementary letter of formal notice. There, the Authority reiterated its position and found that Articles 22(8), 23(1) and (2) of Directive 2013/36/EU and Articles 58(7), 59(1) and (2) of Directive 2009/138/EC were incorrectly implemented into national law regulating credit institutions and insurance undertakings.

On 28 November 2022,¹³ Norway replied to the supplementary letter of formal notice. Norway again recognised that national law could reflect the directives more precisely and committed to drafting a legislative proposal to address the matter. Norway stated that it

³ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 *on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast)* (OJ L 335, 17.12.2009, p. 1), incorporated into the EEA Agreement at point 1 of Annex IX to the Agreement by Decision of the EEA Joint Committee No 78/2011 of 1 July 2011. No specific adaptations are included for the relevant provisions within the EEA. The compliance date was 1 December 2012.

⁴ Document No 774340.

⁵ Document No 779208.

⁶ Document No 787074.

⁷ Document No 792236.

⁸ Document No 798227.

⁹ Document No 817335.

¹⁰ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 *relating to the taking up and pursuit of the business of credit institutions (recast)* (OJ L 177, 30.6.2006, p. 1). The act was referred to at point 14 of Annex IX of the EEA Agreement by Decision of the EEA Joint Committee No 65/2008, which entered into force on 1 November 2010. Repealed by Directive 2013/36/EU.

¹¹ Document No 861399, page 2.

¹² Document No 1303403.

¹³ Document No 1332215.

would keep the Authority updated and that the aim was to send a proposal for public consultation during the winter of 2022-2023.

On 19 July 2023,¹⁴ having received no updates from Norway, the Authority issued a reasoned opinion. The Authority concluded that, by maintaining in force Section 6-3(2), in particular its first sentence and provisions (c) and (d) thereof, of the Act of 10 April 2015 No 17 on financial Institutions and financial groups, Norway failed to fulfil its obligations under Articles 22(8), 23(1) and (2) of Directive 2013/36/EU and Articles 58(7), 59(1) and (2) of Directive 2009/138/EC. Pursuant to Article 31(2) SCA, the Authority required Norway to take the measures necessary to comply with the reasoned opinion within two months of its receipt. This deadline expired on 19 September 2023.

On 1 November 2023, Norway replied to the reasoned opinion, informing the Authority that a bill of law was being prepared which would amend the relevant provisions of national law.¹⁵ On 17 June 2024, the Norwegian Parliament adopted the bill of law which entered into force on 1 July 2024.¹⁶

Incorrect application of EEA rules

On 25 August 2020,¹⁷ after receiving a complaint, the Authority requested information on administrative practices relating to the prudential assessment of acquisitions and increases of qualifying holdings.

By letter of 26 October 2020,¹⁸ Norway replied to the request for information.

The Authority issued a letter of formal notice on 28 September 2022.¹⁹ The Authority found that by maintaining in force an administrative practice which requires the approval of national authorities for the acquisition of 25% or more of voting rights or capital in insurance undertakings and credit institutions and which, save for limited exceptions, results in the rejection of an application with no assessment of suitability being carried out, Norway had failed to fulfil its obligations under Articles 57-59 of Directive 2009/138/EC and Articles 22-23 of Directive 2013/36/EU.

Norway replied on 4 January 2023, stating that it did not agree with the Authority's position. Norway argued that EEA law does not preclude the attachment of conditions to authorisations of financial undertakings. Norway maintained that its dispersed ownership policy relates to financial undertakings as such and does not concern the suitability of shareholders.²⁰

On 19 July 2023, the Authority issued a reasoned opinion, maintaining its conclusions in the letter of formal notice.²¹ Pursuant to Article 31(2) SCA, the Authority required Norway to take the measures necessary to comply with that reasoned opinion within two months of its receipt. This deadline expired on 19 September 2023.

¹⁴ Document No 1384696.

¹⁵ Document No 1409947.

¹⁶ See Innst. 365 L (2023–2024), jf. Prop. 74 LS (2023–2024) - vedtak til lov om endringer i finansmarkedslovgivningen (samleproposisjon) (available at <https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Beslutninger/Lovvedtak/2023-2024/vedtak-202324-092>). Decision on entry into force is available at <https://www.regjeringen.no/no/aktuelt/offisielt-fra-statsrad-25-juni-2024/id3046459>.

¹⁷ Document No 1143769.

¹⁸ Document No 1160009.

¹⁹ Document No 1308730.

²⁰ Document No 1340360.

²¹ Document No 1376243.

On 1 November 2023 Norway replied to the reasoned opinion, maintaining its position that the administrative practice does not breach the EEA Agreement.²²

The reasoned opinions concerning the incorrect implementation²³ and incorrect application²⁴ of relevant EEA law were both issued on the same date, and both concern the same legal provisions. While Norway has taken steps to address the incorrect implementation, those steps were not completed when the deadline given in the reasoned opinion expired. Bringing both matters before the EFTA Court will show the whole extent of Norway's practices with respect to the application of the relevant EEA rules.

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:
 - i) by maintaining in force Section 6-3(2), in particular its first sentence and provisions (c) and (d) thereof, of the Act of 10 April 2015 No 17 on financial institutions and financial groups, Norway has failed to fulfil its obligations under Articles 22(8), 23(1) and (2) of Directive 2013/36/EU and Articles 58(7), 59(1) and (2) of Directive 2009/138/EC;
 - ii) by maintaining in force an administrative practice which requires the approval of national authorities for the acquisition of 25% or more of voting rights or capital in credit institutions and insurance undertakings and which, save in the case of limited exceptions, results in the rejection of an application with no consideration of its merits, Norway has failed to fulfil its obligations under Articles 22 and 23 of Directive 2013/36/EU, as amended by Directive 2019/878, and Articles 57 to 59 of Directive 2009/138/EC.
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 responsible College Member, and to represent the EFTA Surveillance Authority before the EFTA Court in these proceedings.

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 Arni Pall Arnason, Melpo-Menie Josephides.

²² Document No 1409953.

²³ Document No 1384696.

²⁴ Document No 1376243.