

Case No: 82155
Document No: 1263264
Decision No: 202/22/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 16 November 2022

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, due to the failure by Norway to fulfil its obligations under Articles 3(1) and 7(1) of Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the single European sky

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 of 31 May 2018,¹ the EFTA Surveillance Authority (hereinafter 'the Authority') informed the Norwegian Government that it had opened an own-initiative case regarding provision of data link services (hereinafter 'DLS') in Norway according to *Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the single European sky* (hereinafter 'the Regulation').²

According to Article 3(1) of the Regulation, the air traffic service (ATS) provider designated by the EEA EFTA State shall ensure that DLS are implemented within the airspace under the responsibility of that State. According to Article 7(1) of the Regulation, the EEA EFTA State shall ensure that air-ground communications services meeting certain requirements of the Regulation are made available to operators for aircraft flying within the airspace under their responsibility. Article 15 of the Regulation, as amended by Regulation (EU) 2015/310, sets out that ATS providers and the EEA EFTA State must fulfil the obligations stemming from Articles 3(1) and 7(1) respectively as from 5 February 2018.

With reference to the deadline set out in Article 15 of the Regulation, the Authority invited Norway to provide information on the status for implementation and a timeframe for when it expected the air traffic service provider designated by Norway to implement DLS.

After having examined the information provided by the Norwegian Government in its letter of 2 July 2018,³ and in its subsequent letters of 26 April 2019 and 19 November 2019,⁴

¹ [Document 916182](#).

² The act referred to in point 66wg of Annex XIII to the EEA Agreement.

³ [Document 921657](#).

⁴ Letter of 26 April 2018, [Document 1066396](#), and status update of 19 November 2019, [Document 1098342](#), received following a discussion concerning the case during the package meeting in Oslo in October 2019.

the Authority issued a letter of formal notice to Norway on 10 June 2020.⁵ In that letter, the Authority, concluded that Norway had failed to fulfil its obligations under Article 3(1) of the Regulation by not providing and operating DLS to operators of aircraft flying within Norwegian airspace.

The reply to the letter of formal notice was submitted by the Norwegian Government by letter of 12 October 2020.⁶ In its reply, the Norwegian Government stated that it accepted the Authority's assessment that it was in breach of its obligations under Article 3(1) of the Regulation, and further accepted that the same facts constituted an infringement of Article 7(1) of the Regulation. While accepting the facts as outlined by the Authority in the letter of formal notice, the Norwegian Government then commented on the infringements arising therefrom, and, in particular, the reasons for the lack of implementation of DLS in Norway. Finally, the Norwegian Government indicated to the Authority that a new air traffic management system, in which the DLS would be integrated, would become operational mid-2023.

After having examined the reasons for the delayed implementation of DLS in Norway, on 10 November 2021, the Authority issued a reasoned opinion to Norway where it maintained its assessment set out in the letter of formal notice and concluded that, by not providing and operating DLS by 5 February 2018, Norway has failed to fulfil its obligations under Articles 3(1) and 7(1) of the Regulation.⁷

On 15 February 2022, the Norwegian Government replied to the reasoned opinion.⁸ In its letter, the Norwegian Government set out technical challenges, unreasonable costs and safety concerns as reasons for not implementing DLS by the deadline set out in the Regulation. As regards the status for implementation of DLS in Norway, the Norwegian Government indicated a further delay of the full implementation of DLS in Norway, partly due to the Covid-19 pandemic, indicating that DLS will be implemented at the earliest in 2025.

The Authority is of the view that the arguments put forward by the Norwegian Government cannot justify its failure to fulfil its EEA obligations under the Regulation. Subsequently, the Authority maintains its conclusion and 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 Norway, by not providing and operating data link services by 5 February 2018, has failed to fulfil its obligations under Articles 3(1) and 7(1) of Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the single European sky.
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

Arne Røksund
President

Stefan Barriga
College Member

Árni Páll Árnason
Responsible College Member

⁵ Decision No 053/20/COL – LFN of 10 June 2020 ([Document 1123257](#)).

⁶ [Document 1157797](#).

⁷ Decision No 256/21/COL – RDO of 10 November 2021 ([Document 1158815](#)).

⁸ [Document 1270285](#).

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

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