Brussels, 26 May 2021
Case No: 85895
Document No: 1199663
Decision No: 072/21/COL

ESA | EFTA Surveillance Authority

Ministry of Justice and Public Security
Postboks 8005 Dep
N-0030 Oslo
Norway

Dear Sir or Madam,

Subject: Letter of formal notice to Norway concerning Norwegian restrictions upon entry on the basis of COVID-19

1 Introduction

By a request for information letter dated 24 November 2020 (Doc No 1164017), the EFTA Surveillance Authority ("the Authority") informed the Norwegian Government that it had opened an own initiative case to investigate the application of the Regulations Amending the Covid-19 Regulations in Norway of 6 November 2020.[1] In particular, the Authority drew attention to Section 5 of the Regulations, dealing with conditions for entry quarantine for those arriving into Norway. The Authority has since received a large volume of correspondence from individuals and economic operators directly affected by these and subsequently enacted rules, which Norway has consistently defended as justified on the grounds of public health protection.

On 28 January 2021, Norway adopted additional measures restricting the entry of foreigners (including EEA nationals) into Norway on the grounds of public health associated with COVID-19.[2] On 1 February 2021, these additional measures were repealed and replaced with a new suite of measures, which amended the Regulations relating to entry restrictions for foreign nationals out of concern for public health.[3] These two changes effectively supplanted the previous system, with a new system, whereby all non-Norwegian nationals who are not covered by one of the exceptions in the Regulations, would be refused entry into Norwegian territory. However, individuals admitted into Norwegian territory would continue to be covered by the pre-existing rules on entry quarantine.

On 27 February 2021, the Norwegian Government issued a circular revising the rules for entry to Norway.[4] This circular revised the means by which EEA nationals could demonstrate that they were resident in Norway in order to benefit from the exception from the ban on entering Norwegian territory. The previous rules – under Circular G-04/2020 –

[1] *Forskrift om endring i covid-19-forskriften.* Determined by Royal Decree no. 6 November 2020 pursuant to Act no. 55 of 5 August 1994 on protection against infectious diseases § 4-3, § 4-3a and § 7-12. The amending regulations entered into force on 9 November 2020.

[2] G-03/2021 – *Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen*, available at: https://www.regjeringen.no/contentassets/40fe2b78fecb45108d72d18ee6224f07/revidert-ikrafttredelsesrundskriv-om-innreiserestriksjoner-s2901-iii.pdf

[3] *Midlertidig lov om innreiserestriksjoner for utlendinger av hensyn til folkehelsen*, updated on 1 February 2021; see G-04/2021 – *Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen*, available at: https://www.regjeringen.no/contentassets/59133294ed314dd9806c6f835efd5652/revidert-ikrafttredelsesrundskriv-om-innreiserestriksjoner-3.2.21.pdf

[4] G-07/2021 – *Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen*, available at: https://www.regjeringen.no/contentassets/65effc1cc28747579c7104afbf308cfb/revidert-ikrafttredelsesrundskriv-om-innreiserestriksjoner-27.02.21.pdf

defined residence in Norway («*bosatt i Norge*») as covering both those EEA nationals who were registered on the National Population Register, and/or those who had reported their move to the National Population Register. However, Circular G-07/2021 removed the possibility for persons who had reported their move to the National Population Register to be considered as resident in Norway.

On 17 March 2021, via a revised circular, the Norwegian Government announced additional restrictions on entry to Norway.[5] The revised rules provide that those who travel on 'unnecessary' leisure trips abroad must stay in quarantine hotels when they return to Norway for at least three days, until a negative COVID-19 test result is presented. In addition, existing entry restrictions were extended, which means that only those EEA nationals resident in Norway will be allowed to enter the country.[6]

In light of the changes outlined above, the Directorate addressed three additional requests for information to Norway. The Norwegian Government responded to these letters in turn (see 'correspondence', below), including a recent letter of 21 May 2021, setting out significant new changes to the rules in question.

As noted, Norway has consistently defended the various measures adopted as justified on the grounds of public health protection. As a preliminary observation, the Authority notes that while restrictions upon freedom of movement are not prohibited *per se*, they must be suitable for the fulfilment of the objective pursued, proportionate to that objective, and non-discriminatory.

After having examined the relevant legislation and regulations, as well as the explanations received from Norway, the Authority has now reached the conclusion that by maintaining in force the current rules, Norway has failed to fulfil its obligations arising from EEA law, including, *inter alia*, Articles 4, 28 and 36 of the EEA Agreement, Articles 5, 6, 7, 8, 27, 28, 29, 30 and 31 of Directive 2004/38/EC,[7] and Articles 9 and 16 of Directive 2006/123/EC as will be elaborated upon in the following.

2 Correspondence

By a letter dated 24 November 2020 (Doc No 1164017), the Authority informed the Norwegian Government that it had opened an own initiative case, and invited the Norwegian Government to submit its observations on the issues raised in the letter by 20 December 2020. This time-line was extended until 4 January 2021.

The Norwegian Government submitted its reply on 4 January 2021 (Doc No 1171412, ref. 20/5816 - TRR).

In light of the subsequent changes to the Regulations, on 12 February 2021, the Authority addressed a second letter to Norway, wherein it requested additional information concerning the new regime (Doc No 1179284). The Norwegian Government was invited to submit its observations on the issues raised in the letter by 12 March 2021.

[5] G-08/2021 – *Revidert Rudskriv om Karantenehotell*, available at https://www.regjeringen.no/contentassets/862c40a247734dd6bd4bb9b1d3ad15b7/rundskriv-om-karantenehotell.pdf

[6] In principle, this regime was only intended to subsist until 6 April; however, it should be noted that, to the Authority's knowledge, these restrictions have since been extended.

[7] The Act referred to at point 1 of Annex V to the EEA Agreement (Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) as adapted to the EEA Agreement by protocol 1 thereto.

The Norwegian Government replied to this letter on 10 March 2021 (Doc No 1187032, ref. 20/5816 - KKO).

In light of continuing changes to the Regulations and other legal provisions relating to entry to Norway imposed on the basis of the COVID-19 pandemic, on 26 March 2021, the Authority addressed a third letter to Norway, wherein it requested additional information concerning the effects of – and exceptions to – the revised rules (Doc No 1190825). The Norwegian Government was invited to submit its observations on the issues raised in the letter by 26 April 2021.

The Norwegian Government submitted its reply on 22 April 2021 (Doc No 1196218, ref. 20/5816 - KKO).

In order to clarify the Norwegian Government's responses in its reply of 22 April 2021, and in light of evolving issues relating to the rules imposed on the basis of COVID-19, on 3 May 2021, the Authority addressed a fourth letter to Norway, wherein it requested additional information (Doc No 1196735). The Norwegian Government was invited to submit its observations on the issues raised in the letter, as well as any other information it deemed relevant, by 21 May 2021.

The Norwegian Government submitted its reply on 21 May 2021 (Doc No 1202636, ref. 20/5816 - KKO).

2.1 The Norwegian Government's Reply of 21 May 2021

In its Reply of 21 May 2021, the Norwegian Government informed the Authority that it was in the process of updating the rules applicable in respect of entry to Norway on the one hand and quarantine measures for those persons permitted to enter Norway, on the other. While the letter makes it plain that the decision to amend the rules was taken on 20 May 2021,[8] and while the rules themselves are referred to as the new rules 'as of 21 May 2021' in the letter and the relevant Circular,[9] the Authority has observed that repeated publications by the Norwegian Government on its website and elsewhere make it clear that these rules will in fact be applied as of 27 May 2021,[10] while correspondence received from members of the public as late as 25 May 2021 informed the Authority that, as a matter of practice, the new rules were still not being applied as of this date, while the existing rules are clearly affecting a large number of individuals.

Norway's letter of 21 May 2021 explained that the regime in relation to entry restrictions would be amended, providing that *"foreign nationals [including EEA nationals] who are de facto residing in Norway, and can provide sufficient documentation that this is the case, will be allowed re-entry to Norway."* The letter provided details on how *de facto* residence might be demonstrated, including via documents demonstrating home rental or ownership. The Norwegian Government acknowledged that the previous measures had been maintained for a longer duration than had previously been foreseen, and that they could work against the interests of persons who were resident in Norway, but unregistered there. Rather than an outright entry ban for such individuals, the letter indicated that discretion would rest with border control officials, who would examine documents submitted, and make decisions concerning who might be admitted. This

[8] Reply of the Norwegian Government of 21 May 2021 (Doc No 1202636, ref. 20/5816 - KKO), p. 2.

[9] G-15/2021 – *Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen*, available at https://www.regjeringen.no/contentassets/d5c9e74d360743889a7bc9febe0022ed/g-15-2021-revidert-rundskriv-om-ikrafttredelse-av-forskrift-om-innreiserestriksjoner-for-utlendinger-av-hensyn-til-folkehelsen.pdf

[10] See, *inter alia*, «Endringer i karantenehotellordningen og lettelser i innreiserestriksjonene» (Pressemelding), 21 May 2021, available at https://www.regjeringen.no/no/aktuelt/endringer-i-karantenehotellordningen-og-lettelser-i-innreiserestriksjonene/id2850375/

measure entails in concrete terms that persons who are resident in Norway, but who have D-numbers rather than National Identification Numbers, for example, may be permitted to enter Norway, provided that they display to the satisfaction of a border control official, documentation attesting to the fact that they are resident in Norway. Such persons were previously entirely prohibited from entering Norway under the previous rules.

However, Norway's letter further makes it clear that *"foreign nationals [including EEA nationals] who wish to move to Norway, will not be granted entry."*

In addition to the above, Norway's letter made it clear that the pre-existing distinction between "unnecessary" and "necessary" journeys would be abolished in relation to subsequent quarantine obligations. Rather, the obligation to stay in a quarantine hotel will instead depend on the infection situation in the state of departure and the results of COVID-19 tests undertaken by the traveller after his or her entry to Norway (taken 3 or 7 days after entry, depending on the infection situation in the state of departure). The required stay will range from 0 days (no obligation to stay in a quarantine hotel) to 7 days. This provision entails that persons undertaking journeys previously deemed "unnecessary" will no longer necessarily be required to quarantine for long periods in hotels.

The Authority observes that the changes proposed by the new rules represent a welcome relaxation of some of the restrictions set out by the previous regime. However, the Authority reserves the right to further evaluate the new measures. As a general note, and particularly in view of the regular updates and changes to the domestic rules and administrative arrangements in question, the Authority will continue to review the Norwegian rules as they evolve and may supplement this letter of formal notice if it considers this necessary. For the purposes of the present letter, the Authority underlines the importance of offering its evaluation of the rules as they presently stand, particularly in light of the great number of individuals directly affected by the rules in question.

3 Relevant national law[11]

3.1 The Population Registration Act[12]

Section 1.2 ("Purpose") of the Population Registration Act (*Lov om folkeregistrering (folkeregisterloven)*) provides:

"The purpose of the Act is to facilitate the secure, correct and efficient registration of basic personal information about the individual, including which persons are resident in Norway. The law shall contribute to the information in the National Register being able to be used for government tasks and public administration, research, statistics and to take care of basic societal needs."

Section 2.2 ("Population Number") provides:

"Upon first registration in the National Register, a person who is resident or born in Norway is assigned a birth number. Birth number can also be assigned to a Norwegian citizen residing abroad. For other persons, a d-number may be assigned in accordance with rules laid down in regulations."

Section 3.1 ("What information can be registered") provides:

"The following information can be registered for each individual birth number or d-number:

[11] The translations from Norwegian in this section are those of the Authority.
[12] LOV-2016-12-09-88, available at https://lovdata.no/dokument/NL/lov/2016-12-09-88

a) name
b) date of birth
c) sex
d) addresses
e) electronic contact information
f) contact information for estate
g) place of birth
h) citizenship
in) parents
j) spouse or registered partner
k) marital status
l) children
m) parental responsibility
n) adoption
o) family number
p) connection to the Sami Parliament's electoral roll
q) Sami languages
r) guardianship
s) confirmed future power of attorney
t) residency status
u) foreign identification number
v) the identification number of the immigration authorities
w) registration status
x) date of death"

3.2 Temporary law on entry restrictions for foreigners for reasons of public health[13]

Section 1 ("Purpose and scope of the Act") provides:

"The law does not apply to Norwegian citizens. The law also does not apply to citizens from another Nordic country who are resident in Norway."

Section 2 ("Entry to Norway and expulsion") provides:

"Foreigners only have the right to enter if
a) the alien is resident in Norway with a residence permit or right of residence under the Immigration Act…"

Section 5 ("Exceptions to other rules") provides:

"Chapters IV and V of the Public Administration Act do not apply to decisions on expulsion pursuant to this Act. The rules on case processing in the Immigration Act, Chapter 11, and the Immigration Regulations, Chapter 17, apply only insofar as they can be reconciled with a simplified and rapid processing of decisions on expulsion. Decisions pursuant to section 3 of the Act on deferred entry for aliens who are granted a residence permit cannot be appealed.
The rules on free legal advice in the Immigration Act § 92 first paragraph do not apply to decisions on expulsion under this Act."

Section 6 ("Simplified case processing for decisions, justification, decision-making authority and appeal") provides:

[13] *Midlertidig lov om innreiserestriksjoner for utlendinger av hensyn til folkehelsen,* LOV-2020-06-19-83, available at https://lovdata.no/dokument/NL/lov/2020-06-19-83

"Decision on expulsion must be in writing. The justification can be short and standardized. The justification shall state the rules on which the decision is based. Information shall be provided on the right of appeal pursuant to the fourth paragraph.

Decisions can be oral if the decision is urgent or in writing for other reasons is not practically possible. When the decision is not in writing, information as mentioned in the first paragraph shall be provided. The decision-making body shall confirm the decision and its reasons in writing if the party so requests.

Decisions on expulsion can be appealed to the Directorate of Immigration, or to the Immigration Appeals Board if the Directorate of Immigration has made a decision in the first instance, in accordance with the rules in the Public Administration Act, Chapter VI."

Section 7 ("Expulsion") provides:

"An alien without a residence permit may be deported pursuant to the Immigration Act § 66 first paragraph letter a when the alien has grossly or repeatedly violated the entry restrictions in §§ 2 or 3, avoids the implementation of a decision which means that he or she must leave the realm, or has given significantly incorrect or obviously misleading information in connection with entry control or later processing of the issue of entry access under the law here."

3.3 Revised Circular on the entry into force of regulations on entry restrictions for foreigners for reasons of public health[14]

Section 2 of the Circular ("The main rule") provides:

"The temporary law on entry restrictions for foreigners for reasons of public health implies that all foreigners who are not covered by one of the exceptions in the law or regulations issued pursuant to the law, will be expelled without further assessment of the risk of infection they individually pose. Foreigners who are expelled must leave the Kingdom…"

3.4 Regulations on infection control measures etc. at the corona outbreak (Covid-19 regulations)[15]

Chapter 2, Section 4 of the Regulations ("Quarantine requirements") provides:

"The following persons are subject to a quarantine obligation:

a. Entry quarantine: persons arriving in Norway from an area with a quarantine obligation as stipulated in Appendix A shall be quarantined for 10 days…"

Chapter 2, Section 5 ("Requirements for those who are to be in entry quarantine or waiting quarantine") provides:

"Persons in entry quarantine must stay in quarantine hotels at the first point of arrival in the kingdom during the quarantine period.
The obligation to stay in quarantine hotels does not apply to persons who meet the conditions in § 4d [undergoing a rapid test at the border] and who:

a. upon entry can document that they are resident in Norway and that the trip was necessary, and who are staying in the home or other suitable accommodation where it is

[14] G-11/2021 - Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen, available at https://www.regjeringen.no/contentassets/59552a7456ac4dc9b96ce476c51a9ce5/revidert-ikrafttredelsesrundskriv-om-innreiserestriksjoner-26.03.21.pdf

[15] FOR-2020-03-27-470, available at https://lovdata.no/dokument/SF/forskrift/2020-03-27-470#KAPITTEL_2

possible to avoid close contact with others, with private rooms, private bathroom and own kitchen or food service

…

c. upon entry can document that they own or rent a permanent residence in Norway where they can carry out the quarantine in a separate housing unit with bedroom, bathroom and kitchen, and that the trip was necessary. A lease as mentioned in the first sentence must have a duration of at least six months

d. come to Norway to perform work or assignments and who on entry can document that the employer or client provides a suitable place of residence approved by the Norwegian Labour Inspection Authority according to chapter 2A , where it is possible to avoid close contact with others, with private rooms with TV and internet , private bathroom, and separate kitchen or food service…"

Chapter 2, Section 5b ("Duty to register upon entry and entry registration system") provides:

"Persons who arrive in Norway from an area that entails a quarantine obligation as stipulated in Appendix A must, before entering, register information that is necessary to ensure compliance with the quarantine obligation, to strengthen infection control work and contribute to better infection detection. Necessary information on:

a. name, date of birth, language, registered country of residence, contact information and birth number, D-number or any other unique identifier

b. the purpose of the trip abroad and the time of planned entry

…

g. place of residence during the quarantine period and any documentation

h. any exceptions from the entry quarantine..."

Chapter 2.6.b ("Exceptions from the entry quarantine for certain employees and contractors") provides:

"Those who more than once during a period of 15 days arrive in Norway from areas in Sweden or Finland with a quarantine obligation according to Appendix A, as part of travel between workplace and place of residence, are exempt from entry quarantine during working hours if they are tested in Norway for SARS -CoV-2

a. at least every seven days,

b. the first day they arrive in Norway, and then every seven days, if it is more than seven days since they were last tested in Norway for SARS-CoV-2, or

c. for day commuters from Sweden or Finland, cf. regulations on entry restrictions for foreigners for reasons of public health § 2 letter g: within 7 days after they were last tested in Sweden or Finland for SARS-CoV-2."

3.5 Revised Circular on Quarantine Hotels[16]

Section 2.a of the Circular provides:

"Persons who are resident in Norway, and who return to Norway from necessary travel abroad and who have only stayed within the EEA and the Schengen area during the last 10 days before entry, are exempt from the obligation to stay in quarantine hotels if during the quarantine period they stay in the home or another suitable place to stay. If they are staying in a place other than their own home, it is a requirement that in the place of residence, it is possible to avoid close contact with others, and that there is a private room, private bathroom and a private kitchen or food service. For persons who carry out the quarantine in their registered housing, such a requirement does not apply concerning private rooms, etc.

[16] G-13/2021 – *Revidert Rudskriv om Karantenehotell*, available at https://www.regjeringen.no/contentassets/09d300e165fc4a38b231a04f9e0ed6dc/revidert-rundskriv-om-karantenehotell-g13_2021-til-publisering_endelig.pdf

"Resident in Norway" means persons who are registered as resident in Norway. This can for example be documented by referring to information about registered residence from the tax authorities."

Section 5 of the Circular provides:

"A deductible has been set for the individuals who use the hotel. The deductible for employers or clients and private individuals over the age of 18 is NOK 500 per day."

4 Relevant EEA law

4.1 The EEA Agreement

Article 4 of the EEA Agreement provides:

"Within the scope of application of this Agreement…any discrimination on grounds of nationality shall be prohibited."

Article 28 provides:

"1. Freedom of movement for workers shall be secured among EC Member States and EFTA States.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of EC Member States and EFTA States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
(a) to accept offers of employment actually made;
(b) to move freely within the territory of EC Member States and EFTA States for this purpose;
(c) to stay in the territory of an EC Member State or an EFTA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
(d) to remain in the territory of an EC Member State or an EFTA State after having been employed there."

Article 33 provides:

"The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health."

Article 36 provides:

"1. Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended."

Article 39 provides:

"The provisions of Articles 30 and 32 to 34 shall apply to the matters covered by this Chapter [i.e. in respect of the freedom to provide services]."

4.2 Directive 2004/38/EC.[17]

Article 5 ('Right of Entry') of Directive 2004/38/EC reads:

"1. …Member States shall grant Nationals of EC Member States and EFTA States leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport."

Article 6 ('Right of residence for up to three months') provides:

"1. Nationals of EC Member States and EFTA States shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport."

Article 7 ('Right of residence for more than three months') provides:

"1. Nationals of EC Member States and EFTA States shall have the right of residence on the territory of another Member State for a period of longer than three months if they:
(a) are workers or self-employed persons in the host Member State; or
(b)have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or
(c)—are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and
—have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or
(d)are family members accompanying or joining a National of an EC Member State or EFTA State who satisfies the conditions referred to in points (a), (b) or (c)."

Article 8 ('Administrative formalities for Union citizens') provides:

"1. Without prejudice to Article 5(5), for periods of residence longer than three months, the host Member State may require Nationals of EC Member States and EFTA States to register with the relevant authorities.

2. The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be issued immediately, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions.

3. For the registration certificate to be issued, Member States may only require that

[17] The Act referred to at point 1 of Annex V to the EEA Agreement (Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) as adapted to the EEA Agreement by protocol 1 thereto.

Nationals of EC Member States and EFTA States to whom point (a) of Article 7(1) applies present a valid identity card or passport, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons;

Nationals of EC Member States and EFTA States to whom point (b) of Article 7(1) applies present a valid identity card or passport and provide proof that they satisfy the conditions laid down therein;

Nationals of EC Member States and EFTA States to whom point (c) of Article 7(1) applies present a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declaration or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to refer to any specific amount of resources."

Article 27 ('General principles') provides:

"1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Nationals of EC Member States and EFTA States and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends."

Article 28 ('Protection against expulsion') provides:

"1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security."

Article 29 ('Public health') provides:

"1. The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.

2. Diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory."

Article 30 ('Notification of decisions') provides:

"1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.

2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.

3. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State.

Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification."

Article 31 ('Procedural safeguards') provides:

"1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health."

4.3 Directive 2006/123/EC, The Services Directive

Article 4 ('Definitions') of the Services Directive provides:

"For the purposes of this Directive, the following definitions shall apply:

1) 'service' means any self-employed economic activity, normally provided for remuneration[…]

6) 'authorisation scheme' means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;

7) 'requirement' means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the […] States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive;

8) 'overriding reasons relating to the public interest' means reasons recognised as such in the case law […], including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives…"

Article 9 ('Authorisation Schemes') provides:

"1. EC Member States and EFTA States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:
(a) the authorisation scheme does not discriminate against the provider in question;
(b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;
(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective."

Article 16 ('Freedom to Provide Services') provides:
"1. EC Member States and EFTA States shall respect the right of providers to provide services in a State other than that in which they are established.
The State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

EC Member States and EFTA States shall not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the following principles:
(a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the State in which they are established;
(b)necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;
(c)proportionality: the requirement must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.

2. EC Member States and EFTA States may not restrict the freedom to provide services in the case of a provider established in another State by imposing any of the following requirements:
(a)an obligation on the provider to have an establishment in their territory;
(b)an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of EEA law;
(c)a ban on the provider setting up a certain form or type of infrastructure in their territory, including an office or chambers, which the provider needs in order to supply the services in question;
(d)the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;
(e)an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;
(f)requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided;
(g) restrictions on the freedom to provide the services referred to in Article 19…"

5 The Authority's assessment

5.1 Introduction

As noted above, while the Authority has taken cognisance of the fact that the rules in question will, as of 27 May 2021, change substantially, and while the Authority, in principle, welcomes any changes that amount to relaxations of the restrictions imposed by the current legal regime, the present analysis is principally confined to the regime prior to the changes described by the Norwegian Government in its Reply of 21 May 2021. As set out below, having examined the relevant legislation and regulations, as well as the explanations received from Norway in the correspondence outlined above, the Authority has reached the conclusion that by maintaining in force the current rules, Norway has failed to fulfil its obligations arising from EEA law, including, *inter alia*, Articles 4, 28 and 36 of the EEA Agreement, Articles 5, 6, 7, 8, 27, 28, 29, 30 and 31 of Directive 2004/38/EC, and Articles 9 and 16 of Directive 2006/123/EC. These failures relate to a number of distinct measures, which will be examined in turn.

5.2 Restrictions upon initial registration in Norway

Section 2 of the Temporary Law on entry restrictions for foreigners for reasons of public health ("Temporary Law") provides that foreigners – including EEA nationals and their family members – only have the right to enter Norwegian territory if they are resident in Norway with a residence permit or right of residence under the Immigration Act. The Temporary Law was enacted in June 2020, and has been updated a number of times since. In particular, on 28 January 2021, Norway adopted measures restricting the entry

of foreigners (including EEA nationals) into Norway.[18] On 1 February 2021, these additional measures were repealed and replaced with a new suite of measures, which amended the regulations further.[19] These two changes effectively entailed that all non-Norwegian nationals not covered by one of the exceptions in the relevant regulations would be refused entry into Norwegian territory.

While Norway's Letter of 21 May 2021 sets out a number of changes with respect to entry to Norway (including removing the distinction between 'necessary' and 'unnecessary' journeys and changing the assessment criteria for determining residence in Norway), the letter is clear that in respect of initial entry to and registration in Norway, the new rules do not involve any changes, as *"foreign nationals [including EEA nationals] who wish to move to Norway will not be granted entry."*[20]

The Authority notes that Article 5 of Directive 2004/38 provides that "*Member States shall grant Nationals of EC Member States and EFTA States leave to enter their territory with a valid identity card or passport.*" This provision, entitled 'Right of entry', entails that additional conditions may not be required by EEA States to permit entry to their territory.[21]

The right of entry into an EEA State is not absolute, and may be limited, *inter alia*, on the grounds of public health, as set out in Articles 27 and 29 of the Directive. However, any derogations to the free movement of persons must be interpreted restrictively.[22] The Norwegian measures, as they presently apply, effectively constitute an outright ban on EEA nationals entering Norway for the first time, for example to take up work, to seek work, to study, or to register themselves as resident in Norway.

This ban is justified by the Norwegian Government on public health grounds. The Authority observes that, while a State may opt for a high level of public health protection, the measures taken in order to secure this objective must be consistent. In this regard, when a measure constitutes a restriction on the fundamental freedoms of EEA law, it falls to the party imposing the restriction to demonstrate that the measure is suitable to achieve the legitimate objective pursued along with genuinely reflecting a concern to attain that aim in a consistent and systematic manner.[23] The Authority notes that many EEA nationals being denied access to Norway are, as a matter of fact, temporarily admitted to Norwegian territory, and placed in quarantine hotels pending their subsequent expulsion to their States of nationality. Given that these EEA nationals are thus placed in the same environment as other EEA nationals who arrive in Norway and who, under the domestic regulations, are permitted to enter Norwegian territory, it is not entirely clear how their subsequent expulsion reflects a genuine concern to attain the aim of public health protection in a consistent and systematic manner.

In any event, whether or not the measure in question is suitable for attaining the objective of protecting public health, it must also be assessed whether it goes beyond what is necessary in order to attain that objective. This implies that the chosen measure must not

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[18] G-03/2021 – *Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen*, available at: https://www.regjeringen.no/contentassets/40fe2b78fecb45108d72d18ee6224f07/revidert-ikrafttredelsesrundskriv-om-innreiserestriksjoner-s2901-iii.pdf

[19] *Midlertidig lov om innreiserestriksjoner for utlendinger av hensyn til folkehelsen*, updated on 1 February 2021; see G-04/2021 – Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen, available at: https://www.regjeringen.no/contentassets/59133294ed314dd9806c6f835efd5652/revidert-ikrafttredelsesrundskriv-om-innreiserestriksjoner-3.2.21.pdf

[20] Reply of the Norwegian Government of 21 May 2021 (Doc No 1202636, ref. 20/5816 - KKO), p. 2.

[21] Case C-157/03 *Commission v. Spain*, ECLI:EU:C:2005:225, paras 29 and 30.

[22] Case E-15/12 *Jan Anfinn Wahl*, [2013] EFTA Ct. Rep. 534, para 117.

[23] Case E-8/17 *Kristoffersen*, [2018] EFTA Ct. Rep. 383, para 118.

be capable of being replaced by an alternative measure that is equally useful but less restrictive to the fundamental freedoms of EEA law.[24]

As such, it must be determined whether, in accordance with the principle of proportionality, a less restrictive means would have been available to the Norwegian Government, in order to achieve the same outcome. In this regard, it should again be noted that other EEA nationals – as well as third-country nationals – arriving from the same origin countries, will be permitted to enter Norwegian territory, provided that they satisfy the criteria for one of the categories of persons permitted to enter Norway per Section 2 of the Temporary Law, in particular, if they are resident in Norway with a residence permit or right of residence under the Immigration Act. Given that such individuals are, in any event, under an obligation to quarantine – either at home, in another suitable residence, or in a quarantine hotel – it is not clear why EEA nationals arriving in Norway for the first time, or those who are non-residents, cannot do likewise. There is no apparent basis for determining that the latter group pose a greater risk to public health than the former. According to established case law, it is for the party that invokes a derogation from one of the fundamental freedoms to show in each individual case that its rules are necessary and proportionate to attain the aim pursued.[25] Norway has not demonstrated that EEA nationals arriving in Norway for the first time from the same origin countries as those who are arriving in Norway, but who are also registered as resident in Norway, pose a greater degree of risk. As such, the prohibition on entry for this group does not comply with the principle of proportionality.

The Authority notes, again, that Norway's letter of 21 May 2021 is clear that in respect of initial entry to and registration in Norway, the new rules described therein do not involve any changes, as *"foreign nationals [including EEA nationals] who wish to move to Norway will not be granted entry."*[26] As such, the reasoning described in the present section will also apply in respect of the new regime.

In light of the foregoing, the Authority must conclude that by maintaining in force the current measures, Norway has failed to fulfil its obligations arising from Articles 28 and 36 of the EEA Agreement and Article 5 of Directive 2004/38/EC.

5.3 The distinction between EEA nationals with National Identification Numbers and those with D-numbers

As noted above, on 27 February 2021, the Norwegian Government issued a revised circular, updating the rules for entry to Norway.[27] This circular revised the means through which EEA nationals could demonstrate that they were resident in Norway in order to benefit from the exception from the ban on entering Norwegian territory. Previously, Circular G-04/2020 defined residence in Norway («*bosatt i Norge*») as covering both those EEA nationals who were registered on the National Population Register, and/or those who had reported their move to the National Population Register. However, Circular G-07/2021 removed the possibility for persons who had reported their move to the National Population register to be considered as resident in Norway. As such, individuals who are living in Norway, and who may be in possession of other documents to demonstrate their residence (such as rental contracts and/or identity documents), and who have reported their move to Norway to the National Population Register, will not be considered to be resident in Norway unless they are registered on the National

[24] Case E-8/20 *N,* not yet reported, para 94.
[25] Case E-8/17 *Kristoffersen*, cited above, para 123.
[26] Reply of the Norwegian Government of 21 May 2021 (Doc No 1202636, ref. 20/5816 - KKO), p. 2.
[27] G-07/2021 – *Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen*, available at: https://www.regjeringen.no/contentassets/65effc1cc28747579c7104afbf308cfb/revidertikrafttredelsesrundskriv-om-innreiserestriksjoner-27.02.21.pdf

Population Register. This will prevent such persons from being permitted to enter Norway from abroad. It should further be noted that waiting times for registration on the National Population Register are often several months in duration, and that the Authority has received a significant volume of correspondence from persons impeded from entering Norway due to the revised definitions until as late as 25 May 2021, indicating that the Norwegian administration have, in practice, been strict in their adherence to the restricted criteria for demonstrating residence.

While Circular G-07/2021 was later superseded by Circular G-11/2021 of 26 March 2021, it would seem that the criteria for determining residence in Norway were retained from Circular G-07/2021.[28]

In its letter of 26 March 2021 (Doc No 1190825), the Authority drew attention to the changes brought about by Circular G-07/2021. In its Reply of 22 April 2021 (Doc No 1196218), the Norwegian Government referred to Articles 27, 28 and 29 of Directive 2004/38/EC, noting that per Article 27, States may restrict freedom of movement, *inter alia* on grounds of public health, and further noting that per Article 29 (1) *"The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation [WHO]…"* It noted, further, that the WHO had declared COVID-19 to have epidemic potential over a year previously.

In justifying the distinction drawn between those EEA nationals who were registered on the National Population Register, and those who had reported their move to the National Population Register, the Norwegian Government noted that it *"is considered necessary to have a definition that does not require an exercise of discretion as to the nature of residency and quality of documentation; such discretion entails a risk of circumvention that is not acceptable in the current situation."*

However, as a matter of practice, the Authority notes that those persons who report their move to Norway to the National Population Register, but who do not receive a National Identification Number, and are thus not considered resident in Norway («*bosatt i Norge*») for the purposes of Circular G-11/2021 generally receive a D-number. Such persons are permitted by Norwegian law to hold the D-number in lieu of a National Identification Number for up to 5 years, and may pay taxes, work, receive benefits, open bank accounts, and purchase property with a D-number. As such, their ability to function as residents of Norwegian society is not diminished by their possession of a D-number instead of a National Identification Number. In addition, per Section 3.1 of the Population Registration Act, the information collected by the Norwegian Government in respect of persons who receive a National Identification Number, on the one hand, and a D-number on the other, appears to be identical. Given the similarity of the information collected in each case, it is not clear how or in what circumstances a risk of circumvention such as that referred to by the Norwegian Government (above) would arise.

Further, in the course of the Authority's Case 80333 against Norway, relating to the issuance of tax cards to EEA nationals and third-country national family members, and in particular the Reply of the Norwegian Ministry of Finance to the Directorate's supplementary request for information of 7 September 2020 (Doc No 1151157, ref. 17/1987), the Norwegian Government repeatedly recognises that the right to reside in Norway is unconnected to entry on the National Population Register. Rather, the Norwegian Government repeatedly stated during correspondence relating to Case 80333

[28] While the Authority notes that the Reply of the Norwegian Government of 21 May 2021 (Doc No 1202636, ref. 20/5816 - KKO) provides that the criteria in question have been amended, it is the Authority's understanding that the rules set out in the letter and in Circular G-15/2021 have not yet been implemented in practice. Moreover, the new rules leave the decision concerning entry on the basis of residency at the discretion of the individual border control officer, raising questions concerning legal certainty.

that registration does not affect the right of EEA nationals to reside in Norway. Instead, registration in Norway is described as being "used by public administration, researchers, for statistics and related to basic social needs."[29] This would also seem to be confirmed by the wording of Section 1.2 ("Purpose") of the Population Registration Act.

Directive 2004/38/EC, upon which Norway has sought to rely in justifying the measures in question, provides, at Article 7, that EEA nationals shall have the right of residence on the territory of another EEA State for a period of longer than three months, subject to the conditions of working, being self-employed, or possessing sufficient resources and comprehensive sickness insurance. This right applies regardless of the domestic legal status of the individual. As noted by the EFTA Court in *Campbell*, *"Once an EEA national has [satisfied the conditions under Article 7], no other conditions for the right of residence exceeding three months are required."*[30] In other words, domestic legal provisions pertaining to the acquisition of residence status are immaterial in respect of whether an EEA national is considered to have acquired the right of residence for more than three months. In the present case, this would apply equally to EEA nationals in possession of a National Identification Number, and those in possession of a D-number.

Norway has drawn attention to Article 29 of the Directive, wherein it is stated that only diseases recognised by the WHO as having epidemic potential may justify restrictions upon freedom of movement on public health grounds. However, the Authority notes that the same article further provides that *"Diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory."* It is clear from the language employed – arrival, rather than entry – that this provision, read in light of Article 28(1), entails an absolute ban on expulsion from the territory after the EEA national has lived and satisfied the conditions under Article 7 in the EEA State for at least three months. A contrary reading would entail that he or she would run the risk of exclusion every time he or she crossed the border and returned.[31] Moreover, the fact that such persons may have undertaken trips away from Norway does not deprive them of the full assortment of rights arising from the Directive. As noted by the EFTA Court in *Campbell*, Article 7 does not require physical presence and allows temporary absences as part of the enjoyment of the right of residence itself. This is confirmed by the fact that Chapter III of the Directive, which regulates the right of residence, does not contain a conditional requirement that an EEA national's presence in the host State be wholly without temporary absences to enjoy residence rights.[32] In the present context, it is germane to note that many EEA nationals being denied access to Norway are, as a matter of fact, temporarily admitted to Norwegian territory, and placed in quarantine hotels pending their subsequent expulsion to their States of nationality. As such, EEA nationals resident in Norway, but possessing D-numbers rather than National Identification Numbers, are subjected to expulsion within the meaning of the Directive, in violation of the absolute prohibition upon this practice in Article 29, read in conjunction with Article 7 and Article 28(1) of Directive 2004/38.

It has come to the Authority's attention that Norway has been interpreting Circular G-11/2021 so as to prevent EEA nationals in possession of D-numbers from entering its territory, and is submitting those who arrive at its borders to expulsion within the meaning of the Directive. Such individuals are registered in Norway; Norway possesses an equal amount of information about such individuals as registered residents. Many such

[29] Reply of the Norwegian Ministry of Finance to the Directorate's supplementary request for information of 7 September 2020 (Doc No 1151157) in Case 80333, p. 6.
[30] Case E-4/19 *Campbell*, not yet reported, para 39.
[31] Such a reading is further confirmed by one of the forerunners of Directive 2004/38/EC, namely Directive 64/221 / EEC of 1964, which stated in Article 4 (2) that diseases "which occur after the first proof of residence has been issued cannot provide grounds for […] expulsion from the territory". Pursuant to Article 5 (1) of the 1964 Directive, such a first residence permit had to be issued no later than six months after the application for a permit.
[32] Case E-4/19 *Campbell*, paras 65-66.

individuals, moreover, are resident in Norway for longer than three months, thus qualifying for the rights arising under Article 7 of Directive 2004/38/EC. Per Article 29(2) of the Directive, there is an absolute prohibition upon the expulsion of such individuals. This measure therefore is not susceptible of justification.

Prior to concluding its reasoning in respect of this measure, the Authority notes that the new rules referred to in the Norwegian Government's letter of 21 May 2021 entail that the distinction between EEA nationals and their family members who are residents of Norway and who possess D-numbers, on the one hand, and those who possess National Identification Numbers, on the other, will be replaced by a system in which proof of residence may be shown to border officials by a variety of means, with the latter disposing of discretion as to whether to admit the EEA nationals and family members in question.[33] In principle, the Authority welcomes this change, insofar as it removes the automatic barrier for EEA nationals disposing of rights under Article 7 of Directive 2004/38, but who do not have National Identification Numbers, to enter Norway. However, it remains to be seen how the discretion afforded to border control officials will be exercised in practice, taking into account, in particular, the need for individuals to be able to determine whether they will be permitted to enter Norway, and the principle of legal certainty.

In light of the above, the Authority must conclude that by maintaining in force the current measures, Norway has failed to fulfil its obligations arising from Articles 5 and 7 of Directive 2004/38/EC and Articles 28 and 36 of the EEA Agreement.

5.4 Procedural rights of EEA nationals denied entry to Norway

Section 2 of Circular G-11/2021 provides that all EEA nationals who are not covered by one of the exceptions in the law or regulations issued pursuant to the law, will be expelled without further assessment of the risk of infection they individually pose. This Circular must be read together with Sections 5, 6 and 7 of the Temporary Law. Section 5 provides that normal procedural guarantees related to expulsion from Norwegian territory under the Immigration Act "*apply only insofar as they can be reconciled with a simplified and rapid processing of decisions on expulsion,"* and that free legal advice, which is otherwise available in such circumstances, will not be made available. Section 6 provides that decisions on expulsion must be in writing. However, "*the justification can be short and standardized.*" Moreover, a decision can be given orally "*if the decision is urgent or in writing for other reasons is not practically possible."* Section 6 further makes clear that *"decisions on expulsion can be appealed to the Directorate of Immigration, or to the Immigration Appeals Board."* Section 7 sets out the circumstances in which expulsion may occur, notably when an individual, the foreigner, *"has grossly or repeatedly violated the entry restrictions."* In practice, it appears that arriving in Norway without fulfilling one of the exceptions to the entry restriction is treated as a gross violation under Section 7, as such persons are subject to expulsion within the meaning of the Directive.

The Authority notes that Article 30 of Directive 2004/38 provides that persons concerned shall be notified in writing of any decision taken under Article 27(1) to restrict their freedom of movement on the grounds of public health, and that notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the EEA State. Moreover, the Authority further notes that Article 30, in addition, provides that *"save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification."*

[33] See Reply of the Norwegian Government of 21 May 2021 (Doc No 1202636, ref. 20/5816 - KKO).

It has come to the Authority's attention, *inter alia*, on the basis of correspondence received from individuals affected by the measures in question, that many EEA nationals who are denied entry to Norwegian territory, are confined to quarantine hotels for a number of days (usually less than a week) until such time as they are expelled. As noted in Section 5.2, above, there is no apparent reason why such EEA nationals present a higher risk profile than any other persons arriving from the same origin countries who are permitted to enter Norway (due to being registered on the National Population Register, for example). Moreover, a higher level of risk cannot be presumed *en masse.* Rather, individual assessments are required. As such, there is no obvious "*duly substantiated…urgency"* requiring that they be removed from Norwegian territory substantially less than one month from the date of notification of the decision not to admit them. In assessing the nature of any potential urgency that may be argued to arise, the Authority wishes to remind Norway in relation to the justification advanced that derogations from the free movement of persons must be interpreted restrictively.[34]

Furthermore, the provision in Section 6 of the Temporary Law that such a decision can be given orally "*if the decision is urgent or in writing for other reasons is not practically possible"* – which, to the Authority's knowledge, has happened in practice – cannot be reconciled with Article 30(1) of the Directive, which requires a decision in writing.

In addition, the provision in Section 6 that "*the justification can be short and standardized"* is incompatible with Article 30(2) of the Directive, which provides that such persons "*shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security."* Since there are no State security interests involved in the present case, an informed, precise and exhaustive written explanation of any decision to restrict the freedom of movement of an EEA national is required.[35]

Finally, Section 5 of the Temporary Law removes the right of free legal advice for persons who are the subject of expulsion decisions in such circumstances. It has come to the Authority's attention that, in practice, EEA nationals who are subjected to restrictions of their freedom of movement in this manner, are often not informed of their rights, including their right to appeal against the measures in question, while their expedited removal from Norway may serve to frustrate any appeal in practice. This practice is incompatible with Article 31 of the Directive, which provides that such persons "*shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of…public health."*

The Authority notes that the new legal regime foreseen by Circular G-15/2021 does not provide for substantial changes in relation to procedural guarantees available to those EEA nationals.[36] The Circular maintains the practice whereby normal procedural guarantees related to expulsion from Norwegian territory under the Immigration Act apply only insofar as they can be reconciled with a simplified and rapid processing of decisions and that free legal advice will not be made available. The Circular further maintains the practice whereby the justification for written decisions can be short and standardized, and provides that a decision can be given orally in certain circumstances. As such, procedural guarantees do not appear to have garnered any additional protection under the new rules.

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[34] Case E-15/12 *Jan Anfinn Wahl*, cited above, para 117.
[35] See also Joined Cases 115/81 and 116/81 *Adoui* and *Cornuaille* [1982] ECR 1665, para 13.
[36] G-15/2021 – *Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen*, available at: https://www.regjeringen.no/contentassets/d5c9e74d360743889a7bc9febe0022ed/g-15-2021-revidert-rundskriv-om-ikrafttredelse-av-forskrift-om-innreiserestriksjoner-for-utlendinger-av-hensyn-til-folkehelsen.pdf

On the basis of the foregoing, the Authority must conclude that by maintaining in force the current measures and practices, Norway has failed to fulfil its obligations arising from Articles 30 and 31 of Directive 2004/38/EC.

5.5 Discrimination between Nordic citizens and other EEA nationals

Section 1 of the temporary law on entry restrictions for foreigners for reasons of public health states that *"The law…does not apply to citizens from another Nordic country who are resident in Norway."* Norway's Reply of 22 April 2021 (Doc No 1196218), explained that this provision entails that *"Nordic citizens are exempt from the requirement of a residence permit in order to take up residence or employment in the realm."* However, the Reply further stated that *"the distinctions between Nordic citizens and EEA citizens in the [law] does not entail a distinction in the right to enter. Both citizens from Nordic states and citizens from other EEA states are exempt the entry restrictions if they are resident ("bosatt") in Norway."*

Despite the above, it is germane to note the means through which Nordic citizens, on the one hand, and EEA nationals, on the other, may become resident ("*bosatt*") in Norway are different. As noted previously, Circular G-07/2021 restricted the definition of residence for the purposes of being afforded an exemption to the entry restrictions, meaning that only those EEA nationals who were registered on the National Population Register could be considered resident in Norway. This significantly diminished the scope for EEA nationals to enter Norway.

Citizens of the Nordic countries, on the other hand, seem to be subject to a different test in order to determine whether they are resident in Norway, exempting them from a requirement of a residence permit and registration on the National Population Register.

In its Reply of 22 April 2021, the Norwegian Government recognised the long processing times for registration on the National Population Register, and that this further affects individuals' possibility to travel. In essence, this entails that Nordic nationals living and working in Norway may undertake trips away from Norway, and will be readmitted to Norwegian territory, whereas other EEA nationals will be prevented from doing so unless they have received a National Identification Number, for which they may have to wait for up to eight months (or up to five years, if they are instead provided with a D-number). This clearly has the potential to restrict the freedom of movement of the latter group.

The effect of the provisions in question is that the circumstances in which Nordic nationals may be permitted to enter Norwegian territory are, in practice, significantly broader than those in which nationals of other EEA States may enter Norwegian territory.

The Authority notes that Article 4 of the EEA Agreement provides that *"any discrimination on grounds of nationality shall be prohibited"* within the Agreement's scope. It should further be noted that the discrimination in question need not be overt. The prohibition in question extends to any forms of discrimination that *"by the application of other criteria of differentiation, lead to the same result."*[37] As such, it is immaterial for the present purposes whether the measures in question were intended to function in tandem in a manner more favourable to certain EEA nationals (that is, Nordic citizens) than others. Rather, it is the effect of the provisions in practice that is decisive. The effect of the present measures is that it is, in practice, easier for Nordic nationals to exercise their freedom of movement, *inter alia*, under Articles 28 and 36 of the EEA Agreement,[38]

[37] Case E-5/10 *Kottke*, [2009-2010] EFTA Ct. Rep. 320, para 29.

[38] It is further to be noted that the provisions of Directive 2006/123/EC may also be relevant in this context.

whereas nationals of other EEA States are subject to a restriction of their freedom of movement in identical circumstances.

Such discriminatory measures can only be justified if they are based on objective considerations independent of the nationality of the persons concerned, and are proportionate to the legitimate aim of the provisions in question.[39] In the present circumstances, while the protection of public health clearly represents a legitimate aim, questions may be raised about the suitability of the measure in question. Norway has advanced no evidence that Nordic nationals pose a lower level of risk than nationals of other EEA States, and indeed, in circumstances in which the two groups might, for example, share an aeroplane from the same origin airport, it is difficult to imagine how such a distinction would be suitable for the purposes of public health protection. As such, in the Authority's view the measure is not susceptible to justification on this basis.

In any event, whether or not the measure in question is suitable for attaining a legitimate objective under EEA law, it must also be assessed whether it goes beyond what is necessary in order to attain the chosen objective. This implies that the chosen measure must not be capable of being replaced by an alternative measure that is equally useful but less restrictive to the fundamental freedoms of EEA law.[40]

As such, it must be determined whether, in accordance with the principle of proportionality, a less restrictive means would have been available to the Norwegian Government, in order to achieve the same outcome. Given that Nordic residents who are permitted to enter Norway will in any event be obliged to quarantine upon arrival – thus shielding them from the general populace and avoiding further viral dissemination – it is unclear why other EEA nationals who are also resident (albeit unregistered on the National Population Register) could not be permitted to enter the country on the same basis. In the Authority's view, this points to the clear availability of a less restrictive measure that could have been employed in these circumstances in order to obviate any discrimination on the grounds of nationality.

On this basis, the Authority must conclude that by maintaining in force the measures set out above, Norway has failed to fulfil its obligations arising from Articles 4, 28 and 36 of the EEA Agreement.

Finally, the Authority notes that, contrary to previous information received, in its Reply of 21 May 2021,[41] the Norwegian Government asserts that, as a matter of fact, no distinction in practice subsists between Nordic citizens living in Norway without being registered as residents and other EEA nationals in a similar position. Rather, such individuals were, *"like other foreign nationals, and for the same reasons, not allowed to enter the realm."* The Authority observes that, if this is in fact the case, and no distinction between Nordic and other EEA nationals subsists, then *in the alternative to the above,* the previous reasoning outlined, notably in Sections 5.2 and 5.3, should apply to Nordic nationals also, and that by maintaining in force the current measures, Norway has failed to fulfil its obligations in respect of such individuals arising from Articles 5 and 7 of Directive 2004/38/EC and Articles 28 and 36 of the EEA Agreement.

5.6 The Norwegian quarantine rules

The Norwegian quarantine rules apply to those EEA nationals who are exempted from the entry restrictions, and who are thus permitted to enter Norway. Chapter 2, Section 4 of the Covid-19 Regulations provides for a 10-day quarantine period for such persons.

[39] Case E-16/11 *ESA v Iceland ("Icesave")*, [2013] EFTA Ct. Rep. 4, para 218.
[40] Case E-8/20 *N,* cited above, para 94.
[41] Reply of the Norwegian Government of 21 May 2021 (Doc No 1202636, ref. 20/5816 - KKO), p. 2.

Chapter 2, Section 5 of the Regulations sets out a general rule that those arriving must stay in quarantine hotels. Stays in quarantine hotels are subject to a daily charge of NOK 500 for adults.

Chapter 2, Section 5 then provides for a series of categories of persons who are exempted from the requirement to quarantine in hotels, subject to their undertaking a rapid COVID-19 test at the border. These exceptions include: persons who can document that they are resident in Norway, that the trip was necessary, and that they are staying at home or in another suitable accommodation; those who own or rent (on a lease of at least six months) a permanent residence in Norway that is suitable for quarantine; and those who come to Norway to perform work or assignments and who on entry can document that the employer or client provides a suitable place of residence approved by the Norwegian Labour Inspection Authority (*Arbeidstilsyne*t). In relation to the latter category of exempted persons, Chapter 2A, Sections 8a, 8d and 8e provide that accommodation must be approved in advance by the Arbeidstilsynet, that the Arbeidstilsynet shall keep a publicly available register of such approved accommodation, and that a fee for processing each accommodation of NOK 2,000 shall be payable to Arbeidstilsynet.

The Authority notes that Article 28 of the EEA Agreement provides for free movement of workers, and that this shall, subject to limitations imposed on grounds, *inter alia,* of public health, include the right to move freely within the territory of EEA States for this purpose. The Authority further notes that Articles 5 and 6 of Directive 2004/38/EC provide that non-economically active EEA nationals may also enter and reside on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport. The Authority notes in addition that Article 36 of the EEA Agreement prohibits restrictions on the freedom to provide services in respect of EEA nationals who are established in another EEA State, as well as restrictions upon the freedom to travel to other EEA States to receive services.

5.6.1 'Necessary journeys'

The quarantine rules[42] provide that EEA nationals who are registered as resident in Norway, and who undertake journeys that are deemed 'necessary,' will be permitted to quarantine at home upon their return to Norway, whereas EEA nationals who are registered as resident in Norway and who undertake journeys that do not qualify as 'necessary' under the rules in question, will be obliged to quarantine in hotels, thus incurring expense and inconvenience. This distinction has the clear potential to dissuade the exercise of freedom of movement for the latter group, whether for work, tourism, or other purposes.

In its Reply of 22 April 2021, the Norwegian Government justified this distinction on the basis of Article 29(1) of Directive 2004/38, noting that *"preventing the spread of the Covid-19 pandemic clearly constitutes a legitimate aim that may justify restrictions on free movement."* The Authority notes that while the protection of public health may indeed justify restrictions upon freedom of movement in certain circumstances, when such measures are imposed, it falls to the party imposing the restriction to demonstrate that the measure is suitable to achieve the legitimate objective pursued along with genuinely reflecting a concern to attain that aim in a consistent and systematic manner.[43]

The effect of the quarantine rules as they are presently constituted is that registered residents – and Norwegian citizens – who travel for 'necessary' reasons (including

[42] G-13/2021 – *Revidert Rudskriv om Karantenehotell*, available at: https://www.regjeringen.no/contentassets/09d300e165fc4a38b231a04f9e0ed6dc/revidert-rundskriv-om-karantenehotell-g13_2021-til-publisering_endelig.pdf

[43] Case E-8/16 *Netfonds Holdings and others*, [2017] EFTA Ct. Rep. 163para 117.

business travel, and temporary work and study abroad)[44] are exempted from the obligation to quarantine in quarantine hotels, and may quarantine at home or in another suitable location upon returning to Norway, whereas registered residents and Norwegian citizens travelling for any other purpose (including tourism or for family, work or study reasons beyond those listed) are obliged to quarantine in hotels. The latter group are therefore subjected to an additional cost (NOK 5000 for ten days) despite the fact that they also have a home in Norway where quarantine could be undertaken, and are significantly more restricted in terms of how they may spend their time during this period, potentially incurring other ancillary costs (such as childcare) which would not arise were they permitted to quarantine at home.

Given that business travellers on the one hand, and tourists, on the other, may return from the same location, having spent a similar amount of time there, it is not obvious why one group presents a greater risk profile than the other, and why, therefore, tourists are subject to additional costs, which are likely to disincentivise freedom of movement to receive services. According to EEA law, an EEA State must not take measures that would run counter to the achievement of a given national measure.[45] While Norway is free to adopt measures to protect public health, requiring that one group of travellers stay in quarantine hotels for public health reasons while another group presenting a similar risk profile is permitted to quarantine at home or in another suitable location fails to satisfy the principle of consistency. If the risk associated with returning tourists is so high that hotel quarantine is required, imposing a looser regime for persons returning from business travel from the same location would seem to run contrary to the achievement of the high level of protection of public health associated with the hotel quarantine regime.[46]

It is settled case law that it is for the competent national authorities, where they adopt a measure derogating from a principle enshrined in EEA law, to show *in each individual case* that the measure is appropriate to attain the objective relied upon and does not go beyond what is necessary to attain it.[47] Neither in its correspondence with the Authority, nor in the legislation and circulars cited, has the Norwegian Government justified the distinction in question, which clearly has the potential to dissuade freedom of movement, *inter alia,* to receive tourist and other services in other EEA States.[48]

In any event, whether or not the measure in question is suitable for attaining a legitimate objective under EEA law, it must also be assessed whether it goes beyond what is necessary in order to attain the chosen objective. This implies that the chosen measure must not be capable of being replaced by an alternative measure that is equally useful but less restrictive to the fundamental freedoms of EEA law.[49] If the Norwegian Government is satisfied that having returning business travellers quarantine at home is sufficient for the protection of public health, then the less restrictive solution of allowing returning tourists and others undertaking journeys not deemed 'necessary' would also satisfy the *desideratum* of public health protection, while representing a less restrictive means to achieve the same outcome.

Prior to concluding its reasoning in this section, the Authority notes that the Norwegian Government has made it clear that, as of 27 May 2021, the distinction between journeys deemed 'necessary' and 'unnecessary' will cease to apply as a matter of law for the

[44] See Reply of the Norwegian Government of 22 April 2021 (Doc No 1196218, ref. 20/5816 - KKO) pp. 1-3.
[45] See Case E-1/06 *ESA v Norway ("Gaming Machines")* [2007] EFTA Ct. Rep. 8, paras 28, 31, 39, 40 and 43.
[46] Reply of the Norwegian Government of 21 May 2021 (Doc No 1202636, ref. 20/5816 - KKO), p. 2.
[47] Case E-8/17 *Kristoffersen*, cited above, paras 121-122.
[48] See Joined Cases 286/82 and 26/83 *Luisi* and *Carbone* ECLI:EU:C:1984:35, para 16; Case 186/87 *Cowan* ECLI:EU:C:1989:47, para 15.
[49] Case E-8/20 *N,* cited above, para 94.

purposes of determining the quarantine obligations of Norwegian citizens and EEA nationals admitted to Norway.[50] The new rules will instead determine an individual's quarantine obligations on the basis of a risk assessment based upon COVID incidence rates at his or her point of departure when travelling to Norway. This system is likely to significantly easier to justify than the measures described above, though the Authority will scrutinise the implementation of the new regime as it evolves in practice.

On the basis of the foregoing, the Authority must conclude that by maintaining in force the distinctions described above, Norway has failed to fulfil its obligations arising from Article 36 of the EEA Agreement.

5.6.2 'Home' versus 'suitable accommodation'

Section 2.a of Revised Circular G-13/2021 on quarantine hotels provides that EEA nationals who are registered as resident in Norway, who return to Norway from necessary travel abroad, and who have only stayed within the EEA and the Schengen area during the last 10 days before entry, are exempt from the obligation to quarantine in hotels if, during the quarantine period, they stay in the home or another suitable place. Section 2.a further provides that if such persons "*are staying in a place other than their own home, it is a requirement that in the place of residence, it is possible to avoid close contact with others, and that there is a private room, private bathroom and a private kitchen or food service. For persons who carry out the quarantine in their registered housing, such a requirement does not apply concerning private rooms, etc."* These requirements do not apply to quarantine undertaken at home. This distinction in practice entails that individuals who stay at home when they return from trips abroad are not subjected to the same sanitary requirements as those persons who stay in another location.

The requirement entails, in essence, that individuals who may not be able to quarantine at their own home (for example because they have let the property to tenants in the meantime, or because they have a vulnerable relative who should not be exposed to a person undertaking quarantine), in order to avoid the obligation to quarantine in hotels, are obliged to secure accommodation in a location with sanitary facilities (such as a private bathroom and private kitchen) that significantly exceed those typically available in many homes. Acquiring such a location for quarantine for a period of ten days is likely to incur significant costs, in many cases exceeding those associated with hotel quarantine.

The effect of the rules, therefore is that persons who are unable to quarantine at home are subjected to additional costs beyond merely sourcing accommodation. Rather, they must source *appropriate* accommodation that meets prescribed sanitary standards. The price difference between basic accommodation and accommodation meeting these standards is likely to be considerable. However, the requirements that accommodation be *appropriate* in sanitary terms are not imposed when such persons are able to quarantine at home. That is, such persons may live alone with a private kitchen and bathroom, or in a crowded house with shared facilities. However, their circumstances are not examined in respect of individuals' homes, only in respect of accommodation sourced for quarantine purposes.

As was the case in Section 5.6.1, above, there is no obvious difference in terms of risk profile between registered residents who quarantine at home and registered residents who quarantine at another suitable location. However, the latter are subjected to higher sanitary standards, which will likely result in greater costs, and which may dissuade freedom of movement for travel for business and other purposes deemed 'necessary' under the Covid-19 Regulations. Given that, as noted, an EEA State must not take

[50] See, *inter alia*, «Endringer i karantenehotellordningen og lettelser i innreiserestriksjonene» (Pressemelding), 21 May 2021, available at https://www.regjeringen.no/no/aktuelt/endringer-i-karantenehotellordningen-og-lettelser-i-innreiserestriksjonene/id2850375/

measures that would run counter to the achievement of a given national measure,[51] requiring that one group of travellers to satisfy high sanitary standards while another group presenting a similar risk profile is not required to do so fails to satisfy the principle of consistency.

The Authority notes that, in its Reply of 21 May 2021,[52] the Norwegian Government asserts that the distinction between necessary and unnecessary journeys will be removed from the rules, and that the relevant press releases make it clear that this will occur on 27 May 2021.[53] As noted previously, the Authority, in principle, welcomes any change that results in a relaxation of restriction upon freedom of movement, though it reserves the right to comment further on the new rules. Nonetheless, as previously observed, the present letter represents an analysis of the rules prior to these proposed amendments.

The Authority notes that it is for the national authorities, where they adopt a measure derogating from a principle enshrined in EEA law, to show *in each individual case* that the measure is appropriate to attain the objective relied upon and does not go beyond what is necessary to attain it.[54] Neither in its correspondence with the Authority, nor in the legislation and circulars cited, has the Norwegian Government justified the distinction in question, which clearly has the potential to dissuade freedom of movement under Articles 28 and 36 of the EEA Agreement.

In any event, whether or not the measure in question is suitable for attaining a legitimate objective, it must also be assessed whether it goes beyond what is necessary in order to attain the chosen objective. This implies that the chosen measure must not be capable of being replaced by an alternative measure that is equally useful but less restrictive to the fundamental freedoms of EEA law.[55] If the Norwegian Government is satisfied that home quarantine for registered residents who return from 'necessary' trips abroad – perhaps in circumstances in which individuals may not have access to an individual kitchen and private bathroom – is sufficient for the protection of public health, then the less restrictive solution of allowing such individuals who cannot or do not wish to quarantine at home to secure alternative accommodation that meets similar (rather than higher) sanitary standards to those of a typical home would also seem to satisfy the objective of public health protection, while constituting a less restrictive means to achieve the same outcome.

Finally, before concluding its reasoning in this section, the Authority wishes to re-iterate, as it did in relation to the previous section, that it has taken cognisance of the new rules effective as of 27 May 2021, and will evaluate the implementation of the new regime as it evolves in practice.

On this basis, the Authority must conclude that by maintaining in force the distinctions described above, Norway has failed to fulfil its obligations arising from Articles 28 and 36 of the EEA Agreement, as well as Article 7 of Directive 2004/38.

5.6.3 Registration

Per Chapter 2, Section 5 of the Covid-19 Regulations, EEA nationals who come to Norway to perform work or assignments and who, on entry, can document that the employer or client has provided a suitable place of residence approved by the

[51] See Case E-1/06 *ESA v Norway ("Gaming Machines")*, cited above, paras 28, 31, 39, 40 and 43.
[52] Reply of the Norwegian Government of 21 May 2021 (Doc No 1202636, ref. 20/5816 - KKO), p. 2.
[53] See, inter alia, «Endringer i karantenehotellordningen og lettelser i innreiserestriksjonene» (Pressemelding), 21 May 2021, available at https://www.regjeringen.no/no/aktuelt/endringer-i-karantenehotellordningen-og-lettelser-i-innreiserestriksjonene/id2850375/
[54] Case E-8/16 *Netfonds Holdings and others*, cited above, para 126.
[55] Case E-8/20 *N,* cited above, para 94.

Arbeidstilsynet, may stay there. Chapter 2A, Sections 8a, 8d and 8e provide that accommodation must be approved in advance by the Arbeidstilsynet, that the Arbeidstilsynet shall keep a publicly available register of such approved accommodation, and that a fee for processing each accommodation of NOK 2,000 shall be payable to the Arbeidstilsynet.

These measures entail, in essence, that while residents of Norway returning from business trips who do not wish to undertake quarantine at home may find themselves a suitable location to quarantine on their own, and may quarantine there, provided that the location in question conforms to the stated sanitary conditions and without inspection or prior authorisation, EEA nationals arriving in Norway to perform work may only quarantine in such accommodation if it has been approved in advance by the Arbeidstilsynet. The cost and inconvenience associated with processing such an application amounts to a significant dissuasive factor, rendering it more expensive and burdensome for workers and service providers to come to Norway to do business. Acquiring such a location for quarantine for a period of ten days will in any event incur significant expenses, while the addition of a further 2,000 NOK fee is a further dissuasive factor. Finally, the requirement of prior authorisation is likely to entail an additional administrative burden, particularly for businesses based outside of Norway that are less familiar with the national administration, while rendering the provision of such accommodation to individuals undertaking work assignments at short notice effectively impossible.

As noted previously, Norway has justified its quarantine rules with reference to the protection of public health.[56] However, given the potential of the prior authorisation scheme in question to dissuade free movement of services and free movement of workers, the Authority again recalls that it is for the competent national authorities, where they adopt a measure derogating from a principle enshrined in EEA law, to show *in each individual case* that the measure is appropriate to attain the objective relied upon and does not go beyond what is necessary to attain it.[57] Given that registration and inspection of the premises in which quarantine is to take place is required only in the context of workers arriving in Norway from other EEA States, and not in other contexts in which the Norwegian Government has expressed concerns about the maintenance of sanitary standards (such as that referred to in Section 5.6.2, above), it is for the Norwegian Government to demonstrate why such a prior authorisation scheme is required in this context, but not others, and why a less restrictive measure (such as replicating the sanitary requirements for returning registered resident business travellers, without a prior authorisation scheme) would not achieve the same level of public health protection. The Norwegian Government has failed to do so, while the scheme in question clearly has the potential to dissuade the exercise of freedom of movement under Articles 28 and 36 of the EEA Agreement.

Before concluding its reasoning in this section, the Authority wishes to re-iterate, as it did in relation to the two previous sections, that it has taken cognisance of the new rules effective as of 27 May 2021, and will evaluate the implementation of the new regime as it evolves in practice.

On this basis, the Authority must conclude that by maintaining in force the measures described above, Norway has failed to fulfil its obligations arising from Articles 28 and 36 of the EEA Agreement and Articles 9 and 16 of Directive 2006/123/EC.

[56] See Reply of the Norwegian Government of 22 April 2021 (Doc No 1196218, ref. 20/5816 - KKO) pp. 1-3.
[57] Case E-8/20 *N*, cited above, para 94.

6 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that, by maintaining in force the stated provisions of the Temporary law on entry restrictions for foreigners for reasons of public health, the Regulations on infection control measures etc. at the Corona outbreak (Covid-19 Regulations), the Revised Circular on Quarantine Hotels, and the Revised Circular on the entry into force of regulations on entry restrictions for foreigners for reasons of public health, as well as the associated administrative practices, which entail entry restrictions to Norwegian territory, restrictions upon the right to travel from – and then return to – Norway for certain categories of EEA nationals resident in Norway, and a variety of discriminatory categorisations and exceptions resulting from the quarantine rules, Norway has failed to fulfil its obligation arising from Articles 4, 28 and 36 of the EEA Agreement, Articles 5, 6, 7, 8, 27, 28, 29, 30 and 31 of Directive 2004/38/EC, and Articles 9 and 16 of Directive 2006/123/EC.

For the purposes of the present case, it should also be noted that the Authority is also responsible for oversight of the rights of UK nationals covered by the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union ("the Separation Agreement"). In general, UK nationals covered by the Separation Agreement are in an equivalent situation to EEA
nationals with respect to the rules in question. As such, the conclusions expressed above in relation to EEA nationals under the EEA Agreement should be seen to cover UK nationals who fall under the Separation Agreement *mutatis mutandis.*

In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority requests that the Norwegian Government submits its observations on the content of this letter *by 7 July 2021*.

After the time limit has expired, the Authority will consider, in the light of any observations received from the Norwegian Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority,

Bente Angell-Hansen President	Frank J. Büchel Responsible College Member	Högni Kristjánsson College Member

For Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Catherine Howdle.