Case No: 87754
Doc No: 1311864
Last updated: 28/09/2022

Package Meeting in Norway
27-28 October 2022

Proposal for discussion points

Veterinary matters
(Annex I)

Responsible case handlers: **Aleš Brecelj**

Other participants: **Janne Britt Krakhellen**
Craig Simpson

1. Mission to Norway on animal welfare during transport (Case No 81384)

The Authority performed an audit to Norway on animal welfare during transport in April 2018.

In the final report of the above-mentioned audit dated 10 July 2018 (Doc No 923282), the Norwegian Government was invited to notify the Authority in writing no later than 11 September 2018 of additional corrective actions planned or taken in relation to the recommendations in the final mission report other than those already indicated in that report or, where relevant, that no additional corrective actions have been planned.

Norway provided a reply to the final report on 11 September 2018 (Doc No 929597, your ref. 2018/48291).

By a letter dated 26 March 2019 (Doc No 1066834, your ref. 2018/48291), NFSA provided reply to the Authority's follow-up letter (Doc No 1052814) dated 11 April 2019.
In the context of the general review mission to Norway from 10 to 14 February 2020 (Case No 84384), NFSA provided additional information concerning the recommendations on 13 February 2020 (Doc No 1124773). Furthermore, Norway provided an updated plan for corrective actions on 26 March 2020 (Doc No 1123644).

By a letter dated 13 October 2021 (Doc No 1237576, your ref. 2018/48291), NFSA provided reply to the Authority's follow-up letter (Doc No 1225292) dated 8 September 2021.

Norway has in these exchanges failed to address all recommendations. By the follow-up letter (Doc No 1283053) dated 28 April 2022, the Authority invited Norway to provide updated information and underlined that, unless Norway provides adequate assurances that satisfactory actions are implemented in a timely manner to address recommendations 1 and 2, the Authority will consider reclassifying the status of these recommendations to ''Incorrect Implementation'' (INC)[1].

Norway did not provide such assurances in its reply to the follow-up letter dated 6 June 2022 (Doc No 1066834, your ref. 2018/48291). In light of this, the Authority would like to discuss Norway's actions to address the two recommendations.

Specific questions to be discussed:

i. Actions taken or planned actions to address the outstanding recommendations;

ii. Actions taken or planned to establish effective co-operation between the NFSA and NPRA (Norwegian Public Roads Administration) as regards animal welfare during transport; and

iii. The expected timeline for implementation of the actions above.

Estimated time: **30 – 45 minutes**

[1] *"Incorrect application"* (INC) status means that appropriate measures to address the recommendation have not been taken and the follow-up of the recommendation has been referred to an incorrect application case.

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Proposal for discussion points

Veterinary and Phytosanitary Matters / Foodstuffs
(Annex I / Annex II, Chapter XII)

Responsible case handlers: **Craig Simpson**

Other participants: **Janne Britt Krakhellen**
Aleš Brecelj

1. *Incorrect application of certain requirements concerning official controls of consignments in transit and/or transhipment and the customs-approved treatment or use of consignments from third countries (Case No 85428)*

The case concerns failure by the Norwegian Government to ensure implementation of necessary official controls and relevant documentary and customs procedures concerning consignments of products of animal origin in transit and/or transhipment entering Norway from third countries ('relevant consignments').

By letter dated 3 January 2022 (Doc No 1260159, your ref. 21/385), the Norwegian Government informed the Authority that it proposed to remedy the failures raised in the Authority's letter of formal notice (Doc No 1221704) by adopting new legislation requiring a declaration to be lodged by the relevant operator prior to relevant consignments being placed under any customs procedure ('the declaration requirement'). This would enable Customs to verify that such consignments were accompanied by the required CHED certificates. Proposed draft regulations including the declaration requirement ('the draft regulations') had already been submitted to the Norwegian Parliament and the Norwegian Government anticipated their entry into force on 1 January 2023.

The Norwegian Government further noted that it had identified possible technical measures, still being assessed by the relevant working group, to ensure closer cooperation and more efficient and targeted exchange of information between Customs and the competent authorities in order to ensure that relevant consignments are subject to official controls ('the technical measures').

By email dated 13 July 2022 (Doc No 1310241), the Authority requested the Norwegian Government to provide an update on progress regarding the measures proposed in its response to the letter of formal notice with an indication of anticipated timelines for future steps.

By email dated 16 August 2022 (Doc No 1310242), the Norwegian Government informed the Authority that amendments to the draft regulations would be subject to consultation during autumn 2022 but that it still anticipated their entry into force on 1

January 2023. The Norwegian Government further noted that discussions regarding possible technical measures were ongoing but no timeline for this was indicated.

Specific questions to be discussed:

i. Any recent developments relevant to the timing of entry into force of the declaration requirement, including in connection with the pending consultation;

ii. Identification of the precise technical measures to improve cooperation and exchange of information between Customs and competent authorities, the associated timelines for their implementation and the extent to which such improvement is dependent upon these measures; and

iii. Any future correspondence between the Authority and the Norwegian Government prior to the meeting.

Estimated time: 30 – 45 minutes

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Technical Barriers to Trade / Technical regulations
(Annex II)

Responsible case handlers: **Guðlaug Jónasdóttir**

Other participants: **Maria Moustakali**
Gaukur Jörundsson
Kyrre Isaksen

1. Fulfilment of notification obligation under Directive 98/34/EC in Norway (2018) (Case No 86113)

Reference is made to Directive 98/34 (*Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations,* as amended and as adapted by the EEA Agreement)[2] and in particular to its Articles 8 and 9 concerning the obligation of the EFTA States to immediately communicate to the Authority any draft technical regulation, as defined by that Directive, and to postpone their adoption for a period of three months, except in the special cases referred to in the Directive.

A request for information was sent to Norway on 13 January 2021 concerning potentially non-notified technical regulations adopted in 2018 (Doc No 1170741). The Norwegian Government responded to this letter by letters dated 9 February 2021 (Doc No 1179783, your ref. 18/3306-58) and 26 February 2021 (Doc No 1184180, your ref. 18/3306-61). In the letters, the Norwegian Government provided the Authority with information as regards why the measures had not been notified to the Authority.

During the meeting, the Authority would like to discuss the technical nature of the only remaining potentially non-notified technical regulation adopted in 2018, namely FOR-2018-06-20-923 – *Forskrift om helikopter offshoreoperasjoner*. The discussions during the package meeting should be held in light of the latest correspondence in the case.

In addition, the Authority would like to exchange views with the Norwegian Government concerning the notification of technical regulations in Norway in general,

[2] It is noted that Directive 98/34 was repealed by Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society Services, which became applicable to the EEA EFTA states on 1 December 2019. Directive 2015/1535 entails the same substantive obligations as Directive 98/34. As the legislative measures were adopted while Directive 98/34 was applicable, that Directive is referred to as the legal basis for the case.

and in particular which measures it is taking in order to ensure that all relevant technical regulations are being notified to the Authority in compliance with Directive (EU) 2015/1535 as well as new developments concerning the EU TRIS platform that will be adopted soon.

Estimated time: 45 minutes

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Proposal for discussion points

Energy
(Annex IV)

Responsible case handlers: **Anne De Geeter**
Ada Gimnes Jarøy
Mathias Thorkildsen

Other participants: **Marco Uccelli**

1. *Conformity assessment of Directives 2009/72 and 2009/73 for Norway (Case No 84737)*

The case concerns the implementation of *Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC* and of *Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC* ("the Third Electricity and Gas Directives").

The Authority is in the process of assessing the national measures implementing some of the Third Electricity and Gas Directives' provisions. In this process, the Authority identified several areas where clarifications were needed. By letter dated 16 October 2020 (Doc No 114716), the Authority sent a request for information, requesting the Norwegian Government to provide the relevant information.

The Norwegian Government provided the requested information on 22 December 2020 (Doc No 1170752, your ref. 19/2064).

The Authority and the Norwegian Government had preliminary exchanges on the case at the package meeting of October 2021, considering especially recent judgments of the European Court of Justice (Case C-718/18 *European Commission v Federal Republic of Germany* and C-767-19 *European Commission v Kingdom of Belgium*).

During the meeting, the Authority would like to discuss the status of the case.

Estimated time: 45 minutes

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Free movement of persons
(Annex V)

Responsible case handlers:	**Hrafnhildur Kristinsdóttir (Items 1-4)** **Ómar Berg Rúnarsson (Items 1-4)** **Ciarán Burke (Item 5)**
Other participants:	**Maria Moustakali** **Erlend Leonhardsen (Items 1-5)** **Kyrre Isaksen (Item 5)**

1. *Own initiative case concerning assessment of marriages of convenience in Norway (Case No 78450)*

The remaining issue in this case is whether Norway's legal assessment of what constitutes a marriage of convenience is in line with EEA law.

The case was discussed at the package meetings in the years 2016 to 2019.

On 3 March 2020, the Norwegian Supreme Court referred a case to the EFTA Court concerning the assessment of marriages of convenience and, on 9 February 2021, the EFTA Court delivered its advisory opinion in Case E-1/20 *Kerim.* On 1 July 2021, the Norwegian Supreme Court delivered its judgment in the case.

On 7 September 2021, the Authority sent a request for information to Norway in light of the recent judgments in the *Kerim* case (Doc No 1223899). The Norwegian Government replied by letter dated 6 October 2021 (Doc No 1232828, your ref. 15/4606). The case was discussed at the package meeting in Oslo on 28 October 2021.

On 23 November 2021, the EFTA Court delivered its judgment in Case E-16/20 *Q and Others*, where it further clarified the relevant criteria for the assessment of marriages of convenience.

By letter dated 13 December 2021 (Doc No 1255492, your ref. 15/4606), the Norwegian Government replied to parts of the Authority's follow-up letter. On 16 December 2021, a virtual meeting was held with the Ministry of Labour and Social Inclusion to discuss the draft new Circular on family reunification. The Norwegian Government sent a further reply to the follow-up letter on 7 January 2022 (Doc No 1261138, your ref. 19/4032), along with copies of five decisions of UNE (redacted versions).

On 24 January 2020, the Authority sent a supplementary request for information to Norway (Doc No 1262426). By e-mail of 26 January 2022, the Ministry of Labour and Social Inclusion informed the Authority that the new Circular on family reunification, replacing Circular AI-2/2017, had been adopted on 25 January 2022. The Norwegian Government replied to the supplementary request for information by letter dated 4 March 2022 (Doc No 1273372, your ref. 15/4606).

The Authority would kindly request that, if possible, a representative of UDI (the Directorate of Immigration) and UNE (the Immigration Appeals Board) be present for that meeting.

Specific questions to be discussed:

i. Is the objective of the new Circular on family reunification, AI-1/2022, to change the practice of the Directorate of Immigration so that, from now on, the genuine nature of the marriage is also taken into account in the assessment of marriages of convenience under EEA law? If so, has it been communicated clearly that the aim is that the Circular leads to a change in the practice?

ii. Please explain how the new Circular, and its reference to the genuineness (reality) of the marriage, fits with established practice of the Immigration Appeals Board and the Norwegian courts (including the Supreme Court) of not taking the genuineness of the marriage into account when assessing marriages of convenience (unless possibly under the discretionary assessment)?

iii. Is the Directorate of Immigration not bound to follow established case law of the Norwegian courts (including the Supreme Court) in its decisions, regardless of circulars issued by the Ministry?

iv. Please explain how a Circular, which only binds the Directorate of Immigration, can be sufficient to solve the issues raised by the Authority in this case, in relation to the lack of assessment of genuineness of marriages by the Immigration Appeals Board and the Norwegian courts?

v. Please provide copies of the redacted version of decisions pertaining to the subject matter of this case, which the Norwegian immigration authorities issued after the new Circular entered into force.

Estimated time: 1 hour

2. Complaint against Norway concerning children's residence rights under EEA law (Case No 84397)

The remaining issue in this case is whether Norway is in breach of Directive 2004/38 by not ensuring that EEA national children can benefit from the right of residence pursuant to Article 7(1)(b) of the Directive.

On 23 September 2020, the Authority sent a letter of formal notice to the Norwegian Government (Doc No 1140953), concluding that Norway was in breach of *inter alia* Article 7(1)(b) of Directive 2004/38. Norway replied to the letter of formal notice on 30 November 2020 (Doc No 1166262, your ref. 19/4032).

The Authority delivered a reasoned opinion to Norway on 7 July 2021 (Doc No 1184301), with the same conclusions as in the letter of formal notice. Norway replied by letter dated 6 October 2021 (Doc No 1232830, your ref. 19/4032). The case was discussed at the package meeting in Oslo on 28 October 2021.

On 23 November 2021, the EFTA Court delivered its judgment in Case E-16/20 *Q and Others*. Norway replied to the Authority's follow-up letter by letter dated 7 January 2022 (Doc No 1261138, your ref. 19/4032).

On 24 January 2022, the Authority sent a supplementary request for information to Norway (Doc No 1261382). By letter of 1 April 2022 (Doc No 1280244, your ref. 19/4032), the Norwegian Government stated that it could not yet provide the requested information. In the Norwegian Government's letter of 21 April 2022 (Doc No 1283556, your ref. 19/4032), it stated that hopefully a reply could be sent by the end of May or beginning of June. However, by e-mail of 15 June 2022, the Norwegian Government noted that a reply to questions 1-4 in the Authority's request for information could not be sent before the summer holidays. By letter dated 20 June 2022 (Doc No 1298128, your ref. 19/4032), the Norwegian Government sent its reply to questions 5-8 in the request for information, along with copies of three decisions of the Immigration Appeals Board, while also noting that it expected to send the reply to questions 1-4 by the end of September.

On 5 September 2022, the Authority sent a second supplementary request for information to Norway (Doc No 1309438), requesting the Norwegian Government to provide its answers to questions 1-4 in the request for information from 10 January 2022 as soon as possible, as well as asking some follow-up questions in relation to questions 5-8 in the request for information from 10 January 2022.

At the meeting, the Authority would like to discuss this case in light of this recent correspondence.

The Authority would kindly request that, if possible, a representative of UDI (the Directorate of Immigration) and UNE (the Immigration Appeals Board) be present for that meeting.

Estimated time: 1 hour

3. *Complaint concerning Norway's application of the requirement of comprehensive sickness insurance under Directive 2004/38 (Case No 85597)*

This case concerns Norway's interpretation and application of the requirement to have a comprehensive sickness insurance cover as provided for in Article 7(1)(b) of Directive 2004/38.

More precisely, the issue is whether the immigration authorities can reject an application for a residence permit from a third-country national family member of a returning Norwegian national, because the applicant was not previously covered by a sickness insurance during the whole period of residence in the host EEA State.

By letter dated 20 April 2021 (Doc No 1186501), the Authority sent a request for information to Norway. The Norwegian Government replied by letter dated 20 May 2021 (Doc No 1202322, your ref. 21/1181).

The Authority understands that, by judgment dated 19 April 2021, the Oslo District Court declared the decision of the Immigration Appeals Board in the complainant's case invalid and that, by judgment of 5 September 2022, the Borgarting Court of Appeal upheld the District Court's conclusion (21-083091ASD-BORG/030).

The case was discussed at the package meeting in Oslo on 29 October 2021. Norway replied to the follow-up letter by letter dated 7 January 2022 (Doc No 1261138, your ref. 19/4032).

The Authority also notes that the CJEU has recently delivered two judgments which concern, *inter alia*, the concept of a comprehensive sickness insurance within the meaning of Article 7 of Directive 2004/38, that is Cases C-535/19 *A* and C-247/20 *VI*.

The Authority would kindly request that, if possible, a representative of UDI (the Directorate of Immigration) and UNE (the Immigration Appeals Board) be present for that meeting.

Specific questions to be discussed:

i. What is the Norwegian Government's understanding of the judgment of the Borgarting Court of Appeal, referred to above? Also, what is the impact of this judgment on the practice of the immigration authorities, in particular UNE?

ii. Are there other cases, where the immigration authorities have rejected an application for a residence permit in Norway from a third-country national family member of a returning Norwegian national, because the third-country national family member was missing a comprehensive sickness insurance cover in the host EEA State?

iii. What exactly constitutes a comprehensive sickness insurance cover in Norway, within the meaning of Article 7 of Directive 2004/38 and how is this requirement fulfilled in practice? In particular, is affiliation to the public insurance system sufficient to fulfil the sickness insurance requirement, or are there other additional conditions (for instance, private sickness insurance or payment of a specific contribution)?

Estimated time: 1 hour

4. Own initiative case concerning Norway's expulsion practice for petty crimes (Case No 87300)

This case was opened on the basis of two complaints received, in order to examine Norway's expulsion practice in relation to EEA nationals who commit minor criminal offences in light of Article 27 of Directive 2004/38.

A request for information was sent to Norway on 20 September 2021 (Doc No 1223984). The Norwegian Government replied by letter dated 21 October 2021 (Doc No 1237260, your ref. 15/1261 - LMK).

The case was discussed at the package meeting in Oslo on 29 October 2021. The Norwegian Government replied to the Authority's follow-up letter by letter dated 10 January 2022 (Doc No 1261815, your ref. 15/1261 – LMK).

The Authority understands that the Norwegian Supreme Court delivered a judgment on 7 March 2022 in one of the complainants' cases (HR-2022-533-A).

On 4 April 2022, the Authority sent a supplementary request for information to Norway (Doc No 1275269). The Norwegian Government replied by letter dated 2 May 2022 (Doc No 1286358, your ref. 15/1261 – LMK). A further supplementary request for information was sent to Norway on 30 June 2022 (Doc No 1298806). Norway replied by letter dated 11 August 2022 (Doc No 1306586, your ref. 15/1261 – LMK), explaining that Circular GI-02/2013 was still being applied while the work on amending it was ongoing and that hopefully a draft could be finalised this autumn.

The Authority would kindly request that, if possible, a representative of UDI (the Directorate of Immigration) and UNE (the Immigration Appeals Board) be present for that meeting.

Specific questions to be discussed:

i. Has the work on amending the Circular been finalised? If not, please provide a time line.

ii. What is the Norwegian Government's understanding of the judgment of the Norwegian Supreme Court in case HR-2022-533-A? Has this judgment been taken into account for the purposes of amending the Circular or has it changed the approach of the immigration authorities?

iii. The Authority understands that the Circular is still being applied by the Norwegian Directorate of Immigration. Are EEA nationals still being expelled on the basis of the Circular for minor criminal offences? If so, in how many cases since the last package meeting 2021?

Estimated time: 1 hour

5. Own initiative case concerning Norwegian restrictions upon entry on the basis of COVID-19 (Case No 85895)

By a request for information letter dated 24 November 2020 (Doc No 1164017), 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.[3] On 26 May 2021, the Authority sent a letter of formal notice to Norway in the case (Doc No 1199663). This set out the Authority's view that, by maintaining in force the provisions at issue, Norway had 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. The letter further noted that the Authority is also responsible for monitoring 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 Authority noted that conclusions expressed in relation to EEA nationals under the EEA Agreement in the letter of formal notice should be seen to cover UK nationals who fall under the Separation Agreement *mutatis mutandis.*

The Norwegian Government replied on 7 July 2021 (Doc No 1213206, your ref. 20/5816-SBO). The case was also discussed at the package meeting in Oslo in October 2021.

Specific questions to be discussed:

i. Have there been any court judgments or decisions of administrative bodies concerned with the measures adopted by Norway during the COVID-19 pandemic?

ii. If the answer to the first question is in the affirmative, please provide further details.

iii. If the answer to the first question is in the affirmative, have the judgments upheld the legality of the measures adopted by the Norwegian Government?

iv. If the answer to the first question is in the affirmative, has the position adopted by the Authority in relation to the legality of the measures been taken into consideration?

v. Have any redress schemes or other measures been put in place for persons affected by the restrictions, either financially or otherwise? For example, for persons who were unable to attend work and who as a result may have lost their jobs, or who may have suffered serious pecuniary losses.

Estimated time: 45 minutes

[3] *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.

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Social Security
(Annex VI)

Responsible case handler:	**Per-Arvid Sjøgård**
Other participants:	**Stefan Barriga – College Member (Items 1, 2 and 5)** **Maria Moustakali (Items 1-5)** **Ewa Gromnicka (Items 1-5)** **Erlend Leonhardsen (Item 5)**

1. Exportability of sickness benefits in cash (Case No 84329)

Norwegian legislation requires that in order to be eligible for certain kinds of sickness benefits in cash (sick-pay, care allowance and work assessment allowance), the person concerned must "stay in Norway" (*opphold i Norge*). Exceptionally, those benefits may be retained during temporary stays in other EEA States. However, the continued disbursement of benefits during stays in other EEA States is conditional upon *inter alia* prior authorisation being granted by national authorities. At any rate, the benefits may be retained for a limited period only.

In its judgement of 5 May 2021, in Case E-8/20 *Criminal Proceedings against N*, the EFTA Court held that those rules were in breach of Article 21(1) of Regulation 883/2004 and amounted to unjustified restrictions on the freedom to receive services under Article 36 EEA.

On 9 June 2021, the Authority delivered a reasoned opinion on the matter (Doc No 1200885). The reply was received on 9 September 2021 (Doc No 1226129, your ref. 20/4486-20). At the package meeting in Norway in October 2021, the representatives of the Norwegian Government presented the legislative amendments suggested by the Fredriksen-Committee, delivered on 15 June 2021.

On 1 April 2022, the draft legislative amendments (Prop. 71 L 2021-2022) were submitted to the Norwegian Parliament. The draft bill has remained at the committee stage, with the parliament currently scheduled to vote at first reading on 10 November 2022.

Specific questions to be discussed:

i. The representatives of the Norwegian Government are invited to provide a comprehensive presentation of the draft legislative amendments, including how they are foreseen to remedy the breaches of EEA law identified by the

Authority and the EFTA Court and by when they are expected to be adopted;

ii. The representatives of the Norwegian Government are invited to clarify whether further legislative amendments are foreseen, compared to the draft bill presented to parliament on 1 April 2022; and

iii. As regards the work assessment allowance, the Norwegian Government is invited to explain under what conditions that particular benefit may, today as well as following the adoption of the legislative amendments, be retained during stays in other EEA States. More specifically:

   a. Will recipients of that benefit be requested to notify national authorities of stays in other EEA States?

   b. With reference to *inter alia* Section 11-7 of the National Insurance Act, how will activity plans be drafted and, as the case may be, amended, in situations where the beneficiary is staying or intends to stay in another EEA State?

Estimated time: 45 minutes

2. Remedies for individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits (Case No 85884)

By a letter dated 25 November 2020, the Authority informed the Norwegian Government that it had opened an own initiative case to examine the measures taken by Norway in order to ensure appropriate remedies for individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits in cash (Doc No 1163586), c.f. also Case No 84329 referred to above.

At the package meeting held in Norway in October 2021, the representatives of the Norwegian Government reaffirmed its commitment to identify all individuals affected, including those affected by decisions adopted prior to 1 June 2012. The Authority received updated figures pertaining to the individuals affected and the progress of the measures taken in order to provide adequate remedies.

At the package meeting held in Norway in October 2021, the representatives of the Norwegian Government informed the Authority of its intention to finalise the efforts to provide remedies by the end of that year.

Specific questions to be discussed:

i. The representatives of the Norwegian Government are invited to provide a comprehensive presentation of the measures taken in order to identify all individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits in cash;

ii. The representatives of the Norwegian Government are invited to provide updated figures pertaining to the individuals affected and the progress of measures taken in order to provide remedies, including but not limited to

repayments and interests, compensation for economic and non-economic loss as well as overturns of criminal convictions;

iii. The representatives of the Norwegian Government are invited to inform the Authority of the number of individuals affected by decisions adopted prior to 2012 that have been identified and what remedies have been offered; and

iv. The representatives of the Norwegian Government are invited to confirm whether, in their view, the duty to ensure appropriate remedies has now been completed or whether, as appropriate, any specific measures are envisaged ahead.

Estimated time: 30 minutes

3. Transitional benefit for single parents (overgangsstønad) (Case No 86218)

By a letter dated 10 February 2021, the Authority requested the Norwegian Government to confirm whether it held that the transitional benefit for single parents (*overgangsstønad,* c.f. *inter alia* Section 15-5 of the National Insurance Act) fell outside the scope of Regulation 883/2004. (Doc No 1175938).

In said letter, the Internal Market Affairs Directorate observed that the eligibility conditions to fulfil in order to receive the transitional benefit appeared to bring that benefit within the scope of Regulation 883/2004. In its reply, the Norwegian Government argued that the benefit was not covered by the material scope of Regulation 883/2004.

In its judgement in Case E-2/22 *A v Arbeids- og velferdsdirektoratet*, delivered on 29 July 2022, the EFTA Court concluded that the transitional benefit for single parents was covered by the material scope of Regulation 883/2004. On 1 September 2022, the National Insurance Court ruled in accordance with the judgement of the EFTA Court.

On 7 September 2022, referring to the judgements above, the Authority sent a supplementary request for information to Norway with a view to *inter alia* have confirmation that the national administrative practice has been adjusted, whether legislative amendments are foreseen and what measures are being taken in order to ensure appropriate remedies to individuals affected by the misapplication of EEA law (Doc No 1310522).

Discussions at the package meeting should take place in light of the most recent correspondence.

Estimated time: 45 minutes

4. The award of a supplement pursuant to Article 58 of Regulation 883/2004 (minimum benefit) (Case No 84870)

Article 58 of Regulation 883/2004 determines that if the legislation of the EEA State of residence makes provision for a minimum benefit, the benefit payable by that State shall be increased by a supplement equal to the difference between the total benefits payable by the various EEA States to whose legislation the beneficiary was subject and that minimum benefit.

By a letter dated 24 February 2020, the Authority informed the Norwegian Government that it had opened an own-initiative case to examine the application of Article 58 of Regulation 883/2004 concerning the award of a supplement to pensions in Norway (Doc No 1115996).

In its letter, the Authority recalled that the Norwegian National Insurance Act (NIA) contains provisions which ensure a minimum level of old-age pension, c.f. Sections 19-8, 19-9 (*minste pensjonsnivå*) and 20-10 to 20-12 (*garantipensjon*). Moreover, Section 12-13(2) provides for a minimum level of invalidity pension. Common to all is that the entitlement to a full minimum pension level requires an insurance period of minimum 40 years: if the insurance period is shorter, the minimum pension level will be proportionally reduced.

The Authority further observed that according to news reports in the Norwegian press, the Norwegian Labour and Welfare Administration (NAV) had awarded old-age pensions until 2013 under the presumption that the minimum pension levels referred to above fell within the scope of Article 58 of Regulation 883/2004. Allegedly, more than a hundred individuals.

In its reply of 24 April 2020, the Norwegian Government placed much emphasis on the fact that the minimum pension levels were not "fixed", insofar as they depended on insurance periods, acquired through work and/or residence (Doc No 1129608, your ref. 20/718). For example, the Norwegian Government argued that (p. 3) *"… the legislation does not provide for a fixed minimum pension independent of previous insurance periods (…) in order to receive a full minimum pension, 40 years of insurance are required."*

In that same letter, the Norwegian government further explained the change in administrative practice with reference to *inter alia* its reading of relevant case law, namely the judgement of the CJEU in Case C-22/81 *Browning*, in which the court held that a "minimum benefit" under Article 58 of Regulation 883/2004 "*exists only where the legislation of the state of residence includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance"*.

By a letter dated 14 May 2020, the Authority issued a supplementary request for Norway with a view to obtain further clarifications (Doc No 1131458). In its reply, the Norwegian Government maintained its position, emphasising again that the actual minimum pension level depended on previous insurance periods. Moreover, the reply stressed that the minimum pension levels were not based on economical calculations with a view to ensuring pensioners a reasonable standard of living.

The Authority wishes to discuss the case as such at the package meeting, in addition to the specific questions listed below.

Specific questions to be discussed:

i. The representatives of the Norwegian Government are invited to provide an overview of the number of individuals who were receiving a supplement based on Article 58 of Regulation 883/2004 at the time when the change in administrative practice occurred, including the average value of the ensuing reduction in pension payment from Norway in those cases;

ii. The representatives of the Norwegian Government are invited to provide an overview of the number of individuals who, while not receiving the supplement based on Article 58 of Regulation 883/2004 at the time when the change in practice occurred, would have received such a supplement if the previous administrative practice had been upheld; and

iii. The representatives of the Norwegian Government are invited to provide a comprehensive overview of the current disbursement of minimum pensions in Norway (old-age and invalidity), including but not limited to:

Among the total number of *Norwegian citizens* entitled to a minimum pension level, how many of those qualify for the full minimum pension level (40 years insurance period) and how many of those qualify only for a significantly reduced minimum pension level (e.g. 5 years insurance period and less)?

Estimated time: 45 minutes

5. Access to in-patient treatment in other EEA States from Norway (Case No 72376)

The case concerns the general rules and the system in place in Norway for access to hospital treatment in other EEA States ("in-patient treatment"). By several letters sent in the period 2009-2013, the Authority informed the Norwegian Government that it had received complaints against Norway regarding access to in-patient medical treatment in other EEA States.

On 20 September 2017, the Authority delivered a reasoned opinion to Norway (Doc No 828764). Having examined the Norwegian Government's reply to the reasoned opinion of 19 January 2018 (Doc No 894509, your ref. 16/155), the Authority decided on 18 December 2019 to refer the matter to the EFTA Court.

In the course of preparing its application to the EFTA Court, the Authority received additional information from a complainant. Having assessed this information, the Authority sent a request for information (Doc No 1200103) to the Norwegian Government on 7 May 2021. In light of the reply to that request for information on 18 June 2021 (Doc No 1208723, your ref. 21/2317) and having examined further legislative changes which the Norwegian Government introduced after the expiry of the compliance date set by the reasoned opinion, the Authority decided on 18 May 2022 to issue a second supplementary letter of formal notice (Doc No 1256687).

In its second supplementary letter of formal notice, the Authority maintained its assessments and conclusions as set out in its reasoned opinion, concerning the failure of Norwegian rules on access to in-patient treatment in other EEA States to comply with the requirements of the EEA Agreement. Moreover, the Authority concluded that Norwegian law and practice amounted to further, separate breaches of EEA law (Doc No 1256687).

In its reply, the Norwegian Government maintained its views expressed in previous correspondence and argued that it did not share the conclusions set out in the supplementary letter of formal notice (Doc No 1301709, your ref. 21/2317-17).

Discussions at the package meeting should take place in light of the most recent correspondence, including but not limited to the specific questions listed below.

Specific questions to be discussed:

i. In its reply to the Authority's supplementary letter of formal notice, the Norwegian Government repeatedly states that Helfo and the relevant appeal body processes patients' applications for the right to receive an authorisation (S2) in accordance with the provisions of Article 20 of Regulation 883/2004. The representatives of the Norwegian Government are invited to:

   a. Provide comprehensive data on the number of such applications received over the last ten years, including how many S2-forms were issued and how many such applications were ultimately handled by the relevant appeal body.

   b. Provide an explanation and concrete examples of how the rights set out in Article 20 of Regulation 883/2004 are secured through this application process and any appeal.

ii. In its reply to the Authority's supplementary letter of formal notice (Doc No 1301709, your ref. 21/2317-17), the Norwegian Government states that (p.11) "*patients are also informed of the different routes they may pursue to get reimbursement (…) when their applications are denied"* and, moreover, that "*the Ministry has instructed Helfo and the offices for treatment abroad (…) that they are to inform patients of other available routes when an application is denied."* At the meeting, the representatives of the Norwegian Government are invited to:

   a. Clarify whether patients who consider applying for authorisation through the "PRA-route", administered by the regional health authority, are informed *at that stage* of the possibility to apply directly to Helfo with a view to obtain an S2-form (as opposed to being informed of that possibility only once their application has been denied).

   b. Clarify how, concretely, patients having followed the "PRA-route" are informed of the possibility to apply directly to Helfo with a view to obtain an S2-form. The representatives of the Norwegian Government are

invited to share anonymised copies of relevant decisions/communication to patients demonstrating said practice;

iii. In its supplementary letter of formal notice, the Authority concluded that there was no complaints body which applied Article 20 of Regulation 883/2004 in full. If this understanding was incorrect, the Authority invited the Norwegian Government to provide evidence of how the rights set out in Article 20 (and/or Article 36 EEA) are being respected and secured before the competent complaints bodies (c.f. footnote 101 of the supplementary letter of formal notice). Norway's reply does not appear to address this point and the Authority therefore invites the Norwegian representatives to provide any such evidence or relevant documentation.

Estimated time: 45 minutes

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Proposal for discussion points

Professional Qualifications (Hybrid meeting)
(Annex VII)

Responsible case handlers: **Bernhard Zaglmayer**
Gaukur Jörundsson

Other participants: **Maria Moustakali**
Erlend Leonhardsen

1. *Complaint case against the Norwegian Government on the recognition of Danish medical training (Case No 81670)*

The complaint concerns holders of a Danish *cand. med.* degree that have not finished their KBU, and do not have direct access to the Norwegian specialist training, as well as those having completed the Danish KBU but are not granted the right to be exempted from LIS 1 after 1 January 2019.

This case was discussed between the Authority and the Norwegian Government during the years 2018-2022.

The main issue that the Authority wishes to discuss at the meeting is Norway's response to the judgement of the EFTA Court from 25 March 2021.[4]

In that regard, the Authority notes that on 1 July 2021, the Norwegian Directorate of Health (*Helsedirektoratet*) published that it would individually evaluate the qualification of persons seeking authorisation to practice medicine in Norway where they do not fulfil the conditions for automatic recognition under the Directive, in accordance with the abovementioned judgment of the EFTA Court. An application thereto would be assessed in accordance with Section 48 of the Norwegian Health Personnel Act, requiring amongst other things, that applicants provide a diploma attesting to a completed health professional education that entails training corresponding to the requirements for accessing the profession in Norway. [5]

It is the Authority's understanding, that those that have received such recognition of their basic medical qualifications can now be granted access to specialist medical training in Norway. However, those individuals will not have the right to receive approval as a specialist until the basic education has been approved in the country of education.

Specific questions to be discussed:

[4] Case E-3/20 *The Norwegian Government v Anniken Jenny Lindberg* [2021], paragraph 52.
[5] https://www.helsedirektoratet.no/nyheter/endret-autorisasjonspraksis-for-sokere-som-har-helsefaglig-utdanning-fra-eos-land

i. Are those that have finished specialised medical training in Norway, but do not possess all the formal qualification and certifications listed by the home State at point 5.1.1. of Annex V of the Directive for basic education, barred from receiving national authorisation in Norway to practice as a specialist doctor? The Authority would also like to present their own views on this matter.

ii. Do Norwegian rules allow for exemption from part of specialised medical if similar training has already been obtained as part of medical training in other EEA States? If so, how is such an assessment conducted and what are the criteria used?

Estimated time: 60 minutes

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Proposal for discussion points

Freedom of establishment
(Annex VIII)

Responsible case handlers:	**Ciarán Burke (Items 1-3)** **Ómar Berg Rúnarsson (Item 1)** **Gunnar Örn Indriðason (Item 1)**
Other participants:	**Maria Moustakali** **Kyrre Isaksen (items 1-3)** **Erlend Leonhardsen (Item 3)**

1. Complaint from WizzAir against Norway (Case No 86180)

On 22 December 2020, the Authority received a complaint against Norway (Doc No 1170771). The complaint concerns Wizz Air Hungary Ltd, an airline company with its principle place of business in an EEA State, and several Norwegian public and private entities who threatened a boycott against the complainant, which wished to start operating on domestic flight routes in Norway.

The complainant argued that the boycott was liable to deter its airline from exercising its free movement rights under Article 31 on the right of establishment and/or Article 36 on the freedom to provide services of the Agreement on the European Economic Area ("the EEA Agreement"). Furthermore, the complainant has also emphasised that they held a valid operating license as an air carrier under Regulation 1008/2008 on common rules for the operation of air services in the Community ("Regulation No 1008/2008") and must, as such, be recognised in Norway.

The Authority notes that according to Articles 31, 34 and 36 EEA, legal entities are, in principle, i) entitled to carry out an economic activity on a stable and continues basis in another EEA State (freedom of establishment) and/or, ii) offer and provide their services in another EEA State on a temporary basis while remaining in the country of origin (freedom to provide services).

As regards the transport sector and air services in particular, Article 36 EEA and Regulation No 1008/2008 aim at securing the freedom to provide services within the single market envisaged by the EEA Agreement. Regulation 1008/2008 must be interpreted in light of the general principle enshrined in Article 36 EEA. They confer a right upon individuals and economic operators to market access. This right precludes any unjustified restriction, however minor.

According to the complaint, several public law entities in Norway, in particular municipalities, decided to boycott the complainant. Since municipalities and a state-owned enterprise are public law entities, it follows that they can fall under the scope

of Articles 31 and 36 in conjunction with Regulation 1008/2008. Thus, their actions can, as the case may be, constitute restrictions pursuant to the free movement provisions on establishment and services. However, restrictions on the freedom of establishment and services may, under certain conditions, be justified.

On 19 February 2021, the Authority sent a request for information to Norway (Doc No 86180), asking that the Norwegian Government respond to three questions, namely: whether municipalities or e.g. state-owned companies, have threatened or actually decided to boycott the complainant, with respect to domestic flight routes in Norway; when and how such measures were taken, by whom and, in particular, what was their prescribed aim; and whether such actions are compatible with Article 31 EEA and/or Article 36 in conjunction with Regulation 1008/2008.

The Norwegian Government replied to the Authority's request for information on 19 April 2021 (Doc No 1195325, your ref. 21/1502). There it was stated that several municipalities and state-owned enterprises had resolved not to co-operate with the complainant.

The case was discussed at the Package Meeting in Oslo on 28-29 October 2021. Thereafter, the Norwegian Government sent the Authority additional information via a letter of 22 December 2021 (Doc No 1259884, your ref. 21/5553-16), including a copy of the ruling of Agder County Court of 7 October 2021.

Specific questions to be discussed:

i. Given that it has been some time since there has been correspondence in the case, are the facts in relation to the position of the municipalities and state-owned companies?

ii. Given that the response of the Norwegian Government to the Authority's request for information failed to answer the Authority's third question, namely whether such actions are compatible with Article 31 EEA and/or Article 36 in conjunction with Regulation 1008/2008 in any detail, the Norwegian Government is invited to elaborate its views on this point.

Estimated time: 45 minutes

2. Own-initiative case concerning Norwegian rules on group contributions and the final loss exception (Case No 81849)

On 23 March 2018, the Authority opened an own initiative case concerning Norwegian rules on group contributions and the "final loss exception".

Reference is made to the judgment of the EFTA Court in Case E-15/16, *Yara International ASA v the Norwegian Government*, where the EFTA Court confirmed "the final loss exception", established by the Court of Justice of the European Union, and the applicability of such a rule to a system of intra-group contributions.

By letter dated 19 April 2018 (Doc No 903884), the Authority invited the Norwegian Government to confirm that the Norwegian Taxation Act[6] did not contain a "final loss exception", and to provide information on how it intended to react to the ruling of the EFTA Court.

By letter dated 16 May 2018 (Doc No 914029, your ref. 14/3063 SL KAAS/KR), the Norwegian Government confirmed that the Norwegian Taxation Act did not contain a "final loss exception". The Norwegian Government also informed the Authority that it intended to incorporate a "final loss exception" directly in the relevant provisions of the Norwegian Taxation Act, and to send out proposals for new provisions on a public hearing.

The Authority notes that a public consultation paper was published on 13 August 2019 (Doc No 1086256, your ref. 19/2524).

The case was discussed at the package meetings in Oslo on 25-26 October 2018 and 24-25 October 2019. At the meetings, the Norwegian Government informed the Authority that the Norwegian Taxation Act would be amended to include a "final loss exception", and that the amendment would be adopted with the revised national budget of 2020 or the national budget of 2021.

The Authority submitted an additional request for information to the Norwegian Government on 28 April 2021 (Doc No 1196427). The Norwegian Government replied on 14 June 2021 (Doc No 1207331, your ref. 14/3063). Therein, it was stated that the Ministry of Finance was in the process of finalising a draft amendment, with the aim of adopting it with the national budget of 2022.

It is the understanding of the Authority that such an amendment to the Norwegian Taxation Act has not yet been adopted.

Specific questions to be discussed:

i. Taking into consideration that the case has been open for four years, the Norwegian Government is invited to provide the Authority with information on the status of the draft amendment to the Norwegian Taxation Act, and the details of said amendment, as they presently stand.

Estimated time: 20 minutes

3. Own initiative case concerning authorisation requirements to set up subsidiaries of Norwegian financial institutions in other EEA States (Case No 78022)

By letter dated 15 October 2015 (Doc No 775977), the Authority informed the Norwegian Government that it had opened an own initiative case concerning an authorisation requirement to set up subsidiaries of Norwegian financial institutions in other EEA States.

[6] Lov 26. mars 1999 nr. 14 om skatt av formue og inntekt (skatteloven).

On 12 March 2020, the Authority sent a reasoned opinion to Norway (Doc No 1120918). In this reasoned opinion, it maintained the view expressed in the letter of formal notice, that by maintaining in force an authorisation requirement, such as the one established in Section 4-1 first paragraph of the FIA, Norway is in breach of Directives 2013/36/EU, 2009/138/EC, 2003/41/EC, (EU) 2015/2366 and 2009/110/EC and/or of Article 31 EEA.

After repeated extensions of the time-limit, on 9 December 2020, the Norwegian Government replied to the reasoned opinion (Doc No 1168066, your ref. 16/39). In its reply, Norway re-iterated its view that the authorisation requirement contributes to the legitimate goal of safeguarding financial stability in Norway. The Norwegian Government further noted that the relevant EEA legal framework supports the notion that competent authorities should have sufficient supervisory powers in cases where an entity under its supervision plans to establish a group with subsidiaries in other EEA States. Text and translation of the proposed amendments to Section 4-1 of the FIA (Doc No 1168068) were annexed to this reply.

The case was discussed with the representatives of the Norwegian Government at an (online) meeting on 23 February 2021. There, the representatives of the Authority made it clear that, in their view, the proposed legislative amendments to Section 4-1 of the FIA did not solve the outstanding issues, and that the notification scheme proposed effectively amounted to a disguised, or *de facto*, authorisation scheme.

On 7 July 2022, the representatives of the Norwegian Government informed the Authority that, as of 1 June 2022, the relevant provisions of Section 4-1 of the FIA had been amended (Doc No 1301145). The form that these amendments took, ultimately largely reflected the proposed amendments discussed with the Authority previously.

After having assessed the Norwegian provisions at issue, and in particular, the amendments made by the Norwegian Parliament, which entered into force on 1 June 2022, the Authority maintains its view that a *de facto* authorisation requirement, such as the one established in Section 4-1, paragraphs 1-5 of the Norwegian Financial Institutions Act ("the FIA"), is in breach of Directives 2013/36/EU, 2009/138/EC, 2003/41/EC, (EU)2015/2366 and 2009/110/EC and/or constitutes an unjustified restriction on the freedom of establishment, in breach of Article 31 of the Agreement on the European Economic Area ("the EEA Agreement"), and that the amendments to the legislation in question do not fundamentally alter the situation in respect of the breaches to the EEA Agreement noted above.

Specific questions to be discussed:

i. Taking into consideration that the Authority already expressed the view to the Norwegian Government that the amendments proposed to the legislation would not fundamentally alter its effect – substituting an authorisation scheme for a *de facto* authorisation scheme – are the arguments of the Norwegian Government justifying the new legislation in any way different from those justifying the previous legislation, as expressed in the reply to the Authority's reasoned opinion?

ii. With respect to the rules that were in force prior to June 2022, the Norwegian Government has not disputed that these rules constituted a restriction on the freedom of establishment. It argued, however, that the rules could be justified by overriding reasons of general public interest and are proportionate. Does the Norwegian Government view the current rules as constituting a restriction?

iii. Is the Norwegian Government able to provide any substantial arguments concerning the necessity of the national measure as regards situations where finance companies are established or acquired as subsidiaries of Norwegian financial institutions in other EEA States?

iv. The new rules refer to “special risk”. However, they do not define when or how it is deemed that the establishment or acquisition does or does not pose a “special risk” to the solvency of the parent institution, nor whether the test employed involves checking compliance with, for example, the higher capital requirements imposed by Norway or the minimum capital requirements set out in 2013/36/EU or, as the case might be, other directives. Please elaborate upon these questions, and demonstrate to the Authority how the test in question functions in theory, and in practice, what criteria will be applied, and how this complies with the principle of legal certainty.

v. Please further clarify the notion of “special risk”, whether this will involve checking compliance with capital requirements, and whether these will be the higher capital requirements imposed by Norway or the minimum capital requirements set out in Directive 2013/36/EU.

vi. Please further elaborate as to whether, by checking compliance with capital requirements for the purposes of deciding whether a subsidiary in another EEA State could be established or acquired, Norway is or is not intervening into the competence of that other EEA State as set out in Directive 2013/36/EU.

vii. The new rules further require that it should not be “difficult to supervise” the group. However, here it is not clear whether Norway requires that, for example, only a credit institution can establish or acquire a credit institution as a subsidiary in another EEA State or whether this requirement should be understood as meaning that the subsidiary’s activities should not pose a risk to the solvency and governance of the financial institution. Please clarify this point.

Estimated time: 1 hour 15 minutes

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Proposal for discussion points

Financial Services
(Annex IX)

Responsible case handlers:	**Marianne Arvei Moen (Item 1)** **Erlendur Halldór Durante (Items 2–5)** **Marta Margrét Rúnarsdóttir (Items 2–5)**
Other participants:	**Marco Uccelli** **Erlend Leonhardsen (Items 1 and 4)**

1. *Complaint concerning the non-application of EEA law on prospectuses by the Norwegian courts (Case No 87218)*

On 7 July 2021, the Authority received a complaint alleging that Norwegian courts have failed to apply sector-specific EEA law, which sets out disclosure requirements in relation to publishing prospectuses of securities offered to the public or admitted to trading on the regulated markets. The complaint concerns Regulation (EC) 809/2004 ("Prospectuses Regulation"), Directive 2003/71 and Directive 2004/39/EC (MiFID I).

On 9 December 2021, the Authority submitted a request for information to the Norwegian Ministry of Finance. In the letter (Doc No 1231410), the Authority requested information from the Ministry in order to ascertain whether, and to which extent, the case law in question may be indicative of a lack of conformity of Norwegian securities law and practice with that of EEA securities law, and particularly concerning the protection of non-professional investors that should be guaranteed by way of the Prospectus Regulation and Directive 2003/71.

In its reply submitted to the Authority on 1 March 2022 (Doc No 1272631, your ref. 21/6392), the Ministry argues that it is not the correct addressee of the request and that the EEA acts in question are correctly implemented and applied in Norway.

Specific questions to be discussed:

i. The Authority would like to discuss how Norwegian courts and other competent bodies are applying EEA rules in cases relating to investment services.

Estimated time: 1 hour

2. Conformity Assessment of Directive 2015/849 (AMLD IV) (Case No 84351)

By letter dated 21 July 2022 (Doc No 1302977), the Authority sent a request for information to the Norwegian Government on the implementation of Directive 2015/849 (AMLD IV) into the Norwegian legal order. In the request for information, the Authority invited the Norwegian Government to provide certain clarifications and respond to a number of questions by 15 September 2022.

By email of 16 August 2022 (Doc No 1311235), the Norwegian Government requested an extension of the deadline to respond to the Authority's request for information until 15 October 2022. The Authority granted the request.

At the meeting, the Authority wishes to discuss the questions set out in its request for information in light of any clarifications or comments which the Norwegian Government may provide by 15 October 2022.

Specific questions to be discussed:

i. How do the explanations provided for not adopting implementing measures for a number of the provisions of AMLD IV fit with Norway's duties under the EEA Agreement?

ii. Discussion of selected questions set out in the request for information, as will be deemed necessary following assessment of any clarifications and comments which the Norwegian Government may provide prior to the meeting.

Estimated time: 45 minutes

3. IRB calculations in Norway (Case No 88178)

The Authority is currently assessing the rules issued by the Financial Supervisory Authority of Norway (Finanstilsynet) on requirements for internal ratings-based (IRB) models "*Circular 3/2021 Requirement for IRB models for banks, mortgage companies and finance companies*". The circular applies to banks, mortgage companies and finance companies, and was published on 16 June 2021 (in Norwegian on 9 June 2021).

The IRB approach allows banks to calculate risk weights and capital requirements for credit risk based on their own estimates of risk parameters. The circular sets out *Finanstilsynet*'s expectations regarding banks' use of the IRB approach. Use of the IRB approach is subject to approval by *Finanstilsynet*.

The Authority wishes to ascertain whether certain rules in the circular go beyond the applicable EEA law, including but not limited to *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms* (CRR), as amended and incorporated into the EEA Agreement.

Specific questions to be discussed:

i. How is the procedure with regard to adopting circulars issued by *Finanstilsynet*? Could you please elaborate specifically on the role of the Ministry of Finance?

ii. What is the nature of this circular within the Norwegian legal environment? Would *Finanstilsynet* deviate from its own rules when assessing the use of IRB approach for Norwegian entities? Is it thus not de facto binding with regard to banks, mortgage companies and finance companies with regard to the subject matter?

iii. How many banks in Norway have been allowed to use the IRB approach by *Finanstilsynet*, and has that approval been based on the circular?

iv. The Authority will send more and detailed questions to the Norwegian Government concerning specific provisions of the circular to inform and facilitate the discussion ahead of the package meeting. This will include, e.g. questions on factors that are to be regarded as a model change in Section 2.1.1, on the 30 billion NOK limit found in Section 2.1.2, on the requirements to the estimation of loss given default found in Sections 4.2-4.3, on the reference model for residential mortgages found in Section 4.5 and on the determination of the maturity parameter (M) found in Section 5.1 of the circular.

Estimated time: 60 minutes

4. Assessment of acquisitions and increase of holdings in the financial sector (Directive 2007/44) (Case No 77973)

Reference is made to the previous correspondence in the case, in particular the Authority's letter of formal notice dated 15 March 2017 (Doc No 817335), previous discussions on package meetings 2018-2019 and the informal correspondence from the Norwegian Government dated 8 July 2020 (Doc No 1144546), whereby the Authority was informed that the follow-up of the case had been delayed due to the outbreak of COVID-19.

At the package meeting in Norway in October 2021, representatives of the Norwegian Government and the representatives of the Authority discussed the legal framework and the evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector. At the meeting, the Norwegian Government indicated its intention to address the issue and obtain a new report and/or an assessment in the context of a wider reform of the legal framework.

The Authority sent a follow-up letter dated 26 November 2021 (Doc No 1247323), inviting the Norwegian Government to provide the Authority with information on the timeline of the reform of the relevant Norwegian legislation by 18 December 2021. In its reply dated 25 May 2022 (Doc No 1291928), the Norwegian Government reiterated its intention to consider changes to the national legislation, on the basis of the Authority's assessment. Subsequently, the Government informed the Authority

that it expected to circulate legislative proposals for consultation with regard to the issue in spring 2022, and to submit them to Parliament in autumn 2022.

The Authority would like to discuss the case in light of recent and any future correspondence.

Specific questions to be discussed:

i. Norway reiterated its intention to change the national legislation with regard to the issue at hand. What is the expected timeline for approval and entry into force of the proposed legislative amendments?

ii. Can the Norwegian Government present an overview of the extent to which the proposed legislative amendments address the issues raised by the Authority in its letters?

Estimated time: 20 minutes

5. Complaint concerning the incorrect application of Directive 2009/138 (Solvency II) (Case No 85119)

Reference is made to the previous correspondence in the case concerning a complaint against Norway regarding administrative practices for the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector. In particular, the Authority's request for information dated 25 August 2020 (Doc No 1143769) and Norway's reply dated 26 October 2020 (Doc No 1160009, your ref. 20/3709-3).

The case was discussed at the package meeting in Norway in October 2021, where the representatives from the Norwegian Government referred to the link to Case No 80996 (Netfonds), its reply to the Authority's reasoned opinion in aforementioned case, as well as to recent developments in the case before the national courts relating to the EFTA Court's judgment in Case E-8/16 (Advisory Opinion). The representatives of the Norwegian Government reiterated their position, i.e. that the dispersed ownership policy was in compliance with EEA law, and indicated that no changes were foreseen with regard to this administrative practice. The representatives of the Authority confirmed that the Government's reply was under assessment.

The Authority sent a follow-up letter dated 26 November 2021 (Doc No 1247323) to the Norwegian Government, informing that the assessment was still ongoing.

At this meeting, the Authority wishes to obtain some additional clarification and information that relates to the information provided in the Norwegian Government's reply to the request for information. This includes clarification of Norway's regime for initial authorisation of financial undertakings, which the Norwegian Government considers to be linked to subsequent acquisitions and increases of qualifying holdings in the financial sector.

The Authority would like to discuss the case in light of recent and any future correspondence.

Specific questions to be discussed:

i. Beside insurance undertakings and credit institutions, does the same administrative practice also apply to the acquisitions and increases of qualifying holdings in other financial undertakings?

ii. Have the requirements for authorisation of insurance undertakings and credit institutions been laid down in writing, in particular those that form part of the administrative practice?

iii. Have the requirements for authorisation of credit institutions laid down by Norway been notified to the European Banking Authority, in accordance with Article 8(1) of Directive 2013/36 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms[7] (CRD IV), as amended?

iv. How does the Norwegian Government reconcile the administrative practice with the duty to only oppose to an acquisition if there are reasonable grounds for doing so, see for instance Article 23(2) read in conjunction with Article 14(2) of CRD IV?

Estimated time: 30 minutes

[7] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), incorporated into the EEA Agreement at points 14 and 31ea of Annex IX to the Agreement by Decision of the EEA Joint Committee No 79/2019 of 29 March 2019.

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Proposal for discussion points

Freedom of movement of services
(Annex X)

Responsible case handlers: **Per-Arvid Sjøgård**
Ciarán Burke

Other participants: **Maria Moustakali**
Ewa Gromnicka

1. Reimbursement of costs related to cross-border healthcare (Case No 85598)

By letter dated 30 September 2020, the Authority informed the Norwegian Government that it had received a complaint concerning the Norwegian legislation and administrative practices on the reimbursement of costs related to cross-border healthcare. The Authority raised a series of questions with a view to examining whether national law complied with the provisions of Directive 2011/24 on patients' rights (Doc No 1152080).

In said letter, the Authority referred *inter alia* to Article 7(4) of Directive 2011/24 on patients' rights which requires that the costs shall be reimbursed "*up to the level of costs that would have been assumed by the Member State of affiliation, had this healthcare been provided in its territory…"*. The Norwegian Government was invited to explain why the relevant administrative circular required that, in case of cross-border healthcare, only 80 percent of what was referred to as the "DRG price" would be reimbursed (diagnosis-related groups).

Moreover, the Authority raised questions pertaining to national law applicable to the deadlines for submitting claims for reimbursement, the requirement to have certain documents translated, and the transparency and predictability of the national reimbursement process.

The Norwegian Government replied on 30 October 2020 (Doc No 1160689, your ref. 20/4441). With regard to the issue of reimbursement, it was explained *inter alia* that the DRG-costs were calculated as average expenses on a public hospital level and included the hospital sector's administrative expenses, preparedness expenses, emergency costs etc. Reimbursement rates based on the DRG-system as such were average costs which would also contain expenses not solely related to the treatment of individual patients. The estimated average DRG-costs were assumed to be higher than the marginal cost of treatment.

The Norwegian Government informed the Authority that for patients treated in other Norwegian regions than their "home region", a "guest settlement" would take place between the regional health authorities whereby the payment would amount to 80

percent of the estimated DRG-costs. The Norwegian Government had found it rational to use the same 20 percent deduction for treatment given in another EEA State.

In its reply, the Norwegian Government also provided extensive feedback on the other issues raised by the complaint.

By letter dated 23 September 2021, the Authority submitted a supplementary request for information (Doc No 1227746), addressing specifically the national provision whereby certain documents supporting a claim for reimbursement would have to be translated, as a main rule by a state authorised translator. The Norwegian Government replied by a letter dated 21 October 2021 (Doc No 1237151, your ref. 20/4441).

The case was then discussed at the package meeting in Norway held on 28 and 29 October 2021. Reference is made to the ensuing follow-up letter (Doc No 1247323) for a detailed account of the discussions which took place.

The discussion of the case should take place in light of the most recent developments and correspondence therein.

Estimated time: 30 minutes

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Package Meeting in Norway
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Proposal for discussion points

Telecommunications services / Data Protection
(Annex XI)

Responsible case handlers:	**Anna Wrzesniak (Item 1)** **Ciarán Burke (Item 2)**
Other participants:	**Lemonia Tsaroucha (Item 1)** **Maria Moustakali (Item 2)** **Ewa Gromnicka (Item 2)**

1. *Enforcement of ex-ante regulation in Norway pursuant Directives 2002/21/EC and 2002/19/EC (Case No 86799)*

On 6 May 2021, the Authority opened an own initiative case to investigate the application of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("the Framework Directive") and Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ("Access Directive"), in particular with regard to enforcement of ex-ante regulation.

On 5 January 2015, the Authority had received a complaint against Norway (Case No 76785), alleging that Norway infringed Article 8 and Article 20 of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services ("the Framework Directive") and Article 5 of Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities ("the Access Directive"). On 9 July 2021, the Authority received another complaint (Case No 87022), which also concerned an alleged infringement by Norway of Articles 8 and 20 of the Framework Directive and Article 5 of the Access Directive. Both complaint cases have been closed on 23 June 2022 (Doc Nos 1291561 and 1291395, respectively) and the Authority has decided to assess some general aspects of the allegations brought forward in both cases solely and more broadly by way of this own initiative.

On 22 July 2022, the Authority sent a request for information to Norway (Doc No 1303455) to which a reply was received on 22 September (Doc No 1314940, your ref. 22/5648-4).

Specific questions to be discussed:

The Authority would like to follow up on Norway's reply to the request for information and clarify outstanding issues, and in particular, further elaborate on the following questions:

i. What are the decisive criteria, apart from the complexity of a case, which Nkom takes into account when deciding whether a complaint case falls under the exception provided for in Article 20 of the Framework Directive?

ii. What is the status of ongoing appeal proceedings and when does Norway intend to adopt a final decision in (i) complaint, (ii) Article 7(3) and 7(6) Framework Directive cases listed in Norway's reply of 22 September?

iii. In case a decision of the appeal body substantially changes Nkom's decision assessed by the Authority under Article 7 of the Framework Directive, would such decision undergo national/ESA consultation?

iv. With regard to Nkom's indication, that substantial workload in the recent years is due to Telenor's unilateral decision to decommission its copper network:

   a. Has Norway taken other legal actions in addition to Nkom's decision of 15 October 2021 imposing a fine on Telenor, in order to safeguard competition?

   b. Has Nkom's decision of 15 October 2021 been appealed?

   c. Has Nkom been able to enforce other obligations stemming from Nkom's decisions adopted following Telenor's announcement of January 2019 e.g. obligation to provide a migration plan, obligation to provide a replacement product etc.?

Estimated time: 45 minutes

2. Own initiative case concerning NAV's processing of IP addresses (Case No 88929)

On 7 July 2022, the Authority opened an own initiative case to investigate the application of Regulation 2016/679 (EU), the General Data Protection Regulation ("GDPR"), as well as its predecessor, Directive 95/46/EC in Norway, from 2012 until the present day. On 31 August 2022, the Authority sent a request for information to Norway (Doc No 1308820). Therein, the Authority requested that the Norwegian Government clarify the position, current and past practices of the Norwegian Labour and Welfare Administration ("NAV") in relation to the processing and storing of Internet Protocol addresses ("IP addresses") of individuals sending employment status forms to the NAV. The Norwegian Government was invited to submit the above information, as well as any other information it deems relevant to the case, so that it reached the Authority by 31 October 2022.

Based upon information received by the Authority, as well as its own investigations, the Authority understands that, in order to be registered as a jobseeker and to receive unemployment benefits, work assessment allowance and employment scheme benefits, an employment status form must be sent by jobseekers or other

persons in receipt of benefits (who are obliged to register with the NAV) every fourteen days. The Norwegian NAV Commission's 2020 Report makes it clear that the NAV exercised control over whether jobseekers and persons in receipt of work assessment allowance and employment scheme benefits were in fact present in Norway through the use of technological tools that tracked IP addresses. The Report further notes that residence/stay elsewhere in the EEA area than Norway alone has formed the basis for a decision to suspend or reclaim benefits, without further assessment of whether the residence/stay abroad has prevented follow-up in the specific case.

Given that the deadline for receipt of a reply to the Authority's request for information coincides almost exactly with the date of the Package Meeting, the Authority would hope that the Norwegian Government would be in a position to discuss the questions posed in the request for information at the meeting. As such, it is expected that the substantive discussion will closely parallel the content of that letter.

Specific questions to be discussed:

i. The Authority understands that IP addresses were collected and retained when persons sent in their employment status form, and that these addresses were used for control purposes. Was this the sole purpose for which these addresses were used, and what was the legal basis for such processing, under Directive 95/46/EC, and under the GDPR?

ii. For how long were IP addresses stored, and what was the legal basis for their storage? How was this time limit determined?

iii. Was the purpose for which the data was collected specified before the data was collected? Was this made clear to the data subjects? If so, how was this done? What information was provided to the data subjects?

iv. Was the data then used for any purpose beyond the original purpose for which it was collected?

v. How are such communications presently treated? Are IP addresses still processed or stored? If so, what is the legal basis for this?

vi. The Authority understands that, until 11 March 2018, it was possible to log into the system with a username and password, but that since then, it has only been possible to access the system with MinID, BankID, Commfides or similar two-factor authentication keys. Were IP addresses of users still processed and/or stored after this date? If so, what was the legal basis for this processing and/or storage?

vii. Did the practice change after the entry into force of the GDPR in the EEA on 20 July 2018? If so, what was the legal reasoning for the change?

viii. Was the Norwegian Data Protection Authority ("DPA") informed about this practice? If so, when did this take place? Were data subjects notified individually at the same time as the DPA that their personal data had been processed, or was being processed, or were they informed at a later juncture? What information was conveyed to the DPA? What action, if any, was taken by the DPA?

ix. Approximately how many persons are affected by the processing of their personal data in this manner?

x. Approximately how many (formal or informal) enquiries and complaints have been received in relation to this issue by the Norwegian Government and/or the NAV? Please summarise the main lines of complaint received.

xi. Have any remedies been made available to those whose personal data was processed? How can these remedies be accessed? How does the Norwegian Government intend to quantify damage?

xii. Has any litigation been initiated by any affected parties, specifically in relation to data protection issues arising from the NAV's processing of IP addresses?

Estimated time: 1 hour

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Package Meeting in Norway
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Proposal for discussion points

Transport
(Annex XIII)

Responsible case handlers: **Kadus Basit (Item 1)**
Lemonia Tsaroucha (Item 2)
Gunnar Orn Indridason (Items 3 and 4)

Other participants: **Kyrre Isaksen (Item 3)**

1. *Minimum safety requirements for tunnels in the Trans-European Road Network (TERN) – Norway (Case No 84698)*

On 3 December 2020, the Authority delivered a reasoned opinion (Doc No 1160732), in which it concluded that Norway had failed to ensure that all tunnels with lengths of over 500m in the Trans-European Road Network (TERN) complied with the minimum safety requirements of Directive 2004/54/EC by the deadline set out therein. For tunnels that were already in operation at the time of the entry into force of the Directive, the deadline for refurbishment of those tunnels expired on 30 April 2019. At the time of the reasoned opinion, 68 tunnels were not in compliance with the minimum safety requirements.

The reasoned opinion was discussed during the package meeting in Oslo in October 2021. At the meeting, the Norwegian Government presented the status on the implementation of the Directive in Norway and confirmed that 49 tunnels were still not in compliance with the minimum safety requirements of the Directive. In relation to 29 of the 49 non-compliant tunnels, the representatives of the Norwegian Government informed the Authority of the plans to ensure that all safety requirements are met. Additionally, in relation to the remaining 20 tunnels, the Norwegian Government presented the timeline for replacing these tunnels by new road infrastructure.

Following the meeting, by letter of 7 March 2022 (Doc No 1273867, your ref. 15/1923-39, with attachments), the Norwegian Government provided the Authority with additional information pertaining to the case, including information on risk assessments and alternative risk reduction measures for tunnels that are yet to be compliant, and additionally, information on the national budget for 2022 that was relevant for this case.

At the meeting, the Authority wishes to discuss the status of the case, including any developments or updates.

Specific questions to be discussed:

i. What is the status of compliance for tunnels falling under the scope of the Directive, and to what degree have alternative security measures been implemented in tunnels that are not yet in compliance with the Directive?

ii. Has there been any changes to the timeframe for the plans ensuring compliance with the Directive?

iii. What commitments, decisions, funding or other relevant measures have been taken to ensure compliance with the Directive?

Estimated time: 45 minutes

2. EMSA visit to Norway – Port State control (Case No 83735)

The European Maritime Safety Agency ("EMSA") conducted a visit in Norway between 1 and 4 October 2019, on behalf of the Authority, to monitor the implementation of Directive 2009/16/EC on *port State control*. After the visit, EMSA produced a report on its findings dated 19 December 2019, which it shared with the Authority (Doc No 1111247 / EMSA ref. INSP.PSC.2018-AS7096).

In the Authority's follow-up to the EMSA visit in 2019, through correspondence with Norway in the last two years, it has become clear that one issue identified as a recurrent shortcoming by EMSA has not been resolved by Norway. This concerns the system of penalties in Norway, which does not cover all breaches of the Directive as required under Article 34 thereof.

On 9 July 2021 (Doc No 1171237), the Authority requested an update on the progress made by the Norwegian Government to address the remaining shortcomings identified in EMSA's report, in particular, the necessary legislative amendments required to implement penalties for all breaches of the Directive. By a letter dated 11 August 2021 (Doc No 1220717, your ref. 2019/54870-26), the Norwegian Government was still unable to provide the Authority with a concrete timeline on the legislative proposal to amend the national legislation.

On 21 September 2022, the Authority issued a letter of formal notice against Norway (Doc No 1257113), concluding that by failing to ensure that all violations of national provisions implementing the Directive are subject to appropriate penalties under national law, Norway has failed to fulfil its obligations arising from Article 34 of the Directive.

During the meeting, the Authority wishes to discuss the status of the case, including any developments or updates on the legislative proposal to amend the national legislation.

Specific questions to be discussed:

i. Are there any developments in the implementation of the penalty provision under Article 34 of the Directive?

ii. Can the Norwegian Government provide the Authority with a concrete timeline on the foreseen amendments to the national legislation?

Estimated time: 30 minutes

3. Complaint regarding implementation of Directive 96/67 on ground handling (fuel services) at Oslo airport (Case No 74566)

By a letter dated 7 November 2013 (Doc No 688473), the Authority informed the Norwegian Government that it had received a complaint against Norway regarding access to self-handling of fuel and oil at Oslo Airport. Following correspondence between the Authority and the Norwegian Government in 2013 and 2014, the Authority issued a letter of formal notice on 17 June 2015 (Doc No 755811). In this letter, the Authority concluded that the arrangements imposed by *Oslo Tankanlegg AS* ("OLT") on airport users at Oslo Airport, i.e. the obligation to become a shareholder of OLT, in order to be granted access to centralised infrastructure and airport installations (fuel-distribution system and related airport installations), except for the self-handling of into-plane fuelling, did not comply with the requirements laid down in Article 6(1), Article 7(1), Article 8(2) and Article 16(1) of Directive 96/67/EC on access to the ground handling market at Community airports ("the Directive").

Following the letter of formal notice, the Authority and the Norwegian Government had regular correspondence regarding the applicable arrangements at Oslo Airport and measures taken to remove the shareholder requirement.

On 10 May 2022, the Authority issued a supplementary letter of formal notice due to the failure of taking further measures to ensure full implementation of the Directive in Norway (Doc No 1211425).

The Norwegian Government replied to the supplementary letter of formal notice by a letter dated 1 July 2022 (Doc No 1300398, your ref. 15/137) where it acknowledged that the abovementioned arrangements at Oslo Airport constituted a breach of the Directive and would provide further information on the progress of reaching full compliance by 1 October 2022.

During the meeting, the Authority wishes to discuss the status of the case and the awaited letter from the Ministry of Transport. Pending on the substance of that letter, the Authority may present specific questions via email before the meeting.

Estimated time: 45 minutes

4. Public Service Obligations and tender on regional air services in Northern Norway (Case No 87007)

On 30 September 2021, the Authority published in the Official Journal of the European Union a notice for an invitation to tender procedure for the operation of scheduled regional air services in Northern Norway from 1 April 2022 to 31 March 2024. On 11 March 2022, the Ministry of Transport informed the Authority of the selection of operators for the routes (Doc No 1275011).

After receiving the information on the tender, the Authority identified certain requirements for the operation of the PSO routes that were new when compared to most recent previous tenders.

According to Article 16 of the Regulation, the fixed standards imposed on the route subject to a public service obligation shall be set in a transparent and non-discriminatory way and according to Article 16(3), it is for the EEA EFTA States to assess the necessity and adequacy of an envisaged public service obligation, having regard to the criteria mentioned in that provision.

On 8 April 2022, the Authority therefore requested further information and justification for these operational requirements (Doc No 1237711). Namely, the requirement to correspond with flights to and from (1) Tromsø and (2) Oslo, (3) the requirement for specific references in ILO Conventions No 87 and 89, (4) the requirement to offer interline services to domestic connections, and (5) to facilitate unsupervised travel of children over the age of five.

On 9 May 2022, the Authority received a reply from the Ministry of Transport (Doc No 1288246, your ref. 21/1702) where the Government presented its justification for these operational requirements.

During the meeting, the Authority would like to discuss further the abovementioned requirements, and, in particular, points (1) to (4).

Specific questions to be discussed:

i. As regards the requirements to correspond the flight schedule with schedules to and from Oslo and Tromsø, how is this requirement applied in practice?

ii. The views of the Norwegian Government to apply the same standards for PSO procurement as recommended by the Norwegian Agency for Public and Financial Management, is the same policy applied for PSO's in all modes of transport (road, rail and maritime)?

iii. As regards the requirement for operators "[to] offer passengers interline services (tickets and luggage) to natural domestic connections", please elaborate on why these requirements are limited to domestic connections and not applicable to connections intra EEA?

Estimated time: 45 minutes

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Proposal for discussion points

Procurement
(Annex XVI)

Responsible case handlers: **Rachel Harriott**

Other participants: **Árni Páll Árnason – College Member (Item 3)**
Marco Uccelli
Frederik De Ridder
Ewa Gromnicka (Items 1 and 3)

1. *Complaint against Norway concerning the award of exclusive rights for collection and treatment of waste (Case No 78085)*

The case concerns a complaint received by the Authority on 20 October 2015 concerning the award of exclusive rights by Norwegian municipalities to state-owned private undertakings in the area of waste management. According to the complainant, a widespread practice exists in Norway to directly award exclusive rights and then contracts to these undertakings without a prior public call for tenders.

On 8 December 2021, the Authority sent a letter of formal notice to the Norwegian Government, concluding that arrangements entered into with the inter-municipal waste company *Midtre Namdal Avfallsselskap IKS* by its owner municipalities for services in respect of commercial waste from municipal buildings and institutions are in breach of EEA law (Decision No 277/21/COL; Doc No 1143836).

The Norwegian Government submitted its observations on the letter of formal notice on 8 April 2022 (Doc No 1281709, your ref. 15/2910). The Norwegian Government disagreed with the Authority's conclusions and argued that the arrangements in question should be considered as transfers of powers and responsibilities falling outside the scope of Directive 2014/24/EU on public procurement. In the alternative, the Norwegian Government submitted that the arrangements fall within the scope of the exclusive rights exception set out in Article 11 of Directive 2014/24/EU.

On 28 September 2022, the Authority sent a reasoned opinion to the Norwegian Government, maintaining its conclusions set out in the letter of formal notice (Decision No 181/22/COL; Doc No 1281581).

The Authority would like to discuss the case in light of the reasoned opinion. The Authority would like to hear the Norwegian Government's initial reactions to the Authority's position and would be happy to answer any questions the Norwegian Government may have.

Estimated time: 1 hour

2. Complaint concerning Norwegian practices regarding confidential documents in procurement claims (Case No 87544)

The case concerns a complaint received by the Authority on 29 September 2021. The issue raised by the complainant concerns how confidential information is treated for the purposes of review procedures concerning public procurement. This issue entails consideration of how obligations of transparency are balanced with rights to confidentiality in the context of review proceedings relating to public procurement decisions.

On 19 November 2021, the Authority sent a request for information to the Norwegian Government (Doc No 1247181). The Norwegian Government responded to that letter on 18 January 2022 (Doc No 1263702, your ref. 21/7081-7).

The Authority would like to discuss the case in light of recent and any future correspondence.

Specific questions to be discussed:

i. The Norwegian Government is asked to explain step by step how the rules of the Norwegian Act relating to mediation and procedure in civil disputes ("Dispute Act") relating to disclosure of confidential information for the purposes of review proceedings relating to public procurement work in practice.

ii. The Norwegian Government has stated that sections 22-3 and 26-7 are the relevant provisions of the Dispute Act in respect of reviews under both procurement remedies directives (Directives 89/665/EEC and 92/13/EEC). However, section 22-3 appears to only be applicable to a limited list of bodies, not as extensive as the bodies covered by the three procurement directives (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU). The Norwegian Government is asked to comment on this issue and the extent to which section 22-10 of the Dispute Act may also be relevant.

iii. The Norwegian Government is asked to clarify how the claims relating *solely* to decisions of contracting authorities/entities not to disclose certain information for reasons of confidentiality would be dealt with in Norway. In particular, the Norwegian Government is asked to address the legal basis the court would have to examine the information claimed to be confidential, and therefore the basis on which the court would determine such a claim.

iv. The Norwegian Government is asked to clarify to what extent the Norwegian complaints board for public procurement (KOFA) is bound by or otherwise follows the rules of the Dispute Act.

Estimated time: 1 hour

3. Restrictions on subcontracting in the field of public procurement in Norway (Case No 84262)

The case concerns provisions of Norwegian national law which limit the number of links in the supply chain for public contracts for construction and cleaning services. Pursuant to these rules, when contracting authorities award contracts over a certain value for these services, they must require that suppliers have a maximum of two links in the supply chain below them. There are limited grounds for deviating from these rules.

On 10 June 2020, the Authority issued a letter of formal notice to the Norwegian Government (Decision No 052/20/COL; Doc No 1112240). In that letter, the Authority concluded that the national legislation was not compliant with Directive 2014/24/EU on public procurement; Directive 2014/25/EU on utilities procurement; or Articles 31 and 36 of the EEA Agreement. There were two grounds for this conclusion. Firstly, Norway had not demonstrated that the objectives pursued by the national legislation could not be achieved by implementing rules specifically set out in Directives 2014/24/EU and 2014/25/EU, particularly those concerning subcontracting and exclusion of subcontractors. Secondly, the absence of any possibility for assessment on a case-by-case basis by the contracting authority meant the national legislation went beyond what was necessary to meet its objective.

On 28 October 2020, the Norwegian Government responded to the letter of formal notice, disputing the Authority's conclusions (Doc No 1160402, your ref.19/6536-36). The Authority raised a number of queries regarding matters arising from the Norwegian Government's response on 8 January 2021 (Doc No 1170531). The Norwegian Government replied on 15 February 2021 (Doc No 1180861, your ref. 19/6536-50). On 18 May 2022, the Norwegian Government sent further observations, maintaining its conclusion that the relevant provisions comply with EEA law (Doc No 1290327, your ref. 19/6536-71).

The Authority would like to receive further information about the practical effect of the rules limiting subcontracting and the other measures being taken to combat work-related crime.

Specific questions to be discussed:

i. The Norwegian Government is asked to provide information concerning the practical use of the rules restricting subcontracting, such as:
    a. how often either of the two exemptions have been invoked;
    b. specific reasons for which the exemptions have been invoked in individual cases;
    c. the effect the rules have in practice in respect of economic operators bidding or wishing to bid for contracts subject to restrictions on subcontracting.

ii. The Norwegian Government is asked to provide information concerning how work-related crime is combated through other measures, such as:
    a. use of contract monitoring, including on-site;

b. requirements for contractors to provide information concerning their employees and practices, including how such information is checked and followed up.

iii. The Authority would like to discuss the comments made in the Norwegian Government's letter of 18 May 2022 concerning the viability and lawfulness of case by case assessments (section 5.4 of the letter).

iv. The Authority would like to receive an update on the "Norwegian model" for combating work-related crime in public procurement.

Estimated time: 1 hour

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Proposal for discussion points

Labour law
(Annex XVIII)

Responsible case handler: **Hrafnhildur Kristinsdóttir**

Other participants: **Maria Moustakali**

1. *Complaint against Norway concerning deportation of a third-country national sent to Norway by a temporary work agency in another EEA State (Case No 80810)*

At issue in this case is a requirement in the Immigration Regulation that a third-country national sent by an EEA company to work temporarily in Norway must be a part of the EEA company's permanent work force in order to fall within the scope of EEA law.

This case was discussed between the Authority and the Norwegian Government in the years 2017-2019.

In its letter of 19 December 2019 (Doc No 1105973, your ref. 19/2823), the Norwegian Government stated that it had decided to work on a consultation paper with the aim to amend Section 19-8 of the Immigration Regulation. That work was, however, delayed *inter alia* due to the Covid-19 pandemic.

The case was discussed during the virtual package meeting in October 2020. By e-mail of 4 February 2021 (Doc No 1178050), the Authority provided comments on certain aspects of the applicable EEA law. On 30 July 2021, the Authority sent a supplementary request for information to Norway (Doc No 1219022), following up on the work on the consultation paper. Norway replied by letter dated 10 September 2021 (Doc No 1226311, your ref. 17/2212), stating that the work was still under process and that it was anticipated that the paper could be published in the autumn.

The case was discussed at the package meeting in Oslo on 29 October 2021 and Norway replied to the Authority's follow-up letter on 13 January 2022 (Doc No 1262460, your ref. 17/2212).

By e-mail of 28 June 2022 (Doc No 1298786), the Norwegian Government informed the Authority that a consultation paper proposing to amend Section 19-8 of the Immigration Regulation had been published for public consultation, with a 3 month deadline to submit comments.

Specific questions to be discussed:

i. Have the amendments to Section 19-8 of the Immigration Regulation set out in the consultation paper been adopted? If not, when is it foreseen that they will be adopted?

Estimated time: 30 minutes

2. Complaint against Norway concerning the right to paid annual leave (Case No 84481)

This case concerns the issue whether Norway is in breach of Article 7 of the Working Time Directive (Directive 2003/88/EC), on the right to minimum four weeks' paid annual leave, as the Norwegian Holiday Act distinguishes between the holiday year (calendar year), when annual leave can be taken, and the qualifying year (previous calendar year), when the right to holiday pay is accrued.

On 22 January 2020, the Authority sent a request for information to Norway (Doc No 1108454). By letter dated 24 February 2020 (Doc No 1116633, your ref. 19/4123), the Norwegian Government replied, maintaining that the Norwegian system for paid annual leave is in line with Article 7 of the Working Time Directive and noting that the overall response from the social partners is that the system is well established and efficient.

By letter dated 3 March 2020 (Doc No 1118129, your ref. 19/4123), the Norwegian Government provided further information concerning a meeting held with the social partners on the issue.

The Authority also received letters from *Akademikerne* (Doc No 1121278) and a Norwegian Supreme Court attorney (Doc No 1124607), questioning the compatibility of the Norwegian system with Article 7 of the Working Time Directive.

On 6 May 2021, the case was discussed at a virtual meeting with the Norwegian Ministry of Social Affairs, where the Internal Market Affairs Directorate's preliminary legal assessment was discussed.

By e-mail of 7 March 2022 (Doc No 1273617), the Norwegian Government informed the Authority that a report of an expert group tasked with reviewing the Norwegian Holiday Act had been published on 18 February 2022. The report mentions the EEA law issue dealt with in this case without taking a stand on that issue.

Specific questions to be discussed:

i. The Authority notes that in a newspaper article from December 2019, it is stated that the Ministry of Labour and Social Affairs would assess the Norwegian system for paid annual leave, following comments from LO that the system might be in breach of EEA law.[8] Did any such assessment take place? If so, what was the conclusion of that assessment?

[8] https://www.aftenposten.no/norge/politikk/i/1n02mW/lo-ble-tipset-om-at-ferieloven-kan-bryte-med-eoes-avtalen?utm_source=kopierlink&utm_content=deleknapp&utm_campaign=bunn

ii. Have any measures been taken following the publishing of the expert group's report in relation to the Holiday Act?

iii. Is the Norwegian Government still of the view that the Norwegian system of paid annual leave is in full compliance with Article 7 of the Working Time Directive?

iv. Would the Norwegian Government be willing to consider making amendments to its system of paid annual leave, similar to the ones made in Denmark in 2020, entailing that the period of accrual and the period of exercise of the paid leave run parallel *("samtidighedsferie"*)?

Estimated time: 1 hour

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Proposal for discussion points

Consumer Protection
(Annex XIX)

Responsible case handler: **Frederik De Ridder**

Other participants: **Marco Uccelli**

1. Complaint regarding interest-free credit agreements (Case No 89005)

On 13 May 2022, the Authority received a complaint against Norway concerning the revision of the Finansavtaleloven (LOV-2020-12-18-146, "FCA 2020"). According to the complainant, FCA 2020 would treat providers of interest-free credits differently, depending on whether the credit is provided by the seller of the goods or services on the one hand, or by a third-party credit provider such as the complainant on the other. The complainant alleges that third-party credit providers would be subject to the requirements of the Consumer Credit Directive (*Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers*), whereas sellers of goods or services providing interest-free credits would be exempt from some of these requirements.

On 4 August 2022, the Internal Market Affairs Directorate sent Norway a request for information (Doc No 1305348) to enquire about the objectives underpinning the difference in treatment between those two types of providers of interest-free credits.

At the package meeting, the Authority would like to discuss the elements raised by the Norwegian Government in its forthcoming reply.

Specific questions to be discussed:

In light of the fact that these discussion points are drafted prior to receiving the reply of the Norwegian Government to the request for information of 4 August 2022, the questions to be discussed are the same questions as those raised in the request for information. If the reply prompts further questions, these will be communicated informally well ahead of the meeting.

i. What is the objective pursued by the Norwegian Government in submitting third-party interest-free credit providers to the requirements of the Consumer Credit Directive?

ii. What is the objective pursued by the Norwegian Government in exempting sellers of goods or services which are granting interest-free credits (such as payment deferral) from the requirements of the Consumer Credit Directive?

iii. Which elements lead the Norwegian Government to believe that these measures are proportionate to the objectives pursued, more specifically:

a. Why are the measures suitable for securing the attainment of the objectives?

b. Why do these measures not go beyond what is necessary in order attain the objectives?

c. Is it consistent to exclude sellers providing interest-free credits from the requirements of the Consumer Credit Directives, but not third-party credit providers providing the same type of credits?

Estimated time: 30 minutes

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Proposal for discussion points

Environment
(Annex XX)

Responsible case handlers:	**Kristine Aaland (Item 1)** **Mathias Thorkildsen (Item 1)** **Anne De Geeter (Items 1 and 2)** **Ada Gimnes Jarøy (Items 1 and 2)** **Marcus Navin-Jones (Items 3–6)**
Other participants:	**Marco Uccelli** **Kyrre Isaksen (Items 2 and 4)**

1. CCS - Storage permit (Case No 88278)

In the context of the Longship project, which aims at developing carbon capture and storage ("CCS") in Norway, the Authority is preparing for its task under *Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006*[9] ("the CCS Directive"). Pursuant to Article 10 of this directive, the Authority is tasked with reviewing draft storage permits for CCS projects in the EEA EFTA States.

At the package meetings of October 2020 and 2021, representatives of the Norwegian Government gave a presentation on the Longship project, including the applicable process for permitting, the regime for third-party access and the expected timeline.

At the meeting, the Authority would like to get an update on the development of the Longship project and its expected timeline.

The Authority has also carried out an examination of a selection of the Norwegian legislation implementing the CCS Directive. The Authority has identified the need for further clarifications with regard to the implementation and application of Article 21 of the CCS Directive concerning third-party access to transport networks and storage sites, and would like to invite the Norwegian Government to provide clarifications on the below indicated questions.

Specific questions to be discussed:

[9] OJ L 140, 5.6.2009, p. 114, incorporated into the EEA Agreement at point 1a of Annex XX by decision of the EEA Joint Committee No 115/2012.

i. The Authority invites the representatives of the Norwegian Government to provide an update on the development of the Longship project and its expected timeline.

ii. The Authority wishes to understand how the requirement of open access and transparency are met in the regime set up in Norway for third-party access to the carbon dioxide storage sites and transport networks. Could the Norwegian Government please elaborate?

iii. Could the Norwegian Government please clarify the scope of application of the national provisions related to third party access, in particular whether they apply to networks for the transport of carbon dioxide to the storage site?

Estimated time: 45 minutes

2. Management of waste from extractive industries (Case No 80563)

The case concerns the implementation of *Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC* (the "Mining Waste Directive").

The case was opened in 2017 following the submission of a complaint from 11 organisations concerning alleged breaches by Norway of the Mining Waste Directive. The Authority's investigation of the concerns raised by the complainants prompted a broader examination of the implementation of the Mining Waste Directive into the Norwegian legal order.

The Norwegian Government has been invited to provide information on its management of mining waste on several occasions, as well as on the Norwegian legislation that implements the Mining Waste Directive. The case has been discussed at several package meetings.

On 6 October 2021, the Authority issued a pre-Article 31 letter (Doc No 1193682) in which it sets out its preliminary views. Representatives of the Authority and of the Norwegian Government discussed the pre-Article 31 letter at the package meeting of October 2021, for the purpose of clarifying certain concerns raised by the Authority in its letter.

On 8 December 2021, the Norwegian Government responded to the Authority's pre-Article 31 letter (Doc No 1254811, your ref. 17/2763). In its response, the Norwegian Government acknowledged that a clarification of the national legal framework could be beneficial and expressed views on the applicable requirements for the transposition of directives into the national legal order. They also informed the Authority that the Ministry of Climate and Environment would conduct a thorough review of the Norwegian Waste Regulation[10], including on the implementation of the

[10] FOR-2004-06-01-930, Forskrift om gjenvinning og behandling av avfall (avfallsforskriften).

Mining Waste Directive, and make the necessary and appropriate amendments to the regulation, with a draft regulation expected by fall 2022.

At the meeting, the Authority wishes to discuss the status of the indicated review of the Waste Regulation and how the concerns raised in the Authority's pre-Article 31 letter are planned to be addressed.

The Authority welcomes the attendance of the Norwegian Environment Agency if the Norwegian Government deems it useful for the discussions, as well as the sharing ahead of the meeting of the draft amendments to the Waste Regulation, if available.

Specific questions to be discussed:

The Authority invites the representatives of the Norwegian Government to:

i. Detail the views expressed in its reply to the Authority's pre-Article 31 letter on the applicable requirements for the transposition of directives into the national legal order;

ii. Provide an update on the status and timeline for the review of the national Waste Regulation; and

iii. Provide an overview, if possible at this stage, on the outcome of the review and the possible changes that might be made to the national Waste Regulation for the purpose of clarifying the national provisions implementing the Mining Waste Directive.

Estimated time: 45 minutes

3. Norway, Water Framework Directive, Review of Norway's River Basin Management Plans (Case No 77582)

The Water Framework Directive requires EEA EFTA States to provide the Authority River Basin Management Plans ("RBMPs") for review every 6-year period. The latest round of RBMPs are now due for submission and review.

Specific questions to be discussed:

i. General overview and update on the publication of the latest round of RBMPs, including:
   a. an understanding as to why there have been delays;
   b. the main challenges/problems in compiling the latest RBMPs (including challenges in implementing the latest CIS guidance documents/best practices etc);
   c. the main differences/changes between the RBMPs in the latest round of RBMPs, as compared to the RBMPs in the previous round of RBMPs;

d. whether/why there are water bodies whose ecological/chemical status is/remains 'undefined';

e. how many water bodies have been declared as Heavily Modified Water Bodies ("HMWBs") under Article 4(3) WFD in the latest round of RBMPs – as compared to the number of water bodies declared as HMWBs in the previous rounds of RBMPs;

f. how many/which water bodies are regarded as falling within the scope of Article 4(7) WFD in the latest round of RBMPs – as compared to the number of water bodies regarded as falling within the scope of Article 4(7) WFD in the previous rounds of RBMPs;

g. how many/which water bodies are regarded as deteriorating vis-à-vis ecological/chemical status, biological quality elements ("BQEs") and/or other issues – when comparing the information contained in RBMPs in the latest round, as compared to RBMPs in the past;

h. how many/which water bodies are regarded as most at risk of deterioration in the future; what risk management measures and/or other action (e.g. additional monitoring requirements) the Norwegian Government is taking to ensure no deterioration; and whether/what contingency plans the Norwegian Government has in place, if deterioration is detected/identified.

ii. In the past, a number of Action Points were identified by the European Commission and the Authority in order to assist the Norwegian Government in improving the quality of RBMPs (see, for example, the Action Points arising from the Trilateral meeting of 12 June 2014 – Case No 68789, Doc No 724440). The Authority has recently received enquiries from stakeholders concerning these Action Points (see, for example, Case No 88794, Doc No 1293515). The Authority would like an update on whether the Action Points identified following the Trilateral meeting of 12 June 2014 (in Case No 68789, Doc No 724440 or elsewhere) have now, in the Norwegian Government's view, been fully addressed, or whether, alternatively, there are Action Points identified following the Trilateral meeting of 12 June 2014 which remain outstanding. If there are Action Points which have not, to-date, been fully addressed or resolved, the Authority would like an overview and update on:

a. which Action Points, in the Norwegian Government's view, remain outstanding;

b. why, to-date, these Action Points remain outstanding / unresolved;

c. whether action is being taken to address these Action Points;

d. when the remaining Action Points will, in the Norwegian Government's view, be fully resolved.

iii. Future action to be taken by the Authority concerning the review of Norwegian RBMPs - including the likely involvement of third-party consultants to assess the technical issues. The assessment of enquiries and complaints received by the Authority from stakeholders concerning

alleged breaches of WFD and relating to RBMPs. The Authority's assessment of these stakeholder allegations at the same time as, and in tandem with, the review of RBMPs (for example, Case No 87599).

Estimated time: 45 minutes

4. *Water Framework Directive – Concerns regarding deterioration of water bodies due to disposal of mining waste including chemicals/materials of concern (Case No 86194)*

On 21 January 2021, the Authority opened an own initiative case regarding potential non-compliance with the WFD in the area of water bodies used for the disposal of mining waste including chemicals/materials of concern (Case No 86194). On 26 October 2021, the Authority sent the Norwegian Government a first request for information (Doc No 1227895). On 25 and 26 November 2021, the Authority met with representatives of the Norwegian Government in Oslo to discuss Case No 86194. In November, following a competitive process to select a consultant to assist the Authority with the technical aspects of this case, a consultant was appointed. On 15 December 2021, the Norwegian Government replied to the first request for information (Doc No 1267378, your ref. 12/3553). From 18 February to 18 March 2022, the Authority published a Call for Information on its website inviting stakeholders to provide technical and other data to assist the Authority in its assessment of this case. From March 2022 onwards, there were a series of virtual meetings, calls and other interactions between the Authority, the assisting consultants and third parties (including the Norwegian Ministry of Climate and Environment, the Norwegian Environment Agency, and the Norwegian Institute of Marine Research).

Specific questions to be discussed:

i. General overview and update on the data gathering/collection phase in Case No 86194 and possible next steps;

ii. Questions arising from the reply to the request for information, in particular regarding:

   a. Implementation and application of Article 4(7) WFD in Norway and whether solely by way of Section 12 of the Norwegian Water Regulation;

   b. Scope of Section 12 of the Norwegian Water Regulation as compared to scope of Article 4(7) WFD;

   c. Reliance, by the Norwegian Government, on the Article 4(3) and 4(7) WFD exemptions vis-à-vis water bodies used for the disposal of mining waste including chemicals/materials of concern (i.e. current number in RBMPs, whether the number has increased/decreased since the previous round of RBMPs, whether the Norwegian Government has plans to reduce the reliance on these exemptions in the future vis-à-vis

water bodies used for the disposal of mining waste and chemicals of concern and, if so, how and by what dates/deadlines).

Estimated time: 30 minutes

5. *Water Framework Directive – Norwegian national controls over operators of installations (including hydroelectric power plants) impacting water bodies, licensing rules, threatened extinction of wild salmon (Case No 88013)*

On 17 January 2022, the Authority opened a new own-initiative / incorrect implementation / application case regarding potential non-compliance with the WFD in the area of water bodies impacted by certain installations and plants. On 6 May 2022, the Authority sent the Norwegian Government a request for information (Doc No 1262901). Given the length of the request for information, the Directorate took the position that, exceptionally, an extended period of time should be given to allow the Norwegian Government to provide the information requested. For that reason, the Directorate set the deadline for responding to the request for information at 6 September 2022.

Specific questions to be discussed:

i. General overview and update regarding Case No 88013, including whether, or not, a reply to the request for information has been received; and

ii. General overview and summary, from the Norwegian Government, on the reply to the request for information, including a response on whether, or not, there is, in the Norwegian Government's view, an issue or issues of potential concern, and/or potential next steps to resolve the issues of potential concern.

Estimated time: 45 minutes

6. *SEA and EIA Directives – Court practice, Implementation and conformity with requirement to conduct environmental assessments (EAs) / environmental impact assessments (EIAs) (Case No 86939)*

On 11 June 2021, the Authority opened an own-initiative case regarding potential non-compliance with the WFD with the SEA and EIA Directives. On 4 November 2021, the Authority sent the Norwegian Government a request for information (Doc No 1218672). On 15 February 2022, the Norwegian Government sent the Authority a response to the request for information replying to some, but not all, of the questions in the request for information and stating that it wished to conduct a review of the implementation of the directives and address any potential shortcomings or areas of improvement (Doc No 1270158, your ref. 14/2629). On 15 February 2022, the Authority sent a communication to the Norwegian Government asking for an update. On 28 June 2022, there was a virtual meeting with representatives from the Authority and the Norwegian Government to discuss the case. During the meeting the

representatives of the Norwegian Government acknowledged the importance of this matter, and the need to expedite: (1) the response to the remaining questions set out in the request for information, and (2) communication of a plan to resolve the issues of concern - to the Authority.

Specific questions to be discussed:

i. General overview and update regarding Case No 86939, including whether, or not, a reply to the remaining questions set out in the request for information has been received by the Authority; and

ii. A summary, by the Norwegian Government, of the reply to the request for information, including the Norwegian Government's response to the remaining questions – and an overview of the plan and proposed timeline to address the issues of concern.

Estimated time: 30 minutes

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Proposal for discussion points

Environment, Climate change and Energy

Responsible case handlers: **Kristine Aaland**
Anne De Geeter
Ada Gimnes Jarøy

Other participants: **Marco Uccelli**

1. Preparation for the Fit for 55 Package

In July[11] and December[12] 2021, the European Commission (the "Commission") adopted a package of proposals to make the EU's climate and energy legislation fit for reducing net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels (the "Fit for 55 Package"). Further amendments to legislative acts in the energy field were proposed by the Commission as part of the REPowerEU Plan[13] presented in May 2022.

Taking advantage that the Authority will be in Norway for the package meeting, we would welcome the possibility to meet with the national experts working on the proposals under the Fit for 55 Package, without prejudice to the ongoing discussions of these acts in the EU and the pending assessments of their EEA relevance.

These proposals may imply several new tasks for the Authority, in many cases with tight deadlines to align with the timelines on the EU side. A close collaboration with the Commission and EEA EFTA States will thus be required for the Authority to perform these tasks.

While the Authority does not have a formal role in the development of these proposals, recent experience has shown that close up-front dialogue on acts in the process of being incorporated, allows the EEA EFTA States and their economic operators to benefit fully and timely from the relevant acts upon their entry into force.

The purpose of the meeting would be to facilitate good collaboration and an exchange of information between the Authority and the Norwegian Government early in the process, in order to identify key issues moving forward.

[11] https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/delivering-european-green-deal_en
[12] https://energy.ec.europa.eu/topics/markets-and-consumers/market-legislation/hydrogen-and-decarbonised-gas-market-package_en
[13] https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe_en

At the meeting, the representatives of the Authority would welcome an initial exchange on the Norwegian Government's preliminary assessments of the Fit for 55 Package, including on areas where the Authority may have tasks and where a close up-front dialogue would be essential.

Estimated time: 30 minutes

ESA | EFTA Surveillance Authority

Package Meeting in Norway
27-28 October 2022

Proposal for discussion points

UK/EEA Separation Agreement

Responsible case handler: **Ciarán Burke**

Other participants: **Maria Moustakali**
Kyrre Isaksen

1. Separation Agreement (Case No 88758)

On 23 May 2022, the Authority completed its first Annual Report (Doc No 1290490) in accordance with Article 64(3) of 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/the Agreement"), and Article 2 of Protocol 9 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Surveillance and Court Agreement"/"SCA"). This report was submitted to the Joint Committee established under the Separation Agreement at a meeting of 8 June 2022.

The meeting of 8 June 2022 was useful, insofar as it provided the Authority with the opportunity to present its understanding of its duties under the Separation Agreement, and the internal and external measures taken by the Authority to comply with these duties. The Authority also presented a typology of cases likely to arise under the Agreement, specifically:

(a) 'Parallel' cases: these cases are likely to be very common initially, and will arise where EEA law and Separation Agreement law are substantively identical. Such cases can effectively be handled together.

(b) 'Divergent' cases: these cases will arise when post-2021 secondary legislation has been implemented into the EEA Agreement. The Separation Agreement legal order, on the other hand, will rely on the 'old' EEA law as it stood on 1 January 2021, except in matters relating to social security coordination under Regulations (EC) No 883/2004 and (EC) No 987/2009, and under the conditions set out in Article 34 of the Agreement.

(c) 'Transitional' cases: such cases are likely to involve measures adopted by one or more of the EEA EFTA States to implement the Separation Agreement into their domestic legal orders. Such cases may relate to changes in the documentary requirements for UK nationals, formalities

related to the acquisition and maintenance of rights under the Agreement, etcetera.

The Authority noted at the meeting of 8 June 2022 that very few cases had been brought to its attention in relation to either 'divergent' or 'transitional' issues. This may perhaps be interpreted as evidence that the Agreement has been implemented effectively in the EEA EFTA States, and that there are no issues under these heads. However, it may also be interpreted as entailing that UK nationals and their families falling under the scope of the Separation Agreement are not aware of avenues of redress open to them via the Authority under the Agreement, or indeed, their rights under the Agreement.

Specific questions to be discussed:

i. Article 35 of the Agreement, entitled "Publicity" imposes an obligation on the EEA EFTA States and the UK to disseminate information and create awareness of the Agreement. What steps has the Norwegian Government taken to comply with this provision?

ii. Does the Norwegian Government have a bespoke or one-stop-shop contact point for UK nationals affected by issues arising under the Agreement?

iii. How may UK nationals gain awareness of their rights, beyond the limited information provided on the Government[14] and Directorate of Immigration[15] websites, respectively?

iv. How are complaints under the Separation Agreement handled domestically? Is there a special procedure?

v. How many complaints/enquiries under the Agreement have been received in the past calendar year?

vi. What was the substance of these complaints/enquiries?

vii. How were these complaints/enquiries resolved?

viii. Have there been any instances in which issues pertaining to UK nationals falling out of the scope of the Agreement, for example due to prolonged absences from Norway, have arisen?

Estimated time: 45 minutes

[14] https://www.government.is/topics/foreign-affairs/iceland-in-europe/brexit/
[15] https://utl.is/en/information-for-british-citizens