Case handler: Kadus Basit
Tel: +32 2 286 1841
e-mail: kbas@eftasurv.int

Brussels, 5 November 2025
Case No: 94430
Document No: 1564927

Norwegian Ministry of Trade, Industry and Fisheries
Postboks 8090 Dep
0032 Oslo
NORWAY

Dear Sir or Madam,

Subject: Own initiative case against Norway concerning legislation mandating Norwegian pay on ships in Norwegian waters, the Norwegian EEZ and on the continental shelf (Pre-Article 31)

1. Introduction

On 24 July 2025, the Internal Market Affairs Directorate ("the Directorate") of the EFTA Surveillance Authority ("the Authority") opened an own initiative case to investigate the compatibility with EEA law of newly adopted legislation in Norway[1] that mandates Norwegian pay to seafarers on ships in the Norwegian territorial sea, the exclusive economic zone (EEZ) and on the continental shelf, irrespective of the flag of registration. This includes sectorial legislation that imposes a duty on licence-holders in different ocean-based industries to ensure Norwegian wages for workers on ships, irrespective of the flag of registration, that provide services to their activities.

The Directorate's main concern is that these measures limit the freedom to provide maritime transport services for nationals of EEA EFTA States and EU Member States (hereinafter "EEA States"). For ease, the said measures will hereinafter be referred to as "the Norwegian pay measures".

As explained in this letter, the Directorate is of the preliminary view that the legislation is incompatible with both Council Regulation (EEC) No 4055/86[2] (hereinafter "the Maritime Transport Regulation"), and with Council Regulation (EEC) No 3577/92[3] (hereinafter "the Maritime Cabotage Regulation"). Additionally, the Directorate is of the preliminary view that the system for monitoring compliance with the Norwegian pay measures is incompatible with Directive 2009/16/EC[4] (hereinafter "the Port State Control Directive").

[1] Decision of the Norwegian Parliament of 2 June 2025: *Lovvedtak 84 (2024-2025) om endringer i allmenngjøringsloven og petroleumsloven mv. (allmenngjøringslovens anvendelse på innenriks skipsfart og rettighetshaveres plikt til å sørge for norske lønnsvilkår på skip).* [Legislative decision 84 (2024-2025) on changes to the General Application Act and Petroleum Act etc. (the application of the General Application Act to domestic shipping and the duty of licensees to ensure Norwegian wage conditions on ships].

[2] The act referred to at point 53 of Annex XIII to the EEA Agreement, *Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ L 378, 31.12.1986, p. 1).*

[3] The act referred to at point 53a of Annex XIII to the EEA Agreement, *Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).*

[4] The act referred to at point 56b of Annex XIII to the EEA Agreement, *Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (Recast) (OJ L 131, 28.5.2010, p. 57)* as corrected by OJ L 32, 1.2.2013, p. 23, as amended.

The present case succeeds two former cases with the Authority that concerned the legislative process leading up to the above-mentioned national legislation, namely an own-initiative case[5] of 2022 and a consultation case[6] of 2024. As part of the latter case, the Authority on 16 October 2024 issued a comment on the draft legislation concluding that "*the proposal would as currently drafted be incompatible with EEA law*".[7] Whereas the Norwegian Government made some adjustments to the draft legislation before it was submitted to the Norwegian Parliament and adopted, the shortcomings raised by the Authority remain.

2. Relevant national law

2.1. The General Application Act[8]

Under the General Application Act a Tariff Board is granted powers to decide, upon receipt of a complaint from an 'interested party'[9] or upon its own initiative,[10] that a national collective agreement shall apply in whole or in part to employees concerned. The relevant provisions of the Act, outlined below, entered into force on 1 July 2025.

Section 2 of the Act,[11] entitled 'Scope of the act', in point 2 thereof, reads:

> *"2. (Employees on ships, etc.)*
> *The law includes*
> *a. workers on ships and mobile units registered in the Norwegian Ordinary Ship Register (NOR)*
> *b. employees on ships engaged in domestic voyages registered either in the Norwegian International Ship Register (NIS) or a foreign ship register.*

---

[5] On 11 July 2022, the Directorate launched an own-initiative case (88939) concerning a legislative proposal submitted for public consultation on 31 May 2022 in Norway, by the Ministry of Trade, Industry and Fisheries. The purpose of the case was to monitor the various stages of the legislative process in Norway. The case was closed on 5 August 2025 after that process had come to an end.

[6] The Norwegian Government initiated a process to consult the Authority on the measures in question on 29 May 2024, cf. Article 9 of Council Regulation (EEC) No 3577/92. The consultation process, recorded under a management task case (92737), was closed on 5 August 2025 after the termination of that process.

[7] EFTA Surveillance Authority's Decision No 176/24/COL *to comment on the Norwegian Government's proposal to amend the General Application Act and Sectoral Acts, in relation to maritime transport, following its Request for Consultation of 29 May 2024.*

[8] Lov 4. juni 1993 nr. 58 om allmenngjøring av tariffavtaler. [Act no 58 of 4 June 1993 on universal application of collective agreements].

[9] Defined pursuant to Section 39 *Lov om arbeidstvister (arbeidstvistloven),* LOV-2012-01-27-9, [The Labour Disputes Act].

[10] See Section 4, last sentence, of the General Application Act.

[11] Unofficial translation. In Norwegian, the provision reads as follows:
"2. (Arbeidstakere på skip mv.)
Loven omfatter
a. arbeidstakere på skip og flyttbare innretninger registrert i Norsk ordinært skipsregister (NOR)
b. arbeidstakere på skip i innenriksfart registrert enten i Norsk internasjonalt skipsregister (NIS) eller utenlandsk skipsregister.
Skip i innenriksfart etter første ledd omfatter:
a. skip som frakter last eller passasjerer mellom norske havner på fastlandet, men likevel ikke skip som utelukkende setter i land last eller passasjerer som kommer fra utenlandske havner, eller som utelukkende tar om bord last eller passasjerer som skal til utenlandske havner
b. cruiseskip som seiler mellom norske havner på fastlandet, også cruiseskip som utelukkende opererer ut fra én norsk havn, men likevel ikke cruiseskip som anløper norske havner på seilas fra eller til en utenlandsk havn
c. skip som yter andre tjenester i norsk territorialfarvann ved fastlandet, men ikke fiske- og fangstfartøy, skip som tilhører Forsvaret eller benyttes i Forsvarets tjeneste, eller andre statlige skip som brukes utenfor næringsvirksomhet."

Ships engaged in domestic voyages pursuant to the first paragraph include:
a. ships that carry cargo or passengers between Norwegian ports on the mainland, but not ships that exclusively land cargo or passengers coming from foreign ports, or that exclusively take on board cargo or passengers going to foreign ports
b. cruise ships sailing between Norwegian ports on the mainland, including cruise ships that operate exclusively from one Norwegian port, but not cruise ships that call at Norwegian ports on a voyage from or to a foreign port
c. ships that provide other services in Norwegian territorial sea near the mainland, but not fishing and trapping vessels, ships that belong to the Armed Forces or are used in the service of the Armed Forces, or other state ships that are used outside of commercial activities."

Section 6 of the Act,[12] entitled 'Content of the decision', in paragraph 1 thereof, reads:

"Decisions on generalisation for employees on ships engaged in domestic voyages can only apply to those parts of the collective agreement that regulate the individual employees' pay conditions."

Section 11 of the Act,[13] entitled 'Supervision of wages and working conditions', in paragraphs 6 and 7 thereof, reads:

"The Norwegian Maritime Authority supervises that the pay and working conditions resulting from decisions on generalisation for employees on ships, and the client's obligations given pursuant to Section 12, are complied with. The Norwegian Maritime Authority shall have the right to board and supervise ships that are in port. When the Authority so requires, the shipping company, the employer, the master and others who work on board shall, without prejudice to the duty of confidentiality, submit information that is deemed necessary for the exercise of the supervision.

The Norwegian Maritime Authority may issue orders and make other individual decisions pursuant to the provisions of the Ship Safety Act, Sections 49, 50 and 52, which are necessary for the implementation of generalisation decisions and obligations pursuant to section 12, and impose fines for violations pursuant to the provisions of the Ship Safety Act, sections 55 and 56."

2.2. Sectorial acts

A set of sectorial legislation, that enters into force on 1 January 2026, will impose a duty on licence-holders in different ocean-based industries to ensure Norwegian wages for workers on ships providing services to their activities.

---

[12] Unofficial translation. In Norwegian, the provision reads as follows: *"Vedtak om allmenngjøring for arbeidstakere på skip i innenriksfart kan bare gjelde de delene av tariffavtalen som regulerer de enkelte arbeidstakeres lønnsvilkår."*

[13] Unofficial translation. In Norwegian, the provision reads as follows: *"Sjøfartsdirektoratet fører tilsyn med at lønns- og arbeidsvilkår som følger av vedtak om allmenngjøring for arbeidstakere på skip, og oppdragsgivers plikter gitt i medhold av § 12, overholdes. Sjøfartsdirektoratet skal ha adgang til å gå om bord i og føre tilsyn med skip som ligger i havn. Når direktoratet krever det, skal rederiet, arbeidsgiveren, skipsføreren og andre som har sitt arbeid om bord, uten hinder av taushetsplikt legge frem opplysninger som anses nødvendige for utøvelsen av tilsynet.*

Sjøfartsdirektoratet kan gi pålegg og treffe andre enkeltvedtak etter bestemmelsene i skipssikkerhetsloven §§ 49, 50 og 52 som er nødvendige for gjennomføringen av allmenngjøringsvedtak og plikter i medhold av § 12, og ilegge overtredelsesgebyr etter bestemmelsene i skipssikkerhetsloven §§ 55 og 56."

The Petroleum Activities Act,[14] Section 10-18, in paragraph 3 thereof, will read:

> *"The licensee shall ensure that employees on ships providing services to petroleum activities do not have worse pay conditions than those resulting from applicable nationwide collective agreements. This does not apply to the transport of petroleum in bulk. The King may issue regulations on how the licensee's obligations may be fulfilled."*

The Aquaculture Act,[15] Section 22 a will read:

> *"Holders of aquaculture permits shall ensure that employees on ships providing services for aquaculture production do not have worse pay conditions than those resulting from applicable nationwide collective agreements. The King may issue regulations on how the obligations of holders of aquaculture permits may be fulfilled."*

The Offshore Renewable Energy Production Act,[16] Section 10-13, in paragraph 2 will read:

> *"The concessionaire shall ensure that employees on ships providing services for the exploitation of renewable energy resources at sea do not have worse pay conditions than those resulting from applicable nationwide collective agreements. The King may issue regulations on how the obligations of the concessionaires may be fulfilled."*

The Mineral Activities on the Continental Shelf Act,[17] Section 9-16 will read:

> *"The licensee shall ensure that employees on ships providing services to mineral activities do not have worse pay conditions than those resulting from applicable nationwide collective agreements. The King may issue regulations on how the licensee's obligations may be fulfilled."*

3. EEA law

3.1. Council Regulation (EEC) No 4055/86

Article 1 of the Maritime Transport Regulation reads:

---

[14] Lov 29. november 1996 nr. 72 om petroleumsvirksomhet. Unofficial translation. In Norwegian, the provision reads as follows: *"Rettighetshaveren skal sørge for at ansatte på skip som leverer tjenester til petroleumsvirksomhet, ikke har dårligere lønnsvilkår enn det som følger av gjeldende landsomfattende tariffavtaler. Dette gjelder likevel ikke transport av petroleum i bulk. Kongen kan gi forskrift om hvordan rettighetshaverens forpliktelser kan oppfylles."*

[15] Lov 17. juni 2005 nr. 79 om akvakultur. Unofficial translation. In Norwegian, the provision reads as follows: *"Innehavere av akvakulturtillatelser skal sørge for at ansatte på skip som leverer tjenester til akvakulturproduksjon, ikke har dårligere lønnsvilkår enn det som følger av gjeldende landsomfattende tariffavtaler. Kongen kan gi forskrift om hvordan forpliktelsene til innehavere av akvakulturtillatelser kan oppfylles."*

[16] Lov 4. juni 2010 nr. 21 om fornybar energiproduksjon til havs. Unofficial translation. In Norwegian, the provision reads as follows: *"Konsesjonæren skal sørgje for at tilsette på skip som leverer tenester til utnytting av fornybare energiressursar til havs, ikkje har dårlegare lønsvilkår enn det som følgjer av gjeldande landsomfattande tariffavtaler. Kongen kan gje forskrift om korleis pliktene til konsesjonærane kan oppfyllast."*

[17] Lov 22. mars 2019 nr. 7 om mineralvirksomhet på kontinentalsokkelen. Unofficial translation. In Norwegian, the provision reads as follows: *"Rettighetshaveren skal sørge for at ansatte på skip som leverer tjenester til mineralvirksomhet, ikke har dårligere lønnsvilkår enn det som følger av gjeldende landsomfattende tariffavtaler. Kongen kan gi forskrift om hvordan rettighetshaverens forpliktelser kan oppfylles."*

"1. Freedom to provide maritime transport services between Member States and between Member States and third countries shall apply in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.
2. The provisions of this Regulation shall also apply to nationals of the Member States established outside the Community and to shipping companies established outside the Community and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation.
3. The provisions of Articles 55 to 58 and 62 of the Treaty shall apply to the matters covered by this Regulation.
4. For the purpose of this Regulation, the following shall be considered maritime transport services between Member States and between Member States and third countries where they are normally provided for remuneration:
(a) intra-Community shipping services:
the carriage of passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State;
(b) third-country traffic:
the carriage of passengers or goods by sea between the ports of a Member State and ports or off-shore installations of a third country."

3.2. Council Regulation (EEC) No 3577/92

Article 1(1) of the Maritime Cabotage Regulation, regarding the scope of the Regulation, reads:

"As from 1 January 1993, freedom to provide maritime transport services within a Member State (maritime cabotage) shall apply to Community shipowners who have their ships registered in, and flying the flag of, a Member State, provided that these ships comply with all conditions for carrying out cabotage in that Member State, including ships registered in euros, once that Register is approved by the Council."

Article 2(1) of the Maritime Cabotage Regulation, concerning definitions, reads:

"1. 'maritime transport services within a Member State (maritime cabotage)' shall mean services normally provided for remuneration and shall in particular include:
(a) mainland cabotage: the carriage of passengers or goods by sea between ports situated on the mainland or the main territory of one and the same Member State without calls at islands;
(b) off-shore supply services: the carriage of passengers or goods by sea between any port in a Member State and installations or structures situated on the continental shelf of that Member State;
(c) island cabotage: the carriage of passengers or goods by sea between:
- ports situated on the mainland and on one or more of the islands of one and the same Member State,
- ports situated on the islands of one and the same Member State; […]"

Article 3 of the Maritime Cabotage Regulation, concerning all matters relating to manning, reads:

"1. For vessels carrying out mainland cabotage and for cruise liners, all matters relating to manning shall be the responsibility of the State in which the vessel is registered (flag state), except for ships smaller than 650 gt, where host State conditions may be applied.

2. For vessels carrying out island cabotage, all matters relating to manning shall be the responsibility of the State in which the vessel is performing a maritime transport service (host State).
3. However, from 1 January 1999, for cargo vessels over 650 gt carrying out island cabotage, when the voyage concerned follows or precedes a voyage to or from another State, all matters relating to manning shall be the responsibility of the State in which the vessel is registered (flag State). […]"

3.3. Directive 2009/16/EC

Article 1 the Port State Control Directive, entitled 'Purpose', reads:

"The purpose of this Directive is to help to drastically reduce substandard shipping in the waters under the jurisdiction of Member States by:
(a) increasing compliance with international and relevant Community legislation on maritime safety, maritime security, protection of the marine environment and on-board living and working conditions of ships of all flags;
(b) establishing common criteria for control of ships by the port State and harmonising procedures on inspection and detention […];
(c) implementing within the Community a port State control system based on the inspections performed within the Community […], aiming at the inspection of all ships with a frequency depending on their risk profile, with ships posing a higher risk being subject to a more detailed inspection carried out at more frequent intervals."

Article 4 of the Port State Control Directive, entitled 'Inspection powers', in paragraph 1 thereof, reads:

"Member States shall take all necessary measures, in order to be legally entitled to carry out the inspections referred to in this Directive on board foreign ships, in accordance with international law".

Article 11 of the Port State Control Directive, entitled 'Frequency of inspections', reads:

"Ships calling at ports or anchorages within the Community shall be subject to periodic inspections or to additional inspections as follows:
(a) Ships shall be subject to periodic inspections at predetermined intervals depending on their risk profile […]
(b) Ships shall be subject to additional inspections regardless of the period since their last periodic inspection as follows:
- the competent authority shall ensure that ships to which overriding factors listed in Annex I, Part II 2A, apply are inspected,
- ships to which unexpected factors listed in Annex I, Part II 2B, apply may be inspected. The decision to undertake such an additional inspection is left to the professional judgement of the competent authority."

Article 12 of the Port State Control Directive, entitled 'Selection of ships for inspection', reads:

"The competent authority shall ensure that ships are selected for inspection on the basis of their risk profile […] and when overriding or unexpected factors arise in accordance with Annex I, Part II 2A and 2B. […]"

Article 13 of the Port State Control Directive, entitled 'Initial and more detailed inspections', reads:

"Member States shall ensure that ships which are selected for inspection in accordance with Article 12 […] are subject to an initial inspection or a more detailed inspection as follows:
1. On each initial inspection of a ship, the competent authority shall ensure that the inspector, as a minimum:
(a) checks the certificates […] required to be kept on board in accordance with Community maritime legislation and Conventions relating to safety and security;
[…]
(c) satisfies himself of the overall condition of the ship, including the hygiene of the ship, including engine room and accommodation.[…]
[…]
3. A more detailed inspection shall be carried out, including further checking of compliance with on-board operational requirements, whenever there are clear grounds for believing, after the inspection referred to in point 1, that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention.
"Clear grounds" shall exist when the inspector finds evidence which in his professional judgement warrants a more detailed inspection of the ship, its equipment or its crew.
Examples of "clear grounds" are set out in Annex V."

4. The Directorate's preliminary assessment

The freedom to provide maritime cabotage operations applies to maritime transport services within the same EEA State. The subjects of this freedom are EEA shipowners who have their ships registered in and flying the flag of an EEA State, provided that those ships comply with all conditions for carrying out cabotage in the State of registration. In essence, the Maritime Cabotage Regulation allows EEA shipowners to carry passengers and goods by sea between ports in Norway (domestic voyages). The Directorate takes the preliminary view that the Norwegian measures set out in the General Application Act, requiring EEA shipowners to ensure Norwegian pay when providing such services, run counter to the said freedom.

The freedom to provide maritime transport services applies to maritime transport services between EEA States, as well as between EEA States and third countries. The subjects of this freedom are nationals of EEA States established in an EEA State other than the one where the services are provided, as well as nationals of EEA States established outside the EEA and controlling shipping companies, on the condition that the ships are registered in an EEA State. The Maritime Transport Regulation allows, inter alia, EEA shipowners to carry passengers and goods by sea from an EEA State to a port or offshore installation in Norway (international voyages). The Directorate takes the preliminary view that the Norwegian measures set out in the sectorial Acts, e.g. obliging EEA shipowners to ensure Norwegian pay when providing transport services on an international voyage to ocean-based industries in the EEZ or on the continental shelf, run counter to the said freedom.

As will be further set out below, the Directorate takes the preliminary view that the Norwegian pay measures (as described above in points 2.1. and 2.2.) constitute an infringement of Article 3 of the Maritime Cabotage Regulation as well as a restriction on the freedom to provide maritime transport services provided for in Article 1 of the Maritime Cabotage Regulation and Article 1 of the Maritime Transport Regulation.

Furthermore, the Directorate takes the preliminary view that the system for monitoring compliance with the wage requirements under the General Application Act is not compatible with the Port State Control Directive.

4.1. Applicability of the freedom to provide services in the field of maritime transport

Article 38 of the EEA Agreement provides that the freedom to provide services in the field of transport shall be governed by the provisions of Chapter 6. Further, it follows from Article 47(2) of the same agreement, that Annex XIII contains specific rules on transport. The acts incorporated into Annex XIII extends the application of the principles set out by the general services rules in Chapter 3 in Part III of the EEA Agreement as regards various specific modes of transport.

The Maritime Transport Regulation and the Maritime Cabotage Regulation, both incorporated into Annex XIII set out, in essence, measures for the application of the principle of freedom to provide services laid down in Article 36 of the EEA Agreement to the maritime transport services falling under the scope of these Regulations.

4.2. Application of the relevant EEA framework as regards the EEZ and the continental shelf

In the preparatory works, the Norwegian Government makes a distinction between the Maritime Transport Regulation and the Maritime Cabotage Regulation as regards these acts' application beyond the territorial sea.

On the one hand, the Norwegian Government refers to Article 126 of the EEA Agreement and argues that as a result of that provision, the EEA Agreement is applicable only to Norwegian land territory, internal waters and territorial sea, but not applicable to the Norwegian EEZ and continental shelf.[18] The Norwegian Government interprets this provision in such way that the EEA Agreement applies with specific geographical limitations as defined under international law. Based on this premise, the Norwegian Government appears to be of the view that the freedom to provide maritime transport services pursuant to the Maritime Transport Regulation does not extend to the Norwegian EEZ and the continental shelf.

On the other hand, the Norwegian Government appears to accept that the Maritime Cabotage Regulation, pursuant to Article 2(1)b thereof, applies to ships operating in the Norwegian EEZ and above the continental shelf as far as offshore supply services are concerned, based on the fact that no adaptations have been made as regards the geographical scope of that act.[19]

The Directorate does not agree with the Norwegian Government's interpretation of Article 126 of the EEA Agreement, and subsequently the limitation on the application of the Maritime Transport Regulation and the Maritime Cabotage Regulation.

At the outset, the Directorate notes that both the Maritime Transport Regulation and the Maritime Cabotage Regulation have been made part of the EEA Agreement without any adaptation as regards the scope. More to the point, there is no indication whatsoever in the EEA Agreement[20] or in the Joint Committee Decision[21] that the contracting parties have agreed to the Regulations having a more limited scope under the EEA Agreement than as a matter of EU law.

As regards Article 126 of the EEA Agreement, the Directorate is of the view that the references to "territories" must be interpreted in line with the functional approach to the

[18] Prop. 88 L (2024-2025), Section 5.3.1.
[19] Ibid, Section 5.3.2.
[20] See Annex XIII of the EEA Agreement, to which the Regulations have been incorporated.
[21] See Joint Committee Decision No 70/97 of 4 October 1997. The Maritime Transport Regulation has been part of the EEA Agreement since the entry into force of the Agreement.

application of EU law.[22] The Directorate is of the view that it is necessary to consider jurisdiction on the continental shelf where EEA States exercise sovereign rights as the "territory" of that State under Article 126 EEA, in order to ensure a homogenous application of EEA law across the EEA.

The Authority has in a recent case before the EFTA Court, namely Case E-6/25 *Saga Subsea*, argued that work carried out on vessels used in relation to fixed installations on the continental shelf adjacent to the State could be considered as carried out in the territory of that State.[23] This question is currently pending before EFTA Court.

The Directorate furthermore notes that it is clear from the case-law of the CJEU and the EFTA Court that the mere fact that a worker carries on his activities outside the territory of the EU or the EEA, is not sufficient to exclude the application of EU/EEA law. EU and EEA law may apply to professional activities outside the territory of the EEA if the employment relationship retains a sufficiently close link with the EU or the EEA.[24] In this regard, the Directorate considers that work carried out on vessels flying the flag of an EEA State would be one element establishing such a link.[25]

Accordingly, it is the view of the Directorate that Article 126 of the EEA Agreement does not preclude the application of the Maritime Transport Regulation and the Maritime Cabotage Regulation on the Norwegian EEZ and above the continental shelf.

4.3. The Norwegian pay measures

Point 2 of Section 2 of the General Application Act establishes a requirement for, or the discretion to, impose Norwegian wages for seafarers working on ships engaged in domestic voyages. The list of ships covered by that provision are outlined in paragraph 2 of that provision (as described above in point 2.1.) and apply irrespective of the flag of registration.

Additionally, sectorial legislation (described above in point 2.2.) imposes a duty on licence-holders in different ocean-based industries to ensure Norwegian wages for workers on ships, irrespective of the flag of registration, that provide services to their activities.

As further elaborated below, the Directorate's preliminary view is that the Norwegian pay measures are incompatible with the Maritime Cabotage Regulation and the Maritime Transport Regulation.

4.3.1. Infringement of the Maritime Cabotage Regulation

The Directorate takes the preliminary view that the Norwegian pay measures constitute an infringement of Article 3 of the Maritime Cabotage Regulation.

Article 1 of the Regulation provides that Community shipowners who have their ships registered in, and flying the flag of an EEA State, shall be permitted to operate cabotage operations in other EEA states, as specified in Article 2(1). When operating cabotage

---

[22] Case C-347/10 *Salemink*, EU:C:2012:17, paragraphs 31 and 35. See also Joined Cases 3/76, 4/76 and 6/76 *Cornelis Kramer and others*, EU:C:1976:114, paragraphs 30-33, Case C-37/00 *Weber*, EU:C:2002:122, paragraphs 34-35, Case C-6/04 *Commission v UK*, EU:C:2005:626, paragraph 117 and Case C-111/05 *Aktiebolaget*, EU:C:2007:195, paragraph 59.

[23] Case E-6/25 *Saga Subsea (judgment pending)*, concerning the interpretation of Article 5 of Directive 2008/104/EC on temporary agency work. See the Authority's written submission of 24 June 2025, Doc No 1538487.

[24] Case E-8/19 *Scanteam*, paragraphs 67-69. See also Case C-544/11 *Petersen*, EU:C:2013:124, paragraph 41 and case law cited; Case C-266/13 *Kik*, EU:C:2015:188, paragraph 42 and the case law cited.

[25] Opinion of Advocate General Cruz Villalón in Case C-266/13 *Kik*, EU:C:2014:2300, paragraph 40 and judgment in Case C-266/13 *Kik*, EU:C:2015:188, paragraph 44.

operations, the flag State reserves the responsibility for "*all matters relating to manning*", except for the exceptions provided in Article 3. The Directorate notes that the notion of 'matters relating to manning' in Article 3 is not defined by the Regulation. Nevertheless, as outlined below, the Directorate is of the view that wages fall under the notion of 'matters relating to manning'.

In the preparatory works, the Norwegian Government acknowledges that Article 3 of the Regulation can be subject to different interpretations but takes the view that the provision must be understood as a moderation of the freedom to provide services rather than a limitation of the host State's competence.[26] More to the point, the Norwegian Government argues that Article 3 should be understood as covering the composition, number and qualifications of seafarers, and at the same time excluding their working conditions and wages.

The Directorate cannot find any support for the Norwegian Government's view that wages should not be considered as a 'matter relating to manning' to which the flag State principle applies, under the Maritime Cabotage Regulation.

First, as regards the wording in Article 3, the Directorate highlights that the official language versions of the Regulation in French, German, Italian and Spanish refer to 'all matters related to the crew'.[27] To the extent that the word 'manning' could be misconstrued as referring only to the composition and number of crew, a linguistic interpretation of the various versions of the Regulation clarifies, in the Directorate's view, that 'manning' must be interpreted more broadly than what the Norwegian Government suggests.

More to the point, the Directorate considers that the use of the phrase "*all matters relating to*" clearly denotes the intention of the legislator at the time to give this point a broad interpretation.

Second, the Directorate identifies the objective of Article 3 to be to carefully carve out the two specific exceptions to the flag State principle as far as 'all matters relating to manning' are concerned. Namely, an exception for smaller vessels, under 650 gt and a temporary exception for vessels carrying out island cabotage until 1 January 1999.

This is in line with the interpretation the Commission proposes in its Communication of 2014 on the interpretation of the Maritime Cabotage Regulation.[28] Notably, the Commission states that the objective pursued in Article 3 thereof is to uphold flag State jurisdiction over manning matters, while avoiding the distortion of competition in the most sensitive routes, in particular island cabotage.[29]

In terms of what 'matters relating to manning' may entail, the Commission identifies minimum wages as one such matter, which can be decided upon by the host State in very specific circumstances (i.e. island cabotage, except cruises and cargo vessels above 650 gross tonnes). To emphasise the importance of restricting the discretion of the host State

[26] Prop. 88 L (2024-2025), Section 5.3.2.

[27] Article 3(1) of the Regulation reads in French "[…] toutes les questions relatives à l'équipage […]; in German "[…] für alle Fragen im Zusammenhang mit der Besatzung des Schiffes […]"; in Spanish "[…] todas las cuestiones relativas a la tripulación […]"; in Italian: "[…] tutte le questioni relative all'equipaggio […]".

[28] Communication from the Commission on the interpretation of Council Regulation (EEC) No 3577/92 applying the principle of the freedom to provide services to maritime transport within Member States (maritime cabotage), COM(2014) 232final, 22.4.2014, Section 4: "Manning Rules". The Court of Justice of the EU has confirmed this restrictive approach to any deviation from the flag State principle on matters relating to manning. See, for instance, Case C-288/02 *Commission v. Hellenic Republic*, EU:C:2004:647, paragraphs 53-56.

[29] Ibid, at p. 8.

on manning matters, the Commission refers to Article 9 of the Regulation and requires States to consult it (or ESA, as regards the EEA EFTA States) on possible national measures pertaining to manning for ships on island cabotage.[30]

Third, this interpretation of the wording of Article 3 is consistent with the objective pursued by the Maritime Cabotage Regulation, which is to apply the freedom to provide services to Community shipowners with EEA flagged vessels in so far as they comply with the flag State conditions for carrying out cabotage.

Fourth, this interpretation is, moreover, in line with international law. Notably, Article 94 of the United Nations Convention on the Law of the Sea 1982 (UNCLOS)[31], and Article 10 of the United Nations Convention on the High Seas 1958,[32] which was replaced by UNCLOS, both confirm the jurisdiction of the flag State on "social matters" of the ship.

More to the point, as regards the restrictive interpretation of Article 3 by the Norwegian Government, limiting the scope of 'manning' to the composition, number and qualifications of seafarers, the Directorate notes that these aspects are generally reflected under the notion of '*safe* manning' (emphasis added) in the context of international law.[33]

Finally, the Directorate notes that the flag State principle is embedded in various sets of EU/EEA legislation, one such key legislation being Directive 2009/13/EU[34] which implements the Maritime Labour Convention (MLC).[35] The Norwegian Government's approach, whereby it considers it a host State prerogative to regulate seafarer's wages working on foreign flagged vessels, has the potential of running counter to the overall systemic approach to seafarers' working conditions under EEA law, an objective that must be considered as well when interpreting the Maritime Cabotage Regulation.

In light of the above, any limitation established by national law to the flag State principle as far as 'all matters relating to manning' are concerned, beyond the exceptions provided for in Article 3 of the Regulation, constitutes an infringement of that provision, and is therefore not in accordance with EEA law.

---

[30] Ibid, at p. 9.

[31] Signed on 10 December 1982 and entered into force on 16 November 1994 available at: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf. Article 94 on 'Duties of the flag State' states: *"1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. 2. In particular every State shall: […] (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship. […]"*

[32] Signed 29 April 1958, and entered into force on 30 September 1962, available at: https://treaties.un.org/doc/Treaties/1963/01/19630103%2002-0%20AM/Ch_XXI_01_2_3_4_5p.pdf. Article 10 states: *"Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard inter alia to: […] (b) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments; […]"*

[33] See, e.g., article III of the 1978 STCW Convention (as amended), chapter XI-2 of the 1974 SOLAS Convention (as amended), supplemented by IMO Resolution A.1047(27) setting out the principles of minimum safe manning.

[34] The act referred to at point 32j of Annex XVIII to the EEA Agreement, *Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ L 124, 20.5.2009, p. 30),* as amended.

[35] The MLC 2006 (as amended) sets out the responsibility of the flag State as regards seafarers' wages. Whereas the Convention does not require that provisions be adopted to address either the calculation or level of wages, a State that has adopted laws or regulations to govern the level and/or calculation of the wages of seafarers must give due consideration to Guideline B2.2.

4.3.2. Restriction of the freedom to provide maritime transport services

The Directorate is of the preliminary view that the Norwegian pay measures constitute restrictions to the freedom to provide maritime transport services.

The Maritime Transport Regulation and the Maritime Cabotage Regulation, specifically in Articles 1 therein, give effect to the principle of freedom to provide services to maritime transport services falling under the scope of these Regulations. As such, these Regulations must be interpreted in light of the general principle enshrined in Article 36 of the EEA Agreement.[36]

Restrictions

It is well-established case-law from the Court of Justice of the European Union ('CJEU') that minimum wage requirements constitute restrictions to the freedom to provide services.[37] The Norwegian pay measures render the provision of maritime transport services in Norway more difficult for any vessels not registered in NOR.[38]

The difficulties arising are not only related to the elevated costs of paying Norwegian gross salaries to all crew, including crew members who are not registered in NOR or NIS, and, thus, do not benefit from the Norwegian tax refund scheme.[39] The measure would also result in an administrative burden for shipowners and ship operators in order to comply with the Norwegian pay measures.

The Norwegian Government seems to agree that the Norwegian pay measures likely constitute a restriction on the freedom to provide maritime transport services in the EEA.[40]

Possible justifications

The EFTA Court has held that a restriction on the freedom to provide services laid down in Article 36 of the EEA Agreement may be justified on the grounds set out in Article 33 of the EEA Agreement or by overriding reasons in the public interest, provided that it is appropriate to secure the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it.[41] The Directorate recalls that it is for the EEA State imposing a restriction to demonstrate that the measures it has adopted are suitable for attaining the stated objectives.[42]

It follows from the preparatory works that the overriding aim of the restriction is to protect the Norwegian labour market for shipping services.[43] It appears that the concerns of the Norwegian Government in this context relate to, amongst other things, data showing that the transport segments freight, cruise and offshore construction and maintenance are

---

[36] See Case E-1/03 *ESA v Iceland*, paragraph 28.

[37] See, for instance, Case C-115/14 *RegioPost GmbH & Co. KG v Stadt Landau in der Pfalz*, EU:C:2015:760, paragraph 69.

[38] The Norwegian ship registers include the Norwegian Ordinary Ship Register (NOR), the Norwegian International Ship Register (NIS), and the Shipbuilding Register (BYGG). Norwegian vessels of 15 meters and more must be registered in NOR or NIS, unless they are registered in a foreign ship or property register. Registration in BYGG is optional and available for vessels of 10 metres in overall length and upwards.

[39] Decision No 085/16/COL, EFTA Surveillance Authority Decision of 27 April 2016 raising no objections to the tax refund scheme for employing seafarers 2016-2026 (Norway).

[40] Prop. 88 L (2024-2025), Section 5.3.1.

[41] See Case E-8/17 *Kristoffersen*, paragraph 114. For the conditions to be examined in a proportionality assessment of a restriction to the freedom to provide maritime transport services see Case C-205/99 *Analir and Others*, EU:C:2001:107, paragraph 25; Case C-288/02 *Commission v. Hellenic Republic*, EU:C:2004:647, paragraph 32; Case C-323/03 *Commission v. Spain*, EU:C:2006:159, paragraph 45.

[42] See Case E-8/20 *Criminal Proceedings against N*, paragraph 93.

[43] Prop. 88 L (2024-2025), Section 2.1.

dominated by vessels registered either in NIS or other registers.[44] It follows, further, that competition against foreign flagged vessels operating with lower wage costs can lead to NOR-vessels being moved to other registers.[45] The main purpose of the rules, according to the Norwegian Government, is to ensure equal wage for all work carried out in Norway and to prevent that the competition within the shipping sector is detrimental to the Norwegian labour market.[46]

Furthermore, having referenced a statement of the Norwegian Ministry of Foreign Affairs according to which "it is reasonable that the objective [in the present case] is social protection of workers", the preparatory works stipulate that the Norwegian pay measures are suitable and necessary to achieve social protection of seafarers.[47]

Based on the above, it appears that the main objective of the Norwegian pay measures is to protect the Norwegian maritime sector against foreign competition. This, in the Directorate's view, is not an overriding reason relating to the public interest. It should be noted that grounds of purely economic nature cannot constitute an overriding reason in the public interest justifying a restriction on a fundamental freedom and may thus not serve as a justification in this regard.[48]

The objective of securing equal wage costs for all ship operators in Norwegian waters appears, as such, to be purely economic in nature. The same is true for an objective of guaranteeing a steady recruitment to the seafarer profession, as it aims solely at regulating the conditions for new employment and the continuity of a specific business, which are not requirements in the public interest. Furthermore, considerations such as the impact on competition and on market shares in the various shipping sectors are purely economic in nature and therefore as well do not constitute an overriding reason in the public interest justifying a restriction.

In contrast to the grounds addressed above, the Directorate agrees that the protection of workers can be an overriding reason relating to the public interest which can justify a restriction. The Directorate notes, however, that the Norwegian Government has not demonstrated the extent to which seafarers on vessels operated by EEA shipowners and maritime operators, within the various shipping segments, are exposed to unfair wages and, furthermore, that their interest is not safeguarded by the rules to which those EEA shipowners and maritime operators are subject to in the EEA State in which they are established.[49] The Directorate recalls, as follows from the case-law of the EFTA Court, that it is not sufficient for a national measure to resort to a legitimate aim in the abstract, since it must rather be assessed whether the measures in question actually pursue the invoked aim.[50]

Suitability

Furthermore, the Directorate is of the preliminary view that the Norwegian pay measures, in any event, breach EEA law as they are not proportionate.

---

[44] Ibid, Section 3.1.
[45] Ibid, Section 3.1.
[46] Ibid, Section 4.3.
[47] Ibid, Section 5.3.4. In Norwegian the quoted text reads "i vår sak er det nærliggende at formålet er sosial beskyttelse av arbeidstakere".
[48] See Case C-400/08 *Commission v. Spain*, EU:C:2011:172. paragraph 74; Case C-338/09 *Yellow Cab Verkehrsbetrieb*, EU:C:2O10:814, paragraph 51; Case C-254/98 *TK-Heimdienst*, CLI:EU:C:2000:12, paragraphs 32-33; Case C-456/10 *ANETT*, EU:C:2012:241, paragraph 53; Case C-109/04 *Kranemann*, EU:C:2005:187, paragraph 34; Case C-50/21 *Prestige and Limousine SL,* EU:C:2023:448, paragraph 70.
[49] Joined Cases C-369/96 and C-376/96 *Arblade*, EU:C:1999:575, paragraph 34.
[50] Case E-8/16 *Netfonds Holdings*, paragraph 115. See also Case E-14/15 *Holship*, paragraph 126.

The Directorate agrees that a minimum wage requirement can be suitable for attaining the objective of protecting seafarers, as those requirements in fact do ensure the provision of fair salaries to seafarers.[51] However, in the Directorate's view, this reasoning does not hold. The measure does not address the administrative challenges of implementing the requirement on ships with an international crew without ties to Norway. Neither does it afford legal certainty to seafarers on the calculation of their salaries (for example given that their place of residence may be taxing this income differently from the rest of their income from their employment at sea). Lastly, it encompasses seafarers that only occasionally or during a limited period are working on a vessel providing transport services in the Norwegian territorial sea, the EEZ and on the continental shelf.

Furthermore, to the extent that the objective is to protect seafarers, the same rights do not appear to have been afforded to seafarers on NIS-flagged vessels providing services outside Norwegian waters and continental shelf. It is settled case-law that national legislation is only considered to be appropriate to guaranteeing attainment of the objective pursued if it genuinely reflects a concern to attain it in a consistent and systematic manner.[52] Furthermore, there is no information to suggest that such seafarers are not in need of the same wage protection.[53]

The Directorate has noted the Norwegian Government's view that international shipping is subject to decent working and wage conditions, when emphasizing that the requirement in the present case relates to national shipping.[54] In this context, the Directorate would like to highlight, first, that the acknowledgement expressed by Norway in itself creates doubts as to the proportionality of the Norwegian pay measures, and second, that the Norwegian Government does not appear to have considered the extent to which vessels on domestic voyages may as well be in possession of international certificates[55] and as such may be complying already with the international standards for work and wage conditions.

Necessity

As already stated above, the Norwegian Government has not demonstrated why the Norwegian pay measures are necessary to protect seafarers or to safeguard expertise in the Norwegian maritime sector.

More to the point, the Directorate considers that the rules go beyond what is strictly necessary for the following reasons:

- The Norwegian Government has not demonstrated the facts based on which the presumption of unfair wages of seafarers has been established.

- With respect to the Norwegian grant scheme for the employment of seafarers, the purpose of which is also to safeguard Norwegian maritime expertise and the recruitment of Norwegian seafarers, as well as ensure competitive conditions for the shipping companies, the requirement for Norwegian wages appears to fulfil similar purposes as measures introduced for the benefit of the Norwegian maritime sector, in particular for shipping companies with NIS and NOR-registered ships.

[51] See Prop. 88 L (2024-2025), Section 5.3.4, according to which Norwegian wages are considered to protect workers from unreasonable low salaries and prevent that low wages are used as a disloyal competitive advantage.
[52] See e.g. Case E-8/17 *Henrik Kristoffersen*, paragraph 118 and Case C-169/07 *Hartlauer*, EU:C:2009:141, paragraph 55.
[53] See e.g. Case 549/13 *Bundesdruckerei GmbH*, EU:C:2014:2235, paragraph 32.
[54] Prop. 88 L (2024-2025), Section 6.3.
[55] See, e.g. Regulation (EC) No 725/2004 on enhancing ship and port facility security, pursuant to which the established practice in the EEA is that ships issued with an International Ship Security Certificate (ISSC) are always considered to be engaged in international voyages. The same follows from Section 1(2) of the Norwegian Regulation on Port Facility Security (FOR-2013-05-29-538).

The Norwegian Government has not at all demonstrated why the Norwegian pay measures are necessary beyond the existing grant scheme.

- With respect to the application of the Norwegian pay measures to future activities (e.g. CO2 capture and storage, deep-sea minerals mining), no data is available regarding the maritime services provided in that context. In addition, data regarding the distribution of the fleet that is active in the cruise sector and the offshore sector – apart from offshore supply vessels linked to oil and gas activities – is missing.

- The Norwegian Government concludes that Norwegian wages are necessary on the basis that seafarers on board vessels operating between Norwegian ports and offshore installations, as well as vessels providing services to the offshore sector above the Norwegian continental shelf, have a connection to Norway that makes them comparable to 'posted workers' in other industries.[56] In the Directorate's opinion, this analysis is based on an erroneous premise. Seafarers on ships operating in Norwegian waters, EEZ or above the continental shelf, are not comparable to 'posted workers' as commercial shipping undertakings and seagoing personnel are specifically excluded from the scope of the Posting of Workers Directive, as set out in Article 1(2) of that Directive.

- The Norwegian Government has not demonstrated that the objectives pursued could not be achieved, if at all required having regard to the foregoing considerations, with less restrictive measures.[57] The Directorate is of the view that restrictions such as in the present case would require particularly solid and convincing evidence that no other less restrictive measures were available.

In light of all the above-mentioned, the Directorate preliminary concludes that the Norwegian Government has not demonstrated that the adopted restrictions are suitable and necessary to achieve the aim pursued in a consistent and systematic manner.

4.4. Enforcement of the Norwegian pay measures

Pursuant to Section 11 of the General Application Act, the Norwegian Maritime Authority ('NMA'), which is also the competent authority for port State control, is tasked with monitoring compliance with the requirements for Norwegian wages under the said Act. Furthermore, the NMA may sanction violations of the General Application Act pursuant to the Ship Safety and Security Act[58] by enforcing corrective actions (Section 49), applying daily fines (Section 50), through detentions of ships (Section 52) and with administrative penalties (Sections 55 and 56).

The Directorate highlights that the list of items to be controlled by a port State control officer is exhaustively established in the Port State Control Directive and cannot be extended by the EEA States unilaterally to include more items.[59]

In the preparatory works, the Norwegian Government stipulates that, although foreign flagged vessels as a main rule are monitored under the port State control regime, that the NMA in certain circumstances performs inspections of such ships '*on a national basis'*, referring as an example to the monitoring of sulphur content of marine fuels.[60]

The Directorate would like to point out, first, to the extent that the reference to monitoring activities '*on a national basis'* is intended to distinguish such activities from those that are

[56] Prop. 88 L (2024-2025), Section 5.3.4.
[57] See, e.g., Case E-8/17 *Kristoffersen*, paragraph 122.
[58] Lov om skipssikkerhet - LOV-2007-02-16-9.
[59] See Article 11 and 13, as further clarified by the CJEU in Joined Cases C-14/21 and C-15/21 *Sea Watch*, EU:C:2022:604, paragraphs 111-120.
[60] Prop. 88 L (2024-2025), Section 7.8.

carried out subject to the requirements of EEA law, that the example concerning marine fuels in fact is governed by Directive (EU) 2016/802,[61] according to which EEA States have an obligation to check by sampling the sulphur content of fuels.

Second, by comparison, the system in the EEA under which working conditions of seafarers are to be monitored is set out in the Port State Control Directive. More to the point, the Port State Control Directive regulates the frequency and intensity of the port State's inspections on foreign flagged ships that call at a port in its territory.[62] It also sets the conditions under which a port State can order the detention of a ship and the consequences of such detention.[63]

To the extent that Norway has introduced a new system, outside the sphere of the port State control regime, for monitoring compliance with the requirements for Norwegian wages under the General Application Act, the Directorate notes that the system appears to run counter to the objectives of the Port State Control Directive, which harmonises the powers that EEA States may exercises as port States when inspecting, inter alia, the working conditions of seafarers onboard foreign flagged ships. In any event, the system does not appear to comply with the principle of legal certainty, in so far as the selection criteria for ships to be inspected, as well as the frequency and intensity of such inspections are not set out.

Based on the above, the Directorate takes the preliminary view that the system for monitoring compliance with the wage requirements under the General Application Act is not compatible with EEA law.

5. Conclusion

In light of the above, the Norwegian Government is invited to submit its observations on the content of this letter by 5 December 2025. After that date, the Authority will consider, in light of any observations received from the Norwegian Government, whether to initiate infringement proceedings in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and Court of Justice.

Yours faithfully,

Jónína S. Lárusdóttir
Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Jonina S. Larusdottir.

[61] Point 21ad of Annex XX to the EEA Agreement, *Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (OJ L 132, 21.5.2016, p. 58).*
[62] Ibid.
[63] See Articles 19 and 21 of the Port State Control Directive.