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Ministry of Labour and Social Inclusion
Postboks 8019 Dep
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Norway

Dear Sir/Madam,

Subject: Request for Information concerning the access to disability benefits in Norway

The Internal Market Affairs Directorate ("the Directorate") of the EFTA Surveillance Authority ("the Authority") is in the process of examining the Norwegian rules and administrative practice to grant access to disability benefits to persons with past insurance record from other EEA States.

This case results from a series of complaints received by the Authority over the past 18 months.[1] These complaint cases are currently in the process of being closed and bundled in the present case so that the Directorate approaches the issues in a systematic manner. In some of those cases, the Norwegian Government has replied to requests for information of the Authority. This information is taken into account for the assessment of the issues bundles and raised in the present case.

The preliminary assessment of these replies has raised more questions which the Authority would like to invite the Norwegian Government to clarify or comment on to get the full picture of how applications to disability benefits from persons migrating to Norway from other EEA States are processed by the Norwegian authorities. The questions are mostly related to **Article 6 of Regulation 883/2004 - the principle of aggregation of periods of insurance/residence – and Article 5 of Regulation 883/2004 – the principle of equal treatment of benefits, income, facts or events** ("assimilation of facts") and their respective exceptions.

Article 44 of Regulation 883/2004 makes a distinction between Type A and B invalidity benefits, the first ones being independent of insurance record and listed in Annex VI to the Regulation. Norway does not have an entry in that Annex. Consequently, the Norwegian disability benefits are to be considered **Type B benefits** that dependent on the duration of periods of insurance/residence. Therefore, Article 6 of Regulation 883/2004 on **aggregation of periods of insurance/residence** is relevant and has to be applied to its fullest extent.

Article 12 of the implementing Regulation 987/2009 states that (i) for the purposes of applying Article 6 of the basic Regulation, the competent institution shall contact the institutions of the Member States to whose legislation the person concerned has also been subject in order to determine all the periods completed under their legislation. And (ii) that the respective periods of insurance, employment, self-employment or residence completed under the legislation of a Member State shall be added to those completed under the

[1] The Norwegian Government has been informed of the opening of Cases 93351, 93536, 93936 and 93947 and will be informed about their respective closures accordingly.

legislation of any other Member State, insofar as necessary for the purposes of applying Article 6 of the basic Regulation, provided that these periods do not overlap.

Additionally, Decision H6 of the Administrative Commission specifies Article 6 of Regulation 883/2004 and 12 of Regulation 987/2009 and states at point 2: "*All periods for the relevant contingency completed under the legislation of another Member State shall be taken into account solely by applying the principle of aggregation of periods as laid down in Articles 6 of R 883/2004 and 12 of R 987/2009. The principle of aggregation requires that periods communicated by other Member States shall be aggregated without questioning their quality*."

The principle of aggregation only concerns the periods from the same insurance branch; thus, national authorities only need to aggregate pension periods with pension periods and not, for example, pension periods with periods of health care coverage. In the EESSI system, the form P5000 is used as standard form to request information about periods of insurance or residence in other States relevant for the entitlement to disability pensions.

Article 57 of Regulation 883/2004 addresses claims where the applicant has periods of insurance or residence of less than one year in one of the involved States. Accordingly, an EEA State shall not be required to provide benefits in respect of periods completed under the legislation it applies which are taken into account when the risk materialises, if (i) the duration of the said periods is less than one year, and (ii) taking only these periods into account no right to benefit is acquired under that legislation. Thus, the concerned EEA State does not have aggregate periods of insurance/residence to give access to a benefit if the two above conditions are fulfilled.

In the light of the above provisions, the Authority would like to ask the following questions:

1. How, from a procedural point view, would the Norwegian authorities handle an application for a disability benefit (*uføretrygd*, Section 12 of the National Insurance Act (NIA - *Folketrygdloven*), if the applicant has less than 12 months of insurance in Norway, but several years of insurance in at least one other EEA State?
2. Does Norway apply any exception to the rule of aggregation, apart from Article 57 of Regulation 883/2004, whenever national legislation imposes a minimum threshold of periods of residence or insurance? If so, please elaborate.
3. Section 12-2 NIA requires an insurance period of 5 years to qualify for a benefit. Do these periods have to be uninterrupted? If so, when does Norway consider that the insurance record of a person has been interrupted? And, if so, is there a situation possible where a person who has resided in Norway as from birth could have an interruption of its insurance record in Norway?
4. In cases where after applying the principle of aggregation of foreign periods of insurances/residence the national entitlement criteria are still not fulfilled, could a person acquire a right to the disability benefit when remaining resident and being subject to Norwegian social security system? Or, in other words, could periods of residence from the time after the disability has occurred be counted in to fulfil national insurance affiliation requirements, *i.e.* the one of 5 years under Section 12-2 NIA?
5. Any other clarification relevant to understand the entitlement to disability benefits in the context of aggregation of periods and also potential entitlement to alternative benefits where no entitlement to disability benefits can be obtained.

It is inherent in a system of coordination of social security rights that the conditions to which entitlement to a benefit is subject differ depending on the individual EEA States. However, when laying down those conditions, EEA States must ensure the equal treatment of all

workers occupied on their territory as effectively as possible and not penalise workers who exercise their right to freedom of movement.

The purpose of the **principle of assimilation of facts** is to avoid unjustified discriminatory treatment of foreign workers that fall in the scope of the social security coordination regulation. Prior to the inclusion of that principle in the coordination regulation, such instances were addressed on a case-by-case basis under the fundamental freedoms.[2]

The principle as set out in Article 5 of Regulation 883/2004 was integrated in Title I of the Regulation, which contains all general principles of coordination and, thus, assumes general importance for all dimensions of coordination law. It specifically intends to prevent workers who, by exercising their right of free movement, have been employed in more than one EEA State from being placed in a worse position than workers who have completed their entire career in only one State.[3]

Conditions imposed by national law must be regarded as **indirectly discriminatory** where, although applicable irrespective of nationality, they affect essentially migrant workers or the great majority of those affected are migrant workers, where they are applicable without distinction but can more easily be satisfied by national workers than by migrant workers, or where there is a risk that they may operate to the particular detriment of the latter.[4]

In order to address potential (unjustified) indirect discrimination, the whole reasoning about the assimilation of facts rule is that external facts or legal circumstances have the same impact on social security rights as internal circumstances. In this context, the principle of assimilation of facts is limited to facts and events which constitute a requirement for a right under the substantive social security law of the competent State.

6. a) The Norwegian legislation foresees less restrictive conditions to access disability benefits when the disability has occurred before the age of 26 (NIA Section 12-2, second paragraph). How would Norway assess an application for such benefits, when the applicant was a member of a social security system of another EEA State at time of the occurrence of the disability? Or, to phrase it more generally, to which benefits and under which conditions would a disabled person as newcomer in Norway be entitled to, when the disability has occurred in the home State when the person was less than 26 years old (under the assumption that the applicant cannot export any disability benefits from the home State to Norway)?

   b) Does it make a difference whether the application is lodged in Norway before or after the age of 26?

   c) Would it change anything in the assessment of questions 6a and 6b, if a parent of the disabled child is a migrant worker having been already economically active in Norway for several years and only later brought the disabled child along?

   d) Would the exceptions to the same entitlement conditions (see Section 12-17 NIA) also be waived for an applicant, who newly arrives in Norway, if the work accident happened while the person was insured in another EEA State?

[2] See, i.e. CJEU joined Cases C-45/92 and C-46/92, *Lepore and Scamuffa*; C-146/93, *McLachlan*; and *C-290/00, Duchon*.
[3] See i.e. CJEU Case C-10/90, *Masgio*, paragraphs 16 and 17, and case law referred to there.
[4] See e.g. CJEU Case C-507/06*, Klöppel*.

e) Are the basic benefit (*grunnstønad*) and the attendance benefit (*hjelpestønad*) (NIA, Section 6 §4 and §5) independent benefits or only provided when there is already a basic right to disability benefits in accordance with Article 12 NIA?

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *30 September 2025*.

Yours faithfully,

Maria Moustakali
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Maria Moustakali.