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Brussels, 10 February 2021  
Case No: 86224  
Document No: 1177117

Norwegian Ministry of Labour and Social Affairs  
Postboks 8019 Dep  
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Dear Sir/Madam,

**Subject: Request for Information concerning the exportability of the Norwegian cash-for-care benefit (*kontantstøtte*) – Regulation 883/2004 on the coordination of social security systems**

- 1) On 29 January 2021, the Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) opened an own initiative case to investigate the Norwegian legislation and administrative practice related to the exportability of the cash-for-care benefit (*kontantstøtte*).
- 2) It is the national legislation and ensuing administrative practice which provide that only a parent “living permanently” with the child is eligible for the cash-for-care benefit which is at stake. The Directorate is presently assessing the compatibility of that rule with EEA law.
- 3) The Norwegian cash-for-care benefit is regulated by the Cash Benefit Act (the Act).<sup>1</sup> The benefit is available to parents who have children between the ages of 1 and 2 years and do not attend a government subsidised kindergarten, subject to the fulfilment of certain other conditions. The application of those other conditions to cross-border situations covered by Regulation 883/2004 is clarified in the relevant administrative circular.<sup>2</sup>
- 4) Notably, pursuant to Sections 2 and 3 of the Act, both the child and the beneficiary must reside in Norway in order to be eligible for the cash-for-care benefit. According to the administrative circular, those residence-requirements shall not be applied to persons covered by Regulation 883/2004.
- 5) However, Section 3 of the Act also provides that the cash-for-care benefit may only be dispersed to the person with whom the child is “living permanently”. This has the consequence that even if a person is subject to the Norwegian legislation pursuant to Article 11 of Regulation 883/2004, that person cannot claim the benefit if the child resides in another EEA State.
- 6) The example provided by the administrative circular is the following: a mother and a father are divorced. The father is living and working in Norway, while the mother and the child resides in Sweden. The father cannot, in such a situation, claim the cash-for-care benefit.<sup>3</sup>
- 7) The Directorate observes that the national law described above appears difficult to reconcile with the requirements of EEA law, which are briefly recalled in the following.

<sup>1</sup> LOV-1998-06-26-41, Lov om kontantstøtte til småbarnsforeldre (kontantstøtteloven).

<sup>2</sup> Hovednummer 45 – rundskriv til EØS-avtalens bestemmelser om trygd, 2001-02-15.

<sup>3</sup> Idem, point 34.4 – Skilte, separerte og ugifte foreldre

- 8) It is recalled that Article 67 of Regulation 883/2004<sup>4</sup> provides that a person subject to the legislation of an EEA State shall be entitled, in respect of family members residing in another EEA State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State.<sup>5</sup> The phrase “as if they were residing in that State” overrules residence requirements in national legislation.
- 9) Evidently, in the application of the export-rule laid down in Article 67 of Regulation 883/2004, the definition of “family members” becomes essential. Pursuant to Article 1(i) first subparagraph, a “member of the family” means “any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided.”
- 10) Importantly, Article 1(i) third subparagraph determines that “[i]f, under the legislation which is applicable (...), a person is considered a member of the family or member of the household only if he lives in the same household as the insured person (...), this condition shall be considered satisfied if the person in question is mainly dependent on the insured person (...).”
- 11) The Directorate further notes that in Case E-6/12<sup>6</sup>, which concerned an identical requirement for the beneficiary to be “living permanently” with the child pursuant to the Norwegian Child Benefits Act<sup>7</sup>, the EFTA Court confirmed that in situations where the child indeed does not live permanently with the parent who is subject to the Norwegian legislation, failing to consider whether the child is mainly dependent on that parent constitutes a breach of EEA law.
- 12) Following that judgement, the Norwegian Labour and Welfare Administration (NAV) was instructed by the Norwegian Government to adjust its administrative practice in order to bring it in line with the requirements of EEA law.<sup>8</sup>
- 13) However, that adjustment of Norwegian administrative practice does not seem to have been extended to the export of the cash-for-care benefit. In addition to the example provided by the relevant administrative circular itself, referred to in paragraph 5 above, that very same circular notably suggests a restrictive reading of the EFTA Court’s judgement in Case E-6/12.<sup>9</sup>
- 14) In light of the above, the Directorate hereby invites the Norwegian Government to provide a detailed account of the conditions applied to the export of the cash-for-care benefit in situations covered by Regulation 883/2004, including its assessment of why the judgement in Case E-6/12 would not equally be relevant to the export of this particular benefit.

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<sup>4</sup> Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1), incorporated into the EEA Agreement under point 1 of Annex VI by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011.

<sup>5</sup> Case E-3/04 *Tsomakas and Others* [2044] EFTA Ct. Rep. 95, paragraph 47.

<sup>6</sup> Case E-6/12 *ESA v Norway*, [2013] EFTA Ct. Rep. 618.

<sup>7</sup> LOV-2002-03-08-4, Lov om barnetrygd (barnetrygdloven) Section 2(1).

<sup>8</sup> Hovednummer 45 – rundskriv til EØS-avtalens bestemmelser om trygd, point 33.4.

<sup>9</sup> *Idem*, point 34.1.1: “det bemerkes at EFTA-dommen av 11. september 2013 som gjelder retten til **barnetrygd** i tilfeller der foreldrene ikke lever sammen, ikke gjelder for retten til kontantstøtte (...) I slike tilfeller vil det kunne foreligge rett til barnetrygd uten at det foreligger rett til kontantstøtte (...)”

- 15) 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 *10 March 2021*.

Yours faithfully,

Kristin Saether Bangsund  
Deputy Director  
Internal Market Affairs Directorate

*This document has been electronically authenticated by Kristin Saether Bangsund.*