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

Dear Sir/Madam,

Subject: Request for information regarding an own initiative case concerning claims for damages against Norwegian municipalities based on their alleged breach of EEA law

Reference is made to the recent ruling of the Borgarting Court of Appeal of 19 November 2020 (LB-2020-11829) and the ruling of the Norwegian Supreme Court of 10 March 2021 (HR-2021-546-U). The EFTA Surveillance Authority (“the Authority”) was made aware of the judgements by way of an enquiry in two emails dated 27 November 2020 and 15 March 2021 (Docs No 1187672 and 1166100).

Those cases involve a taxi company which had sued the municipality of Oslo for damages for its alleged breach of EEA law. Having lost the case in the district court, the taxi company appealed the judgement. In its judgement, the Borgarting Court of Appeal ruled that the Norwegian State was the correct subject for the claim, and not the municipality. In its judgement, the Borgarting Court of Appeal points, *inter alia*, to the fact that there is currently no rule in Norwegian procedural law clarifying which public body should be the subject for claims for damages for breaches of EEA law. The judgement was subsequently appealed to the Norwegian Supreme Court, which ruled that there were insufficient reasons for the case to be brought before it.

In light of the abovementioned judgements, and as the judgment indicates that there is no rule under Norwegian procedural law clarifying which public body should be subject for claims for damages for breaches of EEA law, the Authority’s Internal Market Affairs Directorate (“the Directorate”) is examining whether the relevant legal framework in Norway complies with EEA law.

In that regard, the Directorate would like to emphasise that legal certainty is a fundamental principle of EEA law that requires rules implementing EEA law to be sufficiently clear and precise, so that interested parties can ascertain their position in situations and legal relationships governed by EEA law.¹ The Directorate would furthermore like to stress that municipalities have an individual duty of loyalty and obligation to interpret Norwegian law in an EEA-conform way.

For the purpose of this examination the Directorate invites the Norwegian Government to provide the following information:

1. Can the Norwegian Government elaborate on how it views the abovementioned judgements, including what precedential effects these rulings have?

¹ See Joined Cases E-4/10, E-6/10 and E-7/10 *Liechtenstein and others v ESA*, [2011] EFTA Ct. Rep. 16, paragraph 156; and Joined Cases E-17/10 and E-6/11 *Liechtenstein and VTM Fund Management v. ESA*, [2012] EFTA Ct. Rep. 114, paragraph 142.

2. Does the Norwegian Government consider that the current legal framework regulating which public body is the correct subject for claims for damages for alleged breaches of EEA law is in line with the requirement of legal certainty?
3. If the answer to the above question is in the negative, how does the Norwegian Government intend to remedy this situation and to remove any doubt that municipalities have an individual duty of loyalty and obligation to interpret Norwegian law in an EEA-conform way?

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 **5 September 2021**.

Yours faithfully,

Gabrielle Somers
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Gabrielle Somers.