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Brussels, 7 September 2022
Case No: 86218
Document No: 1310522

Norwegian Ministry of Labour and Social Affairs
Postboks 8019 Dep
N-0030 Oslo
Norway

Dear Sir/Madam,

Subject: Supplementary Request for Information concerning the classification of the transitional benefit for single parents (*overgangsstønad*) as a family benefit pursuant to Article 3(1) (j) of Regulation 883/2004.

On 27 January 2021, the Internal Market Affairs Directorate of the EFTA Surveillance Authority (“the Authority”) opened an own initiative case to investigate whether the Norwegian transitional benefit for single parents (“the transitional benefit”, in Norwegian: *overgangsstønad*) provided for in Section 15-5 of Chapter 15 of the Norwegian National Insurance Act (“the NIA”, in Norwegian: *folketrygdloven*)¹ is covered by the material scope of Regulation 883/2004 of the European Parliament and of the Council on the coordination of social security systems (“Regulation 883/2004” or “the Regulation”).

On 10 February 2021, the Authority issued a request for information in which it *inter alia* asked the Norwegian Government to confirm whether it held that the transitional benefit was covered by the scope of Regulation 883/2004 (Doc No 1175938).

In said letter, the Authority observed that the conditions to fulfil in order to receive the transitional benefit, as set out in Section 15-5 NIA, appeared to bring that benefit within the scope of the Regulation. On 10 March 2021, the Norwegian Government replied to that request for information (Doc o 1186641). There, it stated (p. 4) that it “*considers that the transitional benefit falls outside the scope of Regulation 883/2004.*”

On 1 April 2022, the Norwegian Government submitted a proposal to the Parliament entitled “*Prop. 71 L (2021-2022) regarding Amendments to the National Insurance Act, etc. (visibility of international law obligations to social security coordination)*” (“the 2022 Proposal”).² There, the Government reiterated that it believes the transitional benefit is not covered by the scope of Regulation 883/2004, with reference to the preparatory works from Norway’s ratification of the EEA Agreement and the view put forward there that the benefit was outside the scope of the EEA Agreement in general.³

In a request for an advisory opinion submitted to the EFTA Court on 26 January 2022, the National Insurance Court (“the NIC”, in Norwegian: *Trygderetten*) essentially asked the EFTA Court whether the transitional benefit falls within the material scope of Regulation 883/2004. In its judgement in Case E-2/22 of 29 July 2022, the EFTA Court concluded that:

¹ Act of 28 February 1997 No 19 on social security. In Norwegian: Lov 28. februar 1997 nr. 19 om folketrygd, available at <https://lovdata.no/dokument/NL/lov/1997-02-28-19>.

² Prop. 71 L (2021-2022) available at <https://www.regjeringen.no/contentassets/479b9006cd88495fa6c0564883b7dfda/no/pdfs/prp202120220071000dddpdfs.pdf>

³ *Ibid*, p. 47-48.

“A benefit such as the transitional benefit at issue in the main proceedings constitutes a family benefit within the meaning of point (j) of Article 3(1) of Regulation (EC) No 883/2004 on the coordination of social security systems, and is not a non-contributory cash benefit within the meaning of Article 3(3) of that regulation, read in conjunction with Article 70.”

On 30 August 2022, the NIC concluded that the transitional benefit falls within the material scope of the Regulation as a family benefit and held that the applicant was entitled to it. The NIC also noted that the applicant had moved to another EEA State during the proceedings, as her financial situation made it difficult to remain in Norway. In that connection the NIC observed that given that the transitional benefit is a family benefit pursuant to Regulation 883/2004, *“it appears difficult to reconcile the stay requirement in Section 15-3 NIA with the principle of exportability”* in Article 7 of the Regulation.⁴ The Authority recalls also that in its written observations in case E-2/22, it noted that the stay requirement appears to be at odds with the EEA Agreement.⁵

The Authority therefore considers it clear that the transitional benefit falls under Regulation 883/2004 as a “family benefit” pursuant to Article 3(1)(j).

The Authority assumes that the Norwegian Government will comply with the EFTA Court judgement and make the requisite changes to its laws and practice, including with respect to exportability, as the NIC noted in its judgement in the specific case leading to the EFTA Court’s judgement.

The Authority notes that given that it appears to be clear that Norwegian law is not in compliance with EEA law, the immediate and uniform application of EEA law requires that the process of compliance must begin immediately and must be completed as soon as possible.

In light of the above, the Norwegian Government is invited to provide the following clarifications and explanations:

1. Does the Norwegian Government consider that the transitional benefit as regulated by national law, specifically in Chapter 15 NIA, is covered by Regulations 883/2004 and 987/2009, following the judgement by the EFTA Court in Case E-2/22 and the ensuing judgement of the NIC in case TRR-2020-1763? Moreover, in the view of the Norwegian Government, do the fundamental freedoms of the EEA Agreement such as the right to receive services abroad pursuant to Article 36 EEA apply in relation to the payment of that benefit?
2. If the reply to the first question is in the affirmative, the Norwegian Government is invited to explain whether and how administrative practice has been adjusted following the rendering of the judgements referred to above.
3. If the reply to the first question is in the affirmative, the Norwegian Government is invited to clarify whether legislative amendments to the NIA are foreseen and subject to what timeframe, including but not limited to the stay-requirement in Section 15-3 NIA, especially in light of the 2022 Proposal which is currently being considered by the Parliament.

⁴ It is recalled that in Case E-8/20, the EFTA Court found that an EEA State cannot condition entitlement to benefits upon a stay requirement and that such a requirement constitutes an unjustified restriction on the freedom of movement of workers and the freedom to provide services.

⁵ The Authority’s written observations in case E-2/22 *A v Arbeids- og velferdsdirektoratet*, available at https://eftacourt.int/wp-content/uploads/2022/08/07_ESA_written-observations_original.pdf, see paragraph 11.

4. As regards the obligation to ensure that all individuals affected by this wrongful application of EEA law are offered appropriate remedies, the Norwegian Government is invited to provide an overview of the individuals identified to date, including what the consequences were for the individuals affected. Moreover, the Norwegian Government is invited to explain what measures are or will be put in place in order to identify all individuals affected since 1994, including but not limited to:
 - a. Individuals who have been denied access to the transitional benefit because the national authorities refused to apply aggregation of insurance periods, c.f. Article 6 of Regulation 883/2004.
 - b. Individuals who have been denied access to the transitional benefit or had their benefit suspended due to stays in other EEA States.

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 **17 October 2022**.

Yours faithfully,

Maria Moustakali
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Maria Moustakali.