

Brussels, 20 February 2013

Case No: 72234

Event No: 659537

Dec. No: 70/13/COL



EFTA SURVEILLANCE
AUTHORITY

Ministry of Finance
Postboks 8008 Dep
N-0030 Oslo
Norway

Dear Sir/Madam,

Subject: Letter of formal notice to Norway for non-compliance with the judgment of the EFTA Court in Case E-9/11

1 Introduction

By letter of 15 August 2012, the EFTA Surveillance Authority (“the Authority”) informed the Norwegian Government that it had opened an own initiative case regarding Norway’s compliance with the judgment of the EFTA Court in Case E-9/11 *EFTA Surveillance Authority v The Kingdom of Norway* from 16 July 2012, on ownership restrictions in Norwegian financial services infrastructure institutions.

In its judgment the EFTA Court came to the conclusion that by maintaining in force restrictions on the rights of persons and undertakings established in EEA States to own holdings and exercise voting rights in financial services infrastructure institutions, Norway failed to fulfil its obligations arising from Articles 31 and 40 of the Agreement on the European Economic Area (“EEA”).

2 Correspondence

In its letter of 15 August 2012 (Event No 644067), the Authority invited Norway to provide information on whether any amendments had been made to the Norwegian Stock Exchange Act and the Securities Depositories Act in order to comply with the judgment of the EFTA Court in Case E-9/11. Norway was invited to submit the requested information by 15 September 2012.

By letter of 11 October 2012, Norway replied to the Authority’s letter of 15 August 2012. In its reply Norway explained that the national provisions that were declared to be in breach of Articles 31 and 40 EEA in Case E-9/11 were still in force. Norway informed the Authority that the Ministry of Finance had, by letter of 9 October 2012, commissioned the Norwegian Financial Supervisory Authority to prepare and recommend new rules on ownership in financial services infrastructure institutions. The Financial Supervisory Authority was to provide its recommendation to the Ministry of Finance by 15 January 2013. Norway explained that shortly after it will receive a recommendation from the

Financial Supervisory Authority the Norwegian Government intends to send a proposal on public hearing, before presenting a bill to the Parliament.

The matter was discussed at the package meeting in Oslo on 25-26 October 2012. At that meeting the representatives of the Norwegian Government informed the Authority that new rules on ownership in financial services infrastructure institutions could be expected to enter into force in January 2014.

3 Relevant EEA law

According to Article 33 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereafter referred to as "SCA") the EFTA States concerned shall take the necessary measures to comply with the judgments of the EFTA Court.

4 The Authority's assessment

The EFTA Court handed down its judgment in Case E-9/11 on 16 July 2012. According to the Authority's information, the first step Norway took with the aim to rectify the infringement found by the EFTA Court was on 9 October 2012 when the Financial Supervisory Authority was asked to start working on the drafting of new rules on ownership in financial services infrastructure institutions.

The Norwegian Government has not supplied the Authority with documents containing formal proposals for amendments of the current rules on ownership in financial services infrastructure institutions. However, as indicated at the package meeting in Oslo on 25-26 October 2012, new rules might be expected to enter into force in January 2014.

According to Article 33 SCA, the EFTA States are required to take necessary measures to comply with the judgments of the EFTA Court, and actions to do so must be commenced immediately and must be completed as soon as possible.¹

The EFTA Court already held that although Article 33 SCA does not specify the period within which measures necessary to comply with a judgment must be taken, the interest in the immediate and uniform application of EEA law requires that the process of compliance with a judgment must be commenced immediately and must be completed as soon as possible.²

It is also settled case-law that EEA States cannot plead internal circumstances or practical difficulties to justify non-compliance with obligations and time-limits arising from rules of Community law.³

As more than seven months have now passed since the judgment of the EFTA Court, the Norwegian Government has had sufficient time to take the measures necessary to comply with the EFTA Court's judgment in Case E-9/11. Furthermore, according to the

¹ Joined cases 227-230/85 *Commission v Belgium* [1988] ECR I, paragraph 11.

² Case E-18/10, *EFTA Surveillance Authority v The Kingdom of Norway*, [2011] EFTA Court Report 2011, p. 212, paragraph 29.

³ See in this regard *inter alia*, Case C-316/06 *Commission v Ireland*, paragraph 31 [2008] ECR I-124, paragraph 31, Case C-89/03 *Commission v Luxembourg* [2003] ECR I-11659, paragraph 5, Case C-140/00 *Commission v United Kingdom* [2002] ECR I-10379, paragraph 60, and Case C-52/91 *Commission v Netherlands* [1993] ECR I-3069, paragraph 36.

information by Norway, the implementing measures cannot be expected to be in place before January 2014 which would be one and a half years after the EFTA Court gave its ruling.

The Authority therefore considers that by failing to take the measures necessary to comply with the judgment of the EFTA Court in Case E-9/11, Norway has failed to fulfil its obligations under Article 33 SCA.

5 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that by failing to comply with the judgment of the EFTA Court in Case E-9/11 *EFTA Surveillance Authority v The Kingdom of Norway*, Norway has breached Article 33 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority invites the Norwegian Government to submit its observations on the content of this letter within *two months* following receipt thereof.

After the time limit has expired, the Authority will consider, in the light of any observations received from the Norwegian Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority



Sabine Monauni-Tömördy
College Member