

Brussels, 28 March 2012
Case No: 67065
Event No: 627491
Dec. No: 119/12/COL

EFTA SURVEILLANCE
AUTHORITY

Ministry of Finance
Akersgt. 40
NO-0030 Oslo
Norway

Dear Sir or Madam,

Subject: Letter of formal notice to Norway for failure to correctly implement Article 37(1) of the Third Anti-Money Laundering Directive (2005/60/EC) into the Norwegian legal order

1 Introduction

The EFTA Surveillance Authority ("the Authority") has carried out a conformity assessment of the Norwegian national measures implementing the Act referred to at point 23b of Annex IX to the Agreement on the European Economic Area (*Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing*) as adapted to the EEA Agreement by Protocol 1 thereto ("the Directive").

The Directive was incorporated into the EEA Agreement by EEA Joint Committee Decision No 87/2006 of 7 July 2006, which entered into force on 1 April 2007. The compliance date for the Directive was 15 December 2007.

On 11 May 2009 (Event No: 518022), Norway provided the Authority with a completed table of correspondence for the Directive on the basis of which the Authority undertook the conformity assessment.

On 16 November 2009, the Authority sent Norway a request for information (Event No: 529829), setting out the questions raised by the conformity assessment of the national measures implementing the Directive, to which Norway replied on 15 January 2010 (Event No: 543263). A second request for information was sent to Norway on 23 March 2010 (Event No: 550920), to which the Authority received an answer on 20 May 2010 (Event No: 558931). A third request for information was sent to Norway on 21 December 2011 (Event No: 619262). Norway responded by a letter of 2 March 2012 (Event No: 626753).

2 The Authority's assessment of Article 37(1) of the Directive – supervision of institutions and persons covered by the Directive

Article 2(1) of the Directive reads:

This Directive shall apply to:

(...)

(3) the following legal or natural persons acting in the exercise of their professional activities:

(a) auditors, external accountants and tax advisors;

(b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of transactions for their client concerning the:

(i) buying and selling of real property or business entities;

(ii) managing of client money, securities or other assets;

(iii) opening or management of bank, savings or securities accounts;

(iv) organisation of contributions necessary for the creation, operation or management of companies;

(v) creation, operation or management of trusts, companies or similar structures;

(c) trust or company service providers not already covered under points (a) or (b);¹

(d) real estate agents;

(e) other natural or legal persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;²

(...)

Article 37(1) of the Directive reads:

Member States shall require the competent authorities at least to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of this Directive by all the institutions and persons covered by this Directive.

In its letter of 15 January 2010, the Norwegian Government explained that trust or company service providers not already covered under points (a) or (b) of Article 2 of the Directive and other natural or legal persons trading in goods were not at that time subject to supervision by a public authority. The Norwegian Government indicated that it would look into how the matter could be resolved. According to its letter of 20 May 2010, the Norwegian Government had still not found a solution to the issue. From its letter of 2 March 2012, it emerged that the Norwegian Government was still exploring an appropriate and practical solution for the required monitoring. The Government indicated that it would give the Authority an update on progress made by the end of the second quarter of 2012.

Against this background, the Authority cannot see that Norway has implemented correctly Article 37(1) of the Directive in full.

¹ Underlining added.

² Underlining added.

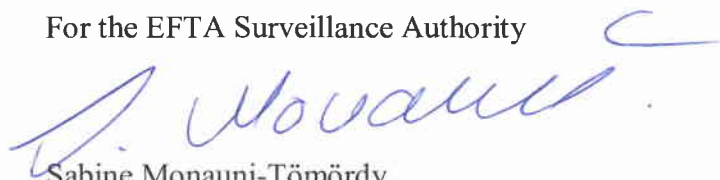
3 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that, because of the shortcomings identified in this letter, Norway has failed to fulfil its obligations arising from the Act referred to at point 23b of Annex IX to the Agreement on the European Economic Area (*Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing*) as adapted to the EEA Agreement by Protocol 1 thereto, and under Article 7 of the EEA Agreement.

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