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Brussels, 2 April 2025
Case No: 87300
Document No: 1523559

Norwegian Ministry of Justice and Public Security
Postboks 8005 Dep
04840 Oslo
Norway

Dear Sir/Madam,

Subject: Request for Information concerning Own-initiative case concerning Norway's expulsion practice for petty crimes

By letter dated 20 September 2021 (Doc No 1223984), the EFTA Surveillance Authority (“the Authority”) informed the Norwegian Government that it had opened an own-initiative case in order to examine whether Norway’s legislation and practices, on the basis of which EEA nationals may be expelled for minor criminal offences, were compatible with EEA law. The Authority’s examination of the case chiefly focussed on Article 27 of Directive 2004/38/EC. The case was opened after the Authority received two lines of correspondence from members of the public concerning related subjects, and in particular the legitimacy of Circular GI-02/2013.

The Authority notes that the relevant legal framework in Norway has been substantially revised since the case was opened. In particular, the relevant Circular has been superseded by a new Circular – Circular UDI RS 2010-022, which has been applied since November 2023.¹ The Authority notes that this Circular provides detailed information concerning the factors that will be taken into account when the Norwegian Directorate of Immigration (“UDI”) makes a decision to reject or expel an EEA national or a family member of an EEA national from Norwegian territory. It also includes information concerning minimum thresholds for expulsion for a variety of classes of criminal offences.

While the above changes resulted in a regime in which UDI was impeded from expelling EEA nationals and their family members from Norway for a single instance of petty theft (as had previously been possible), the Authority is not satisfied that, on this basis alone, the changes implemented have been sufficient to bring Norway into compliance with EEA law. Rather, the Authority’s Internal Market Affairs Directorate (“the Directorate”) will continue to assess the case on the basis of Circular UDI RS 2010-022, as applied in the context of Articles 121(1)(c) and 122 of the Norwegian Immigration Act. In particular, the Authority is concerned about the criteria in Circular UDI RS 2010-022 that provide criteria and thresholds for the rejection and expulsion of EEA nationals and their family members from Norwegian territory. The Authority would like to garner additional information from the Norwegian Government with respect to how Circular UDI RS 2010-022 and Articles 121(1)(c) and 122 of the Norwegian Immigration Act are applied in practice by the relevant authorities.

For the purposes of the present case, it should also be noted that the Authority is responsible for the oversight of the rights of UK nationals covered by the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of

¹ See the reply of the Norwegian Government to the Authority’s Follow-Up Letter of 8 January 2024 (Doc No 1428777, ref 15/1261 – KBH)

the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union ("the Separation Agreement"). Article 64(2) of the Separation Agreement provides that, in the EEA EFTA States (that is, in Iceland, Liechtenstein and Norway), the implementation and application of Part Two thereof shall be monitored by the Authority, which shall have equivalent powers as those that follow from the EEA Agreement and the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Surveillance and Court Agreement").

In general, UK nationals covered by the Separation Agreement are in an equivalent situation to EEA nationals with respect to the rules relating to freedom of movement of persons. As such, the Authority's analysis undertaken in relation to EEA nationals under the EEA Agreement should generally be seen to cover UK nationals who fall under the Separation Agreement *mutatis mutandis*. In view of the Authority's additional mandate under the Separation Agreement, the Authority wishes to inform the Norwegian Government that it also wishes to receive analogous relevant information in the context of rejections and expulsions of UK nationals and their family members falling under the personal scope of the Separation Agreement.

With respect to the rules in question – that is, Circular UDI RS 2010-022, and Articles 121(1)(c) and 122 of the Norwegian Immigration Act – the Authority notes that another circular, namely Circular G-18/2021, specifically Section 5 thereof, provides that UK nationals and other beneficiaries covered by the Separation Agreement are in an equivalent situation to EEA nationals with respect to the rules in question where any relevant conduct occurred before the end of the transition period (that is, on or before 31 December 2020). This entails that the effect of the rules, including the criteria in Circular UDI RS 2010-022 that provide criteria and thresholds for the rejection and expulsion of EEA nationals and their family members from Norwegian territory, will be extended to UK nationals and other beneficiaries covered by the Separation Agreement *mutatis mutandis*.

The Authority further notes that UK nationals and their family members falling under the personal scope of the Separation Agreement are not covered by the same provisions as EEA nationals where the relevant conduct occurred after the end of the transition period. Rather, as a matter of Norwegian law, such persons fall under the rules pertaining to third country nationals, meaning that the rules pertaining to them diverge significantly from EEA nationals. After a preliminary examination, the Authority understands that the relevant rules in this area are Articles 66-68 of the Norwegian Immigration Act and Circular UDI RS 2010-024, which provide criteria and thresholds for the rejection and expulsion of UK nationals and their family members falling under the personal scope of the Separation Agreement from Norwegian territory.

The Authority refers to its previous correspondence with Norway in this case, and the concerns expressed therein.

The Authority further draws the attention of the Norwegian Government to Articles 5, 27, 28 and 33 of Directive 2004/38/EC and Articles 4 of the EEA Agreement, as well as the principles of legal certainty, the presumption of innocence, and effective judicial protection as general principles of EEA law.

The Authority additionally draws the attention of the Norwegian Government to Articles 11, 13, and 19(1) and (2) of the Separation Agreement, as well as the principles of the right to family life, legal certainty, the presumption of innocence, and effective judicial protection as general principles of Separation Agreement law.

In light of the above and in order for the Authority to further examine and assess the case, the Norwegian Government is invited to provide the following information:

1. The Norwegian Government is requested to provide the Authority with copies – redacted for data protection purposes if necessary, but otherwise complete – of all decisions taken on the basis of Circular UDI RS 2010-022, as applied in the context of Articles 121(1)(c) and 122 of the Norwegian Immigration Act to reject or expel EEA nationals and their family members from Norwegian territory since the Circular's coming into force in November 2023. English translations should also be provided to the extent possible.
2. The Norwegian Government is requested to provide the Authority with copies – redacted for data protection purposes if necessary, but otherwise complete – of all decisions taken on the basis of Circular UDI RS 2010-022, as applied in the context of Articles 121(1)(c) and 122 of the Norwegian Immigration Act to reject or expel UK nationals and other beneficiaries covered by the Separation Agreement from Norwegian territory since the Circular's coming into force in November 2023. English translations should also be provided to the extent possible.
3. The Norwegian Government is requested to provide the Authority with copies – redacted for data protection purposes if necessary, but otherwise complete – of all decisions taken on the basis of Articles 66-68 of the Norwegian Immigration Act and Circular UDI RS 2010-024 to reject or expel UK nationals and other beneficiaries covered by the Separation Agreement from Norwegian territory since November 2023. English translations should also be provided to the extent possible.
4. The Norwegian Government is requested to provide, in relation to numbers 1, 2, and 3, above, a statistical breakdown of the crimes or other offences for which individuals falling into any of the categories provided, have been rejected or expelled. In relation to each of these crimes or other offences, the Norwegian Government is further requested to provide a breakdown – or estimate – of the typical or median punishment that a Norwegian citizen might receive for having committed the same offence or acted in the same manner. The latter breakdown or estimate should be grounded in concrete and actual examples, and should not merely refer to the range of sentencing that is available for particular offence (which is typically publicly available online).
5. The Authority notes that Section 9.2 of Circular UDI RS 2010-022 ("Assessment") provides, in extract:

"...If the EEA national has not been punished, or if the judgment or injunction is not legally binding, but the police believe that it is necessary to deport the person from Norway for reasons of public order or security, the police must make a concrete assessment of what kind of threat the person represents. It is necessary for the police to give a detailed account of the case and the investigative material that forms the basis of the assessment...."

The Authority requests additional information concerning how this assessment functions in practice. The Authority further requests concrete examples of police reports – redacted for data protection purposes if necessary, but otherwise

complete – relating to these cases. At least ten examples should be furnished. English translations should also be provided.

6. The Authority notes that Section 10.1 of Circular UDI RS 2010-022 (“*Factors to be considered*”) provides, in extract:

“The presentation is not exhaustive, neither when it comes to which offences can lead to rejection or expulsion nor when it comes to which elements are to be given weight when assessing the seriousness of the relationship, personal circumstances or the proportionality assessment.”

The Authority requests that the Norwegian Government provide examples of factors to be considered that are not subsequently listed in Section 10 of Circular UDI RS 2010-022, but that have been, or that could be, considered by the relevant authorities when determining whether a rejection or an expulsion should take place.

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 2 June 2025.

Yours faithfully,

Maria Moustakali
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Maria Moustakali.