

Case handler: Ciaran Burke
Tel: +32 499934225
e-mail: Ciaran.Burke@eftasurv.int

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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 Internal Market Affairs Directorate (“the Directorate”) of 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, according to which EEA nationals can be expelled for minor criminal offences, is compatible with EEA law. In particular, the Authority has examined the case from the perspective of Article 27 of Directive 2004/38/EC (“Directive 2004/38” or “the Directive”). The case was opened after the Authority received two enquiries concerning the subject, in particular the legitimacy of Circular GI-02/2013. On this basis, the Authority sent a request for information to Norway (Doc No 1223984, as referred to above).

In its letter, the Directorate recalled that the Authority had previously scrutinised Norway’s expulsion practice from the standpoint of Directive 2004/38 in Case 77287. That case was closed in 2019. However, Circular GI-02/2013 was not assessed in the context of that case. Therefore, the Directorate found it necessary to examine again Norway’s practice in this field, in particular concerning the Circular.

The Directorate noted that, according to Circular GI-02/2013, the Directorate of Immigration (“UDI”) is entitled to issue expulsion decisions in accordance with Section 122(1) of the Norwegian Immigration Act when EEA nationals commit acts in breach of Sections 257 and 391a of the Norwegian Criminal Code from 1902 (now, apparently, Sections 321 (theft) and 323 (minor theft) of the 2005 Criminal Code). The Circular also provides for criteria to assess whether there is a risk that the individual might reoffend, for example if they are homeless or lack means of subsistence.

The enquiries received by the Directorate made it clear that the Circular was applied and enforced by the immigration authorities and the national courts. The result seems to be that EEA nationals have been subjected to expulsion decisions accompanied by re-entry bans because they committed a minor criminal offence. According to the enquiries, this has for instance been the case when EEA nationals have stolen a single low valuable food item from a supermarket.

In its letter, the Directorate noted that expulsion is the most restrictive measure which can be taken against EEA nationals who have exercised their free movement and residence rights under Directive 2004/38, as noted by the EFTA Court in Case E-2/20 *The Norwegian Government v L*.¹ Thus, any limitations on EEA nationals who have exercised

¹ Judgment of the EFTA Court from 21 April 2021 in Case E-2/20 *The Norwegian Government v L*, not yet reported, paragraph 30.

their right to move and/or reside in the host State must be consistent with Article 27 of the Directive.²

The Norwegian Government was asked to clarify the national legal framework and the relevant practices concerning expulsions of EEA nationals for minor criminal offences. Moreover, the Norwegian Government was invited to confirm the Authority's understanding that EEA nationals had been expelled because of a single minor criminal offence and how such practice complied with Article 27 of the Directive.

The Norwegian Government replied by a letter dated 21 October 2021 (Doc No 1228465), in which it was stated that the relevant legal provisions were Section 122 of the Norwegian Immigration Act and Section 19-29 of the Norwegian Immigration Regulation. It was also explained that the main circular concerning rejections and expulsions of EEA nationals and their family members was Circular RS 2010-02. That Circular was further supplemented by Circular GI-02/2013, which was published in 2013 by the Ministry of Justice and Public Security.

It was further noted that Circular GI-02/2013 instructed the Norwegian Directorate of Immigration ("UDI") to consider whether to issue an expulsion decision in the situation when a foreign national had been penalized for theft or minor theft on the basis of Sections 321 and 323 of the Norwegian Criminal Code. As regards how Circular GI-02/2013 was applied in practice, the Government stated, *inter alia*, that EEA nationals had been expelled because they committed a single minor criminal offence, such as stealing food of low value from a grocery store. Since 2016, UNE had issued expulsion decisions in seven such cases from 2016. Due to technical difficulties, it was not possible to provide the same overview of UDI cases during the same period.

The Directorate sent two additional requests for information to Norway on 4 April and on 30 June 2022 (Doc nos 1275269 and 1298806, respectively). The Norwegian Government sent multiple replies to these letters. In its letter of 11 August 2022 (Doc no 1306586), the Norwegian Government answered questions from the Authority with regard to the status of Circular GI-02/2013. They noted that the Circular was being revised, and that the Ministry would consult with the Authority before publishing a new, revised circular. In a subsequent letter of 6 October 2022 (Doc no 1319445, your ref. 15/1261), the Norwegian Government informed the Authority that, instead of revising the circular, it would inform the Directorate of Immigration (UDI) and the National Police Directorate (POD) that the Circular was to be withdrawn entirely. In the same letter, the Norwegian Government stated that it would leave it *"to the Directorate of Immigration, in cooperation with the National Police Directorate, to develop future practice within the framework of Directive 2004/38, the Norwegian Immigration Act and the latest court jurisprudence,"* in order to develop an alternative *modus operandi* going forward.

According to the letter in question, this happened on 4 October 2022, and since then, it would appear to the Directorate that there is no longer any way for individuals to be expelled from Norway for having committed petty crimes.

Later, in the reply to the follow-up letter to the 2022 Package Meeting, received on 30 January 2023, Norway made it clear that UDI had *"requested a report from the Police that account for how these types of crimes are currently affecting the Norwegian society. It is necessary for UDI to await this report from the police to ensure an updated and thorough analysis as a basis for future guidelines. The police are expected to finish their work with the report in March 2023."*

On the basis of the information received, and given that two months have now elapsed since March 2023, the Norwegian Government is invited to respond to the following questions:

² Ibid, paragraph 30.

1. What were the principal outcomes of the report undertaken by the Police?
2. Has the UDI begun work on any future guidelines? If so, please share a draft of such guidelines with the Directorate.
3. What is the status of the Circular? Are there plans to replace it? What are the principal tenets of the new regime, if so?
4. If there are no plans to replace the relevant Circular, what measures are presently being employed to deal with cases involving EEA nationals who commit so-called petty crimes in Norway? Are these measures in any way distinct to those applied to Norwegian citizens?
5. Is there any other current provision under which EEA nationals may be expelled for having committed such crimes?
6. If no new regime has yet been put in place, and no new guidelines have been drafted, please supply an approximate timeline in relation to when the new rules will be drafted and will come into force.

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 **3 July 2023**.

Yours faithfully,

Maria Moustakali
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Maria Moustakali.