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Case No: 86218  
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Norwegian Ministry of Labour and Social Affairs  
Postboks 8019 Dep  
N-0030 Oslo  
Norway

Dear Sir/Madam,

**Subject: 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 (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) opened an own initiative case to investigate the application of Article 3 (1)(j) of Regulation 883/2004<sup>1</sup> in the Norwegian legal order.

Specifically, the Directorate seeks clarification as to whether the transitional benefit for single parents (*overgangsstønad*), in the view of the Norwegian Government, falls outside the scope of Regulation 883/2004.

The material scope of Regulation 883/2004 is defined in Article 3, according to which it applies to all legislation concerning the branches of social security benefits listed therein.

In accordance with established case law, a benefit may be regarded as a social security benefit in so far as it is granted without any individual and discretionary assessment of personal needs on the basis of a legally defined position.<sup>2</sup> As such, the term “social security” must be distinguished from the social assistance benefits which are typically not awarded on the basis of a legal right, but, rather, lay within the discretion of the competent authority.<sup>3</sup>

Pursuant to Article 3(1)(j) of Regulation 883/2004, “*all benefits in kind or in cash intended to meet family expenses*” shall be considered to constitute family benefits.

The eligibility conditions to fulfil in order to receive the transitional benefit for single parents are set out in chapter 15 of the National Insurance Act (NIA)<sup>4</sup>. Those conditions appear, *prima facie*, to bring that benefit within the scope of Regulation 883/2004 considering the criteria described above. The Directorate further notes that the benefit in question is listed as a family benefit on a website administered by the European Commission.<sup>5</sup>

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<sup>1</sup> Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1), incorporated into the EEA Agreement under point 1 of Annex VI by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011.

<sup>2</sup> Case C-286/03 *Hosse*, EU:C:1985:139 para 37 with further references.

<sup>3</sup> Fuchs/Cornelissen, EU Social Security Law, 1<sup>st</sup> ed. C.H.BECK/Nomos/Hart Publishing 2015, p. 95 regarding the equivalent provision in Article 3 of Regulation 883/2004.

<sup>4</sup> LOV-1997-02-28-19 *Lov om folketrygd (folketrygdloven)*

<sup>5</sup> <https://ec.europa.eu/social/main.jsp?catId=1123&langId=en&intPageId=4703>

However, in relevant preparatory works, the relevant Ministry considered that “*the benefits in chapter 15 of the NIA are not covered by the [EU] social security regulation. Norway is therefore free to adopt rules on the export of benefits to the single mother or father.*”<sup>6</sup>

For the purposes of examining this matter further, the Directorate invites the Norwegian Government to provide the following clarifications and explanations:

1. A detailed account of the conditions which have to be fulfilled in order to be eligible for the transitional benefit for single parents pursuant to chapter 15 of the NIA.
2. Whether it is the view of the Norwegian Government that this particular benefit falls outside the scope of Regulation 883/2004. If the answer to this should be in the affirmative, please provide the following explanations:
  - a. Why this particular benefit would not constitute a social security benefit pursuant to Article 3 of Regulation 883/2004, as interpreted by the CJEU.
  - b. Why this particular benefit would not constitute a “family benefit” as defined by Article 3 (1)(j) of Regulation 883/2004.

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 *10 March 2021*.

Yours faithfully,

Kristin Saether Bangsund  
Deputy Director  
Internal Market Affairs Directorate

*This document has been electronically authenticated by Kristin Saether Bangsund.*

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<sup>6</sup> Prop. 115 L (2014-2015), chapter 4.4. The amendments entered into force on 1 January 2016.