

EFTA Surveillance Authority (ESA)
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Your ref

Our ref

Date

15/570-57

10 March 2023

Follow-up of Package Meeting in Norway 2022 – Technical Barriers To Trade (Annex II) – agenda point 1 – National offshore helicopter requirements

Background

Reference is made to;

- follow-up letter from EFTA Surveillance Authority ('the Authority') regarding Package Meeting in Norway 2022 (Annex II) – Technical Barriers to Trade/Technical Regulations – agenda point 1 regarding *Fulfilment of notification obligation under Directive 98/34/EC in Norway*, and
- reminder from the Authority by letter of 22 February 2023 (Doc. 1354276).

The core argument from the Authority in the Package Meeting was that the obligation to communicate to the Authority any draft technical regulation (in this case later adopted as FOR-2018-06-20-923 *Forskrift om helikopteroperasjoner offshore*) is not dependent on where the relevant helicopter flight is operated. In other words; the Authority finds the Norwegian reference to the geographical scope of the EEA Agreement in our letter of 26 February 2022 as insufficient and/or irrelevant.

Extended explanation of the Norwegian position

We acknowledge that FOR-2018-06-20-923 *Forskrift om helikopteroperasjoner offshore* does contain technical requirements for helicopter offshore operations (HOFO). However, the Norwegian position can be explained as follows:

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1. The scope of FOR-2018-06-20-923 is *substantively concurrent with* the helicopter offshore operation provisions of Regulation (EU) 2016/1199 amending Regulation (EU) No 965/2012 as regards operational approval of performance-based navigation, certification and oversight of data services providers and helicopter offshore operations, and correcting that Regulation.
2. Regulation (EU) 2016/1199 is based on Regulation (EC) No 216/2008, and amends the fundamental air operation regulation 965/2012.
3. Regulation (EU) 2016/1199 is not yet incorporated into the EEA Agreement, and the main reason is that the EEA EFTA States claim that the HOFO provisions of Regulation (EU) 2016/1199 fall outside the geographical scope of the EEA Agreement (ref. its Article 126). The European Commission does not agree with this position, and the disagreement is yet unsolved.
4. It would be inconsistent of Norway to assume that FOR-2018-06-20-923 is governed by the procedural requirements of Directive 98/34/EC *when we consider helicopter offshore operations as such (the very substance of the national measure) to fall outside the geographical scope of the EEA Agreement.*

This line of reasoning is directly based on Article 126 of the EEA Agreement. Consequently it would be untenable to argue within the framework following from Regulation (EC) No 216/2008 – including its Article 14.

After this, we believe that Case No 86113 should be put on hold pending the outcome of the negotiation regarding Regulation (EU) 2016/1199.

Yours sincerely

Øyvind Ek
Deputy Director General

This document is signed electronically and has therefore no handwritten signature

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Nærings- og fiskeridepartementet