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Ministry of Justice and Public Security
Postboks 8005 Dep
N-0030 Oslo
Norway

Dear Sir/Madam,

Subject: Request for Information concerning Own initiative case concerning Norwegian restrictions upon entry on the basis of COVID-19

On 19 November 2020, the Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) opened an own-initiative case to investigate the application of the Regulations Amending the Covid-19 Regulations in Norway of 6 November 2020. These Regulations required the compulsory use of hotels for quarantine for persons entering Norway, along with a number of defined exceptions to this general rule. By letter of 24 November 2020 (Doc No 1164017), the Directorate sent a request for information to Norway relating to the Norwegian restrictions upon entry due to Covid-19, requesting that Norway respond by 20 December 2020.

Several changes to the Covid-19 Regulations were adopted and entered into force on 13 December 2020.¹ By an e-mail of 16 December 2020, the Directorate granted Norway an extension until 8 January 2021 for its reply, while at the same time requesting a clarification on a number of new points.

By a letter dated 4 January 2021, Norway responded to the Directorate’s questions (Doc No 1171412). Therein, the Norwegian Government stated that it considered any potential restrictions to the freedom of movement due to the Amended Covid-19 Regulations to be justified on the grounds of the protection of human health and proportionate to the aim pursued.

On 28 January 2021, Norway adopted additional measures restricting the entry of foreigners into Norway on the grounds of public health associated with COVID-19.² On 1 February 2021, these additional measures were repealed and replaced with a new suite of measures, which amended the Regulations relating to entry restrictions for foreign nationals out of concern for public health (“the Regulations”).³ These two changes effectively supplanted the previous system, which provided that all non-Norwegian nationals entering Norway who did not fall under a defined exception would be required to spend 10 days in a quarantine hotel, with a new system, whereby all non-Norwegian nationals who are not covered by one of the exceptions in the Regulations, would be refused entry into Norwegian territory.

A number of exceptions to the general restriction upon entry are foreseen, including Section 2 (b) of the Regulations, which exempts foreign nationals who are covered by the

¹ Forskrift om smitteverntiltak mv. ved koronautbruddet (covid-19-forskriften), available at <https://lovdata.no/dokument/SF/forskrift/2020-03-27-470?q=covid-19-forskriften>

² G-03/2021 – Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen, available at <https://www.regjeringen.no/contentassets/40fe2b78fecb45108d72d18ee6224f07/revidert-ikrafttredelsesrundskriv-om-innreiserestriksjoner-s2901-iii.pdf>

³ Midlertidig lov om innreiserestriksjoner for utlendinger av hensyn til folkehelsen, updated on 1 February 2021; see G-04/2021 – Revidert rundskriv om ikrafttredelse av forskrift om innreiserestriksjoner for utlendinger av hensyn til folkehelsen, available at <https://www.regjeringen.no/contentassets/59133294ed314dd9806c6f835efd5652/revidert-ikrafttredelsesrundskriv-om-innreiserestriksjoner-3.2.21.pdf>

Separation Agreement between the EEA/EFTA states and the United Kingdom. In addition, Section 3 provides for further exceptions, *inter alia*, in relation to:

- (c) members of the Sami community in the exercise of reindeer herding;
- (e) journalists and other personnel on assignment for a foreign media institution; [and]
- (h) foreign nationals who work on mobile or fixed installations.

However, no general exception for EEA nationals applies.

Section 4 of the Regulations provide further exemptions for certain classes of persons holding Norwegian residence permits.

The Regulations further provide, at Section 4a, that “*Foreign nationals who otherwise are entitled to enter ... and who arrive in Norway from an area that gives rise to quarantine duty as stipulated in appendix A of the COVID-19 Regulations, shall present certification on entry showing a negative test result for SARS-CoV-2...*” The test is to be taken within the 24 hours prior to their arrival in Norway, or within the 24 hours prior to the scheduled departure time of the first leg of their air travel.

A number of exceptions to the obligation to be in possession of a negative Covid-19 test result are also foreseen, *inter alia*:

- (d) foreign nationals who regularly arrive in Norway from Sweden or Finland to work or study.

In addition, Section 4a further states that “*A foreign national is not to be rejected under this section if special reasons weigh against such rejection.*”

In this regard, the Directorate further wishes to draw the attention of the Norwegian Government to *inter alia* Articles 28 and 36 of the Agreement on the European Economic Area (“EEA Agreement”), and Articles 5, 6 and 7 of Directive 2004/38/EC.⁴

In order for the Directorate to further examine and assess the case, the Norwegian Government is invited to provide further information and reply to the following questions:

In relation to the obligation to be in possession of a valid negative Covid-19 test:

1. On what basis are foreign nationals who regularly arrive in Norway from Sweden or Finland to work or study exempted from this obligation? On what basis are EEA nationals who regularly arrive from other EEA States to work or study not exempted?

In relation to the entry restrictions:

2. Section 2 (b) of the Regulations provides that “*Foreign nationals who are covered by the Separation Agreement between the EEA/EFTA states and the United Kingdom are exempted from the entry restrictions*”. This would seem to amount to a blanket exemption, and would seem to include, *inter alia*: UK nationals who were previously permanently resident in Norway, and who have been absent from Norway for a period of less than five years (Article 14(3) Separation Agreement); frontier workers (Article 9(1)(d)); and persons in a durable relationship (Article 9(4)). However, for certain categories of EEA nationals in analogous situations, including those referred to above, no such exceptions apply. What is the basis of this distinction?

⁴ The Act referred to at point 1 of Annex V to the EEA Agreement (Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) as adapted to the EEA Agreement by protocol 1 thereto.

3. The Norwegian Government, in its letter of 4 January 2021, stated that the usage of compulsory quarantine for those arriving in Norway was justified on the grounds of the protection of human health, and proportionate to the objective pursued. Assuming that the new measures providing for entry restrictions are intended to pursue the same objective, how has the proportionality of these measures been assessed?
4. Does the obligation to engage in entry quarantine subsist for those groups exempted from the entry restrictions listed in the Regulations? If so, are all arrivals covered by the obligation to quarantine? If not, which of the listed groups, exempted from entry restrictions, are also exempted from the obligation to quarantine?
5. Are there any other, comparable, requirements to the aforementioned ones already identified by the Directorate, in currently applicable Norwegian law?
6. Are comparable measures in place for persons who travel from one part of Norway where there may be a large number of COVID-19 cases to another part of Norway in which there are very few, for example via internal flights? If not, what is the basis of the distinction drawn between internal and external travel?
7. On what basis are members of groups listed in Section 3 (c), (e), and (h) of the Regulations exempted from the entry restrictions?
8. In relation to Section 3 (h), are foreign nationals who work on mobile or fixed installations exempted from entry restrictions regardless of whether they are entering Norway in order to work on mobile or fixed installations? If not, how is this controlled?
9. In relation to questions 5-7, above, are these categories of exempted individuals subject to the obligation to engage in entry quarantine, either in a quarantine hotel, or in another appropriate place to stay, if they originate from an area that gives rise to quarantine duty as stipulated in appendix A of the COVID-19 Regulations?
10. Section 4a of the Regulations provides that “*A foreign national is not to be rejected under this section if special reasons weigh against such rejection.*” What factors are to be taken into account in assessing these ‘special reasons’ beyond those listed in the exemption categories enumerated? Please provide examples.

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 *12 March 2021*. Please enclose copies of any relevant national legislation, including English translations, if available.

Yours faithfully,

Kristin Saether Bangsund
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Kristin Saether Bangsund.