

**Package Meeting in Norway  
26-27 October 2023**

**Proposal for discussion points**

**VETERINARY AND PHYTOSANITARY MATTERS / FOODSTUFFS  
(Annex I / Annex II, Chapter XII)**

**Responsible case handler(s):** Margrét Björk Sigurðardóttir (Items 1-3)  
Jim Ross (Items 2-3)

**Other participant(s):** Janne Britt Krakhellen (Items 1-3)

*1. Failure by Norway to ensure the welfare of laying hens (Case No 88980)*

The Authority performed an audit to Norway on protection of laying hens and chicken kept for meat production in November 2022.

The Authority also carried out audits in Norway on this topic in 2009 (Final report - Doc No 538731) and 2012 (Final report - Doc No 662585) covering the welfare of laying hens. Recommendations issued in 2009 and 2012 were closed by the Authority based upon a favourable assessment of corrective actions notified by the Norwegian competent authorities.

In the final report of the 2022 audit dated 30 January 2023 (Doc No 1347459), the Authority concluded that recommendations issued during audits in 2009 and 2012 are still not satisfactorily addressed. Consequently, the official controls have, over a prolonged period of time, failed to ensure compliance with the provisions of the EEA legislation relevant for the welfare of laying hens. Previous plans for corrective measures have failed to address the identified shortcomings, including:

- The obligation to ensure that each establishment is identified by a distinguishing number composed of a digit indicating the farming method determined in accordance with point 2.1 of the Annex to Directive 2002/4/EC;
- Insufficient training and guidance of official veterinarians on how to adequately perform official controls on laying hen holdings;
- Official controls failing to identify non-compliances leading to laying hens being kept in conditions inferior to the minimum animal welfare requirements of EEA law.

**Specific questions to be discussed:**

In light of the past experience with the national authorities' implementation of corrective actions, the Authority would like to discuss how the Norwegian Government ensures that:

- i. the relevant national authorities prioritise and implement the action plan presented to the Authority;

- ii. the effectiveness of the implemented measures is verified;
- iii. the Authority, in relation to recommendations issued in the Authority's audit reports, is kept continuously informed of:
  - changes made to the already notified corrective actions and measures;
  - changes to the deadlines indicated for the various measures;
  - the completion of the measures.

In addition, the Authority would like to be provided with an update on the progress of addressing the outstanding recommendations from the 2022 audit.

**Estimated time: 30-45 minutes**

**2. Audit to Norway on the protection of animals at the time of killing (Case No 87299)**

In November 2021, the Authority carried out an audit to Norway on the protection of animals at the time of killing (Audit ID: 2021/NOR/5, audit report Doc No 1272517). In the final report, the Authority presented findings that the official controls cannot ensure that animals are spared any avoidable pain, distress, or suffering during their killing. The Authority made four recommendations concerning *inter alia*, compliance with the requirements of Regulation (EU) No 2017/625 on the methods and techniques used for official controls, including control verification procedures; and the obligations of business operators with regard to the protection of animals at the time of killing.

In response to the draft audit report, the Authority received a preliminary action plan from Norway on 16 February 2022 (Doc No 1270547 / your ref. 20/1214-35). The Authority considered that three of the proposed timelines for corrective actions were too far in the future and sent a follow-up letter to Norway (Doc No 1282648) on 5 May 2022 inviting the Norwegian Government to provide updated information. Specifically, the Authority underlined the need to address the recommendations linked to the requirement that animals are spared any avoidable pain, distress, or suffering during their killing and related operations with minimal delay.

The Authority received a response to the follow-up letter on 15 June 2022 which included a revised action plan to address the relevant recommendations. The revisions included bringing the timeline on work on existing guidance forward to the last trimester of 2022, and a completion date for the determination of mandatory checkpoints and provision of checklists was set to August 2022.

The Authority accepted these revised timelines.

At the General Review Audit in Norway, which took place in March 2023, the competent authorities confirmed that the work to address the recommendations in question had been temporarily postponed due to lack of resources. This information had not previously been shared with the Authority. The new timelines were now end of 2023 and into 2024. The Authority informed the Norwegian Government that, on this basis, the status of the recommendations would be

changed to 'action still required', and that if no satisfactory update was provided in post-General Review Audit update, the Authority would consider changing recommendation status to 'incorrect implementation'.

On 12 May 2023, Norway provided the current status of actions planned for the relevant recommendations (Doc No 1375765 / your ref. 23/194-20). The competent authorities have re-prioritized work in relation to the recommendations. Some actions would be started in May and June 2023, and be implemented further in the course of the autumn 2023.

### **Specific questions to be discussed:**

In light of the past experience with the national authorities' implementation of corrective actions, the Authority would like to discuss how the Norwegian Government ensures that:

- i. the relevant national authorities prioritise and implement the action plan presented to the Authority;
- ii. the effectiveness of the implemented measures is verified;
- iii. the Authority, in relation to recommendations issued in the Authority's audit reports, is kept continuously informed of:
  - changes made to the already notified corrective actions and measures;
  - changes to the deadlines indicated for the various measures;
  - the completion of the measures.

In addition, the Authority would like to be provided with an update on the progress of addressing the outstanding recommendations from the 2021 audit.

### **Estimated time: 30-45 minutes**

### **3. *Norway's response to outbreaks of epizootic diseases (Case Nos 89889 and 81401)***

In recent years, several epizootic waves of highly pathogenic avian influenza (HPAI) have had a major impact on the domestic poultry sector across Europe where they have caused significant direct and indirect economic and societal costs.

During the 2020-2021 epizootic in Europe, migratory wild birds were instrumental in the transmission of the HPAI virus to the poultry population. Since 2021, Norway has notified an increasing number of confirmed HPAI cases in wild birds.

In Norway, between November 2021 and May 2023, there have been 4 outbreaks of HPAI and 1 outbreak of Newcastle disease (ND) affecting poultry establishments, 2 outbreaks of HPAI and 1 outbreak of ND affecting captive birds and between January 2021 and May 2023, HPAI virus has been detected in over 150 wild birds. In addition, in June and July 2023, a large outbreak of HPAI in wild birds affected several counties in the north of Norway, with more than 12.000

dead birds reported through the European Animal Disease Information System (ADIS) (ADIS ref: NO-HPAI(NON-P)-2023-00033). The Authority notes that the notifications submitted through ADIS in June and July 2023 originally only referred to isolated incidents and that the large number of dead wild birds was only reported after the Authority contacted the competent authorities about this matter.

The Authority is planning an audit to Norway to evaluate official controls related to avian influenza and Newcastle disease in October 2023. *Audit to Norway to evaluate official controls related to Avian Influenza and Newcastle Disease (Case No 89889).*

**Specific questions to be discussed:**

- i. The procedures in place to ensure that outbreaks of notifiable diseases such as HPAI and ND are reported in a timely and accurate manner presenting all relevant information, through ADIS, including updates as the situation develops.
- ii. Any specific topics to be further addressed following the audit planned in October 2023.
- iii. Any further correspondence between the Authority and the Norwegian Government ahead of the meeting.

**Estimated time: 30-45 minutes**

## Proposal for discussion points

### TOBACCO (Annex II, Chapter XXV)

**Responsible case handler(s):** Joachim Nilsen Frislid

**Other participant(s):** Per-Arvid Sjøgård  
Maria Moustakali

#### *1. Preparation for the entry into force of the Tobacco Products Directive in the EEA Agreement (Case No 88120)*

The entry into force in the EEA Agreement of Directive 2014/40/EU on the manufacture, presentation and sale of tobacco and related products<sup>1</sup> is currently pending the lifting of constitutional requirements. However, the lifting of these constitutional requirements is expected to be forthcoming.

The Authority is under the impression that the Norwegian Government has already carried out significant work in preparation for the implementation of this Directive. An example of this is a ban on characterising flavours in tobacco products in Norway, which has not yet entered into force.<sup>2</sup> It also appears to the Authority that the Norwegian Government is currently planning further measures linked to the implementation of the Directive. Some examples of this are ongoing initiatives to ban characterising flavours and to introduce standardised packaging requirements for e-cigarettes.<sup>3</sup> The Norwegian Government has also recently signalled that it intends to introduce a new system for tracking and tracing tobacco products and to prohibit distance selling of tobacco and related products, as part of its implementation of the Directive.<sup>4</sup>

In order to fully understand the Norwegian Government's efforts, the Authority would like to get a more structured overview of the initiatives the Government has taken to ensure the implementation of the Directive in Norwegian law. The Authority therefore invites the representatives of the Norwegian Government to give a brief explanation of these initiatives.

Moreover, the Directive will introduce new areas of cooperation between the EEA EFTA States and the Authority. For example, where an EEA EFTA State considers that a tobacco product might have a characterising flavour, it may initiate a procedure for determining whether this is the case. The EEA EFTA State shall then submit a draft decision to the Authority, which may provide comments

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<sup>1</sup> Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

<sup>2</sup> Section 32, first paragraph, of Act 9 March 1973 No. 14 relating to prevention of the harmful effects of tobacco, stating that the ban will enter into force "when the King decides" ("fra den tid Kongen bestemmer").

<sup>3</sup> See the Proposal to the Parliament in Prop. 125 L (2022-2023) of 9 June 2023, where the Government proposes to ban characterising flavours in e-cigarettes and refill containers, and to introduce standardised design requirements for e-cigarettes and refill containers in Norway. The measures were notified to the Authority through notification DTR 2023/9003/N of 30 January 2023, which also included draft requirements for minimum sizes for portion packages of tobacco for oral use (snus).

<sup>4</sup> See the Notice from the Government to the Parliament of 31 March 2023, Meld. St. 15 (2022-2023) "Folkehelsemeldinga" ("the public health notice"). Here, the Government also signalled its intention to adjust its rules on health warnings for cigarettes.

before the EEA EFTA State can adopt the decision.<sup>5</sup> As another example, an EEA EFTA State may take safeguard measures against electronic cigarettes and refill containers that comply with the requirements of the Directive if it has grounds to believe that such products could present a serious risk to human health.<sup>6</sup> Similarly, the Directive allows EEA EFTA States to prohibit certain categories of tobacco or related products on grounds related to the specific situation in the EEA EFTA State, provided that this is justified by a need to protect public health.<sup>7</sup> In both situations, the EEA EFTA State must inform the Authority, which shall determine whether the safeguard measure is justified.<sup>8</sup> The Directive also include administrative cooperation tasks, such as sharing information and ensuring that it is disseminated to all EEA States as well as to the European Commission and the Authority.<sup>9</sup> In some situations, the Authority shall also publish information<sup>10</sup> and collect fees from importers and manufacturers of tobacco products in EEA EFTA States.<sup>11</sup>

The Authority would like to invite the Norwegian Government to a preliminary discussion about ways to ensure well-functioning cooperation when carrying out tasks under the Directive.

#### **Specific questions to be discussed:**

- i. The Norwegian Government is requested to provide the Authority with a brief presentation of the measures it has already taken, and the measures it is currently planning, to ensure the implementation of the Tobacco Directive into Norwegian law?
- ii. The Authority invites the representatives of the Norwegian Government to a preliminary discussion on how to ensure efficient cooperation between the Norwegian Government and the Authority under the Directive.

**Estimated time: 1 hour**

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<sup>5</sup> Implementing Regulation (EU) 2016/779 laying down uniform rules as regards the procedures for determining whether a tobacco product has a characterising flavour, Articles 3, 5 and 9, cf. Protocol 1 EEA.

<sup>6</sup> Article 20(11) of Directive 2014/40/EU.

<sup>7</sup> Article 24(3) of Directive 2014/40/EU.

<sup>8</sup> Articles 20(11) and 24(3) of Directive 2014/40/EU, cf. Article 4(d) of Protocol 1 EEA.

<sup>9</sup> Articles 3(3), 4(2), 4(4), 7(1), 7(9), 19(2), 20(8), 24(2), 29(1), 29(3) of Directive 2014/40/EU, and Implementing Acts Regulation (EU) 2018/574, Article 3(6) and Regulation (EU) 2016/779, Article 9(1) and (4), Article 11(1).

<sup>10</sup> Article 26 of Directive 2014/40/EU, and whenever the Authority should adopt binding decisions under the Directive, which appears most likely under Articles 7(2), 24(3), 20(11) and 15(8).

<sup>11</sup> Articles 6(4) and 7(13) of Directive 2014/40/EU, as adopted by Joint Committee Decision No 6/2022.

**Proposal for discussion points****TECHNICAL BARRIERS TO TRADE / TECHNICAL REGULATIONS  
(Annex II)**

**Responsible case handler(s):** **Gudlaug Jónasdóttir**  
**Joachim Nilsen Frislid**  
**Gaukur Jörundsson**

**Other participant(s):** **Maria Moustakali**  
**Kyrre Isaksen**

*1. Fulfilment of notification obligation under Directive 98/34/EC in Norway (2018)  
(Case No 86113)*

Reference is made to Directive 98/34/EC (*Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, as amended and as adapted by the EEA Agreement*)<sup>12</sup> and in particular to its Articles 8 and 9 concerning the obligation of the EEA EFTA States to immediately communicate to the Authority any draft technical regulation, as defined by that Directive, and to postpone their adoption for a period of three months, except in the special cases referred to in the Directive.

A request for information was sent to Norway on 13 January 2021 concerning potentially non-notified technical regulations adopted in 2018 (Doc No 1170741). The Norwegian Government responded to this letter by letters dated 9 February 2021 (Doc No 1179783 / your ref. 18/3306-58) and 26 February 2021 (Doc No 1184180 / your ref. 18/3306-61). In the letters, the Norwegian Government provided the Authority with information as regards why the measures had not been notified to the Authority.

The case was discussed at the Package Meeting in Norway in October 2022, where the only remaining potentially non-notified technical regulation adopted in 2018, namely FOR-2018-06-20-923 – Forskrift om helikopter offshoreoperasjoner (“the Regulation on helicopter offshore operations”), was discussed. In its follow-up letter to the Package Meeting (Doc No 1325668), the Authority invited the Norwegian Government to inform the Authority of its views as regards the applicability of Regulation (EC) No 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency and in particular its Article 14 concerning safeguard measures, to offshore helicopter operations.

By letter dated 10 March 2023 (Doc No 1358431 / your ref. 15/570-57), the Norwegian Government replied to the follow-up letter. In the letter, the Norwegian Government informed the Authority about a disagreement as regards whether

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<sup>12</sup> It is noted that Directive 98/34 was repealed by *Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society Services*, which became applicable to the EEA EFTA states on 1 December 2019. Directive 2015/1535 entails the same substantive obligations as Directive 98/34. As the legislative measures were adopted while Directive 98/34 was applicable, that Directive is referred to as the legal basis for the case.

Regulation (EU) 2016/1199 should be incorporated into the EEA Agreement but the scope of the Regulation on helicopter offshore operations was substantively concurrent with the helicopter offshore operation provisions of Regulation (EU) 2016/1199. In light of that, the Norwegian Government expressed its view that the case should be put on hold pending the outcome of the negotiations regarding Regulation (EU) 2016/1199.

During the meeting, the Authority would like to discuss the most recent developments in the case, in light of the Norwegian Government's letter of 10 March 2023.

In addition, the Authority would like to exchange views with the Norwegian Government concerning the notification of technical regulations in Norway in general, and in particular which measures it is taking in order to ensure that all relevant technical regulations are being notified to the Authority in compliance with Directive (EU) 2015/1535 as well as new developments concerning the EU TRIS platform that has recently been adopted.

**Estimated time: 45 minutes**



**Proposal for discussion points****MEDICINAL PRODUCTS  
(Annex II)****Responsible case handler(s): Gudlaug Jónasdóttir****Other participant(s): Maria Moustakali**

1. Complaint against Norway concerning the protection of animals used for scientific purposes (inspections of breeders, suppliers and users) (Case No 90255)

On 27 March 2023, the Authority received a complaint against Norway concerning the protection of animals used for scientific purposes, in particular as regards inspections of breeders, suppliers and users carried out under Directive 2010/63/EU (Doc Nos 1363084 and 1363085).

By a letter of 26 June 2023 (Doc No 1378202), the Norwegian Government was invited to provide the Authority with information concerning certain aspects of the inspections of breeders, suppliers and users as well as concerning the steps taken by the Norwegian Food Safety Authority to promote alternative methods to the use of animals at national level. The extended deadline to reply to the request for information was 1 September 2023 (Doc No 1386133).

At the Package Meeting, the Authority would like to discuss the inspections of breeders, suppliers and users under Directive 2010/63/EU in Norway as well as the related matters identified in the Authority's letter of 26 June 2023. The discussions should be held in light of the latest correspondence in the case, in particular the Norwegian Government's forthcoming reply to the request for information.

**Estimated time: 45 minutes**

## Proposal for discussion points

### ENERGY (Annex IV)

**Responsible case handler(s):** Anne De Geeter  
Ada Gimnes Jarøy

**Other participant(s):** Marco Uccelli

1. *Conformity assessment of Directives 2009/72 and 2009/73 for Norway (Case No 84737)*

The case concerns the implementation of *Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC* and of *Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC* (“the Third Electricity and Gas Directives”).

The Authority is in the process of assessing the national measures implementing some of the Third Electricity and Gas Directives. In this process, the Authority identified several areas where clarifications were needed. By letter of 16 October 2020 (Doc No 1154909), the Authority sent a request for information to the Norwegian Government, inviting the Norwegian Government to provide the relevant information.

The Norwegian Government provided the requested information on 22 December 2020 (Doc No 1170752 / your ref. 19/2064).

The Authority and the Norwegian Government exchanged on the case at the Package Meetings of October 2021 and 2022, considering especially recent judgments of the European Court of Justice (Case C-718/18 *European Commission v Federal Republic of Germany* and C-767-19 *European Commission v Kingdom of Belgium*).

Representatives of the Authority, the Norwegian Government and the Norwegian national regulatory authority for energy, NVE-RME, further exchanged on the topic in a meeting on 22 March 2023.

At the meeting, the Authority would like to discuss the status of the case. The Authority welcomes the presence in the meeting of NVE-RME.

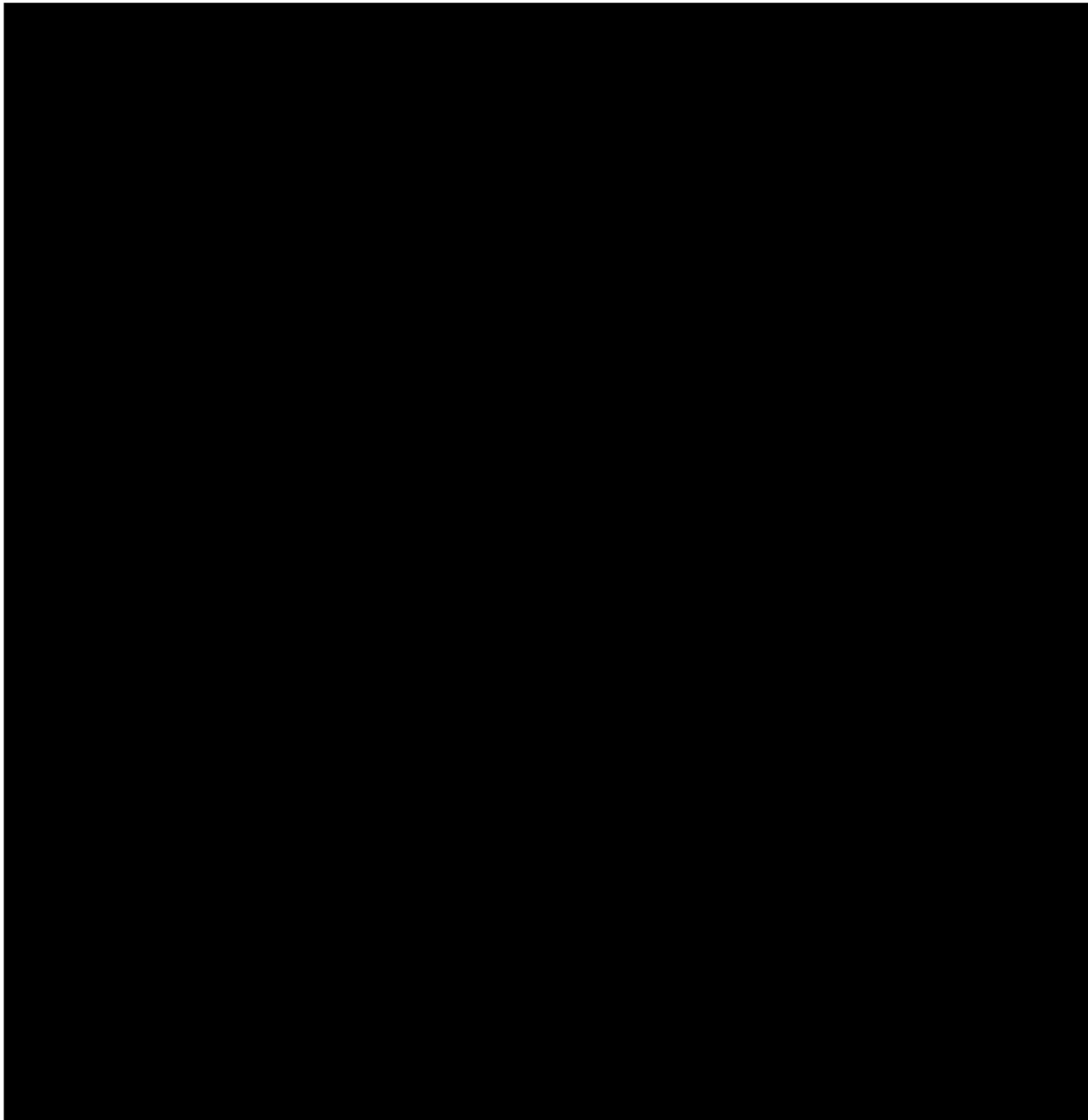
**Estimated time: 45 minutes**

**Proposal for discussion points**

**FREE MOVEMENT OF PERSONS  
(Annex V)**

**Responsible case handler (s):** Hrafnhildur Kristinsdóttir (Item 1)  
Ciarán Burke (Item 2)

**Other participant(s):** Hrafnhildur Kristinsdóttir (Item 2)  
Maria Moustakali  
Erlend Leonhardsen (Items 1 and 2)



**Estimated time: 30 minutes**

## 2. *Own initiative case concerning Norway's expulsion practice for petty crimes (Case No 87300)*

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.

There has since been considerable correspondence in this case. 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 Norwegian Government's letter of 6 October 2022, this happened on 4 October 2022.

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 1 June 2023 (Doc No 1375531), the Directorate submitted a further request for information, and invited the Norwegian Government to submit information, *inter alia*, with respect to the status of the work on providing these new guidelines, including the status of the Circular. The Norwegian Government replied to the Directorate's letter on 27 June 2023 (Doc No 1384878 / your ref. 15/1261 – LMK).

Having analysed the information submitted by the Norwegian Government in its most recent letter of 27 June 2023, on 18 September 2023, the Directorate submitted additional questions and requests for clarification the following observations to the Norwegian Government (Doc No 1394171).

### **Specific questions to be discussed:**

Given that the deadline for the Norwegian Government to reply to the Authority's most recent request for information comes shortly before the Package Meeting, the Authority will analyse the written reply received, and the discussion at the Package Meeting will take place primarily on the basis of the answers of the Norwegian Government.

**Estimated time: 1 hour**

## Proposal for discussion points

### SOCIAL SECURITY (Annex VI)

**Responsible case handler(s):** Per-Arvid Sjøgård (Items 1-2)

**Other participant(s):** Bernhard Zaglmayer (Item 1)  
Maria Moustakali  
Ewa Gromnicka (Items 1 and 2)

#### 1. Transitional benefit for single parents (*overgangsstønad*) (Case No 86218)

By way of a letter dated 10 February 2021, the Authority requested the Norwegian Government to confirm whether it held that the transitional benefit for single parents (*overgangsstønad*, c.f. *inter alia* Section 15-5 of the National Insurance Act) fell outside the scope of Regulation 883/2004 (Doc No 1175938).

In its judgement in Case E-2/22 *A v Arbeids- og velferdsdirektoratet*, delivered on 29 July 2022, the EFTA Court concluded that the transitional benefit for single parents was covered by the material scope of Regulation 883/2004. On 1 September 2022, the National Insurance Court ruled in accordance with the judgement of the EFTA Court.

On 7 September 2022, referring to the judgements above, the Authority sent a supplementary request for information to Norway with a view to *inter alia* have confirmation that the national administrative practice has been adjusted, whether legislative amendments are foreseen and what measures are being taken in order to ensure appropriate remedies to individuals affected by the misapplication of EEA law (Doc No 1310522).

Following public hearing, on 11 August 2023, the Norwegian Ministry of Labour and Social Inclusion formally proposed certain legislative amendments with a view to rectifying the breaches identified above.

#### **Specific questions to be discussed:**

- i. The Norwegian Government is invited to provide a detailed presentation of the proposed legislative amendments.
- ii. The Norwegian Government is invited to provide a tentative timeline for the adoption of those proposed legislative amendments.
- iii. The Norwegian Government is invited to confirm whether administrative practice has been adjusted in line with the judgement of the EFTA Court, notwithstanding the pending legislative amendments.
- iv. With regard to the issue of remedies, the Norwegian Government is invited to clarify, to the fullest extent possible, how many individuals are estimated to be covered by the previous misapplication of EEA law and, moreover, whether any individuals have faced sanctions in that respect and how many individuals have received compensation.

**Estimated time: 60 minutes**

*2. Remedies for individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits (Case No 85884)*

By a letter dated 25 November 2020, the Authority informed the Norwegian Government that it had opened an own initiative case to examine the measures taken by Norway in order to ensure appropriate remedies for individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits in cash (Doc No 1163586), c.f. also Case No 84329 referred to above.

At the package meeting held in Norway in October 2022, the representatives of the Norwegian Government provided a comprehensive presentation of the measures taken in order to identify all individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits in cash. Up to that date, for the period between 1994 and 2010, Norway had identified 340 individuals affected by the wrongful application of EEA law. Moreover, the representatives of the Norwegian Government elaborated on the privacy challenges concerning the search for individuals affected by decisions adopted prior to 2010.

As regards compensation for economic loss, the representatives of the Norwegian Government informed the Authority that 170 applications had been received whereof approximately 70 had been granted.

**Specific questions to be discussed:**

- i. The representatives of the Norwegian Government are invited to provide an update of the current state of play in relation to identifying and providing remedies to all individuals affected by the wrongful application of EEA law in relation to the export of sickness benefits in cash.
- ii. With regard to the issue of compensation for non-economic damage both in civil and criminal matters, the representatives of the Norwegian Government are invited to present the general legal framework and, as appropriate, inform of relevant ongoing (court and administrative) procedures at national level.

**Estimated time: 30 minutes**

## Proposal for discussion points

### PROFESSIONAL QUALIFICATIONS (Annex VII)

**Responsible case handler(s):** **Bernhard Zaglmayer (Items 1-4)**  
**Gaukur Jörundsson (Item 3)**

**Other participant(s):** **Maria Moustakali**  
**Erlend Leonhardsen (Items 2 and 3)**

*1. Conformity assessment of Directive 2005/36/EC on the recognition of professional qualifications as amended by Directive 2013/55/EU (Case No 89499)*

Directive 2005/36/EC on the recognition of professional qualifications (PQD) has entered into force in the EEA on 1 July 2009 and Directive 2013/55/EU, which amends it, on 1 January 2019. Although, for both Acts Norway has submitted the respective Form 1s and related texts of the national legal framework, it appears that some of this legislation has been amended/repealed in the meantime. To be able to perform a conformity assessment, the Authority has already invited the Norwegian Government to submit an up-dated and merged table of correspondence for the two Acts (Doc No 1395018) by 6 October 2023.

The meeting shall be used primarily to discuss the following issues of the practical application of PQD in Norway:

- i. Data base of regulated professions (regprof):
  - a. meeting coordinator responsible for keeping regprof up to date;
  - b. submission of sufficiently detailed information in regprof, i.e. grounds of justification of restrictions;
  - c. submission of statistics in accordance with Articles 59 and 60 PQD;
  - d. specific professions:
    - geotechnicians and geologists: are they considered regulated professions in Norway? What are the respective activities performed by these professions?
- ii. Internal Market Information System (IMI)
  - a. transfer of regprof into IMI;
  - b. European Professional Card (EPC): notifications of Norway still missing in IMI for information about document requirements;
  - c. Alerts: statistics and functioning of alert mechanism according to Article 56a PQD in Norway;
- iii. Article 7(4) PQD: exceptions of prior authorisation for temporary service providers/professions – involvement in SMET network (Single Market Enforcement Task-force).



The Norwegian Government is invited to inform the Authority prior to the meeting, whether it would like to add any other issues of discussion to the agenda.

**Estimated time: 1.5 hours**

*2. Own-initiative case regarding the setup of the Point of Single Contact (PSC) in Norway (Case No 84852)*

By letter dated 18 February 2020 (Doc No 1114716), the Authority informed the Norwegian Government that it had opened an own initiative case concerning the Point of Single Contact (PSC) in Norway. In that letter, the Authority requested information on various issues related to the performance of the PSC in relation to the Services Directive, the Professional Qualifications Directive and the eIDAS Regulation.

During regular correspondence over the years, the last letter from the Norwegian Government has been received on 17 March 2023, the Authority inquired, and the Norwegian Government provided information on the finalisation of the setup of the Point of Single Contact in Norway.

Since it seemed to the Authority that not all aspects of the PSC were put in place, a letter of formal notice was issued on 5 July 2023 (Doc No 1332144), in particular containing references to missing information and available on-line procedures on or via the PSC. Norway is to reply within two months upon receipt of the letter.

The discussion at the meeting will be based on the reply from the Norwegian Government.

**Estimated time: 1.5 hours**

*3. Complaint concerning the recognition of Danish doctors in Norway (Case No 81670)*

The case concerns issues regarding the recognition of Danish doctors in the context of the EFTA Court judgment E-3/20 *Lindberg* and was discussed already at the package meeting in 2022. Reference is made to the Authority's Follow-up letter to that Package Meeting (Doc No 1325083) and the subsequent letter of the Norwegian Government of 6 February 2023 (Doc No 1350268 / your ref. 16/5661), in which it requests further explanations to the issues discussed at the Package Meeting in respect to a proper implementation of the judgment. Subsequently to an on-line discussion between representatives of the Authority and of the Norwegian Government in March 2023, the Internal Market Affairs Directorate sent a summary of the discussions to the Norwegian Government upon its request by a letter dated 5 July 2023 (Doc No 1364344). This letter lays out the functioning of the provisions of Directive 2005/36/EC as amended by Directive 2013/55/EU relating to the parts of specialist medical training that are harmonised on EEA level.

As follow-up to that letter, the Authority invited the Norwegian Government to inform by September 2023 which steps it has taken to comply with the judgment of the EFTA Court and implement the legal consequences related to it. The

discussion at the meeting will be based on the reply from the Norwegian Government.

**Estimated time: 1 hour**

*4. Non-Implementation of Directive 2018/958/EU on a proportionality test before adoption of new regulation of professions (Case No 90319)*

Directive 2018/958/EU entered into force in the EEA Agreement on 1 February 2023. No Form 1 was received from Norway indicating full implementation of the Act. Therefore, a letter of formal notice (Doc No 1369485) was issued on 22 May 2023 regarding Norway's failure to implement the Act.

In its reply dated 29 June 2023 (Doc No 1384081 / your ref. 17/187), the Norwegian government did not dispute that the Act had not yet been implemented into national legislation and informed the Authority that internal consultations for the implementation would take place after the summer. It was envisaged to have the Act implemented by the end of the year.

At the meeting, the Norwegian Government is invited to inform the Authority about the progress made and raise any questions it might have to ensure a full implementation. The discussion will be based on the most recent correspondence in this case.

**Estimated time: 30 minutes**

**Proposal for discussion points****FINANCIAL SERVICES  
(Annex IX)**

**Responsible case handler(s):** Erlendur Halldór Durante (Items 1-2 and 5-6)  
Marta Margrét Rúnarsdóttir (Items 1-2 and 6)  
Marianne Arvei Moen (Items 3-4)  
Valdimar Hjartarson (Item 5)

**Other participant(s):** Marco Uccelli (Items 1-6)  
Marta Margrét Rúnarsdóttir (Item 5)  
Kyrre Isaksen (Items 1 and 6)

*1. Complaint concerning the incorrect application of Directive 2009/138 (Solvency II) (Case No 85119)*

On 28 September 2022, the Authority issued a letter of formal notice (Doc No 1308730) to the Norwegian Government where it concluded that Norway had failed to fulfil its obligations arising from Directive 2009/138 (Solvency II) and Directive 2013/36, as amended by Directive 2019/878 (CRD) concerning aspects of the prudential assessment of acquisitions and increases of qualifying holdings in insurance undertakings and credit institutions. Norway's failure to fulfil its obligations was the result of maintaining in place an administrative practice which was contrary to the fully harmonised EEA rules.

By letter of 4 January 2023 (Doc No 1340360 / your ref. 20/3709), the Norwegian Government responded to the letter of formal notice stating that it did not agree with the Authority's assessment.

On 19 July 2023, the Authority issued a reasoned opinion (Doc No 1376243) to the Norwegian Government. After due consideration of the Norwegian Government's response, the Authority reiterated the conclusions set out in the letter of formal notice and required Norway to take the measures necessary to comply by 19 September 2023.

At the meeting, the Authority wishes to discuss the Norwegian Government's position with regard to the reasoned opinion.

**Specific questions to be discussed:**

- i. What is the Norwegian Government's position with respect the Authority's reasoned opinion?
- ii. Has the Norwegian Government taken any steps and/or made any preparations to comply with the reasoned opinion?

**Estimated time: 45 minutes**

*2. Conformity Assessment of Directive 2015/849 (AMLD IV) (Case No 84351)*

By letter of 21 July 2022 (Doc No 1302977), the Authority sent a request for information to the Norwegian Government on the implementation of Directive 2015/849 (AMLD IV) into the Norwegian legal order. In the request for information, the Authority invited the Norwegian Government to provide certain clarifications and respond to its questions.

By letter of 14 October 2022 (Doc No 1321221 / your ref. 19/4817-31), the Norwegian Government responded to the request for information.

The matter was discussed at the Package Meeting in Norway on 27 October 2022. In particular, the process for deciding which provisions of AMLD IV require specific national implementation; the implementation of certain terms defined in AMLD IV; and rules on the performance of third parties to meet customer due diligence requirements.

By letter of 11 January 2023 (Doc No 1343584 / your ref. 19/4817 -), the Norwegian Government submitted a revised table of correspondence (Doc No 1343586) indicating the national implementing measures for selected provisions of AMLD IV.

At the meeting, the Authority wishes to discuss selected questions set out in its request for information in light of the clarifications and comments which the Norwegian Government has provided.

#### **Specific questions to be discussed:**

- i. Discussion of selected questions set out in the request for information, as deemed necessary following full assessment of the clarifications and comments of the Norwegian Government.

#### **Estimated time: 45 minutes**

### *3. IRB calculations in Norway (Case No 88178)*

On 21 October 2022, the Authority submitted a request for information (“RQI”) concerning guidelines issued by the Financial Supervisory Authority of Norway (“the Norwegian FSA”) on requirements for internal ratings-based (IRB) models “Circular 3/2021 Requirement for IRB models for banks, mortgage companies and finance companies” (“the Circular”). The IRB approach allows banks to calculate risk weights and capital requirements for credit risk based on their own estimates of risk parameters. The guidelines set out the Norwegian FSA’s expectations regarding banks’ use of the IRB approach. Use of the IRB approach is subject to approval by the Norwegian FSA. The Authority is assessing whether certain rules found in the Circular go beyond the current applicable EEA law, including but not limited to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR), as amended and incorporated into the EEA Agreement.

On 25 November 2022, the Authority received the reply to the RQI by the Norwegian Ministry of Finance. In the answer, it is emphasised that Circulars are not rules. Circular 3/2021 had been issued to express the Norwegian FSA’s expectations regarding bank’s use of the IRB Approach and to inform about/give

guidance on regulation and supervisory practices. Therefore, the Circular is not considered to be a regulation. Furthermore, in the reply it was stated that decisions on approvals or corrective measures in relation to IRB are taken pursuant to Regulations of 22 August 2014 no. 1097 on capital requirements and national adaptation of CRR/CRD IV and would be based on individual assessments of the different IRB models. In addition to the regulatory requirements, EBA's guidelines would also be reflected.

**Specific questions to be discussed:**

The Authority would like to discuss the reply to the RQI from the Norwegian Ministry of Finance.

**Estimated time: 45 minutes**

*4. Conformity assessment of national measures implementing Directive 2014/65/EU on markets in financial instruments (MiFID II) (Case No 87596)*

By EEA Joint Committee Decision No 78/2019 of 29 March 2019, Annex IX to the Agreement on the European Economic Area was amended by adding at point 13b the following Act:

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("MiFID II" or "the Directive").

Following the fulfilment of constitutional requirements, the decision entered into force on 3 December 2019, which was the compliance date for the Directive with regard to the EEA EFTA States.

The Authority's Internal Market Affairs Directorate decided to perform a conformity assessment of the national measures implementing the Directive in Norway. In a letter to the Norwegian Government dated 8 April 2020, the Authority attached a table of correspondence (ToC) concerning the implementation of MiFID II (Doc No 1239504).

The Norwegian Government sent their response to the ToC on 1 September 2020.

The Authority has assessed the national implementing measures in Norway.

**Specific questions to be discussed:**

The Authority would like to discuss the answers provided by the Norwegian Government in the ToC.

**Estimated time: 45 minutes**

5. *Conformity assessment – Directive 2013/36 – CRD IV (Case No 85959)*  
*Conformity assessment – Directive 2019/878 – CRD V (Case No 89626)*

On 2 February 2021, the Authority requested the Norwegian Government to submit an overview of the national measures implementing Directive 2013/36 (CRD IV) (Doc No 1177382). By letter of 29 April 2021 (Doc No 1200663 / your ref. 21/688), the Norwegian Government submitted a list of national implementing measures (Doc No 1198280 and a table of correspondence (Doc No 1200536).

On 18 January 2023, the Authority requested the Norwegian Government to submit an overview of the national measures implementing Directive (EU) 2019/878 (CRD V) (Doc No 1341973). By letter of 13 March 2023 (Doc No 1359366 / your ref.19/2867), the Norwegian Government responded to the Authority's request and submitted a list of national implementing measures (Doc No 1359368) and a table of correspondence (Doc No 1359370).

By letter of 28 March 2023 (Doc No 1330780), the Authority requested further information from the Norwegian Government concerning the completeness of implementation of Directive 2013/36 (CRD IV). By letter of 24 May 2023 (Doc No 1375336), the Norwegian Government submitted the required additional information in a table of correspondence (Doc No 1375338).

Subject to the Authority's assessment of the Norwegian Government's submissions, the Authority intends to discuss any points which may require further clarifications.

**Specific questions to be discussed:**

- i. Discussion of points which may require clarification following the Authority's assessment of the Norwegian Government's submissions, indicating the national measures implementing Directive 2013/36 (CRD IV) and of Directive 2019/878 (CRD V).

**Estimated time: 45 minutes**

6. *Assessment of acquisitions and increase of holdings in the financial sector (Directive 2007/44) (Case No 77973)*

The case concerns the EEA rules governing the assessment criteria for acquisitions and increases of qualifying holdings in the financial sector. As the rules have been fully harmonized, EEA States should not impose requirements that go beyond those established by EEA law. The Authority has concluded that the Norwegian legislation on financial institutions and financial groups allows for assessment criteria additional to those set out in the applicable EEA acts. In its correspondence with the Authority, the Norwegian Government has confirmed in several instances its intention to address the issue and amend the relevant legislation.

In respect hereto, reference is made to the previous correspondence in the case, in particular the Authority's letter of formal notice dated 15 March 2017 (Doc No 817335) and previous discussions on Package Meetings 2018 and 2019. By

informal correspondence from the Norwegian Government dated 8 July 2020 (Doc No 1144546), the Authority was informed that the follow-up of the case had been delayed due to the outbreak of COVID 19.

[REDACTED]

By a letter dated 26 November 2021 (Doc No 1247323), the Authority invited the Norwegian Government to provide it with information on the timeline of the legislative reform by 18 December 2021. By informal correspondence dated 16 December 2021 (Doc No 1291925), the Norwegian Government was granted an extension of the deadline to 15 January 2022. It was however not until by further informal correspondence dated 25 May 2022 (Doc No 1291928) that the Norwegian Government confirmed its intention to change the national legislation and expected submitting proposals to Parliament in autumn 2022.

On 28 September 2022, and due to changes made to the relevant EEA legislation, the Authority issued a supplementary letter of formal notice (Doc No 1303403) to the Norwegian Government and the matter was subsequently discussed at the Package Meeting in Norway in October 2022. By letter of 28 November 2022 (Doc No 1332215 / your ref. 15/4296), the Norwegian Government responded to the supplementary letter of formal notice reiterating its commitment to draft a legislative proposal, with the aim to send it on public consultation the winter 2022-2023.

On 19 July 2023, the Authority issued a reasoned opinion (Doc No 1384696) to the Norwegian Government. The Authority reiterated the conclusions set out in the letter of formal notice and required Norway to take the measures necessary to comply by 19 September 2023. At the time of drafting this letter, the Authority has not yet received a reply from Norway.

**Specific questions to be discussed:**

- i. What is the expected timeline for approval and entry into force of the proposed legislative amendments?
- ii. Can the Norwegian Government present an overview of the extent to which the proposed legislative amendments address the issues raised by the Authority in its letters?

**Estimated time: 30 minutes**

## Proposal for discussion points

### FREEDOM OF MOVEMENT OF SERVICES (Annex X)

**Responsible case handler(s):** Per-Arvid Sjøgård  
Ciarán Burke

**Other participant(s):** Maria Moustakali  
Marthe Brathovde  
Ewa Gromnicka

#### *1. Reimbursement of costs related to cross-border healthcare (Case No 85598)*

By a letter dated 30 September 2020, the Authority informed the Norwegian Government that it had received a complaint concerning the Norwegian legislation and administrative practices on the reimbursement of costs related to cross-border healthcare. The Authority raised a series of questions with a view to examining whether national law complied with the provisions of Directive 2011/24 on patients' rights (Doc No 1152080).

Following correspondence and several meetings, on 15 December 2022, the Authority issued a letter of formal notice in which it identified three separate breaches of EEA law (Doc No 1255341). The Norwegian Government replied to said letter on 31 March 2023 (Doc No 1364226/ your ref. 20/4441).

Having examined the Norwegian Government's response to the letter of formal notice, the Authority was satisfied by the solutions provided for one of the breaches identified, namely that pertaining to certain national translation requirements.

In its reasoned opinion issued on 5 July 2023, the Authority maintained, first, its conclusion that the Norwegian administrative practice consisting of limiting the reimbursement of costs related to cross-border healthcare to 80% of the relevant national DRG was in breach of Article 7(4) of the Directive, c.f. also Article 7(1) thereof (Doc No 1365385).

Secondly, with regard to the issue of the national legislation's generic deadline for reimbursement of costs being applied strictly to claims relating to cross-border healthcare, the Authority acknowledged the Norwegian Government's efforts to ensure that the processing body, Helfo, would not apply the deadline in the strict manner set out in the circular whilst corresponding amendments to the relevant implementing regulation were pending. Nevertheless, the Authority's concerns with regard to the effectiveness of the right to claim costs of healthcare in other EEA States reimbursed in Norway however remained as long as the circular was in force with its current wording. To the Authority's understanding, no amendments had been proposed to the circular. The Authority therefore maintained that the problem arising from a strict application of the national legislation's generic deadline to claims relating to cross-border healthcare, in breach of the principle of proportionality as expressed by Article 9(1) of the Directive and the principles of equivalence and effectiveness had not been resolved.



The Norwegian Government is expected to reply to the reasoned opinion no later than 5 October 2023, in due time before the Package Meeting.

The discussion of the case should take place in light of the most recent developments and correspondence therein.

**Estimated time: 45 minutes**

## Proposal for discussion points

### DATA PROTECTION (Annex XI)

**Responsible case handler(s):** Ciarán Burke

**Other participant(s):** Maria Moustakali  
Ewa Gromnicka

#### 1. *Own Initiative Case Concerning NAV's Processing of IP Addresses (Case No 88929)*

On 7 July 2022, the Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) opened an own initiative case to investigate the application of Regulation 2016/679 (EU), the General Data Protection Regulation (“GDPR”)<sup>13</sup>, as well as its predecessor, Directive 95/46/EC<sup>14</sup> in Norway, from 2012 until the present day. The Norwegian Government was requested to clarify the position, current and past practices of the Norwegian Labour and Welfare Administration (“NAV”) in relation to the processing and storing of Internet Protocol addresses (“IP addresses”) of individuals sending employment status forms to the NAV.

The Norwegian NAV Commission’s 2020 Report<sup>15</sup> makes it clear that the NAV exercised control over whether jobseekers and persons in receipt of work assessment allowance and employment scheme benefits were in fact present in Norway through the use of technological tools that tracked IP addresses.

In this regard, the Directorate drew the Norwegian Government’s attention to Articles 5, 6, 13, 32, 33, 34, 35, 77, 79, 80 and 82 GDPR, as well as the equivalent provisions in Directive 95/46/EC, and in particular Articles 4, 6 and 7 thereof, as well as Articles 28 and 36 of the EEA Agreement.

At the 2022 Package Meeting, the Norwegian Government made it clear that the previous regime of tracking IP addresses had ceased. The Directorate asked the Norwegian Government about the present practice that had supplanted the previous regime. This practice is defended in their reply to the follow-up letter of 8 February 2023 (Doc No 1351284/ your ref. 22/3509-15).

Under the new rules, the NAV uses mass collection of data from the Currency Transaction Register to identify benefit recipients potentially living abroad. The legal basis for mass collection of data for control purposes is Section 21-4 d of the National Insurance Act, in conjunction with Section 21-4(1) thereof.

According to the relevant Circular (R21-00), there is no requirement of suspicion for the processing of an individual’s transactions. The Circular goes on to state

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<sup>13</sup> The Act referred to at point 5e of Annex XI to the EEA Agreement (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)), as adapted.

<sup>14</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

<sup>16</sup> See <https://eur-lex.europa.eu/eli/dir/2022/2381/oj>

that mass collection must as far as possible, be carried out using criteria that characterise people as belonging to "risk groups" (a term which is undefined).

**Specific questions to be discussed:**

The Authority would welcome a presentation by the Norwegian Government as to how the new regime is, in its opinion, to be reconciled with the relevant provisions of the GDPR.

**Estimated time: 1 hour**

## Proposal for discussion points

### TRANSPORT (Annex XIII)

**Responsible case handler(s):** Gunnar Örn Indriðason (Items 1 and 2)  
Julia Nordvang Johansen (Items 1 and 2)  
Kadus Basit (Item 3)

**Other participant(s):** Valgerdur Gudmundsdottir (Items 1 – 3)  
Kyrre Isaksen (Item 3)

#### 1. Norway – PSO Maritime Services 2023 (Case No 89936)

On 16 January 2023, the Authority sent a request for information (Doc No 1344776) to Norway concerning the Public Service Obligation (“PSO”) maritime routes in Norway. The Authority regularly carries out such monitoring activities with the previous one taking place in 2019 (Case No 72047).

For the purposes of that monitoring activity, the Authority requested information on ongoing PSO contracts, the contract duration and additional information. The Authority received a reply from the Norwegian Authorities on 28 April 2023 (Doc No 1370034 / your ref. 15/3597-).

On 17 August 2023, the Authority sent a supplementary request for information (Doc No 1391762) requesting further information on certain contracts and their duration. The Authority also requested further information on the proposal for new regulations introducing requirements for zero emissions of greenhouse gases from ferries and fast boats, which was published on 10 May 2023, as well as clarification of the relationship between Regulation 3577/92 and the aforementioned proposal. The deadline for a reply is 29 September 2023.

During the meeting, the Authority wishes to discuss the foreseen reply and in particular the proposal already mentioned.

**Estimated time: 45 minutes**

#### 2. Norway - Direct award of PSO (Østlandet 1 and 2) for the period 2023-2033 (Case No 90137)

On 14 March 2023, the Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) opened an own initiative case to investigate the application in Norway of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road (‘PSO Regulation’), and Directive 2012/34/EU concerning foreseen direct award of the railway network packages Østlandet 1 and 2.

On 29 March 2023, the Authority sent a request for information to the Ministry of Transport, in order to assess whether the process leading to the direct award, and the scope thereof, and the compatibility with EEA Law, the general principles of the internal market and the provisions on market opening of the 4th railway

package (Doc No 1395039). On 28 April 2023, the Authority received a reply from the Norwegian Authorities where it provided the requested information (Doc No 1370197 / your ref. 23/17-).

On 11 July 2023, the Authority sent a supplementary request for information to the Norwegian Authorities where it asked for further information concerning the award process and the market analysis carried out before the award (Doc No 1385706). The Norwegian Authorities sent a reply to the supplementary request for information on 31 August 2023 (Doc No 1395039 / your ref. 23/17-2). In the reply, the Norwegian Authorities provided further information on the market analysis and the PSO itself in addition to other information requested.

During the meeting the Authority would like to discuss the case and the information provided by the Norwegian Authorities.

**Estimated time: 75 minutes**

**3. *Minimum safety requirements for tunnels in the Trans-European Road Network (TERN) – Norway (Case No 84698)***

On 3 December 2020, the Authority issued a reasoned opinion (Doc No 1160732), in which it concluded that Norway had failed to ensure that all tunnels with lengths of over 500 m in the Trans-European Road Network (TERN) complied with the minimum safety requirements of Directive 2004/54/EC by the deadline set out therein. For tunnels that were already in operation at the time of the entry into force of the Directive, the deadline for refurbishment of those tunnels expired on 30 April 2019. At the time of the reasoned opinion, 68 tunnels were not in compliance with the minimum safety requirements.

The reasoned opinion was discussed during the package meeting in Oslo in October 2022. At the meeting, the Norwegian Government presented the status on the implementation of the Directive in Norway and indicated that by end of year 2022 the number of tunnels to be upgraded would have been reduced to 45.

Following the meeting, by letter of 1 February 2023 (Doc No 1349422 / your ref. 15/1923-, with attachments), the Norwegian Government provided the Authority with further information on the implementation of and state of compliance with the Directive. The Norwegian Government also provided information on the 2023 National Budget that was relevant for this case.

At the meeting the Authority wishes to discuss the status of the case, including any developments or updates.

**Specific questions to be discussed:**

- i. What is the status of compliance for tunnels falling under the scope of the Directive, and to what degree have alternative security measures been implemented in tunnels that are not yet in compliance with the Directive?

- ii. Have there been or is there any information indicating possible changes to the previously presented timeframe for complying with the minimum safety requirements of the Directive?

**Estimated time: 45 minutes**

## Proposal for discussion points

### PROCUREMENT (Annex XVI)

**Responsible case handler(s):** Rachel Harriott (Items 1-3)  
Frederik De Ridder (Items 1-3)

**Other participant(s):** Maria Moustakali  
Ewa Gromnicka (Items 1 and 2)  
Kyrre Isaksen (Item 3)

*1. Complaint against Norway regarding breaches of public procurement law in relation to contracts for pension services (Case No 89254)*

The case concerns a complaint essentially alleging that the very limited level of competition in the market for insured public sector occupational pension services in Norway is in breach of EEA law. Allegations have been made of various breaches of the procurement rules, specifically, (i) unlawful direct awards of contracts; (ii) the continuation of contracts without fixed terms for disproportionately long periods of time; (iii) unlawful modifications of contracts.

On 24 March 2023, the Norwegian Government provided its comments on the complaint and a request for information from the Authority (Doc No 1363115 / your ref. 22/6706-9). The Authority would like to discuss the case in light of that letter and any future correspondence.

#### **Specific questions to be discussed:**

- i. Discussion on whether the services fall within the scope of EEA public procurement law:
  - a. Whether the services are economic
  - b. Whether the services are financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments
  - c. Whether the in-house exemption can be applied
- ii. Discussion on whether the services fall under the light touch regime
- iii. Discussion on how the value of the contracts should be calculated
- iv. Discussion on whether a contract awarded without a fixed term can give rise to a breach of EEA law if continued for a long period
- v. Discussion on whether the sole-supplier exemption could be applied between 2013 and 2019 and whether there are any limits to what can be awarded in such a situation
- vi. Discussion on the changes introduced by SGS 2020 and whether these gave rise to unlawful modifications of the contracts

- vii. If desired by the Norwegian Government: discussion on whether any of the municipal/county mergers gave rise to unlawful modifications of contracts
- viii. If desired by the Norwegian Government: discussion on whether extensions to fixed contract terms were unlawful modifications of contracts
- ix. The Norwegian Government's current view of contracting authorities' obligations concerning the (re)tendering of insured public sector occupational pension services
- x. Any factual matters relating to the complaint which the Norwegian Government wishes to comment on.

**Estimated time: 3 hours, including a 15 minute break**

*2. Complaint against Norway concerning the award of exclusive rights for collection and treatment of waste (Case No 78085)*

The case concerns a complaint received by the Authority on 20 October 2015 concerning the award of exclusive rights by Norwegian municipalities to state-owned private undertakings in the area of waste management. According to the complainant, a widespread practice exists in Norway to directly award exclusive rights and then contracts to these undertakings without a prior public call for tenders.

The Authority would like to discuss the Norwegian Government's current position on the issues under consideration in the case, including in light of any future correspondence.

**Specific questions to be discussed:**

- i. Does the Norwegian Government maintain its positions set out in its letter 8 April 2022 (Doc No 1281709 / your ref. 15/2910-) as regards the lawfulness of the application of the exclusive rights exemption and/or the concept of a transfer of powers and responsibilities to services in respect of municipal commercial waste?
- ii. Can the Norwegian Government please provide an update on its assessment of the regulatory choice made at national level as regards responsibilities and powers in respect of household waste and waste similar to household waste from municipalities and private entities and the assessment requested from the Norwegian Environment Agency, as referred to in the Norwegian Government's letter of 17 April 2023 (Doc No 1367241 / your ref. 15/2910-).

**Estimated time: 1 hour**

*3. TBC Restrictions on subcontracting in the field of public procurement in Norway (Case No 84262)*



The case concerns provisions of Norwegian national law which limit the number of links in the supply chain for public contracts for construction and cleaning services. Pursuant to these rules, when contracting authorities award contracts over a certain value for these services, they must require that suppliers have a maximum of two links in the supply chain below them. There are limited grounds for deviating from these rules.

On 24 April 2023, the Norwegian Government informed the Authority that they intended to clarify their understanding of the so-called competition exemption in the guidance to the provision which is available on the website of the Norwegian Agency for Public and Financial Management (DFØ) (Doc No 1368668 / your ref. 19/6536-55).

The Authority would like to discuss these changes.

**Specific questions to be discussed:**

- i. The Norwegian Government is requested to provide an update on the status of the changes to the guidance.

**Estimated time: 30 minutes**

## Proposal for discussion points

### LABOUR LAW (Annex XVIII)

**Responsible case handler(s):** Hrafnhildur Kristinsdottir

**Other participant(s):** Maria Moustakali  
Marthe Brathovde (Item 1)  
Ewa Gromnicka (Item 2)

*1. Complaint against Norway concerning the right to paid annual leave (Case No 84481)*

The issue in this case is whether Norway is in breach of Article 7 of the Working Time Directive (Directive 2003/88/EC), on the right to minimum four weeks' paid annual leave, since the Norwegian Holiday Act distinguishes between the holiday year (calendar year), when annual leave can be taken, and the qualifying year (previous calendar year), when the right to holiday pay is accrued.

The case was discussed at the package meeting in Norway in October 2022 (see the Authority's follow-up letter of 15 December 2022, Doc No 1325668). The representatives of the Norwegian Government informed the representatives of the Authority that an assessment of the current system of paid annual leave had been taking place within the Ministry. The representatives of the Norwegian Government explained that it would be proposed to the Minister to amend the Norwegian Holiday Act introducing a new system of paid annual leave built on the same principles as the Danish model (although not identical).

By a letter dated 24 March 2023 (Doc No 1363986 / your ref. 19/4123-16), the Norwegian Government confirmed that a decision had been taken to conduct an assessment of the Norwegian system for holiday pay and that the social partners would be consulted in the process.

By letters of 17 August 2023 (Doc Nos 1393014 and 1393012 / your ref. 19/4123), the Norwegian Government provided further information, stating that the assignment had been given to Mr Knut Moum (social economist) to assess the Norwegian system for holiday pay and provide proposals for amending it. It was explained that the assignment was to be completed by 1 April 2024 and that the social partners would be consulted by Mr. Moum during the process.

At the meeting, the Authority would like to discuss this assignment in more detail and be provided with an estimated timeline for the next steps.

**Estimated time: 30 minutes**

2. *Own initiative case concerning restrictions on the use of temporary agency workers in Norway (Case No 89887)*

This case was opened on 25 January 2023, *inter alia* on the basis of complaints received, in order to examine newly adopted measures in Norway which restrict the use of temporary agency workers.

On 10 February 2023, a request for information was sent to the Norwegian Government, asking several detailed questions concerning the adopted measures in Norway (Doc No 1348681).

The Norwegian Government replied by a letter dated 5 May 2023 (Doc Nos 1371303 and 1371305 / your ref. 23/709-), maintaining that the adopted measures are compatible with EEA law as they constitute justified and proportionate restrictions on the use of temporary agency workers and the freedom to provide services.

The Authority issued a letter of formal notice to Norway on 19 July 2023 (Doc No 1373235), concluding that by preventing the use of temporary agency workers when the work is of a temporary nature and prohibiting all use of temporary agency workers for construction work on construction sites in Oslo, Viken and former Vestfold, Norway is in breach of Article 4(1) of Directive 2008/104 on temporary agency work and Article 36 of the EEA Agreement. Norway has been asked to respond to the letter of formal notice by 19 September 2023.

At the meeting, the Authority would like to discuss the case in light of the Authority's letter of formal notice and Norway's reply.

**Estimated time: 1 hour**

## Proposal for discussion points

### EQUAL TREATMENT FOR MEN AND WOMEN (Annex XVIII)

**Responsible case handler(s):** Joachim Nilsen Frislid

Gaukur Jörundsson

**Other participant(s):**

Maria Moustakali

Erlend Leonhardsen

1. *Draft Norwegian legislation on gender representation on company boards in the light of new EEA legislation on improving the gender balance among directors of listed companies (Case No 90898)*

On 23 November 2022, Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies was adopted by the European Parliament and the Council.<sup>16</sup> According to its Article 1, the new Directive “aims to achieve a more balanced representation of women and men among the directors of listed companies by establishing effective measures that aim to accelerate progress towards gender balance, while allowing listed companies sufficient time to make the necessary arrangements for that purpose”.

On 19 June 2023, the Norwegian Government submitted a proposal to the Parliament for new national legislation aimed at ensuring more balanced representation between women and men on company boards.<sup>17</sup> In the proposal, the Norwegian Government makes reference to Directive (EU) 2022/2381 and requests Parliament’s approval for its implementation into the EEA Agreement. The Government notes that Norwegian law “in general” (“i hovedsak”) complies with most of the requirements in the Directive and that the proposed national legislation goes beyond the minimum requirements of the Directive.<sup>18</sup> The Norwegian Government also states that it considers it expedient to process the proposed national legislation and the implementation of the Directive into the EEA Agreement jointly.<sup>19</sup>

In order to fully understand the Norwegian Government’s reasoning, the Authority would like to invite the representatives of the Norwegian Government to give a brief explanation of its assessment of the relationship and compatibility between this draft national legislation and Directive (EU) 2022/2381.

#### **Specific questions to be discussed:**

- i. In light of Prop. 131 LS (2022-2023) of 19 June 2023, the Norwegian Government is invited to explain its assessment of the relationship and compatibility between the proposed national legislation on ensuring more balanced representation between women and men on company

<sup>16</sup> See <https://eur-lex.europa.eu/eli/dir/2022/2381/oj>

<sup>17</sup> Prop. 131 LS (2022-2023). Endringer i foretakslovgivningen mv. (kjønnssammensetning i styret) og samtykke til deltakelse i en beslutning i EØS-komiteen om innlemmelse av direktiv (EU) 2022/2381 i EØS-avtalen. <https://www.regjeringen.no/no/dokumenter/prop.-131-ls-20222023/id2984956/?ch=1>

<sup>18</sup> Chapter 7.2, page 38 of the Government proposal referenced above.

<sup>19</sup> Chapter 8, page 58 of the Government proposal referenced above.

boards and Directive 2022/2381 on improving the gender balance among directors of listed companies.

**Estimated time: 45 minutes**

## Proposal for discussion points

### ENVIRONMENT (Annex XX)

**Responsible case handler(s):** Kristine Aaland (Item 1)  
Anne De Geeter (Items 1-2)  
Ada Gimnes Jarøy (Items 1-2)  
Mathias Thorkildsen (Items 1 and 3)  
Eva Hauksdóttir (Item 4)

**Other participant(s):** Ada Gimnes Jarøy (Item 4)  
Kyrre Isaksen (Item 1)

#### 1. CCS – Storage permit – Norway (Case No 88278)

Within the context of the Authority's task to review draft permits for storage of CO<sub>2</sub> under Article 10 of Directive 2009/31/EC ("the CCS Directive"), the Authority is currently looking into the implementation of the CCS Directive into Norwegian law.

The topic was discussed at the package meeting in 2022, with following exchanges between the Authority and the Norwegian Ministry of Petroleum and Energy ("the Ministry"), with particular focus on the implementation of the CCS Directive's provisions related to third-party access. Reference is made to the letter from Norway of 17 February 2023 titled "ESA package meeting follow-up" (Doc No 1353786 / your ref. 21/974-11), questions sent by the Authority to the Ministry by e-mail of 4 May 2023 (Doc No 1371666), a virtual meeting of 8 May 2023, and the e-mail of 30 June 2023 from the Ministry and the attachment thereto (Doc No 1385559).

At the meeting, the Authority would like to discuss the information received from Norway on 30 June 2023. In particular, the Authority seeks to understand how the regime laid down by Section 5-12 of the Norwegian Storage Regulation aligns with the requirements of Article 21 of the CCS Directive.

The Authority would also like to discuss other points it may identify with regard to the implementation of the CCS Directive into Norwegian law while progressing in its preparations for the review of draft permits for storage of CO<sub>2</sub>.

#### **Specific questions to be discussed:**

- i. How does the Norwegian third-party access regime sufficiently ensure transparency, non-discrimination and fair and open access?
- ii. Other questions related to the Norwegian transposition of the CCS Directive that may be identified.

**Estimated time: 45 minutes**

#### 2. Management of waste from extractive industries (Case No 80563)

The case concerns the implementation in Norway of *Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC* (the “Mining Waste Directive”).

On 6 October 2021, the Internal Market Affairs Directorate (“the Directorate”) issued a Pre-Article 31 letter (Doc No 1193682) in which it set out its preliminary views that Norway has failed to adequately implement several provisions of the Mining Waste Directive and that the Norwegian Government’s administrative practices for managing mining waste do not give comfort that the requirements and objectives of the Mining Waste Directive are met. The Norwegian Government responded on 8 December 2021 (Doc No 1254811 / your ref. 17/2763-), setting out its views and informing the Directorate that it would carry out a review of the national implementing legislation.

By letter of 24 October 2022, the Norwegian Government shared with the Directorate a draft regulation and a table of correspondence (Doc No 1323078 / your ref. 17/2763-). An initial exchange on the overall approach and status of the national review process took place at the Package Meeting of 27 and 28 October 2022 (as summarized in the follow-up letter: Doc No 1340525).

Since last year’s Package Meeting, the Directorate has carried out a preliminary review of the Norwegian Government’s draft regulation and shared its initial views by email of 6 July 2023 (Doc No 1386337).

At the upcoming Package Meeting, the representatives of the Authority wish to exchange on the last version of the draft regulation shared by the Norwegian Government and to get an update on the status and timeline for its finalisation. In addition, the Norwegian Government is invited to exchange on how the Directorate’s concerns regarding the Norwegian administrative practices for managing mining waste are addressed.

#### **Specific questions to be discussed:**

- i. What is the status and timeline for the revision of the national legislation implementing the Mining Waste Directive?
- ii. How will the concerns raised in the Pre-Article 31 letter regarding the administrative practices for managing mining waste in Norway be addressed?

#### **Estimated time: 1 hour**

#### *3. Own initiative case concerning exceedances of Norway's emission ceiling for ammonia (Case No 89976)*

Reference is made to the Authority’s letter of formal notice of 5 July 2023 (Doc No 1379455), concluding that Norway has breached Article 4(2) of Directive 2001/81/EC (“the NEC Directive”) by exceeding its national emission ceiling for ammonia in the reported years of 2012 to 2020.

The deadline for the Norwegian Government to reply to the letter of formal notice is 5 October 2023.

At the meeting, the representatives of the Authority would like to discuss the case in light of Norway's reply to the letter of formal notice.

**Specific questions to be discussed:**

- i. By when does the Norwegian Government intend to attain the national emission ceiling for ammonia?
- ii. How does the Norwegian Government intend to attain the national emission ceiling for ammonia?

**Estimated time: 30 minutes**

*4. Complaint concerning Norway's failure to implement the requirements on extended producer responsibility schemes of the revised Waste Framework Directive (Case No 90338)*

The case concerns the complaint received by the EFTA Surveillance Authority ("the Authority") on 29 March 2023 concerning Norway's implementation of extended producer responsibility schemes under *Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste* ("the revised Waste Framework Directive").

On 11 May 2023, the Norwegian Government was informed of the said complaint (Doc No 1371671). The Authority's Internal Market Affairs Directorate ("the Directorate") is currently in the process of assessing the merits of the complaint.

At the upcoming package meeting, the representatives of the Authority wish to discuss the status and last correspondence of this case.

**Specific topics to be discussed:**

- iii. Status of this case
- iv. Latest correspondence

**Estimated time: 45 minutes**



## Proposal for discussion points

### EEA-UK SEPARATION AGREEMENT

**Responsible case handler(s):** Ciarán Burke

**Other participant(s):** Maria Moustakali  
Kyrre Isaksen

#### 1. Separation Agreement (Case No 88758)

On 15 August 2023, the Authority completed its second Annual Report (Doc No 1386001) in accordance with Article 64(3) of 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 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/the Agreement"), and Article 2 of Protocol 9 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Surveillance and Court Agreement"/"SCA"). This report will be submitted to the Joint Committee established under the Separation Agreement at a meeting of 27 September 2023.

This is the second annual report prepared by ESA and reports on the 12-month period during the calendar year 2022. The first annual report, covering the first twelve months after the expiry of the transition period, was adopted on 23 May 2022.

For the first time, in relation to the 2022 Annual Report, ESA distributed pro-forma template documents to the EEA EFTA States, soliciting information concerning measures they had undertaken during 2022 to implement the Separation Agreement. These documents mirrored those distributed by the European Commission to the EU Member States, on the one hand, and by UK IMA to the Government of Gibraltar, the Northern Ireland Executive, the Scottish Government, the Government of the United Kingdom, and the Welsh Government, on the other. ESA's aim was to improve transparency and comparability by following a uniform approach in this regard.

In particular, ESA sought the following information from the EEA EFTA States:

- the most relevant instruments in place to implement Part Two of the Separation Agreement;
- the most relevant instruments implementing Part Two of the Agreement that were adopted or amended in the last year;
- the most relevant domestic jurisprudence from the last year; and
- certain basic statistical data that show how the Separation Agreement has been applied.

**Specific questions to be discussed:**

Given the general good level of compliance by Norway with its obligations following from the Separation Agreement, the Authority wishes to debrief and discuss the exercise of compiling the Annual Report, and the September Joint Committee Meeting. The Authority would also welcome an update on any issues that have arisen under the Separation Agreement during 2023.

**Estimated time: 45 minutes**