

Case No: 82538
Document No: 1382866
Decision No: 102/23/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 19 July 2023

to bring a matter against Norway before the EFTA Court in accordance with Article 31(2) of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice due to the failure by Norway to adopt the measures necessary to fully implement the Act referred to at point 13 of Annex VI to the Agreement on the European Economic Area (*Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights*), as adapted to the EEA Agreement by Protocol 1, into its national law

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31(2) thereof,

Whereas:

Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (“the Act”) was incorporated into the Agreement on the European Economic Area (“EEA Agreement”) by Decision 188/2014 of the EEA Joint Committee of 25 September 2014 at point 13 of Annex VI to the Agreement, as adapted to the Agreement by Protocol 1.

It follows from Article 7 of the EEA Agreement and from Article 8 of the Act, that the EFTA States were required to adopt the measures necessary to implement the Act and to notify these to EFTA Surveillance Authority (“the Authority”). The time limit to do this expired on *21 May 2018*.

By letter dated 10 July 2018 (Doc No 922306), the Authority reminded Norway of the obligation to notify the measures it had taken to implement the Act.

As the Authority had not received any notification from Norway setting out the measures which it had adopted to implement the Act, on 4 October 2018 it sent a Letter of Formal Notice to Norway (Doc No 929909).

In its Letter of Formal Notice, the Authority concluded that by failing to adopt or, in any event, to inform the Authority of the national measures it had adopted to implement the Act, Norway had failed to fulfil its obligations under both the Act and Article 7 of the Agreement.

In its observations of 4 December 2018 (Doc No 1041705) on the Letter of Formal Notice, the Norwegian Government indicated that it was working on legislative amendments and would submit a proposal for legislation to the Parliament as soon as possible. The

Authority later understood, through informal correspondence received on 6 February 2019 (Doc No 1050586), that the Ministry of Finance aimed to submit a proposal for legislation to the Parliament before the summer of 2019.

The Authority issued a Reasoned Opinion on 6 March 2019 (Doc No 1051171). The deadline to comply with the Reasoned Opinion was 6 May 2019.

On 24 June 2019, the Authority received a reply to the Reasoned Opinion from the Norwegian Government (Doc No 1076699). The Norwegian Government stated therein that a proposal had been presented to the Parliament on 21 June 2019 and that it expected it to be discussed in autumn and come into effect on 1 January 2020. The proposal was adopted on 13 December 2019 and entered into force on 1 January 2020.

On 17 April 2020, the Authority received a Form 1 from the Norwegian Government, notifying partial implementation of the Act (Doc No 1127941). In the Form 1, Norway explained that there was one outstanding issue: the implementation of Article 4(1)(c) of the Act (on the reimbursement of contributions in case where a vesting period has not been fulfilled). It stated that the Parliament had adopted a change in Section 8 of the Act relating to protection of complementary pension rights for employees and self-employed persons moving within the EEA Area in this regard, and pursuant to this provision, the Ministry may lay down rules regarding the reimbursement of contributions. It informed the Authority that the Ministry was following up on this, which must also be coordinated with tax law, with some delay being expected due to the ongoing Covid 19 crisis work.

Subsequently, the Authority asked the Norwegian Government for a state of play on four separate occasions: 14 December 2020, 16 April 2021, 13 December 2021, 6 April 2022 (Docs No 1169059, No 1195116, No 1267617, and No 1306180, respectively).

On the first three occasions, the Norwegian Government replied that work on the implementation of the outstanding provision was underway (Docs No 1169237, No 1198479, and No 1267617, respectively). On the fourth occasion, in its reply of 21 June 2022 (Doc No 1306180), the Norwegian Government informed the Authority that it did not consider the implementation of the outstanding provision to be necessary.

On 9 August 2022 and 12 October 2022 (Docs No 1306181 and No 1325438 respectively), the Authority reiterated its position that an implementation of Article 4(1)(c) of the Act remained necessary.

Due to silence from the Norwegian Government, a reminder was sent by e-mail dated 4 November 2022 (Doc No 1320714). In its substantive reply on 17 November 2022 (Doc No 1329419), the Norwegian Government essentially restated its prior arguments on the difficulties of the implementation of the provision, namely administrative complexity in combination with taxation issues, which Norway stated that it was looking into.

In the absence of any concrete proposals from Norway, the Authority informed the Norwegian Government on 2 May 2023 (Doc No 1370454) that it planned to refer the matter to the EFTA Court. By reply of 23 June 2023 (Doc No 1382694), Norway stated that it was in the process of finalizing the consultation document which it had mentioned in previous correspondence, setting out possible legislative amendments, and was working to present it before the summer. However, Norway indicated neither a concrete timeframe nor a concrete proposal for the implementation of Article 4(1)(c) of the Act.

By e-mail exchange of 26 and 27 June 2023 (Doc No 1383376), the Authority informed the Norwegian Government that it intended to refer the matter to the EFTA Court at the start of July 2023.

On 28 June 2023, the Norwegian Government submitted a second Form 1 (Doc No 1383919) indicating full implementation of the Act by way of a Ministerial Regulation of 28 June 2023, with a date of entry into force of 1 October 2023.

However, in the view of the Authority, the notified measure is not sufficient to implement the remaining provision of the Act, in particular for a citizen to rely on, since it is unclear which other national provisions apply in the circumstances set out in the Ministerial Regulation. Moreover, the full implementation of the Act has not been demonstrated by the Norwegian Government in a sufficiently clear and precise manner.

By letter dated 14 July 2023 (Doc No 1386597), the Authority informed the Norwegian Government that it was not able to positively conclude that the notified Ministerial Regulation fully had implemented the outstanding provision of the Act, and that therefore the Authority could not accept the Form 1 of 29 June 2023 indicating full implementation.

For these reasons, the Authority considers that the matter should be brought before the EFTA Court.

HAS ADOPTED THIS DECISION:

1. Proceedings should be commenced before the EFTA Court to seek a declaration that Norway has failed to adopt the measures necessary to fully implement the Act referred to at point 13 of Annex VI to the Agreement on the European Economic Area (*Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights*), as adapted to the EEA Agreement by Protocol 1 thereto, as required by Article 8 of that Act and by Article 7 of the EEA Agreement.
2. The Director of Legal and Executive Affairs is instructed to seize the EFTA Court, liaising with the Internal Market Affairs Directorate and subject to control by the responsible College Member, and to represent the EFTA Surveillance Authority before the EFTA Court.

For the EFTA Surveillance Authority

Arne Røksund
President

Stefan Barriga
Responsible College Member

Árni Páll Árnason
College Member

Melpo-Menie Joséphidès
Countersigning as Director,
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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.