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Ministry of Labour and Social Inclusion
Postboks 8019 Dep.
0030 Oslo
Norway

Dear Sir/Madam,

Subject: Request for Information concerning higher education as a work-oriented measure fulfilling the activity requirement

On 5 December 2023, the Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) opened an own initiative case to examine a Norwegian administrative practice whereby the approval of higher education as a means to comply with the activity requirement intrinsically linked to the granting of work assessment allowance, is limited to education taking place *within Norway*.

Chapter 11 of the Norwegian National Insurance Act (NIA)¹ concerns work assessment allowance.² The purpose of this benefit is enshrined in Section 11-1(1) NIA, i.e. to “*ensure income for members whilst they receive active treatment, participate in work-oriented measures or are being followed up in another way with a view to obtaining or retaining employment.*”

There are two basic conditions to fulfil to be entitled to work assessment allowance. First, the person must have suffered a reduction in their capacity for work due to sickness, injury or impairment to such an extent that the person concerned has limited possibilities for retaining or obtaining employment, c.f. Section 11-5 NIA. The second basic condition relates to the need for assistance in obtaining or retaining employment, c.f. Section 11-6. Accordingly, a condition for entitlement to the benefit is that the person concerned has either a need for active treatment (typically medical follow-up) or a need for work-oriented measures (such as work-training programmes, wage subsidies or education).

The corollary of the need for active treatment or work-oriented measures is that the person concerned is required to actively participate in such measures, c.f. Section 11-8 NIA. The activity requirements are established in an “activity plan”, cf. the Norwegian Labour and Welfare Administration Act Section 14a (3).³

Activity plans will be customised according to individual needs and abilities. Different plans will therefore contain a variety of activities. An activity plan may consist of either medical treatment or work-oriented measures and/or partial work - or preferably a combination of those elements. Examples of what the activity plan may contain include studies, physical treatment, psychological treatment combined with work-oriented measures, psychiatric treatment combined with work practice and studies, and part-time work combined with individual training and health controls.

¹ Lov om folketrygd (folketrygdloven)

² The following presentation of Chapter 11 NIA builds on Norway’s written observations in Case E-8/20 *Criminal Proceedings against N*, [Document 1159029](#).

³ Lov om arbeids-og velferdsforvaltningen (arbeids-og velferdsforvaltningsloven) [NAV-loven]

Within the specific category of *work-oriented measures*, the concrete measure will vary depending on the person's needs and abilities. The different types of measures are regulated in the Norwegian Labour Market Regulation ("the Labour Market Regulation").⁴ An administrative circular clarifies how the provisions set out therein shall be applied in practice ("the circular").⁵

The corollary of the activity requirement in Section 11-8 NIA is the loss of entitlement to work assessment allowance if the person concerned fails to participate in scheduled activity, cf. Section 11-9 NIA.

As already observed, one type of work-oriented measure that can serve to fulfil the concerned person's activity requirement is education, c.f. chapter 7 of the Labour Market Regulation. The purpose of such education is to enable jobseekers to become qualified for available employment, c.f. Section 7-1. Section 7-2 provides that education may be offered to the concerned person in the form of short courses, vocational training at high-school level or as higher education.

As regards higher education, the circular provides that (emphasis added):

"By higher education is meant education at university or university college which provides formal competence, i.e. competence which is documented by diploma or other official documents from school and education establishments. Higher education granted by NAV shall be approved by NOKUT.

NAV should not pay for enrolment at private education establishments if there is a suitable offer with public education establishments.

Higher education is education to the public in general and not particularly targeted to those affiliated with NAV. It is the education establishment, not NAV, who determined criteria for enrolment.

Higher education cannot be granted outside the country's [Norway's] borders."

The circular does not provide any explanations for this limitation.

In light of the above, the Directorate recalls that following the EFTA Court's judgement in Case E-8/20 NAV, it is settled law that the Norwegian work assessment allowance is a social security benefit falling within the scope of Regulation 883/2004 (EU) on the coordination of social security benefits ("the Regulation"). More specifically, the work assessment allowance is considered a sickness benefit for the purpose of the Regulation, c.f. its Article 3(1)(a).

The Directorate further observes, without prejudice to the Authority's position on this point, that the white paper on the implementation and visibility of Norway's international obligations in the area of social security concluded that, while the work assessment allowance falls within the scope of the Regulation, the work-oriented measures as such would not.⁶ The white paper stressed that national law must, at any rate, comply with the fundamental freedoms safeguarded by the EEA Agreement.

⁴ Forskrift om arbeidsmarkedstiltak (tiltaksforskriften).

⁵ Rundskriv – Utfyllende regler til Arbeids-og velferdsetatens anvendelse av forskrift om arbeidsmarkedstiltak.

⁶ NOU 2021:8, *Trygd over landegrensene*, p. 108. The white paper observed, in support for its view, that the work-related measures set out in the Labour Market Regulation are awarded depending on the needs of the individual concerned, which again is based on discretion. Thus, the work-related measures would not be considered as rights-based benefits falling within Regulation 883/2004,

For the purposes of examining this matter further, the Directorate invites the Norwegian Government to provide the following clarifications and explanations, as well as any information it deems pertinent:

1. What are the general conditions to fulfil to be eligible for the work assessment allowance and does residence or stay in another EEA State bear any relevance?
2. Please clarify the relationship between the work assessment allowance and the various work-related measures provided for by the Labour Market Regulation, including what constitute the general objectives behind such measures.
3. With regard to the possibility of higher education qualifying as a work-related measure, the circular provides that (our translation): *Higher education cannot be granted outside the country's [Norway's] borders*". The Norwegian Government is invited to clarify *in detail* what this concretely entails, including but not limited to whether:
 - a. the rule, as suggested by the circular's wording, is absolute in the sense that higher education outside Norway can in no circumstances be granted.
 - b. the rule pertains to whether the education establishment is located outside of Norway and/or whether the individual concerned will remain a resident and/or stay in Norway
 - i. for example, can a recipient of work assessment allowance reside or stay in another EEA State while undertaking higher education (as a work-related measure) with an establishment located in Norway?
 - ii. for example, can a recipient of work assessment allowance undertake higher education (as a work-related measure) with an establishment located in another EEA State insofar as that person resides or stays in Norway?
4. What are the objectives behind restricting this particular work-related measure to education granted within Norway?
5. If a beneficiary's request to have higher education in another EEA State approved as a work-related measure is denied by NAV, and no other work-related measure is deemed appropriate, will the application for work assessment be denied?
6. Are there other work-related measures that may only be granted within the Norwegian territory?

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 22 *January 2024*.

Yours faithfully,

Maria Moustakali
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Maria Moustakali.