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Ministry of Labour and Social Affairs  
Postboks 8019 Dep  
N-0030 Oslo  
Norway

**Subject: Supplementary Request for Information in own initiative case concerning NAV's processing of IP addresses**

Dear Sir/Madam,

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>1</sup>, as well as its predecessor, Directive 95/46/EC<sup>2</sup> in Norway, from 2012 until the present day. The Norwegian Government is 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.

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 practice that had supplanted the previous regime. This practice is defended in Norway's reply to the follow-up letter of 8 February 2023 (Doc No 1351284/ your ref. 22/3509-15).

In the discussion points to the 2023 Package Meeting, the Authority noted that it 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. The Norwegian Government presented the main points of the regime at the 2023 Package Meeting of 26-27 October 2023. The Authority noted that it wished to determine how this regime, which uses mass collection of data from the Currency Transaction Register to identify benefit recipients potentially living abroad, complies with the data minimisation principle, and the principle of proportionality. The Authority noted that there was no definition of "risk groups" defined in the provisions that provide a legal basis for the processing of data in this context, namely Section 21-4 d of the National Insurance Act, in conjunction with Section 21-4(1) thereof, as well as the relevant Circular (R21-00). The Authority further noted its concerns that the bodies that would have access to the data did not seem to be clearly defined.

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<sup>1</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>2</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.

At the 2023 Package Meeting,<sup>3</sup> the representatives of the Norwegian Government noted that the purpose of the Currency Transaction Register was to counter criminality per the relevant domestic legal provisions and that NAV was empowered to have access thereto by Article 6 of the same Act. Furthermore, for the purposes of certain classes of allowances, such as work assessment allowance, it was a condition that recipients should generally stay in Norway, necessitating their being controlled for this purpose by NAV.

The representatives of the Norwegian Government further clarified that while “risk groups” were not defined, in fact, what constituted a risk group would be determined on a periodic basis, rotating between different classes of benefits. However, there were plans in the works to review and revise the relevant circular in this regard. In addition, the majority of individuals in such groups were, in fact, “filtered out” from such searches, since usually, stays of less than 4 months in a foreign country (including an EEA State) would not be seen as an issue, and would not be monitored further.

Individuals who had been monitored – and who had thus had their benefits cut as a result – would be notified *post factum*, and in limited circumstances, the information garnered might be passed on to the police, where evidence was adduced of intentional or gross misconduct amounting to fraud.

The representatives of the Norwegian Government noted that Article 6(1)(e) GDPR provided for a legal basis, namely the exercise of public authority, and that Article 4(2) of the Norwegian NAV Act empowered the NAV to carry out control, including mass collection and collation of subjects’ data, per Article 21(4)(d) of the same Act. The representatives of the Norwegian Government noted that searches were only ever conducted for the purposes of control, or if there was suspicion that a crime had been committed, and that only approximately 10 people within NAV had access to the database.

The representatives of the Authority noted that, according to the information received, the *travaux préparatoires* to the NAV Act dated from prior to the entry into force of the GDPR in the EEA legal order, and that therefore the privacy assessment underpinning the Act was based on an outmoded conception of EEA law. The representatives of the Authority noted that the procedures for the deletion of data needed to be written down, and risk groups defined in the Circular.

In the Reply of the Norwegian Government to the Authority’s Follow-Up Letter, sent on 8 January 2024 (Doc No 1428332, your ref. 22/3509), the Norwegian Government made it clear that NAV had halted all use of the Currency Transaction Register for control purposes until such time as a thorough assessment of the current regime has been carried out. In addition, the Reply addressed measures to ensure compliance with the relevant provisions of the GDPR, along with a planned timeframe for their implementation. The Reply noted that after the 2023 Package Meeting, NAV had initiated a complete review of the current practice of using the Currency Transaction Register for control purposes, and would change the practice to ensure compliance with the GDPR.

In this regard, the Norwegian Government undertook that, as the relevant Circular should reflect and give guidelines for the administration’s practice, it will be updated once the current practice has been reviewed and changes have been made. Further, the Reply stated that the principle of data minimisation will be assessed as part of the process to ensure the regime’s compliance with the GDPR, and that a data protection impact assessment with respect to the current control regime is in progress. The letter further noted that this type of work is by its nature time consuming, and stated that if all goes according to plan the scheduled activities would be finished by the end of the second quarter of 2024.

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<sup>3</sup> The minutes of the Package Meeting are recorded in the Follow-Up Letter of 5 December 2023 (Doc No 1419575).

The Authority welcomes the fact that, at least for the moment, usage of the Currency Transaction Register for control purposes has ceased, as well as the review undertaken by the Norwegian Government on foot of the 2023 Package Meeting.

In order for the Authority to examine and assess the case further, and taking account of the time-frame suggested by the Norwegian Government (stating that, in principle, the review and other relevant measures should have been completed by the end of the second quarter of 2024), the Norwegian Government is invited to provide the following information:

1. Given that usage of the Currency Transaction Register for control purposes has ceased, is (or has) any other method of control being exercised in the meantime?
2. Please provide a full summary of the measures taken to ensure compliance with the GDPR and other relevant data protection principles, including the results of the data protection impact assessment and measures taken to ensure compliance with the principle of data minimisation.
3. Please provide details of any circulars or similar instruments (including drafts thereof if the final versions are not yet available) intended to give effect to any new control regime implemented to supplant that which was withdrawn on foot of the 2023 Package Meeting discussions. Please provide English translations where possible.

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 15 June 2024.

Yours faithfully,

Maria Moustakali  
Deputy Director  
Internal Market Affairs Directorate

*This document has been electronically authenticated by Maria Moustakali.*