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Judgment in Case E-13/20 *O v the Norwegian Government*

**UNEMPLOYMENT BENEFITS AND THE REQUIREMENT TO STAY IN THE
COMPETENT EEA STATE**

In a judgment delivered today, the Court answered questions referred to it by the National Insurance Court (*Trygderetten*) regarding the interpretation of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (“the Regulation”).

The case before the National Insurance Court concerns an order for repayment of unemployment benefits that were paid whilst O was staying in Germany. The basis for the order was that O did not fulfil a requirement that an insured person must be physically present in Norway in order to be entitled to unemployment cash benefits. O was sanctioned on the ground that he had been grossly negligent in failing to report his stays outside of Norway.

By question 1, the National Insurance Court asked whether the requirement that the unemployed person must stay in Norway is compatible with the Regulation in cases where the conditions of Articles 64, 65 or 65a of the Regulation are not fulfilled. The Court held that Article 63 of the Regulation derogates from the main rule in Article 7 and allows EEA States to impose residence rules, including presence requirements, for entitlement to unemployment benefits in cases other than those provided for by Articles 64, 65 and 65a. Further the Court held that those Articles exhaustively regulate the three situations in which the competent EEA State is required to allow recipients of an unemployment benefit to reside or stay in the territory of another EEA State. The Court therefore concluded that the requirement to stay in Norway to be entitled to unemployment benefits in cases where the conditions of Articles 64, 65 or 65a are not fulfilled is compatible with the Regulation, including Article 5(b) thereof.

By questions 2 to 4 and 6, the National Insurance Court asked whether Articles 31 or 36 EEA and/or Directive 2004/38/EC apply in the case of temporary stays in another EEA State such as those in the main proceedings. The Court found that outside the situations expressly mentioned in Articles 64, 65 and 65a of the Regulation, the requirement to stay in Norway does not fall to be assessed under Articles 31 and 36 EEA. According to the same considerations, the Court found that the requirement does not fall to be assessed in the light of Directive 2004/38/EC.

Question 5 concerned whether it is compatible with EEA law to require repayment and impose sanctions in the form of an interest surcharge for a failure to comply with an obligation to inform the competent institution about a stay in another EEA State in circumstances such as in the main proceedings. The Court found that EEA States retain the power to determine in their domestic legislation whether unlawfully acquired allowances and benefits should be repaid. The EEA States must, however, exercise that power in accordance with EEA law and its general principles, including the principles of equivalence and effectiveness.

The full text of the judgment may be found on the Court’s website: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.