

EFTA COURT

**Action brought on 10 October 2023 by the EFTA Surveillance Authority
against Norway**

(Case E-13/23)

An action against Norway was brought before the EFTA Court on 10 October 2023 by the EFTA Surveillance Authority, represented by Ingibjörg Ólöf Vilhjálmsdóttir, Kyrre Isaksen, and Melpo-Menie Joséphidès, acting as Agents of the EFTA Surveillance Authority, Avenue des Arts 19H, B-1000 Brussels, Belgium.

The EFTA Surveillance Authority requests the EFTA Court to declare that:

By maintaining in force an authorisation requirement in Section 4-1 of the Norwegian Financial Institutions Act to set up subsidiaries or acquiring of Norwegian financial institutions in other EEA States, Norway has breached:

- **Articles 14, 26, 57 and 60 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 *on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)* (recast);**
- **Articles 8, 16 and 24 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 *on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms*, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;**
- **Articles 9 and 20 of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 *on the activities and supervision of institutions for occupational retirement provision*;**
- **Article 5 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 *on payment services in the internal market*;**
- **Article 3 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 *on the taking up, pursuit and prudential supervision of the business of electronic money institutions*, and**
- **Article 31 of the EEA Agreement.**

Legal and factual background and pleas in law adduced in support:

- By the present Application, the EFTA Surveillance Authority (the Authority) seeks a declaration that Norway has breached its obligations under EEA law by maintaining an authorisation requirement for Norwegian financial institutions setting up subsidiaries in other EEA States, prescribed by Section 4-1 of the Norwegian Financial Institutions Act (the FIA).
- The Authority claims that by maintaining the authorisation requirement, the provision of the legislation in question amounts to a *de facto* prior authorisation requirement.
- By letter of 15 October 2015, the Authority informed Norway that it had opened an own-initiative case concerning the authorisation requirement to set up subsidiaries of Norwegian financial institutions in other EEA States, prescribed by Section 4-1 of the FIA, and asked Norway to provide certain information for the purpose of the examination of the matter.
- Norway provided the requested information, by a letter of 8 February 2016, essentially claiming that the authorisation requirement in Section 4-1 ensured financial stability and complied with Article 31 EEA.
- After exchange of letters during the years 2018 and 2019, the Authority issued a letter of formal notice on 11 December 2019 where it held that by maintaining in force an authorisation requirement such as the one in Section 4-1 of the FIA, Norway was in breach of Directives 2009/138/EC, 2013/36/EU, 2003/41/EC, (EU) 2015/2366 and 2009/110/EC and/or of Article 31 EEA.
- In its reply on 2 March 2020, Norway maintained its view that the authorisation scheme contributed to the legitimate goal of safeguarding financial stability in Norway but also noted that it would explore whether other measures than the prior authorisation requirement could possibly achieve the same high level of protection of financial stability.
- The Authority delivered a reasoned opinion to Norway on 8 July 2020 to which Norway answered on 9 December 2020.
- On 7 July 2022, Norway informed the Authority that the relevant provisions of Section 4-1 of the FIA had been amended. The Authority issued a supplementary letter of formal notice on 5 October 2022 to which

Norway replied on 2 December 2022, stating that Norway did not agree with the Authority's assessment that the amendments to the relevant legislation had resulted in the creation of a *de facto* authorisation scheme.

- The Authority sent a supplementary reasoned opinion to Norway on 19 April 2023, maintaining its conclusions held in the supplementary letter of formal notice, to which Norway replied on 20 June 2023, disagreeing with the Authority's conclusions and requesting a time extension "to ensure necessary time for the legislative process required for a revision" of Section 4-1 of the FIA.
- The request for time extension was rejected by the Authority on 25 July 2023 and it decided to bring the case to the EFTA Court.
- The Authority notes that the Norwegian legislation in question does not clearly establish which criteria must be fulfilled, in order for a Norwegian financial institution wishing to establish or acquire a financial institution as a subsidiary in another EEA State, to avoid an order from the Financial Supervisory Authority of Norway (FSA) that the establishment or the acquisition shall not be carried out or be subjected to additional conditions determined by the FSA.
- Hence, the Authority concludes that a *de facto* authorisation requirement, such as that established in Section 4-1, first to fifth sub-section of the FIA, is in breach of Articles 14, 26, 57 and 60 of Directive 2009/138/EC, Articles 8, 16, and 24 of Directive 2013/36/EU, Articles 9 and 20 of Directive 2003/41/EC, Article 5 of Directive (EU) 2015/2366 and Article 3 of Directive 2009/110/EC and constitutes an unjustified restriction on the freedom of establishment, in breach of Article 31 EEA.