

EFTA COURT

Action brought on 7 December 2022 by the EFTA Surveillance Authority against Norway

(Case E-15/22)

An action against Norway was brought before the EFTA Court on 7 December 2022 by the EFTA Surveillance Authority, represented by Kyrre Isaksen, Marte Brathovde 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:

- 1. Declare that Norway, by not providing and operating data link services by 5 February 2018, has failed to fulfil its obligations under Articles 3(1) and 7(1) of Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the single European sky, and**
- 2. Order Norway to bear the costs of these proceedings.**

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 failed to fulfil its obligations under Articles 3(1) and 7(1) of Commission Regulation (EC) No 29/2009 (“the Regulation).
- The Authority requested, in a letter to the Norwegian Government dated 31 May 2018, information regarding the status for the implementation of data link services in Norway. The Norwegian Government replied on 2 July 2018, confirming that the air traffic service provider designated by Norway, Avinor Air Navigation Services (Avinor Flysikring), had not yet implemented the data link services as required by the Regulation.
- Following a letter of formal notice issued by the Authority on 10 June 2020, the Norwegian Government, in its reply on 12 October 2020, did not dispute the Authority’s assessment that Norway had failed to fulfil its obligations under Article 3(1) and Article 7(1) of the Regulation.

- In a reasoned opinion of 10 November 2021, the Authority maintained its assessment and concluded that, by not providing and operating data link services by 5 February 2018, Norway had failed to fulfil its obligations under Articles 3(1) and 7(1) of the Regulation.
- The Norwegian Government, in its letter of 15 February 2022, referred to technical challenges, unreasonable costs and safety concerns as reasons for not implementing data link services by the deadline set out in the Regulation or in the Authority's reasoned opinion.
- The Authority submits that there is no legal basis in the Regulation, as incorporated into the EEA Agreement, or otherwise in that Agreement, based on which non-compliance of the obligations set out in Articles 3(1) and 7(1) of the Regulation could be justified in this case.