REPORT FOR THE HEARING

in Case E-24/24

APPLICATION to the Court pursuant to the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice in the case between

EFTA Surveillance Authority

and

The Kingdom of Norway,

seeking a declaration that, by maintaining in force certain national rules, Norway has failed to fulfil its obligations under Article 22(8) and Article 23(1) and (2) 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, and Article 58(7) and Article 59(1) and (2) 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) and, by maintaining in force a certain administrative practice, Norway has failed to fulfil its obligations under Articles 22 and 23 of Directive 2013/36/EU and Articles 57 to 59 of Directive 2009/138/EC.

I INTRODUCTION

1. The present case concerns two matters: the alleged incorrect implementation of Article 22(8) and Article 23(1) and (2) of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ("CRD") and Article 58(7) and Article 59(1) and (2) of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance ("Solvency II") and the alleged incorrect application of these provisions.

2. The EFTA Surveillance Authority ("ESA") contends that, by maintaining in force provisions in the Norwegian Act on financial institutions and financial groups that introduce additional criteria for assessing potential buyers going beyond the exhaustive

list of criteria specified in the CRD and Solvency II, Norway has failed to fulfil its obligations under these directives.

3. Further, ESA asserts that Norway has failed to fulfil its obligations under the CRD and Solvency II, as Norway maintains an administrative practice that requires proposed acquirers to obtain approval for acquiring a stake of 25 per cent or more, deviating from the notification thresholds exhaustively set out by the provisions of these directives. ESA argues that by requiring approval for the acquisition of 25 per cent or more of voting rights or capital under its national law, with only limited exceptions and without conducting an individual suitability assessment, Norway has not met its obligations under the CRD and Solvency II.

4. Norway submits that Section 6-3 of the Act on financial institutions and financial groups, in the version in force on 19 September 2023 (“the material time”), complied with the CRD and Solvency II. Further, Norway denies that the directives are incorrectly applied.

II LEGAL BACKGROUND

EEA law

5. Article 7(b) of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) reads:

> *Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows:*
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> *(b) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.*

6. The second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”) reads:

> *If the State concerned does not comply with the opinion within the period laid down by the EFTA Surveillance Authority, the latter may bring the matter before the EFTA Court.*

The Qualifying Holdings Directive

7. Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (“the Qualifying Holdings Directive”) (OJ 2007 L 247, p. 1, and Norwegian EEA Supplement 2013 No 73, p. 1) was incorporated in the EEA Agreement at points 7a, 7b, 11, 14 and 31ba of Annex IX (Financial services) to the Agreement by

Decision of the EEA Joint Committee No 79/2008 of 4 July 2008 (OJ 2008 L 280, p. 7, and Norwegian EEA Supplement 2008 No 64, p. 1) ("JCD No 79/2008"). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway which were fulfilled by 17 September 2010. JCD No 79/2008 entered into force on 1 November 2010. The Qualifying Holdings Directive is no longer in force. It was repealed by Directive 2014/65/EU which was incorporated in the EEA Agreement at point 31ba of Annex IX to the Agreement by Decision of the EEA Joint Committee No 78/2019 of 29 March 2019 (OJ 2019 L 279, p. 143, and Norwegian EEA Supplement 2019 No 88, p. 1) ("JCD No 78/2019"). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway which were fulfilled by 2 December 2019. JCD No 78/2019 entered into force on 3 December 2019.

8. Recitals 3, 4, 5, 6, 8 and 9 of the Qualifying Holdings Directive read:

> *(3) The role of the competent authorities in both domestic and cross-border cases should be to carry out the prudential assessment within a framework of a clear and transparent procedure and a limited set of clear assessment criteria of strictly prudential nature. It is therefore necessary to specify criteria for the supervisory assessment of shareholders and management in relation to a proposed acquisition and a clear procedure for their application. This Directive prevents any circumvention of the initial conditions for authorisation by acquiring a qualifying holding in the target entity in which the acquisition is proposed. This Directive should not prevent the competent authorities from taking into account commitments made by the proposed acquirer to meet prudential requirements under the assessment criteria laid down in this Directive, provided that the rights of the proposed acquirer under this Directive are not affected.*
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> *(4) The prudential assessment of a proposed acquisition should not in any way suspend or supersede the requirements of on-going prudential supervision and other relevant provisions to which the target entity has been subject since its own initial authorisation.*
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> *(5) This Directive should not prevent market participants from operating effectively in the securities market. The information required for assessing a proposed acquisition, as well as the assessment of the compliance with the different criteria should, therefore, be proportionate, among other things, to the involvement of the proposed acquirer in the management of the entity in which the acquisition is proposed. The competent authorities should, in accordance with good administrative practice, complete their assessment without delay and inform the proposed acquirer also of a positive assessment, in any event if requested to do so by the proposed acquirer.*
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> *(6) For markets that are increasingly integrated and where group structures may extend to various Member States, the acquisition of a qualifying holding is subject to scrutiny in a number of Member States. Maximum harmonisation throughout the Community of the procedure and the prudential assessments,*

without the Member States laying down stricter rules, is therefore critical. The thresholds for notifying a proposed acquisition or a disposal of a qualifying holding, the assessment procedure, the list of assessment criteria and other provisions of this Directive to be applied to the prudential assessment of proposed acquisitions should therefore be subject to maximum harmonisation. This Directive should not prevent the Member States from requiring that the competent authorities are to be informed of acquisitions of holdings below the thresholds laid down in this Directive, so long as a Member State imposes no more than one additional threshold below 10 % for this purpose. Nor should it prevent the competent authorities from providing general guidance as to when such holdings would be deemed to result in significant influence.

(8) With regard to the prudential assessment, the criterion concerning the 'reputation of the proposed acquirer' implies the determination of whether any doubts exist about the integrity and professional competence of the proposed acquirer and whether these doubts are founded. Such doubts may arise, for instance, from past business conduct. The assessment of the reputation is of particular relevance if the proposed acquirer is an unregulated entity but should be facilitated if the acquirer is authorised and supervised within the European Union.

(9) A list established by the Member State should specify the information that may be requested for the purpose of assessments, strictly according to the criteria set out in this Directive. The information should be proportionate and adjusted to the nature of the proposed acquisition, in particular if the proposed acquirer is an unregulated entity or established in a third country. Provision should also be made for the possibility to request less extensive information in justified cases.

The CRD

9. 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 (OJ 2013 L 176, p. 338, and Norwegian EEA Supplement 2022 No 13, p. 569) was incorporated into Annex IX to the EEA Agreement at point 14 by Decision of the EEA Joint Committee No 79/2019 of 29 March 2019 (OJ 2019 L 321 p. 170, and Norwegian EEA Supplement 2019 No 99, p. 1) ("JCD No 79/2019"). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway and were fulfilled by 27 November 2019. JCD No 79/2019 entered into force on 1 January 2020.

10. Article 3(1)(1) and (33) of the CRD, entitled "Definitions", reads:

1. For the purposes of this Directive, the following definitions shall apply:

(1) 'credit institution' means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;

(33) 'qualifying holding' means qualifying holding as defined in point (36) of Article 4(1) of Regulation (EU) No 575/2013;

11. Article 4(3), (4) and (5) of the CRD, entitled "Designation and powers of the competent authorities", reads:

3. Member States shall ensure that appropriate measures are in place to enable the competent authorities to obtain the information needed to assess the compliance of institutions and, where applicable, of financial holding companies and mixed financial holding companies, with the requirements referred to in paragraph 2 and to investigate possible breaches of those requirements.

4. Member States shall ensure that the competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to prudential supervision, investigations and penalties set out in this Directive and in Regulation (EU) No 575/2013.

5. Member States shall require that institutions provide the competent authorities of their home Member States with all the information necessary for the assessment of their compliance with the rules adopted in accordance with this Directive and Regulation (EU) No 575/2013. Member States shall also ensure that internal control mechanisms and administrative and accounting procedures of the institutions permit the checking of their compliance with such rules at all times.

12. Article 8(1) and (2) of the CRD, entitled "Authorisation", reads:

1. Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 10 to 14, they shall lay down the requirements for such authorisation and notify EBA.

2. EBA shall develop draft regulatory technical standards to specify:

(a) the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations, structural organisation and governance arrangements provided for in Article 10;
(b) the requirements applicable to shareholders and members with qualifying holdings, or, where there are no qualifying holdings, to the 20 largest shareholders or members, pursuant to Article 14; and
(c) obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as referred to in Article 14.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in points (a), (b) and (c) of the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

13. Article 10 of the CRD, entitled "Programme of operations, structural organisation and governance arrangements", reads:

1. Member States shall require applications for authorisation to be accompanied by a programme of operations setting out the types of business envisaged and the structural organisation of the credit institution, including indication of the parent undertakings, financial holding companies and mixed financial holding companies within the group. Member States shall also require applications for authorisation to be accompanied by a description of the arrangements, processes and mechanisms referred to in Article 74(1).

2. Competent authorities shall refuse authorisation to commence the activity of a credit institution unless they are satisfied that the arrangements, processes and mechanisms referred to in Article 74(1) enable sound and effective risk management by that institution.

14. Article 14(3) of the CRD, entitled "Shareholders and members", reads:

3. Where close links exist between the credit institution and other natural or legal persons, competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall refuse authorisation to commence the activity of a credit institution where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.

The competent authorities shall require credit institutions to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on an ongoing basis.

15. Article 18 of the CRD, entitled "Withdrawal of authorisation", reads:

The competent authorities may only withdraw the authorisation granted to a credit institution where such a credit institution:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, unless the Member State concerned has made provision for the authorisation to lapse in such cases;

(b) has obtained the authorisation through false statements or any other irregular means;
(c) no longer fulfils the conditions under which authorisation was granted;
(d) no longer meets the prudential requirements set out in Part Three, Four or Six, except for the requirements laid down in Articles 92a and 92b of Regulation (EU) No 575/2013 or imposed under point (a) of Article 104(1) or Article 105 of this Directive or can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors;
(e) falls within one of the other cases where national law provides for withdrawal of authorisation; or
(f) commits one of the breaches referred to in Article 67(1).

16. Title III of the CRD is entitled “Requirements for access to the activity of credit institutions”. Chapter 2 thereof, entitled “Qualifying holding in a credit institution”, contains Articles 22 to 27.

17. Article 22(1) and (8) of the CRD, entitled “Notification and assessment of proposed acquisitions”, reads:

1. Member States shall require any natural or legal person or such persons acting in concert (the "proposed acquirer"), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the credit institution would become its subsidiary (the "proposed acquisition"), to notify the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding in writing in advance of the acquisition, indicating the size of the intended holding and the relevant information, as specified in accordance with Article 23(4). Member States shall not be required to apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

8. Member States shall not impose requirements for notification to, or approval by, the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

18. Article 23(1) and (2) of the CRD, entitled “Assessment criteria”, reads:

1. In assessing the notification provided for in Article 22(1) and the information referred to in Article 22(3), the competent authorities shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that credit institution, assess the suitability of the *proposed acquirer and the financial soundness of the proposed acquisition in accordance with the following criteria:*

(a) the reputation of the proposed acquirer;
(b) the reputation, knowledge, skills and experience, as set out in Article 91(1), of any member of the management body who will direct the business of the credit institution as a result of the proposed acquisition;
(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;
(d) whether the credit institution will be able to comply and continue to comply with the prudential requirements based on this Directive and Regulation (EU) No 575/2013, and where applicable, other Union law, in particular Directives 2002/87/EC and 2009/110/EC, including whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

19. Article 26(2) of the CRD, entitled "Information obligations and penalties", reads:

2. Member States shall require that, where the influence exercised by the persons referred to in Article 22(1) is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. Such measures may consist in injunctions, penalties, subject to Articles 65 to 72, against members of the management body and managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members of the credit institution in question.

Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information as set out in Article 22(1) and subject to Articles 65 to 72.

If a holding is acquired despite opposition by the competent authorities, Member States shall, regardless of any other penalty to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

20. Article 64(1) of the CRD, entitled "Supervisory powers and powers to impose penalties", reads:

1. Competent authorities shall be given all supervisory powers to intervene in the activity of institutions, financial holding companies and mixed financial holding companies that are necessary for the exercise of their function, including in particular the right to withdraw an authorisation in accordance with Article 18, the powers referred to in Articles 18, 102, 104 and 105, and the powers to take the measures referred to in Article 21a(6).

21. Article 74(1) of the CRD, entitled "Internal governance and recovery and resolution plans", reads:

1. Institutions shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management.

The remuneration policies and practices referred to in the first subparagraph shall be gender neutral.

22. Article 104(1)(e) of the CRD, entitled "Supervisory powers", reads:

1. For the purposes of Article 97, Article 98(4) and (5), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:

(e) restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;

The CRR

23. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ("CRR") (OJ 2013 L 176, p. 1, and Norwegian EEA Supplement 2022 No 13, p. 225) was incorporated at point 14a of Annex IX to the EEA Agreement by Decision of the EEA Joint Committee No 79/2019 of 29 March 2019 (OJ 2019 L 321, p. 170, and Norwegian EEA Supplement 2019 No 99, p. 1).

Constitutional requirements were indicated by Iceland, Liechtenstein and Norway and were fulfilled by 27 November 2019. JCD No 79/2019 entered into force on 1 January 2020.

24. Article 4(1)(1) and (36) of the CRR, entitled "Definitions", reads:

> *1. For the purposes of this Regulation, the following definitions shall apply:*
>
> *(1) 'credit institution' means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;*
>
> *(36) 'qualifying holding' means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;*

Solvency II

25. 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) (OJ 2009 L 335, p. 1, and Norwegian EEA Supplement 2015 No 76, p. 987) was incorporated in the EEA Agreement at point 1 of Annex IX to the Agreement by Decision of the EEA Joint Committee No 78/2011 of 1 July 2011 (OJ 2011 L 262, p. 45, and Norwegian EEA Supplement 2011 No 54, p. 57) ("JCD No 78/2011"). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway and were fulfilled by 23 October 2012. JCD No 78/2011 entered into force on 1 December 2012.

26. Recitals 74 and 75 of Solvency II read:

> *(74) The legal framework has so far provided neither detailed criteria for a prudential assessment of a proposed acquisition nor a procedure for their application. A clarification of the criteria and the process of prudential assessment is therefore needed to provide the necessary legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof. Those criteria and procedures were introduced by provisions in Directive 2007/44/EC. As regards insurance and reinsurance those provisions should therefore be codified and integrated into this Directive.*
>
> *(75) Maximum harmonisation throughout the Community of those procedures and prudential assessments is therefore critical. However, the provisions on qualifying holdings should not prevent the Member States from requiring that the supervisory authorities are to be informed of acquisitions of holdings below the thresholds laid down in those provisions, so long as a Member State imposes no more than one additional threshold below 10 % for that purpose.*

Nor should those provisions prevent the supervisory authorities from providing general guidance as to when such holdings would be deemed to result in significant influence.

27. Title I of Solvency II is entitled "General rules on the taking-up and pursuit of direct insurance and reinsurance activities". Chapter IV thereof, entitled "Conditions governing business", contains Sections 1 to 6. Section 4, entitled "Qualifying holdings", contains Articles 57 to 63.

28. Article 13(21) of Solvency II, entitled "Definitions", reads:

For the purposes of this Directive, the following definitions shall apply:

(21) 'qualifying holding' means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

29. Article 14 of Solvency II, entitled "Principle of authorisation", reads:

1. The taking-up of the business of direct insurance or reinsurance covered by this Directive shall be subject to prior authorisation.

2. The authorisation referred to in paragraph 1 shall be sought from the supervisory authorities of the home Member State by the following:

(a) any undertaking which is establishing its head office within the territory of that Member State; or
(b) any insurance undertaking which, having received an authorisation pursuant to paragraph 1, wishes to extend its business to an entire insurance class or to insurance classes other than those already authorised.

30. Article 19 of Solvency II, entitled "Close links", reads:

Where close links exist between the insurance undertaking or reinsurance undertaking and other natural or legal persons, the supervisory authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The supervisory authorities shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the insurance or reinsurance undertaking has close links, or difficulties involved in the enforcement of those measures, prevent the effective exercise of their supervisory functions.

The supervisory authorities shall require insurance and reinsurance undertakings to provide them with the information they require to monitor *compliance with the conditions referred to in the first paragraph on a continuous basis.*

31. Article 29(1) of Solvency II, entitled "General principles of supervision", reads:

1. Supervision shall be based on a prospective and risk-based approach. It shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.

32. Article 34(3) of Solvency II, entitled "General supervisory powers", reads:

3. Member States shall ensure that supervisory authorities have the power to require all information necessary to conduct supervision in accordance with Article 35.

33. Article 35(1) of Solvency II, entitled "Information to be provided for supervisory purposes", reads:

1. Member States shall require insurance and reinsurance undertakings to submit to the supervisory authorities the information which is necessary for the purposes of supervision, taking into account the objectives of supervision laid down in Articles 27 and 28. Such information shall include at least the information necessary for the following when performing the process referred to in Article 36:

(a) to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk management systems, and their capital structure, needs and management;
(b) to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.

34. Article 57 of Solvency II, entitled "Acquisitions", reads:

1. Member States shall require any natural or legal person or such persons acting in concert (the proposed acquirer) who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an insurance or reinsurance undertaking or to further increase, directly or indirectly, such a qualifying holding in an insurance or reinsurance undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the insurance or reinsurance undertaking would become its subsidiary (the proposed acquisition), first to notify in writing the supervisory authorities of the insurance or reinsurance undertaking in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 59(4). Member States need not apply the 30 %

threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one third.

2. Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an insurance or reinsurance undertaking first to notify in writing the supervisory authorities of the home Member State, indicating the size of that person's holding after the intended disposal. Such a person shall likewise notify the supervisory authorities of a decision to reduce that person's qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the insurance or reinsurance undertaking would cease to be a subsidiary of that person. Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one third.

35. Article 58(7) of Solvency II, entitled "Assessment period", reads:

7. Member States shall not impose requirements for the notification to and approval by the supervisory authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

36. Article 59(1), (2) and (4) of Solvency II, entitled "Assessment", reads:

1. In assessing the notification provided for in Article 57(1) and the information referred to in Article 58(2) the supervisory authorities shall, in order to ensure the sound and prudent management of the insurance or reinsurance undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the insurance or reinsurance undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;
(b) the reputation and experience of any person who will direct the business of the insurance or reinsurance undertaking as a result of the proposed acquisition;
(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance or reinsurance undertaking in which the acquisition is proposed;
(d) whether the insurance or reinsurance undertaking will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, notably, Directive 2002/87/EC, in particular, whether the group of which it will become part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the supervisory authorities and

> *determine the allocation of responsibilities among the supervisory authorities;*
> *(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.*
>
> *2. The supervisory authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.*
>
> *4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the supervisory authorities at the time of notification referred to in Article 57(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.*

37. Article 62(1) of Solvency II, entitled “Qualifying holdings, powers of the supervisory authority”, reads:

> *Member States shall require that, where the influence exercised by the persons referred to in Article 57 is likely to operate against the sound and prudent management of an insurance or reinsurance undertaking, the supervisory authority of the home Member State of that undertaking in which a qualifying holding is sought or increased take appropriate measures to put an end to that situation. Such measures may consist, for example, of injunctions, penalties against directors and managers, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.*
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> *Similar measures shall apply to natural or legal persons failing to comply with the notification obligation established in Article 57.*
>
> *Where a holding is acquired despite the opposition of the supervisory authorities, the Member States shall, regardless of any other sanctions to be adopted, provide for:*
>
> *(1) the suspension of the exercise of the corresponding voting rights; or*

38. Article 144 of Solvency II, entitled “Withdrawal of authorisation”, reads:

1. The supervisory authority of the home Member State may withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:

(a) the undertaking concerned does not make use of the authorisation within 12 months, expressly renounces it or ceases to pursue business for more than six months, unless the Member State concerned has made provision for authorisation to lapse in such cases;

(b) the undertaking concerned no longer fulfils the conditions for authorisation;

(c) the undertaking concerned fails seriously in its obligations under the regulations to which it is subject.

The supervisory authority of the home Member State shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the event that the undertaking does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is manifestly inadequate or the undertaking concerned fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.

2. In the event of the withdrawal or lapse of authorisation, the supervisory authority of the home Member State shall notify the supervisory authorities of the other Member States accordingly, and those authorities shall take appropriate measures to prevent the insurance or reinsurance undertaking from commencing new operations within their territories.

The supervisory authority of the home Member State shall, together with those authorities, take all measures necessary to safeguard the interests of insured persons and, in particular, shall restrict the free disposal of the assets of the insurance undertaking in accordance with Article 140.

3. Any decision to withdraw authorisation shall state the full reasons and shall be communicated to the insurance or reinsurance undertaking concerned.

National law[1]

39. The Act of 10 April 2015 no 17 on financial institutions and financial groups *(Lov om finansforetak og finanskonsern)* ("FIA") governs the taking-up and pursuit of banking and insurance activities and read at the material time as follows:

40. Section 1-3 FIA, entitled "Financial institutions", read:

[1] All translations of national law are unofficial.

(1) A 'financial institution' is an entity carrying on business as a

a. bank
b. mortgage credit institution
c. finance company
d. insurance undertaking
e. pension undertaking
f. holding company of a financial group.

(2) Except as otherwise provided by or pursuant to this Act, an entity licensed to operate as a payment institution or electronic money institution is also considered to be a financial institution.

41. Section 3-2(1) FIA, entitled "Granting of licence, conditions etc.", read:

(1) A licence, approval or consent under this Act is granted by the ministry. Conditions may be attached to the licence, approval or consent, including that the business shall be operated in a particular manner or within certain limits, or other conditions in accordance with the purposes that the legislation on financial institutions is intended to serve.

42. Section 3-3(2) FIA, entitled "Ownership structure", read:

(2) Three-quarters of the share capital of a bank or insurance undertaking shall be subscribed by increase of capital with no preferential right for shareholders or others. Where it is stated in the memorandum of association that the founders or other parties have acquired or will acquire a number of shares, such shares may not be disposed of until the entity concerned has published the annual accounts for its first full year of operation.

43. Chapter 6 FIA, entitled "Supervision of owners of qualifying holdings in financial institutions", contains Sections 6-1 to 6-5.

44. Section 6-1(1) and (2) FIA, entitled "Acquisition of holdings in financial institutions etc.", read:

(1) Any person intending to carry out an acquisition whereby that person will become the owner of a qualifying holding in a financial institution must have notified Finanstilsynet thereof in advance. The same applies to acquisitions whereby a qualifying holding will reach or exceed 20 per cent, 30 per cent or 50 per cent, respectively, of the capital or voting rights of a financial institution, or whereby a holding confers controlling influence as referred to in section 1-3 of the Public Limited Companies Act. A qualifying holding is deemed to be a holding that represents 10 per cent or more of the capital or voting rights of a financial institution, or which otherwise makes it possible to exercise significant influence over the management of an institution and its business. In the calculation of a qualifying holding in an institution that has

issued equity certificates, such holding is calculated as a proportion of the sum of ownerless capital (grunnfondskapitalen) and owner capital (eierandelskapitalen) or of the voting rights at the general meeting. Acquisitions carried out by two or more acquirers in concert are deemed to be a single acquisition.

(2) Acquisitions covered by subsection (1) may only be carried out under a licence issued by the ministry.

45. Section 6-3 FIA, entitled "Assessment of fitness and propriety etc.", read:

(1) In the decision of whether or not a licence shall be issued under section 6-1 subsection (2), the Ministry of Finance shall, with due regard for the need to assure proper and adequate management of the financial institution and its activities and in consideration of the level of influence the acquirer will as owner be able to exercise in the institution after the acquisition, assess the acquirer's suitability and propriety as owner of his overall holding after the acquisition, and whether the acquisition of the holding is financially sound.

(2) In any assessment made under subsection (1) the Ministry of Finance shall in particular take into consideration:

(a) the acquirer's general reputation, professional competence, experience and previous conduct in business relationships,
(b) the general reputation, professional competence, experience and previous conduct in business relationships of persons who after the acquisition will form part of the board of directors or management of the institution's business,
(c) whether the acquirer will be able to use the influence conferred by the holding to obtain advantages for his own or associated activity, or indirectly exert influence on other business activity, and whether the acquisition could result in impairment of the institution's independence.
(d) whether the acquirer's financial situation and available financial resources are adequate to the types of activity in which the institution is engaged or in which it must be assumed that the institution will become engaged after the acquisition, and whether the acquirer and its business are subject to financial supervision,
(e) whether the financial institution is and will continue to be in a position to meet capital adequacy and prudential requirements and other supervisory requirements that follow from the financial legislation,
(f) whether the ownership structure of the institution after the acquisition or special ties between the acquirer and a third party will impede effective supervision of the institution, in particular whether the group of which the institution will form part after the acquisition is organised in a manner that does not impede effective supervision, including effective exchange of information and allocation of supervisory tasks between the supervisory authorities involved,

(g) whether there are grounds for assuming that money laundering or financing of terrorism, or any attempt to commit such an act, is taking place in connection with the acquisition, or that the acquisition will increase the risk of such an act.

III FACTS, PRE-LITIGATION PROCEDURE AND PROCEDURE BEFORE THE COURT

46. In the pre-litigation procedure, ESA addressed two separate issues: one related to the alleged incorrect implementation of Article 22(8) and Article 23(1) and (2) of the CRD and of Article 58(7) and Article 59(1) and (2) of Solvency II and the other to their alleged incorrect application.

Alleged incorrect implementation of Article 22(8) and Article 23(1) and (2) of the CRD and of Article 58(7) and Article 59(1) and (2) of Solvency II

47. On 30 September 2015, ESA sent a request for information and informed Norway that it had opened an own-initiative case to examine whether Norway's practices regarding the assessment of proposed acquisitions and increases in holdings in the financial sector were in compliance with EEA law. On 4 November 2015 and on 7 January 2016, Norway replied, providing information about its administrative practices regarding credit institutions, insurance undertakings and on provisions in Norwegian law that set out the criteria for assessing the suitability of acquirers of holdings. On 12 February 2016, ESA requested Norway to provide further information on provisions in Norwegian law setting out the criteria for assessment on the suitability of acquirers of holdings, and, on 21 March 2016, Norway replied.

48. On 15 March 2017, by letter of formal notice, ESA concluded that Article 19a of Directive 2006/48/EC, as inserted by Directive 2007/44/EC, (the criteria of Article 19a of Directive 2006/48/EC are now contained in Article 23 of the CRD) and Article 59 of Solvency II had not been correctly implemented into Norwegian law. On 15 June 2017, Norway submitted its reply, acknowledging that "an adjusted wording of Section 6-3 FIA could reflect the meaning of the directive in a more precise manner".

49. On 28 September 2022, ESA issued a supplementary letter of formal notice, in which ESA found that Article 22(8) and Article 23(1) and (2) of the CRD and Article 58(7) and Article 59(1) and (2) of Solvency II had not been correctly implemented into Norwegian law. On 28 November 2022, Norway replied, and informed ESA that it was committed to drafting a legislative proposal to address the issue and would keep ESA updated. The aim was to send a proposal for public consultation during the winter of 2022-23.

50. On 19 July 2023, as ESA had not received further updates from Norway, ESA issued a reasoned opinion, in which it concluded that, by maintaining Section 6-3(2) FIA in force, particularly its first sentence and provisions (c) and (d), Norway had failed to fulfil its obligations under Article 22(8) and Article 23(1) and (2) of the CRD and Article 58(7) and Article 59(1) and (2) of Solvency II. Pursuant to the second paragraph

of Article 31 SCA, ESA required Norway to take the necessary measures to comply with the reasoned opinion within two months of its receipt. This deadline expired on 19 September 2023.

51. On 1 November 2023, Norway replied to the reasoned opinion. Norway informed ESA about the preparation of a proposal for legislative amendments anticipated to be adopted during the first half of 2024. On 19 April 2024, Norway informed ESA that a proposal had been submitted to the Norwegian Parliament. On 17 June 2024, the Norwegian Parliament adopted amendments to the FIA which entered into force on 1 July 2024.

Alleged incorrect application of Article 22(1) and (8) and Article 23(1) and (2) of the CRD and Articles 57(1) and 58(7) and Article 59(1) and (2) of Solvency II

52. On 25 August 2020, having received a complaint, ESA requested information on Norwegian administrative practice relating to the prudential assessment of acquisitions and increases of qualifying holdings, stating that this practice could entail a breach of Articles 57 and 59 of Solvency II and Articles 22 and 23 of the CRD. On 26 October 2020, Norway provided information on its rules, practices, and other information regarding the alleged incorrect application of these provisions.

53. On 28 September 2022, ESA issued a letter of formal notice. In this letter, ESA concluded that, by maintaining in force an administrative practice which requires the approval of national authorities for the acquisition of 25 per cent or more of voting rights or capital in insurance undertakings and credit institutions and which, except for limited exceptions, results in the rejection of an application with no assessment of suitability being carried out, Norway had failed to fulfil its obligations under Article 57(1) and Article 59(1) and (2) of Solvency II and Article 22(8) and Article 23(1) and (2) of the CRD: “[ESA] must conclude that by maintaining this administrative practice in force, Norway has failed to fulfil its obligation arising from Articles 57 and 59 of ... ("Solvency II"), as regards the insurance sector, and its obligation arising from Articles 22 and 23 of ... ("CRD IV") ....”

54. In the same document, ESA cited the material legal text of Article 58(7) of Solvency II, but entitled it as Article 57(8) of Solvency II, writing: “Article 57(8) of Solvency II reads: Member States shall not impose requirements for the notification to and approval by the supervisory authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.” ESA concluded that there was a breach of Article 57(8) of Solvency II.

55. On 4 January 2023, Norway replied to the letter of formal notice, stating that it did not agree with ESA’s position. Norway argued that EEA law does not preclude the attachment of conditions to authorisations of financial undertakings. Norway maintained that its dispersed ownership policy relates to financial undertakings as such and does not concern the suitability of shareholders.

56. On 19 July 2023, ESA issued a reasoned opinion, maintaining its conclusions as set out in the letter of formal notice, but now also referring to a breach of Article 58(7) of Solvency II. Pursuant to the second paragraph of Article 31 SCA, ESA required Norway to take the necessary measures to comply with that reasoned opinion within two months of its receipt. This deadline expired on 19 September 2023.

57. On 1 November 2023, Norway replied to the reasoned opinion, maintaining its position that the administrative practice does not breach the EEA Agreement.

58. On 14 February 2025, the Court prescribed measures of organisation of procedure ("MoP") in accordance with Article 56(1) and Article 57(3)(a) and (b) of the Rules of Procedure ("RoP"), and in furtherance of Article 57(1) and Article 57(2)(c) RoP. Those participating in the proceedings before the Court were invited to make submissions, as regards the claim in the application that Article 58 of Solvency II has been violated, whether this part of the application meets the requirements under Article 31 SCA, and to indicate what, if any, consequences flow from their answer.

59. On 24 February 2025, ESA replied to the MoP, claiming that the application meets the requirements under Article 31 SCA. In ESA's submission, Norway's right to defend itself against the pleas formulated by ESA was respected, as the reference to Article 57(8) of Solvency II in the letter of formal notice of 28 September 2022 was only a clerical error and ESA may clarify its initial complaints in the application, provided that it does not alter the subject matter of the dispute.[2] ESA contends that, according to case law, Article 31 SCA "cannot be stretched so far as to mean that in every case the statement of the complaints set out in the letter of formal notice, the wording of the reasoned opinion and the forms of order sought in the action must be exactly the same, if the subject-matter of the proceedings as defined in the reasoned opinion has not been extended or altered".[3] Therefore, the clerical error has no consequences for the admissibility of the application regarding the second plea.

60. On 24 February 2025, Norway replied to the MoP, stating that it has noted the discrepancy in the references to Articles 57(8) and 58(7) of Solvency II but considers it a clerical error that has no effect as to the procedural rules applicable to treaty infringement proceedings before the Court.

Forms of order sought by the parties

61. On 23 September 2024, ESA brought an application under the second paragraph of Article 31 SCA, which was registered at the Court on the same date, requesting the Court to:

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[2] Reference is made to the judgment of 21 December 2016 in *Commission* v *Portugal*, C-503/14, EU:C:2016:979, paragraph 16.

[3] Reference is made to the judgments of 8 July 2010 in *Commission* v *Portugal*, C-171/08, EU:C:2010:412, paragraph 26, and of 27 November 2003 in *Commission* v *Finland*, C-185/00, EU:C:2003:639, paragraph 81 and case law cited; and to the opinion of Advocate General Alber of 29 May 2001 in *Commission* v *Italy*, C-439/99, EU:C:2001:295, point 16.

1. Declare that, by maintaining in force Section 6-3(2), in particular its first sentence and provisions (c) and (d) thereof, of the Act of 10 April 2015 No 17 on financial institutions and financial groups, Norway has failed to fulfil its obligations under Articles 22(8), 23(1) and (2) of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, as amended by Directive 2019/878, and Articles 58(7), 59(1) and (2) of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

2. Declare that, by maintaining in force an administrative practice which requires the approval of national authorities for the acquisition of 25% or more of voting rights or capital in credit institutions and insurance undertakings and which, save in the case of limited exceptions, results in the rejection of an application for such approval with no consideration of its merits, Norway has failed to fulfil its obligations under Articles 22 and 23 of Directive 2013/36/EU, as amended by Directive 2019/878, and Articles 57 to 59 of Directive 2009/138/EC;

3. Order Norway to bear the costs of the proceedings.

62. On 27 November 2024, Norway submitted its statement of defence, requesting the Court to:

1. *Dismiss the application of the EFTA Surveillance Authority as unfounded.*

2. Order the EFTA Surveillance Authority to pay the costs of the proceedings.

IV WRITTEN SUBMISSIONS

63. Written arguments have been received from the parties:

- ESA, represented by Kyrre Isaksen, Erlend Møinichen Leonhardsen, Claire Simpson and Melpo-Menie Joséphidès, acting as Agents;

- Norway, represented by Thea Westhagen Edell, Anders Narvestad, Fredrik Bergsjø and Oscar Nordén, acting as Agents.

64. Pursuant to Article 20 of the Statute of the Court, written observations have been received from:

- the European Commission (“the Commission”), represented by Dimitrios Triantafyllou and Gaëtane Goddin, acting as Agents.

V SUMMARY OF THE PLEAS IN LAW AND ARGUMENTS SUBMITTED

ESA

Introductory remarks

65. ESA submits that Norway has breached (i) Articles 22(8) and 23(1) of the CRD and Articles 58(7) and 59(1) of Solvency II by using non-exhaustive criteria in its national provisions; (ii) Article 23(1) of the CRD and Article 59(1) of Solvency II by introducing deviating assessment criteria in Section 6-3(2)(c) and (d) FIA; and (iii) the principles set out in Article 22(1) of the CRD and Article 57(1) of Solvency II by applying a restriction on acquisitions above 25 per cent without a sufficient case-by-case assessment.

66. According to ESA, Articles 22 to 23 of the CRD and Articles 57 to 59 of Solvency II require that any natural or legal person, or persons acting in concert (the "proposed acquirer"), who have decided to acquire, directly or indirectly, a qualifying holding in a credit institution or insurance undertaking, or to further increase such a holding to reach or exceed thresholds of 20 per cent, 30 per cent, or 50 per cent, or to make the institution a subsidiary, must notify in advance the competent supervisory authorities in the relevant EEA State. These supervisory authorities are responsible for assessing both the acquirer's suitability and the financial soundness of the proposed acquisition, based on specific criteria set out in Article 23(1) of the CRD and Article 59(1) of Solvency II. These criteria include evaluating the acquirer's reputation and financial soundness, in order to ensure that the acquisition will not compromise the sound management of the institution in question.[4] If there are reasonable grounds based on the assessment criteria expressly set out, the competent authorities may oppose the acquisition under Article 23(2) of the CRD and Article 59(2) of Solvency II. However, under Article 22(8) of the CRD and Article 58(7) of Solvency II, EEA States are prohibited from imposing more stringent notification or approval requirements than those set out in the CRD and Solvency II.

67. ESA claims that the prudential assessment criteria set out in Article 23(1) of the CRD and Article 59(1) of Solvency II are fully harmonised and exhaustive. These provisions, which were first introduced by the Qualifying Holdings Directive, establish a standardised legal framework for assessing acquisitions of qualifying holdings in credit institutions and insurance undertakings. As the Qualifying Holdings Directive is no longer in force, references to its recitals are made to the extent useful for the interpretation of the provisions of the CRD and Solvency II which it originally introduced.[5] These directives aim to ensure consistency and legal certainty across the EEA by mandating that only the criteria listed in these provisions should be used for

[4] Reference is made to the judgment of 25 January 2024 in *A Ltd* v *the Financial Market Authority (Finanzmarktaufsicht)*, E-2/23, paragraph 40.
[5] Reference is made to the judgment in *A Ltd* v *the Financial Market Authority (Finanzmarktaufsicht)*, E-2/23, cited above, paragraph 3.

prudential assessments, without the possibility of introducing additional or stricter requirements at the national level.

68. Recital 75 of Solvency II and recital 6 of the Qualifying Holdings Directive provide that maximum harmonisation of the procedure and prudential assessments is critical, with no EEA State allowed to impose more stringent rules than those outlined in the directives.[6] In *Netfonds*,[7] the Court found that any restrictions on acquisitions subsequent to authorisations of credit institutions and insurance undertakings must not go beyond the conditions stipulated by the Qualifying Holdings Directive, whose conditions are now found in the CRD and Solvency II.

First plea: incorrect implementation - non-exhaustive assessment criteria in Section 6-3(2) FIA which do not reflect the criteria listed in Article 23(1) of the CRD and Article 59(1) of Solvency II

69. By its first plea, ESA asserts that Section 6-3(2) FIA is intended to implement the prudential assessment criteria outlined in Article 23(1) of the CRD and Article 59(1) of Solvency II into Norwegian law. By maintaining Section 6-3(2) FIA, which permits the inclusion of additional criteria, Norway has incorrectly implemented Article 23(1) of the CRD and Article 59(1) of Solvency II and breached its obligations under Article 22(8) of the CRD and Article 58(7) of Solvency II. ESA emphasises that directives with exhaustive harmonisation, such as the CRD and Solvency II, must be implemented without deviations, as any such national rules could undermine the directives' objectives.

70. ESA contends that Section 6-3(2) FIA is incompatible with the clear and predictable framework that these directives aim to establish, as the criteria in Section 6-3(2)(c) and (d) FIA, specifically regarding the acquirer's influence and whether it is subject to financial supervision, do not align with the exhaustive criteria of the CRD and Solvency II. In ESA's submission, Section 6-3(2)(c) and (d) FIA could potentially jeopardise the consistency and legal certainty mandated by the CRD and Solvency II.

Section 6-3(2) FIA permits the consideration of additional criteria not listed in Article 23(1) of the CRD and Article 59(1) of Solvency II

71. ESA refers to the first sentence of Section 6-3(2) FIA, according to which the listed criteria shall "in particular" be taken into consideration. It contends that this wording clearly indicates that other criteria not explicitly mentioned in the CRD and Solvency II could also be taken into account. It claims further that Norway has confirmed that the list in Section 6-3 is not exhaustive. However, pursuant to Article 23(2) of the CRD and Article 59(2) of Solvency II, competent authorities can only

[6] Reference is made to the judgment of 25 June 2015 in *CO Sociedad de Gestión y Participación SA*, C-18/14, EU:C:2015:419, paragraphs 41 and 42, and the Commission's Proposal of 12 September 2006 for a Directive of the European Parliament and of the Council amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of shareholdings in the financial sector, COM(2006) 507 final, p. 3.
[7] Reference is made to the judgment of 16 May 2017 in *Netfonds Holding and Others*, E-8/16, paragraph 123.

oppose an acquisition if there are reasonable grounds based on the criteria listed in Article 23(1) of the CRD and Article 59(1) of Solvency II, or if the information from the acquirer is incomplete.

72. Further, ESA notes that Article 22(8) of the CRD and Article 58(7) of Solvency II explicitly prohibit EEA States from imposing stricter requirements for the notification or approval of acquisitions than those set out in the directives.

73. ESA recognises that, in the implementation of directives, their provisions do not necessarily have to be transposed in precisely the same words in a specific, express provision of national law, provided it actually ensures the directive’s full application.[8] However, EEA States must not introduce rules that jeopardise a directive’s effectiveness and the achievement of its goals.[9] A core objective of the prudential assessment as set out in Article 23 of the CRD and Article 59 of Solvency II is to provide legal certainty through the establishment of clear and predictable criteria. Therefore, in ESA’s submission, there is no room for additional or differing national criteria. Further, in *Cafpi*,[10] the Court of Justice of the European Union (“ECJ”) has emphasised that when a directive seeks complete harmonisation, the categories it defines must be regarded as exhaustive.

74. In its reply, ESA submits that interpretative guidance which is based on Norwegian legal tradition is not a relevant source of EEA law and does not provide the necessary legal certainty,[11] especially since an example of Norway’s domestic practice[12] suggests that other criteria, beyond those set out in the directives, could be considered in a discretionary assessment.

Section 6-3(2)(c) and (d) FIA does not reflect the exhaustive criteria listed in Article 23(1) of the CRD and Article 59(1) of Solvency II

75. Further, ESA submits that the assessment criteria in Section 6-3(2)(c) and (d) FIA deviate from the exhaustive criteria set out in Article 23(1) of the CRD and Article 59(1) of Solvency II, as Section 6-3(2)(c) and (d) FIA introduces additional criteria not mentioned in the directives.

76. In ESA’s submission, EEA States are not permitted to introduce national rules that deviate from or add additional criteria to those established in the directives. Since the assessment criteria in these directives are exhaustively harmonised, any deviation in national legislation constitutes an incorrect implementation. ESA acknowledges that EEA States have discretion in how to implement directives. However, they must not introduce rules that jeopardise the directives’ effectiveness.[13] A core objective of the

[8] Reference is made to the judgment of 22 July 2013 in *Jan Anfinn Wahl*, E-15/12, paragraph 49.
[9] Ibid, paragraph 54.
[10] Reference is made to the judgment of 24 November 2022 in *Cafpi and Aviva assurances*, C-691/21, EU:C:2022:926, paragraph 35.
[11] Reference is made to the judgments of 16 July 2012 in *ESA* v *Norway*, E-9/11, paragraph 99, and of 10 December 2010 in *Periscopus AS* v *Oslo Børs ASA and Erik Must AS*, E-1/10, paragraph 48.
[12] Reference is made to Annex 11 to the Defence, part 4 second paragraph.
[13] Reference is made to the judgment in *Jan Anfinn Wahl*, E-15/12, cited above, paragraph 54.

prudential assessment is to provide legal certainty by establishing clear and predictable assessment criteria, as mentioned in recital 74 of Solvency II.

77. Section 6-3(2)(c) FIA requires the relevant authority to assess whether the acquirer could use their influence to obtain advantages for themselves or others, or whether the acquisition could impair the institution's independence. In ESA's assessment, while the influence of the acquirer is an important consideration, making it a standalone criterion deviates from the exhaustive criteria set out in Article 23(1) of the CRD and Article 59(1) of Solvency II, as these provisions do not mention "influence," "advantages," or "independence". Section 6-3(2)(c) FIA has a wider scope than the corresponding criterion in Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II, which concerns whether the institution will be able to comply with prudential requirements. Ensuring the independence of financial institutions is a broader objective not related to the individual capacity of the acquirer as set out in the directives. Section 6-3(2)(c) FIA could lead to the rejection of acquisitions based solely on the acquirer's influence, even though, under the definitions set out in Article 3(33) of the CRD and Article 13(21) of Solvency II, any qualifying holding is influential. Thus, using influence as a criterion in itself could unfairly block acquisitions.

78. Section 6-3(2)(d) FIA requires the relevant ministry to assess whether the acquirer and its activities are subject to financial supervision. ESA contends that this criterion has no parallel in the CRD and Solvency II, where the focus is on the ability of the acquired institution to comply with prudential requirements and whether the group structure allows for effective supervision. Although recitals 8 and 9 of the Qualifying Holdings Directive refer to the possibility that the acquirer may be an unregulated entity, in ESA's submission, they do not justify making the issue of whether the acquirer is subject to financial supervision an independent assessment criterion in national legislation. Recital 8 provides simply that the reputation of an acquirer is of particular relevance if the entity is unregulated, but it does not mandate the inclusion of a supervision criterion in relation to the acquirer. Recital 9 only concerns the information EEA States may request for the purpose of assessments, strictly according to the criteria set out in this directive, and, in ESA's submission, does not advance Norway's case.

Second plea: incorrect application - non-compliance with the CRD and Solvency II due to an administrative practice requiring notifications for and limiting acquisitions of 25 per cent or more in financial institutions

79. By its second plea, ESA claims that Norway's practice of requiring notifications for and limiting acquisitions of 25 per cent or more in credit institutions and insurance undertakings, without a sufficient suitability assessment, conflicts with the thresholds set out in Article 22(1) of the CRD and Article 57(1) of Solvency II, which set notification requirements at 20, 30, and 50 per cent, and undermines the individual case-by-case assessments required under Article 23(1) of the CRD and Article 59(1) of Solvency II.

80. ESA understands that, as part of a "dispersed ownership policy", intended to prevent undue concentration of power and mitigate the excessive risk incentives of large

shareholders, Norway follows an administrative practice to prevent a single shareholder from owning more than 20 to 25 per cent of financial institutions.

81. ESA understands the policy to mean that if an acquirer intends to increase their ownership to 25 per cent or more, even if they have been already permitted to own more than 20 per cent, they must notify and seek approval from the authorities. Further, in the assessment by the authorities a 20 to 25 per cent ownership limit is used as a "starting point" or "main rule". ESA understands that there are narrow exceptions, particularly for cooperative entities, which may be allowed to own more than 25 per cent of a bank, and for banks engaged in niche financial activities.

Norway's notification practice conflicts with Article 22(1) of the CRD and Article 57(1) of Solvency II

82. ESA contends that Norway's notification practice, which requires the notification of acquisitions of 25 per cent or more of voting rights or capital in credit institutions and insurance undertakings, conflicts with Article 22(1) of the CRD and Article 57(1) of Solvency II, which set out specific notification thresholds when the acquirer reaches or exceeds 20, 30 or 50 per cent of the voting rights or capital, or when the entity becomes a subsidiary. The CRD and Solvency II harmonise these thresholds across the EEA, and Norway's practice constitutes a stricter requirement.[14] In ESA's submission, Norway's justification, based on conditions tied to an "initial authorisation" of a financial institution or a "subsequent acquisition" with a prior approval for acquiring up to 20 per cent, conflicts with the system established by the CRD and Solvency II.

83. ESA acknowledges that that a distinction can be made between the initial authorisation of credit institutions and insurance undertakings and the assessment of acquisitions and increases of qualifying holdings in the same entities, as authorisation is required before credit institutions commence their activities pursuant to Article 8 of the CRD and before the taking up of the business of insurance pursuant to Article 14 of Solvency II. However, the terminology of "subsequent" acquisitions is not used in Article 22 of the CRD and Article 57 of Solvency II, as these provisions simply refer to a decision to "acquire, directly or indirectly" or "to further increase, directly or indirectly" a qualifying holding. This presupposes that the authorisation process has already resulted in the undertaking being granted. Thus, in ESA's submission, no distinction is made between an acquisition which is carried out immediately after the initial authorisation, and subsequent acquisitions or increases of holdings. Further, according to settled case law, an interpretation of a provision of EEA law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness.[15]

[14] Reference is made to the judgment in *Netfonds Holding and Others*, E-8/16, cited above, paragraph 124.
[15] Reference is made to the judgments of 8 December 2005 in *ECB* v *Germany*, C-220/03, EU:C:2005:748, paragraph 31; of 22 December 2008 in *Les Vergers du Vieux Tauves*, C-48/07, EU:C:2008:758, paragraph 44, and of 13 October 2022 in *Gmina Wieliszew*, C-698/20, EU:C:2022:787, paragraph 83.

84. ESA contends that, in *CO Sociedad de Gestión y Participación SA*,[16] the ECJ did not hold that competent authorities may legitimately attach as a condition to the approval of an acquisition of 20 per cent that the acquirer must seek a new approval if they wish to further increase that holding. Rather, the ECJ held that the list of assessment criteria in the directive is exhaustive, and if an authority decides to impose restrictions or requirements on the approval, those restrictions cannot be based on a criterion not included in the directive, nor can they go beyond what is necessary for the acquisition to satisfy those criteria.[17] Further, although the ECJ held that a requirement aiming to guarantee the independence of the supervisory body of a company may be considered based on one of the criteria listed, in ESA's submission, the situation is different in the present action, to the extent that the notification thresholds are not themselves included in the list of assessment criteria set out in Article 23(1) of the CRD and Article 59(1) of Solvency II.

85. Further, in the same way as a national requirement may not be based on a criterion which is not among those set out in the directive, in ESA's submission, a national requirement may not deviate from the notification thresholds, where such a requirement would be different to those set out in the directives. The only option to deviate from the notification thresholds concerns the application of a threshold of 30 per cent under Article 22(1) of the CRD and Article 57(1) of Solvency II, where EEA States may apply a threshold of one-third. ESA notes that Norway has not exercised this option.

86. Article 22(8) of the CRD and Article 58(7) of Solvency II explicitly prohibit EEA States from imposing more stringent notification requirements than those provided in the directives. Hence, in ESA's submission, under the CRD and Solvency II, an acquirer who has already been allowed to hold more than 20 per cent can further increase their stake to 26 per cent without triggering a new notification obligation. However, Norway's practice requires prior approval for any increase to 25 per cent or more, even if the proposed acquirer has already been allowed to hold a stake above 20 per cent.

Norway's assessment and approval practice conflicts with Articles 22(1) and 23(1) of the CRD and Articles 57(1) and 59(1) of Solvency II

87. ESA contends that Norway's assessment and approval practice effectively prohibits any shareholder from acquiring 25 per cent or more of the shares in a financial institution, even though acquisitions of 25 per cent or more are permitted under the directives if the acquirer meets the criteria set out in Article 23(1) of the CRD and Article 59(1) of Solvency II, which require a case-by-case assessment of the acquirer's suitability and the financial soundness of the proposed acquisition. Norway's administrative practice creates a presumption against qualifying holdings above 25 per cent, which is not reflected in the legislative framework of CRD and Solvency II, as

[16] Reference is made to the judgment in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, paragraphs 29-34 and 43-46.
[17] Reference is made to the judgment in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, paragraphs 34 and 46.

Article 22(1) of the CRD and Article 57(1) of Solvency II permit holdings of 30 per cent and even 50 per cent.

88. ESA acknowledges that the notification thresholds set out in Article 22(1) of the CRD and Article 57(1) of Solvency II are purely procedural in nature and do not automatically imply that acquisitions above the thresholds must be approved. These provisions simply establish requirements for notification when a qualifying holding is reached or exceeded, specifying the thresholds at which an acquirer must notify the relevant authorities. However, in ESA's submission, as is clear from Article 23(2) of the CRD and Article 59(2) of Solvency II, national authorities may oppose a proposed acquisition only if there are reasonable grounds for doing so based on the exhaustive criteria set out in Article 23(1) of the CRD and Article 59(1) of Solvency II, or if the information provided by the acquirer is incomplete.

89. ESA contends that, by rejecting holdings of 25 per cent or more without a case-by-case assessment solely based on the criteria set out in Article 23(1) of the CRD and Article 59(1) of Solvency II, Norway has failed to assess the suitability of the proposed acquirer or the financial soundness of the acquisition, as required by these provisions. In its reply, ESA asserts further that by having as a "starting point" or "main rule" that private individuals should not normally be allowed holdings exceeding 20 to 25 per cent, Norway fails to meet the legal obligation under Article 23(1) of the CRD and Article 59(1) of Solvency II which is an individually conducted assessment in full compliance with these criteria. In ESA's submission, the existence of exceptions to this main rule or instances where holdings of more than 25 per cent have been accepted does not undermine its argument.

90. ESA notes that Article 8 of the CRD and Article 14 of Solvency II govern the authorisation of credit institutions and insurance undertakings respectively, requiring authorisation before these entities can commence their activities. In its submission, the reference in Article 22 of the CRD and Article 57 of Solvency II to the acquisition or further increase of a qualifying holding implies that, once initial authorisation has been granted, further acquisitions should be assessed individually based on the criteria set out in Article 23 of the CRD and Article 59 of Solvency II. Even though national authorities can impose restrictions on acquisitions based on a case-by-case assessment, unlike the situation in *CO Sociedad de Gestión y Participación SA*,[18] Norway's rejection of acquisitions above 25 per cent goes beyond what is permissible under EEA law, however, because an individual assessment of each proposed acquisition is a fundamental requirement under both the CRD and Solvency II.

91. ESA rejects Norway's contention that neither the CRD nor Solvency II can be used to bypass the requirements a financial institution has been subject to since its initial authorisation, and that EEA States are free to impose additional conditions for initial authorisation under national law in accordance with the main provisions of the EEA Agreement. ESA further rejects the contention that the Qualifying Holdings Directive

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[18] Reference is made to the judgment in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, paragraph 34.

and Articles 22 to 23 of the CRD and Articles 57 to 59 of Solvency II do not change this position. Rather, ESA argues that the rules on initial authorisation in Article 8 of the CRD and Article 14 of Solvency II and the rules on the acquisition of qualifying holdings in Article 23 of the CRD and Article 59 of Solvency II must be assessed separately.

92. ESA stresses its contention that the Qualifying Holdings Directive provided for maximum harmonisation of the suitability assessment for acquiring qualifying holdings and that the conditions for acquiring or increasing qualifying holdings under Articles 22 and 23 of the CRD, and Articles 57 to 59 of Solvency II cannot be circumvented by conditions imposed on initial authorisation. Any conditions imposed must align with the relevant notification thresholds for qualifying holdings. In ESA's submission, the issue is not whether the harmonised acquisition rules could be used to circumvent requirements set out in the initial authorisation, but whether requirements set out in the initial authorisation can be used to circumvent the fully harmonised provisions on the acquisition of qualifying holdings. While national laws may specify supervisory powers, they must comply with the directives' harmonised requirements. Specifically, Article 22(8) of the CRD and Article 58(7) of Solvency II prohibit EEA States from imposing stricter notification or approval requirements than those set out in these directives.

93. While Norway cites in its defence Articles 18 and 102 of the CRD and Articles 34 and 144 of Solvency II, which allow EEA States to withdraw authorisations, ESA argues in its reply that the existence of such powers to withdraw an authorisation has no bearing on the obligations set forth in Article 23(1) of the CRD and Article 59(1) of Solvency II to assess proposed acquisitions of qualifying holdings against the criteria set out there. In ESA's submission, the possibility to withdraw an authorisation if the conditions for doing so are fulfilled does not justify Norway's practice of not approving acquisitions above 25 per cent except in limited cases.

Norway

Introductory remarks

94. In relation to the alleged incorrect implementation due to non-exhaustive assessment criteria in Section 6-3(2) FIA, Norway argues that, under Article 7(b) EEA, EEA States have a discretion in determining how to implement directives. The term "in particular" in Section 6-3(2) FIA should not be interpreted as requiring additional criteria beyond those explicitly outlined in the directives, as the section closely mirrors the structure and objectives of the CRD and Solvency II provisions. As regards the alleged incorrect implementation due to the divergent assessment criteria in Section 6-3(2)(c) and (d) FIA, Norway asserts that the CRD and Solvency II justify considering the potential for misuse of ownership and the independence of the target financial institution.

95. In response to the alleged incorrect application of the CRD and Solvency II due to the administrative practice requiring notifications for and limiting acquisitions of a stake of 25 per cent or more in financial institutions, Norway argues in its first line of

argument that its dispersed ownership policy is in line with Article 23 of the CRD and Article 59 of Solvency II. While acknowledging that Article 23(1) of the CRD and Article 59(1) of Solvency II require case-by-case assessments, Norway contends that these provisions leave discretion to national authorities to prioritise certain criteria. In its second line of argument that such notifications and approvals are based on conditions imposed in the institution's initial authorisation or prior approvals. In Norway's submission, Article 23(1) of the CRD and Article 59(1) of Solvency II do not override requirements financial institutions have been subject to since their initial authorisation. In this connection Norway contends that the CRD and Solvency II do not harmonise the requirements or process for the initial authorisation, allowing national authorities to impose additional conditions. These conditions, in line with Article 23(1) of the CRD and Article 59(1) of Solvency II, help ensure effective supervision and the institution's ongoing compliance with prudential requirements. It asserts that the provisions first introduced by the Qualifying Holdings Directive focus on subsequent acquisitions and do not affect initial authorisation procedures.

96. Norway asserts, in explanation of its policy stance, that concentrated ownership in financial institutions is linked to excessive risk-taking, as shareholders often tend to take higher risks due to limited downside and the potential for significant upside.[19] Norway contends that banks with strong shareholder influence before the 2008 financial crisis took greater risks and incurred larger losses.[20] In its submission, diversified ownership reduces shareholder influence, giving more control to management, which can reduce risk-taking. A dispersed ownership policy, alongside regulatory measures, effectively protects against the misuse of shareholder power and aims to build public trust in financial stability.[21] In Norway's submission, the economic mechanisms appear equally applicable to insurance undertakings as to banks. Large shareholders have equally high expectations for returns in insurance undertakings as they do in banks, when ownership is concentrated and not counterbalanced by more independent boards and executives.[22] It is therefore unsurprising that the provisions in Solvency II regulating the assessment of owners in connection with both authorisation of insurance undertakings and assessments of acquisitions of qualified holdings in insurance undertakings are broadly similar to the parallel provisions in the CRD regulating banks, as is evident, for example, from Article 62(1) of Solvency II which is similar to Article 26(2) of the CRD.

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[19] Reference is made to Annexes 4, 5, 6 and 7 to the Defence; Armour et al., *Principles of Financial Regulation*, Oxford University Press, 2010, pp. 374-375; and Larisa Dragomir, *European Prudential Banking Regulation and Supervision*, Routledge, 2010, p. 43.

[20] Reference is made to Annexes 8 and 9 to the Defence.

[21] Reference is made to the judgment in *Netfonds Holding and Others*, E-8/16, cited above, paragraphs 130 and 132; Annex 3 to the Defence; and Sebastian Schich, "Expanded Guarantees for Banks: Benefits, Costs and Exit Issues", *OECD Journal, Financial Market Trend*s, Volume 2009/2, pp. 55-89, at p. 72.

[22] Reference is made to Annex 5 to the Defence, pp. 2 and 3.

First plea: incorrect implementation - non-exhaustive assessment criteria in Section 6-3(2) FIA, which do not reflect the criteria listed in Article 23(1) of the CRD and Article 59(1) of Solvency II

97. Norway argues that Section 6-3(2) FIA falls within the discretion in implementation that is provided for by Article 7(b) EEA. It claims that EEA States have the right to determine the "form and means of implementation" of directives. A directive incorporated into the EEA Agreement is only binding as to the result to be achieved and is to be made part of the internal legal order of EEA States, while leaving their authorities the choice of form and method of implementation. Norway contends that there is no substantive interpretive basis for ESA's concern that elements beyond those warranted by the CRD and Solvency II could or should be considered under Section 6-3(2) FIA. Moreover, the CRD and Solvency II warrant that the potential for misuse of ownership and the independence of the target financial entity, as well as whether the proposed acquirer is a supervised entity, are taken into consideration.

Section 6-3(2) FIA permits the consideration of additional criteria not listed in Article 23(1) of the CRD and Article 59(1) of Solvency II

98. In support of its argument that there is no substantive interpretive basis for the assumption that elements beyond those justified by the CRD or Solvency II could or should be considered under Section 6-3(2) FIA, Norway submits that the wording "in particular" should be seen as a reflection of interpretive challenges presented by the open-ended formulation of the criteria listed in Article 23(1) of the CRD and Article 59(1) of Solvency II and their relationship to the directives' overarching goals. In its submission, the reservation "in particular" falls within the discretion provided to EEA States when transposing directives.

99. In the Norwegian legal tradition, Section 6-3 FIA could not plausibly be read as a licence to take into consideration elements that would go beyond what is warranted by the CRD and Solvency II, as the term "in particular" should be seen as a testament to interpretive challenges, arising from the wording and structure of Article 23(1) of the CRD and Article 59(1) of Solvency II. In Norway's submission, the judgment in *A Ltd* underlines that the criteria listed in Article 59(1) of Solvency II must be read in light of the overall goal of ensuring the target institution's "sound and prudent management", while the isolated wording of the specific criteria may be of lesser importance.[23]

100. Norway argues that Article 23(1) of the CRD and Article 59(1) of Solvency II are structured with an elaborate "chapeau" followed by five specific criteria. While the criteria are "formally exhaustive", the wording and structure of these Articles, as well as their relationship with the rest of these directives, leave room for other criteria. This "chapeau" consists of three parts: the assessment's overall purpose, which is to ensure the sound management of the institution in which the acquisition is proposed, a secondary consideration of the proposed acquirer's influence, and "the operative part",

[23] Reference is made to the judgment in *A Ltd* v *the Financial Market Authority (Finanzmarktaufsicht)*, E-2/23, cited above, paragraph 46.

which ties the approval of a qualifying holding to the suitability of the acquirer and the financial soundness of the acquisition. This last part serves as the overarching evaluative criterion for any acquisition, with the five criteria giving effect to this. Section 6-3 FIA closely mirrors the "chapeau" set out in Article 23(1) of the CRD and Article 59(1) of Solvency II, as the same three components are included.

101. In Norway's submission, the need to reconcile the "formally exhaustive" nature of the five criteria and the overarching concern for sound and prudent management results in interpretive tension. Moreover, Norway claims that the CRD and Solvency II cannot be interpreted in such a way as to override requirements established by an EEA State in the initial authorisation. In this connection, Norway refers to the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector ("the Joint Guidelines"),[24] which, although non-binding, provide interpretive assistance for applying Article 23(1) of the CRD and Article 59(1) of Solvency II. The fact that these Guidelines run to over 30 pages underlines the need, in Norway's submission, for thorough interpretation of the provisions concerning the assessment of qualifying holdings.

Section 6-3(2)(c) and (d) FIA does not reflect the criteria listed in Article 23(1) of the CRD and Article 59(1) of Solvency II

102. In relation to ESA's claim that points (c) and (d) of Section 6-3(2) FIA lack a basis in the criteria listed in the CRD and Solvency II, Norway submits that both directives warrant the consideration of the matters addressed in points (c) and (d).

103. As regards Section 6-3(2)(c) FIA, Norway contends that Article 23(1) of the CRD and Article 59(1) of Solvency II set out that competent authorities shall aim to "ensure the sound and prudent management" of the financial institution in which an acquisition is proposed, having regard to the "likely influence of the proposed acquirer," which, in its submission, is significantly influenced by the size of the acquisition and the proposed level of involvement in the business. By considering the "chapeau", it is evident that the proposed holding's size and the likely influence exercised by the proposed acquirer are relevant factors in the suitability assessment. Norway submits that its national authorities consider this under the dispersed ownership policy. Further, the aim of the dispersed ownership policy is to prevent owners from being able to take decisions contrary to the sound and prudent management of the institution, which is in line with the overall goal of the suitability assessment, as explicitly stated in Article 23(1) of the CRD and Article 59(1) of Solvency II.[25] Norway notes that ESA does not contest that the size of the intended holding and the systemic risks stemming from that holding are relevant when assessing a proposed acquisition in line with Articles 22 and 23 of the CRD and Articles 57 to 59 of Solvency II.

[24] Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector issued by the European supervisory authorities on 20 December 2016.
[25] Reference is made to the judgment in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, paragraph 32.

104. Article 22(1) of the CRD and Article 57(1) of Solvency II provide that the proposed acquirer shall inform the competent authorities of the “size of the intended holding”. In Norway’s submission, that requirement would not make sense if the size of the holding was not a relevant factor to be considered in the assessment under Article 23 of the CRD and Article 59 of Solvency II. Additionally, both Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II set out that the competent authorities shall assess “whether the [financial institution] will be able to comply and continue to comply with the prudential requirements” based on the directives and other EEA law. Norway contends that this criterion allows the competent authorities to assess whether the size of the proposed holding will allow the proposed acquirer to exert undue influence over the financial institution and thereby affect the institution’s ability to comply and continue to comply with prudential requirements. Further, Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II provide a specific expression of a more general consideration in the directives, namely the importance of sound and prudent management. This consideration is mirrored in the “introductory clauses” of Article 23 of the CRD and Article 59 of Solvency II and broadly formulated in Article 26(2) of the CRD and Article 62(1) of Solvency II.

105. In this connection, Norway refers to the preamble of the Qualifying Holdings Directive, which envisages that a larger involvement in the target institution calls for a more stringent assessment. Recital 5 thereof considers the degree of “expected involvement of the proposed acquirer” relevant both in terms of the information required to assess the proposed acquisition and the assessment of compliance with the assessment criteria. Recital 9 states in a similar vein that “the information should be proportionate and adjusted to the nature of the proposed acquisition”. Further, the Joint Guidelines emphasise that the intensity of scrutiny should be proportionate to the level of influence exerted by the proposed acquisition.[26] These guidelines specify how the information requested should depend on the nature of the acquisition, including how the financial soundness of the proposed acquirer should be assessed in relation to their level of influence, and stress that the depth of the financial soundness assessment should be linked to factors such as the likely influence of the acquirer, the nature of the acquirer (whether strategic or financial, such as a private equity fund), and the complexity of the transaction.[27]

106. As regards ESA’s claim that Section 6-3(2)(c) FIA could lead to the rejection of acquisitions based solely on the acquirer’s influence, as any qualifying holding is influential, Norway argues that, under Article 23(2) of the CRD and Article 59(2) of Solvency II, opposition to an acquisition of a qualifying holding must be based on “reasonable grounds”. It contends that there are grounds to be particularly attentive to the ownership range of 20 to 25 per cent, as this range may provide the acquirer with the potential for negative control. This is because, due to traditionally low attendance at general meetings of financial institutions, an owner with 20 to 25 per cent of voting rights can effectively achieve control, having over one-third of the votes present at a

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[26] Reference is made to the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, cited above, paragraphs 8.3, 10.3, 10.26, 10.28, 10.29, 12.4 and 12.5.
[27] Ibid.

general meeting. However, Norway clarifies in its Rejoinder that it does not claim that there would be reasonable grounds to reject acquisitions of any holding representing 10 per cent or more of the capital or voting rights in a target entity.

107. As regards Section 6-3(2)(d) FIA, Norway submits that the relevance of whether the proposed acquirer is a supervised entity has a firm basis in Article 23(1) of the CRD and Article 59(1) of Solvency II, particularly when read in light of the context provided by the preamble of the Qualifying Holdings Directive. Whether the acquirer is supervised is a factor in the financial robustness assessment and not an independent criterion. Recital 8 of the Qualifying Holdings Directive states that when assessing an acquirer's reputation due regard should be paid to whether the acquirer is an unregulated entity. Recital 9 thereof provides that the information required for assessment should be proportionate and adjusted to the nature of the acquisition, in particular for unregulated or third-country acquirers. This approach is reflected in the Joint Guidelines, according to which, whether or not the acquirer is a "supervised financial institution" is relevant for the information that should be required, and where the financial situation of the acquirer has been subject to supervisory assessment, the target supervisor should take this into account.[28]

108. As regards the distinction ESA makes between considering the proposed acquirer as a supervised entity as an independent criterion or as part of another criterion, Norway argues that the distinction is not as clear cut. Section 6-3(2) FIA only requires it to be "taken into consideration" whether the acquirer is a supervised entity, which according to Norway, even semantically, differs only marginally from ESA's interpretation of the directives.

109. Finally, Norway asserts that Sweden, in its national law, closely mirrors the assessment criteria of Article 23(1) of the CRD and Article 59(1) of Solvency II, but also includes an element not found among the directives' five criteria.[29]

Second plea: incorrect application - non-compliance with the CRD and Solvency II due to an administrative practice requiring notifications for and limiting acquisitions of 25 per cent or more in financial institutions

110. In relation to the second plea, Norway submits, first, that its administrative practice is based on Article 23 of the CRD and Article 59 of the Solvency II. Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II, read in line with their objectives and in context, allow national authorities to consider the size of the intended holding and the potential systemic risks that the financial institution will face due to the proposed acquisition.

111. According to Norway`s second line of argument, its notification practice requiring approval for acquisitions exceeding 20 per cent is based on conditions in the

[28] Reference is made to the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, cited above, paragraphs 8.2 and 12.7.
[29] Reference is made to the first and second subparagraphs of Chapter 14 Section 2 of the Swedish Act (2004:297) on Banking and Financing Business.

institution's initial authorisation or prior approvals, which does not contradict Article 22(1) of the CRD and Article 57(1) of Solvency II. These provisions do not harmonise the initial authorisation process. Such conditions are consistent with Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II, as they ensure compliance with prudential requirements and facilitate effective supervision.

112. Norway's administrative practice, which seeks to maintain a dispersed ownership structure, aligns with the assessment criteria in Article 23(1) of the CRD and Article 59(1) of Solvency II, as Norway is within its rights to impose conditions limiting shareholders to no more than 20 to 25 per cent of shares at the initial authorisation stage. The national authorities carry out a case-by-case assessment of proposed acquisitions, as prescribed by Article 23 of the CRD and Article 59 of Solvency II.

113. Moreover, in Norway`s third line of argument, the contested administrative practice reflects several provisions of the CRD and Solvency II regarding ongoing prudential supervision of financial institutions.

114. Norway asserts that ESA did not capture the nature of the contested administrative practice accurately in the application, arguing that it is ESA's responsibility to place before the Court the information needed to enable the Court to establish that the EFTA State has not fulfilled its obligations,[30] while the EEA State is required to facilitate ESA's achievement of its tasks.[31] In Norway's submission, the administrative practice under the dispersed ownership policy is not an absolute rule with limited exceptions. Instead, Norwegian authorities conduct a case-by-case assessment, both for granting initial authorisations to financial institutions and for evaluating subsequent acquisitions.[32] A starting point in this assessment is that private individuals should not normally hold stakes exceeding 20 to 25 per cent of total shares. However, this is only one factor in the discretionary assessment. The authorities also consider other criteria from national law implementing the CRD and Solvency II, particularly Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II, which focus on effective supervision. Depending on the case, holdings exceeding 20 to 25 per cent may be permitted. There are multiple instances in administrative practice where holdings above 25 per cent have been accepted, such as when the owner is a cooperative entity or when the licensed activities are narrow in scope. Moreover, for financial institutions other than banks and insurance companies, such as finance companies, private entities may be allowed to own up to 100 per cent of the shares.

115. In its rejoinder, Norway submits that ESA seems to have changed its approach from the pre-litigation procedure and the application, where it argued that Norway fails to carry out case-by-case assessments based on the criteria set out in the directives, to now argue in the reply that Norway cannot operate with a "main rule" or "starting point" for the discretionary assessment. According to Norway, this argument is not clearly

[30] Reference is made to the judgment of 20 December 2024 in *ESA* v *Norway*, E-13/23, paragraph 61.
[31] Ibid, paragraph 111.
[32] Reference is made to Annexes 12, 14, 16, 18 and 20 to the Defence.

presented in the letter of formal notice or in the reasoned opinion and may therefore seem to go beyond the subject matter of the pre-litigation procedure.

116. Norway notes that the present case only concerns the application of the administrative practice regarding subsequent acquisitions. Although ESA has pointed out that the term "subsequent acquisitions" is not found in the relevant articles of the CRD and Solvency II, Norway uses this term to distinguish between rules for acquisitions of qualifying holdings after the initial authorisation and rules for initial authorisations. This distinction is necessary regardless of whether the acquisition occurs immediately after the initial authorisation or after a longer period, as both should be treated as subsequent acquisitions. Further, it is important to distinguish this case from the application of the administrative practice regarding the granting of initial authorisation, which is covered under a separate infringement case that ESA has decided not to join with present case. Norway additionally notes that ESA has not raised any issues related to the main part of the EEA Agreement.

117. Norway submits that ESA's claim involves a complex area of EEA law, as was underlined in *ESA* v *Norway*,[33] where ESA had not sufficiently explained why it considered the specific provisions of the directives to prohibit the Norwegian rule in question.[34] The same applies for ESA's pleas and arguments in the case at hand, as ESA focuses solely on the specific provisions of Articles 22 and 23 of the CRD and Articles 57 to 59 of Solvency II, without considering the large number of provisions regarding on-going prudential supervision of both directives.

Norway's notification practice conflicts with Article 22(1) of the CRD and Article 57(1) of Solvency II

118. On the issue of notification thresholds, Norway claims that any person wishing to acquire a qualifying holding in a financial institution must notify the competent authorities. If the acquisition involves a qualifying holding (10 per cent) or a holding that reaches or exceeds 20, 30, or 50 per cent, the notification requirement follows directly from Section 6-1(1) FIA and the corresponding provisions of the CRD and Solvency II. Where the proposed acquirer already holds a qualifying holding in the financial institution, that acquirer is, however, often required to notify the competent authorities of increases even when the holding does not exceed these thresholds. This is because such a notification requirement is typically set as a condition in the initial business authorisation or in earlier permissions to acquire qualifying holdings. In Norway's submission, neither the CRD nor Solvency II prohibits such a notification requirement.

119. Requiring a new approval for any proposed acquisition exceeding 20 per cent is based on conditions in the institution's initial authorisation or previous approval. In Norway's submission, this does not entail a deviation from the thresholds set out in Article 22(1) of the CRD and Article 57(1) of Solvency II, as these provisions do not

[33] Reference is made to the judgment in *ESA* v *Norway*, E-13/23, cited above, paragraph 71.
[34] Ibid, paragraphs 72 to 75.

harmonise the initial authorisation process. The legal basis for the notification requirement is a condition set out in the initial authorisation for the institution or in the previous approval to acquire up to 20 per cent of the shares for a specific natural or legal person. The CRD and Solvency II do not harmonise the procedure and assessment of the initial authorisation,[35] and, thus, national authorities may impose such conditions without breaching these directives. When the condition is set out in the previous approval to acquire 20 per cent of the total shares, the authorities have considered that a holding of 20 per cent complies with the prudential assessment criteria set out in Article 23(1) of the CRD and Article 59(1) of Solvency II, but only on the condition that the acquirer seeks a new approval if wishing to increase that holding.

120. Competent authorities may legitimately attach such conditions to the approval of acquisitions of qualifying holdings.[36] These are necessary to ensure that the institution continues to comply with prudential requirements and to facilitate effective supervision, in line with Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II. Without the ability to impose these conditions, competent authorities would have to treat a notification of a proposed 20 per cent holding as an opportunity to acquire up to 29.99 per cent, complicating their ability to assess the suitability of the acquirer. Additionally, such conditions align with supervisory powers granted by Article 4(3) and (5) and Article 64 of the CRD as well as Article 29 and Articles 34(3) and 35(1) of Solvency II, as they allow authorities to require the provision of the necessary information to perform their oversight functions, including proposed increases in qualifying holdings. Each application is considered on its merits, based on the exhaustive criteria as provided for in Article 23(1) of the CRD and Article 59(1) of Solvency II, and nothing else.

121. In response to ESA's argument that the list of assessment criteria in Article 23(1) of the CRD and Article 59(1) of Solvency II are exhaustive and that conditions included in an approval must be based on these criteria, Norway submits that a condition requiring a new approval for increasing a holding is in fact based on Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II. As was the case in *CO Sociedad de Gestión y Participación SA*,[37] this requirement aims to ensure the independence of the management body by limiting the risk of misuse of power by large shareholders.

Norway's assessment and approval practice conflicts with Articles 22(1) and 23(1) of the CRD and Articles 57(1) and 59(1) of Solvency II

122. Norway submits that its administrative practice is based on Article 23 of the CRD and Article 59 of the Solvency II. Norway submits further that neither the CRD nor Solvency II can be used to circumvent requirements which the financial institution has been subject to since the granting of the initial authorisation. From this it concludes that these directives allow EEA States to impose additional requirements for initial

[35] Reference is made to the judgment in *Netfonds Holding and Others*, E-8/16, cited above, paragraphs 101 to 102, and the opinion of Advocate General Mengozzi in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, point 33.
[36] Reference is made to the judgment in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, paragraphs 29 to 34 and 43 to 45.
[37] Reference is made to the judgment in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, paragraph 46.

authorisation of financial institutions. In addition, the practice reflects several other provisions of the CRD and Solvency II regarding on-going prudential supervision of financial institutions.

123. First, Norway claims that the caution against anyone owning more than 20 to 25% of the shares of any financial institution, i.e. the dispersed ownership policy, is said to have its foundation in Article 23(1)(d) of the CRD and Article 59(1)(d) of the Solvency II, both in their wording and when read in light of their purpose and immediate context.

124. All elements of the Norwegian authorities' assessment of any proposed qualifying holding are justified by the criteria as provided for in CRD and Solvency II. Whether the proposed acquirer is itself a financial institution is an element that is argued to be legitimised by, inter alia, Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II regarding "effective supervision," as well as Article 14(3) of the CRD and Article 19 of Solvency II. Another element, the question of whether the target institution engages in niche activities only is, according to Norway, supported by the overall consideration of the "sound and prudent management" of the target institution and the "financial soundness of the proposed acquisition," as well as the criterion set out in Article 23(1)(c) of the CRD and Article 59(1) of Solvency II. Whether the proposed owner is a cooperative body or other type of organisation representing a wide group of members, is relevant as such an entity would not give rise to the underlying concern against concentrated ownership to the same degree as otherwise. There would be less concern that the target entity would no longer be able to continuously comply with the prudential requirements.

125. Norway refers to case law in which it was held that the introduction of a limited set of prudential criteria for the assessment of acquisitions of qualifying holdings, as a result of the Qualifying Holdings Directive, does not prevent competent authorities from attaching conditions to the approval of such acquisitions, provided that these conditions aim to satisfy the prudential assessment criteria and do not go beyond what is necessary to do so.[38] Moreover, it was held that a condition involving that at least half of the members of the supervisory boards of the target institutions, including the chairs, should be independent of shareholders, falls within the assessment criterion in Article 15b(1)(d) of Directive 92/49, as inserted by the Qualifying Holdings Directive, which permitted conditions "relating to the ability of the insurance undertaking … to comply and continue to comply with the prudential requirements based inter alia on that directive".[39] In Norway's submission, the same criterion now found in Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II allows for the consideration of systemic risks arising from the governance structure of the target institution.[40]

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[38] Reference is made to the judgment in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, paragraphs 29-34 and 43-45.

[39] Reference is made to the judgment in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, paragraphs 48-52.

[40] Reference is made to the opinion of Advocate General Mengozzi of 12 February 2015 in *CO Sociedad de Gestión y Participación SA*, C-18/14, EU:C:2015:95, point 67.

126. Although Article 23(1) of the CRD and Article 59(1) of Solvency II presuppose case-by-case assessments, and that these are to be based on the criteria set out in the provisions, these directives do not regulate how the criteria are to be weighed or when there are reasonable grounds for opposing the acquisition based on one or more of the criteria. Thus, in Norway's submission, national authorities have discretion to decide that certain criteria are more important than others.

127. Norway submits that the administrative practice in question cannot be circumvented by applying the rules on subsequent acquisitions of qualifying holdings. The introduction of the Qualifying Holdings Directive into sectoral directives did not affect the initial authorisation stage for financial institutions but rather addressed subsequent acquisitions of qualifying holdings, aiming to harmonise assessments related to acquisitions. However, it did not alter the conditions under which an institution is initially authorised.[41] It is undisputed, in Norway's submission, that the Qualifying Holdings Directive did not seek to harmonise the stage governing the initial authorisation, as recitals 3 and 4 of the Qualifying Holdings Directive underline. Therefore, Norway may maintain its practice of restricting shareholders from holding more than 20 to 25 per cent of shares at the initial authorisation stage. ESA's view, which suggests that the harmonised rules on the procedure for, and prudential assessment of, subsequent acquisitions of qualifying holdings would always take precedence over the initial authorisation requirements in case of a conflict, would imply that the CRD and Solvency II also harmonise the initial authorisation procedure and assessment. This perspective is difficult to reconcile with the partly harmonising nature of the Qualifying Holdings Directive, which is continued through the CRD and Solvency II.

128. Second, Norway submits that the rules on subsequent acquisitions should not suspend or supersede the requirements of on-going prudential supervision or other provisions of the CRD and Solvency II, as stated in recital 4 of the Qualifying Holdings Directive. A contextual interpretation[42] of Articles 22 and 23 of the CRD and Articles 57 to 59 of Solvency II reveals that these directives do not provide for complete harmonisation,[43] as they contain several broadly formulated provisions that require more detailed regulation in national law.[44] Article 26(2) of the CRD and Article 62 of Solvency II permit competent authorities to intervene if they believe that actions such as acquisitions of qualifying holdings could undermine the sound and prudent management of an institution. This is exactly what the Norwegian authorities do when opposing a proposed acquisition on the grounds that they consider the ownership structure to expose the institution to excessive risk incentives and the possibility of misuse of ownership power. In response to ESA's claim that the measure outlined in Article 26(2) of the CRD and Article 62 of Solvency II is distinct from a decision made

[41] Reference is made to the judgment in *Netfonds Holding and Others*, E-8/16, cited above, paragraphs 101 to 102.
[42] Reference is made to the judgment in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, paragraph 27.
[43] Reference is made to the opinion of Advocate General Mengozzi in *CO Sociedad de Gestión y Participación SA*, C-18/14, cited above, point 33.
[44] Reference is made to the Commission Staff working document Impact Assessment Report, SWD(2021) 320 final, part 1/4, p. 19.

upon notification of a proposed acquisition of a qualifying holding, Norway asserts that these provisions do not specify the exact measures that competent authorities may take when the conditions are met but leave it to national law to determine which measures are considered "appropriate." As a result, the national legislator or authorities may decide that an appropriate measure is to oppose a proposed acquisition of a qualifying holding.

129. Moreover, Articles 4(4), 64(1), 102(1) and 104(1)(e) CRD and Articles 29(1) and 34(1) of Solvency II further authorise supervisory authorities to take preventive and corrective actions necessary for prudential supervision. Article 18 of the CRD and Article 144 of Solvency II allow the competent authorities to withdraw an institution's authorisation if it no longer fulfils the conditions under which authorisation was granted. Norwegian authorities may impose conditions such as limiting a shareholder's holding to no more than 20 or 25 per cent of the financial institution's shares, and if a subsequent acquisition of a qualifying holding exceeds these limits, the authorities could withdraw the authorisation. However, a less disruptive approach is to oppose the proposed acquisition.

130. Norway submits that, pursuant to Article 10(2) of the CRD, competent authorities must refuse authorisation for a credit institution unless they are satisfied that the institution's arrangements, processes, and mechanisms for internal governance referred to in Article 74(1) of the CRD are effective. In Norway's submission, the ownership structure directly affects an institution's ability to comply with the prudential requirements set out in Articles 10 and 74 of the CRD. Both the CRD and Solvency II impose prudential requirements regarding close links between institutions and other entities, as outlined in Article 14(3) of the CRD and Article 19 of Solvency II. Close links exist when an entity holds 20 per cent or more of the voting rights or capital of an institution, potentially extending to connected entities, which raises concerns about effective supervision. Therefore, the ownership structure influences an institution's ability to meet prudential requirements. Dispersed ownership improves the quality and reliability of prudential information, which is essential for effective supervision as referred to in Article 23(1)(d) of the CRD and Article 59(1)(d) of Solvency II.

131. Further, Norway stresses that Article 22(1) of the CRD and Article 57(1) of Solvency II do not as such permit holdings of 30 or 50 per cent. These provisions merely establish notification thresholds, but do not mandate that holdings of 30 or 50 per cent must be approved. Instead, they require an assessment of the proposed acquisition by the competent authorities. While the provisions refer to holdings of 30 and 50 per cent, such holdings can only be permitted if the relevant assessment criteria are met, particularly when the size of the holding does not threaten the sound and prudent management of the institution and undermine its ability to comply with the prudential requirements outlined in EEA law. Generally, the Norwegian authorities consider proposed holdings exceeding 20 to 25 per cent of the total shares potentially problematic. However, this is not a default outcome, as the authorities may approve holdings above 20 to 25 per cent depending on the specific circumstances of each case.

The Commission

132. The Commission supports ESA's positions. It submits that the provisions of the CRD and Solvency II regarding the acquisition of qualifying shareholdings are exhaustive, meaning that EEA States cannot impose stricter criteria for the notification and approval process than those outlined in the directives.

First plea: incorrect implementation - non-exhaustive assessment criteria in Section 6-3(2) FIA which do not reflect the criteria listed in Article 23(1) of the CRD and Article 59(1) of Solvency II

133. The Commission submits that Article 22(8) of the CRD and Article 58(7) of Solvency II prohibit EEA States from opposing proposed acquisitions based on criteria not listed in Article 23(2) of the CRD and Article 59(2) of Solvency II. The criteria listed in these Articles are exhaustive, with no indication that they are indicative or flexible. Only the reasonable grounds specified in Article 23(1) of the CRD and Article 59(1) of Solvency II can be used by competent authorities to oppose an acquisition, unless the information provided by the acquirer is incomplete.

134. The Commission contends that the CRD and Solvency II aimed at full harmonisation, in order to achieve maximum clarity, certainty and predictability for operators, and in doing so, they sought to exclude any obstacles to the freedom of establishment and to the free movement of capital in relation to the acquisition of qualified shareholdings. Hence, EEA States cannot add further conditions to those set out in the harmonised legislation, and the national authorities cannot apply additional criteria on top of those in the directives.

135. While the Commission acknowledges that the transposition - which does not need to be literal but to attain the objective - must be undertaken by EEA States, it stresses that the specific criteria in the provisions of the CRD and Solvency II at issue are, in any case, exhaustive. However, Section 6-3(2) FIA allows for additional criteria that are not specified in the directives. Consistent case law of the ECJ has held the phrase "in particular" to indicate non-exhaustivity, undermining the clarity and certainty that the directives aim to provide.[45]

136. Additionally, in the Commission's submission, the potential influence on, or independence of, the entity being acquired, as well as the supervision of the acquirer, are not matters addressed by the CRD and Solvency II, which focus on the acquirer's ability to comply with prudential requirements and the structure of the group to allow for effective supervision and exchange of information. The directives do not provide for anything on the independence of the acquired entity and the supervision of the acquirer.

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[45] Reference is made to the judgments of 4 October 2024 in *AH, FN* v *Bundesamt für Fremdenwesen und Asyl*, Joined Cases C-608/22 and C-609/22, EU:C:2024:828, paragraph 38; of 21 September 2023 in *S, A* v *Staatssecretaris van Veiligheid en Justitie*, C-151/22, EU:C:2023:688, paragraph 29; and of 30 March 2023 in *Hauptpersonalrat der Lehrerinnen und Lehrer beim Hessischen Kultusministerium*, C-34/21, EU:C:2023:270, paragraph 46.

137. According to the Commission, its conclusion on the exhaustiveness of the directives is further is underpinned by more fundamental considerations stemming from the fundamental freedoms, particularly the freedom of establishment and the free movement of capital. Prior authorisation requirements for the acquisition of holdings in national companies constitute restrictions on the freedom of establishment and the free movement of capital under Articles 31 et seq. and 40 et seq. EEA.[46] Such restrictions can only be justified if they pursue legitimate public policy objectives and comply with the principle of proportionality. However, such policy objectives cannot be left to the discretion of the national authorities without any control from the EEA institutions.

Second plea: incorrect application - non-compliance with the CRD and Solvency II due to an administrative practice requiring notifications for and limiting acquisitions of 25 per cent or more in financial institutions

138. In the Commission's submission, its conclusion that the CRD and Solvency II aim for full harmonisation and therefore do not allow the national authorities to apply additional criteria on top of those already set out in the directives is also valid for the thresholds by which these criteria are assessed. The general exclusion of acquisitions of shareholdings above 25 per cent has no foundation in EEA law and contradicts the legal recognition and reality of holding companies.

139. The assessment of proposed acquisitions must occur once the holding reaches certain percentage thresholds, specifically 20 per cent, 30 per cent, or 50 per cent, as set out in Article 22(1) of the CRD and Article 57(1) of Solvency II. These provisions do not allow for additional thresholds, except in cases where a one-third threshold is used instead of the 30 per cent threshold. More importantly, the approval of holdings exceeding 50 per cent is explicitly permitted. The Commission contends that any administrative practice that excludes in principle qualifying shareholdings above 25 per cent would be inconsistent with EEA law, as the CRD and Solvency II allow for shareholdings exceeding 30 per cent and even 50 per cent.

Bernd Hammermann
Judge-Rapporteur

[46] Reference is made to the judgments of 23 April 2019 in *Romenergo and Aris Capital*, C-339/19, EU:C:2020:709, paragraph 35; of 4 June 2002 in *Commission* v *Portugal*, C-367/98, EU:C:2002:326, paragraph 40 et seq.; and of 25 August 2023 in *Xella*, C-106/22, EU:C:2023:568, paragraphs 58 to 59.