

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Norges Høyesterett dated 30 June 2020 in criminal proceedings against N

(Case E-8/20)

A request has been made to the EFTA Court dated 30 June 2020 from Norges Høyesterett (the Supreme Court of Norway), which was received at the Court Registry on 2 July 2020, for an Advisory Opinion in criminal proceedings against N on the following questions:

Questions about the state of the law before 1 June 2012

Question 1: Is the term “sickness benefits” in Article 4(1)(a) of Regulation No 1408/71 to be interpreted as encompassing a benefit such as the work assessment allowance (arbeidsavklaringspenger)?

Question 2: Is Article 22 of Regulation No 1408/71, or possibly Article 19, to be interpreted as conferring entitlement to receive cash benefits only when residing (bosetting) in an EEA State other than the competent State, or are shorter stays (opphold) such as in the present case also included?

Question 3: If shorter stays such as in the present case are also included, is Article 22 of Regulation No 1408/71 and its reference to authorisation from the competent institution, or possibly Article 19, to be interpreted as meaning that the competent State may make a person’s entitlement to be able to bring their work assessment allowance along subject to the condition that that person must have applied for and obtained authorisation to stay (oppholde seg) in another EEA State?

Question 4: Should Regulation No 1408/71 be found not to confer entitlement to bring work assessment allowance along during a stay in another EEA State, or possibly not without authorisation from the competent institution pursuant to national rules, must it also be determined whether the national rules come within the scope of other EEA rules?

Question 5: Do Articles 28 or 36 of the EEA Agreement apply in a situation where a national of an EEA State has a shorterleisure stay in another EEA State?

Question 6: If that question is answered in the affirmative, is it a restriction on free movement under Article 28 of the EEA Agreement or Article 36 that national law lays down the following conditions:

- (i) that the benefit may be given only for a limited period of time which, according to administrative circulars, may not usually exceed four weeks per year; and
- (ii) that the stay abroad is compatible with the performance of defined activity obligations and does not impede follow-up and control by the competent institution, and
- (iii) that the person concerned must apply for and obtain authorisation from the competent institution (and compliance with the notification duty is controlled through the use of a notification form)?

Question 7: If the condition in (i) constitutes a restriction, can the condition be justified as a general safeguarding of the considerations underlying condition (ii), that is to say, ensuring performance of defined activity obligations and also follow-up and control?

Question 8: If condition (i) cannot be justified and conditions (ii) and (iii) constitute a restriction, can conditions (ii) and (iii) be justified on the basis of the same considerations?

Question 9: If conditions (ii) and (iii) can be justified, is it compatible with Articles 28 and 36 of the EEA Agreement for a person who has failed to apply for and obtain authorisation to bring benefits along to another EEA State and who provides the competent institution with incorrect information about the place of stay (oppholdssted) to be ordered to repay the benefit which was thus unlawfully acquired under national law?

Question 10: If that question is answered in the affirmative, is it compatible with Articles 28 and 36 of the EEA Agreement for the person concerned potentially to be subject to criminal sanctions for having provided incorrect information and thus having misled the competent institution into making unfounded payments?

Question 11: If question 5 is answered in the negative, do Articles 4 or 6 of Directive 2004/38 apply in a situation where a national of an EEA State has a shorter leisure stay in another EEA State? In so far as Article 6 applies, does that provision impose obligations on the home State? If Articles 4 or 6 is applicable and may be relied on as against the home State, the same question as questions 6 to 10 are asked in so far as they fit.

Questions about the state of the law after 1 June 2012

Question 12: Is the term “sickness benefits” in Article 3(1)(a) of Regulation No 883/2004 to be interpreted as encompassing a benefit such as a work assessment allowance?

Question 13: Is the term “staying” in Article 21(1) of Regulation No 883/2004, which is defined as “temporary residence” in Article 1(k), to be interpreted as encompassing each and every short-term stay in another EEA State not constituting residence, including stays such as in the present case?

Question 14: If that question is answered in the affirmative, is Article 21 of Regulation No 883/2004 to be interpreted as only covering situations where the medical diagnosis is given during the stay in the other EEA State, or also situations where – as in the present case – the diagnosis is recognised by the competent institution before departure?

Question 15: If Article 21 is applicable in a situation such as that in the present case, is that provision, including the condition “in accordance with the legislation it applies”, to be interpreted as meaning that the competent EEA State may maintain the following conditions:

- (i) that the benefit may be given only for a limited period of time which, according to administrative circulars, may not usually exceed four weeks per year; and
- (ii) that the stay abroad is compatible with the performance of defined activity obligations and does not impede follow-up and control by the competent institution, and
- (iii) that the person concerned must apply for and obtain authorisation from the competent institution (and compliance with the notification duty is controlled through the use of a notification form)?

Question 16: If Article 21 precludes condition (i), but not (ii) and (iii), do (ii) and (iii) come within the scope of other EEA rules (see question 4 et seq.)?