

## EFTA COURT

**Action brought on 3 August 2016 by the EFTA Surveillance Authority against the Kingdom of Norway**

**(Case E-9/16)**

An action against the Kingdom of Norway was brought before the EFTA Court on 3 August 2016 by the EFTA Surveillance Authority, represented by Carsten Zatschler and Auður Ýr Steinarsdóttir, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, B-1040 Brussels.

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

- 1. By maintaining in force a national provision such as section 2, paragraph 32, of the Norwegian Product Regulation which bans the manufacture, import, export and sale of consumer products containing certain concentrations of perfluorooctanoic acid (PFOA), Norway has failed to fulfil its obligations arising from the Act referred to at point 12zc of Chapter XV of Annex II to the EEA Agreement (*Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, as amended*), in particular Article 128(1) thereof, as adapted to the EEA Agreement by Protocol 1 thereto.**
- 2. In the alternative, by maintaining in force a national provision such as the aforementioned one once the restriction process under Title VIII of the aforementioned Act referred to at point 12zc of Chapter XV of Annex II to the EEA Agreement has been initiated, Norway has failed to fulfil its obligations arising from Article 3 of the EEA Agreement read together with Article 128(1) of that Act.**
- 3. By maintaining in force a national provision such as aforementioned one, Norway has failed to fulfil its obligations arising from Article 11 of the EEA Agreement.**
- 4. The Kingdom of Norway bears the costs of the proceedings.**

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

- The EFTA Surveillance Authority (ESA) claims that the Kingdom of Norway has breached its obligations under the REACH Regulation, and/or its obligations under the EEA Agreement, by maintaining in force a national regulation prohibiting the manufacture, import, export and sale of consumer products containing 0.001% or more by weight of a substance commonly referred to as “PFOA”.
- ESA seeks to obtain clarification that once a substance has been identified as posing an uncontrolled risk to the environment and human health, unilateral national regulation of substances covered by REACH is permissible only in certain narrowly defined circumstances, provided for under the REACH Regulation.
- The present Application concerns national legislation adopted in Norway to restrict PFOA. By this Application, ESA in no way seeks to question the necessity of regulating PFOA as a substance. It is instead an important procedural matter which has prompted ESA to bring the present infringement action: when an EEA State identifies a risk to health or the environment arising from a substance covered by REACH, it is essential for the functioning of the system established by REACH that those concerns are acted upon within the framework of that system, rather than resulting in unilateral action.
- On 27 August 2013, the Norwegian Government informed ESA that a regulation amending the Norwegian Product Regulation through the introduction of restrictions on the manufacture, import, export and sale of consumer products containing PFOA and certain salts and esters of PFOA had been adopted on 27 May 2013.
- On 8 July 2015, ESA delivered a reasoned opinion on the matter. Pursuant to the second paragraph of Article 31 of the Surveillance and Court Agreement (SCA), ESA required Norway to take the measures necessary to comply with the reasoned opinion within two months following the notification, that is, no later than 8 September 2015.
- By letter of 16 October 2015, Norway responded to the reasoned opinion, maintaining its position and providing some additional comments. As Norway still maintained the national provisions in question by the deadline set in the reasoned opinion, ESA decided to bring the matter before the EFTA Court pursuant to the second paragraph of Article 31 SCA.