

EFTA COURT

Action brought on 10 July 2020 by the EFTA Surveillance Authority against the Kingdom of Norway

(Case E-9/20)

An action against the Kingdom of Norway was brought before the EFTA Court on 10 July 2020 by the EFTA Surveillance Authority, represented by Stewart Watson, Claire Simpson, Erlend M. Leonhardsen, Catherine Howdle and Carsten Zatschler, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, B-1040 Brussels.

The EFTA Surveillance Authority requests the EFTA Court to:

- 1. Declare that, by maintaining in force provisions such as Sections 6-11(1) and 6-36(2) of the Public Limited Companies Act, Section 6-11(1) of the Private Limited Companies Act and Sections 7-5 and 8-4(5) of the Financial Undertakings Act the Kingdom of Norway has failed to fulfil its obligations under Articles 31 and 28 of the EEA Agreement, Article 1(1) of the Act referred to at point 2 of Annex V to the EEA Agreement (Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union) and Article 2 of the Act referred at point 8 of Annex XXII to the EEA Agreement (Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State).**
- 2. Order the Kingdom of Norway to bear the costs of the proceedings.**

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

- This application concerns various (nationality and/or) residence requirements laid down in Norwegian company law in respect of persons who occupy certain management roles in companies registered and incorporated in Norway. The legislative provisions concerned variably require a proportion of the founders of companies, managers, board members and members of the corporate assembly (corporate officers) to be resident in Norway. At the same time these provisions determine that the said residence requirements do not apply to nationals of EEA States, but only provided they are resident in such a State.

- The provisions thus restrict the ability of companies lawfully established in another EEA State to set up and conduct business in Norway to the extent that they have corporate officers who are either not EEA nationals or EEA nationals not resident in the EEA. They also limit the ability of EEA nationals not resident in the EEA to act as corporate officers of Norwegian companies.
- The EFTA Surveillance Authority (“the Authority”) submits that the provisions referred to amount, primarily, to an unjustified restriction of the freedom of establishment in Norway of companies which have been formed in accordance with the law of an EEA State and which have their seat in the EEA and, consequently, infringe Article 31 EEA. In addition, these requirements are incompatible with Directive 89/666. Finally, from the perspective of the individuals targeted by these provisions, they also infringe Article 28 EEA and Regulation 492/2011.
- The case was opened in 2014 at the Authority’s initiative. In the course of its contacts with the Norwegian Government in the intervening years, on the basis, inter alia, of a letter of formal notice of 4 November 2015 and a reasoned opinion of 12 October 2016, the Norwegian Government explained that the residence requirements were designed to ensure accessibility to company management and to enable the national authorities to exercise jurisdiction over these companies.
- The Norwegian Government considered the requirements to be necessary, suitable and appropriate for this purpose.
- The Authority does not agree with this position, particularly in the light of a number of decisions of both the EFTA Court and the EU Court of Justice, in which similar requirements were found to be contrary to Article 31 EEA and Article 49 TFEU respectively.
- It should be noted that the Norwegian Government has drawn up proposals aimed at relaxing these requirements. The public consultation phase of the legislative process was concluded on 16 January 2020. These proposals had not yet been adopted at the time of lodging the present application.