JUDGMENT OF THE COURT
30 September 2025*

(Failure by an EFTA State to fulfil its obligations – Failure to correctly implement directives – Directive 2013/36/EU– Directive 2009/138/EC (Solvency II) – Maintaining in force an administrative practice – Exhaustive assessment criteria for notified acquisitions of qualifying holdings)

In Case E-24/24

EFTA Surveillance Authority, represented by Kyrre Isaksen, Erlend Møinichen Leonhardsen, Claire Simpson and Melpo-Menie Joséphidès, acting as Agents,

applicant,

v

The Kingdom of Norway, represented by Thea Westhagen Edell, Anders Narvestad, Fredrik Bergsjø and Oscar Nordén, acting as Agents,

defendant,

APPLICATION 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.

* All translations of national provisions are unofficial.

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann (Judge-Rapporteur) and Michael Reiertsen, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having regard to the written pleadings of the applicant and the defendant, and the written observations submitted on behalf of:

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

having regard to the Report for the Hearing,

having heard oral argument of the applicant, represented by Kyrre Isaksen and Erlend Møinichen Leonhardsen; the defendant, represented by Anders Narvestad; and the Commission, represented by Dimitrios Triantafyllou and Gaëtane Goddin, at the hearing on 1 April 2025,

gives the following

JUDGMENT

I INTRODUCTION

1 By an application lodged at the Court's Registry on 23 September 2024, the EFTA Surveillance Authority ("ESA") brought an action under 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"), seeking a declaration from the Court that, by maintaining in force certain national rules, Norway has failed to fulfil its obligations arising from 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 that, by maintaining in force a certain administrative practice, Norway has failed to fulfil its obligations arising from Articles 22 and 23 of Directive 2013/36/EU and Articles 57 to 59 of Directive 2009/138/EC.

2 Norway contests the form of order sought and requests that the application be dismissed. The material time of the action is 19 September 2023.

II LEGAL BACKGROUND

EEA law

3 Article 3 of the Agreement on the European Economic Area ("the EEA Agreement" or "EEA") reads:

> *The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.*
>
> *They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.*
>
> *Moreover, they shall facilitate cooperation within the framework of this Agreement.*

4 Article 7 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:*
>
> *(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;*
>
> *(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.*

5 Article 31 SCA reads:

> *If the EFTA Surveillance Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement or of this Agreement, it shall, unless otherwise provided for in this Agreement, deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.*
>
> *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 CRR

6 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 (OJ 2013 L 176, p. 1, and Norwegian EEA Supplement 2022 No 13, p. 225) ("the CRR") was incorporated at point 14a of Annex IX (Financial services) 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) ("JCD No 79/2019"). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 27 November 2019 and the decision entered into force on 1 January 2020.

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 (OJ 2007 L 247, p. 1, and Norwegian EEA Supplement 2013 No 73, p. 1) ("the Qualifying Holdings Directive") 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). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 17 September 2010 and the decision entered into force on 1 November 2010.

8 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 (Financial services) 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). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 2 December 2019, and the decision entered into force on 3 December 2019.

The CRD IV

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) ("the CRD IV") was incorporated into Annex IX (Financial services) to the EEA Agreement at point 14 by JCD No 79/2019. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 27 November 2019 and the decision entered into force on 1 January 2020.

10 Title III of the CRD IV 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.

11 Article 22(1) and (8) of the CRD IV, 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.

12 Article 23(1) and (2) of the CRD IV, 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.

Solvency II

13 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) ("Solvency II") was incorporated in the EEA Agreement at point 1 of Annex IX (Financial services) 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. The requirements were fulfilled by 23 October 2012 and the decision entered into force on 1 December 2012.

14 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.

15 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.

16 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.*

17 Article 58(7) of Solvency II, entitled "Assessment period", 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.*

18 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.

National law

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

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

(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.

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

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.

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

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.

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

24 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.

25 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 AND PRE-LITIGATION PROCEDURE

26 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 IV 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 IV and of Article 58(7) and Article 59(1) and (2) of Solvency II

27 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.

28 Following correspondence between the parties, ESA issued a letter of formal notice on 15 March 2017, informing Norway that it took the view that Article 19a of Directive 2006/48/EC, as inserted by the Qualifying Holdings Directive, (the criteria of Article 19a of Directive 2006/48/EC are now contained in Article 23 of the CRD IV) and Article 59 of Solvency II had not been correctly implemented into Norwegian law.

29 On 15 June 2017, Norway replied to the letter of formal notice, acknowledging that "an adjusted wording of Section 6-3 FIA could reflect the meaning of the directive in a more precise manner".

30 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 IV and Article 58(7) and Article 59(1) and (2) of Solvency II had not been correctly implemented into Norwegian law.

31 On 28 November 2022, Norway submitted its reply to the supplementary letter of formal notice, 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.

32 On 19 July 2023, having received no further updates from Norway, ESA delivered a reasoned opinion, in which it concluded that, by maintaining in force Section 6-3(2) FIA, 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 IV 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.

33 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 IV and Articles 57(1) and 58(7) and Article 59(1) and (2) of Solvency II

34 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.

35 Following correspondence with Norway, ESA issued a letter of formal notice on 28 September 2022. 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 IV.

36 In the same document, ESA cited the material legal text of Article 58(7) of Solvency II, but erroneously referred to it as Article 57(8) of Solvency II. ESA concluded that there was a breach of Article 57(8) of Solvency II.

37 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 and that its dispersed ownership policy relates to financial undertakings as such and does not concern the suitability of shareholders.

38 On 19 July 2023, ESA delivered 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.

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

40 On 10 July 2024, ESA decided by way of Decision 113/24/COL to bring the matter before the Court pursuant to Article 31 SCA.

IV PROCEDURE AND FORMS OF ORDER SOUGHT

41 On 23 September 2024, ESA lodged an application pursuant to the second paragraph of Article 31 SCA at the Court's Registry, which was registered at the Court on the same date.

42 ESA requests the Court to:

> *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.*

43 On 27 November 2024, Norway submitted its defence, pursuant to Article 107 of the Rules of Procedure ("RoP"). Norway contests the application and requests 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.*

44 On 10 January 2025, ESA submitted its reply.

45 On 31 January 2025, the Commission submitted written observations pursuant to Article 20 of the Court's Statute. On 13 February 2025, Norway submitted its rejoinder.

46 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) 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 on whether the part of the application claiming that Article 58 of Solvency II has been violated met the

requirements under Article 31 SCA and to indicate what, if any, consequences would flow from their answer.

47 On 24 February 2025, ESA replied to the MoP, claiming that the application meets the requirements under Article 31 SCA. On the same day, 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 which has no effect as to the procedural rules applicable to infringement proceedings before the Court.

48 The oral hearing was held on 1 April 2025.

49 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

V ARGUMENTS SUBMITTED AND FINDINGS OF THE COURT

The first plea: the incorrect implementation of the CRD IV and Solvency II

Arguments submitted to the Court

50 ESA submits that the prudential assessment criteria set out in Article 23(1) of the CRD IV and Article 59(1) of Solvency II are fully harmonised and exhaustive. These directives aim to ensure consistency and legal certainty across the EEA.

51 ESA asserts that, by maintaining in force Section 6-3(2) FIA, which permits the inclusion of additional criteria, Norway has incorrectly implemented Article 23(1) of the CRD IV and Article 59(1) of Solvency II and breached its obligations under Article 22(8) and Article 23(1) and (2) of the CRD IV and Article 58(7) and Article 59(1) and (2) of Solvency II.

52 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 as worded at the material time clearly indicates that other criteria not explicitly mentioned in the CRD IV and Solvency II could also be taken into account.

53 Further, ESA submits that the assessment criteria in Section 6-3(2)(c) and (d) FIA as worded at the material time introduce additional criteria, not mentioned in the directives. Section 6-3(2)(c) FIA has a wider scope than the corresponding criterion in Article 23(1)(d) of the CRD IV and Article 59(1)(d) of Solvency II. Section 6-3(2)(d) FIA has no parallel in the CRD IV and Solvency II.

54 Norway maintains that Section 6-3(2) FIA falls within the discretion in implementation that is provided for by Article 7(b) EEA. Norway does not dispute that the criteria set out in Article 23(1) of the CRD IV and Article 59(1) of Solvency II are formally exhaustive. Rather, it argues that the content of those criteria is not entirely clear, which

allows for a certain degree of discretion – both for the EEA States at the implementation stage and for national authorities at the application stage.

55 Norway submits that the term "in particular" in Section 6-3(2) FIA should not be interpreted as requiring additional criteria beyond those explicitly outlined in the CRD IV and Solvency II. Rather, in the Norwegian legal tradition, the term should be seen as a testament to interpretive challenges arising from the wording and structure of Article 23(1) of the CRD IV and Article 59(1) of Solvency II.

56 As regards Section 6-3(2)(c) FIA, Norway submits that, by considering the chapeaux of Article 23(1) of the CRD IV and Article 59(1) of Solvency II, the likely influence exercised by the proposed acquirer is evidently a relevant factor in the suitability assessment.

57 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 IV and Article 59(1) of Solvency II, particularly when read in light of the preamble of the Qualifying Holdings Directive.

58 The Commission supports ESA's positions. It submits that the provisions of the CRD IV and Solvency II regarding the acquisition of qualifying shareholdings are exhaustive, with no indication that they are indicative or flexible. However, Section 6-3(2) FIA allows for additional criteria that are not specified in the directives. The term "in particular" indicates non-exhaustivity, undermining the clarity and certainty that the directives aim to provide. Additionally, in the Commission's submission, the directives do not provide for anything on the independence of the acquired entity and the supervision of the acquirer.

Findings of the Court

59 The Court recalls at the outset that Article 3 EEA imposes upon the EFTA States the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EEA Agreement (see the judgment of 7 May 2025 in *ESA* v *Iceland*, E-29/24, paragraph 18 and case law cited).

60 Pursuant to Article 7(b) EEA, an act corresponding to an EU directive, referred to in the Annexes to the EEA Agreement or a decision of the EEA Joint Committee, shall be made part of the internal legal order of an EEA State in accordance with that EEA State's choice of form and method of implementation (see the judgment of 7 May 2025 in *ESA* v *Iceland*, E-28/24, paragraph 20).

61 Accordingly, the implementation of a directive into domestic law does not necessarily require the provisions of a directive to be enacted in precisely the same words in a specific, express provision of national law. Provisions of directives must, however, be implemented with unquestionable binding force and the specificity, precision and clarity necessary so that, where appropriate, individuals may rely on their rights before the

national courts (see the judgment of 22 July 2013 in *Wahl*, E-15/12, paragraphs 50 to 52 and case law cited).

62 The Court further recalls that although one of the principal characteristics of directives is that they are intended to achieve a specific result whilst leaving it to the EEA States and their national authorities how to achieve this objective, the nature of the result to be achieved is determined by the substantive provisions of the individual directive in question (see the judgment of 28 January 2013 in *ESA* v *Iceland ('Icesave')*, E-16/11, paragraphs 119 to 120).

63 Importantly, where a directive provides for full harmonisation and is imperative in nature, EEA States may not, in the matters specifically covered by that harmonisation, maintain or introduce national provisions other than those laid down by the directive (see the judgment of 23 May 2024 in *Neytendastofa*, E-4/23, paragraph 33).

64 As regards the interpretation of the directives at issue, the Court first observes that Article 22(1) of the CRD IV and Article 57(1) of Solvency II oblige EEA States to require any natural or legal person who has taken a decision to acquire, directly or indirectly, a qualifying holding in a credit institution or an insurance undertaking or to further increase, directly or indirectly, such a qualifying holding in a credit institution or an insurance undertaking to notify the competent authorities of that decision in writing in advance of the acquisition (compare the judgment of 19 September 2024 in *Fininvest* v *ECB and Others*, Joined Cases C-512/22 P and C-513/22 P, EU:C:2024:774, paragraph 87).

65 Article 23(1) of the CRD IV and Article 59(1) of Solvency II further provide that in assessing a notification of acquisition provided for in Article 22(1) of the CRD IV and Article 57(1) of Solvency II and the information referred to in Article 22(3) of the CRD IV and Article 58(2) of Solvency II, the competent authorities shall, in order to ensure the sound and prudent management of a credit institution or an insurance undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the criteria listed in points (a) to (e) thereof.

66 It follows from the wording of Article 23(1) of the CRD IV and Article 59(1) of Solvency II that the list of criteria set out in those provisions is exhaustive. Indeed, Article 23(2) of the CRD IV and Article 59(2) of Solvency II provide that 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".

67 The exhaustive nature of the criteria is confirmed by the wording of Article 22(8) of the CRD IV and Article 58(7) of Solvency II which expressly provide that EEA States may not impose notification or approval requirements for acquisitions more stringent than those set out in the directives (compare the judgment of 25 June 2015 in *CO Sociedad de Gestión*, C-18/14, EU:C:2015:419, paragraphs 41 and 42).

68 This conclusion is also supported by the legislative history of the provisions. The Court observes that the prudential assessment criteria now contained in Article 23(1) of the CRD IV and Article 59(1) of Solvency II were originally introduced in the Qualifying Holdings Directive, as is apparent, inter alia, from recital 74 of Solvency II. The Qualifying Holdings Directive fully harmonised the procedure and prudential assessment applicable when a person intends to acquire or increase a qualifying holding in banks or insurance companies (see the judgment of 16 May 2017 in *Netfonds*, E-8/16, paragraph 101). Recital 75 of Solvency II further states that maximum harmonisation throughout the EEA of those procedures and prudential assessments is critical.

69 In light of the foregoing, it follows that the criteria for prudential assessments contained in Article 23(1) of the CRD IV and Article 59(1) of Solvency II are exhaustive and that EEA States may not provide for any additional criteria.

70 As regards the Norwegian legislation at issue, Norway maintains that Section 6-3(2) FIA did not introduce considerations into the prudential assessment beyond those for which the CRD IV and Solvency II provide.

71 The Court observes, as noted by both ESA and the Commission, first, that by stipulating that the assessment shall "in particular" take into consideration the matters listed in Section 6-3(2) FIA, the Norwegian legislature gave rise to doubts as to whether the list is exhaustive. The use of this formulation suggests that criteria beyond those listed may be relevant to the assessment. That uncertainty is, second, compounded by points (c) and (d) of Section 6-3(2) FIA, which identify the acquirer's likely influence and its inclusion within financial supervision as separate criteria within that assessment.

72 Although, as noted by Norway, the wording of the criteria specified in Article 23(1) of the CRD IV and Article 59(1) of Solvency II stands to be interpreted in light of the provisions' chapeau (see the judgment of 25 January 2024 in *A Ltd*, E-2/23, paragraph 46), and while likely influence and existing financial supervision are relevant to assessing the suitability of the proposed acquirer and the financial soundness of the proposed acquisition, this does not entail that additional criteria beyond the closed list specified in Article 23(1) of the CRD IV and Article 59(1) of Solvency II may be introduced by Norway with respect to such acquisitions.

Conclusion

73 Therefore, by maintaining in force Section 6-3(2) FIA, in particular its first sentence and provisions (c) and (d) thereof, Norway has failed to fulfil its obligations under Article 22(8) and Article 23(1) and (2) of the CRD IV and Article 58(7) and Article 59(1) and (2) of Solvency II.

The second plea: incorrect application of the CRD IV and Solvency II

Arguments submitted to the Court

74 By its second plea, ESA claims that Norway's administrative 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 IV and Article 57(1) of Solvency II and undermines the individual case-by-case assessments required under Article 23(1) of the CRD IV and Article 59(1) of Solvency II.

75 ESA understands Norway's administrative practice to entail, first, that a proposed acquirer, intending to increase its holding to 25 per cent or more in a credit institution or insurance undertaking, must notify and seek approval from the authorities, even in circumstances in which the proposed acquirer has already been permitted to own more than 20 per cent of the same credit institution or insurance undertaking. Secondly, a 20 to 25 per cent ownership limit is used as a "starting point" or "main rule" in the assessment, subject to narrow exceptions, for instance for cooperative entities and for banks engaged in niche financial activities.

76 ESA contends that the first part of Norway's administrative practice, which requires notification, conflicts with Article 22(1) of the CRD IV 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 IV and Solvency II harmonise these thresholds across the EEA and Norway's practice constitutes a stricter requirement. In ESA's submission, Norway's justification, based on conditions tied to an initial authorisation of a financial institution or an earlier approval of the acquisition of a qualifying holding, conflicts with the system established by the CRD IV and Solvency II.

77 ESA contends that the second part of Norway's administrative practice creates a presumption against qualifying holdings above 25 per cent, which is not reflected in the legislative framework of the CRD IV and Solvency II. ESA asserts further that, by maintaining such a "starting point" or "main rule", Norway fails to meet the obligation under Article 23(1) of the CRD IV and Article 59(1) of Solvency II to conduct individual assessments in full compliance with the criteria set out in the directives.

78 Norway submits that the legal basis for the first part of its administrative practice is provided by a condition either imposed at the financial institution's initial authorisation or when an earlier acquisition of a qualifying holding was approved. In the Norwegian Government's view, the CRD IV and Solvency II do not harmonise the initial authorisation and supervisory authorities may legitimately attach such conditions to the approval of acquisitions of holdings.

79 With respect to the second part of its administrative practice, Norway submits, first, that it is based on Article 23 of the CRD IV and Article 59 of Solvency II. Read in line with their objectives and in context, these provisions 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.

80 According to Norway's second line of argument, the initial authorisation process has not been harmonised and the process for approving acquisitions should not be used to circumvent it.

81 According to Norway's third line of argument, the contested administrative practice reflects several provisions of the CRD IV and Solvency II regarding ongoing prudential supervision of financial institutions.

82 Norway asserts, in explanation of its policy stance against holdings greater than 20 to 25 per cent, that concentrated ownership in financial institutions is linked to excessive 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.

83 Norway submits that ESA's argument in the Reply seems to have changed its approach from the pre-litigation procedure and the application. According to Norway, the argument that Norway cannot operate with a "main rule" or "starting point" for the discretionary assessment was not clearly 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.

84 The Commission supports ESA's positions. Its conclusion that, since the CRD IV and Solvency II aim for full harmonisation, they do not allow the national authorities to apply criteria additional to those set out in the directives also applies to the notification thresholds. In its view, the general exclusion of acquisitions of shareholdings above 25 per cent has no foundation in EEA law.

Findings of the Court

Admissibility

85 The Court observes at the outset that, although Norway has not put forward a plea that all or part of the present action is inadmissible, the Court may of its own motion examine whether the conditions laid down in Article 31 SCA for bringing an action for failure to fulfil obligations are satisfied and whether the claim put forward fulfils the relevant procedural requirements (see the judgment of 7 May 2025 in *ESA* v *Norway*, E-9/23, paragraph 60 and case law cited).

86 In the MoP issued by the Court in the present case, the Court drew attention to the fact that although the application seeks a declaration that, as regards maintaining in force the administrative practice at issue, Norway has failed to fulfil its obligations arising from Articles 57, 58 and 59 of Solvency II, the concluding paragraph of the letter of formal notice of 28 September 2022 only refers to a failure to fulfil obligations arising from Articles 57 and 59 of Solvency II. Consequently, the question arises whether the inclusion of Article 58 of Solvency II in the operative part of the reasoned opinion constitutes an impermissible extension of the subject matter set out in the letter of formal notice.

87 It should be recalled that the purpose of the pre-litigation procedure is to give the EFTA State concerned the opportunity to comply with its obligations arising from EEA law or to present its case effectively against the complaints put forward by ESA. The proper

conduct of that procedure constitutes an essential guarantee not only in order to protect the rights of the State concerned, but also so as to ensure that any contentious procedure will have a clearly defined dispute as its subject matter (see the judgment in *ESA* v *Norway*, E-9/23, cited above, paragraph 63 and case law cited).

88 The opportunity for the EFTA State concerned to submit its observations, even if it chooses not to make use of it, is an essential guarantee intended by the SCA, adherence to which is an essential formal requirement of the procedure for finding that an EFTA State has failed to fulfil its obligations (see the judgment in *ESA* v *Norway*, E-9/23, cited above, paragraph 64 and case law cited).

89 The Court recalls that the letter of formal notice issued by ESA to the EFTA State concerned and subsequently the reasoned opinion delivered by ESA delimit the subject matter of the dispute, so that it cannot thereafter be extended. Consequently, the reasoned opinion and the application must be based on the same grounds and pleas. If a complaint was not included in the letter of formal notice or subsequently the reasoned opinion, it is inadmissible at the stage of proceedings before the Court (see the judgment in *ESA* v *Norway*, E-9/23, cited above, paragraph 65).

90 However, that requirement cannot be carried so far as to mean that in every case the statement of complaints in the letter of formal notice, the operative part of the reasoned opinion and the form of order sought in the application must be exactly the same, provided that the subject matter of the proceedings has not been extended or altered but simply limited. Nevertheless, the complaints stated in the application cannot as a rule be extended beyond the infringements alleged in the operative part of the reasoned opinion and in the letter of formal notice (see the judgment in *ESA* v *Norway*, E-9/23, cited above, paragraph 66).

91 In its response to the MoP, ESA submits that the abovementioned omission in the letter of formal notice of 28 September 2022 was the result of a clerical error. More specifically, the letter of formal notice makes reference to Article 57(8) of Solvency II rather than Article 58(7). ESA notes that the correct text of Article 58(7) is reproduced in full on page 6 of the letter of formal notice, and that Solvency II does not contain an Article 57(8). As such, ESA asserts that there can be no doubt that the intention was to refer to Article 58(7) of Solvency II, and that the references to Article 57(8) in the letter of formal notice were typographical errors. ESA notes that the error was corrected in its reasoned opinion of 19 July 2023, which correctly refers to Article 58(7).

92 It should be noted, as observed by ESA, that the aforementioned letter of formal notice builds its reasoning on the text of Article 58(7) although a reference is made to Article 57(8) of Solvency II. Furthermore, the Court observes that Article 58(7) of Solvency II mirrors Article 22(8) of the CRD IV verbatim, save for the placement of two commas, and that in its response to ESA's letter of formal notice, Norway appears to have dealt with the effect of these provisions in tandem, repeatedly referring to them as the "said provisions" of the CRD IV and Solvency II. This approach is maintained in the response to ESA's reasoned opinion in the case. The Court further observes that, in its response to the MoP, Norway indicates that it considers the discrepancy in ESA's letter of formal

notice to constitute a clerical error that should not have any effect on the admissibility of the application.

93 It is apparent from the pre-litigation procedure, viewed as a whole, as well as Norway's response to the MoP, that the error in the letter of formal notice constitutes an irrelevant typographical error which did not, as a matter of fact, adversely affect Norway's rights of defence (compare the judgment of 17 February 2011 in *Commission* v *Cyprus*, C-251/09, EU:C:2011:84, paragraphs 19 to 24). Despite that error, Norway was able to identify ESA's arguments and to present contrary arguments with respect to the provisions of Solvency II at issue (compare the judgment of 2 March 2023, *Commission* v *Poland (Forest management and good practice)*, C-432/21, EU:C:2023:139, paragraphs 31 to 36 and case law cited).

94 It follows that the application is admissible insofar as it seeks a declaration that Article 58 of Solvency II has been infringed.

95 The Court observes that Norway submits in the Rejoinder that ESA's claim in the Reply departs from the claim put forward in the pre-litigation procedure. This submission is predicated on the application having alleged that Norway's practice is to reject applications to hold more than 25 per cent of a financial institution without case-by-case consideration of the merits.

96 The Court recalls, as noted above, that, ESA may clarify its objections after the letter of formal notice, as long as the subject matter of those objections remains essentially the same (see the judgment of 20 December 2024 in *ESA* v *Norway*, E-13/23, paragraph 70; and compare the judgment of 3 September 2014 in *Commission* v *Spain*, C-127/12, EU:C:2014:2130, paragraph 24 and case law cited). What is important at this stage is that the EFTA State was in possession of all the relevant information needed for its defence through the letter of formal notice (compare the judgment of 15 November 1988 in *Commission* v *Greece*, 229/87, EU:C:1988:501, paragraph 13).

97 Norway submits further, with reference to the judgment in *ESA* v *Norway*, E-13/23, cited above, that ESA focuses solely on Articles 22 and 23 of the CRD IV and Articles 57 to 59 of Solvency II, without considering the large number of provisions regarding on-going prudential supervision of both directives.

98 The Court notes that the statements on admissibility in *ESA* v *Norway*, E-13/23, cited above, must be read within their context. In that case, ESA's claim was far-reaching, involving a complex area of EEA law governed by detailed and technical rules. Moreover, the wording of the provisions cited by ESA did not explicitly prohibit an element of control by the supervisory authority of the parent undertaking, whereas ESA's argument was that the provisions in question implicitly prohibited such control. There, the Court observed that it was ESA's responsibility to place before the Court the information needed to enable the Court to establish that the obligation in question – in this instance, the alleged obligation not to exercise control – had not been fulfilled, and that several other provisions of Solvency II were relevant in assessing whether that directive represented a measure of exhaustive harmonisation in relation to authorisations

for the acquisitions of subsidiaries. It was noted that when important elements of law are first introduced after the written submissions of the parties to the dispute, it casts doubt on whether the infringement procedure has enabled the EEA State to present an effective defence and whether ESA has ensured that the State is in a position to fully understand the nature of the alleged breach and thus granted an opportunity to comply with its obligations under EEA law. In this respect, this case is different.

99 The Court, therefore, concludes that the second plea submitted in the present proceedings is admissible.

Existence of the alleged administrative practice

100 In its Rejoinder, Norway accepts the existence of the administrative practice. With respect to the first aspect alleged, Norway accepted at the oral hearing that the administrative practice entails notification requirements beyond or between the thresholds provided for in the directives, citing as an example a requirement to notify the supervisory authority when seeking to increase a holding from 20 to 25 per cent. Norway also accepted that this requirement is not limited to notification but involves an approval procedure, by which the proposed acquirer needs permission for the proposed acquisition.

101 Therefore, the existence of the first part of the administrative practice as set out above is undisputed.

102 Norway accepts that the starting point in the assessment conducted for this approval procedure is predicated on its dispersed ownership policy, which leads to a "strong caution" against anyone owning more than 20 to 25 per cent of a financial institution. However, Norway disputes that the starting point consists of an absolute rule with limited exceptions, submitting that the starting point may be rebutted.

103 Therefore, the existence of a presumption against permitting proposed acquisitions of qualifying holdings of 25 per cent or more is undisputed.

104 The Court recalls that a failure to fulfil obligations may arise due to the existence of an administrative practice which infringes EEA law when the practice is, to some degree, of a consistent and general nature (compare the judgment of 11 September 2013 in *ESA* v *Norway*, E-6/12, paragraph 58 and case law cited). It is clear that the administrative practice in the present case, as accepted by Norway, is consistent and general in nature.

The first part of the administrative practice: the 25 per cent notification and approval threshold

105 Norway accepts that its administrative practice requires notification and approval at thresholds other than those set out in the CRD IV and Solvency II. However, Norway submits that the legal basis for such additional thresholds is provided by conditions imposed as part of the initial business authorisation or in earlier permissions to acquire qualifying holdings.

106 The Court recalls that the CRD IV and Solvency II provide for full harmonisation of the procedures for acquiring a qualifying holding. The Court further recalls that Article 22(8) of the CRD IV and Article 58(7) of Solvency II expressly provide that EEA States may not impose notification or approval requirements for acquisitions more stringent than those set out in those directives. It follows that any conditions laid down in initial authorisations or approvals of acquisitions must not impose notification thresholds for subsequent acquisitions different to those laid down in Article 22(1) of the CRD IV and Article 57 of Solvency II.

107 As regards conditions concerning acquisitions imposed at the initial authorisation stage for financial institutions, Norway submits that, since the initial authorisation process has not been harmonised, such conditions are compliant with the provisions of the CRD IV and Solvency II. This argument cannot be upheld. The notification thresholds set out in Article 22(1) of the CRD IV and Article 57(1) of Solvency II trigger the authorisation procedure laid down in Article 22 et seq. of the CRD IV and Article 57 et seq. of Solvency II. The Court recalls once again that Article 22(8) of the CRD IV and Article 58(7) of Solvency II expressly prohibit EEA States from imposing more stringent notification and approval requirements for acquisitions than those for which the directives provide.

108 Norway further submits that the judgment in *CO Sociedad de Gestión* (C-18/14, cited above) supports its practice of attaching stricter notification and approval thresholds regarding later acquisitions to earlier approvals. However, the judgment in *CO Sociedad de Gestión* cannot call into question the foregoing interpretation of the directives. That judgment covered an entirely different issue from that under examination in the present case. In that case, Article 15b(2) of Directive 92/49 permitted the competent national authorities in EEA States to oppose acquisitions only under specific circumstances, specifically if there were reasonable grounds for doing so on the basis of a closed list of criteria or if the information provided by the proposed acquirer was incomplete. The European Court of Justice ("ECJ") held that, in situations in which the conditions required by Article 15b(2) of Directive 92/49 in question were satisfied, i.e. where the competent national authorities were permitted to oppose a particular acquisition, the Member States could instead attach restrictions or requirements to the approval of proposed acquisitions, either on their own initiative or by formalising commitments given by the proposed acquirer, provided that the rights of the proposed acquirer under that directive were not adversely affected. The ECJ noted that this would subject the approval of the acquisition to requirements that are less restrictive than those laid down by Directive 92/49 (compare the judgment in *CO Sociedad de Gestión*, cited above, paragraphs 30 to 34). Hence, that judgment lends no support to the practice at issue in these proceedings.

109 Moreover, Norway's submission that the additional notification and approval thresholds imposed are related to – and by inference, permitted by – a particular criterion in the relevant directives, namely Article 23(1)(d) of the CRD IV and Article 59(1)(d) of Solvency II, cannot be upheld. Article 22(8) of the CRD IV and Article 58(7) of Solvency II expressly prohibit additional or more stringent notification and approval requirements beyond those set out in the closed list specified in Article 23(1) of the CRD

IV and Article 59(1) of Solvency II. The information obligations set out in Article 22(1) of the CRD IV and Article 57(1) of Solvency II must be distinguished from notification requirements not linked to any approval process. It follows that Norway's submission that the first part of its administrative practice aligns with supervisory authorities' powers to require the provision of information cannot be upheld, since the administrative practice imposes an additional notification and approval requirement, and not a mere information obligation.

110 Therefore, the first part of Norway's administrative practice of imposing additional notification and approval thresholds by means of conditions in initial authorisations and approvals of acquisitions breaches Article 22 of the CRD IV and Article 57 of Solvency II.

The second part of the administrative practice: the presumption against permitting proposed acquisitions of qualifying holdings of 20 to 25 per cent or more

111 The Court first recalls that EEA States may not apply rules which are liable to jeopardise the achievement of the objectives pursued by a directive and, therefore, deprive it of its effectiveness (see the judgment in *Wahl*, E-15/12, cited above, paragraph 54). Article 23(2) of the CRD IV and Article 59(2) of Solvency II provide that the competent authority may oppose the acquisition if there are reasonable grounds for doing so on the basis of the criteria set out in the directives.

112 It is common ground between the parties that the prudential assessment required by the directives must be conducted on a case-by-case basis, taking into account all relevant facts (see, to that effect, the judgment in *A Ltd*, E-2/23, cited above, paragraph 54). The central issue is whether the Norwegian authorities in practice examine such proposals solely on the basis of the exhaustive criteria set out in the directives.

113 The Court observes, in this respect, that Norway has, in substance, acknowledged that proposed acquisitions are not assessed solely on the basis of the exhaustive list of criteria set out in the directives. As the Court has already held, the inclusion of the phrase "in particular" and points (c) and (d) to Section 6-3(2) FIA allows for considerations beyond those expressly provided for in the CRD IV and Solvency II. Moreover, Norway has not disputed that the competent authority usually rejects acquisitions exceeding 25 per cent, despite the absence of any such presumption in the directives.

114 Norway has referred to several decisions where acquisitions exceeding the 25 per cent threshold were approved. This, however, fails to address ESA's main point – namely, that in cases where proposed acquisitions are *not* approved, the refusal is not based solely on an assessment by the competent authority on the basis of the criteria set out in the directives.

115 As noted by ESA, the decisions annexed in Norway's defence are succinct, and do not provide evidence that such assessments were conducted, as none of the decisions demonstrate that Norway carries out a case-by-case assessment based on the required criteria. Norway cannot rebut this finding simply by asserting that the same duty of

giving reasons did not apply because the decisions resulted in *approval*. These decisions do not demonstrate that the competent authority *rejects* acquisitions solely on the basis of the criteria set out in the directives.

116 The Court recalls that the EFTA States are required, pursuant to Article 3 EEA, to facilitate the achievement of ESA's tasks. It follows in particular that, where ESA has adduced sufficient evidence of certain matters in the territory of the defendant EFTA State, it is incumbent on the latter to challenge in substance and in detail the information produced and the consequences flowing therefrom (see the judgment of 11 February 2014 in *ESA* v *Iceland*, E-12/13, paragraph 83 and case law cited).

117 The information submitted by Norway has not been sufficient to rebut the evidence provided by ESA.

118 Therefore, by maintaining the second part of the administrative practice, Norway has failed to fulfil its obligations under Articles 22 and 23 of the CRD IV and Articles 57 to 59 of Solvency II.

Conclusion

119 It follows in regard to the second plea 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 credit institutions and insurance undertakings and which assesses such acquisitions on the basis of a presumption against granting approval rather than on the basis of the criteria set out in Article 23(1) of the CRD IV and Article 59(1) of Solvency II, Norway has failed to fulfil its obligations under Articles 22 and 23 of the CRD IV and Articles 57 to 59 of Solvency II.

VI COSTS

120 Under Article 121(1) RoP, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since ESA has requested that Norway be ordered to pay the costs, the latter has been unsuccessful and none of the exceptions in Article 121(2) RoP applies, Norway must be ordered to pay the costs of the proceedings. The costs incurred by the Commission are not recoverable.

On those grounds,

THE COURT

hereby:

1. **Declares 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 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, as amended by Directive 2019/878, 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).**

2. **Declares 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 credit institutions and insurance undertakings and which assesses such acquisitions on the basis of a presumption against granting approval rather than on the basis of the criteria set out in Article 23(1) of Directive 2013/36/EU and Article 59(1) of Directive 2009/138/EC, 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. **Orders Norway to bear the costs of the proceedings.**

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 30 September 2025.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President