



ROYAL NORWEGIAN MINISTRY
OF CHILDREN AND EQUALITY

EFTA surveillance authority
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BELGIUM

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Reply to the Authority's reasoned opinion - the right to paid parental leave

Reference is made to reasoned opinion from the EFTA Surveillance Authority (the Authority) dated 15 November 2017, concerning the right to paid parental leave in Norway (193/17/COL).

In its reasoned opinion the Authority maintains that certain provisions in the National Insurance Act are in breach of the EEA Agreement, more specifically the Equal Treatment Directive (2006/54/EC), as the father's entitlement to paid parental leave is dependent upon the mother's situation whilst this is not the case in the reverse circumstance. The relevant provisions are Section 14-13 first, second and third paragraphs, and Section 14-14 first paragraph of the National Insurance Act.

The Ministry of Children and Equality (the Ministry) considers Norwegian law regarding the right to paid parental leave to be compatible with EEA law. We present a summary of the reasons of our view, below. For further elaborations on the relevant arguments, we refer to the Ministry's letter to the Authority dated 10 October 2016¹.

The Ministry's observations

In the Ministry's opinion, Norwegian law regarding paid parental leave is not in breach of the Equal Treatment Directive (2006/54/EC).

It is undisputed that the EEA Agreement does not require the EEA States to grant *paid* parental leave, cf. the Parental Leave Directive (2010/18/EC) and the Authority's reasoned

¹ Your reference no: 821851

opinion paragraph 37. Given that there is no obligation to provide paid parental leave according to the EEA Agreement, it is the Ministry's opinion that the EEA States should be given a wide discretion to decide conditions of eligibility and how the benefit should be calculated.

The Ministry considers the rules regarding parental benefits under the National Insurance Act to fall outside the scope of the Equal treatment Directive (the Directive). The Directive forbids discrimination on the grounds of sex in relation to "*employment and working conditions*". For example, a woman has a right to return to the same or equivalent post after taking maternity leave, see Article 15 of the Directive. However, in the Ministry's opinion, the right to receive *parental benefits* from a national social security scheme is not an "*employment and working condition*", and therefore falls outside the scope of the Directive.

The *Maïstrellis* case (C-222/14) did not concern a social security scheme, but the right to parental leave under the Greek Civil Service Code. It is therefore not relevant to the question of parental benefits under a social security scheme.

In the event that the Equal Treatment Directive should apply to the Norwegian provisions on parental benefits, the Ministry argues that the provisions in Section 14-13 and Section 14-14 of the National Insurance Act must be considered as "positive action" according to Article 3 in the Directive, with the aim of "ensuring full equality in practice between men and women in working life". The generous Norwegian parental leave benefits scheme is designed to promote shared parenting, to give incentives for women to return to work and fathers to play a more active role at home, as children have a need for both parents. The disputed provisions in the National Insurance Act have been seen to give incentives to achieve these goals, see:

- two reports published by Berit Brandth and Elin Kvande, Norwegian Institute of Science and Technology:
 - "Masculinity and Fathering Alone during Parental Leave" (2016)
 - "Fathers on Leave Alone in Norway: Changes and Continuities" (2017)
- a report published by the Institute for Social Research in 2016, called "Sharing the parental leave"
- an official Norwegian report from 1995, NOU 1995:27 "Daddy come home".

The Ministry thus maintains that the relevant provisions in the National Insurance Act constitute "positive action" within the meaning of the Directive. Furthermore, and taking into account that it should be within the Member States' discretion to decide which tools to use in order to promote equality between mothers and fathers, the Norwegian provisions concerning right to paid parental leave are compatible with Article 14(1)c read in conjunction with Article 2(1)c of the Equal Treatment Directive.

Yours sincerely

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This document is signed electronically and has therefore no handwritten signature