

Cases No: 77290, 77291 and 78800  
Document No: 1181997  
Decision No: 009/22/COL

## **EFTA SURVEILLANCE AUTHORITY DECISION**

of 26 January 2022

closing three complaint cases against Norway concerning the reporting obligation placed on service recipients and service providers when contracts are given to non-Norwegian contractors

### THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

#### **1 Introduction**

On 15 and 23 April 2015 and 4 March 2016, the EFTA Surveillance Authority (“the Authority”) received three complaints against Norway concerning a reporting obligation applicable to all contracts with a value above NOK 20 000 entered into by a service recipient in Norway with a service provider from another EEA State. According to the complaints, this reporting obligation constitutes a discriminatory and disproportionate restriction on the freedom to provide services under article 36 of the EEA Agreement.

Due to the similarities between these cases, the Authority decided to assess them jointly. The various steps in the process have taken place through the adoption of joint decisions instead of three individual but identical procedures. Some documents are identified by Case No 77290 only, but all documents in that case are to be read as encompassing all three complaints.

#### **2 Correspondence**

By letter dated 9 June 2015 (Doc No 759385), the Authority requested information from the Norwegian Government regarding the applicable Norwegian rules and their justification.

After an extension of the deadline, the Norwegian Government responded to the request for information by letter dated 20 August 2015 (Docs No 770239 and 770241).

The case was discussed at the package meeting in Oslo on 12 and 13 November 2015. The discussion sought a more thorough understanding of the content and the purpose of the Norwegian legislation. In the Authority’s follow-up letter after the meeting (Doc No 781498), the Norwegian Government was invited to provide further information regarding the imposition of penalties for breach of the reporting obligation.

By letter dated 8 January 2016 (Doc No 787241), the Norwegian Government provided the requested information.

On 13 January 2016 (Doc No 771934), the Internal Market Affairs Directorate of the Authority (“the Directorate”) sent a Pre-Article 31 letter setting out its preliminary view that, as the information stood at that time, the Norwegian rules on the reporting obligation went beyond the aim of ensuring fiscal supervision and effective tax collection and of preventing tax evasion. On that basis, the Directorate considered that Norway had failed to comply with the EEA provisions on the freedom to provide services.

The Norwegian Government replied by letter dated 19 February 2016 (Docs No 793881 and 793882). It stated, in essence, that it could impose the reporting obligation without this entailing an infringement of its obligations under EEA law. However, it would review the relevant legislation with the aim of balancing the objective of maintaining inter alia sufficient fiscal supervision against the burdens imposed on the service recipients and providers.

By letter dated 12 October 2016 (Doc No 822109), the Norwegian Government informed the Authority that on 11 October 2016, it published a discussion paper proposing several amendments to the reporting obligation. Based on the assessment of the observations from the public hearing, the Norwegian Government intended to propose legislative amendments to the Parliament during the first parliamentary session in 2017.

The case was then discussed at the package meeting in Oslo on 27 and 28 October 2016. In the Authority’s follow-up letter after the meeting (Doc No 824382), the Norwegian Government was invited to provide the Authority with additional information once the responses to the public hearing had been received and assessed. The Authority also indicated that the proposed changes were welcome, but that they did not address all issues in the pre-Article 31 letter. They would also only come into effect on 1 January 2018.

On 15 December 2016, the Authority issued a letter of formal notice to Norway (Doc No 819456). It concluded that the reporting obligation went beyond the aims of ensuring fiscal supervision and effective tax collection and of preventing tax evasion, and that Norway was therefore in breach of Article 36 EEA on the freedom to provide services.

The case was again discussed with the Norwegian Government at a meeting in Brussels on 6 February 2017.

After an extension of the deadline, Norway replied to the letter of formal notice on 24 March 2017 (Docs No 849873, 849875 and 849877). In its reply, the Norwegian Government presented extensive arguments against the Authority’s conclusions and maintained that the reporting obligation was compliant with EEA law.

The case was further discussed at the package meeting in Oslo on 26 and 27 October 2017. In the Authority’s follow-up letter after the meeting (Doc No 878916), the discussion was summarised, showing the diverging views between the Authority and the Norwegian Government on the justification and proportionality of the reporting obligation.

In a letter dated 8 November 2017 (Doc No 881710), the Norwegian Government stated that it hoped that also the Authority would consider the rules proportionate following the amendments of the reporting obligation scheduled to be assessed by the Parliament in December 2017.

By letter dated 17 November 2017 (Doc No 881934), the Authority welcomed the national developments regarding the reporting obligation. However, it also maintained doubts as

to whether these would sufficiently resolve the underlying concerns and invited a more detailed response from Norway in this respect.

On 15 December 2017, the Parliament adopted amendments to the reporting obligation.<sup>1</sup>

By letter dated 19 December 2017 (Docs No 889950 and 889952), the Norwegian Government informed the Authority of the adoption of the amendments and referred to the central preparatory works of the amendments, more specifically Innst. 4 L (2017-2018) chapter 9.9 and Prop. 1 LS (2017-2018) chapter 21. The preparatory works did not assess the proportionality of the restriction to the freedom to provide services but focused rather on the reduction of the administrative burden without assessing alternative means.

The case was discussed at the package meeting in Oslo on 25 and 26 October 2018. The discussion was summarised in the Authority's follow-up letter (Doc No 1039214), showing that there were still diverging views between the Authority and the Norwegian Government on the proportionality of the reporting obligation.

On 5 December 2018, the Authority delivered a reasoned opinion to the Norwegian Government (Decision 104/18/COL, Doc No 864545). It concluded that the reporting obligation went beyond the aims referred to as justification of the measure and that Norway was therefore in breach of the freedom to provide services in the EEA.

Following a request for extension of the deadline, the Norwegian Government replied to the reasoned opinion by letter dated 5 April 2019 (Doc No 1063269). In its reply, it disputed the conclusion that Norway had failed to comply with its obligations under Article 36 EEA.

On 24 September 2019, a high-level meeting was held between the Authority and the Norwegian Government in Brussels.

In the autumn of 2019 and throughout the whole of 2020, the Authority and the Norwegian Government informally discussed the case, focussing on the proportionality of the rules, and possible solutions that would reduce the burdensome elements of the system.

In early 2021, the Authority and the Norwegian Government reached agreement on a set of measures adjusting the reporting obligation and related obligations, including legislative amendments and adjustments to the technical aspects of the system.

On 12 October 2021, the Norwegian Government submitted to the Parliament its proposals for amendments to the legislation on the reporting obligation (Prop. 1 LS (2021-2022), chapter 12.5 and pages 302 and 303).

The case was discussed at the package meeting in Oslo on 28 and 29 October 2021. The Norwegian Government provided an update on the legislative process and the related technical work. In the Authority's follow-up letter after the meeting (Doc No1247323), the Norwegian Government was invited to keep the Authority updated on the processes and to give formal notice once the proposed legislative amendments had been adopted and the date of entry into force was confirmed.

On 8 November 2021, the new Norwegian Government presented adjustments to the budget package (Prop. 1 LS Tillegg 1 (2021-2022)). These proposals did not include any adjustments to the proposals for amendment to the legislation on the reporting obligation.

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<sup>1</sup> Lov 19 desember 2017 nr. 128 om endringer i lov 27. mai 2016 nr. 14 om skatteforvaltning (skatteforvaltningsloven) and Lov 19 desember 2017 nr. 123 om endringer i lov 17. juni 2005 nr. 67 om betaling og innkreving av skatte- og avgiftskrav (skattebetalingsloven).

On 21 December 2021, the Norwegian Parliament adopted the proposed amendments. On 22 December 2021, the Norwegian Government adopted the supplementary amendments to the regulations detailing the requirements linked to the reporting obligation. That same day, the Norwegian Government officially informed the Authority of the decisions made by the Norwegian Parliament and Government (Doc No 1259472).

The legislative amendments and the amendments to the provisions in the supplementary regulations entered into force on 1 January 2022.

### 3 The Authority's assessment

The case essentially concerns Section 7-6 of the Norwegian Tax Administration Act<sup>2</sup> ("the TAA") and supplementary provisions in a regulation to that act, establishing a reporting obligation for all contracts with a value above NOK 20 000 entered into by a service recipient in Norway with a service provider from another EEA State.

Under the contested rules,<sup>3</sup> the service *recipient* must report all the entities involved, limited to one step up and two steps down the contract chain (main principal and their own principal, as well as the main contractor and one sub-contractor). The obligation only applies to professional parties and public entities, entailing that it excludes individuals/private persons who receive services from foreign service providers. The service *provider* must report information on all employees working on the contract.

The deadline to report is as soon as possible and at the latest within 14 days of the start of the work in Norway under each contract. Any changes to the reported information under each contract and for each employee must also be reported, as well as the end of the work. The same deadline of 14 days applies for each change.

As described in the Authority's reasoned opinion, referred to under Chapter 2, the Authority's view has been that the reporting obligation is in breach of EEA law on the freedom to provide services because it goes beyond what is necessary to achieve the aims sought by the Norwegian Government. The disagreement with the Norwegian Government has not concerned the reporting obligation itself, but the question of what is required to ensure that the measure is proportional as required under Article 36 EEA.

Since the reasoned opinion was issued, several meetings have taken place between the Authority and the Norwegian Government. At the high-level meeting in September 2019, agreement was reached on the main principles and that a solution may be found through technical adjustments to the rules on the reporting obligation.

The Norwegian Government had already made changes to the rules prior to the meeting in 2019. Based on the subsequent discussions with the Authority on possible technical adjustments to the reporting obligation, it proposed several further amendments in informal correspondence with the Authority in December 2020 and January 2021. In December 2021 the Norwegian Parliament adopted the proposed amendments, which entered into force on 1 January 2022.

The amendments concern six main aspects aimed at addressing the concerns raised in the Authority's reasoned opinion.

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<sup>2</sup> Lov 27. mai 2016 nr. 14 om skatteforvaltning (skatteforvaltningsloven).

<sup>3</sup> During the course of the Authority's handling of this case, the Norwegian Government has made amendments to the rules on the reporting obligation. These addressed some of the Authority's concerns but not all and the Authority's final assessment has been based on the rules as they appear after the relevant changes were made and entered into force.

First, an adjustment to the reporting deadline is the most substantial change. It removes the currently burdensome and hard-to-track deadline of 14 days for each piece of information and align it with the deadline for reporting through the so-called AA-register.<sup>4</sup> In essence, this entails reporting by the 5<sup>th</sup> of each month and creates a deadline familiar to Norwegian service recipients and one they already abide by for other activities. A common, fixed monthly deadline also makes it significantly easier for foreign service providers to keep track of and fulfil the obligation to report employee information.

Second, new framework agreements that entail a reduced reporting burden by allowing for reuse of information when reporting call offs. It does not remove the burden of reporting entirely and the effects of the measure in practice are not yet clear. However, the simplification contributes to the overall efforts to remove excessive or duplicate reporting.

Third, the Norwegian Government has formalised a rule on an exemption from filing a tax return for service providers with no permanent establishment in Norway. This is not an issue regulated in Section 7-6 TAA or the regulation, but it is related to the reporting obligation and the overall burden placed on foreign service providers in Norway. It entails a simplification of the system and a formal right to be exempt from this obligation.

Fourth, the service providers should more easily be able to obtain an exemption from withholding tax on employees' salaries. This obligation is also not regulated in Section 7-6 TAA, but the reporting of employees under that provision is linked to an obligation under Norwegian law to report salaries through the AA-register and to withhold tax. The amendments entail that service providers may more easily obtain an exemption from withholding tax where it is clear that the employee will not be tax liable in Norway. As of 1 December 2020, applications are no longer handled manually but instead part of an implemented solution in the reporting obligation system, allowing for an easy automated and effective process.

Fifth, the Norwegian Government has introduced the possibility for exemption from monthly salary reporting to instead allow for reporting once for each assignment (or once for each tax year, if the assignment stretches over more than one calendar year). This exemption applies to employees subject to a withholding tax exemption and it does therefore not necessarily have any effect for service providers with employees who are taxable in Norway. In those cases, it may be easier to report monthly for all employees. However, an exemption rule allows the service provider a choice, and for service providers whose employees are all subject to withholding tax exemptions, the one-time reporting of salaries would be less burdensome than monthly reporting.

Sixth, a designated, tailor-made platform is established to simplify reporting under Section 7-6 TAA. It removes the need for service providers to register and report in two different systems (the other being the AA-register for salaries and withholding tax). Instead, foreign service providers have a one-stop-shop where registration and reporting take place on one platform only. They will also be relieved of the obligation to have a Norwegian payroll system (which is required in the AA-register). Furthermore, information on employees may be reused in a way that makes it easier to report changes, end of contract, etc., or where an employee works on more than one assignment.

The abovementioned amendments sufficiently address the issues related to the obligation on the *service recipient*. During the discussions with the Norwegian Government, the Authority has acknowledged that there may be a justified need for this type of reporting. The main emphasis has been on the burdensome deadline and the heavy cumulative effect of reporting individually on each contract. By having the deadline

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<sup>4</sup> Arbeidsgiver- og arbeidstakerregisteret (State Register of Employers and Employees). AA is the general data register of employment in Norway.

aligned with the reporting deadline in the AA-register (a-melding deadline), the reporting obligation could on this point be considered proportionate.

As regards the obligation imposed on the *service providers*, the adjustment of the deadline reduces the burden significantly also for them.

The establishment of a fit-for-purpose portal for reporting is otherwise the amendment best addressing the concerns raised in the Authority's reasoned opinion, as the obligation to report through the AA-register will then no longer apply and the service provider will not have to report employee information in two different systems and with a risk of duplication.

The other amendments mainly concern technical simplifications on reporting and exemptions. In practice, the service provider would have to report all employees the month following the commencement of the contract. There is now a simplified process for requesting an exemption from the obligation to withhold tax. The salaries will in principle still have to be reported, but where the employer obtains an exemption, it will entail a simplification requiring a once-only reporting of the salary information for employees subject to an exemption for withholding tax.

With these amendments, the overall reporting is less burdensome for the service provider. Exemptions from withholding tax and monthly salary reporting may be easily obtained through simplified technical solutions. All reporting may be done in one common system with one common deadline. For most (if not all) employees, the reporting would only have to take place twice; at the start and the end of an assignment.

In light of the above, it is the Authority's view that the amendments communicated by the Norwegian Government sufficiently address the issues raised in the reasoned opinion.

By letters of 18 November 2021 (Docs No 1182004 and 1182008), the Directorate informed the complainants of its intention to propose to the Authority that the case be closed. The complainants were invited to submit any observations on the Directorate's assessment of the complaint or present any new information by 8 December 2021.

The complainants did not reply to those letters.

Based on the above, there are no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

The complaint case arising from an alleged failure by Norway to comply with Article 36 EEA concerning the freedom to provide services is hereby closed.

For the EFTA Surveillance Authority

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