EFTA COURT

Action brought on 26 July 2023 by the EFTA Surveillance Authority against Norway

(Case E-9/23)

An action against Norway was brought before the EFTA Court on 26 July 2023 by the EFTA Surveillance Authority, represented by Claire Simpson, Erlend Leonhardsen, Marte Brathovde and Ewa Gromnicka, acting as Agents of the EFTA Surveillance Authority, Avenue des Arts 19H, B-1000 Brussels, Belgium.

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

1. **By maintaining in force legislation, such as ss. 2-1b(4) PRA and 6 PR, which unjustifiably restricts or does not include the right to seek in-patient treatment in another EEA State when a medically-justifiable deadline for providing treatment cannot be met, the Kingdom of Norway has failed to fulfil its obligations under Article 20(2) of Regulation 883/2004 and/or Article 36 EEA;**

2. **By maintaining in force legislation, such as ss. 2-1b(5) and 3(4) PR and ss.2-4a(2)a PRA and 3 PR, which failed or fails correctly to reflect the rights of patients to seek treatment in another EEA State where the same or equally-effective treatment cannot be provided in the home State within a time limit which is medically justifiable, the Kingdom of Norway has failed to fulfil its obligations under Article 20(2) of Regulation 883/2004 and/or Article 36 EEA;**

3. **By maintaining in force an appeals and procedural structure under provisions such as Section 7-2 PRA and Sections 7 and 8 PR which prevents and/or discourages the PRA/PR complaint/appeal bodies from correctly applying and securing the rights of patients to seek treatment in another EEA State where the same or equally-effective treatment cannot be provided in the home State within a time limit which is medically justifiable, and/or by maintaining an administrative practice in which such rights are not secured, the Kingdom of Norway has failed to fulfil its obligations under Article 20(2) of Regulation 883/2004 and/or Article 36 EEA, in breach also of Article 3 EEA;**

4. **By maintaining in force and applying the above unclear and/or conflicting national rules and practice in relation to patients' rights to**

seek treatment in another EEA State, the Kingdom of Norway has breached the principle of legal certainty and undermined the effectiveness of Article 36 EEA and Article 20(2) of Regulation 883/2004, in breach of those provisions, and/or of Article 3 EEA.

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

- By the present Application, the EFTA Surveillance Authority (the Authority) seeks a declaration that Norway, in relation to certain national rules and practice governing access to in-patient treatment in other EEA States, has breached Article 36 EEA, Article 20(2) of Regulation 883/2004 (the Regulation) and/or Article 3 EEA, as well as the principle of legal certainty.

- Having received complaints about the Norwegian system for in-patient treatment and the ability to receive such treatment abroad, the Authority decided in 2009 to conduct an own-initiative assessment of the relevant Norwegian rules.

- Between 2009 and 2013 the Authority and the Norwegian Government were engaged in discussions about the issues raised in the complaints and the related rules.

- On 14 May 2014, the Authority issued a letter of formal notice to the Norwegian Government concluding that Norway had failed to meet its obligations under Article 20 of the Regulation and/or Article 36 EEA.

- In its reply of 15 August 2014, the Government of Norway did not accept that the Authority´s concerns were well founded but did state that legislative amendments had been proposed and indicated that, in order to enhance legal certainty, it was considering providing additional information and clarifications in relations to rights to healthcare abroad.

- The Authority issued a supplementary letter of formal notice on 3 February 2016 concluding that not all its concerns had been addressed. The Norwegian Government replied by letter of 3 May 2016.

- The Authority delivered a reasoned opinion to Norway on 20 September 2017, to which the Norwegian Government replied by letter of 19 January 2018, maintaining that there was no breach of EEA law and explaining how a number of amendments had been made to the relevant provisions. Norway also informed the Authority by letter of 11 April 2018 of further

assessments, planned changes in the legislative framework and practical improvements planned.

- The Authority considered the legislative amendments to be unsatisfactory and decided to refer the case to the EFTA Court on 18 December 2019. In the course of preparing its application to the Court, the Authority sent a request for information to Norway on 7 May 2021, following additional information from a complainant.

- In the light of the reply from Norway, the Authority issued a second supplementary letter of formal notice on 18 May 2022.

- The answer from the Norwegian Government, in a letter of 8 July 2022, was considered by the Authority to be unsatisfactory and it delivered a supplementary reasoned opinion on 22 October 2022.

- The Norwegian Government answered by letter of 20 December 2022, maintaining its position that the relevant Norwegian law was in compliance with EEA law. Norway did, however, amend the manner in which Regulation 883/2004 had been incorporated into national law, with entry into force on 25 November 2022.

- The Authority considers that even if the amendments solved some of the issues, other issues raised by the reasoned opinion and the supplementary reasoned opinion, do however remain, and Norway still fails to ensure patients' rights to access in-patient treatment in other EEA States, in breach of its EEA obligations.