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Ministry of Labour and Social Affairs  
Postboks 8019 Dep,  
0030 Oslo  
Norway

Dear Sir/Madam,

**Subject: Complaint against Norway concerning refusal to export the work assessment allowance**

On 2 September 2015, the EFTA Surveillance Authority (“the Authority”) received a complaint against Norway concerning the refusal by the Norwegian Labour and Welfare Administration (“NAV”) to export the Work Assessment Allowance (*Arbeidsavklaringspenger* (“AAP”)) to Sweden.

According to the complainant, [REDACTED] this decision is contrary to the waiving of residence rules clause in Article 7 of Regulation (EC) No 883/2004<sup>1</sup> on the coordination of social security systems.

The complainant is a Norwegian citizen who is residing in [REDACTED] and who is currently receiving AAP. He would like to move to Sweden together with his wife as he is of the opinion that they have better chances of finding work there. However, the export of AAP to Sweden was refused by NAV on the grounds that it would be more difficult to monitor the job-searching activities and that export could delay his re-integration into the labour market. The complainant has expressed his willingness to travel from Sweden to Norway to facilitate the monitoring of his employment opportunities. By denying him the right to export AAP to Sweden, the complainant argues that the exercise of his right to free movement is hindered.

For a benefit to be covered by Regulation (EC) No 883/2004, it should be regarded as a “social security benefit”. According to settled case law of the Court of Justice of the European Union (“CJEU”), a social security benefit is “granted to the recipients, without any individual and discretionary assessment of personal needs, on the basis of a legally defined position and relates to one of the risks in Article 3(1) of Regulation (EC) No 883/2004”<sup>2</sup>.

According to Chapter 11, § 11.1-3, of the National Insurance Act (*Folketrygdløven*), the purpose of AAP is to ensure income for members of the National Insurance Scheme while receiving active treatment, attending vocational measures or receive other assistance with a view to obtain or retain employment. It is granted to persons who have been affiliated to the

<sup>1</sup> The Act referred to at point I of Annex VI to the EEA Agreement.

<sup>2</sup> See for instance Case C-503/09 *Lucy Stewart v Secretary of State for Work and Pensions* EU:C:2011:500, paragraph 32 and Case E-4/07 *Jón Gunnar Þorkelsson and Gildi-lífeyrissjóður* [2008] EFTA Court Report 3, paragraph 36.

National Insurance Scheme for at least 3 years (or at least one year in case of employed activity) and who are incapable of obtaining or retaining gainful employment due to illness, injury or disability. Creating and respecting an Activity Plan is a condition for receiving AAP. As a general rule, a person receiving AAP must reside and stay in Norway (§11.3 of the National Insurance Act).

It follows from the conditions for granting and receiving AAP that it is intended to provide claimants with the financial means to meet their needs and to allow them to, (gradually) return after work after illness. The award of AAP depends on objective criteria laid down in Chapter 11 of the National Insurance Act. It is the preliminary view of the Internal Market Affairs Directorate that AAP would qualify as a social security benefit which is directly related to the risk of invalidity in Article 3(1)(c) of Regulation (EC) No 883/2004.

In that situation, Article 7 of Regulation (EC) No 883/2004 provides that neither the acquisition, nor the retention of the benefit may be denied on the sole ground that the person concerned resides in another Member State than the one paying the benefit<sup>3</sup>. The only exceptions to that prohibition are those expressly provided for in Regulation (EC) No 883/2004, in particular Article 70 and Annex X thereof, Since AAP is not mentioned in Annex X it follows that invalidity benefits are as a rule exportable to another EEA State.

With regard to the condition that a beneficiary should stay in Norway to receive AAP, it seems that such a condition could be capable of putting some nationals of EEA States at a disadvantage simply because they have exercised their right to free movement<sup>4</sup>. Such measures could be accepted if objectively justified and proportionate to the aim pursued<sup>5</sup>.

The Directorate would like to invite the Norwegian Government to submit its observations on the nature of AAP for the purposes of Article 3 of Regulation (EC) No 883/2004 and the reasons for limiting the payment of AAP to persons residing and staying in Norway in the light of Article 7 of Regulation (EC) No 883/2004 and the principle of equal treatment enshrined in Article 28(2) of the EEA Agreement.

In addition, the Norwegian Government is invited to provide any other information it deems relevant to the case, so that it reaches the Authority by *31 October 2015*. The Authority would welcome copies of relevant national legislation, including English translations if available.

Yours faithfully,



Olafur Johannes Einarsson  
Director

Internal Market Affairs Directorate

<sup>3</sup> Case C-356/89 *Newton v Chief Adjudication Officer* EU:C:1991:265, paragraph 23.

<sup>4</sup> See for instance Case C-503/09 *Lucy Stewart v Secretary of State for Work and Pensions* EU:C:2011:500, paragraph 86.

<sup>5</sup> See for instance Case C-503/09 *Lucy Stewart v Secretary of State for Work and Pensions* EU:C:2011:500, paragraph 87.