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

Dear Sir/Madam,

Subject: Request for Information concerning own initiative case concerning NAV's processing of IP addresses

On 7 July 2022, the Internal Market Affairs Directorate ("the Directorate") of the EFTA Surveillance Authority ("the Authority") opened an own initiative case to investigate the application of Regulation 2016/679 (EU), the General Data Protection Regulation ("GDPR")¹, as well as its predecessor, Directive 95/46/EC² in Norway, from 2012 until the present day. The Norwegian Government is requested to clarify the position, current and past practices of the Norwegian Labour and Welfare Administration ("NAV") in relation to the processing and storing of Internet Protocol addresses ("IP addresses") of individuals sending employment status forms to the NAV.

The Directorate understands that, in order to be registered as a jobseeker and to receive unemployment benefits, work assessment allowance and employment scheme benefits, an employment status form must be sent by jobseekers or other persons in receipt of benefits (who are obliged to register with the NAV) every fourteen days.³ The Norwegian NAV Commission's 2020 Report⁴ makes it clear that the NAV exercised control over whether jobseekers and persons in receipt of work assessment allowance and employment scheme benefits were in fact present in Norway through the use of technological tools that tracked IP addresses. The Report further notes that residence/stay elsewhere in the EEA area than Norway alone has formed the basis for a decision to suspend or reclaim benefits, without further assessment of whether the residence/stay abroad has prevented follow-up in the specific case.

In this regard, the Directorate wishes to draw the Norwegian Government's attention to Articles 5, 6, 13, 32, 33, 34, 35, 77, 79, 80 and 82 GDPR, as well as the equivalent provisions in Directive 95/46/EC, and in particular Articles 4, 6 and 7 thereof, as well as Articles 28 and 36 of the EEA Agreement.

The Directive further wishes to draw the Norwegian Government's attention to the judgments of the EFTA Court in Case E-8/20, *N*, and Case E-15/20, *P*. In relation to Case

¹ The Act referred to at point 5e of Annex XI to the EEA Agreement (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)), as adapted.

² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

³ <https://www.nav.no/en/home/benefits-and-services/employment-status-form-how-do-you-use-it>

⁴ NOU 2020: 9 - Blindsonen — Gransking av feilpraktiseringen av folketrygdlovens oppholdskrav ved reiser i EØS-området, available at <https://www.regjeringen.no/no/dokumenter/nou-2020-9/id2723776/?ch=2>

E-8/20, *N*, in particular, the EFTA Court came to the conclusion that work assessment allowance constitutes a sickness benefit within the meaning of point (a) of Article 4(1) of Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and point (a) of Article 3(1) of Regulation (EC) No 883/2004 on the coordination of social security systems. The Court further concluded that Article 36 EEA must be interpreted as precluding legislation of an EEA State which makes the right of insured persons to retain sickness benefits in cash within the meaning of point (a) of Article 4(1) of Regulation (EEC) No 1408/71 in the case of a stay in another EEA State subject to: (1) a requirement that the recipient of sickness benefits may stay abroad only for a limited period of time which may not usually exceed four weeks per year; and (2) a system of prior authorisation, which provides for such authorisation to be refused unless it can be demonstrated that the stay in another EEA State is compatible with the performance of defined activity obligations and does not impede follow-up and control by the competent institution.

In order for the Authority to examine and assess the complaint, the Norwegian Government is invited to provide the following information:

1. The Directorate understands that IP addresses were collected and retained when persons sent in their employment status form, and that these addresses were used for control purposes. Was this the sole purpose for which these addresses were used, and what was the legal basis for such processing, under Directive 95/46/EC, and under the GDPR?
2. For how long were IP addresses stored, and what was the legal basis for their storage? How was this time limit determined?
3. Was the purpose for which the data was collected specified before the data was collected? Was this made clear to the data subjects? If so, how was this done? What information was provided to the data subjects?
4. Was the data then used for any purpose beyond the original purpose for which it was collected?
5. How are such communications presently treated? Are IP addresses still processed or stored? If so, what is the legal basis for this?
6. The Directorate understands that, until 11 March 2018, it was possible to log into the system with a username and password, but that since 11 March 2018, it has only been possible to access the system with MinID, BankID, Commfides or similar two-factor authentication keys. Were IP addresses of users still processed and/or stored after this date? If so, what was the legal basis for this processing and/or storage?
7. Did the practice change after the entry into force of the GDPR in the EEA on 20 July 2018? If so, what was the legal reasoning for the change?
8. Was the Norwegian Data Protection Authority (“DPA”) informed about this practice? If so, when did this take place? Were data subjects notified individually at the same time as the DPA that their personal data had been processed, or was being processed, or were they informed at a later juncture? What information was conveyed to the DPA? What action, if any, was taken by the DPA?
9. Approximately how many persons are affected by the processing of their personal data in this manner?
10. Approximately how many (formal or informal) enquiries and complaints have been received in relation to this issue by the Norwegian Government and/or the NAV? Please summarise the main lines of complaint received.
11. Have any remedies been made available to those whose personal data was processed? How can these remedies be accessed? How does the Norwegian Government intend to quantify damage?
12. Has any litigation been initiated by any affected parties, specifically in relation to data protection issues arising from the NAV’s processing of IP addresses?

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by 31 October 2022.

Yours faithfully,

Maria Moustakali
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Maria Moustakali.