

**Package Meeting in Norway
24-25 October 2024**

Proposal for discussion points

**Social Security
(Annex VI)**

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1. Accrual of old-age pensions through taxation of disability benefits in Norway (Case No: 92185)

On 6 May 2024, the Authority received a complaint against Norway concerning the accrual of old-age pension rights when an individual receives invalidity benefits from another EEA State.

According to the complaint, invalidity benefits have not been considered pensionable income in Norway since 2015, but instead pension accrual is determined based on the income that the invalidity benefits replace (presumed income). However, when the invalidity benefits are received from another EEA State, a calculation for pension accrual is not conducted by the responsible authority. The result is that invalidity benefits received from another EEA State do not contribute to the accrual of old-age pension benefits, unlike corresponding invalidity benefits received from Norway. This is despite the fact that they are taxed exactly the same way and subject to deduction of social security contributions. The complainant argues that this practice is in violation of the basic principles of equality of treatment and non-discrimination of the EEA Agreement, including Articles 4 and 5 of Regulation 883/2004 on the coordination of social security systems.

The Authority sent a request for information on 22 August 2024 (Doc No 1475489). The deadline for the Norwegian Government to reply is 30 September 2024.

Specific questions to be discussed:

The Authority would like to discuss the Norwegian Government's reply.

Estimated time: 45 minutes

2. Restrictions on cross-border labour market measures (Case No: 91342)

Norwegian labour market measures aim to strengthen a person's chances of obtaining or retaining work. Examples are workplace training programs, education, allocation of a functional assistant or a mentor, and wage subsidies to employers who would otherwise be reluctant to hire.

The various types of labour market measures are set out in a national Regulation on Labour Market Measures. The granting of most such measures, for example *training* ("oppl ring") in various forms, is subject to a basic requirement of residence and establishment in Norway pursuant to Section 2 of the national Labour Market Act.

Evidently, those basic requirements entail significant limitations on the possibility of undertaking labour market measures in an "EEA setting", i.e. where the individual concerned and/or the entity involved are not firmly embedded in Norway. For example, as regards *training*, a woman who wished to move to Denmark with her family while undertaking an otherwise approved web-based education, saw her application rejected with reference to the requirement of residence in Norway⁶.

Furthermore, according to an enquiry lodged with the Authority, a person requesting to finalise higher education while remaining a resident of Norway, was rejected because the institution in question was established in another EEA State. Similarly, another enquiry registered with the Authority suggests that a language course organised by an entity located in another EEA State was rejected on the sole ground that it was not part of the Erasmus programme.

Provided that the national rules at issue do not fall within the scope of Regulation 883/2004 (EC), it would appear *prima facie* that they nevertheless constitute restrictions on the fundamental freedoms of the EEA Agreement.

Specific questions to be discussed:

- i. In the most recent year(s), how many persons were undertaking any of the labour market measures provided for by the national Regulation on Labour Market Measures? How many of those were at the same time receiving a social security benefit and which type?
- ii. In the most recent year(s), how many persons received *training* (oppl ring) pursuant to chapter 7 of the Regulation on Labour Market Measures and how are the numbers divided between the different, specific measures provided for by Section 7-2 a) – c)?
- iii. The term "work-oriented measures" (arbeidsrettede tiltak) does not appear to be defined in the national legislation. With regard to the work assessment allowance, it is specified that by "work-oriented measure" in Section 11-6 (1) b) of the National Insurance Act, is meant e.g. a labour market measure, see Section 2 of the Regulation on work assessment allowance. However, it is not clear what is meant by "work-oriented measures" in other provisions, such as but not excluded to Sections 8-4(1) c), 8-7a (1) and (4) as well as Section

⁶ Article published on the website aap-aksjonen.no, entitled "NAV: F r ikke ta utdanning i utlandet".

- 8-8(3) on sick-pay. Equally, it is not clear what is meant by the same term in Section 12-5 NIA on disability benefit. Please explain how this term is to be understood and, importantly, based on what sources;
- iv. The term “arbeidsmarkeditak” does not appear to be defined in national legislation either, see e.g. Section 4-5 of the National Insurance Act as regards unemployment benefit. Please explain how this term is to be understood and, importantly, based on what sources;
 - v. With reference to the previous questions, Norway is invited to explain the relationship between “work-oriented measures” and “labour market measures”;
 - vi. In its response to the Authority's request for information, Norway stated that “labour market measures aim to prepare and qualify people for the national labour market” (letter dated 22 January 2024, p. 5). Norway is invited to elaborate in much further detail about *what* objectives lie behind the restrictions set out in Section 2(1) of the national Labour Market Act;
 - vii. In light of the aim pursued by Section 2(1) of the national Labour Market Act, Norway is invited to clarify whether alternative, less onerous measures were considered (e.g. a prior approval scheme);
 - viii. One of the requirements set out in Section 2(1) of the national Labour Market Act is that in order to be eligible for a labour market measure, the person concerned must have “legal residence” in Norway. In its response to the Authority's request for information, Norway stated that “this does not entail that the person has to stay in Norway continuously”. Norway is invited to clarify what type of stays outside of Norway is permissible as regards labour market measures and, also, what criteria are applied and on what sources they build.

Estimated time: 45 minutes

3. Norwegian rules on the award of a supplement pursuant to Article 58 of Regulation 883/2004 (Case No: 84870)

By letter dated 24 February 2020 (Doc No 1115996), the Authority informed the Norwegian Government of the opening of an own-initiative case to examine whether Norwegian law provided for a minimum pension benefit within the scope of Article 58 of Regulation 883/2004 (EC) on the coordination of social security systems, with the concomitant obligation to award a supplement to certain pensioners.

The correspondence between the Authority and Norway made clear that, in the view of the Norwegian Government, its national law did not provide for a minimum pension within the scope of Article 58 of Regulation 883/2004.

In its judgment in Case E-3/23, handed down on 18 April 2024, the EFTA Court concluded that the Norwegian rules do constitute minimum benefits within the scope of Article 58 of Regulation 883/2204. The judgment from the referring, national court is, as per 2 September 2024, still pending but expected prior to the Package Meeting.

Specific questions to be discussed:

- i. The Norwegian government is invited to clarify how it intends to implement the judgment of the EFTA Court in Case E-3/23 (regardless of whether the judgment of the referring court has been given prior to the Package Meeting);
- ii. The Norwegian Government is invited to explain what measures it foresees to undertake with a view to ensuring appropriate remedies to all individuals affected by the incorrect application of EEA law in this matter.

Estimated time: 45 minutes