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Brussels, 19 February 2021  
Case No: 86180  
Document No: 1175298

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Norwegian Ministry of Trade, Industry and Fisheries  
Postboks 8090 Dep  
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Dear Sir/Madam,

**Subject: Request for Information concerning an alleged boycott of Wizz Air**

On 22 December 2020, the EFTA Surveillance Authority (“the Authority”) received a complaint against Norway.<sup>1</sup> The complaint concerns, on the one hand, Wizz Air Hungary Ltd, an airline company with its principal place of business in an EEA State, and several Norwegian public and private entities, on the other, and an actual or threatened boycott against the complainant, who intends to start operating on domestic flight routes in Norway.

The Authority's Internal Market Affairs Directorate (“the Directorate”) is presently considering the merits of the complaint. At the outset, the Directorate notes that the social protection of workers, the right to collective bargaining, collective action and the right to freedom of assembly and association as enshrined in Article 11 of the European Convention on Human Rights, are amongst the important fundamental rights which form part of the unwritten principles of EEA law.<sup>2</sup>

The complainant has argued that the boycott is liable to deter them from exercising their free movement rights under Article 31 on the right of establishment and/or Article 36 on the freedom to provide services of the Agreement on the European Economic Area (“the EEA Agreement”). Furthermore, the complainant has also emphasised that they hold a valid operating license as an air carrier under Regulation 1008/2008 on common rules for the operation of air services in the Community (“Regulation No 1008/2008”) and must, as such, be recognised in Norway.<sup>3</sup>

The Directorate notes that according to Articles 31, 34 and 36 EEA, legal entities are, in principle, i) entitled to carry out an economic activity on a stable and continuous basis in another EEA State (freedom of establishment) and/or, ii) offer and provide their services

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<sup>1</sup> Doc No 1170771.

<sup>2</sup> See, in this respect, for example the judgments of the EFTA Court in Case E-2/11 *STX Norway Offshore* [2012] EFTA Ct. Rep. 4, paragraph 81 and Case E-14/15 *Holship Norge* [2016] EFTA Ct. Rep. 240, paragraphs 122-123.

<sup>3</sup> Act referred to in point 64a in Annex XIII to the EEA Agreement. Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the community (Recast).

in another EEA State on a temporary basis while remaining in the country of origin (freedom to provide services).<sup>4</sup>

As regards the transport sector and air services in particular, Article 36 EEA and Regulation No 1008/2008 aim at securing the freedom to provide services within the single market envisaged by the EEA Agreement. Regulation 1008/2008 must be interpreted in light of the general principle enshrined in Article 36 EEA.<sup>5</sup> They confer a right upon individuals and economic operators to market access. This right precludes any unjustified restriction, however minor.<sup>6</sup>

According to the complaint, several public law entities in Norway, in particular municipalities, decided to boycott the complainant. As stated in the complaint, Nordland County Municipality decided to take such action on 26 October 2020, when it voted on its procurement policy and, on the same date, Møre og Romsdal County Municipality also took similar actions. As also referred to in the complaint, Agder County Municipality did the same on 10 November 2020, and on 17 November 2020 Bergen's City Counsellor for Finance, Business and Real Estate stated *inter alia* that the municipality would not be using the complainant's services. Moreover, the complainant has stated that on 26 November 2020 Viken County Municipality and the City Council of Stord voted on not using Wizz Air's services. This was then followed by similar actions on the part of the state-owned enterprise Statnett on 27 November 2020.

Since municipalities and a state-owned enterprise are public law entities, it follows that they can fall under the scope of Articles 31 and 36 in conjunction with Regulation 1008/2008.<sup>7</sup> Thus, their actions can, as the case may be, constitute restrictions pursuant to the free movement provisions on establishment and services. However, restrictions on the freedom of establishment and services may, under certain conditions, be justified.

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

1. Please confirm if public bodies in Norway, municipalities or e.g. state-owned companies, have threatened or actually decided to boycott the complainant, with respect to domestic flight routes in Norway.
2. If question 1 is answered in the affirmative, please explain in detail when and how such measures were taken, by whom and, in particular, what was their prescribed aim.
3. If question 1 is answered in the affirmative, please explain if such actions are compatible with Article 31 EEA and/or Article 36 in conjunction with Regulation 1008/2008.

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 19

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<sup>4</sup> Further conditions regarding the right of establishment and services can e.g. be found in the judgments of the EFTA Court in Case E-15/11 *Arcade Drilling* [2012] EFTA Ct. Rep. 676 and Joined Cases E-3/13 and E-2/13 *Fred. Olsen and Others* [2014] EFTA Ct. Rep. 400, and Case E-13/11 *Granville* [2012] EFTA Ct. Rep. 400, paragraphs 37, 38, 40 and 41 and case-law cited.

<sup>5</sup> See, in this respect, the judgment of the EFTA Court in Case E-1/03 *ESA v Iceland* [2003] EFTA Ct. Rep. 143, paragraph 28.

<sup>6</sup> Case E-1/03 *ESA v Iceland*, cited above, paragraph 30.

<sup>7</sup> However, private undertaking, such as labour unions, although not the subject matter of this letter, can also fall under the scope of the free movement provisions. See, in this respect, e.g. the judgments of the Court of Justice of the European Union in Case C-438/05 *Viking*, ECLI:EU:C:2007:772; Case C-341/05 *Laval*, ECLI:EU:C:2007:809; and the judgment of the EFTA Court in Case E-14/15 *Holship Norge*, cited above.

*March 2021.* Please enclose copies of any relevant national legislation, including English translations if available.

Yours faithfully,

Kristin Saether Bangsund  
Deputy Director  
Internal Market Affairs Directorate

*This document has been electronically authenticated by Kristin Saether Bangsund.*