Editorial note:

A special edition of the NJEL devoted to an increasingly special(ised) field – EEA Social Security Law

Christian Franklin*

The following special edition of the Nordic Journal of European Law is dedicated to various European Economic Area (EEA) social security law issues and developments. Whilst a great deal of academic writing has naturally been devoted to European Union law and practice in this field over the years, surprisingly little attention had been given to it in its EEA context in the first 25 years since the EEA Agreement entered into force in 1994.[1] Notwithstanding the fact that social security coordination had formed an integral part of the Agreement itself from the very beginning – initially by virtue of Regulation 1408/71, and as later replaced by Regulation 883/2004 – as an essential corollary in ensuring the three non-EU Member States of Norway, Iceland and Liechtenstein full participation in the EU's internal market.[2]

The picture has nevertheless changed rather radically over the past 5 years or so, following the earth-shattering public announcement by Norwegian authorities on 28 October 2019 that EEA rules concerning the exportation of sickness benefits had been misinterpreted and misapplied for many years, with serious consequences for the beneficiaries concerned.[3] In short, for reasons that may never fully be brought to light, the Norwegian Labour and Welfare Administration (NAV) had wrongly considered the right to export various sickness benefits as limited solely to cases where beneficiaries had transferred their *habitual residence* to another EEA state, and not when they enjoyed mere *temporary stays abroad* (holidays, weekend trips abroad and such).[4] Several thousands of beneficiaries who had spent time abroad in other EEA states whilst in receipt of the benefits in question, the majority of whom were Norwegian citizens, had therefore either had their benefits stopped and/or been required by NAV to repay often ruinous amounts to the Norwegian state. In many cases to the tune of several hundred thousand Norwegian kroner. Worse still, many were subsequently prosecuted for social security fraud under Norwegian criminal law rules. The misinterpretation affected around 86 convictions, including at least 36 cases of imprisonment.[5] For doing something which was not prohibited under EEA law or

* Professor, Director of CENTENOL and Joint Coordinator of the EEA Social Security Law project, University of Bergen.

[1] Agreement on the European Economic Area [1994] OJ L1/3.

[2] Regulation (EEC) 1408/71 on the application of social security schemes to employed persons and their families moving within the Community [1971] OJ L149/2; Regulation (EC) 883/2004 on the coordination of social security systems [2004] OJ L166/1.

[3] A full time line of many important events both pre- and post-dating 28 October 2019 can be found on the Norwegian Government's official website (Norwegian only): <https://www.regjeringen.no/no/tema/pensjon-trygd-og-sosiale-tjenester/feilpraktisering-av-eos-sin-trygdeforordning/id2675673/>.

[4] Article 21(1) of Regulation 883/2004.

[5] Full numbers of cases affected can be found on NAV's website (Norwegian only): <https://www.nav.no/no/nav-og-samfunn/kontakt-nav/feiltolkning-av-eos-reglene/tall-pa-behandlede-saker-og-utbetalinger>.

Norwegian national law – the latter which even aimed (yet obviously had failed) to give EEA social security rules precedence – to begin with.[6]

Somewhat reassuringly, the political and judicial clean-up operations which followed the Norwegian social security scandal (sometimes somewhat misleadingly referred to as the 'NAV-scandal' in the media) proved both rigorous and comprehensive. A public inquiry was established,[7] a law commission set up to reform legislation in the field,[8] criminal cases were re-opened, many convictions expunged, with the Norwegian courts also reaching out to the EFTA Court for assistance as to the EEA legal issues that needed resolving.[9] The clean-up efforts are to a certain extent also still ongoing, with compensatory claims still making their way through the court system.

Perhaps inevitably, the scandal has also led to a significant and uncommonly welcome uptick in interest in EEA legal education and research in Norway, and the role played by academic institutions – not only in assisting with getting to grips with the many legal issues underlying the scandal itself, but also hopefully in helping to prevent anything similar from ever happening again. The contributions to this special edition are in fact a direct result of the push towards increasing both knowledge and awareness of EEA social security law and how it impacts on national law in the EEA EFTA States. They are based on presentations made at the annual EEA Social Security Law Conference 2024, an event which is usually organized by a tri-Faculty Research Project on EEA Social Security Law,[10] but which this past year was also co-hosted by the two new EEA law Centres based at the Universities of Bergen (CENTENOL) and Oslo (EURNOR).[11] The 4-year EEA Social Security Law project – which is led jointly by the Universities of Bergen, Oslo and Tromsø, and funded by the Norwegian Ministry for Labour and Social Inclusion – has proven such a success that it was recently extended for another 4-year period. CENTENOL and EURNOR for their

[6] EU readers will note two of the main peculiarities of EEA law as compared to EU law here: Firstly, since regulations are not directly applicable in the EFTA States but must also be incorporated 'as such' into national law (Art 7 EEA), Regulation 883/2004 was incorporated in full by a Norwegian statutory instrument (*Forskrift om inkorporasjon av trygdeforordningene i EØS-avtalen*, FOR-2012-06-22-585). Secondly, according to Protocol 35 of the EEA Agreement, as implemented in Norway by § 2 of the Norwegian EEA Act (*Lov av 27. november 1992 nr. 109 om gjennomføring i norsk rett av hoveddelen i avtale om Det europeiske økonomiske samarbeidsområde (EØS) m.v.*), EEA primacy only requires that *national rules* implementing EEA obligations be afforded primacy over conflicting *national rules*. Unimplemented or wrongly implemented EEA rules therefore enjoy no primacy (or direct effect) – at least not in the dualist EFTA states of Norway and Iceland. In cases of conflict, full precedence of the statutory instrument (and hence Regulation 883/2004) over the higher-ranking National Insurance Act (*Lov av 28. februar 1997 nr. 19 om folketrygd*) was nevertheless to be ensured by the joint effects of both § 2 of the Norwegian EEA Act and the inclusion of so-called 'sector-monism' clauses in § 1-3 of the National Insurance Act and § 1(3) of the statutory instrument.

[7] NOU 2020:9 *Blindsonen – Gransking av feilpraktiseringen av folketrygdlovens oppholdskrav ved reiser i EØS-området*, <https://www.regjeringen.no/no/dokumenter/nou-2020-9/id2723776/?ch=1>. The full report is available in Norwegian only, but does contain a summary of its main findings in English.

[8] NOU 2021:8 *Trygd over landegrensene – Gjennomføring og synliggjøring av Norges trygdekoordineringsforpliktelser*, <https://www.regjeringen.no/no/dokumenter/nou-2021-8/id2860696/>.

[9] See further e.g. Halvard H. Fredriksen and Christian N.K. Franklin, 'The NAV Case in the EFTA Court and the Supreme Court of Norway', in The EFTA Court (ed), *The EFTA Court – Developing the EEA over Three Decades* (Hart 2024) 267-286.

[10] For more information about the tri-Faculty research project on EEA Social Security Law, visit <https://uit.no/project/trygd> (Norwegian only).

[11] For more information about CENTENOL and EURNOR, see <https://www.uib.no/en/centenol> and <https://www.jus.uio.no/english/research/projects/eurnor/>.

part enjoy funding for an initial 5-year period (2023-2028) from the Norwegian Research Council and were instituted largely as a direct result of the social security scandal.

The articles in this special edition do not aim to cover all of the bases of the scandal itself, but instead aim to draw the spotlight towards various legal issues in the field of EEA social security law. Ingunn Ikdahl and Christoffer C. Eriksen (both EURNOR and the University of Oslo) start by taking a closer look at some of the most important lessons to be learnt from the scandal itself, all of which they explain should be considered relevant not only to national authorities in the EEA EFTA States but also to the authorities of the EU Member States. The article which follows takes a rather different turn, venturing into the at times rather byzantine interplay between social security coordination under Regulation 883/2004 and rights of free movement and residence under the Citizenship Directive 2004/38.[12] This collaborative piece, written by myself and three CENTENOL colleagues – Margrét Einarsdottir (Reykjavik University), Jaan Paju (University of Stockholm and Visiting Professor at the University of Bergen) and Georges Baur (Liechtenstein Institute) – aims to clarify how the requirement of 'comprehensive' sickness insurance in the Citizenship Directive must be understood under EU and EEA law, before analysing and comparing how the requirement has been interpreted and applied in different ways at national level in the three EFTA States and the Nordic EU Member State of Sweden. Omar Berg Runarsson (former Research Fellow on the EEA Social Security Law project, current PhD Fellow at CENTENOL) then picks up the mantle with his contribution on the particular status of third country nationals, refugees and stateless persons under both the EU social security regulations and the Nordic Convention on Social Security. Two contributions of equal interest no doubt to both practitioners and academics alike then follow, penned by Martin Andresen (formerly of NAV) and Dag Sørlie Lund (Judge at the Norwegian National Insurance Tribunal). The first provides an overview and comparison of key rulings of the Court of Justice of the European Union and EFTA Court in the area of social security law, whilst the second describes and analyses several selected decisions of the Norwegian National Insurance Tribunal in the field. This special edition is finally rounded off with an insightful and critical article written by Margrét Einarsdottir and Ómar Berg Runarsson, looking into current Icelandic law and practice in the field of EEA social security law, and making specific calls for improvement in the light thereof.[13]

On behalf of all of the contributors and the editorial board, we hope you enjoy reading this special edition, which we also hope will be the first of many devoted more specifically to EEA social security issues. In the meantime, anyone interested in learning more is naturally welcome to attend the next annual EEA Social Security Law Conference, due to be held in Asker (just outside of Oslo, Norway) on 11-12 September 2025.[14]

---

[12] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158/77.

[13] A huge note of thanks is due to Research Assistant Hans Olav Mangschau Hammervold of the University of Bergen for his invaluable assistance in the editorial process of this special edition and with all of the individual contributions.

[14] <https://uit.no/tavla/artikkel/878107/eos_trygderettskonferansen_2025>.