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Free Movement Rights in Norway

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I. INTRODUCTION

THIS CHAPTER WILL look to explain and compare the conditions for European Union/European Economic Area (EU/EEA), Nordic and European Free Trade Association (EFTA, ie Swiss) nationals' right to residence, access to social rights and naturalisation when moving to Norway. After briefly describing the legal, administrative and judicial arrangements generally applicable at national level in these fields (section II), we shall then proceed to look at how Norwegian law interacts more specifically with Union citizenship and free movement law through EEA (and EFTA) law, as well as the free movement rights created through various Nordic initiatives, on various issues: first, concerning rights of residence in Norway (section III); second, with regard to access to the Norwegian social security system (section IV); and, third, concerning acquisition of Norwegian nationality (section V). The final section will be devoted to two brief discussions, concerning the Norwegian rules on deportation and potential differences in the treatment of Nordic and other EU/EEA nationals regarding refusals of entry into Norway, and how the rights of free movement enjoyed under the EFTA Convention fit with the EU/EEA and Nordic agreement rules (section VI).

II. THE LEGAL ARRANGEMENTS FOR EU, EEA AND NORDIC NATIONALS IN NORWAY

The starting point for EU, EEA and Nordic nationals arriving in Norway is (unsurprisingly) to be found in Norwegian national law. The most important statute setting out the legal rights and obligations of non-Norwegian nationals moving to Norway is the Norwegian Immigration Act (IA), covering amongst other things rights of entry, residence, and grounds for deportation and rejection (ie refusals of entry).[1] The rules set out in the IA are further detailed in

[1] Act relating to the admission of foreign nationals into the realm and their stay here, LOV-2008-05-15-35, available in English at https://lovdata.no/dokument/NLE/lov/2008-05-15-35?q=Immigration%20Act.

several regulations (*forskrifter*), the most important of which is the Immigration Regulation (IR).[2] The rules are administered by several different bodies, the main focal point of which is the Directorate of Immigration (*Utlendingsdirektoratet* (UDI)). The UDI plays a key role in both the development and implementation of Norway's immigration and refugee policy, and is tasked with both facilitating and controlling lawful immigration to Norway. Working in tandem with national and local police authorities, the UDI is therefore responsible for processing asylum and family reunification applications, issuing visitors' visas and all manner of residence permits and travel documents, and making ultimate decisions on deportation and the rejection of foreign nationals.[3] The UDI operates under and answers directly to the Ministry of Justice and Public Security, and in turn instructs both the police and Norwegian foreign service missions in immigration cases.[4] The UDI's decisions under the IA, IR and Nationality Act (see further section V) may be appealed to the Immigration Appeals Board (UNE) – a special tribunal, whose decisions on immigration and citizenship cases are binding on the UDI.

There are several laws governing social security rights, the main ones being the National Insurance Act (NIA),[5] the Family Allowance Act[6] and the Child Benefit Allowance Act.[7] The rules are administered by the Norwegian Labour and Welfare Administration (NAV) and its 456 municipal offices. The NAV answers in turn directly to the Ministry of Labour and Social Inclusion.

Concerning naturalisation rights (ie becoming a Norwegian citizen), the main rules are to be found in the Nationality Act (NA) and Nationality Regulations (NR).[8] All decisions concerning acquisition or loss of citizenship are made by the UDI, following applications made to the police authorities or Norwegian Foreign service missions. As mentioned previously, decisions of the UDI may be appealed to the UNE.[9]

[2] Regulation concerning the entry of foreign nationals into the Kingdom of Norway and their presence in the realm, FOR-2009-10-15-1286.

[3] Applications for residence and work permits are submitted to and prepared by the police. The police also have authority to decide a great number of such applications themselves. Unlike deportation and rejection cases, however, the police authorities do not have the power to reject applications for residence and work permits – such cases must be determined by the UDI.

[4] Less integral for our present purposes, but the UDI must also cooperate with, and in certain instances answer to, a number of other bodies when dealing with refugees, including eg the Directorate of Integration and Diversity (IMDi), the National Police Immigration Service (PU) and local municipal authorities.

[5] *Lov om folketrygd (folketrygdloven)*, LOV-1997-02-28-19.

[6] *Lov om kontantstøtte til småbarnsforeldre (kontantstøtteloven)*, LOV-1998-06-26-41.

[7] *Lov om barnetrygd (barnetrygdloven)*, LOV-2002-03-08-4.

[8] *Lov om norsk statsborgerskap (statsborgerloven)*, LOV-2005-06-10-51; *Forskrift om erverv og tap av norsk statsborgerskap (statsborgerforskriften)*, FOR-2006-06-30-756.

[9] Important exceptions nevertheless apply. According to § 7 NA, certain applications rejected on grounds of fundamental national interests or foreign policy considerations may not be appealed, but may be reviewed by the Ministry of Labour and Social Inclusion. The only ground for review is a claim of invalidity, and the Ministry shall bear all costs of the review procedure (§ 27 NA). The Ministry will also deal with complaints in cases where it has instructed the UDI as to a course of action on grounds of fundamental national interests or foreign policy considerations according to § 28 NA.

The Norwegian national rules concerning immigration, social security rights and nationality for EU, EEA and Nordic nationals can nevertheless not be considered in isolation. In order to understand how they are interpreted and applied, they must also be viewed in light of the many international obligations that have contributed to their formulation. As discussed in earlier chapters, the multi-layered patchwork of rights and obligations flowing from various international legal instruments is complex.[10] For EU and EEA nationals, the Main Part of the EEA Agreement, and its many Annexes incorporating EEA-relevant EU regulations, directives and decisions, is naturally central.[11] For nationals of the EFTA states, the EFTA Convention – which covers Norwegian, Icelandic and Swiss nationals – is also relevant.[12] And for Nordic nationals, one must also be wary of the many Nordic agreements, including the Agreement on Common Nordic Labour Market (1982), the Nordic Passport Control Agreement (1957, as amended 1979) and the Nordic Convention on Social Security (1981).

III. LEGAL BASIS FOR ESTABLISHING RESIDENCE IN NORWAY

This section deals with what it takes to become resident in Norway, and whether there is a difference between Nordic nationals and EU/EEA nationals when it comes to the national residence requirements. This issue does not concern only national law, however, as residence under Norwegian law is in fact prescribed and to a certain extent dictated by Norway's international legal obligations. In short, and as we shall see, the differences are significant, since no residence permit is required for Nordic nationals.

A. EU/EEA Nationals Establishing Residence

As a starting point, all EU/EEA nationals looking to reside in Norway enjoy a general, unwritten right to free movement as a matter of EEA law. In its Advisory Opinion in *Campbell*, the EFTA Court held that the free movement of workers under Article 28 EEA is (only) 'a specific expression of the general right to move and reside freely within the EEA'.[13] The EFTA Court said nothing about the legal basis for this general EEA right, which in the context of EU law is naturally found in Articles 20 and 21 of the Treaty on the Functioning of the European

[10] See eg Butler, ch 3 of this volume.

[11] Agreement on the European Economic Area (EEA) [1994] OJ L1/3.

[12] Convention Establishing the European Free Trade Association (1960) Treaty No 5266 UNTS 1563, 422.

[13] Case E-4/19 *Campbell* [2020] EFTA Ct Rep 21, para 48; as confirmed in eg Case E-2/20 *L* [2021] 21 April 2021, para 24. Thereby paraphrasing similar statements made by the Court of Justice of the European Union (CJEU) concerning the relation between Art 45 and Art 21 TFEU, see eg Case C-457/12 *S and G*, ECLI:EU:C:2014:136, para 45.

Union (TFEU).[14] Based on the EFTA Court's approach in other cases, however, it seems fair to assume that this relatively novel EEA law right was drawn from several EEA sources.[15] The Court's pronouncement was nonetheless significant, since there are no provisions in the EEA Agreement mirroring those on Union citizenship.

The establishment of a general right of free movement runs counter to the EFTA states' traditional understanding that EEA rights of free movement are limited to a number of pre-defined categories of *economically active* persons. It may therefore take a while for at least some of them to fully accept.[16] Tacit support for the EFTA Court's approach, which essentially amounts to expanding freedom of movement rights to a wider range of *economically inactive* persons, may nevertheless also be found in the CJEU's decision in *IN*.[17] Notwithstanding the fact that the EEA Agreement contains no provisions mirroring the EU's policy on the Area of Freedom, Security and Justice (AFSJ), the Court viewed the combined effects of rights afforded to EFTA state nationals under the EEA Agreement, the Schengen *acquis* and several other agreements between (at least two of) the EFTA states and the EU on the joint asylum system and the European Arrest Warrant, as rendering the position of the Icelandic citizen in the case 'objectively comparable with that of an EU citizen to whom, in accordance with Article 3(2) TEU, the Union offers an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured'.[18]

Notwithstanding this development, the categorisation of various groups of persons is still important under (both EU and) EEA law. Which category a person falls into will usually determine what rights and conditions of residence in Norway the EU/EEA national will enjoy. Beyond Article 28 EEA regarding workers, the EEA Agreement contains several other specific expressions of rights to

[14] [2016] OJ C202/1.

[15] eg provisions in the Main Part of the EEA Agreement on the free movement of workers, self-employed and service providers and recipients, the many EU legal acts incorporated into the Annexes of the EEA Agreement concerning free movement of other categories of persons, and the very purposes and structure of the EEA Agreement itself. See further, CNK Franklin and HH Fredriksen, 'Differentiated Citizenship in the European Economic Area' in D Thym and V Kosta (eds), *Research Handbook on European Union Citizenship Law and Policy – Navigating Challenges and Crises* (Edward Elgar 2022) 297.

[16] Heavily objected to by Norwegian authorities in various interventions before both the CJEU and the EFTA Court, see eg the Report for the Hearing in Case E-4/19 *Campbell*, available at https://eftacourt.int/cases/e-4-19/. For an example from the CJEU, see the arguments put forward by the Norwegian Government, as reiterated in AG Tanchev's Opinion, in Case C-897/19 PPU *Ruska Federacija v IN*, ECLI:EU:C:2020:128, paras 55–60.

[17] Case C-897/19 PPU *Ruska Federacija v IN*, ECLI:EU:C:2020:262, para 50.

[18] ibid para 58. The Court hereby extended its earlier judgment in Case C-182/15 *Petruhhin*, ECLI:EU:C:2016:630, concerning the protection of Union citizens from extradition to third countries on the basis of Arts 18 and 21 TFEU, to an Icelandic citizen facing extradition to Russia whilst on holiday in Croatia. For more on these cases, and an assessment of their impact on EEA law, see eg CNK Franklin, 'Diffusion and Differentiation of EU norms in the EEA' in D Fromage (ed), *(Re-)defining Membership: Differentiation in and outside the European Union* (Oxford University Press, forthcoming).

free movement and residence concerning self-employed persons (Articles 31–35 EEA) and service providers and receivers (Articles 36–39 EEA). Other categories of persons, including for example retirees and students, and family members of all of the above, are covered by various EEA Regulations and Directives.

Rights of free movement and residence for EU/EEA nationals are nevertheless subject to specific limitations and conditions set out in the Citizenship Directive, which is (somewhat confusingly, perhaps) also made part of EEA law.[19] Given the dualist approach to the relationship between national and international law under the Norwegian Constitution, both the Main Part of the EEA Agreement and all secondary EU law measures (Regulations, Directives, etc) incorporated into its Annexes must be made into Norwegian national law. Rights of residence for EU/EEA nationals in Norway therefore flow in part from § 1 of the Norwegian EEA Act (NEEA),[20] which incorporated the Main Part of EEA Agreement into Norwegian law, and from Chapter 13 of the IA (§§ 109–125), which transposes the Citizenship Directive. Whilst there is no principle of primacy akin to that under EU law, a 'quasi-primacy' principle of EEA law – reflected in §§ 1 and 2 NEEA – ensures that in situations of potential conflict between provisions of the NEEA (and consequently therefore the Main Part of the EEA Agreement) and the IA (or any other Norwegian statute, for that matter), the former shall apply.

Rights and conditions for residence for EU/EEA nationals for up to three months, from three months to five years and for permanent residence, as set out in the Citizenship Directive (Articles 5–7, 12–14 and 16–18), therefore apply in full in Norway by virtue of Chapter 13 IA §§ 111–116. The fundamental EEA principle of homogeneity requires identical provisions under EU and EEA law to be interpreted and applied in the same way, with deference to their understanding as a matter of EU law.[21] Although the differences between the EU and EEA legal constructs may exceptionally be such as to require differing interpretations,[22]

[19] Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L158/77. Notwithstanding the lack of any provisions in the EEA Agreement mirroring Arts 20 and 21 TFEU, given its obvious impact on rights afforded to economically active persons (workers, etc), the Directive had eventually come to be incorporated into the Annexes of the EEA Agreement. Further on the Citizenship Directive's rather difficult passage into EEA law, see CNK Franklin, 'Square Pegs and Round Holes: The Free Movement of Persons Under EEA Law' (2017) 19 *Cambridge Yearbook of European Legal Studies* 165.

[20] *Lov om gjennomføring i norsk rett av hoveddelen i avtale om Det europeiske økonomiske samarbeidsområde (EØS) m.v. (EØS-loven)*, LOV-1992-11-27-109.

[21] See Arts 1, 6 and 105 EEA, and eg Preamble, recitals 4 and 15 to the Main Part of the EEA Agreement. The EFTA Court has in several cases held that the provisions do not need to be reproduced verbatim but that substantive similarities will suffice, see eg Case E-14/11 *Schenker v ESA* [2012] EFTA Ct Rep 1178, para 78.

[22] See eg Case C-72/09 *Rimbaud*, ECLI:EU:C:2010:645 (free movement of capital); cf Case T-115/94 *Opel Austria*, ECLI:EU:T:115:94, however, where the Court of First Instance rejected pleas by both the Council and the Commission for diverging interpretations of Art 10 EEA and (what is now) Art 30 TFEU.

where the provisions are similar in substance, they enjoy a strong presumption in favour of homogeneous interpretation and application.[23]

Homogeneity is nevertheless not entirely synonymous with uniformity. As already stated, there is no primacy of EEA law in the same way as under EU law. Further, the EEA Agreement does not require direct effect of non-implemented EEA provisions in the EFTA states.[24] The differences in formal *applicability* between EU and EEA law therefore seem rather plain. The lack of direct effect and primacy in the event of a conflict between residence provisions of the Citizenship Directive and the Norwegian IA is nevertheless offset to a great extent through full transposition of the former coupled with the effects of (quasi-)primacy and the inclusion of a so-called 'sector-monism' provision in § 3 IA. This provision provides that international norms binding on Norway shall have precedence over conflicting rules in the statute.[25] Norwegian authorities are also obliged to attempt harmonious interpretations of national law in tune with Norway's international obligations, as a matter of both EEA and national law.[26]

As far as homogeneous *interpretation* is concerned, Article 6 EEA makes clear that case law of the European Court of Justice before 1992 is binding and to be followed by EFTA Court. Practice further reveals that case law of Court of Justice after 1992 to date will also be followed.[27] This may and has nevertheless led to problems in recent years, in situations where the Court of Justice has either created indigenous rights of residence, or based its interpretation of rights of free movement and residence under the Citizenship Directive on the EU Treaty rules on citizenship. Since Union citizenship is not a part of EEA law, reaching identical interpretations under EU and EEA law becomes a rather strained operation.

The EFTA Court has nevertheless proved rather adept at squaring this particular circle. Building on a more *effects-based understanding* of homogeneity,[28] the EFTA Court has in a series of cases concerning residence rights under Article 7 of the Citizenship Directive held that what matters is ensuring *homogeneity as*

[23] See eg Case E-3/98 *Rainford-Towning* [1998] EFTA Ct Rep 205, para 21; P Hreinsson, 'General Principles' in C Baudenbacher (ed), *The Handbook of EEA Law* (Springer, 2016) 349, 352–53.

[24] See eg Case E-18/11 *Irish Bank* [2012] EFTA Ct Rep 592. The fact that the CJEU's general approach to direct effect of provisions in certain international agreements to which the EU is a party has led it to conclude in several cases that provisions of the EAA Agreement may have direct effect under the EU pillar of the EEA, does not change the fact that the same does not hold true for the EFTA pillar, see eg Case T-115/94 *Opel Austria*, ECLI:EU:T:115:94.

[25] For more on these 'sector-monism' provisions, see eg CNK Franklin et al, 'Norway (including Iceland & Liechtenstein)' in MR Botman (ed), *National Courts and the Enforcement of EU Law: The Pivotal Role of National Courts in the EU Legal Order* (Eleven International Publishing 2020) 340.

[26] See eg Case E-01/07 *Criminal Proceedings against A* [2007] EFTA Ct Rep 246; HR-2000-49-B.

[27] See eg Joined Cases E-9/07 and E-10/07 *L'Oréal* [2008] EFTA Ct Rep 258, para 28. Whilst the Court of Justice also routinely takes EFTA Court practice into account in its own case law, there is little denying the formal and practical hierarchical relationship between the two.

[28] Rooted in Case E-9/97 *Sveinbjörnsdóttir* [1998] EFTA Ct Rep 95, para 60; and Case E-04/01 *Karlsson* [2002] EFTA Ct Rep 240, para 28, where the EFTA Court established the unwritten principle of state liability for breaches of EEA law.

to the practical outcome in a case, even if this comes at the expense of *homogeneous interpretations* of the EU measures in question.[29] In short, as we recall, Article 7 provides for a right of residence for up to five years for EEA nationals and their family members in the territory of *another Member State*. The private individuals involved in the cases were not seeking to enforce their rights against a *host EEA state* to which they had moved, however, but rather against their own *home states* (ie Iceland and Norway) upon return from stays abroad. According to several decisions of the CJEU, in its EU setting, such a right may only flow directly from Article 21 TFEU and not the Directive.[30] Yet interpreting the Directive in the same manner as the Court of Justice would have left EFTA state nationals and their family members unable to enjoy the same rights of free movement and residence as those that flow from EU law. In a bold move, the EFTA Court therefore held that in light of the differing EU/EEA legal contexts in which the Directive was to be applied, the case law of the Court of Justice in question did not apply to the cases with which it was dealing.[31] Further, that Article 7 of the Directive, interpreted in its indigenous EEA legal context, was to be understood as giving rise to rights against an EFTA state national's home state, in the same manner as Article 21 TFEU does under EU law.[32] As a result, the need to ensure homogeneity as to results may therefore sometimes trump homogeneity as to identical interpretation.[33]

The Citizenship Directive also affords a wide range of derived rights of residence for family members of EU/EEA nationals moving to Norway.[34] Where the family members in question are EU/EEA nationals themselves, this will pose little difficulty, since they may well enjoy free-standing rights of residence themselves under Chapter 13 IA. Where the family members are third-country (ie non-EU/EEA) nationals, or EU/EEA nationals falling outside the remit of Chapter 13 IA, things are slightly more complicated. Since the EEA Agreement

[29] Case E-26/13 *Gunnarsson* [2014] EFTA Ct Rep 254; Case E-28/15 *Jabbi v Norway* [2016] EFTA Ct Rep 575; and *Campbell* (n 13).

[30] Case C-456/12 *O and B*, ECIL:EU:C:2014:135; confirmed in eg Case C-133/15 *Chavez-Vilchez*, ECLI:EU:C:2017:354; Case C-89/17 *Banger*, ECLI:EU:C:2018:570; Case C-230/17 *Altiner and Ravn*, ECLI:EU:C:2018:497.

[31] *Campbell* (n 13) paras 54–59.

[32] A view that now seems to be accepted by the Norwegian administrative authorities, see eg the Circular issued by the Norwegian Ministry for Labour and Social Inclusion of 25 January 2022, 'Instruks om tolkningen av vilkårene for avledet oppholdsrett for tredjelandsborgere som er familiemedlemmer av EØS-borgere', AI-1/2022, section 4, available at www.regjeringen.no/no/dokumenter/instruks-om-tolkningen-av-vilkarene-for-avledet-oppholdsrett-for-tredjelandsborgere-som-er-familiemedlemmer-av-eos-borgere/id2898528/.

[33] See further CNK Franklin, 'Pride and Prejudice: Some Reflections on the (In)discretionary Application of Fundamental Freedoms by Norwegian Courts' in AT Müller and W Schroeder (eds), *25 Jahre Europäischer Wirtschaftsraum* (2020) 1 *Europarecht* 225.

[34] Although the Citizenship Directive is central as a source of derived rights for third-country nationals, it is important to note that the Workers Regulation 492/2011 (which is fully incorporated into EEA and Norwegian national law) also provides certain additional residence rights for family members of (former) mobile workers, see eg Art 10 concerning residence rights for children and their primary carer.

does not generally cover immigration from third countries or the EU's AFSJ policy, neither the Family Reunification Directive nor the Long-term Residents Directive has been made part of EEA law.[35] Certain *free-standing rights* for third-country nationals may nevertheless flow from the Citizenship Directive, as reflected in § 114(3)–(4) and § 116 IA. Paragraph 114 IA transposes the Directive's rules on retention of residence rights for all family members (including third-country nationals) in the event of the EU/EEA national's death, departure from Norway, divorce or cessation of live-in relationship. Various conditions apply. Where the EU/EEA sponsor has died or left the country, the third-country family member must either fulfil one of the conditions under § 112 (1) IA (ie be a worker, a self-employed person or have sufficient resources and sickness insurance for their stay), or be a family member of a person who fulfils one of these conditions. Alternatively, where the third-country national has custody of the deceased/departed EU/EEA national's child or children, the right to residence will be retained for as long as the children are enrolled at an educational establishment, until the completion of their studies. In order to retain residence in the case of divorce or cessation of cohabitation, in addition to fulfilling the conditions of § 112 (1) IA, further requirements will also apply: The marriage must have lasted at least three years (one of which must have been spent living in Norway); the third-country national must have custody of the EU/EEA national's child(ren); the relationship must have been marred by 'particularly difficult circumstances' (eg cases involving domestic violence); or the third-country national must enjoy legal rights of access to a child/children resident in Norway.

Paragraph 116 IA transposes the right to permanent residence for family members (irrespective of their nationality) of EU/EEA nationals under Articles 16–18 of the Citizenship Directive. The primary condition for permanent residence is that the third-country national family member has resided legally and continuously in Norway for five years (notwithstanding shorter stays abroad).[36] Once acquired, third-country national family members must apply for a residence card from Norwegian authorities (usually at their local police station).[37] Nationals of the EU/EEA and their family members who are EU/EEA nationals do not have to apply for a residence card, but may choose to apply for a residence permit at their discretion.[38] In any event, it seems clear that the very right of permanent residence under § 116 is not contingent upon acquisition of

[35] Directive 2003/86/EC [2003] OJ L251/12; Directive 2003/109/EC [2003] OJ L16/44.

[36] On the meaning of continuity, Art 16(3) of the Citizenship Directive (as transposed by § 19-17 IR) expressly discounts temporary absences not exceeding a total of six months a year, absences of a longer duration for compulsory military service, and/or one absence of a maximum of 12 consecutive months for important reasons (eg pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country).

[37] § 119 IA.

[38] § 118 IA. They are nevertheless subject to a duty to register their stay with local authorities within three months of arriving in Norway, who may ask for various forms of documentation as set out in § 117 IA.

a residence card or permit; the right itself is triggered automatically once the conditions for permanent residence are fulfilled.

In addition to the free-standing rights mentioned so far, third-country national family members of EU/EEA nationals may also enjoy certain *derived rights* of residence under §§ 111 (stay up to three months), 114 (residence for up to five years) and 116 (permanent residence), on the conditions set out therein. Derived rights under §§ 111 and 114 IA are conditional upon the third-country national family member's moving with or being reunited with the EU/EEA sponsor in Norway, and are considered to last for as long as the EU/EEA national enjoys residence rights in Norway. Alternatively, in situations where the conditions of these provisions may prove more difficult to fulfil, third-country nationals may in any event have resort to the general rules on family reunification set out in Chapter 6 IA (§§ 39–53).

It is also important to note more generally that matters falling outside Chapter 13 as not regulated in the Citizenship Directive may nevertheless be caught by the general provisions on free movement in the Main Part of the EEA Agreement – for example, in the event that a situation similar to that dealt with by the CJEU in *Carpenter* were to arise in a Norwegian context.[39] In that case, the Court held that the denial of residence to the third-country national wife of a United Kingdom (UK) citizen resident in the UK yet providing cross-border services to other EU countries in his business, constituted a restriction on the right to provide services under Article 56 TFEU. Although the situation of a Norwegian citizen who married a third-country national without having initially exercised any rights of free movement to another EEA country is not regulated under Chapter 13 IA, it would presumably (given the principle of homogeneity) be resolved instead on the basis of Articles 36–39 of the Main Part of the EEA Agreement (as combined with §§ 1 and 2 NEEA, and/or § 3 IA). Similarly, residence rights for third-country nationals who are employed by companies based in other EEA countries established in Norway – and their family members, regardless of nationality – may also presumably flow from the general rules governing freedom of establishment under Article 31 EEA, to the extent that these are not considered covered by § 114 (2) IA, and at least for as long as they are providing services in Norway.[40]

Finally, it is important to be wary of a few potential (and real) peculiarities and thorny issues regarding EU/EEA nationals' rights of residence in Norway under EEA and Norwegian national law. First, rights of residence for up to five years under Article 114 IA (transposing Article 7 of the Citizenship Directive) for all other persons than workers and self-employed persons (ie students, persons not in work, etc) and their family members, are conditional on proof

[39] Case C-60/00 *Carpenter*, ECLI:EU:C:2002:434.

[40] See eg H Bull, 'Kapittel 13' in V Vevstad (ed), *Utlendingsloven – Kommentarutgave* (Universitetsforlaget 2010) 626.

of sufficient resources and comprehensive medical insurance during their stay in Norway. According to the CJEU, the entire point of these conditions is for the individual to avoid becoming an unreasonable burden on the social services of the host state.[41] Norwegian courts have nevertheless interpreted the requirement of 'sufficient resources' in a very strict manner.[42] A similarly strict – and clearly erroneous – understanding of the term 'comprehensive medical insurance' has also been adopted by the Norwegian Ministry of Labour and Social Inclusion. In a recent circular, through which it instructs case handlers in the NAV on the processing of applications for residence, it states that insurance must be 'all encompassing', covering 'all risks'.[43] Such an absolute requirement had previously been included in various directives pre-dating and replaced by the Citizenship Directive, but it finds no basis in the wording of the current rules.[44] Further, the fact that comprehensive insurance does not need to cover all risks was already inferable from the CJEU's judgment in *Baumbast*, decided more than 20 years ago.[45] The more recent decision in *VI* further clarifies that once an EU/EEA national is affiliated to a public sickness insurance system in the host Member State, he or she shall be deemed to have sufficiently comprehensive sickness insurance within the meaning of Article 7 of the Citizenship Directive.[46]

Second, there appear to be diverging views on what will constitute continuous residence for more than three months, so as to qualify for residence for up to five years under § 114 and Article 7 of the Directive. According to § 19-9 IR, the three-month period under § 111 IA (transposing Articles 5–6 of the Citizenship Directive) will be considered interrupted when the EU/EEA national and/or family member (regardless of nationality) leaves Norway for another country. As a result, any trip abroad during the first three months' stay in Norway would

[41] Case C-333/13 *Dano*, ECLI:EU:C:2014:2358, para 73; and Preamble, recital 10 to the Citizenship Directive.

[42] In TOSLO-2015–52864 (*Jabbi*), the Oslo District Court held that the Norwegian sponsor (wife) of a third-country national (husband) applying for residence on their return to Norway, having lived in Spain for more than a year, did not satisfy the condition of sufficient resources for her stay abroad – notwithstanding the fact that she had received social benefits from Norway during her time abroad, amounting to more than Spanish citizens receive in social security benefits when unemployed. Such a strict interpretation is nevertheless highly questionable in light of the underlying objectives of the Directive, the historical understanding of the term as set out in Art 1(1) of Directive 90/364 (which Art 7 of the Citizenship Directive replaced) and several decisions of the Court of Justice, making clear that the source of the resources – whether private or public, or even obtained illegally – was irrelevant (Case C-200/02 *Chen*, EU:C:2004:639, para 30; Case C-93/18 *Bajratari*, ECLI:EU:C:2019:809) and that any conditions of sufficient resources imposed by a host state must be subjected to a proportionality test (Case C-413/99 *Baumbast*, ECLI:EU:C:2002:493). For a detailed analysis, see Franklin (n 33).

[43] See n 32.

[44] Art. 1 of Directive 90/364 on the right of residence [1990] OJ L180/26; Directive 93/96 on the right of residence for students [1993] OJ L317/59; and Art. 1(1) of Directive 90/365 on the right of residence for employees and self-employed persons who have ceased their occupational activity [1990] OJ L180/28.

[45] *Baumbast* (n 42).

[46] Case C-247/20 *VI*, ECLI:EU:C:2022:177.

result in the clock winding back to zero and a new three-month period beginning. The requirement stipulated by the IR therefore seems clearly out of tune with the EFTA Court's ruling in *Campbell*, where it was held that short-term stays or travel out of the country cannot automatically be considered as interrupting the three-month period.[47] The District Court and the Court of Appeal, which had both heard the case before the Norwegian Supreme Court asked the EFTA Court for an Advisory Opinion, had reached different conclusions on this point.[48] The Supreme Court was not given the chance to provide final clarification, however, as shortly after the EFTA Court's ruling the plaintiff was offered residence in Norway on other grounds, with the result that the case was withdrawn. In light of the EFTA Court's findings, however, an amendment of § 19-9 IR seems clearly called for.

Third, it is important to note that EEA law does not espouse the EU Charter of Fundamental Rights.[49] Lack of inclusion of the Charter has nevertheless been largely overcome so far in practice by reference to other legal instruments binding on the Contracting Parties.[50] In situations where the CJEU interprets provisions of the EU Treaties (or secondary EU measures) in the light of the Charter, and the EU Treaty provisions in question are replicated in the terms of the EEA Agreement, the latter will usually be interpreted by the EFTA Court in the same manner under reference either to the provisions of the European Convention on Human Rights (ECHR) and/or to the constitutional traditions common to the EFTA states.[51] The absence of the Charter has therefore posed only a theoretical problem to date, and will likely continue to do so, unless and until the accidents of litigation give rise to a case concerning indigenous rights found in the Charter that are not reflected in either the ECHR or the common constitutional traditions of the EEA/EFTA states (such as, eg, the freedom to conduct a business under Article 16 of the Charter).

B. Nordic Nationals Establishing Residence

Whilst the general rules on residence set out in Chapter 6 IA apply in principle to all immigrants, and the rules in Chapter 13 IA to all EU/EEA nationals, the

[47] *Campbell* (n 13) paras 65–67.

[48] TOSLO-2017-19932; LB-2017-119057.

[49] Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

[50] For examples of the EFTA Court's 'bridging' work in this area, see HH Fredriksen and CNK Franklin, 'Of pragmatism and principles: the EEA Agreement 20 years on' (2015) 52(3) *CML Rev* 629, 646–50; and Franklin and Fredriksen (n 15).

[51] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos 11 and 14, 4 November 1950, ETS 5. Made largely possible thanks to references in the EEA Agreement's Preamble to human rights and the social dimension of the internal market; see further eg F Arnesen and HH Fredriksen, 'Preamble' in F Arnesen et al (eds), *Agreement on the European Economic Area – a Commentary* (CH Beck/Hart/Nomos/Universitetsforlaget 2018) para 3.

situation for Nordic nationals looking to move to Norway is nevertheless made infinitely less complex under Norwegian law. Paragraph 5 IA makes abundantly clear that citizens of the Nordic countries are fully exempt from the general requirement under § 55 IA of obtaining a residence permit in order to reside and/or work in Norway. This rule thereby transposes Article 1 of the Agreement on Common Nordic Labour Market of 6 March 1982. Furthermore, according to § 19-22 IR, Nordic nationals are not required to register entry in Norway either – unlike the requirements applicable to non-Nordic EU/EEA nationals under § 117(1) IA.

Awareness of the rules specific to Nordic nationals may be of particular importance for Danish citizens residing on the Faroe Islands looking to move to Norway, as these persons would seem to fall without the scope of (EU and hence also) the EEA rules.[52]

As far as family members of Nordic nationals are concerned, the situation is entirely unproblematic where the family members in question are Nordic nationals themselves. In such a case, they will naturally enjoy indigenous residence rights of their own accord. Where the family member is a non-Nordic EU/EEA national or third-country national, however, the Nordic agreements do not appear to offer any particular rights – let alone advantages. The reasons for this may of course be many, for example that the Nordic agreements were initially drafted at a time before free-movement rights had developed such as to fully cover family members as they do today, and/or that no amendments or revisions have been forthcoming in recent years due to the political sensitivity of immigration issues more generally. In any event, in order to secure residence in Norway, family members of Nordic nationals who are not Nordic nationals themselves will have to have recourse to the general rules applicable under the IA – that is Chapter 13 for EU/EEA nationals, and/or the universal family reunification rules set out in Chapter 6.

IV. ACCESS TO SOCIAL RIGHTS/INCLUSION IN RESIDENCE-BASED SOCIAL SYSTEMS IN NORWAY

This section looks at access to residence-based social security benefits in Norway for EU/EEA and Nordic nationals. The idea here is to analyse whether the national law differentiates between the various groups of persons. As we shall

[52] See eg Arts 25, 26(3) and 27 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, annexed to the Treaty concerning the accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community of 27 March 1972 [1972] OJ 73/3; further in Protocol 2, Art 4 to the Treaty, which stipulates that 'Danish nationals resident in the Faroe Islands shall be considered to be nationals of a Member State within the meaning of the original Treaties only from the date on which those original Treaties become applicable to those Islands'.

see, although the EEA and Nordic Agreement rules build directly on the EU social security regulations, there are nevertheless a few minor substantive differences, and also some interesting differences in both geographical and personal scope between them.

A. EU/EEA Nationals' Access to Rights

The EEA rules on social security rights mirror the EU rules to a great extent. Article 29 EEA is (in substance) a carbon copy of Article 49 TFEU, and fully incorporated into Norwegian law with primacy over conflicting national law by virtue of §§ 1 and 2 NEEA. The current EU Social Security Regulations (883/2004 and 987/2009) were both incorporated into Annex VI of the EEA Agreement in 2011.[53] Regulation 883/2004 aims to strengthen free movement by guaranteeing that persons moving within the EEA, including their dependants and survivors, may retain certain social security rights and advantages acquired in other EEA states.[54] Social security coordination under the Regulation is based on five fundamental principles: determination of which state's law shall apply in a given situation (Articles 11–16); non-discrimination on grounds of nationality (Article 4); equal treatment of facts or events taking place in other Member States (Article 5); aggregation of periods of insurance, employment, self-employment or residence completed under the legislation of other Member States (Article 6); and exportability of benefits to other Member States (Article 7). Regulation 987/2009 supplements Regulation 883/2004 by introducing a number of administrative provisions, including rules on how cases are to be handled and on exchanges and retention of digital information between social security authorities in the EEA states. It is important to note, however, that Regulation 1231/2010, which extended the scope of the Social Security Regulations to cover third-country nationals legally resident in the EU, has not been made part of EEA law.[55]

In accordance with Article 7 EEA, which requires EEA regulations to be made part of national law 'as such', Regulations 883/2004 and 1231/2009 are both fully incorporated into Norwegian law. As is usually the case where EEA regulations are made part of Norwegian law, this was done by simply stating in a national regulation (*forskrift*) that the two EEA Regulations were to apply in

[53] Regulation 883/2004 on the coordination of social security systems [2004] OJ L166/1; Regulation 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2007] OJ L284/1. Incorporated by EEA Joint Committee Decision 76/2011 of 1 July 2011.

[54] See Regulation 883/2004, Preamble, recitals 13 and 14; Case E-8/20 *Criminal Proceedings against N* [2021] 5 May 2021, para 46.

[55] Regulation 1231/2010 extending Regulation 883/2004 and Regulation 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality [2010] OJ L344/1.

full as Norwegian national regulations.[56] Any conflicts arising between the EEA Regulations and the provisions of the NIA or NIR are technically dealt with by reference to § 1-3 NIA (which states that reciprocal social security agreements with other countries may make exceptions from the rules of the NIA) and § 1 of the national regulation incorporating Regulations 883/2004 and 1231/2009 (which states that several statutes, including the NIA, are to be set aside in the event of conflict). Together, these provisions are designed to afford primacy of rights contained in the two EEA Regulations (as implemented by the national regulation) over conflicting rules that might be found in the NIA. This method of ensuring primacy is nevertheless somewhat problematic, since the only way in which this could be promised constitutionally under Norwegian law would have been to make provision for this in the NIA itself – not in the statutory instrument ranking below it.

The method of implementing the Social Security Regulations, and attempting to ensure them primacy in the face of conflicting rules in Norwegian social security law, of course matters little in situations where conflicts between the norms are not spotted to begin with. A situation that unfortunately came to pass with the recent NAV scandal in Norway. In short, in the Autumn of 2019, the Norwegian Government informed the public of several systemic breaches of EEA rights to export various sickness benefits when moving or staying abroad in other EEA states. In order to qualify for the benefits, the NIA imposed a condition of residence in Norway, with only limited grounds for exception.[57] The 'stay in Norway' requirements had been at odds with Article 21 of Regulation 883/2004 since the latter was made part of Norwegian law as of 1 June 2012. And before that, stretching all the way back to the entry into force of the EEA Agreement itself in 1994, the IA rules had been contrary to Article 36 EEA (free movement of services). As a result, several thousand benefit recipients, mainly (but not exclusively) Norwegian nationals, who had been in other EEA states whilst receiving the sickness benefits, had been met with hefty reimbursement claims by Norwegian authorities over the years. Approximately 80 of these unfortunate souls ended up being prosecuted, convicted and serving time in prison for social security fraud. To make matters even worse, in light of certain decisions by the Norwegian National Insurance Court, which directly raised the issue a few years' earlier, Norwegian authorities both could and should arguably have acted even sooner.[58] Following a public inquiry, many of the criminal cases were reopened. One of these (a pilot case) resulted in a referral by the Norwegian Supreme Court to the EFTA Court, which confirmed the suspected breaches

[56] § 1-3 IA; § 1 of *Forskrift om inkorporasjon av trygdeforordningene i EØS-avtalen*, FOR-2012-06-22-585.

[57] §§ 8-9, 9-4 and 11-3 NIA.

[58] See eg TRR-2016-2619, TRR-2016-2634, TRR-2017-1058, TRR-2017-2308, TRR-2017-3662 and TRR-2018-567.

of EEA law.[59] Legislative work subsequently began in earnest towards reforming the Norwegian social security laws, so as to bring them in line with Norway's EEA (and other international) social security coordination obligations.[60] The Ministry of Labour and Social Inclusion published its legislative proposals for change on 1 April 2022.[61]

Where the implementation of EEA rules concerning sickness benefits left much to be desired, recent opinions of the EFTA Court nevertheless show that Norwegian authorities have understood and applied the rules pertaining to exportability of certain other benefits – such as, for example, unemployment benefits under Articles 63–65 of Regulation 883/2004 – in more correct fashion. Interestingly, the EFTA Court here held that the rules on unemployment benefits, which derogate from the main rule on exportability in Article 7, allow EEA states to impose residence (and presence) requirements in all situations other than those specifically provided for by Articles 64, 65 and 65a.[62] Further the Court held that those provisions 'exhaustively regulate' the three situations in which the competent EEA state is required to allow recipients of an unemployment benefit to reside or stay in the territory of another EEA state. The Court therefore concluded that the requirement to stay in Norway to be entitled to unemployment benefits in cases where the conditions of Articles 64, 65 or 65a are not fulfilled is compatible with the Regulation, including Article 5(b) thereof.[63]

[59] *Criminal Proceedings against N* (n 54); HR-2021-1453-S.

[60] See the comprehensive Norwegian Official Report NOU 2021:8, 'Trygd over landegrensene, Gjennomføring of synliggjøring av Norges trygdekoordineringsforpliktelser', where several specific suggestions are made on how to bring Norwegian law more in line with Norway's international obligations – not only under EEA law, but also with the EFTA Convention, Nordic agreements and other bi- and multilateral agreements with other countries. The main suggestions for amendments broadly consist of abolition of the 'stay in Norway' requirements; full transposition of all multi- and bilateral agreements in the field at statutory level coupled with a clear(er) indication of the formers' primacy; and the inclusion of comprehensive international law 'pointers' in the statutes themselves.

[61] Prop 71 L (2021–2022) *Endringer i folketrygdloven mv. (synliggjøring av folkerettslige forpliktelser til trygdekoordinering)*.

[62] See Case E-13/20 *O v Arbeids- og velferdsdirektoratet* [2021], 30 June 2021; and Case E-15/20 *Criminal Proceedings Against P* [2021] 30 June 2021.

[63] The Court of Appeal, which made the referral in *Criminal Proceedings Against P*, fully accepted and applied the reasoning of the EFTA Court in its final judgment (see LB-2019-159381). Interestingly, the National Insurance Court making the referral in *O* was much more critical of the EFTA Court's reasoning (see TRR-2019-2736). Although it found that there were not strong enough grounds to disregard the EFTA Court's opinion (which is advisory), the court was not convinced that an assessment of the relevant provisions of Norwegian law was not required in light of the general rules on free movement under the Main Part of the EEA Agreement. For a similar view, see T Bekkedal and M Andenæs, 'Er mottakere av dagpenger beskyttet av EØS-avtalens grunnleggende rett til fri bevegelighet?' (2022) 61(3) *Lov og Rett* 145. Even if a supplementary assessment involving a proportionality review had been carried out, it is nevertheless difficult in my view to imagine a different final outcome in these cases, given the rather obvious differences in nature between unemployment and other benefits.

B. Nordic Nationals' Access to Rights

The Nordic Convention on Social Security extends the personal scope of the EEA Social Security Regulations to a much broader range of persons not otherwise covered by the EEA rules. In line with Article 8(1) of Regulation 883/2004, since the Nordic Convention pre-dates and offers more favourable rights for several groups of persons than under the Regulation, it will therefore apply ahead of the EEA rules in light of the so-called 'sector monism' clause in § 1-3 NIA.

First, the Nordic Convention extends the scope of the EU/EEA Regulations to various third-country nationals. As already mentioned, immigration from third countries is generally deemed to fall outside the scope of EEA law, which goes some way towards explaining why Regulation 1231/2021, which extends the scope of Regulation 883/2204 in the EU to cover legally resident third-country nationals, was not deemed EEA-relevant. The Nordic Convention nevertheless plugs part of this gap, at least as far as certain categories of third-country nationals connected to the Nordic countries are concerned. According to Articles 3 and 4, for the purposes of aggregation, third-country nationals can take into account periods of membership in national insurance schemes, employment, self-employment or residence completed under the legislation of any other Nordic state as though they were periods completed in Norway. And unlike the situation, for example, regarding residence rights, which as we have seen are primarily derived from an EEA national, these rights under the Nordic Convention are transformed to free-standing rights, attributed directly to the third-country nationals in question.

Second, Articles 1, 2 and 3(1) expressly and implicitly extend the geographical scope of the EEA Social Security Regulations to Åland, the Faroe Islands, Greenland and Svalbard – areas that, although strongly tied to Finland, Denmark and Norway respectively, nevertheless are not part of the geographical scope of EU/EEA cooperation.

Third, and rather significantly when seen by comparison to EEA cooperation more generally in the field, Article 3(2) of the Nordic Convention also extends Regulation 883/2204 to cover persons who are not and have not been classified as either workers or self-employed persons under the Regulation – essentially rendering the Regulation applicable to all economically inactive Nordic nationals. This is a significant difference since, as we have seen, Norwegian authorities (notwithstanding the EFTA Court's pronouncements to the contrary) are generally averse to the idea that free movement under EEA law may be viewed as connected to non-economic activity.

Fourth, concerning residence-based membership of the Norwegian National Insurance Scheme, this will be much easier to achieve for persons covered by the Nordic Convention than for non-Nordic EU/EEA nationals. Primarily because, as we have already seen, acquiring residence is easier for Nordic nationals. And, second, since the determination of what constitutes residence is also made simpler under the Convention. Article 11 of Regulation 1231/2009 provides that in the case of a difference of views between two or more EEA states as to where an individual to whom Regulation 883/2004 applies may be considered to reside, the 'centre of interests' of the person concerned shall be determinative. Many factors may be taken into account in this rather comprehensive assessment, including, for example, the duration and continuity of their presence in the territory of the Member States concerned, the nature and specific characteristics of any activity pursued, family status and family ties, and the country in which the person is deemed to reside for taxation purposes. By comparison, the determination of an individual's country of residence is made infinitely simpler under the Nordic Convention. According to Article 5, in the absence of special reasons indicating the contrary, Nordic nationals need merely show proof of registration in the National Registry of the country concerned.

Finally, it is worth noting certain specificities of the Nordic Convention rules connected to particular types of benefits, where the situation seems different than under EEA law. First, since the EEA Agreement (according to the views of the Norwegian authorities, at least) does not apply to the continental shelf, Article 6 of the Convention provides that work related to the exploration and exploitation of natural resources on a Nordic state's continental shelf will also be considered work in that country for the purposes of determining which country's legislation will be applicable under Title II of the Regulation. Second, according to Article 7 of the Convention, the host Nordic state is obliged to cover certain travel expenses for return to the state of residence in the event of a person's getting ill in the host state. Third, Article 10 of the Convention makes an exception to the rules in Article 61 of the Regulation concerning special rules on aggregation relating to unemployment benefits, by providing that individuals covered by the Nordic Convention may count work and social security periods from other Nordic states even if the last working period was not carried out in the state where the unemployment benefits are claimed.[64] Fourth, Article 15 of the Convention introduces a waiver on the refunding of costs between Nordic states for certain benefits-in-kind relating to sickness, maternity and work-related accidents or occupational disease, which otherwise would not apply under Regulation 883/2204.[65]

V. NATIONALITY AND NATURALISATION IN NORWAY

Norwegian citizenship can generally be gained in one of three ways, depending on the particularities of the applicant's situation: by application, by notification, or simply by birth. In the last situation, § 4 NA stipulates that children with a

[64] Subject to a general condition that during the past five years, the individual has either received unemployment benefits from the Nordic state where the application is made, or worked sufficiently so as to be entitled to unemployment benefits under the legislation applicable there.

[65] The Convention thus makes exceptions to Articles 35, 41 and 65 of Regulation 883/2004.

Norwegian mother or father will automatically gain Norwegian nationality – irrespective, it seems, of the country in which they are actually brought into this world.[66] A child born in an EU/EEA and/or Nordic country may therefore acquire Norwegian nationality at birth. For persons not born of a Norwegian parent, however, Norwegian law does in fact differentiate rather significantly between Nordic and EU/EEA nationals when it comes to naturalisation. Whereas EU/EEA nationals must undergo at times rather cumbersome (and expensive) application and vetting procedures, Nordic nationals may be 'fast tracked' through a simpler application procedure, or rely on mere notification of their desire to acquire Norwegian citizenship.

A. EU/EEA Nationals Naturalising

Most immigrants who want to become Norwegian nationals, including non-Nordic EU/EEA nationals, must apply for this. Indeed, according to § 7 NA, the general rule is naturalisation by application. According to this rule, at the time when the application falls to be decided, the applicant must have clarified his or her identity.[67] The applicant must be over 12 years of age, and both be and intend to remain in Norway.[68] In addition, applicants must fulfil various knowledge requirements relating to the undertaking of Norwegian language and social studies courses, as further detailed in § 8 NA.[69]

Whilst EU/EEA nationals are expressly exempt from the general requirement in § 7(d) NA of fulfilling the conditions for permanent residence under § 62 IA, they must have been legally residing in Norway for three years on the basis of the rights set out in Chapter 13 IA before they can apply.[70] As mentioned earlier (section III), §§ 112–116 IA transpose the various residence rules of the Citizenship Directive.

In addition, EU/EEA nationals must have stayed in the country for at least eight of the past 11 years, with valid residence permits of at least one year's duration.[71] Several exceptions nevertheless apply. According to § 10 NA, for persons who can document (by way of their approved tax returns) that they

[66] Specific rules apply for non-Norwegian national children who are adopted – see § 5 NA and the Norwegian Adoption Act – *Lov om adopsjon (adopsjonsloven)*, LOV-2017-06-16-48.

[67] The specific rules on clarification of identity are found in §§ 1-1, 1-2 and 1-3 NR.

[68] § 7(a) NA.

[69] According to this provision, as further detailed in § 4(1)–(5) NR, applicants aged 18–67 must be able to document that they have undergone either 300 hours of approved Norwegian teaching, or that they have 'sufficient knowledge' of the Norwegian or Samí language. In addition, they must be able to show that they command a minimum of Norwegian as a spoken language and have passed a social studies exam in Norwegian. Several exemptions nevertheless apply, including for applicants who have completed Norwegian secondary schooling with pass grades in Norwegian and social studies, completed courses at University level in the Norwegian or Samí languages, and for individuals who are granted dispensation from the requirements on health or other specific grounds.

[70] § 14 NA.

[71] § 7(e) NA.

had 'sufficient income' in the past year, the residence requirement is reduced to six out of the past 10 years, with valid residence permits of at least one year's duration.[72] The requirement is further reduced to five of the last seven years for persons who arrived in Norway before the age of 18, and five out of the past 10 years for applicants married to a Norwegian citizen and living in the same domicile as them.[73]

The applicant must also have a clean criminal record and not have been punished or subjected to any other sanctions for a criminal offence. According to § 9 NA, a 'quarantine' period will apply for any person convicted of a criminal offence, the duration of which will vary according to the nature of the offence, during which applications for Norwegian nationality will be refused.[74] The applicant must apply for a copy of his or her police record from local police authorities and attach this to the application, a process that usually takes about four weeks at no cost.

Whilst the acquisition of Norwegian nationality used to be dependent on being released from any other nationality, as of 1 January 2020 Norway recognises dual citizenship.[75]

Concerning family members of EU/EEA nationals who become Norwegian nationals, special provision is made under § 17 NA for children under the age of 18 to acquire Norwegian nationality. This provision does not afford a right to nationality per se, but rather a right to apply for nationality on more favourable terms. The only conditions applicable are that the child has clarified his or her identity, that he or she both is and intends to remain in Norway for the future, and he or she has not been punished or subjected to any other sanctions for a criminal offence. In addition, children over the age of 2 years must have been staying in Norway for the past two years with residence permits of at least one year's duration.

B. Nordic Nationals Naturalising

The processes for Nordic nationals to acquire Norwegian citizenship are simpler and easier than those that apply for other EU/EEA nationals.

First, according to § 13 NA, whilst Nordic nationals may apply for Norwegian nationality under the conditions set out in § 7 NA, they are exempt from the general temporal residence requirements contained in § 7(d) and (e), and need

[72] This exception came into force as of 1 January 2022, with the requirements of what constitutes 'sufficient income' further determined by § 6-1 NR as resources through income and benefits corresponding to at least three times the National Insurance scheme basic amount (as of 1 May 2021 equalling NOK 319,197 in total).

[73] § 11 and § 12 NA.

[74] § 5 NR contains several provisions mapping out the various quarantine periods relating to all manner of criminal convictions and sanctions.

[75] *Lov om endringer i statsborgerloven (avvikling av prinsippet om ett statsborgerskap)*, LOV-2018-12-20-121.

only have stayed in Norway for the two past years in order to qualify. Nordic nationals who 'can understand' Norwegian are also specifically exempt from the vigorous Norwegian language and social studies requirements that might otherwise apply.[76] As mentioned in section V.A, special (and simpler) conditions apply under § 17 NA for children of EU/EEA nationals who have become Norwegian nationals, when they apply for Norwegian nationality. The conditions are eased even more for children of Nordic nationals. Although such children over the age of 2 years must have been staying in Norway for the past two years in order to apply, the residence permit requirements are naturally waived.

Second, and indigenous to them, according to § 20 NA, citizens of Denmark, Finland, Iceland and Sweden may become Norwegian nationals through mere notification. According to this procedure, the person becomes a Norwegian national on the date when the notification is received by the police, provided that the conditions for the notification have been met. The conditions are rather straightforward, and require the person to be at least 18 years of age, to have lived in Norway for the past seven years, and during those seven years not to have committed any criminal offence punishable by prison sentence or other form of penal sanction. Since the introduction of dual citizenship in Norway on 1 January 2020, there is no longer a requirement for Nordic nationals to give up their other Nordic nationality upon acquiring Norwegian citizenship either.

VI. OTHER DIFFERENCES IN NORDIC/EFTA REGULATION

Two matters will briefly be discussed in this section. First, the general tightening of the Norwegian rules on deportation and differences in the treatment of Nordic and other EU/EEA nationals regarding refusals of entry into Norway. Second, the rights of free movement enjoyed under the EFTA Convention, and how these fit with the EU/EEA and Nordic agreement rules.

A. Deportation and Refusal of Entry

Since the Nordic agreements do not generally regulate the matter, awareness of the EEA rules concerning deportation may be of crucial importance for Nordic nationals living in Norway.[77] Paragraphs 122–123 in Chapter 13 IA contain specific rules on deportation applying to EU/EEA nationals and their family members, transposing relevant provisions of the Citizenship Directive. These rules apply by way of exception to the general rules allowing for the expulsion

[76] § 4-6 NR.

[77] It is also important to note that § 69 IA makes a general exception for all foreign (including Nordic) nationals born in Norway and who have continuously had a fixed abode in the country, who may not be deported.

of foreign nationals set out in Chapter 8 IA (§§ 66–72). Given the strict requirements of the Citizenship Directive, as interpreted by the CJEU and EFTA Court, foreign nationals may generally be considered as less protected from expulsion under the rules in Chapter 8 than EU/EEA nationals and their family members residing in Norway. That said, all of the rules on deportation under the IA have been subjected to rather significant changes in recent years, opening up for Norwegian authorities to deport those considered undesirables in a much wider range of situations than was previously possible. Following amendments that entered into force in 2020, both third-country nationals and EU/EEA nationals may, for example, suffer expulsion for committing criminal offences under the Road Traffic Act.[78] Although the preparatory works to the amending statute, which will usually carry significant weight when interpreting the provisions in question, seemed to indicate caution as regards too strict an approach when deporting on these new grounds, the legislative proposal also makes clear that the amendments were generally designed to make it easier to expel foreigners in the future.[79] The general trend of softening the grounds for expulsion has seemingly been picked up by the lower Norwegian courts, who have sailed rather close to the wind in their understanding of the protection afforded under EEA law against deportation. The Oslo District Court and Court of Appeal had, for example, upheld a decision of the UDI and UNE expelling a Romanian national from Norway for committing two minor theft offences over a three-year period, for which the individual was merely fined, on grounds of posing a genuine, present and sufficiently serious threat affecting the fundamental interests of Norwegian society.[80] The decision of the lower courts was (in my opinion, correctly) overturned by a unanimous Supreme Court on appeal.[81] The Supreme Court held that two criminal offences, carrying fines of NOK 5,000 and 8,000 respectively, could not be deemed sufficiently serious.[82] Further, that there was little evidence that the individual posed a present threat – given that three years had passed between the two offences, the risk of repeat offences could not be said to be present and the individual in question had obtained work in (and was therefore planning to move his family to) Norway shortly after commission of the last offence.[83] The fact that such a case necessitated the time and expense of

[78] *Lov om vegtrafikk (vegtrafikkloven)*, LOV-1965-06-18-4.

[79] See Prop 40 L (2019–2020) *Endringer i utlendingsloven (utvidet adgang til utvisning m.m.)* 5, where the Ministry stated that it is important that immigration legislation does not have an 'unnecessarily high threshold for deportation' in cases where deportation otherwise appears to be a reasonable and proportionate reaction. Innst.250 L (2019–2020) 5 nevertheless emphasises that in cases involving EU/EEA nationals, deportation for traffic offences should be limited to serious offences, that there must be a risk of repeat offences in the future and that deportation can only be based on the individual's personal circumstances (not on general, preventive grounds).

[80] TOSLO-2020-756; LB-2020-94662.

[81] HR-2022-533-A.

[82] ibid para 58.

[83] ibid para 61. Indeed, both the Court of Justice and EFTA Court have held that previous criminal convictions will not be enough of themselves, and that there must be a real risk of repeat offences

legal proceedings at three instances seems indicative of Norwegian authorities' pursuit of a harder line on deportation.[84]

Briefly concerning refusals of entry into Norway, Nordic nationals may – like any foreign citizen – be denied entry into Norway under the general rules applicable under §§ 17 and 121 IA. A specific exemption is nevertheless made under § 17(2) IA for Nordic nationals who are resident in Norway, who may not be turned away at the border.

B. EFTA Convention – Same as EEA Rules or Different?

A question of particular importance for Swiss nationals looking to move to and work in Norway is whether the rules that apply to them under the EFTA Convention are the same as those applicable to EU/EEA nationals. Following its revision in 2002, the EFTA Convention today contains several provisions concerning both free movement of persons and for the coordination of social security systems between the EFTA states (Iceland, Norway, Liechtenstein and Switzerland).[85] Key EU/EEA regulations and directives (with the notable omission of the Citizenship Directive) are also made part of the Convention *acquis*, as updated via amendments to Annex K.[86] The Convention itself is nevertheless silent on whether the Convention's rules, which to a great extent mimic those of the EEA Agreement, are to be interpreted in the same way as the latter. There is also a lack of case law touching upon the issue.

General consensus in academic writing has nevertheless been that where EFTA provisions reflect the content of EEA rules, a strong presumption should be said to exist that they will be interpreted in the same way.[87] A recent decision by one of the Norwegian Courts of Appeal concerning corporate taxation issues linked to establishment rights between Switzerland and Norway seems to confirm this, stating that the presumption may be rebutted (at least in Norway) where the aims and/or context of the rules in question differ.[88] Fiscal issues are nevertheless considered particularly contentious in an EEA context. The Court of Appeal was therefore quick to point out that the situation may

occurring in the future, see eg Case C-50/06 *Commission v the Netherlands*, ECLI:EU:C:2007:325, paras 44–49; *L* (n 11) para 48.

[84] The Supreme Court even seems to infer at one point that the case could not even be considered borderline, see para 58. For a more clear-cut instance of repeat offences triggering expulsion of an EU/EEA (Swedish) national, see eg the Supreme Court's decision in HR-2019-2400-A.

[85] EFTA Convention (n 12) Art 20 (free movement) and Art 21 (social security), with further reference to Annex K.

[86] Including eg Regulation 883/2004 (n 49) and Regulation 987/2009 (n 49). Both incorporated into Annex K of the EFTA Convention by EFTA Council Decision no 5/2015, in force as of 1 January 2016.

[87] See eg B Pirker, 'Switzerland and the EEA' in Arnesen et al (ed) (n 47) 80.

[88] LB-2020-79857 – UTV-2021-1169, concerning Art 23 of the EFTA Convention and Art 31 EEA. Appeal to the Norwegian Supreme Court was not allowed, so the decision is now *res judicata*.

well be different, and the links much stronger, with regard to other rules in the EFTA Convention and EEA Agreement – calling particular attention to the rules concerning free movement of persons in this regard.[89] That the presumption of consistent interpretation may be more difficult to rebut in the field of persons is further emphasised by Norwegian state practice.[90]

Potential differences between the treatment of EU/EEA and Swiss nationals as far as residence in Norway are concerned have in any event seemingly been abated by the very drafting of § 109 IA and § 19-1 IR. These provisions make clear that the rules of Chapter 13 IA are to apply equally to nationals of the EFTA states. Concerning social security rights, although none of the EFTA Convention rules on coordination have been specifically incorporated into Norwegian law, the same practical result has been secured by the inclusion of so-called 'sector monism' clauses in the National Insurance Act (§ 1-3), the Family Allowance Act (§ 22) and the Child Benefit Allowance Act (§ 22). According to the recent Official Norwegian Report on Social Security, and notwithstanding a few minor exceptions, Norwegian authorities also appear to treat Swiss nationals for all practical intents and purposes as though they were EU/EEA nationals.[91]

VII. CONCLUSION: NORWAY

From what we have seen in this chapter, it seems fair to conclude that the legal situation of Nordic nationals coming to Norway is a great deal more advantageous than that of other non-Nordic EU/EEA nationals. Nordic nationals – and in many instances also their family members, regardless of nationality – enjoy a wide range of enhanced rights and simpler ways of attaining them. Concerning residence, Nordic nationals (and their family members who are Nordic nationals) are fully exempt from the general requirement of obtaining a residence permit in order to live and/or work in Norway. As far as access to social security benefits in Norway is concerned, the Nordic Agreements extend the scope of the EU/EEA Social Security Regulations to all economically inactive Nordic nationals. For the purposes of aggregation, third-country national family members of Nordic nationals also enjoy a free-standing right to have periods of membership

[89] ibid 12.

[90] See eg Ot.prp.nr.97 (2008–2009) *Om lov om endringer i utlendingsloven og i enkelte andre lover*, 16, concerning proposed amendments to the Norwegian Student Financial Aid Act (LOV-2005-06-03-37). The Ministry emphasised that in light of the similarities between the EEA and EFTA rules of free movement for workers, the right to financial aid for students afforded to EU/EEA nationals had to apply equally to Swiss nationals. The law was changed accordingly.

[91] NOU 2021:8 'Trygd over landegrensene, Gjennomføring of synliggjøring av Norges trygdekoordineringsforpliktelser', 217. Exceptions include where the rules may be different due to a lack of updating of EFTA Convention Annex K (which has not been updated to cover amendments made to the Social Security Regulations under EU/EEA law since 2012), or where the rights are connected to work on the Norwegian continental shelf (see § 2-4 National Insurance Act, § 3a Family Allowance Act, and § 6 Child Benefit Allowance Act).

in national insurance schemes, employment, self-employment or residence completed under the laws of other Nordic states taken into account as though they were periods completed in Norway – a right not enjoyed by third-country national family members of non-Nordic EU/EEA nationals moving to Norway. The geographical scope of the EU/EEA Regulations is also extended by the Nordic Agreements to cover Åland, the Faroe Islands, Greenland and Svalbard. Concerning naturalisation rights, whilst both EU/EEA and Nordic nationals must generally apply to become Norwegian citizens, the latter are exempt from some of the requirements that would normally apply – and may even (subject to certain conditions) attain Norwegian nationality by way of mere notification. As for other potential differences, it is important to note that the tougher line on deportation pursued by Norwegian authorities over the past few years would indeed seem to apply equally to both Nordic and non-Nordic EU/EEA nationals – although Nordic nationals resident in Norway may not be denied entry into the country. Finally, concerning rights of residence and access to social security benefits under the EFTA Convention, it seems as though Swiss nationals are generally treated on a par with all other EU/EEA (including Nordic) nationals in practice.