



ROYAL NORWEGIAN MINISTRY  
OF LABOUR AND SOCIAL AFFAIRS

EFTA Surveillance Authority  
Rue Belliard 35  
B-1040 Brussels

Your ref  
74557

Our ref  
13/3362-

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**Letter of formal notice to Norway concerning posting of workers - reply from the Norwegian Government**

**Introductory remarks**

1. Reference is made to The EFTA Surveillance Authority's letter of formal notice of 25 October 2016 concerning posting of workers. The Authority claims that the Norwegian rules on general application of coverage of costs incurred for travel, board and lodging are incompatible with the concept of minimum rates of pay in Directive 96/71/EC, and that hence no such requirement can be imposed to foreign service providers.
2. However, in the letter of formal notice, the Authority concedes that such allowances, if formulated differently, may fall within the concept of minimum rates of pay in the Directive.
3. This is an important and exacting matter. The case has now been pending for many years, and it is of the essence to identify an appropriate solution that safeguards the various interests involved.
4. The judgment handed down by The Supreme Court in the STX-case, is based on the consideration of ensuring that employees actually receive the minimum wage to which they are entitled pursuant to the at any time applicable Regulations on general application of collective agreements.
5. The Government considers that The Authority's letter of formal notice provides a basis for

finding solutions to the design of provisions on travel, board and lodging that both are in conformity with Directive 96/71/EC, and that take account of the considerations on which the Supreme Court ruling is based.

6. The solution must be established by the social partners, in conformity with the Norwegian system of wage formation. As shown in more detail below, key organizations in the social partnership are demonstrating their willingness to find solutions that also take the objections raised by ESA into account.

### **The Government's follow-up of the letter of formal notice – process between Confederation of Norwegian Enterprise (NHO) and Norwegian Confederation of Trade Unions (LO)**

7. The scheme for general application of collective agreements authorises a public commission in which the social partners are represented, the Tariff Board, to lay down regulations on wages and working conditions. This scheme represents an exemption from the clear rule in the Norwegian labour-market model that wage setting is the responsibility of the social partners. The social partners have therefore been given a central role in the scheme.
8. A decision to implement general application is invariably based on a collective agreement, and it is a precondition that at least one of the parties to the collective agreement in question has put forward a request for general application of the same. In certain circumstances, the decision may also encompass wages and working conditions other than those that follow from the collective agreement.
9. The regulations on general application of collective agreements are designed so that the provisions on wages and working conditions mirror the provisions in the collective agreement, even though minor adaptations sometimes need to be made for reasons of practicality.
10. Throughout the period in which the general application scheme has been in effect in the Norwegian labour market, it has sought to uphold the principle that those wages and working conditions that the Tariff Board decides to enshrine in regulations be based on the equivalent provisions in the collective agreement in question. This prevents unnecessary infringement of the autonomy of the social partners, which helps ensure robust and long-term solutions.
11. This principle implies that adjustments to the provisions on travel, board and lodging first need to be undertaken in the collective agreements before they can be made subject to general application and be reflected in a set of general application regulations.
12. Based on these points, the Government has remained in close dialogue with the social partners regarding the further follow-up of the Authority's letter of formal notice. From the Government's side, the objective of this is to identify a consensual, agreement-based

solution for general application of the provisions on travel, board and lodging that comply with Directive 96/71/EC, as well as ensure the key considerations on which the ruling of the Supreme Court is based.

### **About the further work of the social partners**

13. General application of provisions concerning travel, board and lodging apply in various industries. The affected trade-union federations in LO have expressed willingness to participate in such a negotiation process. The views on general application of travel, board and lodging vary among the employers' organisations. Reference is made, for example, to the fact that the factual situation is not identical in all industries that have rules on travel, board and lodging, and that the consequences of the rules vary.
14. In the maritime construction industries, this topic has been on the agenda for many years, in the discussions between the social partners. The primary wish of The Federation of Norwegian Industries is that the provisions on travel, board and lodging in the collective agreement should not be made generally applicable. In connection with the wage settlement in 2016, The Federation of Norwegian Industries and The Norwegian United Federation of Trade Unions have appointed a commission whose remit includes discussion of possible amendments in Chapter 8 of the Engineering Industry Agreement, including the provisions on travel, board and lodging, which form the basis for the prevailing general application regulations. This work will be completed before 1 May 2017, and will be subject to ordinary negotiations during the wage settlement in 2018, cf. the letter from The Federation of Norwegian Industries of 23 December 2016 in this regard.
15. The Federation of Norwegian Construction Industries has expressed concern that an absence of generally applicable provisions on travel, board and lodging in the construction industry will entail negative consequences in the form of unequal competitive conditions. The Federation of Norwegian Construction Industries and The Norwegian United Federation of Trade Unions have agreed to negotiations on amendments to the collective agreement. These partners refer to the need to undertake a thorough process, and that a negotiation result can realistically be expected no earlier than in the context of the wage settlement round in 2018, cf. the letter from FNCCI of 13 December 2016 in this regard.

### **Closing remarks**

16. The Government underscores that a solution to this matter best can be found by the social partners, primarily based on the provisions on compensation for travel, board and lodging in the collective agreements, within the framework outlined above.
17. Amendments to the collective agreement require that the partners can reach agreement based on negotiations. No such agreement, nor its possible content, can be guaranteed in

advance. Based on the feedback from the social partners regarding the ongoing efforts and upcoming negotiations in the context of the next wage settlement round, the Government is confident that this process will be successful and produce adequate compromises. The clear objective is to achieve robust solutions that safeguard the key concerns involved in this matter.

18. It is important that the social partners now be given sufficient time to implement the required processes internally in their organisations. NHO and LO will be requested to brief the Minister of Labour and Social Affairs on the status of this work on 31 March 2017 at the latest. The Government will keep The Authority informed of developments in this matter, and will consider whether a basis exists for taking more active steps on the part of the Government to ensure an effective solution.
19. The Government will also initiate a study of the actual conditions involved in posting of workers in different industries. It is generally agreed that more knowledge on the scope and development of this group of employees is required, including their wage level and working conditions in Norway. It will also be facilitated that certain other aspects of the general application scheme being considered, including the procedures for processing of cases.

Yours sincerely,

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