



ROYAL NORWEGIAN MINISTRY
OF LABOUR AND SOCIAL AFFAIRS

EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels

Your ref
74557

Our ref
13/3362-

Date
20 January 2017

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