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Response from the Norwegian Government to the EFTA Surveillance Authority's reasoned opinion - Regulation No. 112/2008 on pay and working conditions in public contracts

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(<http://www.regjeringen.no/en/dep/aid/id165/>)

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Recipient:

EFTA Surveillance Authority

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Reference is made to the reasoned opinion by the EFTA Surveillance Authority (the Authority) of 29 June 2011, in which the Authority holds that by maintaining in force Article 5(1) of regulation 112/2008 on pay and working conditions in public contracts (the Regulation), Norway has failed to fulfil its obligations arising from Article 36 of the EEA Agreement and Article 3 of directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Directive 96/71/EC). By the Authority's letter of 29 September 2011, the deadline for the Norwegian Government (the Government) to respond to the reasoned opinion was extended until 15 November 2011.

Reference is made to the Government's letter of 15 October 2009 and the reasoning put forward there.

In short, the Government underlines the importance of the Regulation as part of the Government's action plan against social dumping. In the view of the Government, the public sector has a particular responsibility in preventing social dumping and not contributing to the exploitation of workers, by ensuring that the pay and working conditions are in line with the minimum level set in the collective agreements. The Regulation makes use of the right to incorporate social considerations in public procurement as laid down in Article 26 of Directive 2004/18/EC, and it implements ILO Convention No. 94 on labour clauses in public contracts (ILO 94).

In addition, the Government would like to refer to the European Parliament's resolution of 25 October 2011 on modernisation of public procurement (2011/2048(INI)), which calls for "an explicit statement in the [public procurement] directives that they do not prevent any country from complying with ILO Convention C94" and that the Parliament also "calls on the Commission to encourage all Member States to comply with that Convention". The Government considers this to be a clear expression from the co-legislator that there is no conflict between the public procurement rules and ILO 94.

It is recalled in this context, as set out in the Government's letter of 15 October 2009, that Directive 96/71/EC must be interpreted in conformity with Directive 2004/18/EC and ILO Convention No 94.

The Government has decided to make some amendments to the Regulation in order to dispel any doubts that the Regulation complies with EEA law. The amendments enter into force on 15 November 2011.

The main amendments are:

- The Regulation now makes it clear that it is the *minimum* rates of pay stemming from nationwide collective agreements that are to be complied with.
- In sectors that are covered by regulations that declare collective agreements generally applicable, the Regulation makes reference to the pay and working