

**REPORT ON THE APPLICATION OF
DIRECTIVE 94/33/EC
ON THE PROTECTION OF YOUNG PEOPLE AT WORK**

Adopted on 13 September 2006

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1 Introduction

Article 68 of the Agreement on the European Economic Area (“the EEA Agreement”) provides that in the field of labour law the EFTA States shall introduce the measures necessary to ensure the good functioning of the EEA Agreement. These measures are specified in Annex XVIII to the EEA Agreement.

*Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work*¹ (hereafter referred to as “the Directive”) has been incorporated into the EEA Agreement. According to Article 17(4) of the Directive, “*Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the viewpoints of the two sides of industry.*” Under Article 17(5) of the Directive, the Commission of the European Communities (“the Commission”) is required to periodically submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of the Directive. On the basis of this provision, the Commission published a report in 2004.²

Pursuant to Protocol 1 to the EEA Agreement³, where such a reporting requirement is imposed on the Commission or another EC body, the EFTA Surveillance Authority (“the Authority”) or the Standing Committee of the EFTA States, as the case may be, shall concurrently prepare a corresponding report. According to Article 4 of Protocol 1 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, it is the Authority which is responsible for preparing the present report.

Thus, the purpose of this report is to give effect to Article 17(5) of the Directive. It gives a brief overview of the transposition and practical application of the Directive in the EFTA States. In addition, it summarises the main provisions of the Directive and outlines the action taken by the Authority in order to ensure that the EFTA States comply with their obligation under Article 7 of the EEA Agreement and the provisions of the Directive.

The report is based on the national reports provided by the EFTA States pursuant to Article 17(4) of the Directive. In 2003 the Authority requested the EFTA States to submit their reports. With a view to enhancing coherence and comparability of the national reports, national authorities were provided with a standard format which was prepared by the Commission. The national reports, produced in English, are annexed to this report. Therefore the present report only summarises the main elements of the national reports.

This report is without prejudice to any future conformity assessments carried out by the Authority or to possible infringement procedures which the Authority may bring against the EFTA States.

¹ Act referred to at point 29 of Annex XVIII to the EEA Agreement, inserted by the EEA Joint Committee Decision No. 43/96.

² *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the application of Directive 94/33/EC on the protection of young people at work* COM(2004) 105 final. Pursuant to Article 17(1) of the Directive, the Commission has also published a report based on Article 17(1) of the Directive: *Report from the Commission on the effects of the transitional period granted to the United Kingdom concerning certain provisions of Council Directive 94/33/EC on the protection of young people at work*, COM(2000) 457 final.

³ Protocol 1 on horizontal adaptations, point 5.

2 The content of the Directive

The Directive applies to all persons under the age of 18 having an employment contract or an employment relationship defined by the law in force in an EEA State and/or governed by the law in force in an EEA State.⁴

The EEA States may stipulate that the measures implementing the Directive shall not be applicable to occasional work or short term work involving domestic service in a private household or work in a family undertaking which is not considered likely to harm, injure or endanger young people.⁵

As one of the main objectives of the Directive is to prohibit the employment of children the Directive requires that the EEA States shall adopt the measures necessary to achieve this aim.⁶

Exceptions to this general prohibition can, however, be included in the national legislation, subject to certain conditions, in regard to children being employed for the purposes of cultural, artistic, sporting or advertising activities and for children aged 14 or over who work under an in-plant work-experience scheme or a combined work/training scheme. In addition, exceptions can also be made for children aged 14 or over and, subject to certain limitations, children aged 13 if performing light work other than the abovementioned cultural or similar activities.⁷

Although not prohibiting the employment of adolescents, the Directive requires that such employment is subject to strict controls and is protected under the conditions provided for in the Directive.⁸ However, work which exceeds the mental or physical capacities of young people and work involving harmful exposure to dangerous substances is prohibited.⁹

The Directive establishes the minimum level of protection as regards, *inter alia*, maximum daily and weekly working time, night work, breaks and rest periods.¹⁰ The Directive also includes provisions relating to the employer's general obligations, such as the protection of the health and safety of young people, an *ex-ante* assessment of the hazards to young people in connection with their work, an assessment and monitoring of the health of young people, and the provision of information to young people and to the legal representatives of children on the possible risks to their health and safety.¹¹

⁴ Cf. Article 2(1) of the Directive. According to Article 3, a 'young person' shall mean any person less than 18 years of age. The same provision defines a 'child' as any young person of less than 15 years of age or who is still subject to compulsory full-time schooling under national law, whereas an 'adolescent' is any person of at least 15 years of age but less than 18 years of age who is no longer subject to compulsory full-time schooling under national law.

⁵ Cf. Article 2(2) of the Directive.

⁶ Cf. Article 4(1) of the Directive.

⁷ Cf. Article 4 and 5 of the Directive.

⁸ It should be noted that *Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)*, (referred to at point 32b to Annex XVIII to the EEA Agreement, as adapted to the EEA Agreement by Protocol 1 thereto), includes with regard to seafarers separate and stricter provisions concerning prohibition of work by young persons and night work by young persons.

⁹ Cf. *e.g.* Articles 6 and 7 of the Directive.

¹⁰ Cf. Articles 8 – 12 of the Directive.

¹¹ Cf. Article 6 of the Directive.

Since the Directive sets out minimum requirements, it also contains a non-reducing clause stating that the transposition of the Directive can not constitute valid grounds for reducing the general level of protection of young people.¹²

3 The transposition of the Directive

The EFTA States were to adopt the national measures necessary to comply with the Directive by 1 July 1997 at the latest.¹³

The following section summarises the formal action taken by the Authority in regard to the implementation of the Directive by the EFTA States.

3.1 Infringement proceedings for failure to implement the Directive

In October 1997 the Authority sent a letter of formal notice to Norway owing to its failure to adopt the national measures necessary to implement the Directive or in any event its failure to notify the Authority of such measures. Norway notified in 1998 the national measures it considered to ensure full implementation of the Directive.

Iceland notified the national measures implementing the Directive in July 1997. However, the Authority, in December 1998, issued a letter of formal notice due to the failure by Iceland to provide the Authority with, as requested by the Authority, the information necessary for assessing whether the Directive had been correctly implemented in Iceland.

Furthermore, in February 2003 a second letter of formal notice was sent to Iceland as the Authority considered that the Directive was only partially implemented in Icelandic legislation. In 2003 Iceland notified the Authority of its new national measures, which Iceland considered to ensure full implementation of the Directive. All these cases have been subsequently closed.

3.2 Conformity assessments

The Authority carries out, on its own initiative, conformity assessments to examine whether a directive has been correctly implemented in the national legislation of the EFTA States.

In July 2001 the Authority sent a letter of formal notice to Norway as the Authority was of the opinion that the Norwegian national measures did not ensure complete compliance with the provisions of the Directive. This concerned, in particular, Articles 2 and 13 of the Directive. Norway subsequently notified the Authority of additional national measures, which, according to Norway, ensured full implementation of the Directive. Having received information on the administrative guidelines on the interpretation and application of the relevant national provisions, the Authority closed the case.

In 1999 the Authority, on the basis of an expert report, initiated a conformity assessment of the implementation of the Directive in Liechtenstein. The Authority concluded that insofar as Articles 2, 4, 6, 7, 8, 9, 10 and 12 of the Directive were concerned, the

¹² Cf. Article 16 of the Directive.

¹³ Pursuant to Article 17 (1) (a) of the Directive, the time limit for the EU Member States was 22 June 1996, except for the UK, see Article 17 (1) (b).

Liechtenstein national measures did not ensure full implementation of the Directive. Consequently, the Authority sent a letter of formal notice to Liechtenstein in October 2000. A reasoned opinion was delivered in December 2003. Liechtenstein adopted a number of amendments to its national legislation and, in May 2005, notified the national measures, which, according to Liechtenstein, ensure full implementation of the Directive. The Authority will assess whether the new national measures address the issues raised in the reasoned opinion.

3.3 Reporting obligation

In December 2003, the Authority sent a letter of formal notice to Liechtenstein owing to its failure to report to the Authority on the practical implementation of the provisions of the Directive. Liechtenstein submitted the national report in September 2004.

4 EFTA States' reports on the practical implementation of the Directive

4.1 Iceland

4.1.1 *General*

The report of Iceland (hereafter referred to as “the report”) was prepared by the Icelandic Ministry of Social Affairs. The draft report was submitted to the social partners for comments.¹⁴

4.1.2 *The legal situation before the transposition of the Directive*

The report states that the Act on Working Environment, Health and Safety in the Workplace¹⁵ (hereafter referred to as “the Working Environment Act”) contained special provisions on work performed by children and young people.

Before the transposition of the Directive, the Working Environment Act provided that the working hours of children aged 14 and 15 were not to exceed those of adults, *i.e.* eight hours, and that young people aged 16 and 17 were not permitted to work longer than 10 hours per day. As regards children under the age of 14, they were only allowed to be employed for light work.

Under the Child Welfare Act¹⁶, the child welfare committees in each local government area were responsible for ensuring that children and young people did not carry out work that posed potential health hazards or involved long working hours or night work.

4.1.3 *The legal and practical consequences of the transposition of the Directive*

Amendments to the Icelandic Act were considered necessary in order to transpose the Directive.

¹⁴ These were the Icelandic Confederation of Labour, the Confederation of Icelandic Employers, the Federation of State and Municipal Employees, the Alliance of Graduate Civil Servants, the Personnel Office of the Ministry of Finance and the Union of Local Authorities in Iceland.

¹⁵ Act No. 46/1980.

¹⁶ Act No. 58/1992, replaced by Act No. 80/2002.

Following the adoption of amending legislation¹⁷, the Working Environment Act now includes a general rule, according to which children of less than 15 years of age, or who are still subject to compulsory full-time schooling, may not be employed to carry out work. Certain exemptions to that rule have been introduced. For instance, children may, subject to certain conditions, be engaged to participate in cultural or artistic events and sporting and advertising activities. Furthermore, children over 14 years of age may be engaged to undertake work that forms part of technical or vocational training, or for light work. The Working Environment Act lists a number of types of work, which persons under the age of 18 may not carry out. The provisions on work by persons under the age of 18 do not cover, however, occasional work, domestic help in a private household, or work in a family undertaking, when such work is not considered likely to harm, injure or endanger young people.

It is the opinion of the Icelandic Ministry of Social Affairs that the Directive has resulted in the adoption of more detailed national rules concerning young workers.

It is stated in the report that several different state bodies, including the Ministry of Social Affairs, are responsible for monitoring the application of the rules. There have been no significant problems concerning the monitoring and application of the rules.

Although no comparative studies of the effects of the rules have recently been carried out in Iceland, the report states that the public discussion on work by young persons, which followed the transposition of the Directive, resulted in an increased general awareness of this topic. Inspections by the Administration of Occupational Health and Safety have shown that employers have also responded positively to the legislation and generally comply with it.

In 1999 there was a campaign to publicise the new national regulations on work by young persons and children. A press-release and a booklet summarising the main points of emphasis of the new regulations were sent to the media. The Administration of Occupational Health and Safety has also visited companies and held special meetings to publicise the provisions concerned.

There had also been a decrease in accidents at work involving children aged 12-17 years from 1999 to 2002, which, according to the report, could indicate an increased employer awareness of the need for vigilance and preventive measures when young persons and children are engaged to carry out work.

4.2 Liechtenstein

4.2.1 *General*

The report of Liechtenstein (hereafter referred to as “the report”) was produced by the Liechtenstein Office of Economic Affairs¹⁸, in collaboration with the national EEA Coordination Unit. The draft report was submitted to the social partners for comments.¹⁹

¹⁷ Chapter X of the Working Environment Act was amended by Act No. 52/1997. Further amendments were introduced by Act No. 68/2003. Regulation No. 426/1999 on work by young persons was issued in 1999.

¹⁸ Previously the Office of National Economy.

¹⁹ The following social partners were consulted: the Liechtenstein Association of Employees; Liechtenstein Chamber of Business and Economy, representing employers of small and medium-sized enterprises; and Liechtenstein Chamber of Industry and Trade, representing employers.

4.2.2 *The legal situation before the transposition of the Directive*

Before the transposition of the Directive, the issues relating to the protection of young people at work were covered by the Labour Act²⁰ and Ordinance I.²¹

4.2.3 *The legal and practical consequences of the transposition of the Directive*

Liechtenstein authorities underlined that, at the time of drafting the report, the Directive had only been partially transposed into Liechtenstein legislation. The problems encountered by Liechtenstein in the transposition of the Directive were not, however, caused by the Directive *per se*, but by the need to adopt legislation which is compatible with both the EEA Agreement and the Liechtenstein labour law traditions.

The major amendments made to the Liechtenstein legislation, following the first, partial, transposition of the Directive, were reduction of the maximum weekly and daily working time for young persons. In addition, provisions were adopted to ensure the provision of information to the young person's legal representatives concerning possible work related risks and all health and safety measures adopted.

The monitoring of the application of the rules on the protection of young persons at work is ensured through inspections. The breaches of the provisions mainly relate to the regulation concerning maximum weekly working time. According to the report, young workers themselves would often like to work longer hours than those allowed by the Directive, which makes the implementation of the new legislation more difficult. In fact, it is stated that in certain situations it should be possible for a young person to work as long as an ordinary worker in the same company.

The report mentions the general increase in the standard of protection of health and safety at work as a positive effect of the transposition of the Directive.

4.3 Norway

4.3.1 *General*

Norway provided the Authority with two national reports prepared by the Norwegian Labour Inspection Authority and the Norwegian Maritime Directorate (hereafter referred to as "the reports"). According to the Labour Inspection Authority, six social partners were consulted but only one contribution was received.²² The Maritime Directorate invited nineteen different social partners' organisations to comment on the practical application of the provisions of the Directive.²³

²⁰ Labour Act of 29 December 1966.

²¹ Ordinance I of 8 January 1968 on the Labour Act.

²² These were the Norwegian Confederation of Trade Unions (LO), Confederation of Norwegian Business and Industry (NHO), Confederation of Vocational Unions (YS), Federation of Norwegian Commercial and Service Enterprises (HSH) and The Confederation of Higher Education Unions (UHO). NHO was the only one answering to the consultation.

²³ These were the Norwegian Shipowner's Association, Association of Cargo Freighters, Norwegian Fishermen's Association, the Norwegian Fishing Vessels Owner's Association/the Norwegian Trawler's Association, the Federation of Norwegian Coastal Shipping, Norwegian Seamen's Union, Norwegian Maritime Officer's Association, Norwegian Union of Marine Engineers and 11 maritime schools / secondary education (Ytre Namdal, Måløy, Stavanger, Nordland, Trondheim, Tromsø, Sørlandet, Bodin, Bergen, Arendal and Kystnæringssektoren).

In the following, the reports will be summarised jointly, save for the instances where a separate approach is more appropriate.

4.3.2 *The legal situation before the transposition of the Directive*

In Norway, the employment of young people was subject to the Norwegian Act relating to Worker Protection and Working Environment²⁴ (hereafter referred to as “the Working Environment Act”), and four supplementary regulations²⁵ applying to different types of work. The Act relating to Hours of Work onboard Ships²⁶ and two additional regulations²⁷ set out the rules governing work on ships.

The Norwegian legislation prohibited employment of children under the age of 15 years or children still attending compulsory education. Exemptions from the prohibition were, however, allowed in certain cases, *e.g.* persons aged 13 or more could carry out light work from which their health, development or schooling would not suffer. Furthermore, approved training programmes and cultural events were covered by an exemption.

The Norwegian legislation also included provisions concerning the employment of young people for hazardous work, a general prohibition of night work, which was subject to some exemptions, and provisions limiting the total amount and scheduling of working hours as well as ensuring breaks and time off. As regards work onboard ships, there were provisions concerning employment of young persons, which laid down a requirement for approved training and special supervision of the young person’s adjustment on board. These provisions did not cover fishing and hunting vessels. Finally, the Act relating to Hours of Work onboard Ships prohibited persons under the age of 17 from working at night.

4.3.3 *The legal and practical consequences of the transposition of the Directive*

The Directive was transposed into Norwegian law through the the Working Environment Act and a regulation, which consolidated the four supplementary regulations.²⁸ Furthermore a new regulation supplementing the Act relating to Hours of Work onboard Ships was adopted.²⁹

The prohibition of work by children and well as the exemptions therefrom were, according to the reports, reproduced in the new provisions. Those provisions were, however, edited to become more user friendly.

²⁴ Act of 4 February 1977, No. 4.

²⁵ Regulation of 22 September 1977 relating to employment of pupils attending compulsory primary and secondary school and who are 13 years of age, Regulation of 23 June 1983 relating to employment of young people at work that demands specific caution, Regulation of 24 August 1977 relating to exemptions from the prohibition against night work of employees under 18 years and Regulation of 24 August 1977 relating to registration of employees under 18 years.

²⁶ Act of 3 June 1977, No. 50.

²⁷ Regulation of 3 February 1986, No. 231, concerning mandatory training, supervision and repatriation, etc. of young people; and Regulation of 4 February 1986, No. 238, concerning protection and work environment on board ships applied to all seafarers engaged in service on board Norwegian ships.

²⁸ Regulation of 30 April 1998, No. 551, relating to work performed by children and young people.

²⁹ Regulation of 25 April 2002, No. 423, concerning work and placement of young people, replacing former Regulation of 31 August 2000 concerning work by young people on Norwegian Ships and Regulation of 3 February 1986 concerning placement of young people in practical work in domestic trade.

Transposition of the Directive entailed amending, *inter alia*, the definitions used in the Norwegian legislation as well as the provisions on working time, rest periods, breaks and night work, applicable to young persons and children. As regards work onboard ships, new regulations concerning work carried out by persons under the age of 18, and provisions concerning protection of young people against high risk and hazardous work, were adopted. Also fishing and hunting vessels were covered by the new provisions.

According to the Norwegian Labour Inspection Authority there was no data available for assessing whether the practical implementation entailed any negative or positive aspects. The Norwegian Maritime Directorate, however, stated that according to certain social partners there were difficulties experienced in complying with the new provisions when employing young persons. This had led to a decrease in employment of young persons.

According to the reports, no data was available for carrying out an assessment of the effectiveness of the legislation. The Norwegian Maritime Directorate states, however, that the number of applications for exemptions from the prohibition of work by children was relatively stable.

The Norwegian Maritime Directorate reported that information on the rules applying to young persons has been distributed to shipowners and to the social partners. The Directorate also published articles on the topic, organised information meetings, and was planning to initiate special information campaigns targeted at certain industries.

5 Conclusions

All three EFTA States have now notified national measures which, according to them, ensure full implementation of the Directive.

In all EFTA States the national legislation included a number of provisions on the protection of young workers already in force before the Directive was transposed.

Two EFTA States did not report specific difficulties in transposing the Directive. All EFTA States had to introduce amendments to their national legislation to ensure the implementation of the minimum protective rules laid down in the Directive. According to one EFTA State, after the transposition of the Directive, the national rules on work by young persons are more detailed, while another noted that transposition has led to the consolidation of national regulations into one legal text. One EFTA State noted that the transposition required some time-consuming and politically contested adaptations to the legislation. Nevertheless, it was underlined that the EEA law has contributed to the general increase in the level of protection of health and safety at work.

Two EFTA States noted that the transposition of the Directive has increased the general awareness of this topic.

Annex 1

NATIONAL TRANSPOSITION MEASURES FOR DIRECTIVE 94/33/EC

EFTA State	Transposition measure
<p>Iceland</p>	<p>Lög nr. 68/2003, um breytingu á lögum nr. 46/1980, um aðbúnað, hollustuhætti og öryggi á vinnustöðum</p> <p><i>Act No. 68/2003 amending the Act on Working Environment, Health and Safety in the Workplace, No. 46/1980</i></p>
	<p>Lög nr. 52/1997 um breytingu á lögum um aðbúnað, hollustuhætti og öryggi á vinnustöðum, nr. 46/1980, með síðari breytingum.</p> <p><i>Law No. 52/1997 amending Law No. 46/1980 concerning working environment, health and safety in the workplace</i></p>
<p>Liechtenstein</p>	<p>Gesetz vom 29. Dezember 1966 über die Arbeit in Industries, Gewerbe und Handel (Arbeitsgesetz) abgeändert durch LGBl 1997 Nr. 212 und LGBl 2005 Nr. 12 (LR 822.10, idgF)</p> <p><i>Act of 29 December 1966 on the Work in Industry, Craft and Trade (Labour Act) as last amended (Law Gazette 1997 No. 212 and Law Gazette 2005 No. 12)</i></p>
	<p>Verordnung V vom 22. März 2005 zum Arbeitsgesetz (ArGV V) (Sonderbestimmungen über den Schutz der jugendlichen Arbeitnehmer) (LR 822.101.5, idgF)</p> <p><i>Ordinance V of 22 March 2005 on Labour Act (Special Provisions on Protection of Young People at Work) (LR 822.101.5, as last amended)</i></p>
	<p>Verordnung vom 16. Juni 1998 über die Sicherheit und den Gesundheitsschutz der Arbeitnehmer am Arbeitsplatz (LR 822.103.3, idgF)</p> <p><i>Ordinance of 16 June 1998 on Health and Safety of Employees at Work (LR 822.101.3, as last amended)</i></p>
	<p>Verordnung I vom 22. März 2005 zum Arbeitsgesetz (ARGV I). abgeändert durch LGBl. 2005 Nr. 67 (LR 822.101.1, idgF)</p> <p><i>Ordinance I of 22 March 2005 on the Labour Act (ArGV I) (Law Gazette 2005 No. 67)</i></p>

Norway	<p>Lov om endringer i arbeidsmiljøloven vedtatt av Stortinget 11. juni 2002 og sanksjonert i Statsråd 21. juni 2002. Lovendringene trer i kraft 1. januar 2003</p> <p><i>Act amending the Work Environment Act, adopted by the Parliament on 11 June 2002 and sanctioned by the Government on 21 June 2002. Entry into force on 1 January 2003</i></p>
	<p>Forskrift av 5. juli 2002 om husarbeid, tilsyn og pleie i privat arbeidsgivers hjem</p> <p><i>Regulation of 5 July 2002 concerning housework, care and nursing in private employers homes and households</i></p>
	<p>Forskrift av 5. juli 2002 om arbeid som utføres i arbeidstakers hjem</p> <p><i>Regulation of 5 July 2002 concerning work performed in the employee's home</i></p>
	<p>Endring av 17. desember 1998 i forskrift av 30. april 1998 om arbeid av barn og unge</p> <p><i>Regulation of 30 April 1998 relating to work performed by Young Persons as amended by the Directorate of Labour Inspection on 17 December 1998</i></p>
	<p>Forskrift av 21. april 1994 om verne- og helsepersonale</p> <p><i>Regulation of 21 April 1998 relating to Health and Safety Personnel</i></p>
	<p>Forskrift om arbeid av barn og unge. Fastsatt av Direktoratet for arbeidstilsynet 30. april 1998</p> <p><i>Regulation relating to work performed by young persons, adopted by the Directorate of Labour Inspection 30 April 1998</i></p>
	<p>Lov av 30.april 1998 nr 24 om endringer i lov av 4.februar 1977 nr 4 om arbeidervern og arbeidsmiljø</p> <p><i>Act of 4 February 1977 No 4 relating to Working Protection and Working Environment, as amended by Act of 30 April 1998 No 24</i></p>