NHO Næringslivets Hovedorganisasjon
Confederation of Norwegian Enterprise

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Attn.: Maria Kase

Vår dato:	01.02.2016
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Vår referanse:	N
Deres referanse:	15/30-

Re: Conformity assessment of the implementation of Directive 2008/104/EC on temporary agency work

Reference is made to your letter dated 17th of December 2015 in respect of the above mentioned and the request from ESA for further information on possible restrictions to the use of temporary work in the collective agreements.

NHO's branch federations have provided the following feedback.

NHO LOGISTICS AND TRANSPORT

(SPEDITØROVERENSKOMSTEN AND SCHENKEROVERENSKOMSTEN)
According to the two collective agreements, hiring may only take place for holidays, seasonal work and in case of unforeseen events. ("Innleie kan finne sted ved ferie, sesong- og fraværstopper og ved uforutsette hendelser.")

Hiring, in accordance with the two collective agreements, may as well only take place under the condition that the company on a permanently basis has employed enough persons to cover the normal amount of work, in the meaning that temporary work only can cover extraordinary amounts of work. ("Forutsetningen for at adgangen til innleie er til stede, er en riktig stipulert bemanning i den enkelte bedrift/avdeling. Riktig bemanning innbefatter det normale fraværsmønsteret på bedriften/avdelingen som skal dekkes opp av fast ansatte.")

The provisions came into the two collective agreements in 2010. The provisions were contained in the agreements requested by NTF. The employers were initially unwilling to deal attach such restrictions. After three weeks of strikes that hit most transport terminals in Norway, and resulted in significant operational problems and distortions of competition, Norwegian Transport Workers' Union (NTF) and NHO Logistikk og Transport (NHO LT/LTL) agreed to the relevant provisions of the collective agreements. One of the main aims of the NTF's strike was to contract the limitations in corporate access to the use of temporary personnel. The limitations included both the extent to which it was entitled to use hired personnel, which working time as hired personnel had the right to perform work on and what salary conditions that would apply to hired personnel.

The intention with the provisions was to limit the access to employ temporary personnel.It was not discussed between the parties to what extent the provisions were necessary in the public

interest or if the provisions were consistent with the principle of proportionality. The parties had a common understanding that the provisions were consistent with the Working Environment Act.

(LKAB MALMTRAFIKK-AVTALEN)
During the review of texts of agreements in connection with ESAs demand for a more detailed account of the hiring provisions in the collective agreements, NHO LT have seen that it may be appropriate that ESA also consider the provisions in the collective agreement for train drivers in LKAB Malmtrafikk AS (agreement no. 434, LO / NLF - NHO / NHO LT). To NHO LT it is of great importance to ensure that no doubt can be raised about the legality of the agreements we are part in.

The current Convention has a temporary agency work provision that was included in the Convention in 2010, and a protocol provision that regulates the distribution of work at cross-border traffic.

Agreement § 17 include provisions for temporary agency work.
This provision establishes as a general rule that "LKAB Malmtrafikk AS need for locomotive services to be covered by own employees train drivers."
Exceptionally, if it is still operational reasons arise needs for temporary agency work, temporary agency work can be done at fixed conditions.
It is also included provision which specifies the requirement for competence for temporary agency work train drivers who applies regardless of the actual skills needs: "The same requirements for competence level for temporary agency work train drivers as for train drivers employed by LKAB Malmtrafikk AS."

("LKAB Malmtrafikk sitt behov for lokomotivførertjenester skal dekkes av egne ansatte lokomotivførere."
Unntaksvis, dersom det likevel av driftsmessige årsaker skulle oppstå behov for innleie, kan innleie skje på fastsatte vilkår.
Det er videre inntatt bestemmelse som presiserer kravet til kompetanse for innleide lokomotivførere som gjelder uavhengig av det faktiske kompetansebehov ved innleie: "Det stilles samme krav til kompetansenivå for innleide lokomotivførere som for lokomotivførere ansatt i LKAB Malmtrafikk AS.")

The Collective agreement also has a protocol provision from 2nd December 2014 which in section 4 regulates the distribution of work at cross-border traffic:
"Staffing of the trains in LKAB Malmtrafikk AS must be done in a way that ensures a distribution equal to the current level, with the same duration as the Collective agreement."
(*"Bemanning av togene i LKAB Malmtrafikk AS må gjøres på en måte som sikrer en fordeling lik dagens nivå, med samme varighet som overenskomsten.")*
The provision means in practice an obligation for LKAB Group to maintain a 50/50 sharing of work between Norwegian train drivers employed by LKAB Malmtrafikk AS and Swedish train drivers employed by the parent company LKAB Malmtrafik AB. According to the wording this obligations seems to apply as long as the Norwegian company exists and has employed locomotive drivers.

We hope that this information helps to ensure that the required surveys of collective agreements can proceed as planned. Should there be a need for further information we will assist to the best of ability.

NHO Reiseliv

Vi har kun det som kom inn fra frontfaget i 2012.

Abelia

Abelia have gone through collective agreement number 478 between LO/ EL & IT Forbundet and NHO, agreement number 466 between LO/NTL and NHO/Abelia, and agreement nr. 243 with YS/Parat and NHO/Abelia. In addition, we have three collective agreements that are identical to the agreement number 514 between Tekna and NHO. That is number 515 between Abelia and Forskerforbundet, number 518 between Abelia and AFAG, and number 539 between Samfunnsøkonomene and NHO/Abelia. NHO have gone through the Tekna agreement and we refer to this review.

Agreement number 478 with EL & IT has the same provisions regarding temporary agency work as implemented in Industrioverenskomsten number 83. Agreement number 243 with Parat and agreement number 466 with NTL have a shorter version of the same text. We assume that Norsk Industri will evaluate these provisions.

We consider that there are no restrictions or prohibitions on the use of temporary agency work in our collective agreements, except the provisions that were implemented in Industrioverenskomsten in 2012.

The Federation of Norwegian Construction Industries

The federation of Norwegian Construction Industries does not have any specific regulations concerning restrictions and prohibitions on the use of temporary agency work in the collective agreements the federation has negotiated. Our agreements contain the same regulations on outsourcing of work, external hiring and employees from temporary agency, that were included in many collective agreements in 2012 as a part of result of negotiations between Federation of Norwegian Industries and trade union Fellesforbundet in so called frontfag (Exposed industries leading negotiations).

NHO Mat og Drikke

NHO Mat og Drikke and NHO Mat og Landbruk merged to NHO Mat og Drikke with effect from March 2015. This did not influence the content of the collective agreements.

NHO Mat og Drikke is part of 17 collective agreements. Meierioverenkomsten and Egg- og fjærfekjøttindustrien are mentioned as examples where ESA requests more detailed information.

Meierioverenskomsten § 8

§ 8 ARBEIDSINNLEIE
1. *Partene er enige om at det er viktig å arbeide for at bransjen skal være attraktiv og seriøs, og at innleide arbeidstakere skal ha ordnede lønns- og arbeidsvilkår. Partene er opptatt av å hindre sosial dumping" og at de utfordringene et internasjonalt arbeidsmarked medfører, løses på en akseptabel måte.*

2. *Partene viser til Hovedavtalens intensjon om et best mulig samarbeid i bedriftene. Informasjon og involvering av de tillitsvalgte er en forutsetning for produktivitetsutvikling og konkurransekraft.*

3. *Det er bare anledning til å bruke innleide arbeidstakere i det omfang arbeidsmiljøloven" § 14-12 og § 14-13 gir adgang til. Videre må vilkårene i arbeidsmiljøloven § 14-9 være oppfylt."*

4. *Forutsetningen for at adgangen til innleie er til stede, er en riktig stipulert bemanning i den enkelte bedrift / avdeling. Riktig bemanning innbefatter det normale fraværsmønsteret på bedriften / avdelingen som skal dekkes opp av fast ansatte. Innleie kan finne sted ved ferie, sesong- og fraværstopper og ved uforutsette hendelser.*

5. *Så tidlig som mulig, og før bedriften inngår avtale om å leie inn arbeidstakere, skal omfang, varighet og behov drøftes med de tillitsvalgte i henhold til Hovedavtalens bestemmelser.*

6. *Tillitsvalgte skal kunne bistå den innleide i arbeidsrelaterte spørsmål ovenfor den bedriften vedkommende er innleid i.*

7. *Dersom de lokale parter er uenige om praktiseringen av det eksisterende lov- og avtaleverk kan saken bringes inn for organisasjonene.*

Section 8 paragraph 4, the last sentence of the applicable collective agreement is not meant to be exhaustive and the wording should not be interpreted as the use of temporary agency work is permitted only in certain special cases. Paragraph 4 lists some examples from the Working Environment Act (WEA) § 14-9 when the use of temporary agency work can take place. Paragraph 4 should be read in conjunction with paragraph 3, where the relevant sections from the WEA are mentioned. The intention of the social partners in 2008, when this text was put in the applicable collective agreement for the first time, was to create guidelines similar to the Working Environment Act. The practice by the social partners of the collective agreement supports the original intention.

If the understanding of Section 8, paragraph 4 by the employee differs from the original intention set in 2008, then the text contains prohibitions and restrictions of temporary agency work which

prevent employers from choosing the forms of employment best suited for the business and also limit the opportunities of temporary agency work.

Similar texts as section 8, paragraph 4 in Meierioverenskomsten are also found in several of the other collective agreements in NHO Mat og Drikke, listed under:

- Overenskomst for Baker- og konditorfagene: Section 19
- Overenskomst for Melkebearbeidende Industri: Section 13
- Overenskomst for Idun: Section 10
- Grossistavtalen: Section 18
- Overenskomst for Margarinfabrikkene: Section 13
- Overenskomst for Bryggerier, mineralvann- og tobakksfabrikker: Section 11
- Overenskomst for Møller- og forblanderier: Section 13
- Overenskomst for Mat- og Drikkevareindustrien: Section 18
- Overenskomst for Sjokolade- sukkervare- og snacksindustrien: Section 14
- Overenskomst for Vin- og Brennevinsbransjen: 1.2.3

From 2010, the same texts also exists in Speditøroverenskomsten and Schenkeroverenskomsten.

Section 8 paragraph 5 in Meierioverensomsten provides an obligation to consultation with the employee's elected representative, "as early as possible and before the company sign an agreement with the temporary work agency". The consultation should cover "the amount, the duration and the need to use temporary agency work".

The collective agreements mentioned above also include an obligation to consult with the employee's elected representative before the company signs an agreement with a temporary work agency. Some texts are identical as the text in section 8, paragraph 5 in Meierioverenskomsten and some are also wider and include an obligation to consult on the "tasks that temporary agency worker will perform".

The term "consult" means that if the management and the employee's elected representative cannot agree, the management can take a sole decision.

It is uncertain if these expanded consultations can be justified on grounds mentioned in the Article 4 paragraph 1.

Egg- og fjærfekjøttoverenskomsten

§ 10 Innleie av arbeidskraft

1. Partene er enige om at det er viktig at bransjen fremstår som attraktiv for å sikre rekrutteringen av medarbeidere.

2. Som hovedregel er partene enige om at fast ansatte på hel- eller deltid er den ansettelsesformen som er den mest gunstige, både for de ansatte og for bedriften. For å dekke

bedriftens produksjonsbehov er det nødvendig at det blir ansatt vikarer som skal erstatte medarbeidere som har permisjon, er sykemeldt og lignende. Det er også nødvendig å ansette medarbeidere på tidsbegrensede kontrakter for å dekke opp for sesonger og uventede oppdrag som i perioder øker produksjonen. Partene erkjenner at det i dagens situasjon er vanskelig å rekruttere kvalifisert arbeidskraft. Det vil derfor være nødvendig i perioder å leie inn arbeidskraft fra etablerte vikarbyråer. Dette skal skje i tråd med gjeldende lov- og avtaleverk. Innleie av arbeidskraft i produksjonen kan først skje etter at bedriften har forsøkt å rekruttere på tradisjonell måte.

3. Organisasjonene erkjenner at det er behov for å lage ordninger som sikrer at de tillitsvalgte får den informasjon og innflytelse som er nødvendig for å sikre kvaliteten på denne ansettelsesformen. Bedriften skal informere de tillitsvalgte om årsaken til innleie, antall ansatte som skal innleies, hvilke arbeidsoppgaver som skal utføres og hvor langt tidsrom innleieforholdet skal vare. Partene er derfor enige om at det skal innkalles til forhandlingsmøte mellom bedriften og de tillitsvalgte før innleie iverksettes. Det skal føres protokoll fra møtet. Forhandlingsretten er knyttet opp mot bedriftens oppfølging av kriteriene ovenfor.

Section 10, paragraph 2, the last sentence provides that the employer first must try to hire permanently or temporary (according to the WEA section 14-9). If the employer is not successful, then the employer can hire from a temporary work agency (according to the WEA § 14-12).

Paragraph 2 came to the applicable collective agreement in 2002 after a request by the workers, and their intention was to limit the companies' use of temporary agency work.

This restriction prevents employers from choosing the form of employment best suited for their business, and the restriction cannot be justified on grounds mentioned in Article 4, paragraph 1.

Section 10, paragraph 3, provides an obligation for the employer to inform the employee's elected representative about "why, the amount, the duration and the tasks" done by temporary agency workers. There is also an obligation for the employer to inform about this in a "forhandlingsmøte" a negotiation meeting. The wording is interpreted as "consultation meeting" and not the more legal binding "negotiation meeting".

It is uncertain if these expanded consultations can be justified on grounds mentioned in the Article 4 paragraph 1.

The identical text in Egg- og Fjærfekjøtt is also found in one other collective agreement in NHO Mat og Drikke:

- Overenskomst for Kjøttindustrien: Section 16

Overenskomst for jordbruks- og gartnerærингene

Annex 9 of the applicable collective agreement regulates the use of temporary agency work. In paragraph 2, the employers must negotiate about the use of temporary agency work with the employee's elective, before start. This is interpreted as an obligation to consult. It is uncertain if this expanded consultation can be justified on grounds mentioned in the Article 4 paragraph 1.

All of the collective agreements in NHO Mat og Drikke adapted the result and text of the collective bargaining from Industrioverenskomsten in the spring of 2012. We expect that Norsk Industri will give an account for this annex

We hope that this information helps and should there be a need for further information we will assist for additional information or clarification.

NHO Luftfart

The Federation of Norwegian Aviation Industries (NHO Luftfart) is an organization that supports aviation industry companies in Norway. Many of our members are bound by collective labour agreements (CLA) at company level rather than sector level CLAs.
A few CLAs at company level have various types of regulations stating that the user company has to have an agreement with the local union before recruiting temporary agency workers or workers from production enterprises (undertakings other than those whose object is to hire out labour). The CLAs do normally not state any requirements for such agreements. Another regulation states that the use of contract workers (both from temporary work agencies and from production enterprises) for longer periods of time is dependent on an agreement with the local union. "Longer periods of time" is interpreted as more than six months.

In practice these regulations might be used to ensure that permanent and direct employment remain the general form of employment, and to limit the companies' use of temporary agency work and outsourcing of labour. With reference to the Labour Ministry's letter 27 March 2015, the Government considers protection of permanent and direct employment to justify restrictions on temporary agency work.

One CLA has a provision requiring temporary agency workers to have the same skills as the permanent employees. The CLA concerned regulates the working conditions for pilots, and relates to operations involving special risks to the health and safety of both the actual worker and his/her co-workers. In our view the regulation pursues legitimate objectives relating to the general interest, namely the requirements of health and safety at work.

Agreements No. 89 and 279 have regulations stating that work covered by the CLA must not be performed under less favorable terms than stated in the agreement. It is however, not certain that these regulations apply to temporary agency work. If the regulations are applicable, they extend the principle of equal treatment further than what is considered as "basic working and employment conditions" in article 5 of the directive, which might be seen as a restriction on

temporary agency work. It is uncertain if this restriction can be justified on grounds mentioned in the Directive, but we understand that it is quite common to apply the user company's CLA in its entirety also for the temporary agency workers.

Several of our agreements have incorporated the general annex on temporary agency work, which was concluded in the collective bargaining negotiations in the spring of 2012.
We expect that NHO or Norsk Industri will give an account for this annex.

Norwegian Oil and Gas

Norwegian Oil and Gas has reviewed the collective agreements, and all agreements contain the joint annexes on contracted workers ("contracting workers and contracting out work, etc." and "staffing policy"). Beyond this, there are no provisions in the collective agreements to which we are a party, that in our opinion may be in violation of Article 4 of the Temporary Agency Work Directive. According to our assessment, the only provision that can be questioned as to whether it entails a restriction or prohibition against using contracted workers, is the provision concerning the temporary worker pool.

1. The content of tariff provisions that contain restrictions or a prohibition against using contracted workers?

Norwegian Oil and Gas has previously expressed that the rule concerning the temporary worker pool that is in force in our collective agreements within drilling and catering may entail a restriction or prohibition against using contracted workers pursuant to Article 4 of the Temporary Agency Work Directive.

The shelf agreements (agreements 123, 125, 284, 271) contain the following provision concerning the pool of temporary workers:

"26. TEMPORARY WORKER POOL IN OIL DRILLING AND CATERING COMPANIES

Temporary worker pools shall be established containing permanently employed temporary workers in order to cover normal absences.

The local parties can agree to deviate from the collective agreement for permanent employees in the temporary worker pool. Such agreements must be approved by the organizations.

Employees with no fixed work plan must have at least 1.5 days off for each day in their last offshore period. Work during the free period must be compensated by overtime for each hour worked.

Protocol addendum
A temporary worker/operations/flexible pool shall be established containing permanent company employees to cover the following:

a) *Illness*
b) *Leaves of absence*
c) *Brief assignments and activity fluctuations*

The local parties can agree to deviate from the collective agreement for employees in the temporary worker/operations/flexible pool. The parties to the collective agreement must approve such agreements.

Employees with no fixed work plan must have at least 1.5 days off for each day in their last offshore period. Work during the free period must be compensated by overtime for each hour worked."

It is our opinion that this is a scheme that aims to cover normal and foreseeable absences in the company that, according to the rules of the Working Environment Act, shall be covered using permanent employees, and entails no preference for instances when the use of contracted workers is allowed.

Being employed in the temporary worker pool entails that an exemption has been made from the collective agreement's requirements for fixed rotation plans and the individual employee may work on different installations. Employees that are not part of the temporary worker pool will have a fixed workplace and will follow a fixed rotation that normally involves 14 days offshore followed by 28 days of time off /time off in lieu.

The basis for the provision is that these are industries with high levels of absence due to illness and must, in our opinion, be viewed as a form of overstaffing in relation to the volume of assignments, and they amount to part of the fixed staffing in the companies. The special circumstances involved in working offshore as regards rigid working hour schemes, requirements for health and safety (e.g. the requirement for a health certificate) and similar, mean that there is a need for a certain overstaffing in order to limit the strain on the other employees. The scheme is also based on financial considerations, as the collective agreement entails that work beyond a fixed rotation must be subject to overtime compensation.

There have been certain disputes in connection with the provision and Norwegian Oil and Gas has previously asserted that the provision does not entail any restriction in the use of temporary workers pursuant to the provisions of the Working Environment Act. This issue has not been tested in the courts, but this presumably follows from the judgment in ARD-2006-407, in which the issue was whether there was a breach of the obligation to enter into consultation pursuant to the Basic Agreement in connection with hiring temporary workers. In this case there was no disagreement between the parties to the effect that, even if a temporary worker pool had been established pursuant to the provision, the hiring of temporary workers was allowed.

It is the opinion of Norwegian Oil and Gas that the provision does not entail a restriction or prohibition against using contracted workers in the context of the Temporary Agency Work Directive.

2. Can they be substantiated based on general considerations?

The background for establishing the temporary worker pool is substantiated by a number of different considerations, including the consideration for the strain on employees in an industry with a high level of absence due to illness. Beyond the considerations accounted for above, there are no other general considerations that could substantiate that a potential restriction is not in violation of the Temporary Agency Work Directive.

3. Do they conform with the proportionality principle?

As there are no general considerations, this is not deemed to be relevant in this context.

Nelfo

Overenskomst for Heisfaget
§ 1 Overenskomstens omfang og varighet
Under § 1 i overenskomsten er det en bestemmelse som regulerer enkelte forhold rundt inn- og utleie.

Teksten er som følger:
«Inn og utleie
Partene er enige om at driften baseres/planlegges med faste ansatte. I situasjoner der dette ikke er mulig, kan innleie av heismontører og hjelpearbeidere i heisfaget bli nødvendig. Innleie skal foregå fra virksomheter som ikke har som formål å drive utleie.»

I forbindelse med tarifforhandlingene i 2012 ble det foretatt en grundigere vurdering av denne bestemmelsen, og vi kom frem til at siste setning i ovennevnte bestemmelse kunne oppfattes som en restriksjon i strid med Vikarbyrådirektivets artikkel 4, mv. Det ble reist krav i forhold til EL&IT Forbundet/Heismontørenes fagforening om at denne setningen skulle fjernes. Det lykkes vi ikke med.

NHO Transport

Jeg kan ikke se at noen av NHO Transports avtaler inneholder noen begrensning i forhold til adgangen til å bruke vikarer.

NHO Service

NHO Service is part of 16 collective bargaining agreements (CBA), of which 6 contain the general annex on temporary agency work that were implemented as a result of the collective bargaining negotiations in the spring 2012. The provisions in this annex state that the WEA Section 14-12 regulates hiring of employees from a temporary work agency.

According to Section 14-12 of the WEA, hiring of *"workers from undertakings whose object is to hire out labour shall be permitted to the extent that temporary appointment of employees may be agreed pursuant to section 14-9, first paragraph"*, i.e. to the same extent that the employer can legally make use of temporary employment.

Hence, according to the WEA the main rule is that an undertaking can only legally hire personnel to the same extent that the same undertaking can prove to have a temporary need for the labor. The use of hired personell may, however, also be allowed if the elected representatives that represents a majority of the employees in the relevant category of workers in an undertaking that is bound by a CBA, enter into a written agreement with the undertaking.

In NHO Service's opinion, these provisions in the WEA represent restrictions on the use of temporary workers that cannot be justified on grounds of general interest as set out in Article 4 (1) of the Directive. The Norwegian Government has especially emphasized that the limitations are implemented to ensure that permanent and direct employment remain the general form of employment in Norway. The Government's assessment is that the restrictions comply with the proportionality principle since they are the only means that can secure the protection of permanent employment.

Notably, the fact that the majority of employees that are hired out are permanently employed by the temporary work agency has been completely left out in this assessment.

As mentioned above, 6 of the CBAs that NHO Service is part of contain the general annex on temporary agency work. This is the case not only for these 6 CBAs, but for the majority of NHO's collective bargaining agreements. As the general annex make reference to the limitations on hiring of employees that are set out in the WEA, and these limitations in our view constitute illegal restrictions, the conclusion is that the provision in the general annex must also be seen as an illegal restriction.

Furthermore, provisions in the CBAs that go even further than the provisions in the general annex without any explanation as to why they are based on grounds of general interest and proportional, i.e. the provisions in the Speditøroverenskomsten, Schenkeroverenskomsten, Meierioverenskomsten, Egg og Fjærfekjøttoverenskomsten and especially the provision in the CBA of Norsk Teknologi, will in our view obviously constitute illegal restrictions.

Several of the organizations in the NHO-family point out that some of the provisions in the CBAs must be considered to be restrictions. However, in NHO Service's view, there is only a few provisions that have been accounted for, ref. the statements of the Federation of Norwegian Aviation Industries and Norwegian Oil and Gas.

For the rest of the provisions that are considered to be restrictions, no explanations have been given as to why they can be justified on grounds of general interest and why they are in accordance with the principle of proportionality. Seeing as these explanations are lacking, it is not possible for NHO Service to give any further comments as to why we believe these restrictions do not comply with Article 4 (1) of the Directive. However, the wording in these provisions are alone

an indication that the purpose of the restriction has not been motivated by circumstances that can be objectively justified, but rather a wish to limit the use of hired employees. Reference in this regard is made especially to Section 8 of Meierioverenskomsten and to Section 10 of the Egg and Fjærfekjøttoverenskomsten, that lay down as a requirement that the company has enough permanently employed persons to cover the normal amount of work, including a normal absentee rate.

NHO Service also wants to comment on the fact that several of the CBAs in the NHO-family contain provisions that put an obligation on the employer to either discuss or negotiate the need for hired personnel with the elected representatives prior to making a decision as to whether the undertaking should hire personnel or not.

For example, The Federation of Norwegian Construction Industries have a provision in annex 14, Section 1.2 of their CBA called "Fellesoverenskomsten for Byggfag" that the undertaking is obliged to negotiate the need for hiring personnel prior to making use of hired employees. Other CBAs, such as for example Norsk Industris "Industrioverenskomsten", annex 8, Section 1 set out an obligation for the employer to discuss the need for hired personnel with the elected representatives. In NHO Service's view, these provisions give the employees representatives an opportunity to make their acceptance dependent on a return favor from the employer's side. This practice can clearly not be justified on grounds of general interest, nor be proportional.

On a general note, the fact that the restrictions have been included in the CBA due to pressure from the unions in collective bargaining negotiations, is in our view without relevance to the question of whether or not the restrictions can be justified. Furthermore, it is without relevance that both parties were of the opinion that the restrictions were in accordance with the WEA. At the same time it is worth noticing that, as an example, Norsk Teknologi has reached out to the union and asked for the relevant provision to be removed from the CBA.

Sjømat Norge

In "Fiskeindustrioverenskomsten" we have the same provision as in section 8 in "Meierioverenskomsten". In this connection, we can refer to the comments from NHO Mat og Drikke.

The Federation of Norwegian Industries

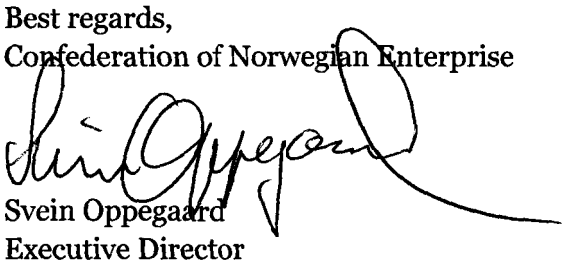
The Federation of Norwegian Industries refers to our remarks as shown in the letter from the Confederation of Norwegian Enterprises of 9 March 2015.
In addition we would like to inform that the provisions in the two mentioned annex' (bilag 8 og 8a I Industrioverenskomsten) whose purpose is to contribute to the implementation of the obligations of equal treatment of hired workers as stated in the Working Environment Act (WEA) section 14-12a, will not be effective from 1 April 2016 when the Temporary Work Agency is bound by the Collective Agreement. Accordingly, this will be the case for Temporary Work Agencies bound by other collective agreements made with Trade Unions entitled to submit

recommendations and where the above mentioned annexes have been incorporated. Reference here are regulations following WEA section 14-12a (3) which came into force on 1 July 2015.

The Norwegian Automotive Association

In "Biloverenskomsten" we have the same provision as in "Industrioverenskomsten". Otherwise the Norwegian Automotive Association endorse the statements from the Federation of Norwegian Industries.

Best regards,
Confederation of Norwegian Enterprise



Svein Oppegaard
Executive Director
Labour Market and Social Affaires