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Ministry of Labour and Social Affairs
Postboks 8019 Dep,
0030 Oslo,
Norway

Dear Sir/Madam,

Subject: Request for Information concerning the general application of collective wage agreements concerning freight transport by road in Norway

On 26 August 2015, the Internal Market Affairs Directorate of the EFTA Surveillance Authority ("the Directorate") opened an own initiative case to investigate whether the Norwegian Regulations of 11 May 2015 on the general application of collective wage agreements concerning freight transport by road in Norway ("the Regulations")¹ complies with EEA law, notably Article 36 of the EEA Agreement, and the obligations set out in Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 *concerning the posting of workers in the framework of the provision of services* ("the Posted Workers Directive" or "the Directive").²

It is the Authority's understanding that the Regulations establish a minimum wage for workers in the road transport sector. The Authority notes that there has been substantial debate as to its scope and impact in the road transport sector over the last two months.

Accordingly, the Authority requests the Norwegian Government to provide the following information:

1 Details of the scope of the Regulations

The Authority invites the Norwegian Government to complete the table set out in Annexe I to the present Request for Information. By this table, the Authority seeks to understand the scope of the Regulations *ratione materiae* (ie the configuration of circumstances in which the minimum wage rules set out in the Regulations would be applied).

¹ FOR-2015-05-11-554. The Regulations entered into force on 1 July 2015.

² Official Journal L 018 , 21/01/1997, p.1. The Posted Workers Directive was incorporated into the EEA Agreement by Joint Committee Decision No 37/98, which entered into force on 1 May 1998. The Directive's compliance date was 16 December 1999.

The Authority is particularly interested to know, for journeys involving stops in more than one country, as well as a stop in Norway ("International Transport" journeys), whether account is taken of any type of "link" to Norway, or any sort of *de minimis* threshold is considered when establishing whether the minimum wage should be applied.

On a related point, the Authority invites the Norwegian Government to comment on whether the minimum wage legislation would be applied to (all or part of) an International Transport journey which starts in EEA State A, goes through Norway and ends in EEA State B, where deliveries and pick-ups are made in all three states. Would the same answer be given if the time or distance spent in Norway constitutes a very small part of the over-all journey? And if not, what is the threshold for determining when the minimum wage would start to apply?

The Authority would also welcome clarification from the Norwegian Government on the question of whether similar Regulations are applied or are planned to be adopted to transport of passengers.

2 Posted Workers

Section 2 of Chapter I states that:

"For employees in companies established outside Norway, the Regulations apply only to the extent that transportation is a service for Sections 1 to 7 of the Working Environment Act (Posted Workers)."

The Authority invites the Norwegian Government to clarify the relationship between the Regulations and the Posted Workers Directive. In particular, the Authority invites the Norwegian Government to comment on the scope of the Norwegian legislation implementing the Posted Workers Directive in the context of the Regulations at issue.

In particular, in determining whether work falls within the scope of the legislation on posted workers, does Norway apply a "link" test or *de minimis* threshold similar to the one outlined above?

3 Accommodation allowance

The Authority invites the Norwegian Government to clarify the provisions of the Regulations concerning the accommodation allowance. In particular, the Authority would be interested to know what is the amount of the accommodation allowance and how this amount is fixed, how the allowance is calculated in case of international transport operations *etc.*

4 Notification requirements

The Authority invites the Norwegian Government to confirm whether the Regulations impose upon employers any notification requirements, and if so, what those requirements are.

In the event that there are no notification requirements the Authority would welcome clarification from the Norwegian Government on the question of how the implementation of the Regulations is ensured.

5 Fines and penalties

The Authority seeks to ascertain whether breaches of the Regulations would give rise to fines and/or penalties (including a cessation of activities). The Norwegian Government is accordingly invited to comment on whether this is the case, and on the level of fines which would be applicable.

In the event that there are no fines or penalties the Authority would welcome clarification from the Norwegian Government on the question of how the implementation of the Regulations is ensured.

6 Possible restriction on freedom to provide services

Accordingly, the Authority wishes to invite the Norwegian Government to comment on these concerns directly, including whether the Regulations could be seen as a restriction on the freedom to provide services, and if this is the case, whether such a restriction could be justified.

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *16 October 2015*.

Yours faithfully,



Ólafur Jóhannes Einarsson

Director

Internal Market Affairs Directorate

ANNEX I: TABLE FOR COMPLETION

This table seeks to determine the scope of application of the Regulations.

Type of operation	Min wage applied (to all/part)?	
	Y/N	Notes
<i>Cabotage</i>		
Cabotage operations <i>in</i> Norway: - <i>ordered</i> by Norwegian-registered companies or persons in Norway and <i>carried out</i> by companies registered outside Norway	Y/N	
- <i>ordered</i> by companies or persons registered outside Norway and <i>carried out</i> by companies registered outside Norway	Y/N	
Cabotage operations <i>outside</i> Norway <i>carried out</i> by companies registered in Norway	Y/N	
<i>Transit (for the part of the transit operation that is within Norway)</i>		
Transit operations <i>ordered</i> by companies registered in Norway or persons in Norway	Y/N	
Transit operations <i>ordered</i> by companies or persons registered outside Norway	Y/N	
Transit operations <i>carried out</i> by companies registered in Norway	Y/N	
Transit operations <i>carried out</i> by companies registered outside Norway	Y/N	
<i>International transport, stopping in Norway for loading/unloading</i>		
Transport operations <i>ordered</i> by companies registered in Norway or persons in Norway	Y/N	
Transport operations <i>ordered</i> by companies or persons registered outside Norway	Y/N	
Transport operations <i>carried out</i> by companies registered in Norway	Y/N	
Transport operations <i>carried out</i> by companies registered outside Norway	Y/N	
<i>Other</i>		

<p>Any situation not covered by the above (please give details)</p>		
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