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Brussels, 4 November 2025
Case No: 89887
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Norwegian Ministry of Labour and Social Inclusion
Postboks 8019 Dep
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Norway

Dear Sir/Madam,

Subject: Supplementary Request for Information concerning restrictions on the use of temporary agency workers in Norway

1 Introduction

By a letter dated 10 February 2023,[1] the Internal Market Affairs Directorate ("the Directorate") of the EFTA Surveillance Authority ("the Authority") informed the Norwegian Government that it had opened an own initiative case on 25 January 2023, *inter alia* on the basis of a complaint received, in order to examine newly adopted measures in Norway which restrict the use of temporary agency workers.

Following an exchange of letters and dialogue with the Norwegian government[2], the Authority on 19 July 2023 issued a letter of formal notice in which it concluded that, by maintaining in force national provisions such as Section 14-12(1), cf. Section 14-9(2), of the Working Environment Act[3] ("WEA") and Section 11(1) of the Civil Service Act[4], which prevent the use of temporary agency workers when the work is of a temporary nature, and Section 4 of the regulation on temporary agency work[5], which prohibits all use of temporary agency workers for construction work on construction sites in Oslo, Viken and former Vestfold[6], Norway is in breach of Article 4(1) of Directive 2008/104 *on temporary agency work*[7] ("the Temporary Agency Work Directive" or "the Directive") and Article 36 of the EEA Agreement ("EEA"). In the following, these provisions will be referred to as "the contested measures."

In parallel to the Authority's infringement case, the national rules at issue have been challenged in two separate court proceedings at national level. In one of those cases, following a request made by the Oslo District Court, the EFTA Court provided an advisory

[1] Doc No 1348681.
[2] See request for information of 10 February 2023 (Doc No 1348681) and the reply from the Norwegian government of 5 May 2023 (Doc Nos 1371303 and 1371305 / your ref. 23/709). That reply was preceded by a meeting held in Brussels between the Authority and representatives of the Norwegian government on 21 April 2023
[3] Lov 17. juni 2005 nr. 62 om arbeidsmiljø, arbeidstid og stillingsvern, as amended.
[4] Lov 16. juni 2017 nr. 67 om statens ansatte mv., as amended.
[5] Forskrift 11. januar 2013 nr. 33 om innleie fra bemanningsforetak, as amended.
[6] The provision now reads "Oslo, Akershus, Østfold, Buskerud and Vestfold."
[7] Incorporated into the EEA Agreement by Joint Committee Decision No 149/2012 of 13 July 2012 at point 32k of Annex XVIII (Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work) as adapted to the EEA Agreement by Protocol 1 thereto, with entry into force and compliance date of 1 May 2013.

opinion on 20th November 2024.[8] The referring court handed down its judgement on 18 August 2025, ruling in favor of the Norwegian state.[9]

The Authority has taken note that the judgement of the Oslo District Court has been appealed.

As part of its continued examination of the national rules at issue, the Directorate hereby requests the Norwegian government to respond to the questions raised below.

2 The effects of the Norwegian restrictions on temporary agency work

The Directorate has taken note of several reports assessing the impact of the contested measures, including those published in December 2024 by Fafo[10] and, more recently, by the Institute for Social Research in August 2025.[11]

Based on these analyses, or other relevant information, the Norwegian Government is invited to provide a detailed overview of the impacts of the national restrictions on temporary agency work, including but not limited to:

1. The decrease in the use of hiring-in from temporary work agencies since the adoption of the contested measures.

2. The current use of hiring-in from temporary work agencies -- differentiated by the applicable legal basis (e.g. Section 14-12(2) WEA, Section 14-9 (2) b)-e), and Section 3 of the Temporary Agency Work Regulation[12]) and by the sectors relying on these provisions – compared to the situation prior to the adoption of the contested measures.

3. The current use of hiring-in from production companies, cf. Section 14-3 WEA, compared to the situation prior to the adoption of the contested measures.

4. The effects of the contested measures on permanent employment, temporary employment and the use of overtime.

5. The effects of the contested measures on part-time and full-time employment within both temporary work agencies and the average across all occupations in Norway.

6. Statistical data on how the contested measures have influenced the number of workers coming from other EEA States to Norway.

7. How the contested measures have affected temporary work agencies from other EEA countries seeking to offer services in Norway, including the impact of registration or authorisation requirements.

8. How enterprises are currently fulfilling their temporary staffing needs under the new rules, and whether there has been a shift toward alternative arrangements such as posting of workers or subcontracting.

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[8] Judgement by the EFTA Court of 20 November 2024 in Case E-2/24 *Bygg & Industri AS and others v the Norwegian State*.

[9] Judgement by the Oslo District Court of 18 August 2025, Joined Cases No. 23-130279TVI-TOSL/02.

[10] Fafo-notat 2024:22 titled (in Norwegian) “Virkninger av innstramminger i innleieregelverket.“

[11] Rapport 2025:4 titled (in Norwegian) “Ett år etter innstramming: følgeevaluering av regel-endringen for innleie fra bemanningsforetak.“

[12] Forskrift om innleie fra bemanningsforetak.

3 Legitimate objectives – permanent and direct employment

Firstly, the Directorate recalls that pursuant to Article 4(1) of the Temporary Agency Work Directive, prohibitions or restrictions on the use of temporary agency work must be justified on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labor market functions properly and abuses are prevented. Secondly, the Directorate also recalls that a restriction on any fundamental freedom enshrined in the EEA Agreement must be justified by overriding reasons in the public interest.

With reference to the above, the Directorate notes that the Norwegian Government has consistently declared that the principal objective of the contested measures is to promote *permanent and direct employment*, by means of limiting the use of temporary agency work.[13]

In that respect, the Directorate observes that *permanent* employment is explicitly recognised as the general form of an employment relationship, cf. recital 15 to the Temporary Agency Work Directive. *Direct* employment (with the user undertaking), on the other hand, is seemingly not vested with any comparable standing pursuant to the Directive. To the Directorate, this is quite logic, bearing in mind that temporary agency work – a recognised form of employment – inherently consists of a tripartite relationship under which the worker's relationship with the user undertaking is temporary.

Against this background, the Norwegian government is requested to provide information and responses to the following:

9. Focusing on *permanent* employment, please provide precise data demonstrating the share of permanent employment in temporary work agencies compared to the average in Norway, at the time of adoption of the national rules at issue and today. Kindly distinguish between sectors (including, but not limited to, all sectors that have been excluded from the contested measures such as agriculture and the health sector) and specify whether this varies between sectors.

10. Assuming that the share of permanent employment in temporary work agencies was and remains comparable to the average in Norway, please clarify whether the Norwegian Government maintains that the promotion of *permanent* work was and remains a principal objective of the contested measures.

11. Please explain whether workers who hold a permanent employment contract with a temporary work agency enjoy rights equivalent to those of workers permanently employed in a two-party employment relationship.

[13] Reference is made, first, to *inter alia* to the document enclosed with Norway's reply to the Authority's Request for information, titled "Information concerning restrictions on the use of temporary agency workers …", chapter 1.3 which provides that: *"The principal objective of the new regulations is to facilitate permanent employment in a two-party relationship between an employee and an employer to be used to the greatest extent possible (…) the Norwegian Government is of the opinion that such [temporary agency] work has the potential to displace and challenge permanent employments. Even when hired workers have a permanent employment relationship with the temporary work agency, the latter mostly acts as an intermediary (…) In this way, a tripartite relationship arises (…) this tripartite relationship corresponds poorly with key regulations of Norwegian working life, through legislation and collective agreements, which are largely built around the two-party relationship."* See also the preparatory works in Prop. 131 L (2021-2022), p. 63 and para. 102 of the judgement in Case E-2/24.

12. Turning to *direct* employment (in the "user undertaking", i.e. a two-party relationship[14]), please clarify whether the Norwegian Government maintains that its promotion was and remains a principal objective of the contested measures. In the affirmative, please explain in detail why this type of direct employment is considered preferrable to direct employment in a temporary work agency.

4 Suitability and consistency

The Directorate recalls that it is for Norway to demonstrate that the contested measures are suitable for attaining the stated objectives. Moreover, the national legislation as a whole and the various relevant rules must genuinely reflect a concern to attain the aims pursued in a consistent and systematic manner.

The Directorate further recalls that the contested measures at issue are subject to several exceptions. One of those exceptions allows for the time-limiting hiring in of health personnel to ensure proper operation of health and care-services, when the work is of a temporary nature.[15] The guidelines adopted by the Norwegian government clarify how this provision is to be interpreted and applied.[16] The provision was summarised in the following way by the Oslo District Court:[17]

"Thus, hiring in [from temporary work agencies] is not permitted pursuant to this provision if the permanent staffing is too low. However, as it follows from the guidelines, an unexpected staffing need may occur even if the permanent staffing is adequate. As such, this provision is meant to be a safety valve in exceptional circumstances where an unexpected staffing need occurs, and where increased staffing is necessary to ensure proper operation of health and care-services."

The Oslo District Court held that hiring-in from temporary work agencies, when based on the exceptions to the contested measures, could not be regarded as displacing permanent, direct employment (in a two-party relationship) and was therefore not considered inconsistent.

The Directorate has taken note of the public debate in Norway regarding the use of temporary agency work in the health-care sector, including concerns that permanent staffing needs are, in practice, being solved by having recourse to temporary work agencies.

Against this background, the Norwegian Government is requested to provide information and responses to the following:

13. The current degree of hiring-in from temporary work agencies based on Section 3(1)(a) of the Temporary Agency Work Regulation in the health care sector compared to the situation prior to the adoption of the contested measures.

14. Whether such hiring-in, *de facto,* is used in order to satisfy permanent staffing needs.

15. Please explain how the condition "exceptional circumstances where an unexpected staffing need occurs" differ from the criterion "when the work is of a temporary

[14] In such a situation, it is not strictly speaking accurate to apply the term "user undertaking" as there is no tripartite situation involving a temporary work agency.
[15] Section 3(1) a) of the Temporary Agency Work Regulation.
[16] Innleie av arbeidskraft, veileder, published on 30 June 2023 and revised on 18 March 2024.
[17] In Joined Cases No. 23-130279TVI-TOSL/02, see pages 29-30.

nature" as set out in Section 14-9(2) (a) WEA and, moreover, how it is established *concretely and in practice* that the former condition is satisfied.

5 The continuous obligation to justify restrictions

The Directorate recalls that the justification for the restrictions on the use of temporary work agencies must be maintained for as long as the measure is in force. This entails, *inter alia,* that the measure must always remain the least restrictive alternative capable of achieving the legitimate objective pursued.

On that basis, the Norwegian Government is requested to provide information and responses to the following:

16. Whether any new assessment of the justification for the contested measures has been undertaken or is foreseen to be conducted.

17. More specifically, please provide information whether any new assessment of the justification for the total prohibition of all use of temporary agency worker for construction work on construction sites in Oslo etc. has been undertaken or is foreseen to be conducted.

18. A detailed description of all alternative and less restrictive measures considered at the legislative stage and later, including comprehensive explanations for why they were not considered equally useful (this should entail a demonstration that genuine assessments of possible alternative measures were made).

19. Please present the effects of the operation of the authorisation scheme which entered into effect on 1 January 2024. Please also explain why the authorisation scheme for temporary work agencies was not considered a sufficiently effective measure to achieve the objectives pursued. In particular, clarify why it was deemed necessary to adopt the contested measures before the scheme took effect and why their continued application is considered necessary following its introduction.

6 Hiring-in from temporary work agencies via elected representatives

The Directorate recalls that the general prohibition of hiring-in from temporary work agencies when the work is of a temporary nature, cf. Section 14-9 (2) a) WEA in conjunction with Section 14-12(1) WEA, does not apply if the user undertaking is bound by a collective agreement with a trade union with the right of nomination (i.e. at least 10 000 members) and the elected representatives represent a majority of the employees in the category of workers affected by the hiring in, cf. Section 14-12(2) WEA.

In that context, the Norwegian government is required to provide information and responses to the following:

20. A detailed overview of all conditions to fulfil in order to hire in from a temporary work agency based on Section 14-12(2) WEA, including whether any such conditions are provided for in collective agreements.

21. To what extent hiring-in based on Section 14-12(2), before and after the adoption of the contested measures, has been made use of.

22. The reasons why this legal basis for hiring-in from temporary work agencies is limited to trade unions with the right of nomination.

23. The reasons why this legal basis for hiring-in from temporary work agencies is limited to user undertakings bound by a collective agreement (with a trade union with the right of nomination).

24. How would companies without a collective agreement with a trade union with the right of nomination cover their temporary staffing needs, and how many such undertakings exist.

25. Whether in practice not only the user undertaking but, also, the temporary work agencies and their workers are subjected to a request to be bound by collective agreements.

26. How many temporary work agencies have concluded collective agreements and with which trade unions.

27. Recalling the principles of legal certainty and transparency, please indicate the guidelines, criteria, or other standards on which elected representatives base their decisions to approve hiring-in from temporary work agencies. Furthermore, clarify whether the process or any conditions imposed depend on whether the agency is a party to a collective agreement.

28. What remedies are available to temporary work agencies where hiring-in is rejected by elected representatives?

7 The current Norwegian legal framework for hiring-in from temporary work agencies

29. The Directorate is aware that the Norwegian government has amended the restrictions on the use of temporary agency workers and the related exceptions after the contested measures first entered into force, including but not limited to the newly introduced exception applicable for the agricultural sector. Please provide a detailed description of the current framework of rules and exceptions governing hiring-in from temporary work agencies.

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 *15 December 2025.* Please enclose copies of any relevant national legislation, including English translations if available.

Yours faithfully,

Maria Moustakali
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Maria Moustakali.