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Judgment in Case E-2/11 *STX Norway Offshore AS and Others*

THE EFTA COURT RULES ON THE EMPLOYMENT CONDITIONS OF WORKERS POSTED TO ANOTHER EEA STATE

In a judgment delivered today, the EFTA Court gave an Advisory Opinion on a question referred to it by Borgarting lagmannsrett (Borgarting Court of Appeal) regarding the interpretation of Directive 96/71 concerning the posting of workers.

Under Norwegian law, workers within the maritime construction industry who are posted to its territory from another EEA State, are secured certain terms and conditions of employment, by way of nationwide collective agreements that have been declared universally applicable. Among these are maximum working hours, additional remuneration to the basic hourly wage for work assignments requiring overnight stays away from home and compensation for travel, board and lodging expenses in the case of work assignments that require overnight stays away from home. Borgarting lagmannsrett has asked the EFTA Court if the Directive precludes such terms and conditions of employment.

In its judgment delivered today, the Court pointed out, first, that the Directive does not allow the host EEA State to make the provision of services in its territory conditional on the observance of terms and conditions of employment which go beyond the mandatory rules for minimum protection under the Directive.

The Court found that terms and conditions regarding maximum normal working hours, such as those in question, are covered by the Directive's mandatory rules for minimum protection. Furthermore, the Court held that provisions concerning remuneration paid in compensation for working outside normal working hours are compatible with the Directive, provided these fall within the notion of "minimum rates of pay".

However, as regards entitlement to additional remuneration for work assignments requiring overnight stays away from home, the Court found that it is liable to make it less attractive, or more difficult, for undertakings established in other EEA States to perform their services in Norway, and therefore constitutes a restriction on the freedom to provide services.

The Court held, further, that such a restriction may be justified only if it pursues a legitimate objective and is justified by overriding reasons of public interest. If so, the restriction must be suitable and not go beyond what is necessary in order to attain its objective. This is for the national court to determine on an objective basis.

On the point concerning compensation for travel, board and lodging expenses the Court stated that such payments cannot fall within the notion of pay within the meaning of Article 3(1). An EEA State is therefore not permitted to impose such terms and conditions, unless this can be justified on the basis of public policy provisions.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

This press release is not an official document. Please note that the Court may not comment on the case.