



ROYAL NORWEGIAN MINISTRY  
OF LABOUR AND SOCIAL AFFAIRS

EFTA Surveillance Authority  
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Your ref

Our ref

Date

15/30-45

2 December 2019

**Conformity assessment on the implementation of Directive 2008/104/EC  
on temporary agency work in Norway**

Reference is made to the letter from ESA dated 2 September 2019, in which the Authority requests information on the status of the proposal to repeal Section 27 (1) no. 2 of the Labour Market Act. The matter was discussed at the Package Meeting 24 October 2019, where the Norwegian Ministry of Labour and Social Affairs informed ESA that it would provide further information on the process in writing by the extended deadline of 2 December. Reference is also made to ESAs follow-up letter to the package meeting dated 25 November 2019.

In a letter dated 10 April this year, the Norwegian Ministry of Labour and Social Affairs informed ESA that a proposal to repeal the provision would be sent for public consultation, and that the final assessment would depend on what was revealed in the consultative round. The public consultation closed 15 September.

The Norwegian Government is invited to submit information on the status of the legislative amendments as well as any other information it deems relevant to the case.

**Proposal to repeal the Labour Market Act Section 27 Subsection 1 Number 2**

The Labour Market Act Section 27 (1) no. 2 concerns a prohibition on assigning a temporary agency worker to his former employer in the first six months after the termination of the employment relationship. The object of the provision is to safeguard the interests of the workers and to prevent unhealthy recruitment and employment activity by temporary work agencies.

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The Ministry has previously held that the provision can be justified on the grounds referred to in Article 4 of the Directive on temporary agency work (2008/104/EC). However, it has stated that it will examine the necessity of the provision further.

A proposal to repeal the provision was sent to the public and specific stakeholders for consultation in June this year, requesting their view on the need for the provision today. The response from the consultation showed both support and concerns with regard to repealing the provision. Several stakeholders are of the opinion that there is a continued need for it.

The largest trade unions oppose repealing the provision, and point to several reasons why retaining the provision is necessary. Although the provision was intended to prevent increased costs for businesses by exploiting a lack of labour, it has been pointed out that it is also useful to prevent employers from lowering wages by letting their employees go and hire them back from agencies at a lower cost.

Further, it has been pointed out that it is not unusual that groups of employees are transferred to a temporary work agency and subsequently hired back out to the former employers as needed. The deterrent effect of the provision has also been emphasised.

Concerns about repealing the provision has also been expressed from the employer perspective. The South-Eastern Norway Regional Health Authority views the provision as useful. They are concerned that the health authorities may face increased recruitment challenges if the provision is repealed. As an example of recruitment challenges, they report difficulties with recruiting specialised nurses, and having to hire from temporary work agencies.

In general, the employers' organisations do not oppose repealing the provision.

### **Progress of the legislative process**

The Ministry is currently and still in the process of reviewing the response to the consultation and assessing how to proceed. The proposed amendments regarding the Labour Market Act Section 27 were subject to consultation jointly with other legislative changes. The Ministry will seek to conclude this process during the spring of 2020, and will update ESA with further information when a decision has been made on how to proceed.

Yours sincerely

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Director

Marthe Eikeskog  
Adviser

*This document is signed electronically and has therefore no handwritten signature*