Request for an Advisory Opinion from the EFTA Court by Borgarting lagmannsrett dated 1 February 2011 in the case of STX Norway Offshore AS m.fl v Staten v/Tariffnemnda

(Case E-2/11)

(2011/C 208/06)

A request has been made to the EFTA Court by a letter of 1 February 2011 from Borgarting lagmansrett (Borgarting Court of Appeal), which was received at the Court Registry on 9 February 2011, for an Advisory Opinion in the case of STX Norway Offshore AS m.fl. v Staten v/Tariffnemnda, on the following questions:

1. Does Directive 96/71/EC, including its Article 3(1) first subparagraph (a) and/or (c), see second subparagraph, permit an EEA State to secure workers posted to its territory from another EEA State, the following terms and conditions of employment, which, in the EEA State where the work is being performed, have been established through nationwide collective agreements that have been declared universally applicable in accordance with Article 3(8) of the Directive:

   (a) maximum normal working hours;

   (b) additional remuneration to the basic hourly wage for work assignments requiring overnight stays away from home, with an exception for employees who are hired at the work site; and

   (c) compensation for travel, board and lodging expenses in the case of work assignments requiring overnight stays away from home, with an exception for employees who are hired at the work site?

   What bearing, if any, does the proportion of employees covered by the relevant collective agreement, before it was declared universally applicable, have on the answers to the above questions?

2. If terms and conditions of employment in the EEA State where the work is performed, which are stipulated in a nationwide collective agreement declared universally applicable in accordance with Article 3(8), satisfy the requirements under Article 3(1) of Directive 96/71/EC, does the national court have to carry out a separate evaluation of whether these terms and conditions of employment satisfy the requirements under Article 36 EEA, including whether they can be justified by overriding requirements in the general interest?

3. If question 2 is answered in the affirmative:

   (a) Does Article 36 EEA permit that the stated grounds for a universal application decision, whereby certain terms and conditions of employment in a nationwide collective agreement are declared universally applicable to the industry concerned, are 'to ensure that foreign workers enjoy equivalent pay and working conditions to Norwegian workers'?

   (b) Can it be presumed, with reservations for any evidence to the contrary which it is up to the private parties to present, that terms and conditions of employment that are compatible with Directive 96/71/EC, see Article 3(1) read in the light of Article 3(8), safeguard the protection of workers and loyal competition?

   (c) What is the effect, if any, on the answer to question 3(a) of the host State applying a system under which generally applicable terms and conditions of employment are set out in national laws and supplemented by terms and conditions of employment stipulated in nationwide collective agreements that can be declared universally applicable to the profession or industry concerned?