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EFTA SURVEILLANCE
AUTHORITY

Norwegian Ministry of Climate and Environment
Gabrielle Østern
Seniorrådgiver
P.O. Box 8013 Dep
NO-0030 Oslo

Dear Madam,

Subject: Complaint against Norway concerning the award of exclusive rights for the collection and treatment of waste

By letter dated 28 October 2015 (Doc. No. 777989) the Internal Market Affairs Directorate of the EFTA Surveillance Authority (“the Directorate”) informed the Norwegian Government that it had received a complaint against Norway concerning the award of exclusive rights by Norwegian municipalities to State-owned undertakings in the area of waste management (collection and treatment of waste). According to the information received, there seems to be a widespread practice in Norway, not observed in any other EEA State, to directly award this type of contracts without a prior public call for tenders to the said undertakings. The complainant maintains that this administrative practice amounts to a breach of Article 36 EEA and *Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts*, as it precludes economic operators from having access to this specific sector of the market. The complainant assumes that there might be a confusion among municipalities regarding the correct application of EEA law and has therefore decided to lodge the complaint.

Reference is made to the correspondence in this case, in particular to the information submitted by the Norwegian Government in reply to the Directorate’s formal requests for information dated 15 December 2015 (Doc. No. 784886) and 18 October 2016 (Doc. No. 822684). In order for the Directorate to examine and assess the merits of the complaint, the Norwegian Government is invited to clarify certain aspects by providing the following additional information:

1. Explain in detail how the Norwegian Government understands (a) the meaning and (b) the scope of the concept of “exclusivity” (sector specific, geographical, etc) in the context of the award of exclusive rights in the field of waste management;

2. Explain how this concept of exclusivity is applied in practice by the contracting authorities in the cases at hand¹ when awarding exclusive rights to State-owned undertakings in the field of waste management;
3. Explain how the Norwegian Government understands the legislative purpose of the legal provision laid down in Article 18 of Directive 2004/18 (and Article 11 of Directive 2014/24);

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 *27 June 2017*. Please enclose copies of any relevant national legislation, including English translations if available.

Yours sincerely,

Gabrielle Somers
Deputy Director
Internal Market Affairs Directorate

This document has been electronically signed by Gabrielle Somers on 30/05/2017

¹ The five cases referred to in the Directorate's letter dated 18 October 2016 (Doc. No. 822684), as well as the award of exclusive rights from Follo REN IKS to ROAF IKS on sorting, further treatment and recovery of residual household waste (see <http://www.folloren.no/kunngjoeringer.385700.no.html>).