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EFTA SURVEILLANCE AUTHORITY

Norwegian Ministry of Trade, Industry and Fisheries
Postboks 8090 Dep
0032 Oslo
Norway

Dear Sir or Madam,

Subject: Letter of formal notice to Norway concerning restrictions on subcontracting in the field of public procurement in Norway

1 Introduction and correspondence

By a letter dated 13 November 2019,[1] the EFTA Surveillance Authority ("the Authority") informed the Norwegian Government that, in light of the ruling of the Court of Justice of the European Union ("the CJEU") in Case C-63/18, *Vitali*[2] regarding restrictions on subcontracting in the field of public procurement, the Authority had undertaken to examine whether applicable Norwegian public procurement legislation complied with EEA law.

In its letter, the Authority requested that the Norwegian Government provide an assessment of the compatibility of the relevant provisions of national law with the applicable procurement directives. The Norwegian Government responded to that letter on 11 December 2019.[3]

Having examined the Norwegian Government's response, the Authority has reached the conclusion that the relevant provisions of Norwegian public procurement law do not comply with EEA law.

2 Relevant EEA law

2.1 The EEA Agreement

Article 31 (1) of the EEA Agreement provides:

> *"Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to*

[1] Document No 1094321.
[2] Judgment of the Court of Justice of 26 September 2019, *Vitali*, C-63/18, EU:C:2019:787.
[3] Document No 1103402.

> *the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4."*

Article 36(1) of the EEA Agreement provides:

> *"Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended."*

2.2 EEA procurement directives

EEA rules on procurement in the public sector and in the utilities sectors are set out in Directive 2014/24/EU[4] and Directive 2014/25/EU[5] ("the Directives") respectively. There are no material differences in the provisions of the two Directives which are relevant for the purposes of the present case.

The aims of the Directives are set out in Recital 1 of Directive 2014/24/EU and Recital 2 of Directive 2014/25/EU. These recitals refer to ensuring that procurement is opened up to competition and ensuring that effect is given to principles of EEA law, in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

Article 18(1) of Directive 2014/24/EU and Article 36(1) of Directive 2014/25/EU require contracting authorities/entities to treat economic operators equally and without discrimination and to act in a transparent and proportionate manner.

The Directives contain provisions in relation to measures concerning public policy and compliance with social and labour law.

Recital 41 of Directive 2014/24/EU and Recital 56 of Directive 2014/25/EU provide:

> *"Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life, the preservation of plant life or other environmental measures, in particular with a view to sustainable development, provided that those measures are in conformity with the TFEU."*

Article 18(2) of Directive 2014/24/EU and Article 36(2) of Directive 2014/25/EU provide:

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[4] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, act referred to at point 2 of Annex XVI to the EEA Agreement.

[5] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, act referred to at point 4 of Annex XVI to the EEA Agreement.

"Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex [X/XIV]."

Article 57(4) of Directive 2014/24/EU provides:[6]

"Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations:

(a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Article 18(2);

…"

The Directives also contain provisions in relation to reliance on the capacity of other entities and in relation to subcontracting.

Article 63(1) of Directive 2014/24/EU provides:

"With regard to criteria relating to economic and financial standing as set out pursuant to Article 58(3), and to criteria relating to technical and professional ability as set out pursuant to Article 58(4), an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them…"

Articles 79(1) and (2) of Directive 2014/25/EU provide:

"(1) Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities...

(2) Where the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities the economic operator may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities…"

[6] See Article 80 of Directive 2014/25/EU for the application of this article to procurements falling under that directive.

Article 71 of Directive 2014/24/EU and Article 88 of Directive 2014/25/EU provide:

> *"(1) Observance of the obligations referred to in Article [18(2)/36(2)] by subcontractors is ensured through appropriate action by the competent national authorities acting within the scope of their responsibility and remit.*
>
> *(2) In the procurement documents, the contracting [authority/entity] may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.*
>
> *(3) Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting [authority/entity] shall transfer due payments directly to the subcontractor for services, supplies or works provided to the economic operator to whom the public contract has been awarded (the main contractor). Such measures may include appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.*
>
> *(4) Paragraphs 1 to 3 shall be without prejudice to the question of the main contractor's liability.*
>
> *(5) In the case of works contracts and in respect of services to be provided at a facility under the direct oversight of the contracting [authority/entity], after the award of the contract and at the latest when the performance of the contract commences, the contracting [authority/entity] shall require the main contractor to indicate to the contracting [authority/entity] the name, contact details and legal representatives of its subcontractors, involved in such works or services, in so far as known at this point in time. The contracting [authority/entity] shall require the main contractor to notify the contracting [authority/entity] of any changes to this information during the course of the contract as well as of the required information for any new subcontractors which it subsequently involves in such works or services.*
>
> *Notwithstanding the first subparagraph, Member States may impose the obligation to deliver the required information directly on the main contractor.*
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> *Where necessary for the purposes of point (b) of paragraph 6 of this Article, the required information shall be accompanied by the subcontractors' self-declarations as [provided for/referred] to in Article [59/80(3)]. The implementing measures pursuant to paragraph 8 of this Article may provide that subcontractors which are presented after the award of the contract shall provide the certificates and other supporting documents instead of the self-declaration.*
>
> *The first subparagraph shall not apply to suppliers.*
>
> *Contracting [authority/entity] may extend or may be required by Member States to extend the obligations provided for in the first subparagraph to for instance:*
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> *(b) supply contracts, to services contracts other than those concerning services to be provided at the facilities under the direct oversight of the contracting [authority/entity] or to suppliers involved in works or services contracts;*

(c) subcontractors of the main contractor's subcontractors or further down the subcontracting chain.

(6) With the aim of avoiding breaches of the obligations referred to in Article [18(2)/36(2)], appropriate measures may be taken, such as:

(a) Where the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor, the Member State concerned shall ensure that the relevant rules are applied in compliance with the conditions set out in Article [18(2)/36(2)].

(b) Contracting authorities may, in accordance with [Articles 59, 60 and 61/Article 80(3) of this Directive], verify or may be required by Member States to verify whether there are grounds for exclusion of subcontractors pursuant to Article 57 [of Directive 2014/24/EU]. In such cases, the contracting authority shall require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion. The contracting authority may require or may be required by a Member State to require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.

(7) Member States may provide for more stringent liability rules under national law or to go further under national law on direct payments to subcontractors, for instance by providing for direct payments to subcontractors without it being necessary for them to request such direct payment.

(8) Member States having chosen to provide for measures pursuant to paragraphs 3, 5 or 6 shall, by law, regulation or administrative provisions and having regard for Union law, specify the implementing conditions for those measures. In so doing, Member States may limit their applicability, for instance in respect of certain types of contracts, certain categories of contracting [authorities/entities] or economic operators or as of certain amounts."

3 Relevant national law

Directives 2014/24/EU and 2014/25/EU are implemented in Norway by Regulation No. 974 of 12 August 2016 on Public Procurement ("Regulation No. 974") [7] and Regulation No. 975 of 12 August 2016 on Procurement in the Utility Sectors ("Regulation No. 975")[8] respectively.

Section 19-3 of Regulation No. 974 ("Limitation of the number of links in the supply chain") provides:

1) The client shall require that suppliers may have a maximum of two links in the supply chain below them when the supplier is to carry out construction work or cleaning services covered by CPV code 90910000 (cleaning).

[7] Forskrift om offentlige anskaffelser (anskaffelsesforskriften), FOR-2016-08-12-974, available at https://lovdata.no/dokument/SF/forskrift/2016-08-12-974 [accessed 8 June 2020].
[8] Forskrift om innkjøpsregler i forsyningssektorene (forsyningsforskriften), FOR-2016-08-12-975, available at https://lovdata.no/dokument/SF/forskrift/2016-08-12-975 [accessed 8 June 2020].

2) *The client may accept several links in the supply chain if necessary to ensure adequate competition. The maximum number of links the client may accept must be stated in the procurement documents. After the contract is signed, the client may accept more links if, due to unforeseen circumstances, it is necessary in order for the contract to be completed."*[9]

Section 19-3 of Regulation No. 974 falls within Part III of the regulation, which sets out the rules for contracts exceeding the EEA thresholds, i.e. the thresholds set out in Article 4 of Directive 2014/24/EU, being the financial thresholds at which that directive applies.

Section 7-8 of Regulation No. 975 ("Limitation of the number of links in the supply chain") provides:

1) *Clients referred to in section 1-2, first paragraph, subparagraphs a to d, shall require that suppliers may have a maximum of two links in the supply chain below them when the supplier is to carry out construction work or cleaning services covered by CPV code 90910000 (cleaning) in contracts with an estimated value equal to or exceeding NOK 4.1m excluding VAT.*

2) *The client may accept several links in the supply chain if necessary to ensure adequate competition. The maximum number of links the client may accept must be stated in the procurement documents. After the contract is signed, the client may accept more links if, due to unforeseen circumstances, it is necessary in order for the contract to be completed."*[10]

Section 7-8 of Regulation No. 975 falls within Part I of the regulation, which applies to all procurements covered by the regulation. Its first paragraph states that it is only applicable to contracts awarded by contracting authorities (not other contracting entities) with an estimated value equal to or exceeding NOK 4.1m, which is equivalent to the threshold at which Directive 2014/25/EU applies to supply and service contracts.[11] However, the thresholds at which that directive applies to works contracts and service contracts for social and other specific services are higher than NOK 4.1m.[12] As such, Section 7-8 of Regulation No. 975 applies to contracts falling within the scope of Directive 2014/25/EU, as well as some contracts falling outside the scope of that directive.

For the purposes of this letter, Section 19-3 of Regulation No. 974 and Section 7-8 of Regulation No. 975 will be referred to as "Sections 19-3 and 7-8".

4 The Authority's assessment

The Authority will first set out its assessment of the compliance of Sections 19-3 and 7-8 with Directives 2014/24/EU and 2014/25/EU as their provisions are applicable to contracts falling within the scope of those directives.

[9] The Authority's translation.
[10] The Authority's translation.
[11] Article 15(a) of Directive 2014/25/EU. See also "Threshold values referred to in Directives 2014/23/EU, 2014/24/EU, 2014/25/EU and 2009/81/EC, expressed in the national currencies of the EFTA States", 2020/C 51/08, OJ C 51, 14.2.2020, p. 1; EEA Supplement 10, 20.02.2020.
[12] Articles 15(b) and (c) of Directive 2014/25/EU. See also "Threshold values referred to in Directives 2014/23/EU, 2014/24/EU, 2014/25/EU and 2009/81/EC, expressed in the national currencies of the EFTA States", 2020/C 51/08, OJ C 51, 14.2.2020, p. 16; EEA Supplement 10, 20.02.2020.

The Authority will then set out its assessment of the compliance of Section 7-8 of Regulation No. 975 with the EEA Agreement as that section also applies to contracts falling outside the scope of the Directives.

4.1 Compliance with the Directives

4.1.1 Introduction

As referred to above, the Directives aim to ensure that effect is given to principles of EEA law and to ensure that public procurement is opened up to competition.[13] They explicitly recognise the right of economic operators to rely on the capacity of other entities and envisage the possibility of subcontracting by the successful tenderer.[14]

Limitations on subcontracting restrict those rights. More generally, such limitations restrict freedom to provide services and freedom of establishment by limiting the possibility for economic operators to subcontract to third parties or to propose their services as subcontractors.[15]

However, the Directives include some provisions that provide for scope for measures to be taken which may affect subcontracting, particularly:[16]

a) Article 18(2) of Directive 2014/24/EU and Article 36(2) of Directive 2014/25/EU, which oblige States to take measures to ensure contractors comply with obligations of, inter alia, social and labour law.

b) Article 71(6) of Directive 2014/24/EU and Article 88(6) of Directive 2014/25/EU, which provide that measures may be taken in the context of subcontracting with the aim of avoiding breaches of the obligations referred to in Article 18(2)/36(2).

c) Recital 41 of Directive 2014/24/EU and Recital 56 of Directive 2014/25/EU, which refer to the ability of states to take measures necessary to protect, inter alia, public policy, public morality and public security.

Nevertheless, any restrictions must comply with EEA law.[17] In particular, they must comply with the principle of proportionality, which is explicitly referred to in Article 18(1) of Directive 2014/24/EU and Article 36(1) of Directive 2014/25/EU,[18] and must pursue legitimate objectives, be suitable to meet those objectives and not go beyond what is necessary.[19]

The Norwegian Government has explained that the objective of Sections 19-3 and 7-8 is to combat work related crime. The Authority understands "work related crime" to mean actions that violate Norwegian laws on pay and working conditions, social security, and

[13] Recital 1 of Directive 2014/24/EU and Recital 2 of Directive 2014/25/EU.
[14] Articles 63 and 71 of Directive 2014/24/EU, Articles 79 and 88 of Directive 2014/25/EU. See also *Vitali*, paragraphs 24 to 26.
[15] See judgment of the Court of Justice of 5 April 2017, *Borta*, C-298/15, EU:C:2017:266, paragraphs 49 and 50.
[16] See also *Vitali*, paragraphs 33 to 35.
[17] See *Vitali*, paragraph 33.
[18] See *Vitali*, paragraph 39
[19] See *Borta*, paragraph 51 and the case law cited.

taxes and fees, which are often carried out in an organised way, and which exploit workers or distort competition and undermine the social structure.[20]

The Norwegian Government has further explained that Sections 19-3 and 7-8 aim to increase transparency and make it possible for contracting authorities to have effective means of control to combat work related crime. In summary, this is because it is considered that a shorter supply chain enables detection of such crime.[21]

The Authority considers that, irrespective of an assessment of whether those provisions in fact pursue legitimate objectives capable of justifying restrictions, Sections 19-3 and 7-8 in any event go beyond what is necessary to meet their objectives, and therefore are not compliant with the Directives on that basis. This letter therefore focuses on that aspect of the proportionality test.

4.1.2 Assessment of the necessity condition

The Authority relies on the judgment of the CJEU in *Vitali* to conclude that the necessity condition is not met. In *Vitali*, the CJEU held that a provision which limited subcontracting to 30% of the public contract was precluded by Directive 2014/24/EU on the basis that it went beyond what was necessary to achieve its objective in relation to organised crime.[22] In reaching its conclusion, the CJEU relied on the fact that the provision was in general and abstract terms, so that the prohibition applied whatever the economic sector concerned by the contract at issue, the nature of the works or the identity of the subcontractors, and that it did not allow for any assessment on a case-by-case basis by the contracting entity.[23]

The Authority considers Sections 19-3 and 7-8 to be materially similar to the provision in *Vitali* in that they are also in general and abstract terms and do not allow for any case-by-case assessment as to whether or not they are necessary to meet their objective.

The Norwegian Government has sought to distinguish Sections 19-3 and 7-8 from the provision in *Vitali*.[24] However, the Authority is of the view that the differences are not sufficient to alter the conclusion that Sections 19-3 and 7-8 are not compliant with the Directives.

The Authority does not dispute that Sections 19-3 and 7-8 are limited to specific sectors (construction and cleaning services) which the Norwegian Government considers to have particular problems of work related crime which arise from the length of supply chains. In this respect, the provisions indeed do not suffer from the one of the shortcomings identified by the CJEU in *Vitali.* However, they are otherwise in abstract terms. They apply limitations on subcontracting based on the number of links in the chain without any further assessment of the nature of the works/services or the identity of the subcontractors.

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[20] Strategy against work related crime ("*Strategi mot arbeidslivskriminalitet*"), revised 5 February 2019, available at https://www.regjeringen.no/contentassets/7f4788717a724ef79921004f211350b5/no/pdfs/strategi-mot-arbedslivskriminalitet-2019.pdf, [accessed 8 June 2020], p.5.

[21] See the Norwegian Government's letter of 11 December 2019 (Document No 1103402).

[22] *Vitali*, paragraph 38.

[23] *Vitali*, paragraph 40.

[24] See the Norwegian Government's letter of 11 December 2019 (Document No 1103402).

The Norwegian Government emphasises that Sections 19-3 and 7-8 do not limit the number of subcontractors. However, the provision in *Vitali* also did not limit the number of subcontractors. It limited the proportion of the contract which could be subcontracted, but not the number of subcontractors within that proportion, nor whether that proportion could be further subcontracted.

With regard to case-by-case assessment, Sections 19-3 and 7-8 provide for more links in the supply chain to be accepted in two circumstances: firstly, where more links are necessary to ensure adequate competition and secondly, where unforeseen circumstances mean that more links are necessary for the contract to be performed. However, neither of these exemptions involve assessment of whether the objective could be met by other means in a particular case, and therefore neither exemption addresses the possibility that Sections 19-3 and 7-8 may not be necessary in some cases.

The first ground for an exemption is based on the need to secure adequate competition. However, the relevant test for compliance with the principle of proportionality is not whether there is adequate competition but whether the measure goes beyond what is necessary. Furthermore, the aim of the Directives is to open up procurement to competition and ensure the freedoms of the internal market. The Court of Justice has held that "*In this context of a single internal market and effective competition it is the concern of Community law to ensure the widest possible participation of tenderers in a call for tenders."*[25] The freedoms of the internal market are not ensured if certain economic operators are excluded from public procurement unjustifiably, or if unjustified restrictions are placed on how economic operators perform contracts, even if "adequate" competition remains.

The second ground for an exemption is based on practical considerations arising from unforeseen circumstances and has no connection with either the objectives of the Directives or the objective of Sections 19-3 and 7-8.

The Norwegian Government argues that a case-by-case assessment of either the risk related to work related crime or the nature and complexity of the proposed supply chain could result in Sections 19-3 and 7-8 not reaching their intended policy objective. The Authority does not accept this position. A case-by-case assessment does not preclude a requirement that any alternative approach must combat work related crime to the same degree. Moreover, it is not clear to the Authority why it should never be possible for a contracting authority to assess the nature of a specific contract and conclude that the risk of work related crime in that instance does not require additional measures to be taken.

The Norwegian Government has also referred to a case-by-case assessment being difficult to carry out and burdensome for both the contracting authority and the economic operator. The Authority does not dispute that such an assessment would involve work, potentially for both parties. However, if a contracting authority has other means of control at its disposal to combat work related crime, it should be able to use such means. Furthermore, the Authority is of the view that a contracting authority could place the burden of proof on the economic operator to demonstrate that appropriate control to combat work related crime could be satisfactorily achieved by other means.[26] Whilst this would impose a burden on the economic operator, providing for the option of adducing such evidence would be less restrictive than an outright prohibition of longer subcontracting chains.

[25] Judgment of the Court of Justice of 19 May 2009, *Assitur*, C-538/07, EU:C:2009:317, paragraph 26.
[26] See, by analogy, Article 57(6) of Directive 2014/24/EU. See also judgment of the Court of Justice of 30 January 2020, *Tim SpA*, C-395/18, EU:C:2020:58, paragraphs 49 and 50.

Moreover, the Authority is not satisfied that Norway has demonstrated that the rules set out in the Directives, particularly those concerning subcontracting[27] and exclusion of subcontractors,[28] cannot be implemented in such a way as to achieve the objective pursued by the national legislation at issue.[29]

In the Authority's view, Sections 19-3 and 7-8 are not compliant with the Directives as Norway has not demonstrated that the rules set out in the Directives cannot be implemented in such a way as to achieve the objective pursued and, in any event, the absence of any possibility for assessment on a case-by-case basis by the contracting authority means they go beyond what is necessary to meet their objective.

4.2 Compliance with Articles 31 and 36 of the EEA Agreement

As set out in section 3 above, Section 7-8 of Regulation No. 975 applies to contracts falling both within and outside the scope of Directive 2014/25/EU.

It is settled case law that contracts falling outside the scope of the EEA procurement directives are nevertheless subject to general principles of EEA law when they are of certain cross-border interest.[30] It is therefore also necessary to assess whether Section 7-8 is compliant with EEA law when applied to contracts that fall outside the scope of Directive 2014/25/EU but are of certain cross-border interest.

As set out in section 4.1 above, limitations on subcontracting restrict the freedom to provide services and the freedom of establishment, provided for by Articles 31 and 36 of the EEA Agreement.

In the same section, the Authority has explained why Sections 19-3 and 7-8 fail to meet the requirements of the necessity test. This assessment is equally applicable to the compliance of Section 7-8 with Articles 31 and 36 of the EEA Agreement, save that in that context, Norway is not required to demonstrate that the objectives cannot be achieved by implementation of the rules of Directive 2014/25/EU.

The Authority therefore concludes that Section 7-8 is not compliant with Articles 31 and 36 of the EEA Agreement when it applies to contracts that fall outside the scope of Directive 2014/25/EU but are of certain cross-border interest as the absence of any possibility for assessment on a case-by-case basis by the contracting authority means it goes beyond what is necessary to meet its objective.

5 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that Norway has failed to fulfil its obligations arising from Directives 2014/24/EU and 2014/25/EU, as adapted to the EEA Agreement by Annex XVI and Protocol 1 thereto, by maintaining in force national legislation, in the form of Section 19-3 of Regulation No. 974 of 12 August

[27] Article 71 of Directive 2014/24/EU and Article 88 of Directive 2014/25/EU
[28] Article 57, read in conjunction with Article 71(6)(b), of Directive 2014/24/EU and Article 80, read in conjunction with Article 88(6)(b) of Directive 2014/25/EU.
[29] See Vitali, paragraph 44.
[30] *Borta*, paragraph 36 and the case law cited.

2016 on Public Procurement and Section 7-8 of Regulation No. 975 of 12 August 2016 on Procurement in the Utility Sectors, which is not compliant with those directives.

Furthermore, the Authority must conclude that Norway has failed to fulfil its obligations arising from Articles 31 and 36 of the EEA Agreement by maintaining in force national legislation, in the form of Section 7-8 of Regulation No. 975 of 12 August 2016 on Procurement in the Utility Sectors, which is not compliant with those articles.

In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority requests that the Norwegian Government submits its observations on the content of this letter *within four months* of its receipt.

After the time limit has expired, the Authority will consider, in the light of any observations received from the Norwegian Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority

Bente Angell-Hansen President	Frank J. Büchel College Member	Högni Kristjánsson Responsible College Member

Carsten Zatschler
Countersigning as Director,
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This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.