



ROYAL NORWEGIAN MINISTRY OF  
CLIMATE AND ENVIRONMENT

EFTA Surveillance Authority (ESA)  
Avenue des Arts 19H  
1000 BRUSSELS  
BELGIUM

Your ref  
Case No: 78085

Our ref  
23/2660

Date  
7 March 2023

**Reply to supplementary letter of formal notice from the Authority:  
Complaint against Norway concerning the award of exclusive rights for  
collection and treatment of waste**

Dear Madam/Sir,

Reference is made to the supplementary letter of formal notice dated 27 September 2023 from EFTA Surveillance Authority (The Authority), and the package meeting in Norway on 26 October 2023.

In the letter, the Authority refers to the correspondence between the Authority and Norway related to this case, that started with a complaint against Norway concerning the award of exclusive rights by municipalities to publicly owned undertakings in the area of waste management. The complaint concerned the collection and treatment of commercial waste, treatment of hazardous waste and collection of household waste.

The case as it now stands after the supplementary letter, concerns whether and to what extent municipalities may transfer power or award public contracts in respect of municipal commercial waste without competition pursuant to Directive 2014/24 on public procurement as incorporated into the Agreement on the European Economic Area<sup>1</sup> and implemented into the Norwegian Regulation on Public Procurement.<sup>2</sup>

As we understand it, the Authority's view is that, based on the municipalities' responsibility for such waste pursuant to the Norwegian Pollution Control Act Section 32, cf. Section 27a,<sup>3</sup>

<sup>1</sup> Joint Committee Decision No 97/2016 of 29 April 2016, OJ L 300, 16.11.2017, p. 49.

<sup>2</sup> FOR-2016-08-12-974 *Forskrift om offentlige anskaffelser*

<sup>3</sup> LOV-1981-03-13-6 *Lov om vern mot forurensninger og om avfall (forurensningsloven)*.

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this is neither a public task that can be transferred without competition in accordance with Article 1(6) of Directive 2014/24, nor an exclusive right that can be used as the basis for awarding public service contracts for the management of such waste without competition pursuant to Article 11 of the Directive. Public contracts for the management of such waste may however be awarded without competition between entities within the public sector pursuant to and in accordance with the conditions set out in Article 12 of the Directive.

The Authority therefore concludes that Norwegian municipalities may not rely on Article 11 as the basis for awarding public contracts for the management of such waste without competition.

In light of the case as it now stands after the supplementary letter of formal notice dated 27 September 2023, the Ministry has reviewed the case and undertaken a new assessment of the facts and the relevant legal framework.

On this basis, the Norwegian Government note that the municipalities' current responsibility for commercial waste pursuant to the Pollution Control act Section 32, cf. Section 27a, exclude Norwegian municipalities from directly awarding public service contracts for management of municipal commercial waste pursuant to Article 11 of Directive 2014/24.

The Norwegian Government will inform the municipalities accordingly.

Yours sincerely,

Hege Jordbakke  
Deputy Director General

Elerine A. S. Tellemann  
Higher Executive Officer

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