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

Dear Sir/Madam,

Subject: Complaint against Norway regarding breaches of public procurement law in relation to contracts for pension services

On 17 October 2022, the EFTA Surveillance Authority (“the Authority”) informed the Norwegian Government that it had received a complaint against Norway concerning contracts for pension services. The Authority has subsequently received a further submission from the complainant, containing details of various notices published in relation to contracts for pension services.¹

In the complaint, allegations are made that there have been various breaches of the public procurement rules in respect of numerous contracts for pension services between Norwegian contracting authorities and Kommunal Landspensjonskasse Gjensidig Forsikringsselskap (“KLP”), specifically:

1. unlawful direct awards of contracts;
2. the continuation of indefinite contracts for disproportionately long periods of time;
3. unlawful modifications of contracts due to:
 - changes to the services;
 - mergers of contracting authorities.

Given the complaint comprises various allegations giving rise to various issues of law and fact, the Authority’s Internal Market Affairs Directorate (“the Directorate”) is sharing a copy of the complaint in its entirety with the Norwegian Government. The Norwegian Government is asked to provide its initial comments on the complaint by addressing at least the following points:

1. whether the Norwegian Government considers that there are any justifications for contracting authorities directly awarding contracts to KLP;
2. the extent of the changes made to the pension schemes referred to in section 5.1 of the complaint and the complainant’s argument that these constitute substantial modifications to contracts continued subsequent to those changes;
3. the extent of the changes made to the pension schemes as a result of the central general special collective agreement on pension schemes, “SGS 2020” and the complainant’s argument that these constitute, for the purposes of Article 72 of Directive 2014/24, substantial modifications to contracts continued subsequent to those changes;

¹ Document No 1329844, plus attachments.

4. the allegation that no competitive procedures have been carried out in respect of contracts for pension services in the health sector since 2002 (see section 2.3.2 of the complaint);
5. the extent of the changes made to the pension schemes in the health sector referred to in section 7 of the complaint and the complainant's argument that these constitute substantial modifications to contracts continued subsequent to those changes;
6. whether any contracting authorities have contracts with KLP for pension services with indefinite durations which are still in force today;
7. whether an obligation exists under Norwegian law to terminate indefinite contracts.

As regards individual contracts, the Norwegian Government is asked to verify the details listed below. At this stage, the Directorate is not asking the Norwegian Government to provide a full overview, nor to verify the details of all of the contracts referred to by the complainant. The Directorate has selected examples from the contracts referred to by the complainant which appear to be representative of some of the categories of contracts encompassed by the complaint and has added some of its own examples to the list.² The Directorate therefore emphasises that these cases are considered as possible *examples* of an alleged general practice. Furthermore, the Directorate may request details in respect of additional examples in the future, should this be considered necessary.

- a. Skedsmo municipality
 - Please confirm that the municipality awarded a contract directly to KLP in 2013 on the basis of technical reasons meaning the contract could only be awarded to a particular economic operator (Article 31(1)(b) of Directive 2004/18/EC)
 - Please confirm whether this contract is still in force and, if not, what arrangements the municipality has subsequently made for the provision of pension services
- b. Kristiansund municipality
 - Please confirm that the municipality awarded a contract directly to KLP in 2014 on the basis of technical reasons meaning the contract could only be awarded to a particular economic operator given the timescales involved (Article 31(1)(b) of Directive 2004/18/EC)
 - Please confirm that this contract had a term of one year
 - Please confirm what arrangements the municipality has subsequently made for the provision of pension services
- c. Rogaland county municipality
 - Please confirm that the municipality awarded a contract to KLP in 2011/2012 after a competition
 - Please confirm that this contract had a term of two years with options to extend for a maximum of three additional years
 - Please confirm what arrangements the municipality has subsequently made for the provision of pension services

² Comprising larger municipalities which do not appear to have their own pension fund and in respect of which the Directorate has not identified contract notices in respect of pension services in either Doffin or TED (tenders electronic daily). Should the Norwegian Government wish to discuss an alternative approach to obtaining information about current contracts with KLP, the Directorate is open to such a discussion.

- d. Stavanger municipality
 - Please confirm whether the municipality has a contract for pension services with KLP
 - If so, please confirm when this contract was entered into, whether it was entered into after a competitive process complying with EEA public procurement law, and the term of the contract
- e. Lillestrøm municipality
 - Please confirm whether the municipality has a contract for pension services with KLP
 - If so, please confirm when this contract was entered into, whether it was entered into after a competitive process complying with EEA public procurement law, and the term of the contract
- f. Fredrikstad municipality
 - Please confirm whether the municipality has a contract for pension services with KLP
 - If so, please confirm when this contract was entered into, whether it was entered into after a competitive process complying with EEA public procurement law, and the term of the contract

The Norwegian Government is also asked to set out details of the municipalities involved in all municipal mergers which have taken place since 2017 and the dates of these mergers. The Norwegian Government is asked to confirm whether these merged municipalities receive pension services from KLP and whether the relevant contracts were entered into after competitive processes complying with EEA public procurement law.

The Norwegian Government is asked to provide the above, as well as any other information it deems relevant to the case, so that it reaches the Authority by 3 February 2023. Please enclose copies of any relevant national legislation, including English translations if available.

Yours faithfully,

Marco Uccelli
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Marco Uccelli.

Attachments:

- a. Complaint (Document No 1309815)
- b. Appendixes to the complaint (24 documents; Document Nos 1309887 to 1309910)