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Brussels, 29 March 2023
Case No: 90137
Document No: 1360069

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Ministry of Transport
Postboks 8010 Dep
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Dear Sir/Madam,

Subject: Request for Information concerning the Norwegian Government's plan to directly award the railway network packages Østlandet 1 and 2

On 14 March 2023, the Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) opened an own initiative case to investigate the application in Norway of *Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road* (‘PSO Regulation’),¹ and *Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area* (‘Single Railway Market Directive’),² with regard also to the amendments of these acts following the incorporation into the EEA Agreement of the 4th railway package,³ in connection to the foreseen direct award of the railway network packages Østlandet 1 and 2.

The Directorate is aware of the Norwegian Government’s policy to award these concessions directly.⁴ To learn about the Norwegian railway market and the ongoing process in Norway, the Directorate had meetings with the Regulatory Body within the Norwegian Railway Safety Authority on 28 October 2022 and 6 December 2022, and with the Norwegian Railway Directorate on 2 December 2022. Furthermore, with reference to a recent announcement from the Railway Directorate,⁵ the Directorate understands that the result is to award both concessions as one to Vygruppen before the end of 2023.

In order to assess whether the process leading to the direct award, and the scope thereof, applies with EEA Law, the general principles of the internal market and the

¹ Applicable to the EEA EFTA States, as amended for the purposes of the EEA Agreement, cf. Point 4a. of Annex XIII to the EEA Agreement.

² Applicable to the EEA EFTA States, as amended for the purposes of the EEA Agreement, cf. Point 37. of Annex XIII to the EEA Agreement.

³ Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail, cf. Point 4a of Annex XIII to the EEA Agreement, and Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure, cf. Point 37. Of Annex XIII to the EEA Agreement.

⁴ Letter from the Ministry of Transport to the Railway Directorate of [19 November 2021](#), asking that open tenders for railway passenger services be cancelled, and works be started to award directly the services that have not yet been subjected to competition by 25 December 2023.

⁵ <https://www.jernbanedirektoratet.no/no/aktualiteter/2023/vy-far-tildelt-togtilbudet-pa-hele-ostlandet/>

provisions on market opening of the 4th railway package,⁶ the Directorate requests the following information from the Norwegian Government:

- With regard to the PSO Regulation, please clarify on what legal basis the direct award is foreseen.
- Moreover, please clarify which is the competent authority for granting the concession, and what role the Ministry of Transport has played in terms of the negotiations and conclusions pertaining to the award process governed by that authority.
- With regard to Article 7(2) of the PSO Regulation, please describe the measures taken, if any, to publish information about the direct award of the railway network packages Østlandet 1 and 2 prior to the award.
- With regard to the general principle of EEA Law, please clarify whether, before imposing public service obligations, a market analysis was carried out to establish to what degree railway passenger services could be provided on a commercial basis on (parts of) the Østlandet 1 and 2 networks and the genuine public service need. If affirmative, please provide the Directorate with this market analysis.
- With regard to any identified market failure for railway services in the geographical area of Østlandet 1 and 2, the Ministry is invited to describe the public service obligations which will be imposed on the operator and how, and by which public authority, those criteria have been established.
- With regard to Article 4 of the PSO Regulation and taking also into account the interpretive guidelines concerning the PSO Regulation,⁷ please clarify whether rail substitute services, for instance by other modes of transport, are foreseen contractually required from the awarded operator, and if affirmative, whether those services are integrated in the award.
- Please clarify when the concession will be awarded, and when the operations will start. Moreover, with consideration to the existing public service contract with Flytoget for the route between the Oslo area and Oslo airport,⁸ please clarify whether the award in question includes future operations, and subsequently when operations on these and/or any new future routes will start. In relation to any future operations included in the award, please clarify to what extent a market analysis establishes the need for public service obligations for those routes.
- With regard to the provisions on market opening of the 4th railway package, in particular Article 11 of the Single Railway Market Directive, please clarify what is the policy of the Norwegian Government as regards access of other railway

⁶ The Directorate wishes to also highlight that this Request for Information is only focused on potential Internal Market issues and in particular the procedural requirements for imposing the Public Service Obligation. It may at later stages also request information concerning the compensation for the Public Service Obligation in question. The Directorate also notes that the State aid Directorate of the Authority has a parallel process concerning two open complaint cases (no 85950 & 86651) concerning PSO contracts for passenger railway services in Norway from 2018. The information submitted in reply to this request will be shared with the State aid Directorate.

⁷ Communication from the Commission on interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road (2014/C 92/01), published in the Official Journal of the European Union on 29 March 2014, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0329\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0329(01)&from=EN)

⁸ Cf. Concession with Flytoget AS signed 1 February 2013, «Avtale om konsesjon for utførelse av persontransport med tog som offentlig tjeneste i 2013-2028».

undertakings to the railway infrastructure concerned for the provision of rail passenger services.

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 *29 April 2023*.

Yours faithfully,

Valgerdur Gudmundsdottir
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Valgerdur Gudmundsdottir.