



Luxembourg, 21 March 2018

PRESS RELEASE 02/2018

Judgment in Case E-4/17 *EFTA Surveillance Authority v Kingdom of Norway*

THE MUNICIPALITY OF KRISTIANSAND'S TENDER PROCEDURE FOR AN UNDERGROUND CAR PARK WAS IN BREACH OF EEA LAW

In a judgment delivered today, the Court decided on whether a tender procedure by the Municipality of Kristiansand, Norway, in April 2015 in the form of a services concession for the construction and operation of an underground car park beneath Torvet, the main town square, in Kristiansand was compatible with EEA law.

The EFTA Surveillance Authority (“ESA”) sought a declaration that Norway had breached provisions of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (“the Directive”) in conjunction with Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (“the CPV Regulation”), by incorrectly classifying a public contract, having as its subject matter the construction and operation of an underground car park under Torvet, as a “service concession” rather than as a “works concession”, and by carrying out a tender procedure which is not in line with EEA rules on public procurement. Norway contested ESA’s pleas.

The Court stated that when a public contract contains elements relating both to a public works contract and another type of contract, it is the main object of the contract which determines which body of EEA rules on public contracts is, in principle, to be applied. That determination must be made in light of the essential obligations which predominate and which, as such, characterise the transaction, as opposed to those which are only ancillary or supplementary in nature and are required by the very object of the contract. The Court found that the main object of the contracts in question was public works and that the contracts constituted a public works concession within the meaning of Article 1(3) of the Directive. The Court went on to conclude that the Directive applied to the award procedure carried out by the Municipality of Kristiansand.

The Court held that Norway had failed to fulfil its obligations under the Directive by failing to: (i) publish a contract notice throughout the EEA in accordance with the legal requirements laid down in Article 58(3) of the Directive; (ii) use a complete and sufficiently precise set of CPV codes, in breach of Article 58(2) of the Directive, in conjunction with Article 1(14) of the Directive and the CPV Regulation; and (iii) respect the minimum time limit for the submission of applications in an award procedure, as prescribed by Article 59 of the Directive.

The full text of the judgment may be found on the internet at: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.