

## EFTA COURT

### Action brought on 2 June 2017 by the EFTA Surveillance Authority against the Kingdom of Norway

(Case E-4/17)

An action against the Kingdom of Norway was brought before the EFTA Court on 2 June 2017 by the EFTA Surveillance Authority, represented by Carsten Zatschler, Maria Moustakali, Øyvind Bø and Marlene Lie Hakkebo, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, B-1040 Brussels.

The EFTA Surveillance Authority requests the EFTA Court to declare that:

- 1. The Kingdom of Norway has breached provisions of the Act referred to at point 2 of Annex XVI to the EEA Agreement, *Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts* by incorrectly classifying a public contract and by carrying out a tender procedure for the construction and operation of an underground car park under Torvet in Kristiansand which is not in line with the requirements under the EEA rules on public procurement. Specifically, the Kingdom of Norway has:**
  - i. incorrectly described the subject matter of the public contract by failing to use the correct, or at any rate 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 Act referred to at point 6a of Annex XVI to the EEA Agreement (*Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the CPV*);**
  - ii. failed to publish a contract notice EEA-wide in the *Official Journal of the European Union* and the *TED* database in accordance with the legal requirements laid down in Article 58 of the Directive and;**
  - iii. not respected the minimum time limit for the submission of applications in an award procedure, as prescribed by Article 59 of the Directive.**
- 2. The Kingdom of Norway bears the costs of the proceedings.**

*Legal and factual background and pleas in law adduced in support:*

- In April 2015, the Municipality of Kristiansand in southern Norway launched a tender procedure for the construction and operation of a large underground car park underneath the main town square, known as “Torvet”, in Kristiansand.
- ESA claims that the project was not tendered out as a public works concession. Instead, the project was incorrectly described as being merely for the provision of “parking services” and the tender procedure did not comply with the detailed rules laid down in EEA law governing public works concession tenders, notably Directive 2004/18/EC *on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts*.
- ESA seeks a declaration that Norway has: incorrectly described the subject matter of the public contract by failing to use the correct, or at any rate a complete and sufficiently precise set of CPV codes; failed to publish a contract notice EEA-wide in the official Journal of the European Union and the TED database; and not respected the minimum time limit for the submission of applications in an award procedure.
- The specific contract in issue was expressed as concerning the “design, construction, financing and the operation of an underground car park”. The tender was published in the Norwegian national notification database for public procurement, Doffin, on 20 April 2015, using the CPV code equivalent for “parking services”.
- According to the contract notice, the value of the contract has been estimated to be between 24.000.000 and 100.000.000 NOK.
- Only one tender was submitted within the prescribed deadline on 15 May 2015. The tender was revised after negotiations, and the contract was eventually awarded on 24 June 2015 and signed by the parties on 29 June 2015.