

Case handler: Rachel Harriott
Tel: +32 2 286 1844
e-mail: rha@eftasurv.int

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Case handler: Frederik De Ridder
Tel: +32 2 286 1863
e-mail: fde@eftasurv.int

To: Ministry of Local Government and Regional Development
Postboks 8112 Dep
0032 Oslo
Norway

CC Ministry of Foreign Affairs
Postboks 8114 Dep
0032 Oslo
Norway

Follow-up letter to the package meeting in Norway on 24-25 October 2024

Dear Sir/Madam,

On behalf of the Authority, I would like to thank the Norwegian Government for the very useful and constructive meetings and for the hospitality offered to us during the recent package meeting.

The enclosed follow-up letter reflects the Authority's understanding of the results of the discussions that took place during the package meeting and as such, save for correcting minor errors - e.g. dates, we do not anticipate any further changes to the document.

Yours faithfully,

Marco Uccelli
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Marco Uccelli.

**Package Meeting in Norway
24-25 October 2024**

Follow-up letter

**Procurement
(Annex XVI)**

**Responsible case handlers: Rachel Harriott
Frederik De Ridder**

1. Complaint against Norway regarding breaches of public procurement law in relation to contracts for pension services (Case No 89254)

The meeting was attended by:

- Ragnhild Spigseth, Tonje Areng Skaara and Ida Bakke Husom from the Ministry of Local Government and Regional Development;
- Vegard Pettersen from the Ministry of Health and Care Services;
- Samantha Tahir-Hafting and Joachim Isaksen Simonsen from the Ministry of Trade, Industry and Fisheries;
- Kari Sjørholt from the Ministry of Finance;
- Bjørn Bogstad from the Ministry of Labour and Social Inclusion;
- Marco Uccelli, Sigrún Ingibjörg Gísladóttir, Rachel Harriott, Ewa Gromnicka, Frederik De Ridder and Bisma Rasool from the EFTA Surveillance Authority ('the Authority').

The discussion at the meeting focused on four points:

1. The application of the in-house exemption in Article 12(3) of Directive 2014/24/EU on public procurement.
2. How the services should be valued.
3. Possible consequences of successive changes to the contracts with regard to Article 72 of Directive 2014/24/EU on public procurement.
4. Forthcoming changes in relation to AFP premiums.

With regard to the first two points concerning the in-house exemption and valuation of the services, the representatives of the Authority explained that their current assessment remained in line with the provisional views expressed in the letter of 29 February 2024 (Document No 1366568) from the Internal Market Affairs Directorate ('the Directorate'). The representatives of the Authority elaborated on the positions expressed in that letter in the context of the reply by the Norwegian Government in its letter of 14 June 2024 (Document No 1463487, your ref. 22/6706-

127), with reference to case law from the Court of Justice of the European Union (see for example C-574/12, *SUCH* and C-271/08, *Commission v Germany*).

With regard to the changes made to the contracts, the representatives of the Authority outlined that the Directorate currently focusses its consideration of the case on the cumulative changes made to contracts in force since 2009 and the lack of a fixed term to the contracts. The representatives of the Authority expressed concern regarding the compatibility of these changes with Article 72 of Directive 2014/24/EU, in particular in light of the long or indefinite duration of the contracts.

With regard to the final point concerning AFP, the representatives of the Norwegian Government informed the representatives of the Authority that KLP was intending to make changes to its premiums, anticipated to take effect from 2024/5 and last until 2029, in order to fund AFP payments during the period in which pensioners would be drawing down AFP pensions under both the old and new regimes. In line with the wider discussion on Article 72 of Directive 2014/24/EU, the representatives of the Authority expressed concern about possible effects of such additional variations to long standing contracts.

The Authority will further consider the case and potential next steps in light of the Norwegian Government's letter of 14 June 2024.

The Norwegian Government is invited to share any further comments or information in relation to the points discussed at the meeting, should it wish to do so. In particular, the Authority would welcome information concerning changes to AFP premiums.