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Norwegian Ministry of Trade, Industry and Fisheries
Postboks 8090 Dep
0032 Oslo
Norway

Dear Sir/Madam,

Subject: Municipal policies in Norway regarding work-related crime in the context of public procurement

Reference is made to the above case which was opened in order for ESA's Internal Market Affairs Directorate ("the Directorate") to review the compliance with EEA law of the application of policies to combat work-related crime in public procurement.

During the course of the case, the Norwegian Government has provided information from the municipalities of Oslo and Skien regarding how their policies operate in practice,¹ including how the relevant legal constraints are taken into account,² and has also provided information about the national context in which the municipal policies have been developed and applied,³ including guidance from the Ministry of Trade, Industry and Fisheries; recommendations from Norwegian Agency for Public and Financial Management, the Norwegian Association of Local and Regional Authorities (KS), the Federation of Norwegian Construction Industries and the United Federation of Trade Unions; and legal advice obtained by KS on existing and possible new measures.

As the Directorate has emphasised a number of times during the course of this case and Case No 84262 on restrictions on subcontracting, EEA public procurement rules allow public bodies to take social and employment considerations into account in their purchasing and contracting, and EEA States are under an obligation to take appropriate measures to ensure compliance with, inter alia, social and labour law in the performance of public contracts.⁴

The Directorate's concern has been, and remains, the need for relevant legal constraints to be respected, in particular, the need for measures to be proportionate⁵ and linked to the subject matter of each particular contract.⁶ Such matters must by necessity be assessed on an individual basis by the relevant contracting authority and this entails a need for a certain level of flexibility within any relevant rules/policies.

Having reviewed the information provided by Norway, the Directorate has concluded that the current national framework encourages compliance at local level. Furthermore, the Directorate is not aware of any systemic problems or general practices in breach of the EEA public procurement rules. On this basis, the current case has been closed.

¹ Document Nos 1152418, 1152420 and 1152426.

² See, for example, references to the need for proportionality assessments, measures being limited to the scope of the contract in question and, in the case of Oslo, an explanation that each Vice Mayor can approve exemptions in certain circumstances.

³ Document No 1252149.

⁴ Article 18(2) of Directive 2014/24/EU, Article 36(2) of Directive 2014/25/EU and Article 30(3) of Directive 2014/23/EU.

⁵ See in particular Article 18(1) of Directive 2014/24/EU.

⁶ See in particular Articles 67(2) and 70 of Directive 2014/24/EU.

Whilst the case has been closed for the reasons stated above, it should be noted that as the Directorate has not reviewed every individual application of every individual policy, this cannot be taken as a conclusion that each and every measure applied at municipal level in Norway to combat work-related crime in public procurement is lawful. The decision to close the case is, as always, without prejudice to any future decision by the Authority to open a new case on the issue or related issues. For the avoidance of doubt, it should also be noted that the closure of this case does not affect the Authority's on-going case concerning restrictions on subcontracting.⁷

The Directorate is aware that work is currently on-going in Norway regarding a "Norwegian model" to combat work-related crime and the Directorate thanks the Norwegian Government for the update on that work during a call on 29 March 2022. The Directorate would welcome any further updates the Norwegian Government wishes to share on such work in due course.

Yours faithfully,

Marco Uccelli
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Marco Uccelli.

⁷ Case No 84262 - Restrictions on subcontracting in the field of public procurement in Norway.