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Judgment in Case E-13/19 *Hraðbraut ehf. v mennta- og menningarmálaráðuneytið, Verzlunarskóli Íslands ses., Tækniskólinn ehf., and Menntaskóli Borgarfjarðar ehf.*

**EEA PUBLIC PROCUREMENT RULES AND
CONTRACTS FOR UPPER SECONDARY EDUCATION**

In a judgment delivered today, the Court answered questions referred by the Icelandic Complaints Board for Public Procurement (*Kærunefnd útboðsmála*) regarding whether Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (“the Directive”) is applicable to contracts for providing upper secondary education in Iceland concluded between the Icelandic Ministry of Education, Science and Culture and three private colleges.

Under the contracts, the colleges provide pupils and teachers with the necessary services and facilities customary for instruction for the upper secondary school level. Further, the colleges are responsible for ensuring that the education complies with quality requirements and the law. The colleges receive contributions from the Icelandic State based on an allocation of funds determined by the Icelandic Parliament in each year’s budget legislation.

The Court found that for the Directive to apply, contracts such as those in question must constitute a “public contract” for the provision of “services” within the meaning of the Directive. A “public service contract” presupposes that the contracts in question concern the provision of services within the meaning of Article 37 of the EEA Agreement, that is services normally provided for remuneration. That characteristic is absent in the case of education provided under a national education system in situations where two conditions are satisfied. First, the State must be seeking to fulfil its duties towards its own population in the social, cultural, and educational fields. Second, the system in question must, as a general rule, be funded from the public purse.

Accordingly, the Court held that in such circumstances, the provision of upper secondary education provided under a national education system cannot be regarded as a “service” for the purposes of Article 37 of the EEA Agreement. Therefore, such contracts cannot be regarded as having as their object the provision of “services” within the meaning of the Directive, and accordingly, do not constitute “public service contracts” within the meaning of that directive.

The full text of the judgment may be found on the Court’s website: www.eftacourt.int.

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