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Judgment in Case E-7/19 *Tak – Malbik ehf. v the Icelandic Road and Coastal Administration (Vegagerðinni) and Próttur ehf.*

ADVISORY OPINION ON THE CLASSIFICATION OF A PUBLIC CONTRACT AS A PUBLIC WORKS OR SERVICE CONTRACT

In a judgment delivered today, the Court answered a question referred by the Icelandic Public Procurement Complaints Committee (*Kærunefnd útbodsmála*) (“the Complaints Committee”) regarding the interpretation of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (“the Directive”).

The case concerned a complaint lodged by Tak – Malbik ehf. with the Complaints Committee contesting a decision awarding a contract following a procurement procedure conducted by the Icelandic Road and Coastal Administration (*Vegagerðinni*). The subject of the procurement procedure at issue was the processing and stockpiling of base materials of specific sizes.

By its question, the Complaints Committee asked whether a public contract to process and stockpile certain raw materials provided by the contracting authority and in accordance with its requirements constitutes a public works contract within the meaning of point (6) of Article 2(1) of the Directive, or a public service contract within the meaning of point (9) of Article 2(1).

The Court held that in circumstances such as those of the case in the main proceedings, there is no public works contract within the meaning of point (6) of Article 2(1) of the Directive. A public contract that has as its object the provision of services other than those referred to in point (6) of Article 2(1) of the Directive, constitutes a public service contract within the meaning of point (9) of Article 2(1).

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

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