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Judgment in Case E-8/19 *Scanteam AS v The Norwegian Government, represented by the Ministry of Foreign Affairs*

APPLICABILITY OF EEA PUBLIC PROCUREMENT RULES TO A PROCUREMENT PROCEDURE UNDERTAKEN BY A FOREIGN MISSION IN A THIRD COUNTRY

In a judgment delivered today, the Court answered a question referred by the Complaints Board for Public Procurement (*Klagenemnda for offentlige anskaffelser*) (“the Complaints Board”) 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 procurement procedures undertaken by a foreign mission of an EFTA State in a third country outside the EEA.

The case in the main proceedings concerned a complaint lodged by Scanteam AS with the Complaints Board. The complaint alleged that a procurement procedure conducted by the Royal Norwegian Embassy in Luanda, Republic of Angola, was an unlawful direct procurement, as no contract notice had been published in the EU database for notices (Tenders Electronic Daily). In its request for an advisory opinion, the Complaints Board noted that it was apparent from the facts of the case that practically all potential suppliers were domiciled in the EEA. At the same time, the service being procured was to be provided primarily in a third country outside the EEA.

The Court found that the scope of application of the Directive is not subject to any specific geographical limitation. However, this does not mean that the applicability of the Directive is without limit, as legal acts incorporated into the EEA Agreement apply, in principle, to the same area as the EEA Agreement. The geographical scope of the EEA Agreement does not preclude EEA law from having effects outside the territory of the EEA.

The Court held that procurement, within the meaning of the Directive, will come within the scope of the EEA Agreement if it is sufficiently closely linked to the EEA. Acquisition by an EFTA State’s foreign mission located in a third country by means of a public contract of supplies or services from an economic operator established in the EEA is liable to have a direct impact on the functioning of the internal market within the EEA. The Court found that such procurement must, in principle, be considered sufficiently closely linked to the EEA and will, therefore, come within the scope of the EEA Agreement.

Accordingly, the Court held that the Directive is applicable to a procurement procedure undertaken by a foreign mission of an EFTA State in a third country, if the procurement is sufficiently closely linked to the EEA.

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.