

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Oslo District Court dated 6 July 2023 in the case of Trannel International Limited v Staten v/Kultur- og likestillingsdepartementet

(Case E-8/23)

A request has been made to the EFTA Court dated 6 July 2023 from Oslo District Court (*Oslo tingrett*), which was received at the Court Registry on 6 July 2023, for an Advisory Opinion in the case of *Trannel International Limited v Staten v/Kultur- og likestillingsdepartementet*, on the following questions:

- 1. Which factors are key under EEA law for the determination of whether an award of an exclusive right for gaming is to be regarded as an administrative authorisation scheme falling outside the scope of the public procurement rules, or whether it is to be regarded as an award of a “services concession” under Article 5(1)(b) of Directive 2014/23?**
- 2. Have the adoption and entry into force of Directive 2014/23 and its regulation of concession contracts entailed any change for how to draw the line between public contracts in the form of services concession contracts, on the one hand, and administrative authorisation schemes, on the other?**
- 3. What significance does the fact that any profits of the party awarded the exclusive right are controlled by the State through regulation, to the benefit of third parties, have for the determination of whether one is dealing with an administrative authorisation scheme or a services concession contract?**
- 4. Is the award of an exclusive right to offer horse race betting to a foundation organised in a manner similar to that of Stiftelsen Norsk Rikstoto, a “services concession” under Article 5(1)(b) of Directive 2014/23?**
- 5. Is it of significance for whether the exception under the first subparagraph of Article 10(1) of Directive 2014/23 applies that the national legislation does not specifically name the holder of the exclusive right, but that the preparatory works assume that the exclusive right is to be awarded to a specific exclusive right provider, although this is not laid down in statute because an obligation may not be imposed on the foundation to offer gaming?**

- 6. Is it of significance for whether the exception under the first subparagraph of Article 10(1) of Directive 2014/23 applies that the foundation was also awarded an exclusive right on the basis of previous national legislation, including that the foundation was awarded an exclusive right for horse race betting uninterrupted under that previous national legislation, although for five years at a time, until such time as the exclusive right was awarded again after new legislation entered into force on 1 January 2023?**