DANISH COMPETITION AND CONSUMER AUTHORITY

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Questions regarding the use of labels in public procurement

The Danish Government has launched a new strategy "Green Procurement for a Green Future - Strategy for green public procurement". According to the strategy, a greener public procurement shall contribute to achieving the target of reducing Denmark's greenhouse gas emissions by 70 per cent in 2030. As part of the strategy, it will be mandatory for government procurement officers to choose eco-labelled products for some product groups.

Against this background, we have a few questions regarding the interpretation of article 43(1)(a) of Directive 2014/24/EU. We hope that you can elaborate on and possibly clarify the meaning of the conditions in question.

It is our understanding that article 43(1)(a) contains two cumulative conditions for label requirements. 1) the label requirements must be linked to the subject-matter of the contract (hereafter the first condition) and 2) the label requirements must be appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract (hereafter the second condition).

In respect of 2), it is our understanding that "label requirements appropriate to define characteristics" can be understood in the same way as technical specifications under article 42(1) i.e. that the technical specification shall lay down the characteristics required of a works, service or supply.

This gives rise to the following questions:

1) *Does the Commission agree that label requirements under article 43(1)(a) may contain criteria as defined in article 42 regarding technical specifications? And in that case:*
   a) *May label requirements also include criteria referring to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives, cf. the definition in article 42?*

or

    b) *Shall requirements that are "appropriate to define characteristics" instead be understood as requirements only concerning the "material substance" of the work, product or service?*

2) *Does the second condition in article 43(1)(a) mean that labels <u>must only</u> contain criteria consistent with the definition of technical specifications in article 42?*

3) *If "no" to question 2, what is then the implication of the second condition in article 43(1)(a)? That is, how is "appropriate to define characteristics" to be understood and how does the effect from the second condition differ from the resulting effect of the first condition? And can you provide us with some examples of label requirements consistent with the second condition but which are not technical specifications as defined in article 42?*

4) *If "yes" to question 2:*

    a) *Does that mean that label requirements may include criteria regarding for example the CO2 emission in the production process, but not certain social criteria such as wage levels of production workers or workers safety measures?*

    b) *In this case, how should the reference to specific environmental, social or other characteristics and the permission to require specific labels in either the technical specifications, the award criteria or the contract performance conditions in article 43 be understood?*

We will be looking forward to hear your answers to the above-mentioned questions.

Thank you in advance.

Yours sincerely

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