

11. Follow-up on member proposals to stop the purchase of goods from illegal Israeli settlements (2021-0041391)

Appendix

Annex 1 - Member proposal to stop the purchase of goods from illegal Israeli settlements

This recommendation is a follow-up to the members' proposal to stop the purchase of goods from illegal Israeli settlements, which was presented at the Citizens' Representation's meeting on 28 May 2015.

The financial administration does not recommend that the municipality in its procurement policy adopt a stop to the purchase of goods from illegal Israeli settlements, as the administration sees a number of problems associated with such a decision.

Case presentation

Setting

The Finance Administration recommends to the Finance Committee that

1. that the following statement on the membership proposal be noted,
2. that it is approved that the membership proposal submitted by the Socialist People's Party at the Citizens' Representation's meeting on 28 May 2015, agenda item 37, cf. Appendix 1, is hereby handled.

Problem statement

On 28 May 2015, the Socialist People's Party submitted a membership proposal to the Citizens' Representation to stop the purchase of goods from illegal Israeli settlements. The proposal was referred to the Finance Committee for consideration. The proposal is a resubmission of a similar proposal from 2012.

On 22 September 2015, the Finance Administration informed the Finance Committee of the status of the case. From this briefing, it appeared that a statement was awaited from the municipal inspectorate (the then State Administration) on the basis of an inquiry from Aarhus Municipality.

In February 2015, the state administration had received a request for a statement from Aarhus Municipality, which wanted an answer as to whether a municipality could legally boycott goods from illegal Israeli settlements.

On 13 February 2017, the Authority issued its opinion in the case. The state administration refused to take a position on the issue for formal reasons.

The City Council of Aarhus Municipality decided on 16 August 2017 to reject the proposal. Aarhus Municipality referred to the fact that "the municipality [...] cannot boycott goods from another country or area without special legal authority. As such legal authority does not exist, the municipality must act within the tender rules. It is the assessment that it is hardly compatible with the procurement rules to implement a decision that the municipality does not generally purchase goods produced in illegal Israeli settlements in occupied Palestinian territories. It is therefore recommended that the City Council does not approve the resolution. "

Aarhus Municipality referred i.a. to a memorandum, which the City of Copenhagen had ordered in 2011 from the law firm Lett on consideration of international law when purchasing. The memorandum concluded at the time that "a municipality cannot boycott goods, products and companies from another country or area without special legal authority".

The Finance Administration regrets to the Finance Committee that a final assessment of the proposal has only now been made. The reason for this is due to a lack of follow-up in relation to the statement from the municipal supervision.

There is another membership proposal from 2015, which has not yet been handled. These are overviews of values of residential properties, land and other rights that the City of Copenhagen owns outside the municipality. The membership proposal will be handled as soon as possible. The Finance Administration has subsequently established an internal procedure to ensure timely handling of member proposals.

Solution

Foreign policy is a state task. A municipality can therefore in principle not deal with and / or use its financial resources for purposes of a foreign policy nature.

In addition, a municipality cannot without special authority boycott goods, products and companies from another country for foreign policy reasons. This is true even though the government is generally critical of the government in question.

In the opinion of the Financial Administration, the then Minister of Economic Affairs and the Interior's answer to question 16 of 26 November 2014 to the Folketing's Municipal Committee, which is mentioned in the member proposal, is not unambiguous. However, the Finance Administration is of the opinion that the most obvious answer is that the municipalities in this area, if they boycott goods from illegal Israeli settlements, act in accordance with the foreign policy statement, which was adopted by the Folketing on 21 January 2014 (V 13 on EU, Israel and the West Bank). Thus, there will be no question of the municipality, in violation of the municipal power of attorney rules, independently coming up with a foreign policy position.

Furthermore, it is the opinion of the Financial Administration that the municipal power of attorney rules do not for that reason in themselves give authority for a municipality to boycott goods from another country.

The financial administration has therefore assessed whether this legal basis is found in the procurement law rules. The response of the then Minister of Economic Affairs and the Interior does not take a position on whether a boycott of goods from illegal Israeli settlements will be in accordance with the rules of procurement law.

During the Citizens' Representation's consideration of the proposal in 2012, the Financial Administration found that the proposal was contrary to basic procurement law principles, and that a municipality cannot boycott goods, products and companies from another country or area without special legal authority.

On 1 January 2016, a new Public Procurement Act entered into force in Denmark. Pursuant to the Public Procurement Act, the City of Copenhagen may set requirements for the supplier's general suitability, and / or for the supplier's specific implementation of the contract in question. However, the Public Procurement Act does not provide an independent authority to, for example, boycott goods, products or suppliers from a given area.

The Public Procurement Act regulates exhaustively the requirements that the City of Copenhagen can set for a supplier's general suitability. According to the law, the requirements must relate to the company's pursuit of the profession in question, the company's economic and financial capacity or the company's technical and professional capacity. It is therefore not possible under the Public Procurement Act to establish a general suitability condition that the company does not have production in the illegal Israeli settlements.

As regards the possibility of laying down special conditions for the performance of the contract, it is a requirement that there is a direct link between the terms of the contract and the subject - matter of the contract, and that the terms of the contract must comply with the principles of equal treatment and transparency. In addition, the condition must not conflict with national or EU law.

The requirement of direct link between the subject-matter of the contract and the special conditions for the performance of the contract precludes a general requirement that the supplier in question may not have production in the illegal Israeli settlements, just as the requirement of equal treatment precludes discrimination against suppliers solely on the basis of a specific country or territory.

In addition, such a general boycott must also be presumed to be contrary to general principles of EU law. See thus the Foreign Minister's answer of 28 June 2018 to EUU alm. part question 268 from Søren Søndergaard (EL), whether Denmark can, in accordance with EU law, ban the import of goods from Israeli settlements that are illegal under international law. The Minister of Foreign Affairs replies here that "Trade policy is an exclusive competence of the EU. A ban on the import of settlement goods will therefore only be able to be implemented - in a legal and practical sense - jointly under the auspices of the EU."

The Finance Administration has investigated whether the Folketing should have adopted similar parliamentary resolutions in relation to Iran, Syria, Saudi Arabia, Russia, Qatar and China. This is not seen to be the case. However, according to the Ministry of Foreign Affairs' website, there are a number of sanctions, including trade sanctions, in relation to Iran, Syria, Russia and China.

Economy

The setting has no financial consequences.

Next steps

If the case is approved, the Financial Management considers the membership proposal to be handled and does not take any further action.

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